

Apr 07 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001510

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants.

RECORD ON APPEAL
VOLUME 3 OF 3

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Topsail Island Investments, LLC, and TR Sales
Plantation, LLC*

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Attorney for Mount Vintage Plantation Homeowners Association, Inc.

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From: [McIntosh, Lawton Law Clerk \(Kjursten Collier\)](#)
To: [Justin Lucey](#); [Steven Edward Buckingham](#); ckrawczyk@finkellaw.com; [Anna McCann](#); [Kristina Shernoff](#); [Lee Weiland](#); [Mandee Funai](#); tkelly@finkellaw.com
Cc: [McIntosh, Lawton Secretary \(Tammy Jennings\)](#)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
Date: Friday, August 30, 2024 3:27:18 PM

Good afternoon,

Judge McIntosh has asked me to relay the following:

“Counsel, after reviewing the following documents: Deed in Lieu of Foreclosure filed 09/03/2013, Assignment of Bid filed 11/06/2013, Master’s Report filed 11/11/2013, Special Referee Deed filed 08/13/24, and Corrective Special Referee Deed filed 08/13/24 it appears that LL of SC, LLC signed over developer rights to Raiford Topsail Island Investments, LLC. Accordingly, this letter is to inquire what makes the issue of who is properly invested with developer rights a question of fact for the jury as opposed to a question of law.”

Additionally, **Mr. Krawczyk**, in case you had missed my last email, Judge McIntosh would appreciate it if you would send over your material regarding your order of protection/attorney client privilege matter that you mentioned Wednesday.

Thank you,

Kjursten Collier
Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmcintoshlc@sccourts.org

ROA_00870

From: Justin Lucey <jlucey@lucey-law.com>

Sent: Thursday, August 29, 2024 8:41 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; cKrawczyk@finkellaw.com

Cc: Kristina Shernoff <kshernoff@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Kjursten,

Good morning.

Yesterday, Judge McIntosh asked for a case demonstrating that Plaintiff can proceed against the developer on both negligence and breach of fiduciary duty, simultaneously. The first case excerpted below (and attached), Cohen, is a California case wherein the Plaintiff was permitted to proceed against the Developer for acts and omissions committed during his control of the association, for cause of action in both negligence and breach of fiduciary duty. The pertinent point is excerpted into this email under the signature line.

The second case excerpted below, Accident Ins., is not a developer case, but it is a local case, where the Plaintiff was permitted to proceed upon both negligence and breach of fiduciary duty simultaneously. Copy attached.

Claims for both negligence and breach of fiduciary duty have been permitted regularly in suits against developers for defective construction. See, e.g., Pope v. Heritage Communities, 395 SC 404, 717 SE2nd, 765 (Ct. App. 2011).

While the Walbeck Supreme Court decision did not address this issue, it may be worth noting that the derivative, HOA claim in Walbeck went to the jury on both negligence (negligent misrepresentation) and breach of fiduciary duty; but as Plaintiff elected to take under the breach of fiduciary duty verdict in lieu of the negligence verdict, and the Supreme Court sustained the breach of fiduciary duty verdict, it ultimately did not need to consider the Court of Appeals negative treatment of the negligence verdict. Copy of verdict form attached.

Respectfully submitted,

Justin Lucey

ROA_00871

COHEN:

Plaintiffs seek damages for negligence, breach of fiduciary duty and breach of the duty of good faith and fair dealing, all based on the developer's alleged failure to properly administer and enforce the Declaration. Division Two has already determined these allegations are sufficient as against the Association; and we find them adequate as against S & S as well.

A developer's liability to a homeowner's association for breach of the basic fiduciary duty to act in good faith, exercise proper management and avoid conflicts of interest is well settled. (*Raven's Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783, 171 Cal.Rptr. 334.) This fiduciary duty extends to individual homeowners, not just the homeowners association. (*Cohen v. Kite Hill Community Association*, supra, 142 Cal.App.3d 642, 652–653, 191 Cal.Rptr. 209.) Efforts by S & S to distinguish *Raven's Cove*, supra, are unavailing. As the court there noted, “a developer ... may not make decisions for the Association that benefit [its] own interest at the expense of the association and its members...” (114 Cal.App.3d at p. 799, 171 Cal.Rptr. 334.) When the developer and its employees control the Association, and the Association thus controlled permits mismanagement, the developer may be liable. (*Id.*, at p. 800, 171 Cal.Rptr. 334.) Accordingly, plaintiffs' allegations against S & S in the eighth, ninth and tenth causes are sufficient and the demurrer was improperly sustained. (*Cohen*, supra.)

Cohen v. S & S Constr. Co., 151 Cal. App. 3d 941, 945–46, 201 Cal. Rptr. 173, 175 (Ct. App. 1983)

ACCIDENT INS.:

Accordingly, the court finds that Plaintiff has sufficiently alleged that there exists an independent duty of good faith and care, which supports Plaintiff's claim for breach of fiduciary duty.

3. Negligence/Gross Negligence (Count 3)

Plaintiff repeats the allegations underlying its claim for breach of fiduciary duty, adding the adjectives “negligently, grossly negligently, recklessly, willfully, and wantonly” to the allegations. (ECF No. 1 ¶ 126.) As discussed above, the court finds that Plaintiff has sufficiently alleged that there exists an independent duty of good faith and care, which supports Plaintiff's claim for negligence/gross negligence.

Accident Ins. Co., Inc. v. U.S. Bank Nat'l Ass'n, No. 3:16-CV-2621-JMC, 2017 WL 4315141, at *9 (D.S.C. Sept. 28, 2017)

-----Original Message-----

From: McIntosh, Lawton Law Clerk (Kjursten Collier)

Sent: Wednesday, August 28, 2024 4:48 PM

To: Steven Edward Buckingham ; cKrawczyk@finkellaw.com

ROA_00872

Cc: Kristina Shernoff ; Anna McCann ; Mandeef Funai ; Lee Weiland ; tkelly@finkellaw.com; Justin Lucey ; McIntosh, Lawton Secretary (Tammy Jennings)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Mr. Krawczyk,

Our office can find no record of the cases you mentioned earlier today regarding the matters of attorney-client privilege. Judge McIntosh has asked me to reach out to you and ask you to send them to me so that he can look them over.

Thank you,

Kjursten Collier
Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmcintoshlc@sccourts.org

-----Original Message-----

From: Justin Lucey
Sent: Tuesday, August 27, 2024 10:44 AM
To: McIntosh, Lawton Secretary (Tammy Jennings) ; Steven Edward Buckingham
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Anna McCann ; Mandeef Funai ; Lee Weiland ; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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Tammy,

Out of an abundance of caution, I wanted to clarify the below typo - that the summary judgment motions are being held tomorrow, Wednesday, August 28, in Anderson (not Thursday)

Plaintiffs Memorandum in Support of their motion for summary judgment was contained within the

ROA_00873

Motion filed August 13; Plaintiffs Opposition to Defendants Motions will be filed by Lunch today.

Thank you

Justin Lucey

-----Original Message-----

From: McIntosh, Lawton Secretary (Tammy Jennings)

Sent: Monday, August 12, 2024 3:00 PM

To: Steven Edward Buckingham

Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Justin Lucey ; Anna McCann ; Mande Funai ; Lee Weiland ; ckrawczyk@finkellaw.com; tkelly@finkellaw.com

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

All,

Our office has secured a court reporter for Thursday, August 28 at 9:30 a.m.

If anything new is filed pertaining to these motions please send by email or regular mail if your brief with exhibits is over 30 pages long.

Thank you,

Tammy Jennings

Administrative Assistant

Judge R. Lawton McIntosh

P.O. Box 8002

Anderson, SC 29622

(864)- 260-4059

lmcintoshsc@sccourts.org

-----Original Message-----

From: Steven Edward Buckingham

Sent: Wednesday, August 7, 2024 10:13 AM

To: McIntosh, Lawton Secretary (Tammy Jennings)

Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Justin Lucey ; Anna McCann ; Mande Funai ; Lee Weiland ; ckrawczyk@finkellaw.com; tkelly@finkellaw.com

Subject: Re: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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Those also work for LL.

Sent from my iPhone

> On Aug 7, 2024, at 10:01 AM, McIntosh, Lawton Secretary (Tammy Jennings) wrote:

>

> All,

>

>

> I need to send in a request for a court reporter for Wednesday, August 28th day. I wanted to verify that everyone was available that morning and see if a 9:30 time would work. This will be in held in Anderson County.

>

>

> For the Pre-Trial motions please verify if Wednesday, September 11, 2024 at 2:00 will work for everyone, this would held in Oconee County.

>

>

> Before I send out an email to court administration I wanted to double check these dates with everyone.

>

>

>

>

> Thank you,

>

>

> Tammy Jennings

>

> Administrative Assistant to Judge McIntosh

>

> PO Box 8002

>

> Anderson, SC 29622

>

> (864) 260-4059

>

>

> _____

> From: McIntosh, Lawton Law Clerk (Chase Kinsey)

> Sent: Friday, July 26, 2024 10:07 AM

> To: McIntosh, Lawton Secretary (Tammy Jennings); Kristina Shernoff

> Cc: Justin Lucey; Anna McCann; Mandelee Funai; Lee Weiland; seb@buckingham.legal;

ckrawczyk@finkellaw.com; tkelly@finkellaw.com

> Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

>

>

> Good morning all,

>

>

>

> We enjoyed seeing everyone yesterday for motions. Per Judge's instructions during the hearing yesterday, here is what we have as far as dates for the next couple of months leading up to trial. Please let us know if we have left anything out or if anything needs to be adjusted.

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> Week of August 26th, 2024:

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> * Judge McIntosh has a chambers week. The plan is to argue summary judgment motions during this week.

> * Tentatively, Judge wants to shoot for the morning of Wednesday, August 28th to argue these motions, pending the availability of counsel. We will need to get everyone's availability and nail down a concrete date and time.

> * Since it is a chambers week, Judge will not have a court reporter signed. He stated yesterday that our office would work on getting a court reporter, but if we are unable to, the parties will agree on one and share the costs for the court reporter.

>

>

>

> Week of August 9th, 2024:

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>

> * Judge McIntosh has a term of Common Pleas Court in Oconee County that week.

> * Tentatively, he would like to argue the remaining pre-trial motions on Wednesday September 11th. Based upon your schedules, and his court docket for that week, we could potentially flex these dates to Thursday the 12th, or Friday the 13th. Again, we will need to get everyone's availability and get a concrete date set for these motions.

> * Could counsel provide us with what pre-trial motions they expect to have, and how much time you anticipate you will need to argue these motions so that we can determine whether these motions can be completed during an afternoon on one of these days or if a full day will be needed to complete the pre-trial motions.

>

>

>
> Again, if you could please confirm the accuracy of this information or if anything else needs to be added to our schedule. Thank you all!
>
>
>
> Respectfully,
>
>
>
> Chase Kinsey
>
> Law Clerk to the
>
> Honorable R. Lawton McIntosh
>
> P.O. Box 8002
>
> Anderson, SC 29622
>
> Cell: (864) 760-5936
>
> Office: (864) 260-4059
>
> lmcintoshlc@sccourts.org
>
>
>
> From: McIntosh, Lawton Secretary (Tammy Jennings)
> Sent: Wednesday, June 19, 2024 2:16 PM
> To: Kristina Shernoff ; McIntosh, Lawton Law Clerk (Chase Kinsey)
> Cc: Justin Lucey ; Anna McCann ; Mandee Funai ; Lee Weiland ; seb@buckingham.legal; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
> Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
>
>
>
> Thank you!
>
>
>
>
>
>
> Tammy

>
>
>
> From: Kristina Shernoff <kshernoff@lucey-law.com>
> Sent: Tuesday, June 18, 2024 4:07 PM
> To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; McIntosh, Lawton Law Clerk (Chase Kinsey) <lmcintoshlc@sccourts.org>
> Cc: Justin Lucey <jlucey@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mandee Funai <mfunai@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; seb@buckingham.legal; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
> Subject: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
>
>
>
> *** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
>
> Good afternoon,
>
>
>
> Please find attached Plaintiffs' Twelfth Quarterly Update to Judge McIntosh in the above referenced case.
>
>
>
> If you have any questions, please feel free to call our office at the number below.
>
>
>
> Thank you,
>
> Kristina
>
>
>
>
>
> Kristina Koklas Shernoff
>
> Senior Paralegal
>
> Justin O'Toole Lucey, P.A.

>

> 415 Mill Street

>

> Mount Pleasant, SC 29464

>

> Main: (843) 849-8400

>

> Direct: (843) 849-6449

>

>

>

> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

From: [Steven Edward Buckingham](#)
To: [McIntosh, Lawton Law Clerk \(Kjursten Collier\)](#); [Justin Lucey](#); ckrawczyk@finkellaw.com; [Anna McCann](#); [Kristina Shernoff](#); [Lee Weiland](#); [Mandee Funai](#); tkelly@finkellaw.com
Cc: [McIntosh, Lawton Secretary \(Tammy Jennings\)](#)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
Date: Tuesday, September 3, 2024 10:49:00 AM

Good morning. In response to the Judge's question, I think it might have 2 components. The first component is the question of which chain of documents establishes the transfer of developer rights and into which entity. Candidly, I think that is a question of law. The second component is the question of who presently has developer rights. That might involve questions of fact, particularly when it comes to—in this case—whether LL of SC has always had developer rights, or whether—as it appears the judge is leaning—RTI was conveyed developer rights through the master's deed(s). If RTI was conveyed developer rights, then there may very well be issues of fact about LL of SC's exercise of those rights on behalf of RTI.

Either way, it would seem an adjudication of which entity received developer rights through the DIL/foreclosure process would be very important at this juncture.

Separately, Mr. Krawczyk called me a little while ago to say that he has been having trouble with email since Friday. He can apparently see emails come in, but he can't read them or respond to them. He says that his firm's email servers are being repaired and that he should have.

Thanks to all.

Steve Buckingham

From: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>
Sent: Friday, August 30, 2024 3:27 PM
To: Justin Lucey <jlucey@lucey-law.com>; Steven Edward Buckingham <seb@buckingham.legal>; ckrawczyk@finkellaw.com; Anna McCann <amccann@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; Mandee Funai <mfunai@lucey-law.com>; tkelly@finkellaw.com
Cc: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good afternoon,

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“Counsel, after reviewing the following documents: Deed in Lieu of Foreclosure filed 09/03/2013, Assignment of Bid filed 11/06/2013, Master’s Report filed 11/11/2013, Special Referee Deed filed 08/13/24, and Corrective Special Referee Deed filed 08/13/24 it appears that LL of SC, LLC signed over developer rights to Raiford Topsail Island Investments, LLC. Accordingly, this letter is to inquire what makes the issue of who is properly invested with developer rights a question of fact for the jury as opposed to a question of law.”

Additionally, **Mr. Krawczyk**, in case you had missed my last email, Judge McIntosh would appreciate it if you would send over your material regarding your order of protection/attorney client privilege matter that you mentioned Wednesday.

Thank you,

Kjursten Collier

Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
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From: Justin Lucey <jlucey@lucey-law.com>

Sent: Thursday, August 29, 2024 8:41 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; cKrawczyk@finkellaw.com

Cc: Kristina Shernoff <kshernoff@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

ROA_00881

Kjursten,

Good morning.

Yesterday, Judge McIntosh asked for a case demonstrating that Plaintiff can proceed against the developer on both negligence and breach of fiduciary duty, simultaneously. The first case excerpted below (and attached), Cohen, is a California case wherein the Plaintiff was permitted to proceed against the Developer for acts and omissions committed during his control of the association, for cause of action in both negligence and breach of fiduciary duty. The pertinent point is excerpted into this email under the signature line.

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While the Walbeck Supreme Court decision did not address this issue, it may be worth noting that the derivative, HOA claim in Walbeck went to the jury on both negligence (negligent misrepresentation) and breach of fiduciary duty; but as Plaintiff elected to take under the breach of fiduciary duty verdict in lieu of the negligence verdict, and the Supreme Court sustained the breach of fiduciary duty verdict, it ultimately did not need to consider the Court of Appeals negative treatment of the negligence verdict. Copy of verdict form attached.

Respectfully submitted,

Justin Lucey

COHEN:

Plaintiffs seek damages for negligence , breach of fiduciary duty and breach of the duty of good faith and fair dealing, all based on the developer's alleged failure to properly administer and enforce the Declaration. Division Two has already determined these allegations are sufficient as against the Association; and we find them adequate as against S & S as well.

A developer's liability to a homeowner's association for breach of the basic fiduciary duty to act in good faith, exercise proper management and avoid conflicts of interest is well settled. (Raven's Cove Townhomes, Inc. v. Knuppe Development Co. (1981) 114 Cal.App.3d 783, 171 Cal.Rptr. 334.) This fiduciary duty extends to individual homeowners, not just the homeowners association. (Cohen v. Kite Hill Community Association, supra, 142 Cal.App.3d 642, 652–653, 191 Cal.Rptr. 209.) Efforts by S

& S to distinguish Raven's Cove, supra, are unavailing. As the court there noted, "a developer ... may not make decisions for the Association that benefit [its] own interest at the expense of the association and its members...." (114 Cal.App.3d at p. 799, 171 Cal.Rptr. 334.) When the developer and its employees control the Association, and the Association thus controlled permits mismanagement, the developer may be liable. (Id., at p. 800, 171 Cal.Rptr. 334.) Accordingly, plaintiffs' allegations against S & S in the eighth, ninth and tenth causes are sufficient and the demurrer was improperly sustained. (Cohen, supra.)

Cohen v. S & S Constr. Co., 151 Cal. App. 3d 941, 945–46, 201 Cal. Rptr. 173, 175 (Ct. App. 1983)

ACCIDENT INS.:

Accordingly, the court finds that Plaintiff has sufficiently alleged that there exists an independent duty of good faith and care, which supports Plaintiff's claim for breach of fiduciary duty.

3. Negligence/Gross Negligence (Count 3)

Plaintiff repeats the allegations underlying its claim for breach of fiduciary duty, adding the adjectives "negligently, grossly negligently, recklessly, willfully, and wantonly" to the allegations. (ECF No. 1 ¶ 126.) As discussed above, the court finds that Plaintiff has sufficiently alleged that there exists an independent duty of good faith and care, which supports Plaintiff's claim for negligence/gross negligence.

Accident Ins. Co., Inc. v. U.S. Bank Nat'l Ass'n, No. 3:16-CV-2621-JMC, 2017 WL 4315141, at *9 (D.S.C. Sept. 28, 2017)

-----Original Message-----

From: McIntosh, Lawton Law Clerk (Kjursten Collier)

Sent: Wednesday, August 28, 2024 4:48 PM

To: Steven Edward Buckingham ; cKrawczyk@finkellaw.com

Cc: Kristina Shernoff ; Anna McCann ; Mandeel Funai ; Lee Weiland ; tkelly@finkellaw.com; Justin Lucey ; McIntosh, Lawton Secretary (Tammy Jennings)

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Mr. Krawczyk,

Our office can find no record of the cases you mentioned earlier today regarding the matters of attorney-client privilege. Judge McIntosh has asked me to reach out to you and ask you to send them to me so that he can look them over.

ROA_00883

Thank you,

Kjursten Collier
Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmcintoshlc@sccourts.org

-----Original Message-----

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Sent: Tuesday, August 27, 2024 10:44 AM
To: McIntosh, Lawton Secretary (Tammy Jennings) ; Steven Edward Buckingham
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Anna McCann ; Mande Funai ; Lee Weiland ; cKrawczyk@finkellaw.com; tkelly@finkellaw.com
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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Tammy,

Out of an abundance of caution, I wanted to clarify the below typo - that the summary judgment motions are being held tomorrow, Wednesday, August 28, in Anderson (not Thursday)

Plaintiffs Memorandum in Support of their motion for summary judgment was contained within the Motion filed August 13; Plaintiffs Opposition to Defendants Motions will be filed by Lunch today.

Thank you

Justin Lucey

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From: McIntosh, Lawton Secretary (Tammy Jennings)
Sent: Monday, August 12, 2024 3:00 PM
To: Steven Edward Buckingham
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Justin Lucey ; Anna McCann ; Mande Funai ; Lee Weiland ; cKrawczyk@finkellaw.com; tkelly@finkellaw.com
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et

ROA_00884

al//2021CP1900050 (Quarterly Update 12)

All,

Our office has secured a court reporter for Thursday, August 28 at 9:30 a.m.

If anything new is filed pertaining to these motions please send by email or regular mail if your brief with exhibits is over 30 pages long.

Thank you,

Tammy Jennings
Administrative Assistant
Judge R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
(864)- 260-4059
lmcintoshsc@sccourts.org

-----Original Message-----

From: Steven Edward Buckingham
Sent: Wednesday, August 7, 2024 10:13 AM
To: McIntosh, Lawton Secretary (Tammy Jennings)
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Justin Lucey ; Anna McCann ; Mande Funai ; Lee Weiland ; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
Subject: Re: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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Those also work for LL.
Sent from my iPhone

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> All,

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ROA_00885

Anderson County.

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> Thank you,

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>

> Tammy Jennings

>

> Administrative Assistant to Judge McIntosh

>

> PO Box 8002

>

> Anderson, SC 29622

>

> (864) 260-4059

>

>

>

> _____
> From: McIntosh, Lawton Law Clerk (Chase Kinsey)

> Sent: Friday, July 26, 2024 10:07 AM

> To: McIntosh, Lawton Secretary (Tammy Jennings); Kristina Shernoff

> Cc: Justin Lucey; Anna McCann; Mandelee Funai; Lee Weiland; seb@buckingham.legal; ckrawczyk@finkellaw.com; tkelly@finkellaw.com

> Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

>

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> Good morning all,

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> We enjoyed seeing everyone yesterday for motions. Per Judge's instructions during the hearing yesterday, here is what we have as far as dates for the next couple of months leading up to trial. Please let us know if we have left anything out or if anything needs to be adjusted.

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> Week of August 26th, 2024:
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> * Judge McIntosh has a chambers week. The plan is to argue summary judgment motions during this week.
> * Tentatively, Judge wants to shoot for the morning of Wednesday, August 28th to argue these motions, pending the availability of counsel. We will need to get everyone's availability and nail down a concrete date and time.
> * Since it is a chambers week, Judge will not have a court reporter signed. He stated yesterday that our office would work on getting a court reporter, but if we are unable to, the parties will agree on one and share the costs for the court reporter.
>
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>
> Week of August 9th, 2024:
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>
> * Judge McIntosh has a term of Common Pleas Court in Oconee County that week.
> * Tentatively, he would like to argue the remaining pre-trial motions on Wednesday September 11th. Based upon your schedules, and his court docket for that week, we could potentially flex these dates to Thursday the 12th, or Friday the 13th. Again, we will need to get everyone's availability and get a concrete date set for these motions.
> * Could counsel provide us with what pre-trial motions they expect to have, and how much time you anticipate you will need to argue these motions so that we can determine whether these motions can be completed during an afternoon on one of these days or if a full day will be needed to complete the pre-trial motions.
>
>
>
> Again, if you could please confirm the accuracy of this information or if anything else needs to be added to our schedule. Thank you all!
>
>
>
> Respectfully,
>
>
>
> Chase Kinsey
>
> Law Clerk to the

>
> Honorable R. Lawton McIntosh
>
> P.O. Box 8002
>
> Anderson, SC 29622
>
> Cell: (864) 760-5936
>
> Office: (864) 260-4059
>
> lmcintoshlc@sccourts.org
>
>
>
> From: McIntosh, Lawton Secretary (Tammy Jennings)
> Sent: Wednesday, June 19, 2024 2:16 PM
> To: Kristina Shernoff ; McIntosh, Lawton Law Clerk (Chase Kinsey)
> Cc: Justin Lucey ; Anna McCann ; Mande Funai ; Lee Weiland ; seb@buckingham.legal;
ckrawczyk@finkellaw.com; tkelly@finkellaw.com
> Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
>
>
>
> Thank you!
>
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>
>
> Tammy
>
>
>
> From: Kristina Shernoff <kshernoff@lucey-law.com>
> Sent: Tuesday, June 18, 2024 4:07 PM
> To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; McIntosh, Lawton Law Clerk (Chase Kinsey) <lmcintoshlc@sccourts.org>
> Cc: Justin Lucey <jlucey@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; seb@buckingham.legal; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
> Subject: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

>
>
>
> *** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution
before clicking any links or opening attachments. ***
>
> Good afternoon,
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>
> Please find attached Plaintiffs' Twelfth Quarterly Update to Judge McIntosh in the above
referenced case.
>
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>
> If you have any questions, please feel free to call our office at the number below.
>
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>
> Thank you,
>
> Kristina
>
>
>
>
>
> Kristina Koklas Shernoff
>
> Senior Paralegal
>
> Justin O'Toole Lucey, P.A.
>
> 415 Mill Street
>
> Mount Pleasant, SC 29464
>
> Main: (843) 849-8400
>
> Direct: (843) 849-6449
>
>
>
> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may
contain information that is confidential. If you are not the intended recipient, do not read, copy,

retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Kristina Shernoff

From: Justin Lucey
Sent: Tuesday, September 3, 2024 11:25 AM
To: McIntosh, Lawton Law Clerk (Kjursten Collier); Steven Edward Buckingham; cKrawczyk@finkellaw.com; Anna McCann; Kristina Shernoff; Lee Weiland; Mande Funai; tkelly@finkellaw.com
Cc: McIntosh, Lawton Secretary (Tammy Jennings)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Importance: High

Categories: Trial

Ms. Collier,

Good morning,

It appears the two footnotes in my response to the court, below, did not copy from the word document into the email, so I am sending the footnotes below.

I apologize for any inconvenience.

Justin Lucey

^[1] Pl. Ex. 46.02 evidences Raiford was receiving advice on corporate matters from attorney Ken Smith.

² Attorney Mary Guynn prepared the 2013 deed for RTI for the proposed sale to foreign investors; and Attorney Guynn prepared the 2018 deed whereby RTI transferred all but eleven lots to LL of SC, LLC. In the interim, RTI filed for the multi-lot property tax discount at least one time, wrote several letters, and received legal and tax advice on retaining ten or more lots to qualify for the multi-lot property tax discount. Between Sept. 9, and Sept 14, 2014, Guynn and CPA Fliflet purported to backdate an assignment of the ownership of RTI from Raiford to LL, effective December 31, 2013. Additionally, from time to time from 2014-2024, RTI has executed other deeds to LL and/or others.

From: Justin Lucey
Sent: Tuesday, September 3, 2024 10:38 AM
To: McIntosh, Lawton Law Clerk (Kjursten Collier) <Imcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; cKrawczyk@finkellaw.com; Anna McCann <amccann@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; tkelly@finkellaw.com
Cc: McIntosh, Lawton Secretary (Tammy Jennings) <Imcintoshsc@sccourts.org>
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

RTI – Developer Abandonment

On Friday, August 30, 2024, the Court sent the following inquiry:

Counsel, after reviewing ... it appears that LL of SC, LLC signed over developer rights to Raiford Topsail Island Investments, LLC. Accordingly, this letter is to inquire what makes the issue of who is properly invested with developer rights a question of fact for the jury as opposed to a question of law.

Plaintiffs respectfully submit that it is or has become a matter of law for the Court to rule upon for a number of independent reasons.

First, as the Court appears to be indicating, LL's quitclaim deed was subject to the existing 2012 Lis Pendens and the eventual Court order/determination which would relate back to the filing of the Lis Pendens for priority. LL's subsequent transfer of the winning foreclosure bid to RTI (Raiford Topsail Island, LLC), and the Special Referee Deed (and Corrective Deed) emanating therefrom thereafter operated to transfer all foreclosure property and developer rights to RTI.

Second, it is undisputed that RTI has never exercised any developer rights or satisfied any developer obligations in the eleven years since receiving the Special Referee Deed, and was represented by multiple counsel^[1] at all times and his CPA, and so it is apparent RTI's failure to act is conscious.^[2]

Third, Plaintiffs Motion for Summary Judgment put RTI's failure to assume developer status into issue, and in response thereto, Defendants simply reiterated LL's status as the developer, and, implicitly, RTI's non-status as the developer.

Lastly, Plaintiffs having put RTI's abandonment of developer rights into issue in their Motion for Summary Judgment, it was incumbent procedurally for RTI to come forward with some evidence that it has not abandoned its developer rights – and RTI has not done so. This is fatal to RTI's position.

Fifth, RTI emphatically denied developer status or acts in its deposition.

Further Discussion

To be clear, since 2013, RTI has never:

- Provided roads or common areas;
- Elected the HOA Board of Directors ("BOD");
- Appointed any representatives to the BOD;
- Attended or voted at any HOA BOD meetings;
- Filed a state or federal tax return;
- Had a bank account or any employees;
- Had any records, other than an unsigned Articles which were first produced several weeks ago; or,
- Objected to LL's exercise of control, election and appointment of members of the BOD.

If there was any remaining doubt, attached is an excerpt from the Rule 30(b)6 deposition of RTI, wherein Mr. Raiford confirms that RTI has never exercised any developer rights at Mount Vintage, and has never performed on any developer obligations.

Respectfully submitted,

Justin Lucey

From: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>

Sent: Friday, August 30, 2024 3:27 PM

To: Justin Lucey <jlucey@lucey-law.com>; Steven Edward Buckingham <seb@buckingham.legal>;
cKrawczyk@finkellaw.com; Anna McCann <amccann@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>;
Lee Weiland <lweiland@lucey-law.com>; Mandee Funai <mfunai@lucey-law.com>; tkelly@finkellaw.com
Cc: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good afternoon,

Judge McIntosh has asked me to relay the following:

“Counsel, after reviewing the following documents: Deed in Lieu of Foreclosure filed 09/03/2013, Assignment of Bid filed 11/06/2013, Master’s Report filed 11/11/2013, Special Referee Deed filed 08/13/24, and Corrective Special Referee Deed filed 08/13/24 it appears that LL of SC, LLC signed over developer rights to Raiford Topsail Island Investments, LLC. Accordingly, this letter is to inquire what makes the issue of who is properly invested with developer rights a question of fact for the jury as opposed to a question of law.”

Additionally, **Mr. Krawczyk**, in case you had missed my last email, Judge McIntosh would appreciate it if you would send over your material regarding your order of protection/attorney client privilege matter that you mentioned Wednesday.

Thank you,

Kjursten Collier

Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmcintoshlc@sccourts.org

From: Justin Lucey <jlucey@lucey-law.com>
Sent: Thursday, August 29, 2024 8:41 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; cKrawczyk@finkellaw.com

Cc: Kristina Shernoff <kshernoff@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mandee Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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Kjursten,

Good morning.

Yesterday, Judge McIntosh asked for a case demonstrating that Plaintiff can proceed against the developer on both negligence and breach of fiduciary duty, simultaneously. The first case excerpted below (and attached), Cohen, is a California case wherein the Plaintiff was permitted to proceed against the Developer for acts and omissions committed during his control of the association, for cause of action in both negligence and breach of fiduciary duty. The pertinent point is excerpted into this email under the signature line.

The second case excerpted below, Accident Ins., is not a developer case, but it is a local case, where the Plaintiff was permitted to proceed upon both negligence and breach of fiduciary duty simultaneously. Copy attached.

Claims for both negligence and breach of fiduciary duty have been permitted regularly in suits against developers for defective construction. See, e.g., Pope v. Heritage Communities, 395 SC 404, 717 SE2nd, 765 (Ct. App. 2011).

While the Walbeck Supreme Court decision did not address this issue, it may be worth noting that the derivative, HOA claim in Walbeck went to the jury on both negligence (negligent misrepresentation) and breach of fiduciary duty; but as Plaintiff elected to take under the breach of fiduciary duty verdict in lieu of the negligence verdict, and the Supreme Court sustained the breach of fiduciary duty verdict, it ultimately did not need to consider the Court of Appeals negative treatment of the negligence verdict. Copy of verdict form attached.

Respectfully submitted,

Justin Lucey

COHEN:

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ACCIDENT INS.:

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Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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Tammy,

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Thank you

Justin Lucey

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If anything new is filed pertaining to these motions please send by email or regular mail if your brief with exhibits is over 30 pages long.

Thank you,

Tammy Jennings

Administrative Assistant

Judge R. Lawton McIntosh

P.O. Box 8002

Anderson, SC 29622

(864)- 260-4059

-----Original Message-----

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Sent: Wednesday, August 7, 2024 10:13 AM

To: McIntosh, Lawton Secretary (Tammy Jennings)

Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Justin Lucey ; Anna McCann ; Mande Funai ; Lee Weiland ; ckrawczyk@finkellaw.com; tkelly@finkellaw.com

Subject: Re: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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>

>

> Tammy Jennings

>

> Administrative Assistant to Judge McIntosh

>

> PO Box 8002

>

> Anderson, SC 29622

>

> (864) 260-4059

>

>

> _____

> From: McIntosh, Lawton Law Clerk (Chase Kinsey)

> Sent: Friday, July 26, 2024 10:07 AM

> To: McIntosh, Lawton Secretary (Tammy Jennings); Kristina Shernoff

> Cc: Justin Lucey; Anna McCann; Mande Funai; Lee Weiland; seb@buckingham.legal; ckrawczyk@finkellaw.com; tkelly@finkellaw.com

> Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

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> Week of August 26th, 2024:

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> * Judge McIntosh has a chambers week. The plan is to argue summary judgment motions during this week.

> * Tentatively, Judge wants to shoot for the morning of Wednesday, August 28th to argue these motions, pending the availability of counsel. We will need to get everyone's availability and nail down a concrete date and time.

> * Since it is a chambers week, Judge will not have a court reporter signed. He stated yesterday that our office would work on getting a court reporter, but if we are unable to, the parties will agree on one and share the costs for the court reporter.

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> Week of August 9th, 2024:

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> * Judge McIntosh has a term of Common Pleas Court in Oconee County that week.

> * Tentatively, he would like to argue the remaining pre-trial motions on Wednesday September 11th. Based upon your schedules, and his court docket for that week, we could potentially flex these dates to Thursday the 12th, or Friday the 13th. Again, we will need to get everyone's availability and get a concrete date set for these motions.

> * Could counsel provide us with what pre-trial motions they expect to have, and how much time you anticipate you will need to argue these motions so that we can determine whether these motions can be completed during an afternoon on one of these days or if a full day will be needed to complete the pre-trial motions.

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> Again, if you could please confirm the accuracy of this information or if anything else needs to be added to our schedule. Thank you all!

>

>

>

> Respectfully,

>
>
>
> Chase Kinsey
>
> Law Clerk to the
>
> Honorable R. Lawton McIntosh
>
> P.O. Box 8002
>
> Anderson, SC 29622
>
> Cell: (864) 760-5936
>
> Office: (864) 260-4059
>
> lmcintoshlc@sccourts.org
>
>
>
> From: McIntosh, Lawton Secretary (Tammy Jennings)
> Sent: Wednesday, June 19, 2024 2:16 PM
> To: Kristina Shernoff ; McIntosh, Lawton Law Clerk (Chase Kinsey)
> Cc: Justin Lucey ; Anna McCann ; Mande Funai ; Lee Weiland ; seb@buckingham.legal; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
> Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
>
>
>
>
> Thank you!
>
>
>
>
>
>
> Tammy
>
>
>
> From: Kristina Shernoff <kshernoff@lucey-law.com>
> Sent: Tuesday, June 18, 2024 4:07 PM
> To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; McIntosh, Lawton Law Clerk (Chase Kinsey) <lmcintoshlc@sccourts.org>
> Cc: Justin Lucey <jlucey@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; seb@buckingham.legal; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
> Subject: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
>
>

>
> *** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
>
> Good afternoon,
>
>
>
> Please find attached Plaintiffs' Twelfth Quarterly Update to Judge McIntosh in the above referenced case.
>
>
>
> If you have any questions, please feel free to call our office at the number below.
>
>
>
> Thank you,
>
> Kristina
>
>
>
>
>
> Kristina Koklas Shernoff
>
> Senior Paralegal
>
> Justin O'Toole Lucey, P.A.
>
> 415 Mill Street
>
> Mount Pleasant, SC 29464
>
> Main: (843) 849-8400
>
> Direct: (843) 849-6449
>
>
>
> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

[1] Pl. Ex. 46.02 evidences Raiford was receiving advice on corporate matters from attorney Ken Smith.

^[2] Attorney Mary Guynn prepared the 2013 deed for RTI for the proposed sale to foreign investors; and Attorney Guynn prepared the 2018 deed whereby RTI transferred all but eleven lots to LL of SC, LLC. In the interim, RTI filed for the multi-lot property tax discount at least one time, wrote several letters, and received legal and tax advice on retaining ten or more lots to qualify for the multi-lot property tax discount. Between Sept. 9, and Sept 14, 2014, Guynn and CPA Fliflet purported to backdate an assignment of the ownership of RTI from Raiford to LL, effective December 31, 2013. Additionally, from time to time from 2014-2024, RTI has executed other deeds to LL and/or others.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-CP-19-00050

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC,
Mount Vintage Plantation Homeowners Association, Inc. *a/k/a*
Mount Vintage Homeowners Association, Inc., and TR Sales
Plantation, LLC Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants.

NOTICE OF APPEAL

LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC, Appellants, hereby appeal a Form 4 Order dated September 4, 2024, issued by the Honorable R. Lawton McIntosh, granting partial summary judgment in Respondents' favor on an issue that is central and critical to every aspect of the underlying proceedings. A true and accurate copy of such Order is attached hereto as **Attachment A**. Appellants received written notice of the entry of such Order via email on the date such Order was entered.

Separately and by U.S. Mail, Appellant has submitted the filing fee to the Clerk of Court.

Respectfully submitted,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham, LLC
16 Wellington Avenue
Greenville, South Carolina 29609
(o) 864.735.0832
(e) seb@buckingham.legal

*Attorney for Appellants LL of SC, LLC, Raiford
Topsail Island Investments, LLC, and TR Sales
Plantation, LLC*

Filed this 4th Day of September, 2024.
Greenville, South Carolina

Other Counsel of Record:

Justin O'Toole Lucey, Esq.
Anna S. McCann, Esq.
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, SC 29465-0806
(o) 843.849.8400
(e) jlucey@lucey-law.com
amccann@lucey-law.com

Attorneys for Respondents

Charles A. Krawczyk, Esq.
Finkel Law Firm LLC
1201 Main Street / Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
(o) 803.765.2935
(e) ckrawczyk@finkellaw.com

Attorney for Mount Vintage Plantation Homeowners Association, Inc.

RECEIVED

Sep 04 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-CP-19-00050

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC,
Mount Vintage Plantation Homeowners Association, Inc. *a/k/a*
Mount Vintage Homeowners Association, Inc., and TR Sales
Plantation, LLC Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants.

PROOF OF SERVICE

The undersigned counsel for Appellants hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

Document(s): Appellants' Notice of Appeal *w/ Attachment A*

Counsel Served: For Respondents

Justin O'Toole Lucey, Esq.
Anna S. McCann, Esq.
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, SC 29465-0806

ROA_00904

(o) 843.849.8400
(e) jlucey@lucey-law.com
amccann@lucey-law.com

Means of Delivery: *Via Email Only*

For Mount Vintage Plantation Homeowners Association, Inc.

Charles A. Krawczyk, Esq.
Finkel Law Firm LLC
1201 Main Street / Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
(o) 803.765.2935
(e) ckrawczyk@finkellaw.com

Means of Delivery: *Via Email Only*

Courts Served: Office of the Clerk of the Court of Appeals
ctappfilings@sccourts.org

Means of Delivery: *Via Email Only*

Date: September 4, 2024

Respectfully,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham
16 Wellington Avenue
Greenville, South Carolina 29609
(o) 864.735.0832
(e) seb@buckingham.legal

Attorney for Appellants

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900050

Elizabeth Ferraro et al
PLAINTIFF(S)

LL of SC LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

BASED UPON THE DEED IN LIEU OF FORECLOSURE (09/13/13), THE ASSIGNMENT OF BID (11/18/13), THE MASTER'S REPORT (11/18/13), THE SPECIAL REFEREE'S DEED (11/18/13), AND THE CORRECTIVE SPECIAL REFEREE'S DEED (8/4/14), THE COURT FINDS THAT LL OF SC ASSIGNED "DEVELOPER'S RIGHTS" TO RAIFORD TOPSAIL ISLAND INVESTMENTS DURING THIS PERIOD OF TIME AND ACCORDINGLY GRANTS PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT THAT LL OF SC ASSIGNED ITS DEVELOPER'S RIGHTS TO RAIFORD TOPSAIL ISLAND INVETSMENTS DURING THIS PERIOD. THE COURT MAKES NO FURTHER FINDINGS OR RULINGS OTHER THAN AS STATED.

PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER CONSISTENT WITH THIS ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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Sep 04 2024
SC Court of Appeals

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2155 Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Edgefield Common Pleas

Case Caption: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al
Case Number: 2021CP1900050
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-09-04 12:29:37 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	BUSINESS COURT CASE,
FERRARO, EDWARD J. PRZYBYL,	)	ASSIGNED TO:
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	
THOMAS BOWES, CONNIE BOWES, MOATAZ	)	THE HONORABLE R. LAWTON
ALASADI, VIRGINIA KIRKWOOD, BOB	)	MCINTOSH
KIRKWOOD, PAUL VICHROSKI, NYDZA	)	
VICHROSKI, JAMES MONTELLESE,	)	
ROXANN MONTELLESE, Individually,	)	
Derivatively, and on Behalf of all the Mount	)	
Vintage Homeowners Association Members,	)	
	)	PLAINTIFFS' MOTION IN LIMINE FOR
Plaintiffs,	)	REALIGNMENT OF ASSOCIATION AS
	)	A PLAINTIFF
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL ISLAND	)	
INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT VINTAGE	)	
PLANTATION HOMEOWNERS ASSOCIATION,	)	
INC. A/K/A MOUNT VINTAGE HOMEOWNERS	)	
ASSOCIATION, INC.,	)	
	)	
Defendants.	)	

Come now, Plaintiffs, above named, and move this Court for an order realigning the Mount Vintage Plantation Homeowners' Association ("the Association") as a Plaintiff before the trial of this matter. The basis of this Motion is as follows:

As conceded by Defendants, the primary issue in controversy in this Case is an allegation of harm to the Association caused by the Defendants. (*See generally* Defs. Mot. for Summary Judgment, filed Aug. 16, 2024, at 10-13) ("[E]ach and every one of these grievances pertains to actions or omissions that have allegedly had an adverse effect on the HOA[...].").

Further, if the Association fails to realign, it cannot recover the treble damages and attorney fees available under the South Carolina Unfair Trade Practices Act ("the Act"). The Act does not

permit prosecution in a representative capacity. It is only if the Association realigns as a party Plaintiff that these much-needed remedies will be available to the Association. Additionally, as evidenced by the *Walbeck*¹ case, there are other reasons for (and benefits from) the realignment of the Association as a party Plaintiff. However, the Association presently remains controlled by a rogue developer and appears unable to make a proper decision in this matter.

The law supports such a realignment. The South Carolina Supreme Court has conclusively held that Rule 21, SCRCP, grants trial judges the authority to realign parties. *Branham v. Ford Motor Co.*, 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010) (finding that trial judges have the authority to realign parties at any stage of the action, and that such a decision will not be disturbed on appeal absent a showing of an abuse of discretion and resulting prejudice). The Court in *Branham* further explained that, because of the similarity between Rule 21 of the Federal Rules and Rule 21, SCRCP, South Carolina courts look to and rely on federal case law interpreting the companion Federal Rule. (*See id.*). The Fourth Circuit applies the “principal purpose” test:

Application of the principal purpose test entails two steps. First, the court must determine the primary issue in the controversy. Next, the court should align the parties according to their positions with respect to the primary issue.

U.S. Fid. & Guar. Co. v. A & S Mfg. Co., 48 F.3d 131, 133 (4th Cir. 1995).

Realignment is supported in this case, and Plaintiffs’ respectfully request that this Court grant the instant motion prior to the trial of this case.

Signature on following page.

¹ *Walbeck v. I'On Co., LLC*, 439 S.C. 568, 589, 889 S.E.2d 537, 548 (2023), *reh'g denied* (July 26, 2023).

Respectfully submitted,

By: s/ Justin Lucey
Justin Lucey
Anna McCann
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
jlucey@lucey-law.com
amccann@lucey-law.com
Attorneys for the Plaintiffs

September 5, 2024
Charleston, South Carolina

RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

From Justin Lucey <jlucey@lucey-law.com>

Date Thu 9/5/2024 1:20 PM

To Steven Edward Buckingham <seb@buckingham.legal>; McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com <ckrawczyk@FinkelLaw.com>

Cc Mandeel Funai <mfunai@lucey-law.com>; tkelly@finkellaw.com <tkelly@FinkelLaw.com>; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>; Carra Cicalese <ccicalese@lucey-law.com>

 1 attachment (118 KB)

20240905 PI Sur Reply to Stay.pdf;

Dear Ms. Collier,

In their brief in opposition to summary judgment (filed August 26, 2024), the Defendants asserted to the Court "The Issue of who holds developer rights is much ado about absolutely nothing." P. 8. Defendants' new position, that:

"It's hard to fathom how the issue of developer rights is anything other than a "substantial matter forming the whole or part of some cause of action or defense" which has now been finally decided,"

cannot be reconciled with the Defendants' original representation to the Court.

Further, in supplemental briefing in opposition to Plaintiffs' motion for summary judgment, the Defendants asserted:

The first component is the question of which chain of documents establishes the transfer of developer rights and into which entity. Candidly, I think that is a question of law. The second component is the question of who presently has developer rights. That might involve questions of fact....

The Court ruled on the first component – which Defendant conceded was an issue of law; and did not rule on the second component. As we shall see below, partial summary judgments on matters of law are not appealable.

Note, there are several legal issues being addressed in Defendants' response:

1. Is there an automatic stay
2. Should there be a stay, i.e., is it prudent

If there is not an automatic stay, the Defendants can still seek one out of prudence, but the Court will be able to require the Defendants to post a bond or other arrangements to protect Plaintiffs from damage during the delay (for example, the Court may recall that the Defendants have recently offered the Association's golf course amenity for sale to others). Rule 241, SCACR.

There are two cases Plaintiff would commend to the Court's attention. The first is Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011).

Thornton held that an interlocutory partial summary judgment, which resolves only a portion of the claims in a case, is generally not immediately appealable. The South Carolina Court of Appeals dismissed the appeal

because the order did not fall within one of the limited exceptions for immediate appealability under South Carolina law.

The court reasoned that allowing immediate appeals of interlocutory partial summary judgments could lead to piecemeal litigation and delay the resolution of the entire case. Instead, the court indicated that the parties would have to wait until the final judgment on the entire case to appeal the partial summary judgment.

The second case is Watson vs. Underwood, 407 SC 443, 756 S.E.2d 155 (Ct. App. 2014). The Court permitted the appeal of the grant of the Defendant's Motion for Partial Summary judgment because by declaring that the Defendant had the authority to create the subject trust, that the Court had essentially ruled on the merits of Plaintiff's claim, that the trust was not validly created. The Watson case is also notable for its discussion of why most interlocutory orders are not immediately appealable, in discussing a cross appeal.

The Court in Watson stated:

"The right of appeal arises from and is controlled by statutory law." Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). "An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Id.* (citing S.C.Code Ann. § 14-3-330(1) (1977); Rule 72, SCRPC; Rule 201(a), SCACR). "The determination *458 of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code (1977 & Supp.2013)]." *Id.* "Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." *Id.* "An order 'involves the merits,' as that term is used in [s]ection 14-3-330(1)[.] and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense." *Id.* at 7, 630 S.E.2d at 467 (footnote omitted). "The phrase 'involving the merits' is narrowly construed.... An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights." *Id.* at 7, 630 S.E.2d at 467-68.

"The provisions of [s]ection 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial." Hagood v. Sommerville, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005). "The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted." Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000).

"An order affects a substantial right and is immediately appealable when it '(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial[,] or (c) strikes out an answer or any part thereof or any pleading in any action.'" Hagood, 362 S.C. at 195, 607 S.E.2d at 709 (brackets omitted) (quoting § 14-3-330(2)).

Usually, an order that does not finally end a case or prevent a final judgment from which a party could appeal is not immediately appealable. *Id.* A judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment. Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 41, 21 S.E.2d 209, 212 (1942). Additionally, a decree or judgment that leaves in doubt whether the plaintiff will prevail *459 is not final. Donaldson v. Bank, 4 S.C. 106, 115 (1873). An order is not immediately appealable when appellants "have not 'arrived at the end of the road' and [would] be able to appeal the decision after the trial [wa]s finished." Baldwin Constr. Co. v. Graham, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004).

As seen by the foregoing, Defendants do not have a right to an immediate appeal; and as briefed earlier today, a notice of an appeal without a right to an appeal does not deprive the circuit court of jurisdiction.

As noted above, the Court explicitly did not rule on whether developer abandoned his rights. The Court only ruled as a matter of law that developer rights had been transferred at some point in time. The Court explicitly declined to rule, as a matter of law, that developer "abdicated" his rights (as implied in the Defendants' email). Defendants referred to what use Plaintiff intends to make with the Order – it doesn't matter what Plaintiffs think about the Order, what matters is what is in the order. All questions of fact are left

open; and interlocutory rulings on matters of law are not appealable. Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993):

“South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.”

Plaintiffs will be happy to answer any further inquiry by the Court.

Respectfully submitted,

Justin Lucey

From: Steven Edward Buckingham <seb@buckingham.legal>

Sent: Thursday, September 5, 2024 11:36 AM

To: Justin Lucey <jlucey@lucey-law.com>; McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com

Cc: Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>; Carra Cicalese <ccicalese@lucey-law.com>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

With due respect, this matter is not resolved with reference to federal law, but to South Carolina law. Code Section 14-3-330(1) states that there is appellate jurisdiction with respect to “[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas.” That includes orders granting partial summary judgment. See, e.g., Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990).

The phrase “involving the merits” means that the issue decided “must finally determine some substantial matter forming the whole or part of some cause of action or defense.” Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993). Each and every aspect of Plaintiffs’ claim touches, concerns, and even depends on the chain of developer rights. In Plaintiffs’ email submissions from last evening, they are now suggesting that the consequences of the decision finding that RTI has developer rights means—as a matter of law—that there has been an abdication of the developer in Mount Vintage, and that the HOA must be forced to re-align as a Plaintiff. It’s hard to fathom how the issue of developer rights is anything other than a “substantial matter forming the whole or part of some cause of action or defense” which has now been finally decided.

The foregoing analysis is not my own. It is taken from Chief Justice Toal’s book, Appellate Practice in South Carolina, and specifically Chapter 8, Part IV, Subsection (B)(1) and (G)(3), which I relied on heavily before filing the notice of appeal.

Defendants’ notice of appeal is timely. And that implicates Rule 241(a), SCACR. “As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically say the relief ordered in the appealed order, judgment, or decree or decision.” The Court’s decision regarding developer rights is under the general rule, not any of the exceptions listed in Rule 241(b). And, since the matter involved in the Court’s decision fundamentally affects each aspect of the litigation, nothing is salvaged by Rule 205. “Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal,” except to the extent there are “matters not affected by the appeal,” which in this case is nothing.

In short, it would seem that Plaintiffs’ objection to the right of immediate appealability ought to be directed to the Court of Appeals, since it has now acquired exclusive jurisdiction over the entire case.

If a conference call would be useful, I’ll be happy to join whenever. But, in the interests of logistics and notice to witnesses, I am hopeful we can put this issue to rest swiftly. Thanks to all.

Steve Buckingham

From: Justin Lucey <jlucey@lucey-law.com>

Sent: Thursday, September 5, 2024 10:48 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmccintosh@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com

Cc: Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmccintosh@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>; Carra Cicalese <ccicalese@lucey-law.com>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Ms. Collier,

As previously communicated, there is not automatic stay in this matter:

No Automatic Stay for Interlocutory Appeals

An order of partial summary judgment is interlocutory in nature. *American Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 515-16 (4th Cir. 2003); *see also, e.g.*, 11 Moore's Federal Practice § 56.40[3] (Matthew Bender 3d ed.) ("A partial summary judgment order is interlocutory...."). See also, Rule 56(c), SCRCR.

Under the SCACR and SCRCR, the filing of a notice of appeal from an interlocutory order does not automatically result in a stay of proceedings in the trial court. This is a key distinction from appeals of final judgments, where an automatic stay is granted under Rule 62(a), SCRCR.

Rule 201, SCACR confirms that a notice of appeal serves to inform the appellate court of the intent to appeal but does not itself affect the trial court's proceedings. The notice of appeal from an interlocutory order does not trigger an automatic stay of the case's proceedings or the enforcement of the order being appealed.

See S.C. Pub. Serv. Auth. v. Arnold, 287 S.C. 584, 340 S.E.2d 535 (1986) ("Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay proceedings in the lower court . . . **Since [the order] was interlocutory, and not appealable, the Circuit Court never lost jurisdiction and properly proceeded to trial.**") (emphasis added).

This conforms with Rule 205, SCACR, which provides "Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal." Since interlocutory orders are not appealable (absent an enumerated exception, e.g., an order that affects modes of trial), there is no valid appeal to affect any circuit court proceedings.

Respectfully submitted,

Justin Lucey

From: Justin Lucey

Sent: Thursday, September 5, 2024 9:42 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmccintosh@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com

Cc: Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmccintosh@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Respectfully, No. There is no automatic stay for improper appeals of interlocutory orders. Plaintiff will brief this momentarily.

Justin Lucey

From: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmccintosh@sccourts.org>

Sent: Thursday, September 5, 2024 9:33 AM

ROA_00915

To: Steven Edward Buckingham <seb@buckingham.legal>; Justin Lucey <jlucey@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com

Cc: Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmccintoshsc@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good morning,

"Counsel,

In light of the appeal filed by LL of SC, LLC does everyone agree that the current trial scheduled to begin September 16, 2024 in Edgefield, SC cannot go forward. If everyone agrees, please indicate the same in a reply e-mail so that I may contact the Edgefield clerk and Court Administration. Thank you"

Lawton McIntosh

Kjursten Collier

Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmccintoshlc@sccourts.org

From: Steven Edward Buckingham <seb@buckingham.legal>

Sent: Wednesday, September 4, 2024 8:13 PM

To: Justin Lucey <jlucey@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>; McIntosh, Lawton Secretary (Tammy Jennings) <lmccintoshsc@sccourts.org>

Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmccintoshlc@sccourts.org>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; cKrawczyk@finkellaw.com; tkelly@finkellaw.com

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good evening: Defendants LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC have just filed the attached notice of appeal with the Court of Appeals, focused solely on the Form 4 from earlier today regarding developer rights. Because of the centrality of this issue to the underlying case, these Defendants understand that the entirety of this matter is now subject to the automatic stay.

Because of how close trial is, Defendants wanted to get this filed expeditiously, so that everyone could plan accordingly. I can be available at the Court's convenience for any discussions pertinent to this filing. Thank you.

Steve Buckingham

From: Justin Lucey <jlucey@lucey-law.com>

Sent: Wednesday, September 4, 2024 7:37 PM

To: Kristina Shernoff <kshernoff@lucey-law.com>; McIntosh, Lawton Secretary (Tammy Jennings) <lmccintoshsc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>

Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmccintoshlc@sccourts.org>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; cKrawczyk@finkellaw.com; tkelly@finkellaw.com

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good evening,

ROA_00916

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001451

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants / Petitioners.

**PETITION TO STAY UNDERLYING PROCEEDINGS IN THE TRIAL COURT
AND/OR FOR WRIT OF SUPERSEDEAS**

(URGENT CONSIDERATION REQUESTED)

This petition seeks a Writ of Supersedeas with respect to a decision issued by the trial court on September 6, 2024 (attached hereto as **Attachment A**), which held that a prior decision of the trial court (dated September 4, 2024, and attached hereto as **Attachment B**) granting partial summary judgment in Respondents' favor on an issue involving the merits was interlocutory and not subject to any appellate stay. However:

1. At the time the September 6 order was entered, Petitioners had already taken an appeal of the September 4 order;
2. The September 4 order was immediately appealable under South Carolina Code § 14-3-330(1);
3. The matter appealed in the September 4 order is subject to the automatic stay established by Rule 241(a), SCACR;
4. The matter appealed in the September 4 order involves a decision on the merits of the underlying case that materially touches and concerns substantial and disputed issues as to the entirety of the case; and therefore,
5. Under Rule 205, SCACR, the trial court did not have jurisdiction to enter the September 6 order, or to find that it continued to have jurisdiction to entertain underlying proceedings despite Petitioners' filing of a notice of appeal.

The immediate consequences of this decision are—for Petitioners—profound. As explained briefly below, the trial court has now held, as a matter of law and incident to a granting of summary judgment in Respondents' favor, that Petitioner Raiford Topsail Island Investments, LLC (“**RTI**”) acquired developer rights with respect to a residential community in 2013, which is an issue that has been hotly contested. And, as explained below, this decision deeply affects each and every aspect of the claims and defenses

presented. (See Resps.’ 2d Am. Compl., attached hereto as **Attachment C**; Resp.’s 3d Am. Compl., attached hereto as **Attachment D**; Resps.’ Mot. Partial Summ. Judg., attached hereto as **Attachment E**; and Pets.’ Memo. Opp. to Resps.’ Mot. Partial Summ. Judg., attached hereto as **Attachment F**.)

In fact, immediately after the trial court issued its September 4 decision, Respondents sought to “realign” the Defendant homeowners’ association from a party-defendant to a party-plaintiff, explicitly under the theory that the homeowners’ association “has been controlled by a rogue fake developer for the last ten years.” (See Email of Resps.’ Counsel, Sept. 4, 2024, attached hereto as **Attachment G**; Resps.’ Mot. in Limine, attached hereto as **Attachment H**.)

Urgency of Review of This Petition

Trial is set to commence on Monday, September 16, 2024—ten days from now. Pre-trial motions are scheduled to be heard in 5 days—September 11.

On September 4—the very same day that the trial court issued its decision regarding the conclusion that RTI had acquired developer rights—Petitioners filed its notice of appeal. This triggered the automatic stay of Rule 241(a), and should have resulted in a postponement of trial until after the disposition of this appeal. However, on September 6—the very date of this filing—the trial court further decided that its September 4 order was interlocutory, that the automatic stay was not triggered, and that trial will proceed as scheduled on September 16.

In other words, the trial court has decided a material issue on its merits and has placed Petitioners’ appellate rights in jeopardy by neglecting the automatic stay.

The Court of Appeals is therefore respectfully requested to issue an order staying all proceedings in the underlying litigation until such time as Petitioners' appeal may be adjudicated, and (to the extent necessary) issue a supersedeas with respect to the trial court's September 6 decision.

I. The Rule 241(a) automatic stay applies to the trial court's September 4 order.

South Carolina Code § 14-3-330(1) establishes appellate jurisdiction with respect to "[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas." That includes orders granting partial summary judgment. See, e.g., Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990).

The phrase "involving the merits" means that the issue decided "must finally determine some substantial matter forming the whole or part of some cause of action or defense." Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993); see also Toal, J.H. et al., Appellate Practice in South Carolina, Chapter 8, Part IV, Subsections (B)(1) & (G)(3). Each and every aspect of Respondents' claim touches, concerns, and even depends on the chain of developer rights. Furthermore, as explained above, Respondents are trying to achieve material procedural advantages against Petitioners heading into trial, on the eve of trial, as a direct result of the trial court's decision on whether RTI ever acquired developer rights.

In short, the trial court's September 4 order granting Respondents' motion for partial summary judgment constitutes a decision "involving the merits" because it has "finally determine[d] some substantial matter forming the whole or part of some cause of

action or defense.” And that gives Petitioners a right of immediate appeal under South Carolina Code § 14-3-330(1).

II. The September 4 order is subject to the automatic stay of Rule 241(a).

Rule 241(a) provides that, “[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” The trial court’s September 4 decision is under the general rule—not any of the exceptions listed in Rule 241(b).

III. The Rule 241(a) automatic stay applies, under Rule 205, to every aspect of the case.

The controlling pleading is presently Respondents’ third amended complaint. (Att. D.) The core causes of action are for negligent development, breach of fiduciary duty based on a developer relationship, and violation of the Unfair Trade Practices Act. Each of these causes of action depends on who holds developer rights, and since when. The September 4 order concludes—over dispute—that such rights resided with RTI as of 2013. That is not only a decision involving the merits, it is one that affects every aspect of the case. Therefore, the filing of Petitioners’ notice of appeal on September 4 imposes the automatic stay on the case in its entirety.

IV. The trial court did not have jurisdiction to enter the September 6 order.

Consistent with the foregoing analysis, the filing of Petitioners’ notice of appeal triggered the Rule 241(a) automatic stay as to the underlying case in its entirety. At that point, all proceedings in the trial court should have been held in abeyance pending a

disposition of this appeal, specifically because the trial court had been divested of jurisdiction under Rule 205.

Regardless, the trial court has issued the September 6 decision, determining that the September 4 was interlocutory in nature. But, under Rule 205, at the time the September 6 decision was issued, the trial court no longer had jurisdiction of the case. Therefore, the September 6 decision is a legal nullity.

It does, however, introduce some amount of procedural confusion into this appeal. Petitioners have made this filing, in part, as a petition for writ of supersedeas. But, if the September 6 order is a legal nullity, there is no effective order to which a supersedeas may attach. See, e.g., Ditech Fin., LLC v. Snyder, Case No. 2019-000575 (S.C. Ct. App. July 20, 2022) (unpublished decision) (citing Tillman v. Oakes, 398 S.C. 245, 256, 728 S.E.2d 45, 51 n.3 (Ct. App. 2012) for the proposition that a trial court's failure to consider the effect of an appeal on the power of the court to proceed with the underlying action while the appeal is pending constitutes an abuse of discretion). However, if a supersedeas is the correct procedural device, Petitioners have provided a verification with this petition at **Attachment I**.

Petitioners have also styled this filing as a motion to stay the underlying proceedings. This is necessary for the Court of Appeals to protect its jurisdiction and give effect to the automatic stay.

Importantly, Respondents never filed their own motion to lift the stay or for supersedeas with respect to the Petitioners' notice of appeal.

And, finally, because of the strange procedural circumstances in which Petitioners find themselves, out of an extreme abundance of caution, they are also filing a separate notice of appeal of the September 6 order.

Regardless, through at least one of these procedural avenues, the Court of Appeals is requested to suspend all further proceedings in the trial court pending disposition of the initial matter from which this appeal is taken.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, the Court of Appeals is respectfully requested to issue an order imposing a stay of the underlying trial court proceedings, or granting a supersedeas of the trial court's September 6 decision. Petitioners are entitled to exercise their appellate rights, and humbly seek the opportunity to do so.

Respectfully,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham
16 Wellington Avenue
Greenville, South Carolina 29609
(o) 864.735.0832
(e) seb@buckingham.legal

Attorney for Petitioners

September 6, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900050

Elizabeth Ferraro et al
PLAINTIFF(S)

LL of SC LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

THE GRANTING OF PLAINTIFF'S PARTIAL SUMMARY JUDGMENT AS TO "DEVELOPER RIGHTS" AS STATED IS INTERLOCUTORY. THEREFORE, THIS MATTER IS NOT STAYED.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Edgefield Common Pleas

Case Caption: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al
Case Number: 2021CP1900050
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-09-06 11:19:25 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900050

Elizabeth Ferraro et al
PLAINTIFF(S)

LL of SC LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

BASED UPON THE DEED IN LIEU OF FORECLOSURE (09/13/13), THE ASSIGNMENT OF BID (11/18/13), THE MASTER'S REPORT (11/18/13), THE SPECIAL REFEREE'S DEED (11/18/13), AND THE CORRECTIVE SPECIAL REFEREE'S DEED (8/4/14), THE COURT FINDS THAT LL OF SC ASSIGNED "DEVELOPER'S RIGHTS" TO RAIFORD TOPSAIL ISLAND INVESTMENTS DURING THIS PERIOD OF TIME AND ACCORDINGLY GRANTS PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT THAT LL OF SC ASSIGNED ITS DEVELOPER'S RIGHTS TO RAIFORD TOPSAIL ISLAND INVETSMENTS DURING THIS PERIOD. THE COURT MAKES NO FURTHER FINDINGS OR RULINGS OTHER THAN AS STATED.

PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER CONSISTENT WITH THIS ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

_____	2155	_____
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

_____	_____
_____	_____
_____	_____
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Edgefield Common Pleas

Case Caption: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al
Case Number: 2021CP1900050
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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ROA_00929

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	
FERRARO, EDWARD J. PRZYBYL,	)	
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	SECOND AMENDED SUMMONS
THOMAS BOWES, CONNIE BOWES,	)	(Negligent Development)
MOATAZ ALASADI, VIRGINIA	)	
KIRKWOOD, BOB KIRKWOOD, PAUL	)	(Jury Trial Demanded)
VICHROSKI, NYDZA VICHROSKI, JAMES	)	
MONTELLESE, ROXANN MONTELLESE,	)	
Individually, Derivatively, and on Behalf of all	)	
the Mount Vintage Homeowners Association	)	
Members,	)	
Plaintiffs,	)	
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL	)	
ISLAND INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT	)	
VINTAGE PLANTATION HOMEOWNERS	)	
ASSOCIATION, INC. A/K/A MOUNT	)	
VINTAGE HOMEOWNERS ASSOCIATION,	)	
INC.,	)	
Defendants.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-entitled Action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their offices located at 415 Mill Street, Mt. Pleasant, South Carolina 29464, within thirty (30) days after the date of such service, exclusive of the day of service. If you fail to answer the Complaint within the above-described time, judgment by default will be rendered against you for the relief demanded in the Complaint.

-SIGNATURES ON FOLLOWING PAGE-

Plaintiffs' Second Amended Summons

/s/Anna S. McCann
Justin O' Toole Lucey
Anna McCann
JUSTIN O'TOOLE LUCEY, PA
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Attorneys for Plaintiffs

September 11, 2023
Mount Pleasant, SC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	
FERRARO, EDWARD J. PRZYBYL,	)	
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	SECOND AMENDED COMPLAINT
THOMAS BOWES, CONNIE BOWES,	)	(Negligent Development)
MOATAZ ALASADI, VIRGINIA KIRKWOOD,	)	
BOB KIRKWOOD, PAUL VICHROSKI, NYDZA	)	(Jury Trial Demanded)
VICHROSKI, JAMES MONTELLESE,	)	
ROXANN MONTELLESE, Individually,	)	
Derivatively, and on Behalf of all the Mount	)	
Vintage Homeowners Association Members,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL ISLAND	)	
INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT VINTAGE	)	
PLANTATION HOMEOWNERS	)	
ASSOCIATION, INC. A/K/A MOUNT VINTAGE	)	
HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Defendants.	)	

The Plaintiffs, above named, individually, derivatively, and on behalf of all the Mount Vintage Plantation Homeowners, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Plaintiffs are residents of the neighborhood and development known as Mount Vintage (hereinafter referred to as "Mount Vintage").
2. Plaintiffs Ferraro's residence is located at 106 Captain Johnsons Drive, North Augusta, South Carolina, 29860, and is also described as Lot 0-48 on a plat of Mount Vintage by Newby-Proctor and Associates dated August 21, 2006.
3. Plaintiff Przybyl's residence is located at 255 Homeward Bound Drive, North

Plaintiffs' Second Amended Complaint

Augusta, South Carolina, 29860, and is also described as Lot D-14 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 6, 2000.

4. Plaintiffs Gleie's residence is located at 527 Schoolhouse Lane, North Augusta, South Carolina, 29860, and is also described as Lot 0-18 on a plat of Mount Vintage by Newby-Proctor and Associates dated April 17, 2007.

5. Plaintiffs Bowes' residence is located at 99 Whitney Court, North Augusta, South Carolina, 29860, and is also described as Lot A-21 on a plat of Mount Vintage by Newby-Proctor and Associates dated August 21, 2015.

6. Plaintiff Alasadi's residence is located in the Shaw Estates area of Mount Vintage at 15 Ballentine Court, North Augusta, South Carolina, 29860, and is also described as Lot S-44 on a plat of Mount Vintage by Newby-Proctor and Associates dated July 19, 2018.

7. Plaintiffs Kirkwood's residence is located at 108 Whitney Court, North Augusta, South Carolina, 29860, and is also described as Lot A-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 22, 1998.

8. Plaintiffs Vichroski's residence is located at 35 Independent Hill Lane, North Augusta, South Carolina, 29860, and is also described as Lot R-35 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 26, 2000.

9. Plaintiffs Montellese's residence is located at 1036 Longstreet Place, North Augusta, South Carolina, 29860, and is also described as Lot H-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated January 14, 1999.

10. Defendant LL of SC, LLC ("LL"), is a limited liability company formed under the laws of South Carolina; LL also owns lots in the Mount Vintage subdivision. LL's Registered Agent's address is listed with the South Carolina Secretary of State as 616 Edgefield Road, Suite

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115, North Augusta, South Carolina, 29841, which is located in Aiken County, South Carolina. LL's current Articles of Incorporation, filed on January 14, 2010, list its principal office at the same address located in Aiken County, South Carolina.

11. Defendant Raiford Topsail Island Investments, LLC ("Topsail"), is a limited liability company formed under the laws of South Carolina; Topsail also owns lots in the Mount Vintage subdivision. Topsail's Registered Agent's address is listed with the South Carolina Secretary of State as 528 Edgefield Road, Suite G, Belvedere, South Carolina, 29481, located in Aiken County, South Carolina. Topsail's Articles of Incorporation, filed on December 12, 2007, list its principal office at the same address located in Aiken County, South Carolina.

12. Defendant T R Sales Plantation, LLC ("T R Sales"), is a limited liability company formed under the laws of South Carolina and is managed and owned, at least in part, by J. Wayne Raiford. Upon information and belief, TR Sales is the management entity which employs, manages, and is otherwise involved in the control of Defendants LL and Topsail.

13. J. Wayne Raiford ("Raiford") owns (at least in part), manages, controls and acts on behalf of Defendants LL, Topsail, and T R Sales.

14. Defendant Mount Vintage Plantation Homeowners Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc. (hereinafter "The Association"), is a mutual benefit, non-profit corporation formed under the laws of South Carolina.

15. Defendant LL appointed Raiford to the Board of Directors of The Association, and Raiford acts as its Chairman and President.

16. Upon information and belief, Defendant LL has in turn permitted or appointed all other members of the Board of Directors since Defendant LL acquired its interests in Mount Vintage.

Plaintiffs' Second Amended Complaint

17. Leigh Ann Keels (“Keels”) is the daughter of Raiford and a non-resident of Mount Vintage, a former member of The Association’s Board of Directors, a current officer of The Association, and a member and manager of LL, Topsail, and T R Sales.

18. Hereinafter “Affiliated Defendants” and/or “Defendants” refers to LL, Topsail, and TR Sales.

19. Only when “Defendants” is modified to “All Defendants” does the reference include The Association.

20. By virtue of their property ownership, as well as The Association’s Articles of Incorporation, The Association’s Covenants and Bylaws, as amended from time to time (hereinafter “Governing Documents”), and the South Carolina Non-Profit Corporation Act, S.C. Code §§ 33-31-101, *et seq.* (hereinafter the “SC NPC Act.”), the Plaintiffs are members of The Association and have been members at all times relevant herein.

21. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of The Association and its members, the other property owners in Mount Vintage, because The Association has failed to protect and enforce the rights of The Association and its members with respect to the matters alleged herein.

22. Plaintiffs also bring this action on behalf of all Mount Vintage home and lot owners as a class action (hereinafter, “The Homeowners” or “the Homeowner Class”), as the Homeowners themselves have been damaged by the wrongful acts of the Defendants.

(Background; Formation of Association; Governing Documents)

23. The development of Mount Vintage, as a residential community, commenced in approximately 1995.

24. The Association was incorporated as a mutual benefit, non-profit corporation.

Plaintiffs' Second Amended Complaint

25. In its Articles of Incorporation, filed April 3, 2000, The Association elected to have “members,” which election is required by the SC NPC Act §§ 33-31-101, *et seq.*

26. The Articles of Incorporation also specify that The Association will have two (2) “classes of members,” whose respective rights and privileges are spelled out in The Association’s Declaration of Restrictive Covenants and Bylaws.

27. By virtue of its election to have members, The Association is entitled to “impose dues, assessments, and admission and transfer fees upon its members[.]” (SC NPC Act, § 33-31-302 (15)). The Association has continually exercised this power granted by and enumerated in the SC NPC Act.

28. The Governing Documents have been amended numerous times since the filing of the Articles of Incorporation.

29. In 2013, Defendant LL became the alleged “successor developer,” approximately eighteen (18) years after the development was founded.

30. Defendant LL gained control of the development by taking a Deed in Lieu of Foreclosure on the prior developer’s remaining 183-odd lots.

31. The Deed in Lieu transaction purported to include an assignment of developer rights to LL.

32. The most recent versions of the Governing Documents were filed on January 19, 2018 (Declaration of Covenants), and January 19, 2018 (Bylaws). Hereafter, reference to the Governing Documents is to these versions unless specifically stated otherwise.

33. The Governing Documents purport to give all members certain rights, voting privileges and duties.

Plaintiffs' Second Amended Complaint

34. According to the Governing Documents, Defendant LL is allegedly a “Class A” member of The Association by virtue of its claiming “developer rights.”

35. As a Class A member, Defendant LL has one (1) vote for each residential lot owned by it in Mount Vintage.

36. Neither Raiford nor Defendant Topsail are Class A members of The Association.¹

37. According to the Governing Documents, all property owners in Mount Vintage other than the developer are allegedly “Class B” members of The Association.

38. The Class B members purportedly have voting rights which spring upon either (1) the developer’s conveyance of all residential lots and tracts within Mount Vintage, including, but not limited to, additional phases, sections and developments which it may decide to add to the Mount Vintage development, or (2) when the developer, in its sole discretion, decides to convert Class B members to Class A members.

39. By virtue of their membership in The Association, Plaintiffs have been assessed each year of their ownership, including some special assessments.

40. The Governing Documents, specifically the Declaration of Protective Covenants, provides that the developer is not obligated by virtue of its property ownership to pay any dues, assessments, fees, or fines.

(Perpetual and Complete Developer Control)

41. The Governing Documents give Defendant LL, as the sole Class A member complete control and authority over the Governing Documents, the Board, and The Association.

¹ Nor is Keels a member of The Association.

Plaintiffs' Second Amended Complaint

42. By virtue of the foregoing, Defendant LL has complete control over all Mount Vintage matters, including, but not limited to, amenities and lot acquisitions, dues and lien releases, the architectural committee, and assessments.

43. The Board's voting rights (and those of all committees) are illusory as all Board members serve at the discretion of Defendant LL; and, Keels, Raiford's daughter, handles finances, and for all practical purposes, runs The Association. The Bylaws, for example, purport to give the developer the unilateral right to amend any aspect of the Bylaws without vote by the Class B Members, even if said amendment affects the rights, privileges, preferences, restrictions, or conditions of Class B members as to voting, dissolution, redemption, or transfer of membership in a manner different than such amendment would affect another class of members, i.e., Class A members.

44. The Declaration of Covenants, for example, purports to give the developer, as well as its successors, assigns, or heirs, the exclusive right, exercisable at any time and from time to time, to amend or to grant exceptions to the Declarations and to waive, repeal, or vary the Declarations in any one or more respects whenever in the sole and controlled opinion of the Developer such waiver, repeal, or variance shall not be materially detrimental to the general nature in development of Mount Vintage. The foregoing unilateral rights violate the letter and/or spirit of the SC NPC Act.

45. The perpetual developer control, including the perpetual ability to amend the Bylaws and Declaration of Covenants regardless of the substance of those amendments, runs contrary to the SC NPC Act, including, but not limited to, §§ 33-31-206 and 33-31-1022, and therefore runs afoul of South Carolina law. The foregoing perpetual control additionally violates

Plaintiffs' Second Amended Complaint

the common law, industry standards, Restatement(s), model acts, and the reasonable expectations of the purchasing homeowners.

46. In the particulars described in the foregoing paragraphs, the Governing Documents permit complete control by Defendant LL, *funded by the homeowner members*, for an unlimited duration.

47. The Governing Documents do not have a definitive or reasonable time limitation on the Defendant LL's control, which cannot be thwarted or avoided by the developer, thereby giving Defendant LL potentially unlimited perpetual control of The Association and neighborhood.

48. The Governing Documents contain other unfair, conflicting, and/or confusing terms.

49. The defects in the Governing Documents are latent and would not be recognized by a lay person, even if they tried to read them.

50. Further, the Governing Documents permit Defendant LL to add (a virtually unlimited amount of) additional parcels to the regime, which in turn permits perpetual control and dominance by Defendant LL.

51. The Governing Documents are or are akin to contracts of adhesion; neither The Association nor the Homeowners were ever permitted to negotiate their terms; further, they have been unilaterally amended several times by Defendant LL to the detriment of the Homeowners, again without negotiation or input or recourse or representation.

52. At all times relevant herein, Affiliated Defendants have had unfair advantage over the Homeowners by sophistication, dominance, unequal bargaining positions, and position of authority.

Plaintiffs' Second Amended Complaint

53. The foregoing and many of the other terms contained in the Governing Documents are so one-sided and unfair, that no reasonable person who understood their potential for abuse would have agreed to them; and no reasonable person would avail themselves of the untoward advantages that they create.

54. The Governing Documents are unconscionable and, therefore, unenforceable; and they further violate public policy, South Carolina law, the previously referenced standards, and the rule against perpetuities.

(Futility of Demand)

55. Plaintiffs' demand upon The Association to rectify the wrongs described herein would be futile and is, therefore, excused under the futility doctrine.

56. Plaintiffs' demand upon The Association would be futile for the following reasons, which are more particularly described in the preceding paragraphs:

- a) The Association's Governing Documents give "Developer, LL of SC, LLC, its successors and assigns" absolute control over The Association;
- b) Defendant LL therefore controls The Association, whose rights are being adversely affected by Affiliated Defendants;
- c) Under the Governing Documents, Defendant LL is entitled to modify, amend, repeal, suspend, and otherwise alter the Governing Documents in its sole discretion, at its sole option, and at any time;
- d) Defendant LL has complete control over the Board, including the ability to appoint and remove Directors;
- e) Defendant LL has *de facto* veto power over any and all decisions of the Board, which power Defendant LL has exercised in the past;
- f) Raiford, as owner and/or partial owner of Defendants LL, Topsail, and T R Sales, would never permit the Board of Directors to authorize The Association to bring suit against the Affiliated Defendants;;
- g) The Board of Directors is illusory as the Board serves at the pleasure of LL and Raiford;
- h) The Board of Directors have failed to successfully intercede in The Association's or Homeowner's behalf; ultimately, the only recourse for a dissenting Board member is resignation, which has occurred from time to time; and
- i) Other reasons which will be proven at trial.

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57. In further support of futility, various Homeowners, Plaintiffs included, have requested that Defendants cure many of the wrongs addressed herein, and their efforts have been rebuffed and/or ignored by the Board, which is controlled by Defendant LL. (see, e.g., ¶¶ 30-35, *infra*).

58. For example, one or more Plaintiffs have challenged the Board's failure to provide accounting information, failure to charge assessments against all lot owners, misuse of reserve funds, self-dealing, inurement, debt forgiveness, conflicts of interest, cronyism, misfeasance, non-developer titling of lots, to name a few. All of the Homeowners' inquiries and complaints have been rebuffed. To this day, Plaintiffs have not received the 2019 accounting records from the Defendants.

59. When direct inquiries were ignored, one or more Plaintiffs complained to the South Carolina Department of Consumer Affairs, who in turn served notice on Defendants and requested a response. The Defendants refused to budge in their response to the Homeowners through the Department and the Department was powerless to do anything about it.

(Operation of Association for the Benefit of Affiliated Defendants)

60. Affiliated Defendants have embarked upon a pattern and practice of using past due assessments owed to The Association to coerce and cajole the sale of lots by the then current owners, and the acquisition of the lots by the Affiliated Defendants, at below market values, without the Affiliated Defendants compensating The Association for its lost dues, opportunity, and/or value.

61. Upon information and belief, on one or more of these occasions, the Affiliated Defendants have failed to declare the release of sums owed to The Association as consideration for the transfer and have exposed The Association to future liability for these transactions.

Plaintiffs' Second Amended Complaint

62. Affiliated Defendants have embarked upon a pattern and practice of bidding for and acquiring Mount Vintage lots at tax sales, thereafter, suing The Association they control to eliminate past due Association dues and assessment, defaulting The Association in the suits, and failing to advise of or assist with The Association's redemption or other rights, and/or simply causing the HOA to write them off, all without the Affiliated Defendants compensating The Association for its lost dues, liens, opportunity, and/or value.

63. Affiliated Defendants have subsequently embarked upon a pattern and practice of lot acquisition, whereby, they avoid/bypass public sales, using unrecorded Association liens as leverage to negotiate the cheap acquisition of Mount Vintage lots from remote owners, and then waiving The Association dues owed once the lots are received, with little or no compensation to The Association, all without any disclosure to The Association or its members, let alone adequate disclosure.

64. The Board has failed to intercede, has failed to protect The Association or its members, or to achieve or arrange for adequate management of The Association and its affairs. In essence, the Affiliated Defendants treat The Association as its pawn for its own financial transactions and inurement.

65. By virtue of this pattern and practice, the Affiliated Defendants have amassed an additional 100 or so lots in their own names and/or the names of their affiliates at below market consideration while decimating The Association's finances.

66. Defendant LL has wrongfully treated the owners of some of these and other lots as Class A members (including Defendant Topsail and Raiford), waiving dues, when only Defendant LL could possibly claim that status, and thereby have caused additional financial detriment to The Association, the neighborhood, and the Homeowners.

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67. Similarly, Defendant LL and Raiford have permitted favored third parties and relatives to temporarily consolidate lots to reduce the dues owed to The Association.

(Amenities)

68. The original developers sold Mount Vintage and its lots to the Homeowners and the public as an upscale, first-class, luxury community with high standards for design of neighborhood and residences, maintenance, and amenities.

69. The upscale amenities promised to be available included the below Town Center, Golf Course and Club House, Equestrian facilities, and 24-hour security.

70. An attractive selling point for Mount Vintage was that its residents' use and enjoyment of the amenities would be optional, as would the associated financial obligation. Neither The Association nor the Homeowners would be required to provide financial support to the amenities that they did not choose to enjoy.

71. Mount Vintage's Athletic Club and Town Center ("Town Center") is comprised of six (6) tennis courts, fitness center, library, kitchen, small and large meeting and recreational spaces, and a pool complex.

72. The Town Center and the Golf Club/Course ("Golf Amenity") were built/developed circa 2005 by the original developers; the Equestrian facilities were developed thereafter.

73. Following the Great Recession, the original developers fell on hard times and the amenities were lost to foreclosure or other purchasers.

74. In 2010, the Town Center and Golf Amenity were purchased by Plantation Alliance LLC, a company owned by several Mount Vintage residents, to prevent the properties from being lost to bank foreclosure.

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75. From 2013 to 2020, Defendant LL has done nothing to fulfill the original developers' promise of providing multiple, optional, first-class, upscale amenities.

76. Circa 2014, while Defendant LL was the sole Class A member, Apex Bank foreclosed on the Town Center and Golf Amenity.

77. Circa 2015-2016, Defendant LL embarked on persuading and arranging for The Association and its members to acquire the Town Center and then the Golf Amenity ("Amenity Package").

78. In 2016, the value of the Amenity Package was \$1,800,000 or less; the Association nonetheless paid approximately \$3,800,000 to acquire the amenities (not including refurbishment costs).

79. This was done with numerous representations by the Affiliated Defendants as to the wisdom and affordability of acquisitions; that the acquisition was necessary to maintain or bolster members' property values; that the acquisitions would be self-sustaining; and that The Association and its members would *not* be responsible for any operating shortfalls.

80. Affiliated Defendants failed to disclose that they were causing The Association to complete the acquisitions to increase the value of the Affiliated Defendants' lots or that, as the alleged successor to the original developer enjoying developer rights, Defendant LL had some obligation to facilitate the availability of the Amenities.

81. Affiliated Defendants failed to disclose to the membership that they were causing The Association to pay over twice the Amenity Package's fair market value.

82. Affiliated Defendants failed to disclose that, in obligation or in all fairness, Defendant LL as purported "developer" should have funded the acquisition or contributed far more to the acquisition.

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83. The acquisition and operation of the Amenities were further accompanied by the wrongful and negligent acts further described below.

84. The performance of the Amenities has been less than optimal, perhaps dismal is a better word; and contrary to representations made by the LL-controlled Board, the Board has since passed member assessments to cause The Association and its members to fund the operating losses of the Amenities.

85. No arrangements are in place for The Association to meet the balloon payments due shortly on both acquisitions.

86. The equestrian facilities do not currently exist, and Defendant LL has made no attempt to make good on that developer promise.

87. Defendant LL has failed to make good on the original developer's promise of multiple, optional, first class amenities.

(Other and Cumulative Matters)

88. Defendant LL has failed to adequately advance the development and funding of The Association and Mount Vintage, thereby harming The Association and the Homeowners' property values.

89. Defendant LL has failed to deliver and maintain a first-class, upscale, luxury development in many ways.

90. Defendant LL has failed to uphold the first-class standards required of residences, permitting tract homes and slab-on-grade homes into the neighborhood which have devalued the neighborhood and each home in the neighborhood.

91. Defendant LL failed and refused to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage.

Plaintiffs' Second Amended Complaint

92. Defendant LL and the Board's foregoing activities, inadequate disclosures, amateur accounting, and lack of transparency have caused rifts in Mount Vintage.

93. Defendant LL and their predecessor's failure, after 25 years, to transfer control of The Association and Mount Vintage neighborhood to the Homeowners is a violation of the public policy against perpetual developer control – both as described and separately, with due acknowledgement that there is no end in sight and under the current pace of development, there could well be another 25 to 50 years of developer control or more.

94. Defendant LL has practiced nepotism, cronyism, and favoritism in the operation of The Association and Neighborhood. It has placed unqualified family member(s) in important controlling positions; it has allowed extended family members to use the Amenities with false addresses; and it has acted in an arbitrary and capricious manner in The Association's dealings, e.g., negotiating behind the back of The Association's board and allowing some investors to temporarily merge their lot inventories to dodge Association dues and assessments pending resale of the lots and they have permitted Defendant Topsail and Raiford to wrongfully dodge dues and assessments

95. The foregoing has damaged The Association and the Homeowners and has caused a public stigma that has further damaged both.

(Additional Statement of Liability and Negligent Acts)

96. It is axiomatic, through law and equity, that by claiming "Successor Developer" status, and accepting the assignment of developer benefits and rights, and/or by availing itself of and exercising such rights, Defendant LL obligated itself to properly perform the developer obligations and promises that gave rise to the presence of developer rights and benefits.

Plaintiffs' Second Amended Complaint

97. As the sole, complete controlling member, officer, and board member of a planned community neighborhood and its owner's association, Defendant LL owed The Association, the Homeowners, and the ensuing neighborhood fiduciary and fiduciary-like duties, and the duty to use due care in the development of the neighborhood and the administration of The Association.

98. Because of Defendant LL's complete control, Homeowners have had no choice but to repose their complete trust and reliance in Defendant LL resulting in the imposition of a fiduciary duty upon Defendant LL.

99. Defendants Topsail and T R Sales owed The Association and its members a duty of due care, a duty not to profit by their codefendants' misfeasance, and, when operating in concert with Defendant LL, a duty of good faith and fair dealing.

100. Defendant LL has been negligent as follows:

- a) In failing to act to prevent the amenities from being foreclosed upon by Apex Bank under its tenure as the alleged developer;
- b) In failing to pay for the acquisition of the amenities or for the Developer's fair share of the acquisition of the Amenities;
- c) In their use of insider knowledge of Mount Vintage affairs to benefit themselves in lieu of The Association or its members;
- d) In their use of Association opportunities, rights, receivables, liens, and legal proceedings to acquire property for the benefit of the Affiliated Defendants;
- e) By exposing The Association to liability for false property transfer documentation;
- f) In failing to pay or require payment of Association dues and assessments on lots that are not properly considered developer lots;
- g) In failing to arrange for proper funding of The Association and neighborhood while under their control;
- h) In failing to adequately develop Mount Vintage to create an adequate membership base to fund the neighborhood's success;
- i) In detracting from the membership base;
- j) In failing to timely transition control of The Association to the Homeowners;
- k) In failing to avoid perpetual developer control of Mount Vintage;
- l) In failing to share Association records and documents with The Association's members;
- m) In failing to create, maintain, publish, and share accurate financial records of The Association's activities;

Plaintiffs' Second Amended Complaint

- n) In failing to disclose and/or accurately disclose their financial transactions with The Association and The Association's interests;
- o) In practicing nepotism, favoritism, and cronyism in the operation of Mount Vintage at the expense of The Association and Homeowners;
- p) In moving The Association operations and records out of The Association property to private property;
- q) In failing and refusing to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage;
- r) In failing to afford adequate rights to the Homeowners in the operation of The Association;
- s) In the negligent development, marketing, and operation of Mount Vintage and its Association in other ways that will be shown through discovery and at trial;
- t) In the acquisition and operation of the Amenities as further described below;
- u) In causing a stigma that hurts The Association and the Homeowners' property values;
- v) By distributing funds from a non-profit entity in violation of S.C. Code § 33-31-1301-2;
- w) By accepting, agreeing to, and enforcing unconscionable Governing Documents; and,
- x) By violating the SC NPC Act in failing to accord voting rights to Class B members on important or discriminatory votes delineated by the Act.

101. Defendant LL has been negligent with regards to the *acquisition* of the *Golf* Amenity, as follows:

- a) Proposing and arranging for the Homeowners to pay two and a half (2.5) times the Golf Amenity's market value to acquire the Golf Amenity;
- b) Failing to disclose to the Homeowners or warn the Homeowners that the Affiliated Defendants were arranging for them to pay two-hundred fifty percent (250%) of the Golf Amenity's market value for the ownership of the Amenity;
- c) Utilizing the borrowing, funding, and assessment capability of The Association to buy an Amenity that would increase the value of the Affiliated Defendants' lots, without adequate disclosure or just compensation;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for The Association to have default liability on the Amenity Note;
- f) Arranging for a balloon payment without adequate protection or an exit plan;
- g) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment without protection;
- h) Arranging for and advising the Homeowners to support and enter a relationship with an unproven, underfunded golf course operator, without adequate warning or disclosure;

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- i) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- j) Failing to disclose to homeowners the developer's and Board's conflict of interest in the acquisition; and,
- k) Such other ways as shall be shown in the discovery and trial of this matter.

102. Defendant LL has been negligent in the following particulars with regards to the *operation* of the *Golf Amenity*:

- a) Arranging for and relying upon a short-term lease with an unproven, underfunded operator;
- b) Failing to enforce the terms of the lease;
- c) Arranging for the Homeowners to be responsible for the Amenity operating losses;
- d) Failing to exercise proper supervision to prevent mismanagement of the course;
- e) Assessing the Homeowners to fund the operating losses; and,
- f) Such other ways as shall be shown in the discovery and trial of this matter.

103. Defendant LL has been negligent in the following particulars, with regards to the *acquisition and operation* of the *Town Center Amenity*:

- a) Utilizing the borrowing, funding, and assessment capability of The Association to buy an amenity that would increase the value of the Affiliated Defendants' lots, without adequate disclosure or just compensation;
- b) Recommending to the Homeowners that they pay a price for the Amenity that failed to account for the deferred maintenance on the facility;
- c) Failing to warn the Homeowners that they were overpaying for the Amenity;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for a balloon payment without adequate protection or an exit plan;
- f) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment;
- g) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- h) Arranging for The Association to have default liability on the Amenity Note;
- i) Arranging for the Homeowners to be responsible for the operating losses;
- j) Increasing the assessments on the Homeowners to fund the operating losses;
- k) Failing to disclose to Homeowners Defendants LL's' and Board's conflict of interest in the acquisition and in the assessment of Homeowners to fund the operating losses; and,
- l) Such other ways as shall be shown in the discovery and trial of this matter.

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104. As this suit concerns rights allegedly derived from sealed instruments, a twenty (20) year statute of limitations applies to Plaintiffs' claims.

105. Defendants are barred or estopped from relying on any statutes of limitation or repose by virtue of their own misfeasance and concealment of misfeasance and rights relating thereto.

(Damages)

106. Defendants have proximately damaged Plaintiffs as follows:

- a) The Defendants have proximately damaged The Association by the above-described actions and by decreasing The Association's funding and funding base and, therefore, operational capacity, by failing to pay assessments, causing it to pass assessments to fund Amenity deficits, by converting Association opportunities to their own benefit, and by saddling The Association with staggering debt and amenity maintenance cost;
- b) Defendants have proximately damaged the individual Plaintiffs and the Homeowner Class vis a vis increased and special assessments and by its improper operation of The Association and the neighborhood, which has resulted in loss of appreciated value in their homes; loss of value in their homes, and loss of collective control of their neighborhood; and the likelihood of staggering future assessments to support The Association's staggering debt and maintenance costs; and
- c) The cumulative actual damages to The Association are expected to exceed \$7,000,000; and the Class damages are expected to exceed that.

107. All of the within-described advantages unilaterally taken by Defendants have been directly or indirectly at the expense of and damage to the Plaintiffs.

(Class Action Allegations)

108. Plaintiffs additionally bring this action on behalf of all those similarly situated pursuant to the common law of this state and Rule 23, SCRCF. The Class is defined as follows:

An opt-out class of all persons and entities that are members of the Mount Vintage Homeowners Association in North Augusta, South Carolina.²

² Plaintiffs propose that if cohesiveness is challenged by the Defendants, that the Class be divided into subclasses if and as necessary to align Class interests.

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This class excludes the Defendants and their affiliates, employees, owners, and relatives; excludes Essex/Stamley Homes and the owners of any properties built by Essex/Stamley Homes; and excludes any person or entity that timely indicate their desire to be excluded from the class.

109. Plaintiffs are members of the Class that they seek to represent. The interests of Plaintiffs are coincident with and non-antagonistic to those other members of the class Plaintiffs seek to represent.

110. Plaintiffs' claims are typical of the claims of the other class members, and Plaintiffs will fairly and adequately represent the interests of the members of the class.

111. Plaintiffs have retained counsel experienced and competent in complex litigation, class actions, developer matters, and homeowner association affairs.

112. The class members are so numerous that joinder of all members is impractical. It is estimated that there is in excess of three hundred (300) members of the Class as defined.

113. The claims of the Plaintiffs and the Class involve common questions of law and fact, including but not limited to:

- a) Whether Defendants were negligent in the development and management of Mount Vintage;
- b) Whether the Defendants adequately disclosed their conflicts of interest;
- c) Whether the Defendants breached their fiduciary duties;
- d) Whether the Defendants' conduct has proximately damaged the Plaintiffs; and,
- e) Whether Defendants' conduct was grossly negligent, reckless, willful, wanton, intentional, or the like, entitling Plaintiffs to punitive damages from the Defendants.

114. Common questions of law and fact herein predominate over any questions affecting only individual members of the Class. Common issues represent the most significant issues in the case and can be resolved for all members of the Class in one action.

115. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the

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Class, which would establish incompatible standards of conduct for the Defendants, the parties likely opposing the Class.

116. The prosecution of separate actions by individual members of the Class would create the risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications and/or substantially impair or impede their ability to protect their interests.

117. A class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

118. Prosecution of this matter as a class action would significantly reduce the possibility of repetitive litigation by providing redress to Class Members who would not or could not prosecute this litigation on an individual basis.

119. Plaintiffs and the Class envision no unusual difficulty in the management of this action as a class action.

120. Each class member has an interest of more than one hundred dollars (\$100.00).

121. The amount of money at stake for each member is not sufficient for each member to hire their own counsel and accountants and bring their own action.

122. Much of this action focuses on the Defendants' mistreatment of The Association and its finances and requires a forensic financial evaluation. The judiciary, parties, and Homeowners would best be served by a single financial analysis in a single action, rather than multiplicity and duplicity.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS AND REPOSE**

123. Defendants are estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, Defendants should have known that they had

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violated the Plaintiffs rights as described herein.

124. Defendants had a duty to inform Plaintiffs of the violations (including conflicts) described herein each of which they should have known. Notwithstanding their duty, Defendants never disclosed the violations.

125. As Defendants had a duty to disclose, the non-disclosure constituted concealment.

126. Despite exercising reasonable diligence, Plaintiffs could not have discovered the violations at the time they originally occurred.

127. Given Defendants' failure to disclose this non-public information about the violations – information over which they had exclusive control – and because Plaintiffs could not reasonably have known of the violations, Defendants are barred and estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

128. Defendants are further estopped from relying upon any statute of limitations or repose as they have repeatedly represented to Plaintiffs that they knew what they were doing and that they were acting in the best interests of The Association.

129. The equitable tolling doctrine further precludes Defendants from relying on a statute of limitations defense.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence by All Plaintiffs as to Affiliated Defendants)

130. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

131. Plaintiffs have been damaged as a direct and proximate result of the previously-described negligence, carelessness, and recklessness of the Defendants in an amount to be determined by the trier of fact.

132. The foregoing acts and omissions were committed with gross negligence,

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willfulness, wantonness, and/or reckless disregard for the rights of others, and/or constituted negligence *per se*, and Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty by All Plaintiffs as to Defendant LL)

133. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

134. Defendant LL, as the alleged developer, owed fiduciary and fiduciary like duties to the Plaintiffs by virtue of its capacity as the steward of the Mount Vintage community and amenities, and in its capacity in controlling The Association as the lone Association voting member. It owed Homeowners fiduciary and fiduciary like duties by virtue of the Homeowners forced respite of trust and confidences in it.

135. The fiduciary relationship required Defendant LL to make full disclosure to The Association and Homeowners of all material facts relevant to all transactions between the parties.

136. The fiduciary relationship required that Defendant LL treat The Association and Homeowners with good faith and fair dealing.

137. The fiduciary relationship shifts the burden of proof as to all transactions and dealings between the Affiliated Defendants, The Association, and the homeowners, or any two thereof, to Defendant LL to prove the arms-length nature of each transaction or each transaction becomes voidable and compensable at The Association's and Homeowners' option.

138. Defendant LL breached the fiduciary relationship by failing to honor their trust; by using their insider knowledge and control to benefit itself and related entities/parties at the expense of the Plaintiffs; by failing to make full or adequate disclosure; by failing to disclose their breach

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of duty; by failing to enforce the Homeowner Association's rights; by self-dealing; by breaching their duty of loyalty; and by the other acts and omissions described herein.

139. Defendant's breach of fiduciary duty has proximately damaged Plaintiffs in an amount to be determined by the trier of fact.

140. As said failures were committed with gross negligence, reckless disregard for the rights of others, and/or intentional or malicious conduct, Plaintiffs are entitled to an award of punitive damages against Defendant LL.

FOR A THIRD CAUSE OF ACTION
(S.C. Unfair Trade Practices Act By Individual Plaintiffs ("SCUTPA") as to Affiliated Defendants)

141. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

142. The Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

143. The Defendants have engaged in planned community development both from time to time in Mount Vintage and in other new communities in this state and region, including Aiken, wherein their acts have been repeated or capable of repetition.

144. The Defendants' above-described activities, reincorporated herein by reference as if set forth at length, constitute unfair and deceptive practices in the conduct of their trade.

145. The Defendants' above-described acts are capable of repetition and adversely affect the public interest.

146. The Defendants knew or should have known that their conduct was in violation of Section 39-5-20 of the South Carolina Code.

147. The Defendants' wrongs entitle the Plaintiffs to an award of treble damages,

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attorneys' fees, and costs.

148. As discovery will show that The Association should be realigned as a Plaintiff, it will be bringing its SCUTPA claim as a direct claim, and not through its derivative Plaintiffs.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Action/Reformation by Individual Plaintiffs and Class as to Defendant LL and Association)

149. Plaintiffs re-allege the allegations contained in the above paragraphs as if fully set forth herein.

150. The unilateral and *de facto* perpetual control provisions and other offensive provisions of The Association's Governing Documents violate:

- a) Public policy;
- b) South Carolina law and/or provisions of the Constitution;
- c) The developer Defendants' fiduciary duties;
- d) The standards and references set forth further above; and/or,
- e) The Rule Against Perpetuities.

151. Plaintiffs are entitled to a declaration by this Court that the offensive provisions included within the Governing Documents by the Defendants and their predecessors are void and/or require reformation or severance to eliminate the offensive provisions.

152. Plaintiffs are also entitled to have ambiguous and contradictory provisions in the Governing Documents construed against Defendants, declared void and/or reformed by the Court to reflect the reasonable expectations of the Homeowners Association and Plaintiffs more accurately.

FOR A FIFTH CAUSE OF ACTION
(Unjust Enrichment by All Plaintiffs as to Affiliated Defendants)

153. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

154. Plaintiffs have conferred the benefits discussed herein on the Affiliated Defendants.

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155. The Affiliated Defendants have been unjustly enriched at the expense of the Plaintiffs, The Association, and those similarly situated.

156. As an example, the Affiliated Defendants reaped the economic benefits from the Yeoman's lot transaction at the expense of the Association and its Members.

157. Using the above example, the Affiliated Defendants have transferred and continue to transfer the ill-gotten profits from the Yeoman's transaction amongst themselves.

158. Plaintiffs and The Association should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Association in the form of monetary restitution paid by the Affiliated Defendants.

FOR A SIXTH CAUSE OF ACTION

(Promissory Estoppel or Declaration by Individual Plaintiffs & Class as to Defendant LL)

159. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

160. The original developers promised the Plaintiffs, their predecessors, and other similarly situated that Mount Vintage would be developed as a first-class, upscale, luxury community, second to none, a true utopia, among other promises, with optional, first-class amenities and architecturally significant residential dwellings, with impeccable maintenance.

161. Specifically, the original developers promised in the various marketing materials:

One of our nation's most premier luxury...master planned...World-class community; Mount Vintage truly is one of our Nation's crowning jewels; Known for its refined luxury and amenities; southern charm and elegant sophistication; carefully planned residential community that rivals the best in America; signature Mount Vintage has enlisted legendary designers for the superior craftsmanship you see throughout the community; Some of the area's finest builders will provide you a delightful choice of well-thought-out and attractive home designs; neighborhood[s]; Gracefully appointed homes showcasing traditional architectural styles; exquisite homes and grounds; experience a world of unequalled amenities; amazing offering of amenities; unsurpassed

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amenities; Exceptional amenities; superb amenities; World-class amenities; our facilities provide everything horse lovers and their horses require; Fully equipped equestrian center; full boarding facilities and lessons; many riding trails; world class... championship golf course; highly experienced maintenance staff; extreme attention to detail; so meticulously maintained that not a single blade of grass appears out of place; finest lifestyle amenities imaginable; the finest lifestyle amenities man can provide; the very best of luxury living.

162. Plaintiffs relied on these and other promises in acquiring their lots and building their residences. The original developers expected and foresaw Plaintiffs' reliance.

163. By accepting the benefits of the alleged assignment of developer rights, the defendant successor developer(s) bear the burden of the obligations of its predecessors.

164. The common law provides that to qualify as a Successor Developer, an assignee of declarant rights must substantially honor the development plan put in place by the original developer.

165. Concomitantly, the common law provides that an assignee of developer rights who/which does not honor the development plan and obligations is not entitled to Successor Developer status.

166. Plaintiffs are entitled to an order of this Court requiring Defendant LL to specifically perform the development plan, and to an award of costs, damages, consequential and special damages, and attorneys' fees.

167. Alternatively, Plaintiffs seek a ruling that the Defendant LL, having not acted as a proper successor developer, and having breached the developer obligations, was not and is no longer entitled to exercise developer privileges at Mount Vintage, and an award of judgment for all prior unpaid dues and all other damages set forth herein.

FOR A SEVENTH CAUSE OF ACTION
(Accounting and Temporary and Permanent Injunction By All Plaintiffs as to All Defendants)

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168. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

169. Individual Plaintiffs and Plaintiff Class are entitled to and seek an accounting of all The Association's financial transactions since Defendant LL took control, generally and with the Defendants.

170. The Association is entitled to and seeks an accounting of all The Association's financial transactions with the Defendants since Defendant LL took control and the Defendants financial transactions relating to Mount Vintage that The Association is not a party to but maybe affected by.

171. The foregoing allegations evidence that the Plaintiffs are suffering irreparable harm, and an injunction is necessary to protect their rights and interests, both temporarily and as part of the full adjudication and resolution of the within matters. The foregoing detailed allegations evidence a likelihood of success on the merits; and further evidences that there is an inadequate remedy at law for some of the wrongs complained of herein. The likelihood of success on the merits is enhanced by the shifting of the burden of proof as to the self-dealing described in detail herein.

172. Plaintiffs are entitled to the issuance of a temporary and permanent injunction enjoining the Defendants from treating The Association as a subsidiary and from having any financial transactions with The Association that are not approved by an independent majority of the Homeowners, after full advanced disclosure, and the Court, pending resolution of this suit and the transfer of control to the Homeowners.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy By Individual Plaintiffs and Plaintiff Class as to Affiliated Defendants)

Plaintiffs' Second Amended Complaint

173. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

174. Defendants have conspired and acted in concert as described herein to benefit themselves at the expense of and with damage to the Plaintiffs.

175. The Defendants actions have proximately caused the Plaintiffs special damages which are unique to this very unique and abusive situation.

176. The special damages include, but are not limited to, the non-economic damages that Plaintiffs have suffered by having to endure this conduct in their retirement home and community, and amongst their neighbors, the loss of use and enjoyment Plaintiffs have suffered, and the loss of the planned collective control of their residential community.

177. Plaintiffs' special damages also include the stigma that the neighborhood (and therefore its members) has and is suffering as a result of the above described conduct and having to use litigation to correct it, and all its attendant consequences.

178. Plaintiffs are entitled to an award of actual, special and punitive damages from Defendants.

WHEREFORE, Plaintiffs pray for a judgment of this Court for themselves, The Association, and the Homeowner Class, as follows:

1. That the foregoing class of Homeowners be certified; that two (2) or more of the individual plaintiffs be constituted as the class representatives in this matter and that the below counsel be constituted as class counsel;
2. Judgment in favor of The Association against Defendants for its actual, consequential, statutory, and punitive damages;
3. Judgment in favor of the individual Plaintiffs and Plaintiff Class against Defendants for their actual, consequential, special, statutory, and punitive damages;
4. Judgment in favor of the Individual Plaintiffs and Plaintiff Class against Association for assessments paid by Plaintiffs recovered against the Defendants;
5. An accounting by all Defendants for all Plaintiffs;

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6. Reformation, specific performance, declaratory, and injunctive relief;
7. An award of attorneys' fees, costs, and prejudgment interest; and
8. Jury trial demanded.

JUSTIN O'TOOLE LUCEY, P.A.

By: /s/Anna S. McCann
Justin O'Toole Lucey
Anna McCann
415 Mill Street
Mount Pleasant, SC 29465-0806
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amccann@lucey-law.com

September 11, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	BUSINESS COURT CASE,
FERRARO, EDWARD J. PRZYBYL,	)	ASSIGNED TO:
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	
THOMAS BOWES, CONNIE BOWES,	)	THE HONORABLE R. LAWTON
MOATAZ ALASADI, VIRGINIA	)	MCINTOSH
KIRKWOOD, BOB KIRKWOOD, PAUL	)	
VICHROSKI, NYDZA VICHROSKI, JAMES	)	THIRD AMENDED SUMMONS
MONTELLESE, ROXANN MONTELLESE,	)	(Negligent Development)
Individually and Derivatively on Behalf of the	)	
Mount Vintage Homeowners Association,	)	(Jury Trial Demanded)
Plaintiffs,	)	
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL	)	
ISLAND INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT	)	
VINTAGE PLANTATION HOMEOWNERS	)	
ASSOCIATION, INC. A/K/A MOUNT	)	
VINTAGE HOMEOWNERS ASSOCIATION,	)	
INC.,	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-entitled Action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their offices located at 415 Mill Street, Mt. Pleasant, South Carolina 29464, within thirty (30) days after the date of such service, exclusive of the day of service. If you fail to answer the Complaint within the above-described time, judgment by default will be rendered against you for the relief demanded in the Complaint.

-SIGNATURES ON FOLLOWING PAGE-

Pls' Third Amended Summons & Complaint

/s/Anna S. McCann
Justin O' Toole Lucey
Anna McCann
JUSTIN O'TOOLE LUCEY, PA
415 Mill Street
Mt. Pleasant, South Carolina 29464
(843) 849-8400
jlucey@lucey-law.com
amccann@lucey-law.com
Attorneys for Plaintiffs

September 4, 2024
Mount Pleasant, SC

Pls' Third Amended Summons & Complaint

Newby-Proctor and Associates dated September 6, 2000.

4. Plaintiffs Gleie's residence is located at 527 Schoolhouse Lane, North Augusta, South Carolina, 29860, and is also described as Lot 0-18 on a plat of Mount Vintage by Newby-Proctor and Associates dated April 17, 2007.

5. Plaintiffs Bowes' residence is located at 99 Whitney Court, North Augusta, South Carolina, 29860 and is also described as Lot A-21 on a plat of Mount Vintage by Newby-Proctor and Associates dated August 21, 2015.

6. Plaintiff Alasadi's residence is located in the Shaw Estates area of Mount Vintage at 15 Ballentine Court, North Augusta, South Carolina, 29860 and is also described as Lot S-44 on a plat of Mount Vintage by Newby-Proctor and Associates dated July 19, 2018.

7. Plaintiffs Kirkwood's residence is located at 108 Whitney Court, North Augusta, South Carolina, 29860, and is also described as Lot A-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 22, 1998.

8. Plaintiffs Vichroski's residence is located at 35 Independent Hill Lane, North Augusta, South Carolina, 29860 and is also described as Lot R-35 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 26, 2000.

9. Plaintiffs Montellese's residence is located at 1036 Longstreet Place, North Augusta, South Carolina, 29860 and is also described as Lot H-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated January 14, 1999.

10. Defendant LL of SC, LLC ("LL"), is a limited liability company formed under the laws of South Carolina; LL also owns lots in the Mount Vintage subdivision.

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11. Defendant Raiford Topsail Island Investments, LLC (“Topsail”), is a limited liability company formed under the laws of South Carolina; Topsail also owns lots in the Mount Vintage subdivision.

12. Defendant T R Sales Plantation, LLC (“T R Sales”), is a limited liability company formed under the laws of South Carolina.

13. J. Wayne Raiford (“Raiford”) owns (at least in part), manages, controls and acts on behalf of Defendants LL, Topsail, and T R Sales.

14. Leigh Ann Keels (“Keels”) is the daughter of Raiford and a non-resident of Mount Vintage, a former member of The Association’s Board of Directors, a current officer of The Association, and a part owner or part beneficial owner of LL, Topsail, and T R Sales.

15. T R Sales is the management entity which employs Raiford and Keels and, through Raiford and Keels, manages and controls Defendants LL and The Association. During the last nine or so years, Raiford has been solely employed by T R Sales; and Keels has been solely employed by T R Sales for all activities relating to this Complaint.

16. Defendants T R Sales, LL, and Topsail have acted in concert in the below described matters.

17. Defendant Mount Vintage Homeowners Association, Inc. f/k/a Mount Vintage Plantation Homeowners Association, Inc. (hereinafter “The Association”), is a mutual benefit, non-profit corporation formed under the laws of South Carolina, and is an interested party to the within matters. No recovery is sought against The Association.

18. Defendant LL appointed Raiford to the Board of Directors of The Association, and Raiford acts as its Chairman and President.

Pls' Third Amended Summons & Complaint

19. Defendants LL and/or T R Sales has, in turn, permitted or appointed all other members of the Board of Directors since late 2013.

20. Hereinafter "Defendants" refers to one or more of LL, Topsail, and T R Sales. Only when "Defendants" is modified to "All Defendants" does the reference include The Association.

21. By virtue of their property ownership, as well as The Association's Articles of Incorporation, The Association's Covenants ("Covenants") and Bylaws, as amended from time to time (hereinafter "Governing Documents"), and the South Carolina Non-Profit Corporation Act, S.C. Code §§ 33-31-101, *et seq.* (hereinafter the "SC NPC Act"), the Plaintiffs are members of The Association and have been members at all times relevant herein.

22. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of The Association and its members, the other property owners in Mount Vintage, because The Association has failed to protect and enforce the rights of The Association and its members with respect to the matters alleged herein.

(Background; Formation of Association; Governing Documents)

23. The development of Mount Vintage, as a residential community, commenced in approximately 1995.

24. The Association was incorporated as a mutual benefit, non-profit corporation.

25. In its Articles of Incorporation, filed April 3, 2000, The Association elected to have "members," which election is required by the SC NPC Act §§ 33-31-101, *et seq.*

26. The Articles of Incorporation also specify that The Association will have two (2) "classes of members," whose respective rights and privileges are spelled out in The Association's Declaration of Restrictive Covenants and Bylaws.

Pls' Third Amended Summons & Complaint

27. By virtue of its election to have members, The Association is entitled to “impose dues, assessments, and admission and transfer fees upon its members[.]” (SC NPC Act, § 33-31-302 (15)). The Association has continually exercised this power granted by and enumerated in the SC NPC Act.

28. The Governing Documents have been amended numerous times since the filing of the Articles of Incorporation.

29. On September 3, 2013, Defendant LL gained control of Mount Vintage by taking a Deed in Lieu of Foreclosure on the prior developer’s remaining 183-odd lots.

30. The Deed in Lieu transaction purported to include an assignment of developer rights to LL.

31. Thereafter, Defendant LL asserted its position as the alleged “successor developer,” approximately eighteen (18) years after the development was founded.

32. Unbeknownst to The Association or its members, Defendant LL elected to continue the foreclosure process and assign its successful bid to a different entity, Defendant Topsail.

33. Thereafter, Defendant Topsail then received a Court deed to the 185 developer lots and all rights “appurtenant” thereto.

34. Topsails’ receipt of “developer rights” was confirmed by a subsequent deed issued by the foreclosing Court in 2014.

35. According to the Governing Documents, the Developer is allegedly a “Class A” member of The Association by virtue of its claiming “developer rights.”

36. As a Class A member, the Developer has one (1) vote for each residential lot owned by it in Mount Vintage.

Pls' Third Amended Summons & Complaint

37. As a result of LL's assertion of developer status, neither Raiford nor Defendant Topsail were Class A members of The Association.¹

38. According to the Governing Documents, all property owners in Mount Vintage other than the developer are allegedly "Class B" members of The Association.

39. The Class B members purportedly have voting rights which spring upon either (1) the developer's conveyance of all residential lots and tracts within Mount Vintage, including, but not limited to, additional phases, sections and developments which it may decide to add to the Mount Vintage development, or (2) when the developer, in its sole discretion, decides to convert Class B members to Class A members.

40. By virtue of their membership in The Association, Plaintiffs have been assessed each year of their ownership, including some special assessments.

41. The Covenants provide that the developer Class A member is not obligated by virtue of its property ownership to pay any dues, assessments, fees, or fines.

(Perpetual and Complete Developer Control)

42. The Governing Documents give the developer, as the sole Class A member, complete control and authority over the Governing Documents, the Board, and The Association.

43. Defendant LL has maintained complete control over all Mount Vintage matters, including, but not limited to, amenities and lot acquisitions, dues and lien releases, the architectural committee, and assessments.

44. The Board's voting rights (and those of all committees) are illusory as all Board members serve at the discretion of Defendant LL; and, Keels, Raiford's daughter, handles finances, and for all practical purposes, runs The Association's day-to-day matters. The Bylaws, for

¹ Nor is Keels a member of The Association.

Pls' Third Amended Summons & Complaint

example, purport to give the developer the unilateral right to amend any aspect of the Bylaws without vote by the Class B Members, even if said amendment affects the rights, privileges, preferences, restrictions, or conditions of Class B members as to voting, dissolution, redemption, or transfer of membership in a manner different than such amendment would affect another class of members, *i.e.*, Class A members.

45. The Covenants, for example, purports to give the developer, as well as its successors, assigns, or heirs, the exclusive right, exercisable at any time and from time to time, to amend or to grant exceptions to the Declarations and to waive, repeal, or vary the Declarations in any one or more respects whenever in the sole and controlled opinion of the Developer such waiver, repeal, or variance shall not be materially detrimental to the general nature in development of Mount Vintage.

46. The perpetual developer control, including the perpetual ability to amend the Bylaws and Declaration of Covenants regardless of the substance of those amendments, runs contrary to the SC NPC Act, including, but not limited to, §§ 33-31-206 and 33-31-1022, and therefore runs afoul of South Carolina law. The foregoing perpetual control additionally violates the common law, industry standards, Restatement(s), model acts, and the reasonable expectations of the purchasing homeowners that the neighborhood will be managed by the homeowners within a reasonable amount of time.

47. Essentially, the Governing Documents permit complete control by the developer, *funded by the homeowner members*, for an unlimited duration.

48. The Governing Documents do not have a definitive or reasonable time limitation on the developer's control, which cannot be thwarted or avoided by the developer, thereby giving the developer potentially unlimited perpetual control of The Association and neighborhood.

Pls' Third Amended Summons & Complaint

49. The Governing Documents contain other unfair, conflicting, and/or confusing terms.

50. The defects in the Governing Documents are latent and would not be recognized by a lay person, even if they tried to read them.

51. Further, the Governing Documents permit the developer to add (a virtually unlimited amount of) additional parcels to the regime, which also permits perpetual control and dominance by the Developer.

52. The Governing Documents are or are akin to contracts of adhesion; neither The Association nor the Homeowners were ever permitted to negotiate their terms; further, they have been unilaterally amended several times by Defendant LL, again without negotiation or input or recourse or representation.

53. At all times relevant herein, Defendants have had an unfair advantage over the Homeowners by sophistication, dominance, unequal bargaining positions, and positions of authority.

54. The foregoing and many of the other terms contained in the Governing Documents are so one-sided and unfair, that no reasonable person who understood their potential for abuse would have agreed to them; and no reasonable person would avail themselves of the untoward advantages that they create.

55. The Governing Documents are unconscionable and, therefore, unenforceable; and separately, they further violate public policy, South Carolina law, and the previously referenced standards.

*Pls' Third Amended Summons & Complaint***(Futility of Demand)**

56. Plaintiffs' demand upon The Association to rectify the wrongs described herein would be futile and is, therefore, excused under the futility doctrine.

57. Plaintiffs' demand upon The Association would be futile for the following reasons, which are more particularly described in the preceding paragraphs:

- a) The Association's Governing Documents (as amended) give "Developer, LL of SC, LLC, its successors and assigns" absolute control over The Association;
- b) Defendant LL has controlled The Association, whose rights are being adversely affected by Defendants;
- c) Under the Governing Documents, the developer is entitled to modify, amend, repeal, suspend, and otherwise alter the Governing Documents in its sole discretion, at its sole option, and at any time;
- d) Defendant LL has exercised complete control over the Board, including the ability to appoint and remove Directors;
- e) The developer has *de facto* veto power over any and all decisions of the Board, which power Defendant LL has exercised in the past;
- f) Defendants LL and T R Sales, who have been controlling The Association, would never permit the Board of Directors to authorize The Association to bring suit against the Defendants;
- g) The Board of Directors is illusory as the Board serves at the pleasure of LL and T R Sales;
- h) The Board of Directors have failed to successfully intercede in The Association's or Homeowner's behalf; ultimately, the only recourse for a dissenting Board member is resignation, which has occurred regularly; and
- i) Other reasons which will be proven at trial.

58. In further support of futility, as described elsewhere herein, various Homeowners, Plaintiffs included, have requested that Defendants cure many of the wrongs addressed herein, and their efforts have been rebuffed and/or ignored by the Board, which is controlled by Defendant LL.

59. For example, one or more Plaintiffs have challenged the Board's failure to provide accounting information, failure to charge assessments against all lot owners, misuse of reserve funds, self-dealing, inurement, debt forgiveness, conflicts of interest, cronyism, misfeasance, non-

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developer titling of lots, to name a few. All of the Homeowners' inquiries and complaints have been rebuffed. Plaintiffs did not receive the 2019 accounting records from the Defendants for years pending the Defendants adjustment to the books to create a backdated \$300,000.00 note payable to LL that had no basis in law or fact.

60. When direct inquiries were ignored, one or more Plaintiffs complained to the South Carolina Department of Consumer Affairs, who in turn served notice on Defendants and requested a response. The Defendants refused to budge in their response to the Homeowners through the Department and the Department was powerless to do anything about it.

(Operation of Association for the Benefit of Defendants)

61. Defendants have embarked upon a pattern and practice of using past due assessments owed to The Association to facilitate the sale of lots by the then current owners, and the acquisition of the lots by the Defendants, at below market values, without the Defendants compensating The Association for its lost dues, opportunity, and/or value.

62. Defendants have embarked upon a pattern and practice of bidding for and acquiring Mount Vintage lots at tax sales, thereafter, suing The Association they control to eliminate past due Association dues and assessment, defaulting The Association in the suits, and failing to advise of or assist with The Association's redemption or other rights, and/or simply causing the HOA to write them off, all without the Defendants compensating The Association for its lost dues, liens, opportunity, and/or value.

63. Defendants have subsequently embarked upon a pattern and practice of lot acquisition, whereby, they avoid/bypass public sales, using unrecorded Association liens as leverage to negotiate the cheap acquisition of Mount Vintage lots from remote owners, and then waiving The Association dues owed once the lots are received, with no compensation to The

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Association, all without any disclosure to The Association or its members, let alone adequate disclosure.

64. The Board has failed to intercede, has failed to protect The Association or its members, or to achieve or arrange for adequate management of The Association and its affairs. In essence, the Defendants treat The Association as its pawn for its own financial transactions and inurement.

65. By virtue of this pattern and practice, while they delayed commencing development efforts and the completion of the roads, the Defendants have amassed an additional 100 or so lots in their own names and/or the names of their affiliates at below market consideration while decimating The Association's finances.

66. Defendant LL and T R Sales have wrongfully treated the owners of some lots as Class A members (including one or more defendants and Raiford), waiving dues, when only one entity was entitled to that status, and thereby have caused additional financial detriment to The Association, the neighborhood, and the Homeowners.

67. Similarly, Defendant LL has permitted favored third parties and relatives to temporarily consolidate lots to reduce the dues owed to The Association.

(Amenities)

68. The original developers sold Mount Vintage and its lots to the Homeowners and the public as an upscale, first-class, luxury community with high standards for design of neighborhood and residences, maintenance, and amenities.

69. The upscale amenities promised to be available included the below Town Center, Golf Course and Club House, Equestrian facilities, and 24-hour security.

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70. An attractive selling point for Mount Vintage was that its residents' use and enjoyment of the amenities would be optional, as would the associated financial obligation. Neither The Association nor the Homeowners would be required to provide financial support for the amenities that they did not choose to enjoy.

71. Mount Vintage's Athletic Club and Town Center ("Town Center") is comprised of tennis courts, fitness center, library, kitchen, small and large meeting and recreational spaces, and a pool complex. The Golf Course is a twenty-seven-hole course.

72. The Town Center and the Golf Club/Course ("Golf Amenity") were built/developed circa 2002 by the original developers; the Equestrian facilities were developed thereafter.

73. Following the recession which occurred circa 2008-09, the original developers fell on hard times and the amenities were lost to foreclosure or other purchasers.

74. In 2010, the Town Center and Golf Amenity were purchased by Plantation Alliance LLC, a company owned by several Mount Vintage residents, to prevent the properties from being lost to bank foreclosure.

75. From 2013 to 2024, Defendants have done little to fulfill the original developers' promise of providing multiple, optional, first-class, upscale amenities.

76. In 2013, Defendants' marketing consultant advised them that they would not be able to sell the Mount Vintage lots without securing the amenities.

77. In July of 2014, one or more defendants made a \$1.5 million offer on the note and mortgage on the Golf Course, only to be substantially outbid by Apex Bank.

78. Circa 2014, while Defendant LL was the purported sole Class A member, Apex Bank foreclosed on the Town Center and Golf Amenity.

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79. Circa 2015-16, Defendant LL embarked on persuading and arranging for The Association and its members to acquire the Town Center and then the Golf Amenity (“Amenity Package”) at The Association’s and homeowners’ expense so that it could sell its lots at a profit.

80. In 2016, the value of the Amenity Package was \$1,800,000.00 or less; the developer-controlled Association nonetheless paid approximately \$3,800,000.00 to acquire the amenities (not including refurbishment costs). As the developer was not paying dues, this acquisition occurred at The Association’s and homeowners’ expense.

81. This was done with numerous representations by the Defendants as to the wisdom and affordability of acquisitions; that the acquisition was necessary to maintain or bolster members’ property values; that the acquisitions would be self-sustaining; and that The Association and its members would *not* be responsible for any operating shortfalls.

82. Defendants failed to disclose that they were causing The Association to complete the acquisitions to increase the value of the Defendants’ lots.

83. Defendants failed to disclose to the membership that they were causing The Association to pay over twice the Amenity Package’s fair market value.

84. Defendants failed to disclose that, in obligation or in all fairness, Defendant LL as the purported “developer” should have funded the acquisition or contributed far more to the acquisition.

85. The acquisition and operation of the Amenities were further accompanied by the wrongful and negligent acts further described below.

86. The performance of the Amenities has been less than optimal; and contrary to representations made by the LL-controlled Board, and the Board has since passed member

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assessments to cause The Association and its members to fund the operating deficits of the Amenities.

87. No arrangements were made for The Association to meet the balloon payments due on both acquisitions, or to anticipate increased payments under the adjustable-rate mortgage, or to set aside reserves for repairs and obsolescence.

88. The equestrian facilities do not currently exist, and Defendants have made no attempt to make good on that developer promise.

89. Defendants have failed to make good on the original developer's promise of multiple, optional, first-class amenities.

(Other and Cumulative Matters)

90. Defendants have failed to adequately advance the development and funding of The Association and Mount Vintage, thereby harming The Association and the Homeowners' enjoyment, expenses, and property values.

91. Defendants have failed to deliver and maintain a first-class, upscale, luxury development in many ways.

92. Defendants have failed to uphold the first-class standards required of residences, permitting tract homes and slab-on-grade homes into the neighborhood which have devalued the neighborhood and each home in the neighborhood.

93. Defendants have failed and refused to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage.

94. Defendants and the Board's foregoing activities, inadequate disclosures, amateur accounting, and lack of transparency have caused rifts in Mount Vintage.

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95. Defendants and their predecessor's failure, after 25 years, to transfer control of The Association and Mount Vintage neighborhood to the Homeowners is a violation of the public policy against perpetual developer control – both as described and separately, with due acknowledgement that there is no end in sight and under the current pace of development, there could well be another 25 to 50 years of developer control or more.

96. Defendant T R Sales and LL have practiced nepotism, cronyism, and favoritism in the operation of The Association and Neighborhood. They have placed unqualified family member(s) in important controlling positions; allowed extended family members to use the Amenities with false addresses; and acted in an arbitrary and capricious manner in The Association's dealings, *e.g.*, negotiating behind the back of The Association's board and allowing some investors to temporarily merge their lot inventories to dodge Association dues and assessments pending resale of the lots and they have permitted Defendant Topsail and Raiford to wrongfully dodge dues and assessments.

97. The foregoing has damaged The Association and the Homeowners and has caused a public stigma that has further damaged both.

(Additional Statement of Liability and Negligent Acts)

98. It is axiomatic, through law and equity, that by claiming "Successor Developer" status, and accepting the assignment of developer benefits and rights, and/or by availing itself of and exercising such rights, Defendants obligated themselves to properly perform the developer obligations and promises that gave rise to the presence of developer rights and benefits.

99. As the controlling entity, officer, and board member of a planned community neighborhood and its owner's association, Defendants T R Sales and LL owed The Association,

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the Homeowners, and the ensuing neighborhood fiduciary and fiduciary-like duties, and the duty to use due care in the development of the neighborhood and the administration of The Association.

100. Because of Defendants' complete control, Homeowners have had no choice but to repose their complete trust and reliance in Defendants resulting in the imposition of a fiduciary duty upon Defendants.

101. Defendant Topsail owed The Association and its members a duty of due care, a duty not to profit by their codefendants' misfeasance, and, when operating in concert with Defendant LL, a duty of good faith and fair dealing.

102. One or more of the Defendants have been negligent as follows:

- a) In failing to act to prevent the amenities from being foreclosed upon by Apex Bank under its tenure as the alleged developer;
- b) In failing to pay for the acquisition of the amenities or for the Developer's fair share of the acquisition of the Amenities;
- c) In their use of insider knowledge of Mount Vintage affairs to benefit themselves in lieu of The Association or its members;
- d) In their use of Association opportunities, rights, receivables, liens, and legal proceedings to acquire property for the benefit of the Defendants;
- e) In failing to pay or require payment of Association dues and assessments on lots that are not properly considered developer lots;
- f) In failing to arrange for proper funding of The Association and neighborhood while under their control;
- g) In failing to adequately develop Mount Vintage to create an adequate membership base to fund the neighborhood's success;
- h) In detracting from the membership base;
- i) In failing to timely transition control of The Association to the Homeowners;
- j) In failing to avoid perpetual developer control of Mount Vintage;
- k) In failing to share Association records and documents with The Association's members;
- l) In failing to create, maintain, publish, and share accurate financial records of The Association's activities;
- m) In failing to disclose and/or accurately disclose their financial transactions with The Association and The Association's interests;
- n) In practicing nepotism, favoritism, and cronyism in the operation of Mount Vintage at the expense of The Association and Homeowners;
- o) In moving The Association operations and records out of The Association property to private property;

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- p) In failing and refusing to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage;
- q) In failing to afford adequate rights to the Homeowners in the operation of The Association;
- r) In the negligent development, marketing, and operation of Mount Vintage and its Association in other ways that will be shown through discovery and at trial;
- s) In the acquisition and operation of the Amenities as further described below;
- t) In causing a stigma that hurts The Association and the Homeowners' property values;
- u) By distributing funds from a non-profit entity in violation of S.C. Code § 33-31-1301-2;
- v) By accepting, agreeing to, and enforcing unconscionable Governing Documents;
- w) By violating the SC NPC Act in failing to accord voting rights to Class B members on important or discriminatory votes delineated by the Act; and,
- x) By failing to enforce the Developer's obligations set forth in the Essex/Stamley Martin contract(s) to fund deficits and to transfer common areas free and clear.

103. One or more of the Defendants been negligent with regards to the *acquisition* of the *Golf Amenity*, as follows:

- a) Proposing and arranging for the Homeowners to pay two and a half (2.5) times the Golf Amenity's market value to acquire the Golf Amenity;
- b) Failing to disclose to the Homeowners or warn the Homeowners that the Defendants were arranging for them to pay two-hundred fifty percent (250%) of the Golf Amenity's market value for the ownership of the Amenity;
- c) Utilizing the borrowing, funding, and assessment capability of The Association to buy an Amenity that would increase the value of the Defendants' lots, without adequate disclosure or just compensation;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for The Association to have default liability on the Amenity Note;
- f) Arranging for a balloon payment without adequate protection or an exit plan;
- g) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment without protection;
- h) Arranging for and advising the Homeowners to support and enter a relationship with an unproven, underfunded golf course operator, without adequate warning or disclosure;
- i) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- j) Failing to disclose to homeowners the developer's and Board's conflict of interest in the acquisition; and,
- k) Such other ways as shall be shown in the discovery and trial of this matter.

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104. One or more of the Defendants have been negligent in the following particulars with regards to the *operation* of the *Golf* Amenity:

- a) Arranging for and relying upon a short-term lease with an unproven, underfunded operator;
- b) Failing to enforce the terms of the lease;
- c) Arranging for the Homeowners to be responsible for the Amenity operating losses;
- d) Failing to exercise proper supervision to prevent mismanagement of the course;
- e) Assessing the Homeowners to fund the operating losses; and,
- f) Such other ways as shall be shown in the discovery and trial of this matter.

105. One or more of the Defendants have been negligent in the following particulars, with regards to the acquisition *and* operation of the *Town Center* Amenity:

- a) Utilizing the borrowing, funding, and assessment capability of The Association to buy an amenity that would increase the value of the Defendants' lots, without adequate disclosure or just compensation;
- b) Recommending to the Homeowners that they pay a price for the Amenity that failed to account for the deferred maintenance on the facility;
- c) Failing to warn the Homeowners that they were overpaying for the Amenity;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for a balloon payment without adequate protection or an exit plan;
- f) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment;
- g) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- h) Arranging for The Association to have default liability on the Amenity Note;
- i) Arranging for the Homeowners to be responsible for the operating losses;
- j) Increasing the assessments on the Homeowners to fund the operating losses;
- k) Failing to disclose to Homeowners Defendants LL's' and Board's conflict of interest in the acquisition and in the assessment of Homeowners to fund the operating losses; and,
- l) Such other ways as shall be shown in the discovery and trial of this matter.

106. As this suit concerns rights allegedly derived from sealed instruments, a twenty (20) year statute of limitations applies to Plaintiffs' claims.

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107. Defendants are barred or estopped from relying on any statutes of limitation or repose by virtue of their own misfeasance and concealment of misfeasance and rights relating thereto.

(Damages)

108. Defendants have proximately damaged Plaintiffs as follows:

- a) The Defendants have proximately damaged The Association by the above-described actions and by decreasing The Association's funding and funding base and, therefore, operational capacity, by failing to pay assessments, causing The Association to pass assessments to fund Amenity deficits, by converting Association opportunities to their own benefit, by failing to fund reserves and deferred maintenance, and by saddling The Association with staggering debt and amenity maintenance cost;
- b) Defendants have proximately damaged the individual Plaintiffs and vis a vis increased and special assessments and by its improper operation of The Association and the neighborhood, which has resulted in loss of appreciated value in their homes; and loss of collective control of their neighborhood; and the likelihood of staggering future assessments to support The Association's staggering debt and maintenance costs; and
- c) The cumulative actual damages to The Association are expected to exceed \$10,000,000.

109. All of the within-described advantages unilaterally taken by Defendants have been directly or indirectly at the expense of and damage to the Plaintiffs.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS AND REPOSE**

110. Defendants are estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, Defendants should have known that they had violated the Plaintiffs rights as described herein.

111. Defendants had a duty to inform Plaintiffs of the violations (including conflicts) described herein, each of which they should have known. Notwithstanding their duty, Defendants never disclosed the violations.

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112. As Defendants had a duty to disclose, the non-disclosure constituted concealment.

113. Despite exercising reasonable diligence, Plaintiffs could not have discovered the violations at the time they originally occurred.

114. Given Defendants' failure to disclose this non-public information about the violations – information over which they had exclusive control – and because Plaintiffs could not reasonably have known of the violations, Defendants are barred and estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

115. Defendants are further estopped from relying upon any statute of limitations or repose as they have repeatedly represented to Plaintiffs that they knew what they were doing and that they were acting in the best interests of The Association.

116. The equitable tolling doctrine further precludes Defendants from relying on a statute of limitations defense.

117. The below causes of action are brought derivatively by Plaintiffs on behalf of The Association against Defendants unless otherwise indicated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

118. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

119. Plaintiffs have been damaged as a direct and proximate result of the previously-described negligence, carelessness, and recklessness of the Defendants in an amount to be determined by the trier of fact.

120. The foregoing acts and omissions were committed with gross negligence, willfulness, wantonness, and/or reckless disregard for the rights of others, and/or constituted negligence *per se*, and Plaintiffs are entitled to an award of actual and punitive damages against

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the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

121. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

122. One or more Defendants owed fiduciary and fiduciary like duties to the Plaintiffs by virtue of their capacity as the steward of the Mount Vintage community and amenities, and in their capacity in controlling The Association. Defendants owed Homeowners fiduciary and fiduciary like duties by virtue of the Homeowners forced respite of trust and confidences.

123. The fiduciary relationship required Defendants to make full disclosure to The Association and Homeowners of all material facts relevant to all transactions between the parties.

124. The fiduciary relationship required that Defendants treat The Association and Homeowners with good faith and fair dealing.

125. The fiduciary relationship shifts the burden of proof as to all transactions and dealings between the Defendants and The Association to Defendants to prove the arms-length nature of each transaction or each transaction becomes voidable and compensable at The Association's and Homeowners' option.

126. One or more Defendants breached the fiduciary relationship by failing to honor their trust; by using their insider knowledge and control to benefit itself and related entities/parties at the expense of the Plaintiffs; by failing to make full or adequate disclosure; by failing to disclose their breach of duty; by failing to enforce the Homeowner Association's rights; by self-dealing; by breaching their duty of loyalty; and by the other acts and omissions described herein.

127. Defendants' breach of fiduciary duty has proximately damaged Plaintiffs in an amount to be determined by the trier of fact.

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128. As said failures were committed with gross negligence, reckless disregard for the rights of others, and/or intentional or malicious conduct, Plaintiffs are entitled to an award of punitive damages against Defendant LL.

FOR A THIRD CAUSE OF ACTION
(S.C. Unfair Trade Practices Act By Individual Plaintiffs Only ("SCUTPA"))

129. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

130. The Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

131. The Defendants have engaged in planned community development both from time to time in Mount Vintage and in other new communities in this state and region, including Aiken, wherein their acts have been repeated or capable of repetition.

132. The Defendants' above-described activities, reincorporated herein by reference as if set forth at length, constitute unfair and deceptive practices in the conduct of their trade.

133. The Defendants' above-described acts are capable of repetition and adversely affect the public interest.

134. The Defendants knew or should have known that their conduct was in violation of § 39-5-20 of the South Carolina Code.

135. The Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys' fees, and costs.

136. As discovery will show that The Association should be realigned as a Plaintiff, it will be bringing its SCUTPA claim as a direct claim, and not through its derivative Plaintiffs.

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FOR A FOURTH CAUSE OF ACTION
**(Declaratory Action/Reformation by Plaintiffs Individually and
Derivatively Against All Defendants)**

137. Plaintiffs re-allege the allegations contained in the above paragraphs as if fully set forth herein.

138. The unilateral and *de facto* perpetual control provisions and other offensive provisions of The Association's Governing Documents violate:

- a) Public policy;
- b) South Carolina law and/or provisions of the Constitution;
- c) The developer Defendants' fiduciary duties; and,
- d) The standards and references set forth further above.

139. Plaintiffs are entitled to a declaration by this Court that the offensive provisions included within the Governing Documents by the Defendants and their predecessors are void and/or require reformation or severance to eliminate the offensive provisions.

140. Plaintiffs are also entitled to have ambiguous and contradictory provisions in the Governing Documents construed against Defendants, declared void and/or reformed by the Court to reflect the reasonable expectations of the Homeowners Association and Plaintiffs more accurately.

FOR A FIFTH CAUSE OF ACTION
(Unjust Enrichment)

141. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

142. Plaintiffs have conferred the benefits discussed herein on the Defendants.

143. The Defendants have been unjustly enriched at the expense of the Plaintiffs and The Association.

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144. As an example, the Defendants reaped the economic benefits from the Yeoman's lot transaction at the expense of the Association and its Members.

145. Using the above example, the Defendants have transferred and continue to transfer the ill-gotten profits from the Yeoman's transaction amongst themselves.

146. Plaintiffs and The Association should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Association in the form of monetary restitution paid by the Defendants.

FOR A SIXTH CAUSE OF ACTION
(Promissory Estoppel or Declaration by Plaintiffs, Individually and Derivatively)

147. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

148. The original developers promised the Plaintiffs, their predecessors, and other similarly situated that Mount Vintage would be developed as a first-class, upscale, luxury community, second to none, a true utopia, among other promises, with optional, first-class amenities and architecturally significant residential dwellings, with impeccable maintenance.

149. Specifically, the original developers promised in the various marketing materials:

One of our nation's most premier luxury...master planned...World-class community; Mount Vintage truly is one of our Nation's crowning jewels; Known for its refined luxury and amenities; southern charm and elegant sophistication; carefully planned residential community that rivals the best in America; signature Mount Vintage has enlisted legendary designers for the superior craftsmanship you see throughout the community; Some of the area's finest builders will provide you a delightful choice of well-thought-out and attractive home designs; neighborhood[s]; Gracefully appointed homes showcasing traditional architectural styles; exquisite homes and grounds; experience a world of unequalled amenities; amazing offering of amenities; unsurpassed amenities; Exceptional amenities; superb amenities; World-class amenities; our facilities provide everything horse lovers and their horses require; Fully equipped equestrian center; full boarding facilities and lessons; many riding trails; world class... championship golf course;

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highly experienced maintenance staff; extreme attention to detail; so meticulously maintained that not a single blade of grass appears out of place; finest lifestyle amenities imaginable; the finest lifestyle amenities man can provide; the very best of luxury living.

150. Plaintiffs relied on these and other promises in acquiring their lots and building their residences. The original developers expected and foresaw Plaintiffs' reliance.

151. By accepting the benefits of the alleged assignment of developer rights, the defendant successor developer(s) bear the burden of the obligations of its predecessors.

152. The common law (and equity) provides that to qualify as a Successor Developer, an assignee of declarant rights must substantially honor the development plan put in place by the original developer.

153. Concomitantly, the common law (and equity) provides that an assignee of developer rights who/which does not honor the development plan and obligations is not entitled to Successor Developer status.

154. Plaintiffs are entitled to an order of this Court requiring Defendants to specifically perform the development plan, and to an award of costs, damages, consequential and special damages, and attorneys' fees.

155. Alternatively, Plaintiffs seek a ruling that the Defendants, having not acted as a proper successor developer, and having breached the developer obligations, was not and is no longer entitled to exercise developer privileges at Mount Vintage, and an award of judgment for all prior unpaid dues and all other damages set forth herein.

FOR A SEVENTH CAUSE OF ACTION
(Temporary and Permanent Injunction as to All Defendants)

156. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

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157. The foregoing allegations evidence that the Plaintiffs are suffering irreparable harm, without an adequate remedy at law, and an injunction is necessary to protect their rights and interests, both temporarily and as part of the full adjudication and resolution of the within matters. The foregoing detailed allegations evidence a likelihood of success on the merits; and further evidences that there is an inadequate remedy at law for some of the wrongs complained of herein. The likelihood of success on the merits is enhanced by the shifting of the burden of proof as to the self-dealing described in detail herein.

158. Plaintiffs are entitled to the issuance of a temporary and permanent injunction enjoining the Defendants from treating The Association as a subsidiary and from having any financial transactions with The Association that are not approved by an independent majority of the Homeowners, after full advanced disclosure, and the Court, pending resolution of this suit and the transfer of control to the Homeowners.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy)

159. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

160. Defendants have conspired and acted in concert as described herein to benefit themselves at the expense of and with damage to the Plaintiffs.

161. The Defendants actions have proximately caused the Plaintiffs the above-described damages, including loss of enjoyment continued operating and non-operating deficits.

162. Plaintiffs are entitled to an award of actual, special and punitive damages from Defendants.

WHEREFORE, Plaintiffs pray for a judgment of this Court for themselves, The Association, and the Homeowner Class, as follows:

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1. Judgment in favor of The Association against Defendants for its actual, consequential, statutory, and punitive damages;
2. Judgment in favor of the individual Plaintiffs against Defendants for their actual, consequential, special, statutory, and punitive damages;
3. Reformation, specific performance, declaratory, and injunctive relief;
4. An award of attorneys' fees, costs, and prejudgment interest; and
5. Jury trial demanded.

JUSTIN O'TOOLE LUCEY, P.A.

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September 4, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

ELIZABETH M. FERRARO, JAMES T. FERRARO,
 EDWARD J. PRZYBYL, MARCELLA GLEIE, JOHN
 E. GLEIE, JR., THOMAS BOWES, CONNIE BOWES,
 MOATAZ ALASADI, VIRGINIA KIRKWOOD, BOB
 KIRKWOOD, PAUL VICHROSKI, NYDZA
 VICHROSKI, JAMES MONTELLESE, ROXANN
 MONTELLESE, Individually, Derivatively, and on
 Behalf of all the Mount Vintage Homeowners
 Association Members,

Plaintiffs,

vs.

LL OF SC, LLC, RAIFORD TOPSAIL ISLAND
 INVESTMENTS, LLC, TR SALES PLANTATION,
 LLC, AND MOUNT VINTAGE PLANTATION
 HOMEOWNERS ASSOCIATION, INC. A/K/A
 MOUNT VINTAGE HOMEOWNERS ASSOCIATION,
 INC.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
) CASE NO. 2021-CP-19-00050
)

) **BUSINESS COURT CASE,**
) **ASSIGNED TO:**

) **THE HONORABLE R. LAWTON**
) **MCINTOSH**

) **PLAINTIFFS' MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT AS TO**
) **DEVELOPER RIGHTS AND CLASS A**
) **MEMBERSHIP**

PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned counsel, and pursuant to Rule 56, SCRCP, move this Court for an Order granting summary judgment in favor of Plaintiffs as to developer rights and Class A Membership. Specifically, the September 3, 2013 deed in lieu of foreclosure (hereinafter "Deed in Lieu"), granted after the October 23, 2012, Lis pendens (hereinafter "Lis Pendens"), was **superseded** by the November 11, 2013 Special Referee's Deed (hereinafter "Special Referee's Deed"), and LL of SC, LLC ("LL") is not the developer of Mount Vintage and is not a Class A Member under the Covenants. The current LL appointed and controlled Association Board is a nullity. There are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law.

SUMMARY JUDGMENT STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d

196, 203 (Ct. App. 2008). Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton*, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, “[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* at 198, 659 S.E.2d at 203. “It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). “Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Id.*

ARGUMENT

I. The Lis Pendens Pre-Dates the Deed in Lieu, and Therefore the Special Referee’s Deed Relates Back to the Filing of the Lis Pendens and Takes Precedence Over the Deed in Lieu.

The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct.App.1985); *Wooten v. Seanch*, 187 S.C. 219, 196 S.E. 877 (1938). **“A properly filed lis pendens binds subsequent purchasers or**

encumbrancers to all proceedings evolving from the litigation.” *South Carolina Nat’l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987) (emphasis added). Generally, the filing of a Lis pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved. *Shelley Constr.*, 287 S.C. at 24, 336 S.E.2d at 491–492.

Additionally, the South Carolina Code provides that subsequent purchasers shall be bound by all proceeding taken after the filing of the lis pendens:

From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and **shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action.** For the purposes of this section, an action shall be deemed to be pending from the time of filing such notice.

S.C. Code Ann. § 15-11-20 (emphasis added). Moreover, it is hornbook law that a later obtained judgment relates back to the filing of the lis pendens.

A "lis pendens" is a notice of litigation, placed in the real property records, asserting an interest in the property and notifying third parties that ownership of the property is disputed. "Lis pendens" is a common-law and statutory doctrine which has the effect of providing constructive notice to the world of an alleged claim of a lien or an interest in property. As lis pendens provides constructive notice of litigation, **any judgment later obtained in that litigation relates back to filing of the lis pendens.**

51 Am.Jur.2d *Lis Pendens* § 1 (2000) (emphasis added).

Although lis pendens has been defined as an "encumbrance" as that term has been traditionally defined, and may be applied to enforce an existing lien, some courts have stated that the doctrine of lis pendens does not impress affected property with a lien, or extend or prolong any existing lien, but rather, **binds third parties with notice that any interest they may acquire in property pending litigation will be subject to the outcome of the action.**

Id. § 3 (emphasis added).

Furthermore, the lis pendens **“notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject**

to the judgment, without any substantive rights.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (citing 51 Am.Jur.2d *Lis Pendens* § 2 (2000) (emphasis added). After the filing of the lis pendens, any conveyance of the property is now subject to the outcome of the litigation. *In re Shiver*, 598 B.R. 221 (Bankr. D. S.C. 2019); *see also Meliani v. Jade Dunn Loring Metro, LLC*, 286 F. Supp. 2d 741 (E.D. Va. 2003) (“**[O]nce recorded, lis pendens binds subsequent bona fide purchasers of disputed property such that subsequent purchaser, with or without actual notice of lis pendens, takes subject to outcome of pending litigation.**”) (emphasis added).

Here, the below is a chronology of relevant events showing that the Deed in Lieu to LL, granted after the Lis Pendens, was superseded by the Special Referee’s Deed to Raiford Topsail Island Investments, LLC (“RTI”):

1. Oct. 23, 2012: LL files a Lis Pendens (**Ex. A**);
2. Oct. 23, 2012: LL files a Summons & Complaint foreclosing on the real estate (**Ex. B**);
3. Sept. 3, 2013: Deed in Lieu of Foreclosure to LL (**Ex. C**);
4. Nov. 6, 2013: LL voluntary assignment of Foreclosure Bid to RTI (**Ex. D**);
5. Nov. 11, 2013: Filing of the Master’s Report on the Bid by RTI (**Ex. E**);
6. Nov. 11, 2013: Special Referee’s Deed filed in Favor of RTI (**Ex. F**); and
7. July 22, 2014: Corrective Special Referee Deed filed (**Ex. G**).

A. Supersession by the Special Referee’s Deed

The Special Referee’s Deed, executed and filed on November 11, 2013, provides the definitive terms regarding the ownership and development of Mount Vintage because it relates back in time to the filing of the Lis pendens, which was filed on October 23, 2012. The Deed in Lieu, executed on September 3, 2013, post-dates the Lis pendens and cannot alter or supersede

whatever judgment results from the Lis pendens and the related litigation. Under South Carolina law, this properly filed Lis pendens binds all subsequent purchasers or encumbrancers to all proceedings evolving from the litigation. *See Cook, supra*. Here, the culmination of the litigation which evolved from the filing of the Lis pendens is the Special Referee's Deed.

The superseding nature of the 2013 Special Referee's Deed was confirmed when all Defendants, through Raiford, had Defendants' long-time counsel, Mary Guynn, draft, submit, and secure a Corrective Special Referee Deed in 2014. While the Corrective Deed purports to be for the purpose of adding one lot to the legal description, it also expressly adds that the conveyance of developer rights to RTI was part of the original 2013 Special Referee's Deed.¹ There can be no doubt about the meaning or intent of this Order as the Defendants' attorney prepared it, solicited it, and filed it.²

B. Binding Effect of the Lis Pendens and Resulting Special Referee's Deed

The Special Referee's Deed (and the Corrective Special Referee's Deed), as the latest document, governs the rights and responsibilities related to the property. The Deed in Lieu does not impact the current status of the property or the parties' roles as defined in the Special Referee's Deed. This is consistent with the principle that subsequent legal documents and proceedings take precedence over earlier ones.

C. LL's Status

Because the Deed in Lieu of Foreclosure was a nullity, LL is not the "Developer" of Mount Vintage and is not a Class A member under the Covenants. Therefore, all actions taken by LL in the administration of the Homeowners' Association since 2013 are a nullity, and the current Board

¹ The appurtenant rights were originally referred to generally in the Special Referee deed as being granted "with all and singular rights, members, hereditaments and appurtenances to the said premises belonging or in any way incident or pertaining thereto, and all the estate, right title, claim, and interest, whatsoever...".

² See the "Return to" entry on the Corrective Master Deed, and the Guynn testimony which will be supplemented.

of Directors is not properly nominated, elected, or appointed and is non-existent. RTI has obviously abandoned its developer rights by allowing LL to conduct this charade. As there is no Developer, the Class B members are automatically elevated to Class A membership and a homeowner elected Board of Directors should be recognized by this Court before trial.

These and other grounds will be supported by the pleadings, discovery, affidavits, expert reports, memorandum of law, and oral argument at the hearing on this matter.

CONCLUSION

Since the Special Referee's Deed (original and corrected) supersedes the Deed in Lieu of Foreclosure and defines the present ownership rights, membership, and privileges, LL's purported status as the Developer/Class A Member must be vacated as there are no genuine issues of material fact. RTI's failure to assume Developer status after eleven years clearly constitutes abandonment; and the absence of a Class A member for eleven years should act to automatically elevate the Class B members to Class A status and permit a homeowner Board of Directors to replace the current null Board prior to trial. Plaintiff is entitled to judgment on these preliminary issues as a matter of law.

JUSTIN O'TOOLE LUCEY, P.A.

By: /s/ Anna McCann
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Anna McCann
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August 13, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF EDGEFIELD) ELEVENTH JUDICIAL CIRCUIT

ELIZABETH M. FERRARO; JAMES) C.A. No.: 2021-CP-19-00050
 T. FERRARO; EDWARD J.)
 PRZYBYL; MARCELLA GLEIE;)
 JOHN E. GLEIE, JR.; THOMAS)
 BOWES; CONNIE BOWES;)
 MOATAZ ALASADI; VIRGINIA)
 KIRKWOOD; BOB KIRKWOOD;)
 PAUL VICHROSKI; NYDZA)
 VICHROSKI; JAMES)
 MONTELLESE; and ROXANN)
 MONTELLESE, *Individually,*)
Derivatively, and on Behalf of all the)
Mount Vintage Homeowners Association)
Members,)
)
)
 Plaintiffs,)
)
)

vs.)

LL OF SC, LLC; RAIFORD TOPSAIL)
 ISLAND INVESTMENTS, LLC;)
 MOUNT VINTAGE PLANTATION)
 HOMEOWNERS ASSOCIATION,)
 INC. a/k/a MOUNT VINTAGE)
 HOMEOWNERS ASSOCIATION,)
 INC.; and TR SALES PLANTATION,)
 LLC,)
)
)

Defendants.)

MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO DEVELOPER
RIGHTS AND CLASS A MEMBERSHIP

Defendants LL of SC, LLC and Raiford Topsail Island Investments, LLC respectfully submit this memorandum in opposition to Plaintiffs' motion for partial summary judgment as to developer rights and Class A membership. In short, Plaintiffs' argument is:

1. That LL of SC, LLC does not have developer rights in Mount Vintage, and does not hold the Class A membership interest in the community;

2. That Raiford Topsail Island Investments, LLC is the holder of developer rights, and is the holder of the Class A membership interest;
3. That this is so, allegedly, because the subsequent assignment of a successful bid at a mortgage foreclosure nullified LL of SC's deed in lieu, through which it acquired its developer rights and Class A membership interest;
4. That RTI has abdicated its rightful status as developer in Mount Vintage; and,
5. That, because of such abdication, the Court should judicially dissolve the existing Board of Directors and install its own Board.

Even if the Court could take such drastic action, it is not warranted. Plaintiffs' analysis of the pertinent facts is deeply misguided.

I. LL of SC's deed in lieu was not superseded by the Special Referee's deeds.

In 2010, LL of SC loaned the immediately preceding developer of Mount Vintage \$2.5 million, taking back a mortgage against the entirety of that party's interest in Mount Vintage as security for payment. (See 2010 Mortg. Excerpt, attached hereto as **Attachment 1.**)

By the latter months of 2012, the debtor-developer was in default of its note to LL of SC. Accordingly, during October 2012, LL of SC caused its legal counsel to commence foreclosure proceedings against the mortgage. (See Pls.' Mot. Partial Summ. Judg., Exhibits A & B.) Specifically, on October 23, 2012, a foreclosure action was commenced against the debtor-developer, and a lis pendens was recorded in connection therewith.

On September 3, 2013, a deed in lieu of foreclosure was recorded in the Office of the Register of Deeds for Edgefield County, transferring the entirety of the debtor-developer's interest in Mount Vintage to LL of SC in satisfaction of the debt. (See Pls.' Mot. Partial Summ. Judg., Exhibit C.)

A little more than 2 months later, on November 4, 2013, and in connection with the foreclosure proceedings against the debtor-developer that were still under way, LL of SC attended a foreclosure sale and “was the high bidder” of the debtor-developer’s remaining interest in Mount Vintage “with the successful bid amount of \$100,000.00.” (See Pls.’ Mot. Partial Summ. Judg., Exhibit D.) Payment was then tendered to the Special Referee. (See Pls.’ Mot. Partial Summ. Judg., Exhibit E.)

Two days later, on November 6, LL of SC caused its legal counsel to file an assignment of bid in the Edgefield County foreclosure action, directing that the Special Referee’s deed should be made out to Raiford Topsail Island Investments. (See Pls.’ Mot. Partial Summ. Judg., Exhibit D.) The Special Referee honored that instruction, and, on November 11, 2013, issued a foreclosure deed in favor of Raiford Topsail Island Investments.

It is on this factual basis that Plaintiffs claim the deed in lieu was a legal nullity, that it was superseded by the Special Referee’s foreclosure deed, and that Raiford Topsail Island Investments—not LL of SC—holds developer rights in Mount Vintage.

This leads to an exceedingly narrow question presented: *What is the net legal effect when the creditor in a foreclosure action purchases the same rights at a foreclosure sale that had been previously acquired by the same creditor through a deed in lieu?*

Plaintiffs have not cited to any case that resolves this issue. Instead, they have generally argued that a deed in lieu of foreclosure is trumped by an earlier filed lis pendens. And, in some circumstances, that may be accurate. But not in this case.

First of all, a lis pendens does not create a property right. It is merely a mechanism to put the world on notice that an adverse interest is claimed in the subject property. See, e.g., S.C. Code § 15-11-20 (explicitly describing the purpose of a lis pendens as constructive notice to

subsequent purchasers or encumbrancers). Whether the property right claimed in a lis pendens ultimately exists is a matter for a much later adjudication.

Second, and of particular importance to this case, the lis pendens at issue was recorded by LL of SC against the debtor-developer's property with respect to a pre-existing mortgage that LL of SC had against the same party and the same property. In other words, through the mortgage, LL of SC had an adverse interest in the debtor-developer's Mount Vintage property; and through the lis pendens, LL of SC was putting the world on notice that it was in the midst of foreclosing on the mortgage. The mortgage gave rise to the lis pendens.

Third, through the deed-in-lieu, LL of SC acquired the same rights and interest to the Mount Vintage property that it could have acquired through foreclosure.

And fourth, LL of SC was the winning bidder at the foreclosure auction. Only after winning the auction and paying what was owed did LL of SC assign its rights of ownership (if any) to Raiford Topsail Island Investments.

But why would a creditor proceed with a foreclosure sale after getting a deed-in-lieu? The reason is very simple: for the foreclosing creditor to be more assured of clean title. See, e.g., Decon Group, Inc. v. Prudential Mortg. Cap. Co., 227 Cal. App. 4th 665, 174 Cal. Rptr. 3d 205 (Cal. Ct. App. 2014). When a creditor takes title to property through a deed-in-lieu, he takes the property subject to all existing liens and encumbrances as of the date of transfer. By contrast, when a creditor takes title through a foreclosure sale, he takes the property free and clear of junior liens and encumbrances as of the date of sale. See, e.g., Green Tree Servicing v. Adams, 375 S.C. 583, 654 S.E.2d 100 (Ct. App. 2007). Therefore, by taking a belt-and-suspenders approach to foreclosure, a first-priority creditor may be able to get the best of both worlds: taking title to property more quickly and cheaply than waiting for a foreclosure sale, but using

foreclosure to ultimately extinguish junior liens, be they known or unknown. See CIT Bank, N.A. v. Buono, C.A. No. 14-CV-6610, *6 n. 3 (E.D.N.Y. Nov. 8, 2019) (“Generally, an experienced and careful lender will only rarely find the acceptance of a deed in lieu of foreclosure to be an appropriate avenue for settling or concluding a foreclosure action.” (citation and internal quotation omitted).)

LL of SC took the belt-and-suspenders approach. In fact, when LL of SC received the debtor-developer’s deed-in-lieu, it would very much seem as though LL of SC’s equitable interest—established by the mortgage—was united with ownership, establishing a merger that would nullify the relief sought in the foreclosure action. See, e.g., McCraney v. Morris, 170 S.C. 250, 170 S.E. 276 (1933) (applying the doctrine of merger). If that is accurate, then a foreclosure sale of the debtor-developer’s property would have absolutely no value to anyone—at least, to no one other than LL of SC.

All of this has previously been explained. During the course of this litigation, Plaintiffs took the deposition of Mary Guynn, Esq., a lawyer in Aiken who has worked with LL of SC for a very long time, and who was responsible for coordinating the debtor-developer deed-in-lieu / foreclosure transaction. (See Dep. Guynn, attached hereto as **Attachment 2**, 23:20-31:1.) In relevant part:

Q: And what is this?

...

A: This is a deed in lieu of foreclosure.

Q: And what’s the purpose of this document?

A: This document was K&H Development deeding over to LL of SC all of the property that was subject to the foreclosure action as well as developer rights.

Q: Okay. And is—why would this not halt the action—the foreclosure action?

A: We elected to proceed forward and complete the sale for two purposes—to ensure that title was clean. It would estop anyone that had filed a claim against the properties post-filing of the lis pendens, and it would also give any other named creditor the opportunity to voice or to assert a lien on the properties.

Q: So in your understanding, did developer rights transfer with this deed in lieu of foreclosure, or did they transfer with the special referee's deed at the conclusion of the foreclosure action.

A: They transferred with this deed in lieu of foreclosure.

...

Q: Do you believe that this document, the special referee deed, transferred developer rights to Raiford Topsail Island Investments?

A: No.

Q: And why is that?

A: The developer rights had already been transferred to LL of SC with the deed in lieu of foreclosure.

...

Q: So the special referee's deed that in essence finalized the foreclosure proceeding that was filed in 2012, why is—why does this special referee deed not supersede the deed in lieu of foreclosure?

A: The deed in lieu of foreclosure, which was filed after the foreclosure action had been instituted, transferred all of the property to LL of SC at that point.

Q: Well, that what was the—I guess, again, what was the purpose of going through the foreclosure proceedings and then assigning a bid—a successful bid to RTI?

A: If any creditor claimed an interest in the properties post lis pendens, filing of the lis pendens or if any named defendant claimed an interest in the properties, they would have the opportunity at the final hearing to assert the claim. And then the special referee or the master would determine whether there was a residual claim on the lots that were transferred to LL of SC.

...

Q: So does this deed, this special referee deed, does it grant anything to Raiford Topsail Island?

A: In my opinion, it does not.

Q: And why is that?

A: There was—the property had already been conveyed over to LL of SC with the deed in lieu of foreclosure.

(Id.)

Consistent with the foregoing discussion, there is no factual or legal basis on which to conclude that the Special Referee's deed divested LL of SC of its Class A membership or status as the holder of developer rights in Mount Vintage, much less to dissolve the current Board of Directors by judicial fiat.

II. The issue of who holds developer rights is much ado about absolutely nothing.

At its core, Plaintiffs' argument is that Raiford Topsail Island Investments, LLC holds developer rights in Mount Vintage, not LL of SC. This leads to an obvious question: *Does it matter?* Effective December 31, 2013 (and as part of his estate planning), Mr. Raiford assigned the totality of his interest in Raiford Topsail Island Investments, LLC to LL of SC, LLC. (See Assignment, attached hereto as **Attachment 3.**) At this point, Raiford Topsail Island became a wholly owned subsidiary of LL of SC.

Then, by deed recorded on May 31, 2018, Raiford Topsail Island Investments, LLC quitclaimed the ownership of whatever lots it may have acquired by the Special Referee's deed in 2013 over to LL of SC. (See 2018 Quitclaim Deed, attached hereto as **Attachment 4.**)

Accordingly, even if it were the case that Raiford Topsail Island Investments, LLC had ever acquired developer rights in Mount Vintage, that has since been addressed.

III. Literally no one—other than Plaintiffs' counsel—is contending that any party other than LL of SC or Wayne Raiford individually holds developer rights in Mount Vintage.

Following are relevant excerpts of depositions taken in this case of Plaintiffs or other homeowners:

1. Sharon Brady, current Vice President of the Mount Vintage Homeowners Association, excerpt attached as **Attachment 5**, at 35:7-11:

Q: Well, who's the developer of Mount Vintage.

A: Wayne Raiford.

Q: I thought it was LL of South Carolina.

A: That may be his company.

Q: Well, which one is it; do you know?

A: I don't know.

2. Ed Przybyl, Plaintiff, Att. 5, at 67:17-19:

Q: And when it says developer, who do you understand that to be?

A: Wayne Raiford.

3. Patrick Bukszar, Homeowner, Att. 5, at 77:9-14:

Q: So sitting here today, do you know one way or another whether the HOA has been turned over from the declarant to the homeowners?

A: I mean, I would say, no, it has not since Wayne Raiford is still listed as the declarant or LL of South Carolina. . . .

4. Virginia Kirkwood, Plaintiff, Att. 5, at 46:3-11:

Q: And do you recall who the developer was when Raiford first came onto the scene?

A: He became the developer.

Q: All right. And was it Wayne that became the developer, as far as you know, or was it one of his companies?

A: One of his companies.

Q: Do you remember which one?

A: LL of SC, LLC.

5. Marcella Gleie, Plaintiff, Att. 5, at 175:7-14, acknowledging that Raiford Topsail Island Investments, LLC is “not the developer company.”
6. Gaylord “Buddy” Hodges, Homeowner, Att. 5, at 44:21-24:

Q: And is it—who was the developer—who became the developer after that assignment, which entity?

A: LL of SC.
7. Elizabeth Ferraro, Plaintiff, Att. 5, at 67:4-11, acknowledging that LL of SC, LLC is the current holder of developer rights at Mount Vintage.
8. Charles L. “Rick” Atkins, Jr., Homeowner, Att. 5, at 129:10-12, referring to Wayne Raiford as the holder of developer rights.
9. Connie Bowes, Plaintiff, Att. 5, at 42:15-25, same.
10. Art Biggs, Homeowner, Att. 5, at 32:20-25, same.

Finally, it is worth noting that, if Plaintiffs have ever intended to put the issue of who owns developer rights in question, it is nowhere alleged in any version of the Complaint they have ever filed.

In short, this issue is not before the Court. And even if it were, it has no merit.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, Plaintiffs’ motion for partial summary judgment must be denied.

Respectfully submitted,

s/ Steven Edward Buckingham

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*Attorney for Defendants LL of SC, LLC and Raiford
Topsail Island Investments, LLC*

August 26, 2024
Greenville, South Carolina

Steven Edward Buckingham

From: Justin Lucey <jlucey@lucey-law.com>
Sent: Wednesday, September 4, 2024 7:37 PM
To: Kristina Shernoff; McIntosh, Lawton Secretary (Tammy Jennings); Steven Edward Buckingham
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier); Anna McCann; Mande Funai; Lee Weiland; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good evening,

Plaintiffs also move for the compulsory realignment of the Mount Vintage Homeowners Association as a Party Plaintiff. While evidence previously submitted overwhelming indicates that the Association had been damage by the Defendant's acts, today's order evidences that the Association has been controlled by a rouge fake developer for the last ten years, and needs to be compensated for the damages the rouge developer and its affiliates are done. If the Association fails to realign, it cannot recover the treble damages and attorney fees available under the South Carolina Unfair Trade Practices Act ("the Act"). The Act does not permit prosecution in a representative capacity. The derivative plaintiffs cannot prosecute this claim for the Association. It is only if the Association realigns as a party Plaintiff that these much needed remedies will be available to the Association. Additionally, as evidenced by the *Walbeck* case, there are other reasons for and benefits from the realignment of the Homeowners Association as a party Plaintiff. However, the Association presently remains controlled by a rogue developer, and appears unable to make a proper decision in this matter.

Plaintiffs also move for the the Mount Vintage Homeowners Association to be placed in a receivership. It has come to light that the Association has been controlled by a rouge, fake developer for the last ten years, and likely has no valid sitting Board of Directors or officers. Additionally, it has come to light that the rogue developer who impersonated the proper successor developer of Mt. Vintage, has been attempting to sell the Developer Rights and Golf Course amenities. Presently, the Association Board of Directors consists of persons appointed by the non-developer, as does the positions of President and Treasurer. The Association needs a receiver appointed to protect it from the actions of these impostors until these legal issues can be sorted out and decided.

These motions are included herein to comply with the pending deadlines and unfolding events; these motions will be formalized and re-submitted tomorrow Thursday, September 5, 2024.

By copy of this communication, Plaintiffs are serving all other Parties.

Respectfully submitted,

Justin Lucey
Attorney for the Plaintiffs

From: Kristina Shernoff <kshernoff@lucey-law.com>
Sent: Wednesday, September 4, 2024 7:18 PM
To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Steven Edward Buckingham

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	BUSINESS COURT CASE,
FERRARO, EDWARD J. PRZYBYL,	)	ASSIGNED TO:
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	
THOMAS BOWES, CONNIE BOWES, MOATAZ	)	THE HONORABLE R. LAWTON
ALASADI, VIRGINIA KIRKWOOD, BOB	)	MCINTOSH
KIRKWOOD, PAUL VICHROSKI, NYDZA	)	
VICHROSKI, JAMES MONTELLESE,	)	
ROXANN MONTELLESE, Individually,	)	
Derivatively, and on Behalf of all the Mount	)	
Vintage Homeowners Association Members,	)	
	)	PLAINTIFFS' MOTION IN LIMINE FOR
Plaintiffs,	)	REALIGNMENT OF ASSOCIATION AS
	)	A PLAINTIFF
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL ISLAND	)	
INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT VINTAGE	)	
PLANTATION HOMEOWNERS ASSOCIATION,	)	
INC. A/K/A MOUNT VINTAGE HOMEOWNERS	)	
ASSOCIATION, INC.,	)	
	)	
Defendants.	)	

Come now, Plaintiffs, above named, and move this Court for an order realigning the Mount Vintage Plantation Homeowners' Association ("the Association") as a Plaintiff before the trial of this matter. The basis of this Motion is as follows:

As conceded by Defendants, the primary issue in controversy in this Case is an allegation of harm to the Association caused by the Defendants. (*See generally* Defs. Mot. for Summary Judgment, filed Aug. 16, 2024, at 10-13) ("[E]ach and every one of these grievances pertains to actions or omissions that have allegedly had an adverse effect on the HOA[...].").

Further, if the Association fails to realign, it cannot recover the treble damages and attorney fees available under the South Carolina Unfair Trade Practices Act ("the Act"). The Act does not

permit prosecution in a representative capacity. It is only if the Association realigns as a party Plaintiff that these much-needed remedies will be available to the Association. Additionally, as evidenced by the *Walbeck*¹ case, there are other reasons for (and benefits from) the realignment of the Association as a party Plaintiff. However, the Association presently remains controlled by a rogue developer and appears unable to make a proper decision in this matter.

The law supports such a realignment. The South Carolina Supreme Court has conclusively held that Rule 21, SCRCP, grants trial judges the authority to realign parties. *Branham v. Ford Motor Co.*, 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010) (finding that trial judges have the authority to realign parties at any stage of the action, and that such a decision will not be disturbed on appeal absent a showing of an abuse of discretion and resulting prejudice). The Court in *Branham* further explained that, because of the similarity between Rule 21 of the Federal Rules and Rule 21, SCRCP, South Carolina courts look to and rely on federal case law interpreting the companion Federal Rule. (*See id.*). The Fourth Circuit applies the “principal purpose” test:

Application of the principal purpose test entails two steps. First, the court must determine the primary issue in the controversy. Next, the court should align the parties according to their positions with respect to the primary issue.

U.S. Fid. & Guar. Co. v. A & S Mfg. Co., 48 F.3d 131, 133 (4th Cir. 1995).

Realignment is supported in this case, and Plaintiffs’ respectfully request that this Court grant the instant motion prior to the trial of this case.

Signature on following page.

¹ *Walbeck v. I'On Co., LLC*, 439 S.C. 568, 589, 889 S.E.2d 537, 548 (2023), *reh'g denied* (July 26, 2023).

Respectfully submitted,

By: s/ Justin Lucey
Justin Lucey
Anna McCann
JUSTIN O'TOOLE LUCEY, P.A.
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Attorneys for the Plaintiffs

September 5, 2024
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001451

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants / Petitioners.

VERIFICATION OF PETITIONERS

PERSONALLY APPEARED BEFORE ME the Affiant, and, after being placed under
oath, did state and/or affirms as follows:

1. My name is J. Wayne Raiford. I am over the age of eighteen (18) years,
am of sound mind, am not under the influence of any chemical substance that is likely to
impair my capacity, and am competent to give testimony.

2. The facts and circumstances presented in this statement are made based upon my own personal knowledge and information, and are true and accurate to the best of my present recollection.

3. I am authorized by LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC to give this statement.

4. I have reviewed the Petition to Stay and/or for Writ of Supersedeas to which this statement is attached.

5. To the best of my knowledge, information, and belief, the factual circumstances set out in the petition are true and accurate, as are the documents provided as exhibits.

6. Respondents have claimed that Raiford Topsail Island Investments, LLC acquired developer rights for Mount Vintage in 2013, though it has always been Petitioners' understanding that LL of SC, LLC held those developer rights. This issue is very much disputed.

7. The same day as the issuance of the September 4 decision, Petitioners, through counsel, filed a Notice of Appeal.

8. If Petitioners are required to proceed to trial while this appeal is pending, the Court of Appeals may render an opinion on the September 4 decision that is different than what Judge McIntosh decided, which may affect the outcome of trial.

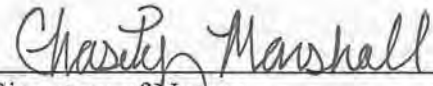
9. Additionally, Respondents are trying to use the September 4 decision to say that the homeowners association board is fake, or rogue, or has been without authority to act for the past more-than-ten years. That is just not the case. Petitioners

would appreciate the opportunity to have their appellate rights so that the September 4 decision can be corrected.

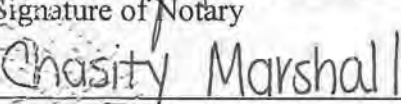
10. I affirm, under penalty of perjury, that the facts and circumstances set out in this statement are true and accurate to the best of my knowledge, information, and belief.


J. Wayne Raiford

SIGNED AND SUBSCRIBED BEFORE ME



Signature of Notary

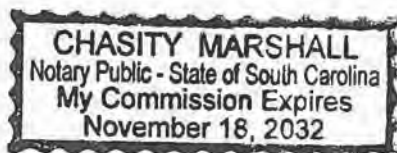


Printed Name

Notary Public for the State of South Carolina

This 10th Day of September, 2024.

My Commission Expires: November 18, 2032



This petition seeks a Writ of Supersedeas with

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR
COUNTY OF EDGEFIELD	)	THE ELEVENTH JUDICIAL CIRCUIT
	)	
ELIZABETH M. FERRARO, JAMES T.	)	Civil Action No.: 2021-CP-19-00050
FERRARO, EDWARD J. PRZYBYL,	)	
MARCELLA GLEIE, JR., THOMAS	)	
BOWES, CONNIE BOWES, AND	)	
MOATAZ ALASADI, VIRGINIA	)	
KIRIKWOOD, BOB KIRKWOOD, PAUL	)	
VICHROSKI, NYDZA VICHROSKI,	)	
JAMES MONTELLESE, ROXANN	)	
MONTELLESE, AND JULIE WILLIAMS	)	DEFENDANT MOUNT VINTAGE
Individually, Derivatively, and on Behalf of	)	HOMEOWNERS ASSOCIATION'S
all the Mount Vintage Homeowners	)	MEMORANDUM IN OPPOSITION OF
Association Members,	)	PLAINTIFFS' MOTION IN LIMINE FOR
	)	REALIGNMENT OF ASSOCIATION AS
	)	PLAINTIFF
Plaintiffs,	)	
	)	
v.	)	
	)	
J. WAYNE RAIFORD, INDIVIDUALLY	)	
AND AS PRESIDENT OF THE BOARD OF	)	
DIRECTORS OF MOUNT VINTAGE	)	
PLANATION HOMEOWNERS	)	
ASSOCIATION, INC., LL OF SC, LLC,	)	
RAIFORD TOPSAIL ISLAND	)	
INVESTMENTS, LLC, MOUNT VINTAGE	)	
PLANTATION HOMEOWNERS	)	
ASSOCTION, INC A/K/A MOUNT	)	
VINTAGE HOMEOWNERS	)	
ASSOCIATION, INC., GREGG	)	
KARLBERG, JERRY SCHAEFER,	)	
LEIGH ANN KEELS, AND JOHN	)	
DOE,	)	
	)	
Defendants.	)	

Defendant Mount Vintage Homeowners Association, Inc. ("HOA") respectfully submits this Memorandum in Opposition to Plaintiffs' Motion in Limine for Realignment of Association as Plaintiff.

The current HOA Board consists of 5 board members, each with one vote on the Board. There is Wayne Raiford, who is the developer representative, and four homeowner

representatives Sharon Brady, Steve Perun, Darnell Husband and Vanessa Meade. As with most HOA boards volunteers come and go. New Board members are picked from homeowner volunteers willing to serve on the Board. The current Board members review the applications of the potential new Board member and vote on who will be added as a board member. While the number of board members has changed over the time relevant to this action, the one constant is that there has been one board member who is the developer and the remaining Board members have been homeowner volunteers. The Board has been consistently run in this manner, following the requirements of the Covenants and restrictions and Bylaws governing the Association.

This action was brought under Rule 23 with the allegations that it was futile to demand that the current Board file this action because that Board is “developer controlled”. The current Board would disagree with this assertion and would state that the HOA Board, including the homeowner members, do not agree with the assertions being put forth in the Complaint about the developer control over this Board. The HOA Board believes that that Plaintiffs’ current claims do not align with the Board members’ personal knowledge of how the Board operates nor do the Plaintiffs’ allegations regarding the nature of the board represent the best interests of the HOA. However, the board additionally understands that they represent homeowners of differing opinions as to the validity of the claims being made in the lawsuit. As such the Board understands that Rule 23 allows for the Plaintiffs to assert claims on behalf of the Association even when the HOA Board may disagree. That the Plaintiffs have made derivative claims in this action does not require that the current HOA board be forced to align with their positions or agree with those claims.

During the pendency of this lawsuit the Board has had the difficult task of running the day-to-day operations of the HOA, including a busy golf course, while working with the current developer in a harmonious manner to get the necessary tasks done. All of this being done in the shadow of the allegations in this lawsuit against the Developer and board members. The HOA Board continued to operate as it has always done, under the guidelines set forth in the governing documents which do not address many of the allegations in the lawsuit. They did so while trying to take a neutral stance on issues being pressed by the Plaintiffs. The board's consideration was that to the extent that the allegations could be proven in the Court, that would be decided in this action by the testimony put forth by the Plaintiffs, and the Board would just continue to be run as it always had until directed otherwise by the Court. To intentionally drive a wedge between the homeowner board members and the developer would severely hamper the Board's ability to conduct its day-to-day business and potentially throw the HOA into chaos. To force this HOA Board into an adversarial position could potentially cause dysfunction with the board and its ability to perform its operations which have kept the association and the golf course functioning.

Plaintiffs seek a realignment of the HOA as a Plaintiff in this action. They want to force this HOA board to make the same affirmative allegations of the Plaintiffs, despite their attempts to remain neutral. They seek the realignment for the purposes of asserting an Unfair Trade Practice Act claim and "other benefits" as set forth in *Walbeck v. I'On Co., LLC* 439 S.C. 568, 589, 889 S.E.2d 537, 548 (2023). The most obvious benefit under *Walbek* being that a decision to realign the HOA as a Plaintiff potentially renders all deformities of the requirements of Rule 23 for the derivative claims moot. The basis of Plaintiffs claims revolve around the idea that the HOA board is and has been controlled by the developer. The HOA Board believes that that Plaintiffs' claims do not align with the Board members' personal knowledge of how the Board

operates nor do the Plaintiffs' allegations represent the best interests of the HOA. However, the board additionally understands that they represent homeowners of differing opinions as to the validity of the claims being made in the lawsuit. As such the Board understands that Rule 23 allows for the Plaintiffs to assert claims on behalf of the Association even when the HOA Board does not necessarily believe that such actions are in the best interest of the Association. The HOA has asserted in its Answer that Plaintiffs' claims "are contingent upon a judicial finding that the Plaintiffs fairly and adequately represent the interests of the similarly situated members in enforcing the rights of the association".

I. Plaintiffs' Motion for Realigning Mount Vintage as a Plaintiff Should be Denied Because the Parties Have Adverse Interests.

Plaintiffs set forth in their Motion that the Court has the authority to realign parties under SCRCP 21. The HOA would agree that a two-step test required. The "principal purpose" test: (1) the court determined the primary issue in the controversy by considering the plaintiff's principal purpose for filing its suit and (2) the court aligns the parties according to their positions with respect to the primary issue.

In applying the test, the primary issue in this case, according to the Plaintiffs' amended complaint, concerns the actions of "developer-controlled board" and whether the developer, through the actions of the board, is affecting the rights of the association. *See* Pl's. Second Amended Comp. ¶ 56(b). The interests of the parties are adverse as to this issue as can be seen by Plaintiffs actions and demands among other issues.

- A. The Escrow money: Plaintiffs have refused to allow the current Board to use the escrow funds for a purpose that is clearly a benefit to the association and its members. They claim that doing so will allow the "developer-controlled board" use it to the benefit of the Developer, an assertion denied by the HOA. They also state that

releasing the funds will hurt the Plaintiffs damages in the lawsuit, a position that clearly does not outweigh the benefit of paying down HOA debt.

- B. Plaintiffs e-mail to request a receiver be appointed for the HOA board. Plaintiffs indicate that the current board has no valid sitting board members. Plaintiffs call the current Board “imposters” and calls into question every action taken by the HOA board. While Plaintiffs did not file a formal motion, this e-mail indicates their intentions going forward. This Board does not see any imminent threat by allowing this Board to continue to operate even upon certain findings against the Developer. The cause of action against the HOA for an accounting has been dropped because all of the necessary accounting disclosures have been made and no current discrepancies have been noted to this board.
- C. The assertion that despite every board member believing that LL of SC held the developer rights, that LL of SC did not hold the Developer rights. That Raiford Top Sail held those rights, abandoned those rights and as such there is no developer at Mt. Vintage. Not only does it call into question every intentional board action taken by the HOA, but it potentially leaves the Mt. Vintage subdivision without an entity to promote the subdivision, market and promote sales of lots and provide the services that LL of SC has provided to the HOA over the years.

As such Plaintiffs interests are not aligned with the HOA Board.

II. Recovering Damages under the South Carolina Trade Practices Act is not Grounds for Realigning a Party.

The Plaintiffs claim that only way the Association can recover the treble damages and attorney fees available under the South Carolina Unfair Trade Practices Act (“SCUTPA”) is if Mount Vintage realigns a Plaintiff in this case. However, this is not grounds for realignment and

does not outweigh the adverse positions regarding the primary issues of this case. There is a reason that this cause of action cannot be asserted in a derivative manner. Plaintiffs are attempting to circumvent that reason by forcing the HOA to become a Plaintiff.

The HOA Board believes it is imperative that the current board be allowed to maintain its neutral stance regarding this action. Even upon a finding of this Court of certain causes of action against the Developer, aligning the HOA will have a detrimental affect on the HOA, not to mention force the HOA into a position which they do not support and that is that this board is controlled by the developer. Therefore, realignment of Mount Vintage as a Plaintiff is improper, and Defendant HOA respectfully requests that this Court deny Plaintiffs' motion prior to the trial of this case.

By: /Charles A. Krawczyk
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ckrawczyk@finkellaw.com
Attorney for Defendant Mount Vintage
Homeowners Association

September 10, 2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-CP-19-00050

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC,
Mount Vintage Plantation Homeowners Association, Inc. *a/k/a*
Mount Vintage Homeowners Association, Inc., and TR Sales
Plantation, LLC Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants.

NOTICE OF APPEAL

LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC, Appellants, hereby appeal a Form 4 Order dated September 10, 2024, issued by the Honorable R. Lawton McIntosh, granting partial summary judgment in Respondents' favor on an issue that is central and critical to every aspect of the underlying proceedings. A true and accurate copy of such Order is attached hereto as **Attachment A**. Appellants received written notice of the entry of such Order via email on the date such Order was entered.

Separately and by U.S. Mail, Appellant has submitted the filing fee to the Clerk of Court.

Respectfully submitted,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham, LLC
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Greenville, South Carolina 29609
(o) 864.735.0832
(e) seb@buckingham.legal

*Attorney for Appellants LL of SC, LLC, Raiford
Topsail Island Investments, LLC, and TR Sales
Plantation, LLC*

Filed this 10th Day of September, 2024.
Greenville, South Carolina

Other Counsel of Record:

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Anna S. McCann, Esq.
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Attorney for Mount Vintage Plantation Homeowners Association, Inc.

ATTACHMENT A

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900050

Elizabeth Ferraro et al
PLAINTIFF(S)

LL of SC LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

AMENDED

BASED UPON THE DEED IN LIEU OF FORECLOSURE (09/13/13), THE ASSIGNMENT OF BID (11/18/13), THE MASTER'S REPORT (11/18/13), THE SPECIAL REFEREE'S DEED (11/18/13), AND THE CORRECTIVE SPECIAL REFEREE'S DEED (8/4/14), THE COURT FINDS THAT LL OF SC ASSIGNED "DEVELOPER'S RIGHTS" TO RAIFORD TOPSAIL ISLAND INVESTMENTS DURING THIS PERIOD OF TIME AND ACCORDINGLY GRANTS PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT THAT LL OF SC ASSIGNED ITS DEVELOPER'S RIGHTS TO RAIFORD TOPSAIL ISLAND INVETSMENTS DURING THIS PERIOD. THE COURT MAKES NO FURTHER FINDINGS OR RULINGS OTHER THAN AS STATED.

NO FORMAL ORDER REQUESTED.

Trial is set for September 16, 2024 in Edgefield County. (RM)

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

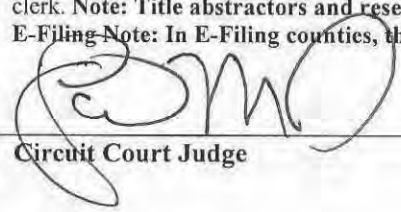
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2155

Judge Code

9-10-24
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-_____

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants / Petitioners.

**PETITION TO STAY UNDERLYING PROCEEDINGS IN THE TRIAL COURT
AND/OR FOR WRIT OF SUPERSEDEAS**

(URGENT CONSIDERATION REQUESTED)

This petition seeks a Stay or Supersedeas with respect to a decision issued by the trial court on September 10, 2024 (attached hereto as **Attachment A**), granting partial summary judgment in Respondents' favor on an issue involving the merits. These appellate proceedings follow the dismissal of a prior appeal (which occurred during the afternoon of September 10) based on an order that is substantially similar to the one from which this appeal is taken. The Court of Appeals dismissed that prior appeal (attached hereto as **Attachment B**) as premature, noting that the Form 4 order being appealed directed Plaintiffs' counsel to prepare a more formal order, which—at the time the prior notice of appeal was filed—had not been executed. That issue has now been resolved. On September 10, the trial court issued a substitute Form 4 on the same matters, without the instruction for a formal order, stating that “no formal order [is] requested.”

Accordingly:

1. The September 10 order is immediately appealable under South Carolina Code § 14-3-330(1);
2. The matter appealed in the September 10 order is subject to the automatic stay established by Rule 241(a), SCACR; and,
3. The matter appealed in the September 10 order involves a decision on the merits of the underlying case that materially touches and concerns substantial and disputed issues as to the entirety of the case.

The immediate consequences of the September 10 decision are—for Petitioners—profound. The trial court has now held, as a matter of law and incident to a granting of summary judgment in Respondents' favor, that Petitioner Raiford Topsail Island Investments, LLC (“**RTI**”) acquired developer rights with respect to a residential

community in 2013, which is an issue that has been hotly contested. And, as explained below, this decision deeply affects each and every aspect of the claims and defenses presented. (See Resps.’ 2d Am. Compl., attached hereto as **Attachment C**; Resp.’s 3d Am. Compl., attached hereto as **Attachment D**; Resps.’ Mot. Partial Summ. Judg., attached hereto as **Attachment E**; and Pets.’ Memo. Opp. to Resps.’ Mot. Partial Summ. Judg., attached hereto as **Attachment F**.)

As a result of the September 10 decision (a substitution of the September 4 order), Respondents intend to argue the following at trial: (i) that Defendant LL of SC, LLC assigned the totality of its developer rights to RTI in 2013; (ii) that RTI has utterly neglected to exercise its developer rights in the affected community since that time (even though LL of SC, LLC—who everyone has understood to have developer rights—has been exercising developer rights consistently since 2013, to include financial commitments); (iii) that, because of the so-called abandonment of developer rights in 2013, the HOA board is “fake” and has acted under the authority of a “rogue” developer; and (iv) that, because of all these circumstances, the trial court ought to deem the community to have been turned over to the homeowners in 2013. (See Email of Resps.’ Counsel, Sept. 4, 2024, attached hereto as **Attachment G**.)

All of this is disputed by Appellants. For its own part, the HOA board understands that LL of SC, LLC is and has always been the owner of developer rights in the affected community (at least since 2013); and further, that the HOA board is not under the command of the developer.

Yet, now, Appellants and the HOA board are under a judicial determination, issued on the eve of trial, holding that RTI—not LL of SC, LLC—owns developer rights. And Respondents intend to use this material ruling to their advantage.

The trial court's September 10 order regarding RTI's ownership of developer rights therefore constitutes a decision on the merits of a key, contested issue, affecting each and every aspect of this case. It is immediately appealable under S.C. Code § 14-3-330(1). And, because it is immediately appealable, and because of how thoroughly it affects the issues in dispute, the automatic stay operates to divest the trial court of jurisdiction with respect to the entirety of the underlying proceedings, at least until such time as this appellate issue is resolved.

Urgency of Review of This Petition

As noted in the trial judge's handwriting on the Form 4 from which appeal is taken, trial is set to commence on Monday, September 16, 2024—five days from now. Pre-trial motions were heard on the morning of September 11—this very morning. The filing of Petitioners' notice of appeal triggered the automatic stay of Rule 241(a), and should result in a postponement of trial until after the disposition of this appeal. However, in the September 10 order, the trial court makes plain that trial will proceed as scheduled on September 16. This was confirmed in this morning's pre-trial motions hearing. (See Verification of Appellants' Counsel, Sept. 11, 2024, attached hereto as **Attachment H.**)

Simply stated, the trial court has decided a material issue on its merits and has placed Petitioners' appellate rights in jeopardy by neglecting the automatic stay.

The Court of Appeals is therefore respectfully requested to issue an order staying all proceedings in the underlying litigation until such time as Petitioners' appeal may be adjudicated, and (to the extent necessary) issue a supersedeas with respect to the trial court's September 10 decision.

I. The September 10 order is immediately appealable.

South Carolina Code § 14-3-330(1) establishes appellate jurisdiction with respect to "[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas." That includes orders granting partial summary judgment. See, e.g., Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990).

The phrase "involving the merits" means that the issue decided "must finally determine some substantial matter forming the whole or part of some cause of action or defense." Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993); see also Toal, J.H. et al., Appellate Practice in South Carolina, Chapter 8, Part IV, Subsections (B)(1) & (G)(3). Each and every aspect of Respondents' claim touches, concerns, and even depends on the chain of developer rights. Furthermore, as explained above, Respondents are trying to achieve material procedural advantages against Petitioners heading into trial, on the eve of trial, as a direct result of the trial court's decision on RTI's acquisition of developer rights.

In short, the trial court's September 10 order granting Respondents' motion for partial summary judgment constitutes a decision "involving the merits" because it has "finally determine[d] some substantial matter forming the whole or part of some cause of

action or defense.” And that gives Petitioners a right of immediate appeal under South Carolina Code § 14-3-330(1).

II. The September 10 order is subject to the automatic stay of Rule 241(a).

Rule 241(a) provides that, “[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” The trial court’s September 10 decision is under the general rule—not any of the exceptions listed in Rule 241(b).

III. The Rule 241(a) automatic stay applies, under Rule 205, to every aspect of the case.

The controlling pleading is presently Respondents’ third amended complaint. (Att. D.) The core causes of action are for negligent development, breach of fiduciary duty based on a developer relationship, and violation of the Unfair Trade Practices Act. Each of these causes of action depends on who holds developer rights, and since when. The September 10 order concludes—over dispute—that such rights resided with RTI as of 2013. That is not only a decision involving the merits, it is one that affects every aspect of the case. Therefore, the filing of Petitioners’ notice of appeal on September 10 imposes the automatic stay on the case in its entirety. See, e.g., Ditech Fin., LLC v. Snyder, Case No. 2019-000575 (S.C. Ct. App. July 20, 2022) (unpublished decision) (citing Tillman v. Oakes, 398 S.C. 245, 256, 728 S.E.2d 45, 51 n.3 (Ct. App. 2012) for the proposition that a trial court’s failure to consider the effect of an appeal on the power of the court to proceed with the underlying action while the appeal is pending constitutes an abuse of discretion).

* * *

There is some amount of procedural confusion. Petitioners have made this filing, in part, as a petition for writ of supersedeas. If supersedeas is, in fact, the correct procedural device, Petitioners have provided a verification with this petition at **Attachment J.**

Petitioners have also styled this filing as a motion to stay the underlying proceedings. This is necessary for the Court of Appeals to protect its jurisdiction and give effect to the automatic stay.

Importantly, Respondents have not filed their own motion to lift the stay or for supersedeas with respect to Petitioners' notice of appeal.

Regardless, the Court of Appeals is requested to suspend all further proceedings in the trial court pending disposition of the initial matter from which this appeal is taken.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, the Court of Appeals is respectfully requested to issue an order imposing a stay of the underlying trial court proceedings, or granting a supersedeas of the trial court's September 10 decision. Petitioners are entitled to exercise their appellate rights, and humbly seek the opportunity to do so.

[Signature Page Follows]

Respectfully,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham
16 Wellington Avenue
Greenville, South Carolina 29609
(o) 864.735.0832
(e) seb@buckingham.legal

Attorney for Petitioners

September 11, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900050

Elizabeth Ferraro et al
PLAINTIFF(S)

LL of SC LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

AMENDED

BASED UPON THE DEED IN LIEU OF FORECLOSURE (09/13/13), THE ASSIGNMENT OF BID (11/18/13), THE MASTER'S REPORT (11/18/13), THE SPECIAL REFEREE'S DEED (11/18/13), AND THE CORRECTIVE SPECIAL REFEREE'S DEED (8/4/14), THE COURT FINDS THAT LL OF SC ASSIGNED "DEVELOPER'S RIGHTS" TO RAIFORD TOPSAIL ISLAND INVESTMENTS DURING THIS PERIOD OF TIME AND ACCORDINGLY GRANTS PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT THAT LL OF SC ASSIGNED ITS DEVELOPER'S RIGHTS TO RAIFORD TOPSAIL ISLAND INVETSMENTS DURING THIS PERIOD. THE COURT MAKES NO FURTHER FINDINGS OR RULINGS OTHER THAN AS STATED.

NO FORMAL ORDER REQUESTED.

Trial is set for September 16, 2024 in Edgefield County. (RM)

This order ☐ ends ☒ does not end the case.

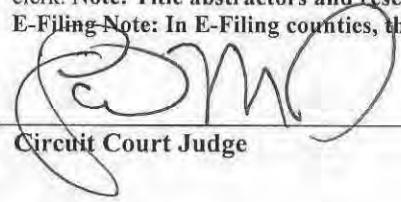
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amount contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Circuit Court Judge

2155

Judge Code

9-10-24
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The South Carolina Court of Appeals

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl, Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski, Nidza Vichroski, James Montellese, Roxann Montellese, Individually, Derivatively, and on Behalf of all the Mount Vintage Homeowners Association Members, Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales Plantation, LLC, and Mount Vintage Plantation Homeowners Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc., Defendants,

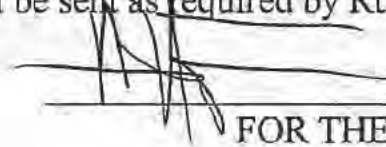
of which LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC, are the Appellants.

Appellate Case No. 2024-001451

ORDER

Appellants have filed a petition for supersedeas to stay the proceedings below pending this appeal. However, the circuit court's September 4, 2024 Form 4 order, from which Appellants appeal, states, "Plaintiff's counsel to prepare a formal order consistent with this order." Accordingly, the order is interlocutory and not immediately appealable. *See Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) ("As a matter of practice and convenience, a Form 4 order is used on a plethora of occasions" as a final order, when nothing remains to be done by the circuit court after signing the order, but a Form 4 is not "efficacious as a final order" if the circuit court explicitly provides that "a more formal order will be filed," or "the final order will be prepared by

[counsel]."). Appellants have filed a second notice of appeal from the circuit court's September 6, 2024 Form 4 order denying their motion for a stay. Initially, we note that Appellants failed to file a motion to amend their notice of appeal. Nonetheless, this order is also interlocutory. *See Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm'n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (holding an order lifting a stay is not immediately appealable); *Edwards v. SunCom*, 369 S.C. 91, 95, 631 S.E.2d 529, 531 (2006) ("[W]e find an order granting a stay is not immediately appealable."). Accordingly, this appeal is dismissed.¹ The remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

FILED
Sep 10 2024

cc:

Collin Heath Fuller, Esquire
Justin O'Toole Lucey, Esquire
Anna Scarborough McCann, Esquire
Steven Edward Buckingham, Esquire
The Honorable R. Lawton McIntosh

¹ Because we dismiss this appeal, we decline to act upon Appellants' petition for supersedeas.

ROA_01038

Plaintiffs' Second Amended Summons

/s/Anna S. McCann
Justin O' Toole Lucey
Anna McCann
JUSTIN O'TOOLE LUCEY, PA
415 Mill Street
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Attorneys for Plaintiffs

September 11, 2023
Mount Pleasant, SC

ELECTRONICALLY FILED - 2023 Sep 11 1:41 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900050

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	
FERRARO, EDWARD J. PRZYBYL,	)	
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	SECOND AMENDED COMPLAINT
THOMAS BOWES, CONNIE BOWES,	)	(Negligent Development)
MOATAZ ALASADI, VIRGINIA KIRKWOOD,	)	
BOB KIRKWOOD, PAUL VICHROSKI, NYDZA	)	(Jury Trial Demanded)
VICHROSKI, JAMES MONTELLESE,	)	
ROXANN MONTELLESE, Individually,	)	
Derivatively, and on Behalf of all the Mount	)	
Vintage Homeowners Association Members,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL ISLAND	)	
INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT VINTAGE	)	
PLANTATION HOMEOWNERS	)	
ASSOCIATION, INC. A/K/A MOUNT VINTAGE	)	
HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Defendants.	)	

The Plaintiffs, above named, individually, derivatively, and on behalf of all the Mount Vintage Plantation Homeowners, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Plaintiffs are residents of the neighborhood and development known as Mount Vintage (hereinafter referred to as "Mount Vintage").
2. Plaintiffs Ferraro's residence is located at 106 Captain Johnsons Drive, North Augusta, South Carolina, 29860, and is also described as Lot 0-48 on a plat of Mount Vintage by Newby-Proctor and Associates dated August 21, 2006.
3. Plaintiff Przybyl's residence is located at 255 Homeward Bound Drive, North

Plaintiffs' Second Amended Complaint

Augusta, South Carolina, 29860, and is also described as Lot D-14 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 6, 2000.

4. Plaintiffs Gleie's residence is located at 527 Schoolhouse Lane, North Augusta, South Carolina, 29860, and is also described as Lot 0-18 on a plat of Mount Vintage by Newby-Proctor and Associates dated April 17, 2007.

5. Plaintiffs Bowes' residence is located at 99 Whitney Court, North Augusta, South Carolina, 29860, and is also described as Lot A-21 on a plat of Mount Vintage by Newby-Proctor and Associates dated August 21, 2015.

6. Plaintiff Alasadi's residence is located in the Shaw Estates area of Mount Vintage at 15 Ballentine Court, North Augusta, South Carolina, 29860, and is also described as Lot S-44 on a plat of Mount Vintage by Newby-Proctor and Associates dated July 19, 2018.

7. Plaintiffs Kirkwood's residence is located at 108 Whitney Court, North Augusta, South Carolina, 29860, and is also described as Lot A-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 22, 1998.

8. Plaintiffs Vichroski's residence is located at 35 Independent Hill Lane, North Augusta, South Carolina, 29860, and is also described as Lot R-35 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 26, 2000.

9. Plaintiffs Montellese's residence is located at 1036 Longstreet Place, North Augusta, South Carolina, 29860, and is also described as Lot H-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated January 14, 1999.

10. Defendant LL of SC, LLC ("LL"), is a limited liability company formed under the laws of South Carolina; LL also owns lots in the Mount Vintage subdivision. LL's Registered Agent's address is listed with the South Carolina Secretary of State as 616 Edgefield Road, Suite

Plaintiffs' Second Amended Complaint

115, North Augusta, South Carolina, 29841, which is located in Aiken County, South Carolina. LL's current Articles of Incorporation, filed on January 14, 2010, list its principal office at the same address located in Aiken County, South Carolina.

11. Defendant Raiford Topsail Island Investments, LLC ("Topsail"), is a limited liability company formed under the laws of South Carolina; Topsail also owns lots in the Mount Vintage subdivision. Topsail's Registered Agent's address is listed with the South Carolina Secretary of State as 528 Edgefield Road, Suite G, Belvedere, South Carolina, 29481, located in Aiken County, South Carolina. Topsail's Articles of Incorporation, filed on December 12, 2007, list its principal office at the same address located in Aiken County, South Carolina.

12. Defendant T R Sales Plantation, LLC ("T R Sales"), is a limited liability company formed under the laws of South Carolina and is managed and owned, at least in part, by J. Wayne Raiford. Upon information and belief, TR Sales is the management entity which employs, manages, and is otherwise involved in the control of Defendants LL and Topsail.

13. J. Wayne Raiford ("Raiford") owns (at least in part), manages, controls and acts on behalf of Defendants LL, Topsail, and T R Sales.

14. Defendant Mount Vintage Plantation Homeowners Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc. (hereinafter "The Association"), is a mutual benefit, non-profit corporation formed under the laws of South Carolina.

15. Defendant LL appointed Raiford to the Board of Directors of The Association, and Raiford acts as its Chairman and President.

16. Upon information and belief, Defendant LL has in turn permitted or appointed all other members of the Board of Directors since Defendant LL acquired its interests in Mount Vintage.

Plaintiffs' Second Amended Complaint

17. Leigh Ann Keels ("Keels") is the daughter of Raiford and a non-resident of Mount Vintage, a former member of The Association's Board of Directors, a current officer of The Association, and a member and manager of LL, Topsail, and T R Sales.

18. Hereinafter "Affiliated Defendants" and/or "Defendants" refers to LL, Topsail, and TR Sales.

19. Only when "Defendants" is modified to "All Defendants" does the reference include The Association.

20. By virtue of their property ownership, as well as The Association's Articles of Incorporation, The Association's Covenants and Bylaws, as amended from time to time (hereinafter "Governing Documents"), and the South Carolina Non-Profit Corporation Act, S.C. Code §§ 33-31-101, *et seq.* (hereinafter the "SC NPC Act."), the Plaintiffs are members of The Association and have been members at all times relevant herein.

21. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of The Association and its members, the other property owners in Mount Vintage, because The Association has failed to protect and enforce the rights of The Association and its members with respect to the matters alleged herein.

22. Plaintiffs also bring this action on behalf of all Mount Vintage home and lot owners as a class action (hereinafter, "The Homeowners" or "the Homeowner Class"), as the Homeowners themselves have been damaged by the wrongful acts of the Defendants.

(Background; Formation of Association; Governing Documents)

23. The development of Mount Vintage, as a residential community, commenced in approximately 1995.

24. The Association was incorporated as a mutual benefit, non-profit corporation.

Plaintiffs' Second Amended Complaint

25. In its Articles of Incorporation, filed April 3, 2000, The Association elected to have “members,” which election is required by the SC NPC Act §§ 33-31-101, *et seq.*

26. The Articles of Incorporation also specify that The Association will have two (2) “classes of members,” whose respective rights and privileges are spelled out in The Association’s Declaration of Restrictive Covenants and Bylaws.

27. By virtue of its election to have members, The Association is entitled to “impose dues, assessments, and admission and transfer fees upon its members[.]” (SC NPC Act, § 33-31-302 (15)). The Association has continually exercised this power granted by and enumerated in the SC NPC Act.

28. The Governing Documents have been amended numerous times since the filing of the Articles of Incorporation.

29. In 2013, Defendant LL became the alleged “successor developer,” approximately eighteen (18) years after the development was founded.

30. Defendant LL gained control of the development by taking a Deed in Lieu of Foreclosure on the prior developer’s remaining 183-odd lots.

31. The Deed in Lieu transaction purported to include an assignment of developer rights to LL.

32. The most recent versions of the Governing Documents were filed on January 19, 2018 (Declaration of Covenants), and January 19, 2018 (Bylaws). Hereafter, reference to the Governing Documents is to these versions unless specifically stated otherwise.

33. The Governing Documents purport to give all members certain rights, voting privileges and duties.

Plaintiffs' Second Amended Complaint

34. According to the Governing Documents, Defendant LL is allegedly a “Class A” member of The Association by virtue of its claiming “developer rights.”

35. As a Class A member, Defendant LL has one (1) vote for each residential lot owned by it in Mount Vintage.

36. Neither Raiford nor Defendant Topsail are Class A members of The Association.¹

37. According to the Governing Documents, all property owners in Mount Vintage other than the developer are allegedly “Class B” members of The Association.

38. The Class B members purportedly have voting rights which spring upon either (1) the developer’s conveyance of all residential lots and tracts within Mount Vintage, including, but not limited to, additional phases, sections and developments which it may decide to add to the Mount Vintage development, or (2) when the developer, in its sole discretion, decides to convert Class B members to Class A members.

39. By virtue of their membership in The Association, Plaintiffs have been assessed each year of their ownership, including some special assessments.

40. The Governing Documents, specifically the Declaration of Protective Covenants, provides that the developer is not obligated by virtue of its property ownership to pay any dues, assessments, fees, or fines.

(Perpetual and Complete Developer Control)

41. The Governing Documents give Defendant LL, as the sole Class A member complete control and authority over the Governing Documents, the Board, and The Association.

¹ Nor is Keels a member of The Association.

Plaintiffs' Second Amended Complaint

42. By virtue of the foregoing, Defendant LL has complete control over all Mount Vintage matters, including, but not limited to, amenities and lot acquisitions, dues and lien releases, the architectural committee, and assessments.

43. The Board's voting rights (and those of all committees) are illusory as all Board members serve at the discretion of Defendant LL; and, Keels, Raiford's daughter, handles finances, and for all practical purposes, runs The Association. The Bylaws, for example, purport to give the developer the unilateral right to amend any aspect of the Bylaws without vote by the Class B Members, even if said amendment affects the rights, privileges, preferences, restrictions, or conditions of Class B members as to voting, dissolution, redemption, or transfer of membership in a manner different than such amendment would affect another class of members, i.e., Class A members.

44. The Declaration of Covenants, for example, purports to give the developer, as well as its successors, assigns, or heirs, the exclusive right, exercisable at any time and from time to time, to amend or to grant exceptions to the Declarations and to waive, repeal, or vary the Declarations in any one or more respects whenever in the sole and controlled opinion of the Developer such waiver, repeal, or variance shall not be materially detrimental to the general nature in development of Mount Vintage. The foregoing unilateral rights violate the letter and/or spirit of the SC NPC Act.

45. The perpetual developer control, including the perpetual ability to amend the Bylaws and Declaration of Covenants regardless of the substance of those amendments, runs contrary to the SC NPC Act, including, but not limited to, §§ 33-31-206 and 33-31-1022, and therefore runs afoul of South Carolina law. The foregoing perpetual control additionally violates

Plaintiffs' Second Amended Complaint

the common law, industry standards, Restatement(s), model acts, and the reasonable expectations of the purchasing homeowners.

46. In the particulars described in the foregoing paragraphs, the Governing Documents permit complete control by Defendant LL, *funded by the homeowner members*, for an unlimited duration.

47. The Governing Documents do not have a definitive or reasonable time limitation on the Defendant LL's control, which cannot be thwarted or avoided by the developer, thereby giving Defendant LL potentially unlimited perpetual control of The Association and neighborhood.

48. The Governing Documents contain other unfair, conflicting, and/or confusing terms.

49. The defects in the Governing Documents are latent and would not be recognized by a lay person, even if they tried to read them.

50. Further, the Governing Documents permit Defendant LL to add (a virtually unlimited amount of) additional parcels to the regime, which in turn permits perpetual control and dominance by Defendant LL.

51. The Governing Documents are or are akin to contracts of adhesion; neither The Association nor the Homeowners were ever permitted to negotiate their terms; further, they have been unilaterally amended several times by Defendant LL to the detriment of the Homeowners, again without negotiation or input or recourse or representation.

52. At all times relevant herein, Affiliated Defendants have had unfair advantage over the Homeowners by sophistication, dominance, unequal bargaining positions, and position of authority.

Plaintiffs' Second Amended Complaint

53. The foregoing and many of the other terms contained in the Governing Documents are so one-sided and unfair, that no reasonable person who understood their potential for abuse would have agreed to them; and no reasonable person would avail themselves of the untoward advantages that they create.

54. The Governing Documents are unconscionable and, therefore, unenforceable; and they further violate public policy, South Carolina law, the previously referenced standards, and the rule against perpetuities.

(Futility of Demand)

55. Plaintiffs' demand upon The Association to rectify the wrongs described herein would be futile and is, therefore, excused under the futility doctrine.

56. Plaintiffs' demand upon The Association would be futile for the following reasons, which are more particularly described in the preceding paragraphs:

- a) The Association's Governing Documents give "Developer, LL of SC, LLC, its successors and assigns" absolute control over The Association;
- b) Defendant LL therefore controls The Association, whose rights are being adversely affected by Affiliated Defendants;
- c) Under the Governing Documents, Defendant LL is entitled to modify, amend, repeal, suspend, and otherwise alter the Governing Documents in its sole discretion, at its sole option, and at any time;
- d) Defendant LL has complete control over the Board, including the ability to appoint and remove Directors;
- e) Defendant LL has *de facto* veto power over any and all decisions of the Board, which power Defendant LL has exercised in the past;
- f) Raiford, as owner and/or partial owner of Defendants LL, Topsail, and T R Sales, would never permit the Board of Directors to authorize The Association to bring suit against the Affiliated Defendants;;
- g) The Board of Directors is illusory as the Board serves at the pleasure of LL and Raiford;
- h) The Board of Directors have failed to successfully intercede in The Association's or Homeowner's behalf; ultimately, the only recourse for a dissenting Board member is resignation, which has occurred from time to time; and
- i) Other reasons which will be proven at trial.

Plaintiffs' Second Amended Complaint

57. In further support of futility, various Homeowners, Plaintiffs included, have requested that Defendants cure many of the wrongs addressed herein, and their efforts have been rebuffed and/or ignored by the Board, which is controlled by Defendant LL. (see, e.g., ¶¶ 30-35, *infra*).

58. For example, one or more Plaintiffs have challenged the Board's failure to provide accounting information, failure to charge assessments against all lot owners, misuse of reserve funds, self-dealing, inurement, debt forgiveness, conflicts of interest, cronyism, misfeasance, non-developer titling of lots, to name a few. All of the Homeowners' inquiries and complaints have been rebuffed. To this day, Plaintiffs have not received the 2019 accounting records from the Defendants.

59. When direct inquiries were ignored, one or more Plaintiffs complained to the South Carolina Department of Consumer Affairs, who in turn served notice on Defendants and requested a response. The Defendants refused to budge in their response to the Homeowners through the Department and the Department was powerless to do anything about it.

(Operation of Association for the Benefit of Affiliated Defendants)

60. Affiliated Defendants have embarked upon a pattern and practice of using past due assessments owed to The Association to coerce and cajole the sale of lots by the then current owners, and the acquisition of the lots by the Affiliated Defendants, at below market values, without the Affiliated Defendants compensating The Association for its lost dues, opportunity, and/or value.

61. Upon information and belief, on one or more of these occasions, the Affiliated Defendants have failed to declare the release of sums owed to The Association as consideration for the transfer and have exposed The Association to future liability for these transactions.

Plaintiffs' Second Amended Complaint

62. Affiliated Defendants have embarked upon a pattern and practice of bidding for and acquiring Mount Vintage lots at tax sales, thereafter, suing The Association they control to eliminate past due Association dues and assessment, defaulting The Association in the suits, and failing to advise of or assist with The Association's redemption or other rights, and/or simply causing the HOA to write them off, all without the Affiliated Defendants compensating The Association for its lost dues, liens, opportunity, and/or value.

63. Affiliated Defendants have subsequently embarked upon a pattern and practice of lot acquisition, whereby, they avoid/bypass public sales, using unrecorded Association liens as leverage to negotiate the cheap acquisition of Mount Vintage lots from remote owners, and then waiving The Association dues owed once the lots are received, with little or no compensation to The Association, all without any disclosure to The Association or its members, let alone adequate disclosure.

64. The Board has failed to intercede, has failed to protect The Association or its members, or to achieve or arrange for adequate management of The Association and its affairs. In essence, the Affiliated Defendants treat The Association as its pawn for its own financial transactions and inurement.

65. By virtue of this pattern and practice, the Affiliated Defendants have amassed an additional 100 or so lots in their own names and/or the names of their affiliates at below market consideration while decimating The Association's finances.

66. Defendant LL has wrongfully treated the owners of some of these and other lots as Class A members (including Defendant Topsail and Raiford), waiving dues, when only Defendant LL could possibly claim that status, and thereby have caused additional financial detriment to The Association, the neighborhood, and the Homeowners.

Plaintiffs' Second Amended Complaint

67. Similarly, Defendant LL and Raiford have permitted favored third parties and relatives to temporarily consolidate lots to reduce the dues owed to The Association.

(Amenities)

68. The original developers sold Mount Vintage and its lots to the Homeowners and the public as an upscale, first-class, luxury community with high standards for design of neighborhood and residences, maintenance, and amenities.

69. The upscale amenities promised to be available included the below Town Center, Golf Course and Club House, Equestrian facilities, and 24-hour security.

70. An attractive selling point for Mount Vintage was that its residents' use and enjoyment of the amenities would be optional, as would the associated financial obligation. Neither The Association nor the Homeowners would be required to provide financial support to the amenities that they did not choose to enjoy.

71. Mount Vintage's Athletic Club and Town Center ("Town Center") is comprised of six (6) tennis courts, fitness center, library, kitchen, small and large meeting and recreational spaces, and a pool complex.

72. The Town Center and the Golf Club/Course ("Golf Amenity") were built/developed circa 2005 by the original developers; the Equestrian facilities were developed thereafter.

73. Following the Great Recession, the original developers fell on hard times and the amenities were lost to foreclosure or other purchasers.

74. In 2010, the Town Center and Golf Amenity were purchased by Plantation Alliance LLC, a company owned by several Mount Vintage residents, to prevent the properties from being lost to bank foreclosure.

Plaintiffs' Second Amended Complaint

75. From 2013 to 2020, Defendant LL has done nothing to fulfill the original developers' promise of providing multiple, optional, first-class, upscale amenities.

76. Circa 2014, while Defendant LL was the sole Class A member, Apex Bank foreclosed on the Town Center and Golf Amenity.

77. Circa 2015-2016, Defendant LL embarked on persuading and arranging for The Association and its members to acquire the Town Center and then the Golf Amenity ("Amenity Package").

78. In 2016, the value of the Amenity Package was \$1,800,000 or less; the Association nonetheless paid approximately \$3,800,000 to acquire the amenities (not including refurbishment costs).

79. This was done with numerous representations by the Affiliated Defendants as to the wisdom and affordability of acquisitions; that the acquisition was necessary to maintain or bolster members' property values; that the acquisitions would be self-sustaining; and that The Association and its members would *not* be responsible for any operating shortfalls.

80. Affiliated Defendants failed to disclose that they were causing The Association to complete the acquisitions to increase the value of the Affiliated Defendants' lots or that, as the alleged successor to the original developer enjoying developer rights, Defendant LL had some obligation to facilitate the availability of the Amenities.

81. Affiliated Defendants failed to disclose to the membership that they were causing The Association to pay over twice the Amenity Package's fair market value.

82. Affiliated Defendants failed to disclose that, in obligation or in all fairness, Defendant LL as purported "developer" should have funded the acquisition or contributed far more to the acquisition.

Plaintiffs' Second Amended Complaint

83. The acquisition and operation of the Amenities were further accompanied by the wrongful and negligent acts further described below.

84. The performance of the Amenities has been less than optimal, perhaps dismal is a better word; and contrary to representations made by the LL-controlled Board, the Board has since passed member assessments to cause The Association and its members to fund the operating losses of the Amenities.

85. No arrangements are in place for The Association to meet the balloon payments due shortly on both acquisitions.

86. The equestrian facilities do not currently exist, and Defendant LL has made no attempt to make good on that developer promise.

87. Defendant LL has failed to make good on the original developer's promise of multiple, optional, first class amenities.

(Other and Cumulative Matters)

88. Defendant LL has failed to adequately advance the development and funding of The Association and Mount Vintage, thereby harming The Association and the Homeowners' property values.

89. Defendant LL has failed to deliver and maintain a first-class, upscale, luxury development in many ways.

90. Defendant LL has failed to uphold the first-class standards required of residences, permitting tract homes and slab-on-grade homes into the neighborhood which have devalued the neighborhood and each home in the neighborhood.

91. Defendant LL failed and refused to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage.

Plaintiffs' Second Amended Complaint

92. Defendant LL and the Board's foregoing activities, inadequate disclosures, amateur accounting, and lack of transparency have caused rifts in Mount Vintage.

93. Defendant LL and their predecessor's failure, after 25 years, to transfer control of The Association and Mount Vintage neighborhood to the Homeowners is a violation of the public policy against perpetual developer control – both as described and separately, with due acknowledgement that there is no end in sight and under the current pace of development, there could well be another 25 to 50 years of developer control or more.

94. Defendant LL has practiced nepotism, cronyism, and favoritism in the operation of The Association and Neighborhood. It has placed unqualified family member(s) in important controlling positions; it has allowed extended family members to use the Amenities with false addresses; and it has acted in an arbitrary and capricious manner in The Association's dealings, e.g., negotiating behind the back of The Association's board and allowing some investors to temporarily merge their lot inventories to dodge Association dues and assessments pending resale of the lots and they have permitted Defendant Topsail and Raiford to wrongfully dodge dues and assessments

95. The foregoing has damaged The Association and the Homeowners and has caused a public stigma that has further damaged both.

(Additional Statement of Liability and Negligent Acts)

96. It is axiomatic, through law and equity, that by claiming "Successor Developer" status, and accepting the assignment of developer benefits and rights, and/or by availing itself of and exercising such rights, Defendant LL obligated itself to properly perform the developer obligations and promises that gave rise to the presence of developer rights and benefits.

Plaintiffs' Second Amended Complaint

97. As the sole, complete controlling member, officer, and board member of a planned community neighborhood and its owner's association, Defendant LL owed The Association, the Homeowners, and the ensuing neighborhood fiduciary and fiduciary-like duties, and the duty to use due care in the development of the neighborhood and the administration of The Association.

98. Because of Defendant LL's complete control, Homeowners have had no choice but to repose their complete trust and reliance in Defendant LL resulting in the imposition of a fiduciary duty upon Defendant LL.

99. Defendants Topsail and T R Sales owed The Association and its members a duty of due care, a duty not to profit by their codefendants' misfeasance, and, when operating in concert with Defendant LL, a duty of good faith and fair dealing.

100. Defendant LL has been negligent as follows:

- a) In failing to act to prevent the amenities from being foreclosed upon by Apex Bank under its tenure as the alleged developer;
- b) In failing to pay for the acquisition of the amenities or for the Developer's fair share of the acquisition of the Amenities;
- c) In their use of insider knowledge of Mount Vintage affairs to benefit themselves in lieu of The Association or its members;
- d) In their use of Association opportunities, rights, receivables, liens, and legal proceedings to acquire property for the benefit of the Affiliated Defendants;
- e) By exposing The Association to liability for false property transfer documentation;
- f) In failing to pay or require payment of Association dues and assessments on lots that are not properly considered developer lots;
- g) In failing to arrange for proper funding of The Association and neighborhood while under their control;
- h) In failing to adequately develop Mount Vintage to create an adequate membership base to fund the neighborhood's success;
- i) In detracting from the membership base;
- j) In failing to timely transition control of The Association to the Homeowners;
- k) In failing to avoid perpetual developer control of Mount Vintage;
- l) In failing to share Association records and documents with The Association's members;
- m) In failing to create, maintain, publish, and share accurate financial records of The Association's activities;

Plaintiffs' Second Amended Complaint

- n) In failing to disclose and/or accurately disclose their financial transactions with The Association and The Association's interests;
- o) In practicing nepotism, favoritism, and cronyism in the operation of Mount Vintage at the expense of The Association and Homeowners;
- p) In moving The Association operations and records out of The Association property to private property;
- q) In failing and refusing to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage;
- r) In failing to afford adequate rights to the Homeowners in the operation of The Association;
- s) In the negligent development, marketing, and operation of Mount Vintage and its Association in other ways that will be shown through discovery and at trial;
- t) In the acquisition and operation of the Amenities as further described below;
- u) In causing a stigma that hurts The Association and the Homeowners' property values;
- v) By distributing funds from a non-profit entity in violation of S.C. Code § 33-31-1301-2;
- w) By accepting, agreeing to, and enforcing unconscionable Governing Documents; and,
- x) By violating the SC NPC Act in failing to accord voting rights to Class B members on important or discriminatory votes delineated by the Act.

101. Defendant LL has been negligent with regards to the *acquisition* of the *Golf* Amenity, as follows:

- a) Proposing and arranging for the Homeowners to pay two and a half (2.5) times the Golf Amenity's market value to acquire the Golf Amenity;
- b) Failing to disclose to the Homeowners or warn the Homeowners that the Affiliated Defendants were arranging for them to pay two-hundred fifty percent (250%) of the Golf Amenity's market value for the ownership of the Amenity;
- c) Utilizing the borrowing, funding, and assessment capability of The Association to buy an Amenity that would increase the value of the Affiliated Defendants' lots, without adequate disclosure or just compensation;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for The Association to have default liability on the Amenity Note;
- f) Arranging for a balloon payment without adequate protection or an exit plan;
- g) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment without protection;
- h) Arranging for and advising the Homeowners to support and enter a relationship with an unproven, underfunded golf course operator, without adequate warning or disclosure;

Plaintiffs' Second Amended Complaint

- i) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- j) Failing to disclose to homeowners the developer's and Board's conflict of interest in the acquisition; and,
- k) Such other ways as shall be shown in the discovery and trial of this matter.

102. Defendant LL has been negligent in the following particulars with regards to the *operation* of the *Golf Amenity*:

- a) Arranging for and relying upon a short-term lease with an unproven, underfunded operator;
- b) Failing to enforce the terms of the lease;
- c) Arranging for the Homeowners to be responsible for the Amenity operating losses;
- d) Failing to exercise proper supervision to prevent mismanagement of the course;
- e) Assessing the Homeowners to fund the operating losses; and,
- f) Such other ways as shall be shown in the discovery and trial of this matter.

103. Defendant LL has been negligent in the following particulars, with regards to the acquisition *and* operation of the *Town Center Amenity*:

- a) Utilizing the borrowing, funding, and assessment capability of The Association to buy an amenity that would increase the value of the Affiliated Defendants' lots, without adequate disclosure or just compensation;
- b) Recommending to the Homeowners that they pay a price for the Amenity that failed to account for the deferred maintenance on the facility;
- c) Failing to warn the Homeowners that they were overpaying for the Amenity;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for a balloon payment without adequate protection or an exit plan;
- f) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment;
- g) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- h) Arranging for The Association to have default liability on the Amenity Note;
- i) Arranging for the Homeowners to be responsible for the operating losses;
- j) Increasing the assessments on the Homeowners to fund the operating losses;
- k) Failing to disclose to Homeowners Defendants LL's' and Board's conflict of interest in the acquisition and in the assessment of Homeowners to fund the operating losses; and,
- l) Such other ways as shall be shown in the discovery and trial of this matter.

Plaintiffs' Second Amended Complaint

104. As this suit concerns rights allegedly derived from sealed instruments, a twenty (20) year statute of limitations applies to Plaintiffs' claims.

105. Defendants are barred or estopped from relying on any statutes of limitation or repose by virtue of their own misfeasance and concealment of misfeasance and rights relating thereto.

(Damages)

106. Defendants have proximately damaged Plaintiffs as follows:

- a) The Defendants have proximately damaged The Association by the above-described actions and by decreasing The Association's funding and funding base and, therefore, operational capacity, by failing to pay assessments, causing it to pass assessments to fund Amenity deficits, by converting Association opportunities to their own benefit, and by saddling The Association with staggering debt and amenity maintenance cost;
- b) Defendants have proximately damaged the individual Plaintiffs and the Homeowner Class vis a vis increased and special assessments and by its improper operation of The Association and the neighborhood, which has resulted in loss of appreciated value in their homes; loss of value in their homes, and loss of collective control of their neighborhood; and the likelihood of staggering future assessments to support The Association's staggering debt and maintenance costs; and
- c) The cumulative actual damages to The Association are expected to exceed \$7,000,000; and the Class damages are expected to exceed that.

107. All of the within-described advantages unilaterally taken by Defendants have been directly or indirectly at the expense of and damage to the Plaintiffs.

(Class Action Allegations)

108. Plaintiffs additionally bring this action on behalf of all those similarly situated pursuant to the common law of this state and Rule 23, SCRCF. The Class is defined as follows:

An opt-out class of all persons and entities that are members of the Mount Vintage Homeowners Association in North Augusta, South Carolina.²

² Plaintiffs propose that if cohesiveness is challenged by the Defendants, that the Class be divided into subclasses if and as necessary to align Class interests.

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This class excludes the Defendants and their affiliates, employees, owners, and relatives; excludes Essex/Stamley Homes and the owners of any properties built by Essex/Stamley Homes; and excludes any person or entity that timely indicate their desire to be excluded from the class.

109. Plaintiffs are members of the Class that they seek to represent. The interests of Plaintiffs are coincident with and non-antagonistic to those other members of the class Plaintiffs seek to represent.

110. Plaintiffs' claims are typical of the claims of the other class members, and Plaintiffs will fairly and adequately represent the interests of the members of the class.

111. Plaintiffs have retained counsel experienced and competent in complex litigation, class actions, developer matters, and homeowner association affairs.

112. The class members are so numerous that joinder of all members is impractical. It is estimated that there is in excess of three hundred (300) members of the Class as defined.

113. The claims of the Plaintiffs and the Class involve common questions of law and fact, including but not limited to:

- a) Whether Defendants were negligent in the development and management of Mount Vintage;
- b) Whether the Defendants adequately disclosed their conflicts of interest;
- c) Whether the Defendants breached their fiduciary duties;
- d) Whether the Defendants' conduct has proximately damaged the Plaintiffs; and,
- e) Whether Defendants' conduct was grossly negligent, reckless, willful, wanton, intentional, or the like, entitling Plaintiffs to punitive damages from the Defendants.

114. Common questions of law and fact herein predominate over any questions affecting only individual members of the Class. Common issues represent the most significant issues in the case and can be resolved for all members of the Class in one action.

115. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the

Plaintiffs' Second Amended Complaint

Class, which would establish incompatible standards of conduct for the Defendants, the parties likely opposing the Class.

116. The prosecution of separate actions by individual members of the Class would create the risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications and/or substantially impair or impede their ability to protect their interests.

117. A class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

118. Prosecution of this matter as a class action would significantly reduce the possibility of repetitive litigation by providing redress to Class Members who would not or could not prosecute this litigation on an individual basis.

119. Plaintiffs and the Class envision no unusual difficulty in the management of this action as a class action.

120. Each class member has an interest of more than one hundred dollars (\$100.00).

121. The amount of money at stake for each member is not sufficient for each member to hire their own counsel and accountants and bring their own action.

122. Much of this action focuses on the Defendants' mistreatment of The Association and its finances and requires a forensic financial evaluation. The judiciary, parties, and Homeowners would best be served by a single financial analysis in a single action, rather than multiplicity and duplicity.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS AND REPOSE**

123. Defendants are estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, Defendants should have known that they had

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violated the Plaintiffs rights as described herein.

124. Defendants had a duty to inform Plaintiffs of the violations (including conflicts) described herein each of which they should have known. Notwithstanding their duty, Defendants never disclosed the violations.

125. As Defendants had a duty to disclose, the non-disclosure constituted concealment.

126. Despite exercising reasonable diligence, Plaintiffs could not have discovered the violations at the time they originally occurred.

127. Given Defendants' failure to disclose this non-public information about the violations – information over which they had exclusive control – and because Plaintiffs could not reasonably have known of the violations, Defendants are barred and estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

128. Defendants are further estopped from relying upon any statute of limitations or repose as they have repeatedly represented to Plaintiffs that they knew what they were doing and that they were acting in the best interests of The Association.

129. The equitable tolling doctrine further precludes Defendants from relying on a statute of limitations defense.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence by All Plaintiffs as to Affiliated Defendants)

130. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

131. Plaintiffs have been damaged as a direct and proximate result of the previously-described negligence, carelessness, and recklessness of the Defendants in an amount to be determined by the trier of fact.

132. The foregoing acts and omissions were committed with gross negligence,

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willfulness, wantonness, and/or reckless disregard for the rights of others, and/or constituted negligence *per se*, and Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty by All Plaintiffs as to Defendant LL)

133. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

134. Defendant LL, as the alleged developer, owed fiduciary and fiduciary like duties to the Plaintiffs by virtue of its capacity as the steward of the Mount Vintage community and amenities, and in its capacity in controlling The Association as the lone Association voting member. It owed Homeowners fiduciary and fiduciary like duties by virtue of the Homeowners forced respite of trust and confidences in it.

135. The fiduciary relationship required Defendant LL to make full disclosure to The Association and Homeowners of all material facts relevant to all transactions between the parties.

136. The fiduciary relationship required that Defendant LL treat The Association and Homeowners with good faith and fair dealing.

137. The fiduciary relationship shifts the burden of proof as to all transactions and dealings between the Affiliated Defendants, The Association, and the homeowners, or any two thereof, to Defendant LL to prove the arms-length nature of each transaction or each transaction becomes voidable and compensable at The Association's and Homeowners' option.

138. Defendant LL breached the fiduciary relationship by failing to honor their trust; by using their insider knowledge and control to benefit itself and related entities/parties at the expense of the Plaintiffs; by failing to make full or adequate disclosure; by failing to disclose their breach

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of duty; by failing to enforce the Homeowner Association's rights; by self-dealing; by breaching their duty of loyalty; and by the other acts and omissions described herein.

139. Defendant's breach of fiduciary duty has proximately damaged Plaintiffs in an amount to be determined by the trier of fact.

140. As said failures were committed with gross negligence, reckless disregard for the rights of others, and/or intentional or malicious conduct, Plaintiffs are entitled to an award of punitive damages against Defendant LL.

FOR A THIRD CAUSE OF ACTION
(S.C. Unfair Trade Practices Act By Individual Plaintiffs ("SCUTPA") as to Affiliated Defendants)

141. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

142. The Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

143. The Defendants have engaged in planned community development both from time to time in Mount Vintage and in other new communities in this state and region, including Aiken, wherein their acts have been repeated or capable of repetition.

144. The Defendants' above-described activities, reincorporated herein by reference as if set forth at length, constitute unfair and deceptive practices in the conduct of their trade.

145. The Defendants' above-described acts are capable of repetition and adversely affect the public interest.

146. The Defendants knew or should have known that their conduct was in violation of Section 39-5-20 of the South Carolina Code.

147. The Defendants' wrongs entitle the Plaintiffs to an award of treble damages,

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attorneys' fees, and costs.

148. As discovery will show that The Association should be realigned as a Plaintiff, it will be bringing its SCUTPA claim as a direct claim, and not through its derivative Plaintiffs.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Action/Reformation by Individual Plaintiffs and Class as to Defendant LL and Association)

149. Plaintiffs re-allege the allegations contained in the above paragraphs as if fully set forth herein.

150. The unilateral and *de facto* perpetual control provisions and other offensive provisions of The Association's Governing Documents violate:

- a) Public policy;
- b) South Carolina law and/or provisions of the Constitution;
- c) The developer Defendants' fiduciary duties;
- d) The standards and references set forth further above; and/or,
- e) The Rule Against Perpetuities.

151. Plaintiffs are entitled to a declaration by this Court that the offensive provisions included within the Governing Documents by the Defendants and their predecessors are void and/or require reformation or severance to eliminate the offensive provisions.

152. Plaintiffs are also entitled to have ambiguous and contradictory provisions in the Governing Documents construed against Defendants, declared void and/or reformed by the Court to reflect the reasonable expectations of the Homeowners Association and Plaintiffs more accurately.

FOR A FIFTH CAUSE OF ACTION
(Unjust Enrichment by All Plaintiffs as to Affiliated Defendants)

153. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

154. Plaintiffs have conferred the benefits discussed herein on the Affiliated Defendants.

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155. The Affiliated Defendants have been unjustly enriched at the expense of the Plaintiffs, The Association, and those similarly situated.

156. As an example, the Affiliated Defendants reaped the economic benefits from the Yeoman's lot transaction at the expense of the Association and its Members.

157. Using the above example, the Affiliated Defendants have transferred and continue to transfer the ill-gotten profits from the Yeoman's transaction amongst themselves.

158. Plaintiffs and The Association should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Association in the form of monetary restitution paid by the Affiliated Defendants.

FOR A SIXTH CAUSE OF ACTION

(Promissory Estoppel or Declaration by Individual Plaintiffs & Class as to Defendant LL)

159. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

160. The original developers promised the Plaintiffs, their predecessors, and other similarly situated that Mount Vintage would be developed as a first-class, upscale, luxury community, second to none, a true utopia, among other promises, with optional, first-class amenities and architecturally significant residential dwellings, with impeccable maintenance.

161. Specifically, the original developers promised in the various marketing materials:

One of our nation's most premier luxury...master planned...World-class community; Mount Vintage truly is one of our Nation's crowning jewels; Known for its refined luxury and amenities; southern charm and elegant sophistication; carefully planned residential community that rivals the best in America; signature Mount Vintage has enlisted legendary designers for the superior craftsmanship you see throughout the community; Some of the area's finest builders will provide you a delightful choice of well-thought-out and attractive home designs; neighborhood[s]; Gracefully appointed homes showcasing traditional architectural styles; exquisite homes and grounds; experience a world of unequalled amenities; amazing offering of amenities; unsurpassed

Plaintiffs' Second Amended Complaint

amenities; Exceptional amenities; superb amenities; World-class amenities; our facilities provide everything horse lovers and their horses require; Fully equipped equestrian center; full boarding facilities and lessons; many riding trails; world class... championship golf course; highly experienced maintenance staff; extreme attention to detail; so meticulously maintained that not a single blade of grass appears out of place; finest lifestyle amenities imaginable; the finest lifestyle amenities man can provide; the very best of luxury living.

162. Plaintiffs relied on these and other promises in acquiring their lots and building their residences. The original developers expected and foresaw Plaintiffs' reliance.

163. By accepting the benefits of the alleged assignment of developer rights, the defendant successor developer(s) bear the burden of the obligations of its predecessors.

164. The common law provides that to qualify as a Successor Developer, an assignee of declarant rights must substantially honor the development plan put in place by the original developer.

165. Concomitantly, the common law provides that an assignee of developer rights who/which does not honor the development plan and obligations is not entitled to Successor Developer status.

166. Plaintiffs are entitled to an order of this Court requiring Defendant LL to specifically perform the development plan, and to an award of costs, damages, consequential and special damages, and attorneys' fees.

167. Alternatively, Plaintiffs seek a ruling that the Defendant LL, having not acted as a proper successor developer, and having breached the developer obligations, was not and is no longer entitled to exercise developer privileges at Mount Vintage, and an award of judgment for all prior unpaid dues and all other damages set forth herein.

FOR A SEVENTH CAUSE OF ACTION
(Accounting and Temporary and Permanent Injunction By All Plaintiffs as to All Defendants)

Plaintiffs' Second Amended Complaint

168. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

169. Individual Plaintiffs and Plaintiff Class are entitled to and seek an accounting of all The Association's financial transactions since Defendant LL took control, generally and with the Defendants.

170. The Association is entitled to and seeks an accounting of all The Association's financial transactions with the Defendants since Defendant LL took control and the Defendants financial transactions relating to Mount Vintage that The Association is not a party to but maybe affected by.

171. The foregoing allegations evidence that the Plaintiffs are suffering irreparable harm, and an injunction is necessary to protect their rights and interests, both temporarily and as part of the full adjudication and resolution of the within matters. The foregoing detailed allegations evidence a likelihood of success on the merits; and further evidences that there is an inadequate remedy at law for some of the wrongs complained of herein. The likelihood of success on the merits is enhanced by the shifting of the burden of proof as to the self-dealing described in detail herein.

172. Plaintiffs are entitled to the issuance of a temporary and permanent injunction enjoining the Defendants from treating The Association as a subsidiary and from having any financial transactions with The Association that are not approved by an independent majority of the Homeowners, after full advanced disclosure, and the Court, pending resolution of this suit and the transfer of control to the Homeowners.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy By Individual Plaintiffs and Plaintiff Class as to Affiliated Defendants)

Plaintiffs' Second Amended Complaint

173. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

174. Defendants have conspired and acted in concert as described herein to benefit themselves at the expense of and with damage to the Plaintiffs.

175. The Defendants actions have proximately caused the Plaintiffs special damages which are unique to this very unique and abusive situation.

176. The special damages include, but are not limited to, the non-economic damages that Plaintiffs have suffered by having to endure this conduct in their retirement home and community, and amongst their neighbors, the loss of use and enjoyment Plaintiffs have suffered, and the loss of the planned collective control of their residential community.

177. Plaintiffs' special damages also include the stigma that the neighborhood (and therefore its members) has and is suffering as a result of the above described conduct and having to use litigation to correct it, and all its attendant consequences.

178. Plaintiffs are entitled to an award of actual, special and punitive damages from Defendants.

WHEREFORE, Plaintiffs pray for a judgment of this Court for themselves, The Association, and the Homeowner Class, as follows:

1. That the foregoing class of Homeowners be certified; that two (2) or more of the individual plaintiffs be constituted as the class representatives in this matter and that the below counsel be constituted as class counsel;
2. Judgment in favor of The Association against Defendants for its actual, consequential, statutory, and punitive damages;
3. Judgment in favor of the individual Plaintiffs and Plaintiff Class against Defendants for their actual, consequential, special, statutory, and punitive damages;
4. Judgment in favor of the Individual Plaintiffs and Plaintiff Class against Association for assessments paid by Plaintiffs recovered against the Defendants;
5. An accounting by all Defendants for all Plaintiffs;

Plaintiffs' Second Amended Complaint

6. Reformation, specific performance, declaratory, and injunctive relief;
7. An award of attorneys' fees, costs, and prejudgment interest; and
8. Jury trial demanded.

JUSTIN O'TOOLE LUCEY, P.A.

By: /s/Anna S. McCann
Justin O'Toole Lucey
Anna McCann
415 Mill Street
Mount Pleasant, SC 29465-0806
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September 11, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	BUSINESS COURT CASE,
FERRARO, EDWARD J. PRZYBYL,	)	ASSIGNED TO:
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	
THOMAS BOWES, CONNIE BOWES,	)	THE HONORABLE R. LAWTON
MOATAZ ALASADI, VIRGINIA	)	MCINTOSH
KIRKWOOD, BOB KIRKWOOD, PAUL	)	
VICHROSKI, NYDZA VICHROSKI, JAMES	)	THIRD AMENDED SUMMONS
MONTELLESE, ROXANN MONTELLESE,	)	(Negligent Development)
Individually and Derivatively on Behalf of the	)	
Mount Vintage Homeowners Association,	)	(Jury Trial Demanded)
Plaintiffs,	)	
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL	)	
ISLAND INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT	)	
VINTAGE PLANTATION HOMEOWNERS	)	
ASSOCIATION, INC. A/K/A MOUNT	)	
VINTAGE HOMEOWNERS ASSOCIATION,	)	
INC.,	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-entitled Action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their offices located at 415 Mill Street, Mt. Pleasant, South Carolina 29464, within thirty (30) days after the date of such service, exclusive of the day of service. If you fail to answer the Complaint within the above-described time, judgment by default will be rendered against you for the relief demanded in the Complaint.

-SIGNATURES ON FOLLOWING PAGE-

Pls' Third Amended Summons & Complaint

/s/Anna S. McCann
Justin O' Toole Lucey
Anna McCann
JUSTIN O'TOOLE LUCEY, PA
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Attorneys for Plaintiffs

September 4, 2024
Mount Pleasant, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	CASE NO. 2021-CP-19-00050
	)	
ELIZABETH M. FERRARO, JAMES T.	)	
FERRARO, EDWARD J. PRZYBYL,	)	
MARCELLA GLEIE, JOHN E. GLEIE, JR.,	)	THIRD AMENDED COMPLAINT
THOMAS BOWES, CONNIE BOWES,	)	(Negligent Development)
MOATAZ ALASADI, VIRGINIA KIRKWOOD,	)	
BOB KIRKWOOD, PAUL VICHROSKI, NYDZA	)	(Jury Trial Demanded)
VICHROSKI, JAMES MONTELLESE,	)	
ROXANN MONTELLESE, Individually,	)	
Derivatively, and on Behalf of all the Mount	)	
Vintage Homeowners Association Members,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
LL OF SC, LLC, RAIFORD TOPSAIL ISLAND	)	
INVESTMENTS, LLC, T R SALES	)	
PLANTATION, LLC, AND MOUNT VINTAGE	)	
HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Defendants.	)	

The Plaintiffs, above named, individually, and derivatively, on behalf of the Mount Vintage Homeowners Association, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Plaintiffs are residents of the neighborhood and development known as Mount Vintage (hereinafter referred to as “Mount Vintage”).

2. Plaintiffs Ferraro’s residence is located at 106 Captain Johnsons Drive, North Augusta, South Carolina, 29860, and is also described as Lot 0-48 on a plat of Mount Vintage by Newby-Proctor and Associates dated August 21, 2006.

3. Plaintiff Przybyl’s residence is located at 255 Homeward Bound Drive, North Augusta, South Carolina, 29860, and is also described as Lot D-14 on a plat of Mount Vintage by

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Newby-Proctor and Associates dated September 6, 2000.

4. Plaintiffs Gleie's residence is located at 527 Schoolhouse Lane, North Augusta, South Carolina, 29860, and is also described as Lot 0-18 on a plat of Mount Vintage by Newby-Proctor and Associates dated April 17, 2007.

5. Plaintiffs Bowes' residence is located at 99 Whitney Court, North Augusta, South Carolina, 29860 and is also described as Lot A-21 on a plat of Mount Vintage by Newby-Proctor and Associates dated August 21, 2015.

6. Plaintiff Alasadi's residence is located in the Shaw Estates area of Mount Vintage at 15 Ballentine Court, North Augusta, South Carolina, 29860 and is also described as Lot S-44 on a plat of Mount Vintage by Newby-Proctor and Associates dated July 19, 2018.

7. Plaintiffs Kirkwood's residence is located at 108 Whitney Court, North Augusta, South Carolina, 29860, and is also described as Lot A-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 22, 1998.

8. Plaintiffs Vichroski's residence is located at 35 Independent Hill Lane, North Augusta, South Carolina, 29860 and is also described as Lot R-35 on a plat of Mount Vintage by Newby-Proctor and Associates dated September 26, 2000.

9. Plaintiffs Montellese's residence is located at 1036 Longstreet Place, North Augusta, South Carolina, 29860 and is also described as Lot H-26 on a plat of Mount Vintage by Newby-Proctor and Associates dated January 14, 1999.

10. Defendant LL of SC, LLC ("LL"), is a limited liability company formed under the laws of South Carolina; LL also owns lots in the Mount Vintage subdivision.

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11. Defendant Raiford Topsail Island Investments, LLC (“Topsail”), is a limited liability company formed under the laws of South Carolina; Topsail also owns lots in the Mount Vintage subdivision.

12. Defendant T R Sales Plantation, LLC (“T R Sales”), is a limited liability company formed under the laws of South Carolina.

13. J. Wayne Raiford (“Raiford”) owns (at least in part), manages, controls and acts on behalf of Defendants LL, Topsail, and T R Sales.

14. Leigh Ann Keels (“Keels”) is the daughter of Raiford and a non-resident of Mount Vintage, a former member of The Association’s Board of Directors, a current officer of The Association, and a part owner or part beneficial owner of LL, Topsail, and T R Sales.

15. T R Sales is the management entity which employs Raiford and Keels and, through Raiford and Keels, manages and controls Defendants LL and The Association. During the last nine or so years, Raiford has been solely employed by T R Sales; and Keels has been solely employed by T R Sales for all activities relating to this Complaint.

16. Defendants T R Sales, LL, and Topsail have acted in concert in the below described matters.

17. Defendant Mount Vintage Homeowners Association, Inc. f/k/a Mount Vintage Plantation Homeowners Association, Inc. (hereinafter “The Association”), is a mutual benefit, non-profit corporation formed under the laws of South Carolina, and is an interested party to the within matters. No recovery is sought against The Association.

18. Defendant LL appointed Raiford to the Board of Directors of The Association, and Raiford acts as its Chairman and President.

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19. Defendants LL and/or T R Sales has, in turn, permitted or appointed all other members of the Board of Directors since late 2013.

20. Hereinafter "Defendants" refers to one or more of LL, Topsail, and T R Sales. Only when "Defendants" is modified to "All Defendants" does the reference include The Association.

21. By virtue of their property ownership, as well as The Association's Articles of Incorporation, The Association's Covenants ("Covenants") and Bylaws, as amended from time to time (hereinafter "Governing Documents"), and the South Carolina Non-Profit Corporation Act, S.C. Code §§ 33-31-101, *et seq.* (hereinafter the "SC NPC Act"), the Plaintiffs are members of The Association and have been members at all times relevant herein.

22. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of The Association and its members, the other property owners in Mount Vintage, because The Association has failed to protect and enforce the rights of The Association and its members with respect to the matters alleged herein.

(Background; Formation of Association; Governing Documents)

23. The development of Mount Vintage, as a residential community, commenced in approximately 1995.

24. The Association was incorporated as a mutual benefit, non-profit corporation.

25. In its Articles of Incorporation, filed April 3, 2000, The Association elected to have "members," which election is required by the SC NPC Act §§ 33-31-101, *et seq.*

26. The Articles of Incorporation also specify that The Association will have two (2) "classes of members," whose respective rights and privileges are spelled out in The Association's Declaration of Restrictive Covenants and Bylaws.

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27. By virtue of its election to have members, The Association is entitled to “impose dues, assessments, and admission and transfer fees upon its members[.]” (SC NPC Act, § 33-31-302 (15)). The Association has continually exercised this power granted by and enumerated in the SC NPC Act.

28. The Governing Documents have been amended numerous times since the filing of the Articles of Incorporation.

29. On September 3, 2013, Defendant LL gained control of Mount Vintage by taking a Deed in Lieu of Foreclosure on the prior developer’s remaining 183-odd lots.

30. The Deed in Lieu transaction purported to include an assignment of developer rights to LL.

31. Thereafter, Defendant LL asserted its position as the alleged “successor developer,” approximately eighteen (18) years after the development was founded.

32. Unbeknownst to The Association or its members, Defendant LL elected to continue the foreclosure process and assign its successful bid to a different entity, Defendant Topsail.

33. Thereafter, Defendant Topsail then received a Court deed to the 185 developer lots and all rights “appurtenant” thereto.

34. Topsails’ receipt of “developer rights” was confirmed by a subsequent deed issued by the foreclosing Court in 2014.

35. According to the Governing Documents, the Developer is allegedly a “Class A” member of The Association by virtue of its claiming “developer rights.”

36. As a Class A member, the Developer has one (1) vote for each residential lot owned by it in Mount Vintage.

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37. As a result of LL's assertion of developer status, neither Raiford nor Defendant Topsail were Class A members of The Association.¹

38. According to the Governing Documents, all property owners in Mount Vintage other than the developer are allegedly "Class B" members of The Association.

39. The Class B members purportedly have voting rights which spring upon either (1) the developer's conveyance of all residential lots and tracts within Mount Vintage, including, but not limited to, additional phases, sections and developments which it may decide to add to the Mount Vintage development, or (2) when the developer, in its sole discretion, decides to convert Class B members to Class A members.

40. By virtue of their membership in The Association, Plaintiffs have been assessed each year of their ownership, including some special assessments.

41. The Covenants provide that the developer Class A member is not obligated by virtue of its property ownership to pay any dues, assessments, fees, or fines.

(Perpetual and Complete Developer Control)

42. The Governing Documents give the developer, as the sole Class A member, complete control and authority over the Governing Documents, the Board, and The Association.

43. Defendant LL has maintained complete control over all Mount Vintage matters, including, but not limited to, amenities and lot acquisitions, dues and lien releases, the architectural committee, and assessments.

44. The Board's voting rights (and those of all committees) are illusory as all Board members serve at the discretion of Defendant LL; and, Keels, Raiford's daughter, handles finances, and for all practical purposes, runs The Association's day-to-day matters. The Bylaws, for

¹ Nor is Keels a member of The Association.

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example, purport to give the developer the unilateral right to amend any aspect of the Bylaws without vote by the Class B Members, even if said amendment affects the rights, privileges, preferences, restrictions, or conditions of Class B members as to voting, dissolution, redemption, or transfer of membership in a manner different than such amendment would affect another class of members, *i.e.*, Class A members.

45. The Covenants, for example, purports to give the developer, as well as its successors, assigns, or heirs, the exclusive right, exercisable at any time and from time to time, to amend or to grant exceptions to the Declarations and to waive, repeal, or vary the Declarations in any one or more respects whenever in the sole and controlled opinion of the Developer such waiver, repeal, or variance shall not be materially detrimental to the general nature in development of Mount Vintage.

46. The perpetual developer control, including the perpetual ability to amend the Bylaws and Declaration of Covenants regardless of the substance of those amendments, runs contrary to the SC NPC Act, including, but not limited to, §§ 33-31-206 and 33-31-1022, and therefore runs afoul of South Carolina law. The foregoing perpetual control additionally violates the common law, industry standards, Restatement(s), model acts, and the reasonable expectations of the purchasing homeowners that the neighborhood will be managed by the homeowners within a reasonable amount of time.

47. Essentially, the Governing Documents permit complete control by the developer, *funded by the homeowner members*, for an unlimited duration.

48. The Governing Documents do not have a definitive or reasonable time limitation on the developer's control, which cannot be thwarted or avoided by the developer, thereby giving the developer potentially unlimited perpetual control of The Association and neighborhood.

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49. The Governing Documents contain other unfair, conflicting, and/or confusing terms.

50. The defects in the Governing Documents are latent and would not be recognized by a lay person, even if they tried to read them.

51. Further, the Governing Documents permit the developer to add (a virtually unlimited amount of) additional parcels to the regime, which also permits perpetual control and dominance by the Developer.

52. The Governing Documents are or are akin to contracts of adhesion; neither The Association nor the Homeowners were ever permitted to negotiate their terms; further, they have been unilaterally amended several times by Defendant LL, again without negotiation or input or recourse or representation.

53. At all times relevant herein, Defendants have had an unfair advantage over the Homeowners by sophistication, dominance, unequal bargaining positions, and positions of authority.

54. The foregoing and many of the other terms contained in the Governing Documents are so one-sided and unfair, that no reasonable person who understood their potential for abuse would have agreed to them; and no reasonable person would avail themselves of the untoward advantages that they create.

55. The Governing Documents are unconscionable and, therefore, unenforceable; and separately, they further violate public policy, South Carolina law, and the previously referenced standards.

*Pls' Third Amended Summons & Complaint***(Futility of Demand)**

56. Plaintiffs' demand upon The Association to rectify the wrongs described herein would be futile and is, therefore, excused under the futility doctrine.

57. Plaintiffs' demand upon The Association would be futile for the following reasons, which are more particularly described in the preceding paragraphs:

- a) The Association's Governing Documents (as amended) give "Developer, LL of SC, LLC, its successors and assigns" absolute control over The Association;
- b) Defendant LL has controlled The Association, whose rights are being adversely affected by Defendants;
- c) Under the Governing Documents, the developer is entitled to modify, amend, repeal, suspend, and otherwise alter the Governing Documents in its sole discretion, at its sole option, and at any time;
- d) Defendant LL has exercised complete control over the Board, including the ability to appoint and remove Directors;
- e) The developer has *de facto* veto power over any and all decisions of the Board, which power Defendant LL has exercised in the past;
- f) Defendants LL and T R Sales, who have been controlling The Association, would never permit the Board of Directors to authorize The Association to bring suit against the Defendants;
- g) The Board of Directors is illusory as the Board serves at the pleasure of LL and T R Sales;
- h) The Board of Directors have failed to successfully intercede in The Association's or Homeowner's behalf; ultimately, the only recourse for a dissenting Board member is resignation, which has occurred regularly; and
- i) Other reasons which will be proven at trial.

58. In further support of futility, as described elsewhere herein, various Homeowners, Plaintiffs included, have requested that Defendants cure many of the wrongs addressed herein, and their efforts have been rebuffed and/or ignored by the Board, which is controlled by Defendant LL.

59. For example, one or more Plaintiffs have challenged the Board's failure to provide accounting information, failure to charge assessments against all lot owners, misuse of reserve funds, self-dealing, inurement, debt forgiveness, conflicts of interest, cronyism, misfeasance, non-

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developer titling of lots, to name a few. All of the Homeowners' inquiries and complaints have been rebuffed. Plaintiffs did not receive the 2019 accounting records from the Defendants for years pending the Defendants adjustment to the books to create a backdated \$300,000.00 note payable to LL that had no basis in law or fact.

60. When direct inquiries were ignored, one or more Plaintiffs complained to the South Carolina Department of Consumer Affairs, who in turn served notice on Defendants and requested a response. The Defendants refused to budge in their response to the Homeowners through the Department and the Department was powerless to do anything about it.

(Operation of Association for the Benefit of Defendants)

61. Defendants have embarked upon a pattern and practice of using past due assessments owed to The Association to facilitate the sale of lots by the then current owners, and the acquisition of the lots by the Defendants, at below market values, without the Defendants compensating The Association for its lost dues, opportunity, and/or value.

62. Defendants have embarked upon a pattern and practice of bidding for and acquiring Mount Vintage lots at tax sales, thereafter, suing The Association they control to eliminate past due Association dues and assessment, defaulting The Association in the suits, and failing to advise of or assist with The Association's redemption or other rights, and/or simply causing the HOA to write them off, all without the Defendants compensating The Association for its lost dues, liens, opportunity, and/or value.

63. Defendants have subsequently embarked upon a pattern and practice of lot acquisition, whereby, they avoid/bypass public sales, using unrecorded Association liens as leverage to negotiate the cheap acquisition of Mount Vintage lots from remote owners, and then waiving The Association dues owed once the lots are received, with no compensation to The

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Association, all without any disclosure to The Association or its members, let alone adequate disclosure.

64. The Board has failed to intercede, has failed to protect The Association or its members, or to achieve or arrange for adequate management of The Association and its affairs. In essence, the Defendants treat The Association as its pawn for its own financial transactions and inurement.

65. By virtue of this pattern and practice, while they delayed commencing development efforts and the completion of the roads, the Defendants have amassed an additional 100 or so lots in their own names and/or the names of their affiliates at below market consideration while decimating The Association's finances.

66. Defendant LL and T R Sales have wrongfully treated the owners of some lots as Class A members (including one or more defendants and Raiford), waiving dues, when only one entity was entitled to that status, and thereby have caused additional financial detriment to The Association, the neighborhood, and the Homeowners.

67. Similarly, Defendant LL has permitted favored third parties and relatives to temporarily consolidate lots to reduce the dues owed to The Association.

(Amenities)

68. The original developers sold Mount Vintage and its lots to the Homeowners and the public as an upscale, first-class, luxury community with high standards for design of neighborhood and residences, maintenance, and amenities.

69. The upscale amenities promised to be available included the below Town Center, Golf Course and Club House, Equestrian facilities, and 24-hour security.

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70. An attractive selling point for Mount Vintage was that its residents' use and enjoyment of the amenities would be optional, as would the associated financial obligation. Neither The Association nor the Homeowners would be required to provide financial support for the amenities that they did not choose to enjoy.

71. Mount Vintage's Athletic Club and Town Center ("Town Center") is comprised of tennis courts, fitness center, library, kitchen, small and large meeting and recreational spaces, and a pool complex. The Golf Course is a twenty-seven-hole course.

72. The Town Center and the Golf Club/Course ("Golf Amenity") were built/developed circa 2002 by the original developers; the Equestrian facilities were developed thereafter.

73. Following the recession which occurred circa 2008-09, the original developers fell on hard times and the amenities were lost to foreclosure or other purchasers.

74. In 2010, the Town Center and Golf Amenity were purchased by Plantation Alliance LLC, a company owned by several Mount Vintage residents, to prevent the properties from being lost to bank foreclosure.

75. From 2013 to 2024, Defendants have done little to fulfill the original developers' promise of providing multiple, optional, first-class, upscale amenities.

76. In 2013, Defendants' marketing consultant advised them that they would not be able to sell the Mount Vintage lots without securing the amenities.

77. In July of 2014, one or more defendants made a \$1.5 million offer on the note and mortgage on the Golf Course, only to be substantially outbid by Apex Bank.

78. Circa 2014, while Defendant LL was the purported sole Class A member, Apex Bank foreclosed on the Town Center and Golf Amenity.

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79. Circa 2015-16, Defendant LL embarked on persuading and arranging for The Association and its members to acquire the Town Center and then the Golf Amenity (“Amenity Package”) at The Association’s and homeowners’ expense so that it could sell its lots at a profit.

80. In 2016, the value of the Amenity Package was \$1,800,000.00 or less; the developer-controlled Association nonetheless paid approximately \$3,800,000.00 to acquire the amenities (not including refurbishment costs). As the developer was not paying dues, this acquisition occurred at The Association’s and homeowners’ expense.

81. This was done with numerous representations by the Defendants as to the wisdom and affordability of acquisitions; that the acquisition was necessary to maintain or bolster members’ property values; that the acquisitions would be self-sustaining; and that The Association and its members would *not* be responsible for any operating shortfalls.

82. Defendants failed to disclose that they were causing The Association to complete the acquisitions to increase the value of the Defendants’ lots.

83. Defendants failed to disclose to the membership that they were causing The Association to pay over twice the Amenity Package’s fair market value.

84. Defendants failed to disclose that, in obligation or in all fairness, Defendant LL as the purported “developer” should have funded the acquisition or contributed far more to the acquisition.

85. The acquisition and operation of the Amenities were further accompanied by the wrongful and negligent acts further described below.

86. The performance of the Amenities has been less than optimal; and contrary to representations made by the LL-controlled Board, and the Board has since passed member

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assessments to cause The Association and its members to fund the operating deficits of the Amenities.

87. No arrangements were made for The Association to meet the balloon payments due on both acquisitions, or to anticipate increased payments under the adjustable-rate mortgage, or to set aside reserves for repairs and obsolescence.

88. The equestrian facilities do not currently exist, and Defendants have made no attempt to make good on that developer promise.

89. Defendants have failed to make good on the original developer's promise of multiple, optional, first-class amenities.

(Other and Cumulative Matters)

90. Defendants have failed to adequately advance the development and funding of The Association and Mount Vintage, thereby harming The Association and the Homeowners' enjoyment, expenses, and property values.

91. Defendants have failed to deliver and maintain a first-class, upscale, luxury development in many ways.

92. Defendants have failed to uphold the first-class standards required of residences, permitting tract homes and slab-on-grade homes into the neighborhood which have devalued the neighborhood and each home in the neighborhood.

93. Defendants have failed and refused to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage.

94. Defendants and the Board's foregoing activities, inadequate disclosures, amateur accounting, and lack of transparency have caused rifts in Mount Vintage.

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95. Defendants and their predecessor's failure, after 25 years, to transfer control of The Association and Mount Vintage neighborhood to the Homeowners is a violation of the public policy against perpetual developer control – both as described and separately, with due acknowledgement that there is no end in sight and under the current pace of development, there could well be another 25 to 50 years of developer control or more.

96. Defendant T R Sales and LL have practiced nepotism, cronyism, and favoritism in the operation of The Association and Neighborhood. They have placed unqualified family member(s) in important controlling positions; allowed extended family members to use the Amenities with false addresses; and acted in an arbitrary and capricious manner in The Association's dealings, *e.g.*, negotiating behind the back of The Association's board and allowing some investors to temporarily merge their lot inventories to dodge Association dues and assessments pending resale of the lots and they have permitted Defendant Topsail and Raiford to wrongfully dodge dues and assessments.

97. The foregoing has damaged The Association and the Homeowners and has caused a public stigma that has further damaged both.

(Additional Statement of Liability and Negligent Acts)

98. It is axiomatic, through law and equity, that by claiming "Successor Developer" status, and accepting the assignment of developer benefits and rights, and/or by availing itself of and exercising such rights, Defendants obligated themselves to properly perform the developer obligations and promises that gave rise to the presence of developer rights and benefits.

99. As the controlling entity, officer, and board member of a planned community neighborhood and its owner's association, Defendants T R Sales and LL owed The Association,

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the Homeowners, and the ensuing neighborhood fiduciary and fiduciary-like duties, and the duty to use due care in the development of the neighborhood and the administration of The Association.

100. Because of Defendants' complete control, Homeowners have had no choice but to repose their complete trust and reliance in Defendants resulting in the imposition of a fiduciary duty upon Defendants.

101. Defendant Topsail owed The Association and its members a duty of due care, a duty not to profit by their codefendants' misfeasance, and, when operating in concert with Defendant LL, a duty of good faith and fair dealing.

102. One or more of the Defendants have been negligent as follows:

- a) In failing to act to prevent the amenities from being foreclosed upon by Apex Bank under its tenure as the alleged developer;
- b) In failing to pay for the acquisition of the amenities or for the Developer's fair share of the acquisition of the Amenities;
- c) In their use of insider knowledge of Mount Vintage affairs to benefit themselves in lieu of The Association or its members;
- d) In their use of Association opportunities, rights, receivables, liens, and legal proceedings to acquire property for the benefit of the Defendants;
- e) In failing to pay or require payment of Association dues and assessments on lots that are not properly considered developer lots;
- f) In failing to arrange for proper funding of The Association and neighborhood while under their control;
- g) In failing to adequately develop Mount Vintage to create an adequate membership base to fund the neighborhood's success;
- h) In detracting from the membership base;
- i) In failing to timely transition control of The Association to the Homeowners;
- j) In failing to avoid perpetual developer control of Mount Vintage;
- k) In failing to share Association records and documents with The Association's members;
- l) In failing to create, maintain, publish, and share accurate financial records of The Association's activities;
- m) In failing to disclose and/or accurately disclose their financial transactions with The Association and The Association's interests;
- n) In practicing nepotism, favoritism, and cronyism in the operation of Mount Vintage at the expense of The Association and Homeowners;
- o) In moving The Association operations and records out of The Association property to private property;

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- p) In failing and refusing to install or complete the cable, phone, and other utility infrastructure in various parts of Mount Vintage;
- q) In failing to afford adequate rights to the Homeowners in the operation of The Association;
- r) In the negligent development, marketing, and operation of Mount Vintage and its Association in other ways that will be shown through discovery and at trial;
- s) In the acquisition and operation of the Amenities as further described below;
- t) In causing a stigma that hurts The Association and the Homeowners' property values;
- u) By distributing funds from a non-profit entity in violation of S.C. Code § 33-31-1301-2;
- v) By accepting, agreeing to, and enforcing unconscionable Governing Documents;
- w) By violating the SC NPC Act in failing to accord voting rights to Class B members on important or discriminatory votes delineated by the Act; and,
- x) By failing to enforce the Developer's obligations set forth in the Essex/Stamley Martin contract(s) to fund deficits and to transfer common areas free and clear.

103. One or more of the Defendants been negligent with regards to the *acquisition* of the *Golf Amenity*, as follows:

- a) Proposing and arranging for the Homeowners to pay two and a half (2.5) times the Golf Amenity's market value to acquire the Golf Amenity;
- b) Failing to disclose to the Homeowners or warn the Homeowners that the Defendants were arranging for them to pay two-hundred fifty percent (250%) of the Golf Amenity's market value for the ownership of the Amenity;
- c) Utilizing the borrowing, funding, and assessment capability of The Association to buy an Amenity that would increase the value of the Defendants' lots, without adequate disclosure or just compensation;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for The Association to have default liability on the Amenity Note;
- f) Arranging for a balloon payment without adequate protection or an exit plan;
- g) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment without protection;
- h) Arranging for and advising the Homeowners to support and enter a relationship with an unproven, underfunded golf course operator, without adequate warning or disclosure;
- i) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- j) Failing to disclose to homeowners the developer's and Board's conflict of interest in the acquisition; and,
- k) Such other ways as shall be shown in the discovery and trial of this matter.

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104. One or more of the Defendants have been negligent in the following particulars with regards to the *operation* of the *Golf Amenity*:

- a) Arranging for and relying upon a short-term lease with an unproven, underfunded operator;
- b) Failing to enforce the terms of the lease;
- c) Arranging for the Homeowners to be responsible for the Amenity operating losses;
- d) Failing to exercise proper supervision to prevent mismanagement of the course;
- e) Assessing the Homeowners to fund the operating losses; and,
- f) Such other ways as shall be shown in the discovery and trial of this matter.

105. One or more of the Defendants have been negligent in the following particulars, with regards to the acquisition *and* operation of the *Town Center Amenity*:

- a) Utilizing the borrowing, funding, and assessment capability of The Association to buy an amenity that would increase the value of the Defendants' lots, without adequate disclosure or just compensation;
- b) Recommending to the Homeowners that they pay a price for the Amenity that failed to account for the deferred maintenance on the facility;
- c) Failing to warn the Homeowners that they were overpaying for the Amenity;
- d) Representing to the Homeowners that their Association would have limited or no liability on the Amenity Note;
- e) Arranging for a balloon payment without adequate protection or an exit plan;
- f) Failing to disclose to the Homeowners the risks inherent in agreeing to deficiency liability and a short-term balloon payment;
- g) Representing to the Homeowners that they would not be responsible for any funding shortfalls or losses incurred in the operation of the Amenity;
- h) Arranging for The Association to have default liability on the Amenity Note;
- i) Arranging for the Homeowners to be responsible for the operating losses;
- j) Increasing the assessments on the Homeowners to fund the operating losses;
- k) Failing to disclose to Homeowners Defendants LL's' and Board's conflict of interest in the acquisition and in the assessment of Homeowners to fund the operating losses; and,
- l) Such other ways as shall be shown in the discovery and trial of this matter.

106. As this suit concerns rights allegedly derived from sealed instruments, a twenty (20) year statute of limitations applies to Plaintiffs' claims.

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107. Defendants are barred or estopped from relying on any statutes of limitation or repose by virtue of their own misfeasance and concealment of misfeasance and rights relating thereto.

(Damages)

108. Defendants have proximately damaged Plaintiffs as follows:

- a) The Defendants have proximately damaged The Association by the above-described actions and by decreasing The Association's funding and funding base and, therefore, operational capacity, by failing to pay assessments, causing The Association to pass assessments to fund Amenity deficits, by converting Association opportunities to their own benefit, by failing to fund reserves and deferred maintenance, and by saddling The Association with staggering debt and amenity maintenance cost;
- b) Defendants have proximately damaged the individual Plaintiffs and vis a vis increased and special assessments and by its improper operation of The Association and the neighborhood, which has resulted in loss of appreciated value in their homes; and loss of collective control of their neighborhood; and the likelihood of staggering future assessments to support The Association's staggering debt and maintenance costs; and
- c) The cumulative actual damages to The Association are expected to exceed \$10,000,000.

109. All of the within-described advantages unilaterally taken by Defendants have been directly or indirectly at the expense of and damage to the Plaintiffs.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS AND REPOSE**

110. Defendants are estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, Defendants should have known that they had violated the Plaintiffs rights as described herein.

111. Defendants had a duty to inform Plaintiffs of the violations (including conflicts) described herein, each of which they should have known. Notwithstanding their duty, Defendants never disclosed the violations.

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112. As Defendants had a duty to disclose, the non-disclosure constituted concealment.

113. Despite exercising reasonable diligence, Plaintiffs could not have discovered the violations at the time they originally occurred.

114. Given Defendants' failure to disclose this non-public information about the violations – information over which they had exclusive control – and because Plaintiffs could not reasonably have known of the violations, Defendants are barred and estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

115. Defendants are further estopped from relying upon any statute of limitations or repose as they have repeatedly represented to Plaintiffs that they knew what they were doing and that they were acting in the best interests of The Association.

116. The equitable tolling doctrine further precludes Defendants from relying on a statute of limitations defense.

117. The below causes of action are brought derivatively by Plaintiffs on behalf of The Association against Defendants unless otherwise indicated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

118. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

119. Plaintiffs have been damaged as a direct and proximate result of the previously-described negligence, carelessness, and recklessness of the Defendants in an amount to be determined by the trier of fact.

120. The foregoing acts and omissions were committed with gross negligence, willfulness, wantonness, and/or reckless disregard for the rights of others, and/or constituted negligence *per se*, and Plaintiffs are entitled to an award of actual and punitive damages against

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the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

121. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

122. One or more Defendants owed fiduciary and fiduciary like duties to the Plaintiffs by virtue of their capacity as the steward of the Mount Vintage community and amenities, and in their capacity in controlling The Association. Defendants owed Homeowners fiduciary and fiduciary like duties by virtue of the Homeowners forced respite of trust and confidences.

123. The fiduciary relationship required Defendants to make full disclosure to The Association and Homeowners of all material facts relevant to all transactions between the parties.

124. The fiduciary relationship required that Defendants treat The Association and Homeowners with good faith and fair dealing.

125. The fiduciary relationship shifts the burden of proof as to all transactions and dealings between the Defendants and The Association to Defendants to prove the arms-length nature of each transaction or each transaction becomes voidable and compensable at The Association's and Homeowners' option.

126. One or more Defendants breached the fiduciary relationship by failing to honor their trust; by using their insider knowledge and control to benefit itself and related entities/parties at the expense of the Plaintiffs; by failing to make full or adequate disclosure; by failing to disclose their breach of duty; by failing to enforce the Homeowner Association's rights; by self-dealing; by breaching their duty of loyalty; and by the other acts and omissions described herein.

127. Defendants' breach of fiduciary duty has proximately damaged Plaintiffs in an amount to be determined by the trier of fact.

Pls' Third Amended Summons & Complaint

128. As said failures were committed with gross negligence, reckless disregard for the rights of others, and/or intentional or malicious conduct, Plaintiffs are entitled to an award of punitive damages against Defendant LL.

FOR A THIRD CAUSE OF ACTION
(S.C. Unfair Trade Practices Act By Individual Plaintiffs Only ("SCUTPA"))

129. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

130. The Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

131. The Defendants have engaged in planned community development both from time to time in Mount Vintage and in other new communities in this state and region, including Aiken, wherein their acts have been repeated or capable of repetition.

132. The Defendants' above-described activities, reincorporated herein by reference as if set forth at length, constitute unfair and deceptive practices in the conduct of their trade.

133. The Defendants' above-described acts are capable of repetition and adversely affect the public interest.

134. The Defendants knew or should have known that their conduct was in violation of § 39-5-20 of the South Carolina Code.

135. The Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys' fees, and costs.

136. As discovery will show that The Association should be realigned as a Plaintiff, it will be bringing its SCUTPA claim as a direct claim, and not through its derivative Plaintiffs.

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FOR A FOURTH CAUSE OF ACTION
**(Declaratory Action/Reformation by Plaintiffs Individually and
Derivatively Against All Defendants)**

137. Plaintiffs re-allege the allegations contained in the above paragraphs as if fully set forth herein.

138. The unilateral and *de facto* perpetual control provisions and other offensive provisions of The Association's Governing Documents violate:

- a) Public policy;
- b) South Carolina law and/or provisions of the Constitution;
- c) The developer Defendants' fiduciary duties; and,
- d) The standards and references set forth further above.

139. Plaintiffs are entitled to a declaration by this Court that the offensive provisions included within the Governing Documents by the Defendants and their predecessors are void and/or require reformation or severance to eliminate the offensive provisions.

140. Plaintiffs are also entitled to have ambiguous and contradictory provisions in the Governing Documents construed against Defendants, declared void and/or reformed by the Court to reflect the reasonable expectations of the Homeowners Association and Plaintiffs more accurately.

FOR A FIFTH CAUSE OF ACTION
(Unjust Enrichment)

141. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

142. Plaintiffs have conferred the benefits discussed herein on the Defendants.

143. The Defendants have been unjustly enriched at the expense of the Plaintiffs and The Association.

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144. As an example, the Defendants reaped the economic benefits from the Yeoman's lot transaction at the expense of the Association and its Members.

145. Using the above example, the Defendants have transferred and continue to transfer the ill-gotten profits from the Yeoman's transaction amongst themselves.

146. Plaintiffs and The Association should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Association in the form of monetary restitution paid by the Defendants.

FOR A SIXTH CAUSE OF ACTION
(Promissory Estoppel or Declaration by Plaintiffs, Individually and Derivatively)

147. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

148. The original developers promised the Plaintiffs, their predecessors, and other similarly situated that Mount Vintage would be developed as a first-class, upscale, luxury community, second to none, a true utopia, among other promises, with optional, first-class amenities and architecturally significant residential dwellings, with impeccable maintenance.

149. Specifically, the original developers promised in the various marketing materials:

One of our nation's most premier luxury...master planned...World-class community; Mount Vintage truly is one of our Nation's crowning jewels; Known for its refined luxury and amenities; southern charm and elegant sophistication; carefully planned residential community that rivals the best in America; signature Mount Vintage has enlisted legendary designers for the superior craftsmanship you see throughout the community; Some of the area's finest builders will provide you a delightful choice of well-thought-out and attractive home designs; neighborhood[s]; Gracefully appointed homes showcasing traditional architectural styles; exquisite homes and grounds; experience a world of unequalled amenities; amazing offering of amenities; unsurpassed amenities; Exceptional amenities; superb amenities; World-class amenities; our facilities provide everything horse lovers and their horses require; Fully equipped equestrian center; full boarding facilities and lessons; many riding trails; world class... championship golf course;

Pls' Third Amended Summons & Complaint

highly experienced maintenance staff; extreme attention to detail; so meticulously maintained that not a single blade of grass appears out of place; finest lifestyle amenities imaginable; the finest lifestyle amenities man can provide; the very best of luxury living.

150. Plaintiffs relied on these and other promises in acquiring their lots and building their residences. The original developers expected and foresaw Plaintiffs' reliance.

151. By accepting the benefits of the alleged assignment of developer rights, the defendant successor developer(s) bear the burden of the obligations of its predecessors.

152. The common law (and equity) provides that to qualify as a Successor Developer, an assignee of declarant rights must substantially honor the development plan put in place by the original developer.

153. Concomitantly, the common law (and equity) provides that an assignee of developer rights who/which does not honor the development plan and obligations is not entitled to Successor Developer status.

154. Plaintiffs are entitled to an order of this Court requiring Defendants to specifically perform the development plan, and to an award of costs, damages, consequential and special damages, and attorneys' fees.

155. Alternatively, Plaintiffs seek a ruling that the Defendants, having not acted as a proper successor developer, and having breached the developer obligations, was not and is no longer entitled to exercise developer privileges at Mount Vintage, and an award of judgment for all prior unpaid dues and all other damages set forth herein.

FOR A SEVENTH CAUSE OF ACTION
(Temporary and Permanent Injunction as to All Defendants)

156. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

Pls' Third Amended Summons & Complaint

157. The foregoing allegations evidence that the Plaintiffs are suffering irreparable harm, without an adequate remedy at law, and an injunction is necessary to protect their rights and interests, both temporarily and as part of the full adjudication and resolution of the within matters. The foregoing detailed allegations evidence a likelihood of success on the merits; and further evidences that there is an inadequate remedy at law for some of the wrongs complained of herein. The likelihood of success on the merits is enhanced by the shifting of the burden of proof as to the self-dealing described in detail herein.

158. Plaintiffs are entitled to the issuance of a temporary and permanent injunction enjoining the Defendants from treating The Association as a subsidiary and from having any financial transactions with The Association that are not approved by an independent majority of the Homeowners, after full advanced disclosure, and the Court, pending resolution of this suit and the transfer of control to the Homeowners.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy)

159. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

160. Defendants have conspired and acted in concert as described herein to benefit themselves at the expense of and with damage to the Plaintiffs.

161. The Defendants actions have proximately caused the Plaintiffs the above-described damages, including loss of enjoyment continued operating and non-operating deficits.

162. Plaintiffs are entitled to an award of actual, special and punitive damages from Defendants.

WHEREFORE, Plaintiffs pray for a judgment of this Court for themselves, The Association, and the Homeowner Class, as follows:

Pls' Third Amended Summons & Complaint

1. Judgment in favor of The Association against Defendants for its actual, consequential, statutory, and punitive damages;
2. Judgment in favor of the individual Plaintiffs against Defendants for their actual, consequential, special, statutory, and punitive damages;
3. Reformation, specific performance, declaratory, and injunctive relief;
4. An award of attorneys' fees, costs, and prejudgment interest; and
5. Jury trial demanded.

JUSTIN O'TOOLE LUCEY, P.A.

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September 4, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

ELIZABETH M. FERRARO, JAMES T. FERRARO,
 EDWARD J. PRZYBYL, MARCELLA GLEIE, JOHN
 E. GLEIE, JR., THOMAS BOWES, CONNIE BOWES,
 MOATAZ ALASADI, VIRGINIA KIRKWOOD, BOB
 KIRKWOOD, PAUL VICHROSKI, NYDZA
 VICHROSKI, JAMES MONTELLESE, ROXANN
 MONTELLESE, Individually, Derivatively, and on
 Behalf of all the Mount Vintage Homeowners
 Association Members,

Plaintiffs,

vs.

LL OF SC, LLC, RAIFORD TOPSAIL ISLAND
 INVESTMENTS, LLC, TR SALES PLANTATION,
 LLC, AND MOUNT VINTAGE PLANTATION
 HOMEOWNERS ASSOCIATION, INC. A/K/A
 MOUNT VINTAGE HOMEOWNERS ASSOCIATION,
 INC.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
) CASE NO. 2021-CP-19-00050
)

) **BUSINESS COURT CASE,**
) **ASSIGNED TO:**

) **THE HONORABLE R. LAWTON**
) **MCINTOSH**

) **PLAINTIFFS' MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT AS TO**
) **DEVELOPER RIGHTS AND CLASS A**
) **MEMBERSHIP**

PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned counsel, and pursuant to Rule 56, SCRCP, move this Court for an Order granting summary judgment in favor of Plaintiffs as to developer rights and Class A Membership. Specifically, the September 3, 2013 deed in lieu of foreclosure (hereinafter "Deed in Lieu"), granted after the October 23, 2012, Lis pendens (hereinafter "Lis Pendens"), was superseded by the November 11, 2013 Special Referee's Deed (hereinafter "Special Referee's Deed"), and LL of SC, LLC ("LL") is not the developer of Mount Vintage and is not a Class A Member under the Covenants. The current LL appointed and controlled Association Board is a nullity. There are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law.

SUMMARY JUDGMENT STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d

196, 203 (Ct. App. 2008). Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton*, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, “[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* at 198, 659 S.E.2d at 203. “It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). “Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Id.*

ARGUMENT

I. The Lis Pendens Pre-Dates the Deed in Lieu, and Therefore the Special Referee’s Deed Relates Back to the Filing of the Lis Pendens and Takes Precedence Over the Deed in Lieu.

The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct.App.1985); *Wooten v. Seanch*, 187 S.C. 219, 196 S.E. 877 (1938). **“A properly filed lis pendens binds subsequent purchasers or**

encumbrancers to all proceedings evolving from the litigation.” *South Carolina Nat’l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987) (emphasis added). Generally, the filing of a *Lis pendens* places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved. *Shelley Constr.*, 287 S.C. at 24, 336 S.E.2d at 491–492.

Additionally, the South Carolina Code provides that subsequent purchasers shall be bound by all proceeding taken after the filing of the *lis pendens*:

From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and **shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action.** For the purposes of this section, an action shall be deemed to be pending from the time of filing such notice.

S.C. Code Ann. § 15-11-20 (emphasis added). Moreover, it is hornbook law that a later obtained judgment relates back to the filing of the *lis pendens*.

A "*lis pendens*" is a notice of litigation, placed in the real property records, asserting an interest in the property and notifying third parties that ownership of the property is disputed. "*Lis pendens*" is a common-law and statutory doctrine which has the effect of providing constructive notice to the world of an alleged claim of a lien or an interest in property. As *lis pendens* provides constructive notice of litigation, **any judgment later obtained in that litigation relates back to filing of the *lis pendens*.**

51 Am.Jur.2d *Lis Pendens* § 1 (2000) (emphasis added).

Although *lis pendens* has been defined as an "encumbrance" as that term has been traditionally defined, and may be applied to enforce an existing lien, some courts have stated that the doctrine of *lis pendens* does not impress affected property with a lien, or extend or prolong any existing lien, but rather, **binds third parties with notice that any interest they may acquire in property pending litigation will be subject to the outcome of the action.**

Id. § 3 (emphasis added).

Furthermore, the *lis pendens* **“notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject**

to the judgment, without any substantive rights.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (citing 51 Am.Jur.2d *Lis Pendens* § 2 (2000) (emphasis added). After the filing of the lis pendens, any conveyance of the property is now subject to the outcome of the litigation. *In re Shiver*, 598 B.R. 221 (Bankr. D. S.C. 2019); *see also Meliani v. Jade Dunn Loring Metro, LLC*, 286 F. Supp. 2d 741 (E.D. Va. 2003) (“**[O]nce recorded, lis pendens binds subsequent bona fide purchasers of disputed property such that subsequent purchaser, with or without actual notice of lis pendens, takes subject to outcome of pending litigation.**”) (emphasis added).

Here, the below is a chronology of relevant events showing that the Deed in Lieu to LL, granted after the Lis Pendens, was superseded by the Special Referee’s Deed to Raiford Topsail Island Investments, LLC (“RTI”):

1. Oct. 23, 2012: LL files a Lis Pendens (**Ex. A**);
2. Oct. 23, 2012: LL files a Summons & Complaint foreclosing on the real estate (**Ex. B**);
3. Sept. 3, 2013: Deed in Lieu of Foreclosure to LL (**Ex. C**);
4. Nov. 6, 2013: LL voluntary assignment of Foreclosure Bid to RTI (**Ex. D**);
5. Nov. 11, 2013: Filing of the Master’s Report on the Bid by RTI (**Ex. E**);
6. Nov. 11, 2013: Special Referee’s Deed filed in Favor of RTI (**Ex. F**); and
7. July 22, 2014: Corrective Special Referee Deed filed (**Ex. G**).

A. Supersession by the Special Referee’s Deed

The Special Referee’s Deed, executed and filed on November 11, 2013, provides the definitive terms regarding the ownership and development of Mount Vintage because it relates back in time to the filing of the Lis pendens, which was filed on October 23, 2012. The Deed in Lieu, executed on September 3, 2013, post-dates the Lis pendens and cannot alter or supersede

whatever judgment results from the Lis pendens and the related litigation. Under South Carolina law, this properly filed Lis pendens binds all subsequent purchasers or encumbrancers to all proceedings evolving from the litigation. *See Cook, supra*. Here, the culmination of the litigation which evolved from the filing of the Lis pendens is the Special Referee's Deed.

The superseding nature of the 2013 Special Referee's Deed was confirmed when all Defendants, through Raiford, had Defendants' long-time counsel, Mary Guynn, draft, submit, and secure a Corrective Special Referee Deed in 2014. While the Corrective Deed purports to be for the purpose of adding one lot to the legal description, it also expressly adds that the conveyance of developer rights to RTI was part of the original 2013 Special Referee's Deed.¹ There can be no doubt about the meaning or intent of this Order as the Defendants' attorney prepared it, solicited it, and filed it.²

B. Binding Effect of the Lis Pendens and Resulting Special Referee's Deed

The Special Referee's Deed (and the Corrective Special Referee's Deed), as the latest document, governs the rights and responsibilities related to the property. The Deed in Lieu does not impact the current status of the property or the parties' roles as defined in the Special Referee's Deed. This is consistent with the principle that subsequent legal documents and proceedings take precedence over earlier ones.

C. LL's Status

Because the Deed in Lieu of Foreclosure was a nullity, LL is not the "Developer" of Mount Vintage and is not a Class A member under the Covenants. Therefore, all actions taken by LL in the administration of the Homeowners' Association since 2013 are a nullity, and the current Board

¹ The appurtenant rights were originally referred to generally in the Special Referee deed as being granted "with all and singular rights, members, hereditaments and appurtenances to the said premises belonging or in any way incident or pertaining thereto, and all the estate, right title, claim, and interest, whatsoever...".

² See the "Return to" entry on the Corrective Master Deed, and the Guynn testimony which will be supplemented.

of Directors is not properly nominated, elected, or appointed and is non-existent. RTI has obviously abandoned its developer rights by allowing LL to conduct this charade. As there is no Developer, the Class B members are automatically elevated to Class A membership and a homeowner elected Board of Directors should be recognized by this Court before trial.

These and other grounds will be supported by the pleadings, discovery, affidavits, expert reports, memorandum of law, and oral argument at the hearing on this matter.

CONCLUSION

Since the Special Referee's Deed (original and corrected) supersedes the Deed in Lieu of Foreclosure and defines the present ownership rights, membership, and privileges, LL's purported status as the Developer/Class A Member must be vacated as there are no genuine issues of material fact. RTI's failure to assume Developer status after eleven years clearly constitutes abandonment; and the absence of a Class A member for eleven years should act to automatically elevate the Class B members to Class A status and permit a homeowner Board of Directors to replace the current null Board prior to trial. Plaintiff is entitled to judgment on these preliminary issues as a matter of law.

JUSTIN O'TOOLE LUCEY, P.A.

By: /s/ Anna McCann
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August 13, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF EDGEFIELD) ELEVENTH JUDICIAL CIRCUIT

ELIZABETH M. FERRARO; JAMES) C.A. No.: 2021-CP-19-00050
 T. FERRARO; EDWARD J.)
 PRZYBYL; MARCELLA GLEIE;)
 JOHN E. GLEIE, JR.; THOMAS)
 BOWES; CONNIE BOWES;)
 MOATAZ ALASADI; VIRGINIA)
 KIRKWOOD; BOB KIRKWOOD;)
 PAUL VICHROSKI; NYDZA)
 VICHROSKI; JAMES)
 MONTELLESE; and ROXANN)
 MONTELLESE, *Individually,*)
Derivatively, and on Behalf of all the)
Mount Vintage Homeowners Association)
Members,)
)
)
 Plaintiffs,)
)
)

vs.)

LL OF SC, LLC; RAIFORD TOPSAIL)
 ISLAND INVESTMENTS, LLC;)
 MOUNT VINTAGE PLANTATION)
 HOMEOWNERS ASSOCIATION,)
 INC. a/k/a MOUNT VINTAGE)
 HOMEOWNERS ASSOCIATION,)
 INC.; and TR SALES PLANTATION,)
 LLC,)
)
)
 Defendants.)

MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO DEVELOPER
RIGHTS AND CLASS A MEMBERSHIP

Defendants LL of SC, LLC and Raiford Topsail Island Investments, LLC respectfully submit this memorandum in opposition to Plaintiffs' motion for partial summary judgment as to developer rights and Class A membership. In short, Plaintiffs' argument is:

1. That LL of SC, LLC does not have developer rights in Mount Vintage, and does not hold the Class A membership interest in the community;

2. That Raiford Topsail Island Investments, LLC is the holder of developer rights, and is the holder of the Class A membership interest;
3. That this is so, allegedly, because the subsequent assignment of a successful bid at a mortgage foreclosure nullified LL of SC's deed in lieu, through which it acquired its developer rights and Class A membership interest;
4. That RTI has abdicated its rightful status as developer in Mount Vintage; and,
5. That, because of such abdication, the Court should judicially dissolve the existing Board of Directors and install its own Board.

Even if the Court could take such drastic action, it is not warranted. Plaintiffs' analysis of the pertinent facts is deeply misguided.

I. LL of SC's deed in lieu was not superseded by the Special Referee's deeds.

In 2010, LL of SC loaned the immediately preceding developer of Mount Vintage \$2.5 million, taking back a mortgage against the entirety of that party's interest in Mount Vintage as security for payment. (See 2010 Mortg. Excerpt, attached hereto as **Attachment 1.**)

By the latter months of 2012, the debtor-developer was in default of its note to LL of SC. Accordingly, during October 2012, LL of SC caused its legal counsel to commence foreclosure proceedings against the mortgage. (See Pls.' Mot. Partial Summ. Judg., Exhibits A & B.) Specifically, on October 23, 2012, a foreclosure action was commenced against the debtor-developer, and a lis pendens was recorded in connection therewith.

On September 3, 2013, a deed in lieu of foreclosure was recorded in the Office of the Register of Deeds for Edgefield County, transferring the entirety of the debtor-developer's interest in Mount Vintage to LL of SC in satisfaction of the debt. (See Pls.' Mot. Partial Summ. Judg., Exhibit C.)

A little more than 2 months later, on November 4, 2013, and in connection with the foreclosure proceedings against the debtor-developer that were still under way, LL of SC attended a foreclosure sale and “was the high bidder” of the debtor-developer’s remaining interest in Mount Vintage “with the successful bid amount of \$100,000.00.” (See Pls.’ Mot. Partial Summ. Judg., Exhibit D.) Payment was then tendered to the Special Referee. (See Pls.’ Mot. Partial Summ. Judg., Exhibit E.)

Two days later, on November 6, LL of SC caused its legal counsel to file an assignment of bid in the Edgefield County foreclosure action, directing that the Special Referee’s deed should be made out to Raiford Topsail Island Investments. (See Pls.’ Mot. Partial Summ. Judg., Exhibit D.) The Special Referee honored that instruction, and, on November 11, 2013, issued a foreclosure deed in favor of Raiford Topsail Island Investments.

It is on this factual basis that Plaintiffs claim the deed in lieu was a legal nullity, that it was superseded by the Special Referee’s foreclosure deed, and that Raiford Topsail Island Investments—not LL of SC—holds developer rights in Mount Vintage.

This leads to an exceedingly narrow question presented: *What is the net legal effect when the creditor in a foreclosure action purchases the same rights at a foreclosure sale that had been previously acquired by the same creditor through a deed in lieu?*

Plaintiffs have not cited to any case that resolves this issue. Instead, they have generally argued that a deed in lieu of foreclosure is trumped by an earlier filed lis pendens. And, in some circumstances, that may be accurate. But not in this case.

First of all, a lis pendens does not create a property right. It is merely a mechanism to put the world on notice that an adverse interest is claimed in the subject property. See, e.g., S.C. Code § 15-11-20 (explicitly describing the purpose of a lis pendens as constructive notice to

subsequent purchasers or encumbrancers). Whether the property right claimed in a lis pendens ultimately exists is a matter for a much later adjudication.

Second, and of particular importance to this case, the lis pendens at issue was recorded by LL of SC against the debtor-developer's property with respect to a pre-existing mortgage that LL of SC had against the same party and the same property. In other words, through the mortgage, LL of SC had an adverse interest in the debtor-developer's Mount Vintage property; and through the lis pendens, LL of SC was putting the world on notice that it was in the midst of foreclosing on the mortgage. The mortgage gave rise to the lis pendens.

Third, through the deed-in-lieu, LL of SC acquired the same rights and interest to the Mount Vintage property that it could have acquired through foreclosure.

And fourth, LL of SC was the winning bidder at the foreclosure auction. Only after winning the auction and paying what was owed did LL of SC assign its rights of ownership (if any) to Raiford Topsail Island Investments.

But why would a creditor proceed with a foreclosure sale after getting a deed-in-lieu? The reason is very simple: for the foreclosing creditor to be more assured of clean title. See, e.g., Decon Group, Inc. v. Prudential Mortg. Cap. Co., 227 Cal. App. 4th 665, 174 Cal. Rptr. 3d 205 (Cal. Ct. App. 2014). When a creditor takes title to property through a deed-in-lieu, he takes the property subject to all existing liens and encumbrances as of the date of transfer. By contrast, when a creditor takes title through a foreclosure sale, he takes the property free and clear of junior liens and encumbrances as of the date of sale. See, e.g., Green Tree Servicing v. Adams, 375 S.C. 583, 654 S.E.2d 100 (Ct. App. 2007). Therefore, by taking a belt-and-suspenders approach to foreclosure, a first-priority creditor may be able to get the best of both worlds: taking title to property more quickly and cheaply than waiting for a foreclosure sale, but using

foreclosure to ultimately extinguish junior liens, be they known or unknown. See CIT Bank, N.A. v. Buono, C.A. No. 14-CV-6610, *6 n. 3 (E.D.N.Y. Nov. 8, 2019) (“Generally, an experienced and careful lender will only rarely find the acceptance of a deed in lieu of foreclosure to be an appropriate avenue for settling or concluding a foreclosure action.” (citation and internal quotation omitted).)

LL of SC took the belt-and-suspenders approach. In fact, when LL of SC received the debtor-developer’s deed-in-lieu, it would very much seem as though LL of SC’s equitable interest—established by the mortgage—was united with ownership, establishing a merger that would nullify the relief sought in the foreclosure action. See, e.g., McCraney v. Morris, 170 S.C. 250, 170 S.E. 276 (1933) (applying the doctrine of merger). If that is accurate, then a foreclosure sale of the debtor-developer’s property would have absolutely no value to anyone—at least, to no one other than LL of SC.

All of this has previously been explained. During the course of this litigation, Plaintiffs took the deposition of Mary Guynn, Esq., a lawyer in Aiken who has worked with LL of SC for a very long time, and who was responsible for coordinating the debtor-developer deed-in-lieu / foreclosure transaction. (See Dep. Guynn, attached hereto as **Attachment 2**, 23:20-31:1.) In relevant part:

Q: And what is this?

...

A: This is a deed in lieu of foreclosure.

Q: And what’s the purpose of this document?

A: This document was K&H Development deeding over to LL of SC all of the property that was subject to the foreclosure action as well as developer rights.

Q: Okay. And is—why would this not halt the action—the foreclosure action?

A: We elected to proceed forward and complete the sale for two purposes—to ensure that title was clean. It would estop anyone that had filed a claim against the properties post-filing of the lis pendens, and it would also give any other named creditor the opportunity to voice or to assert a lien on the properties.

Q: So in your understanding, did developer rights transfer with this deed in lieu of foreclosure, or did they transfer with the special referee's deed at the conclusion of the foreclosure action.

A: They transferred with this deed in lieu of foreclosure.

...

Q: Do you believe that this document, the special referee deed, transferred developer rights to Raiford Topsail Island Investments?

A: No.

Q: And why is that?

A: The developer rights had already been transferred to LL of SC with the deed in lieu of foreclosure.

...

Q: So the special referee's deed that in essence finalized the foreclosure proceeding that was filed in 2012, why is—why does this special referee deed not supersede the deed in lieu of foreclosure?

A: The deed in lieu of foreclosure, which was filed after the foreclosure action had been instituted, transferred all of the property to LL of SC at that point.

Q: Well, that what was the—I guess, again, what was the purpose of going through the foreclosure proceedings and then assigning a bid—a successful bid to RTI?

A: If any creditor claimed an interest in the properties post lis pendens, filing of the lis pendens or if any named defendant claimed an interest in the properties, they would have the opportunity at the final hearing to assert the claim. And then the special referee or the master would determine whether there was a residual claim on the lots that were transferred to LL of SC.

...

Q: So does this deed, this special referee deed, does it grant anything to Raiford Topsail Island?

A: In my opinion, it does not.

Q: And why is that?

A: There was—the property had already been conveyed over to LL of SC with the deed in lieu of foreclosure.

(Id.)

Consistent with the foregoing discussion, there is no factual or legal basis on which to conclude that the Special Referee's deed divested LL of SC of its Class A membership or status as the holder of developer rights in Mount Vintage, much less to dissolve the current Board of Directors by judicial fiat.

II. The issue of who holds developer rights is much ado about absolutely nothing.

At its core, Plaintiffs' argument is that Raiford Topsail Island Investments, LLC holds developer rights in Mount Vintage, not LL of SC. This leads to an obvious question: *Does it matter?* Effective December 31, 2013 (and as part of his estate planning), Mr. Raiford assigned the totality of his interest in Raiford Topsail Island Investments, LLC to LL of SC, LLC. (See Assignment, attached hereto as **Attachment 3.**) At this point, Raiford Topsail Island became a wholly owned subsidiary of LL of SC.

Then, by deed recorded on May 31, 2018, Raiford Topsail Island Investments, LLC quitclaimed the ownership of whatever lots it may have acquired by the Special Referee's deed in 2013 over to LL of SC. (See 2018 Quitclaim Deed, attached hereto as **Attachment 4.**)

Accordingly, even if it were the case that Raiford Topsail Island Investments, LLC had ever acquired developer rights in Mount Vintage, that has since been addressed.

III. Literally no one—other than Plaintiffs' counsel—is contending that any party other than LL of SC or Wayne Raiford individually holds developer rights in Mount Vintage.

Following are relevant excerpts of depositions taken in this case of Plaintiffs or other homeowners:

1. Sharon Brady, current Vice President of the Mount Vintage Homeowners Association, excerpt attached as **Attachment 5**, at 35:7-11:

Q: Well, who's the developer of Mount Vintage.

A: Wayne Raiford.

Q: I thought it was LL of South Carolina.

A: That may be his company.

Q: Well, which one is it; do you know?

A: I don't know.

2. Ed Przybyl, Plaintiff, Att. 5, at 67:17-19:

Q: And when it says developer, who do you understand that to be?

A: Wayne Raiford.

3. Patrick Bukszar, Homeowner, Att. 5, at 77:9-14:

Q: So sitting here today, do you know one way or another whether the HOA has been turned over from the declarant to the homeowners?

A: I mean, I would say, no, it has not since Wayne Raiford is still listed as the declarant or LL of South Carolina. . . .

4. Virginia Kirkwood, Plaintiff, Att. 5, at 46:3-11:

Q: And do you recall who the developer was when Raiford first came onto the scene?

A: He became the developer.

Q: All right. And was it Wayne that became the developer, as far as you know, or was it one of his companies?

A: One of his companies.

Q: Do you remember which one?

A: LL of SC, LLC.

5. Marcella Gleie, Plaintiff, Att. 5, at 175:7-14, acknowledging that Raiford Topsail Island Investments, LLC is “not the developer company.”
6. Gaylord “Buddy” Hodges, Homeowner, Att. 5, at 44:21-24:

Q: And is it—who was the developer—who became the developer after that assignment, which entity?

A: LL of SC.
7. Elizabeth Ferraro, Plaintiff, Att. 5, at 67:4-11, acknowledging that LL of SC, LLC is the current holder of developer rights at Mount Vintage.
8. Charles L. “Rick” Atkins, Jr., Homeowner, Att. 5, at 129:10-12, referring to Wayne Raiford as the holder of developer rights.
9. Connie Bowes, Plaintiff, Att. 5, at 42:15-25, same.
10. Art Biggs, Homeowner, Att. 5, at 32:20-25, same.

Finally, it is worth noting that, if Plaintiffs have ever intended to put the issue of who owns developer rights in question, it is nowhere alleged in any version of the Complaint they have ever filed.

In short, this issue is not before the Court. And even if it were, it has no merit.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, Plaintiffs’ motion for partial summary judgment must be denied.

Respectfully submitted,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
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(o) 864.735.0832
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*Attorney for Defendants LL of SC, LLC and Raiford
Topsail Island Investments, LLC*

August 26, 2024
Greenville, South Carolina

Steven Edward Buckingham

From: Justin Lucey <jlucey@lucey-law.com>
Sent: Wednesday, September 4, 2024 7:37 PM
To: Kristina Shernoff; McIntosh, Lawton Secretary (Tammy Jennings); Steven Edward Buckingham
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier); Anna McCann; Mande Funai; Lee Weiland; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good evening,

Plaintiffs also move for the compulsory realignment of the Mount Vintage Homeowners Association as a Party Plaintiff. While evidence previously submitted overwhelming indicates that the Association had been damage by the Defendant's acts, today's order evidences that the Association has been controlled by a rouge fake developer for the last ten years, and needs to be compensated for the damages the rouge developer and its affiliates are done. If the Association fails to realign, it cannot recover the treble damages and attorney fees available under the South Carolina Unfair Trade Practices Act ("the Act"). The Act does not permit prosecution in a representative capacity. The derivative plaintiffs cannot prosecute this claim for the Association. It is only if the Association realigns as a party Plaintiff that these much needed remedies will be available to the Association. Additionally, as evidenced by the *Walbeck* case, there are other reasons for and benefits from the realignment of the Homeowners Association as a party Plaintiff. However, the Association presently remains controlled by a rogue developer, and appears unable to make a proper decision in this matter.

Plaintiffs also move for the the Mount Vintage Homeowners Association to be placed in a receivership. It has come to light that the Association has been controlled by a rouge, fake developer for the last ten years, and likely has no valid sitting Board of Directors or officers. Additionally, it has come to light that the rogue developer who impersonated the proper successor developer of Mt. Vintage, has been attempting to sell the Developer Rights and Golf Course amenities. Presently, the Association Board of Directors consists of persons appointed by the non-developer, as does the positions of President and Treasurer. The Association needs a receiver appointed to protect it from the actions of these impostors until these legal issues can be sorted out and decided.

These motions are included herein to comply with the pending deadlines and unfolding events; these motions will be formalized and re-submitted tomorrow Thursday, September 5, 2024.

By copy of this communication, Plaintiffs are serving all other Parties.

Respectfully submitted,

Justin Lucey
Attorney for the Plaintiffs

From: Kristina Shernoff <kshernoff@lucey-law.com>
Sent: Wednesday, September 4, 2024 7:18 PM
To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Steven Edward Buckingham

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR
COUNTY OF EDGEFIELD	)	THE ELEVENTH JUDICIAL CIRCUIT
	)	
ELIZABETH M. FERRARO, JAMES T.	)	Civil Action No.: 2021-CP-19-00050
FERRARO, EDWARD J. PRZYBYL,	)	
MARCELLA GLEIE, JR., THOMAS	)	
BOWES, CONNIE BOWES, AND	)	
MOATAZ ALASADI, VIRGINIA	)	
KIRIKWOOD, BOB KIRKWOOD, PAUL	)	
VICHROSKI, NYDZA VICHROSKI,	)	
JAMES MONTELLESE, ROXANN	)	
MONTELLESE, AND JULIE WILLIAMS	)	DEFENDANT MOUNT VINTAGE
Individually, Derivatively, and on Behalf of	)	HOMEOWNERS ASSOCIATION'S
all the Mount Vintage Homeowners	)	MEMORANDUM IN OPPOSITION OF
Association Members,	)	PLAINTIFFS' MOTION IN LIMINE FOR
	)	REALIGNMENT OF ASSOCIATION AS
	)	PLAINTIFF
Plaintiffs,	)	
	)	
v.	)	
	)	
J. WAYNE RAIFORD, INDIVIDUALLY	)	
AND AS PRESIDENT OF THE BOARD OF	)	
DIRECTORS OF MOUNT VINTAGE	)	
PLANATION HOMEOWNERS	)	
ASSOCIATION, INC., LL OF SC, LLC,	)	
RAIFORD TOPSAIL ISLAND	)	
INVESTMENTS, LLC, MOUNT VINTAGE	)	
PLANTATION HOMEOWNERS	)	
ASSOCTION, INC A/K/A MOUNT	)	
VINTAGE HOMEOWNERS	)	
ASSOCIATION, INC., GREGG	)	
KARLBERG, JERRY SCHAEFER,	)	
LEIGH ANN KEELS, AND JOHN	)	
DOE,	)	
	)	
Defendants.	)	

Defendant Mount Vintage Homeowners Association, Inc. (“HOA”) respectfully submits this Memorandum in Opposition to Plaintiffs’ Motion in Limine for Realignment of Association as Plaintiff.

The current HOA Board consists of 5 board members, each with one vote on the Board. There is Wayne Raiford, who is the developer representative, and four homeowner

representatives Sharon Brady, Steve Perun, Darnell Husband and Vanessa Meade. As with most HOA boards volunteers come and go. New Board members are picked from homeowner volunteers willing to serve on the Board. The current Board members review the applications of the potential new Board member and vote on who will be added as a board member. While the number of board members has changed over the time relevant to this action, the one constant is that there has been one board member who is the developer and the remaining Board members have been homeowner volunteers. The Board has been consistently run in this manner, following the requirements of the Covenants and restrictions and Bylaws governing the Association.

This action was brought under Rule 23 with the allegations that it was futile to demand that the current Board file this action because that Board is “developer controlled”. The current Board would disagree with this assertion and would state that the HOA Board, including the homeowner members, do not agree with the assertions being put forth in the Complaint about the developer control over this Board. The HOA Board believes that that Plaintiffs’ current claims do not align with the Board members’ personal knowledge of how the Board operates nor do the Plaintiffs’ allegations regarding the nature of the board represent the best interests of the HOA. However, the board additionally understands that they represent homeowners of differing opinions as to the validity of the claims being made in the lawsuit. As such the Board understands that Rule 23 allows for the Plaintiffs to assert claims on behalf of the Association even when the HOA Board may disagree. That the Plaintiffs have made derivative claims in this action does not require that the current HOA board be forced to align with their positions or agree with those claims.

During the pendency of this lawsuit the Board has had the difficult task of running the day-to-day operations of the HOA, including a busy golf course, while working with the current developer in a harmonious manner to get the necessary tasks done. All of this being done in the shadow of the allegations in this lawsuit against the Developer and board members. The HOA Board continued to operate as it has always done, under the guidelines set forth in the governing documents which do not address many of the allegations in the lawsuit. They did so while trying to take a neutral stance on issues being pressed by the Plaintiffs. The board's consideration was that to the extent that the allegations could be proven in the Court, that would be decided in this action by the testimony put forth by the Plaintiffs, and the Board would just continue to be run as it always had until directed otherwise by the Court. To intentionally drive a wedge between the homeowner board members and the developer would severely hamper the Board's ability to conduct its day-to-day business and potentially throw the HOA into chaos. To force this HOA Board into an adversarial position could potentially cause dysfunction with the board and its ability to perform its operations which have kept the association and the golf course functioning.

Plaintiffs seek a realignment of the HOA as a Plaintiff in this action. They want to force this HOA board to make the same affirmative allegations of the Plaintiffs, despite their attempts to remain neutral. They seek the realignment for the purposes of asserting an Unfair Trade Practice Act claim and "other benefits" as set forth in *Walbeck v. I'On Co., LLC* 439 S.C. 568, 589, 889 S.E.2d 537, 548 (2023). The most obvious benefit under *Walbek* being that a decision to realign the HOA as a Plaintiff potentially renders all deformities of the requirements of Rule 23 for the derivative claims moot. The basis of Plaintiffs claims revolve around the idea that the HOA board is and has been controlled by the developer. The HOA Board believes that that Plaintiffs' claims do not align with the Board members' personal knowledge of how the Board

operates nor do the Plaintiffs' allegations represent the best interests of the HOA. However, the board additionally understands that they represent homeowners of differing opinions as to the validity of the claims being made in the lawsuit. As such the Board understands that Rule 23 allows for the Plaintiffs to assert claims on behalf of the Association even when the HOA Board does not necessarily believe that such actions are in the best interest of the Association. The HOA has asserted in its Answer that Plaintiffs' claims "are contingent upon a judicial finding that the Plaintiffs fairly and adequately represent the interests of the similarly situated members in enforcing the rights of the association".

I. Plaintiffs' Motion for Realigning Mount Vintage as a Plaintiff Should be Denied Because the Parties Have Adverse Interests.

Plaintiffs set forth in their Motion that the Court has the authority to realign parties under SCRCP 21. The HOA would agree that a two-step test required. The "principal purpose" test: (1) the court determined the primary issue in the controversy by considering the plaintiff's principal purpose for filing its suit and (2) the court aligns the parties according to their positions with respect to the primary issue.

In applying the test, the primary issue in this case, according to the Plaintiffs' amended complaint, concerns the actions of "developer-controlled board" and whether the developer, through the actions of the board, is affecting the rights of the association. *See* Pl's. Second Amended Comp. ¶ 56(b). The interests of the parties are adverse as to this issue as can be seen by Plaintiffs actions and demands among other issues.

- A. The Escrow money: Plaintiffs have refused to allow the current Board to use the escrow funds for a purpose that is clearly a benefit to the association and its members. They claim that doing so will allow the "developer-controlled board" use it to the benefit of the Developer, an assertion denied by the HOA. They also state that

- releasing the funds will hurt the Plaintiffs damages in the lawsuit, a position that clearly does not outweigh the benefit of paying down HOA debt.
- B. Plaintiffs e-mail to request a receiver be appointed for the HOA board. Plaintiffs indicate that the current board has no valid sitting board members. Plaintiffs call the current Board “imposters” and calls into question every action taken by the HOA board. While Plaintiffs did not file a formal motion, this e-mail indicates their intentions going forward. This Board does not see any imminent threat by allowing this Board to continue to operate even upon certain findings against the Developer. The cause of action against the HOA for an accounting has been dropped because all of the necessary accounting disclosures have been made and no current discrepancies have been noted to this board.
- C. The assertion that despite every board member believing that LL of SC held the developer rights, that LL of SC did not hold the Developer rights. That Raiford Top Sail held those rights, abandoned those rights and as such there is no developer at Mt. Vintage. Not only does it call into question every intentional board action taken by the HOA, but it potentially leaves the Mt. Vintage subdivision without an entity to promote the subdivision, market and promote sales of lots and provide the services that LL of SC has provided to the HOA over the years.

As such Plaintiffs interests are not aligned with the HOA Board.

II. Recovering Damages under the South Carolina Trade Practices Act is not Grounds for Realigning a Party.

The Plaintiffs claim that only way the Association can recover the treble damages and attorney fees available under the South Carolina Unfair Trade Practices Act (“SCUTPA”) is if Mount Vintage realigns a Plaintiff in this case. However, this is not grounds for realignment and

does not outweigh the adverse positions regarding the primary issues of this case. There is a reason that this cause of action cannot be asserted in a derivative manner. Plaintiffs are attempting to circumvent that reason by forcing the HOA to become a Plaintiff.

The HOA Board believes it is imperative that the current board be allowed to maintain its neutral stance regarding this action. Even upon a finding of this Court of certain causes of action against the Developer, aligning the HOA will have a detrimental affect on the HOA, not to mention force the HOA into a position which they do not support and that is that this board is controlled by the developer. Therefore, realignment of Mount Vintage as a Plaintiff is improper, and Defendant HOA respectfully requests that this Court deny Plaintiffs' motion prior to the trial of this case.

By: /Charles A. Krawczyk

Charles A. Krawczyk

SC Bar No.: 16832

Finkel Law Firm LLC

1201 Main Street, Suite 1800

Post Office Box 1799 (29202)

Columbia, SC 29201

803-765-2935

ckrawczyk@finkellaw.com

Attorney for Defendant Mount Vintage

Homeowners Association

September 10, 2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-_____

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants / Petitioners.

VERIFICATION OF PETITIONERS' COUNSEL

PERSONALLY APPEARED BEFORE ME the Affiant, and, after being placed under
oath, did state and/or affirms as follows:

1. My name is Steven Edward Buckingham, Esq. I am over the age of
eighteen (18) years, am of sound mind, am not under the influence of any chemical
substance that is likely to impair my capacity, and am competent to give testimony.

2. The facts and circumstances presented in this statement are made based upon my own personal knowledge and information, and are true and accurate to the best of my present recollection.

3. I am licensed to practice law and am in good standing with the South Carolina Bar and the pertinent office of admissions and practice within the South Carolina Supreme Court.

4. I am counsel for Petitioners LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC with respect to the underlying civil action from which this appeal is taken.

5. A hearing on pre-trial motions was held in this case this morning, September 11, 2024.

6. At the pre-trial motions hearing, I asked the trial judge if it were still his view that the notice of appeal Petitioners filed on September 10 (with respect to the order of September 10) was not immediately appealable, such that it did not stay proceedings in trial court pending the outcome of appeal. The trial judge confirmed that this was his view, and that jury selection and trial will proceed on Monday, September 16 as scheduled, regardless of the filing of the notice of appeal.

7. I affirm, under penalty of perjury, that the facts and circumstances set out in this statement are true and accurate to the best of my knowledge, information, and belief.

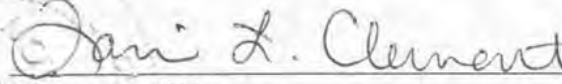
[Execution Page Follows]



Page 2 of 3


Steven Edward Buckingham

SIGNED AND SUBSCRIBED BEFORE ME



Signature of Notary

Tammie L. Clement
Printed Name
Notary Public for the State of South Carolina

This 11th Day of September, 2024.

My Commission Expires: 11-12-2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001451

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants / Petitioners.

VERIFICATION OF PETITIONERS

PERSONALLY APPEARED BEFORE ME the Affiant, and, after being placed under
oath, did state and/or affirms as follows:

1. My name is J. Wayne Raiford. I am over the age of eighteen (18) years,
am of sound mind, am not under the influence of any chemical substance that is likely to
impair my capacity, and am competent to give testimony.

2. The facts and circumstances presented in this statement are made based upon my own personal knowledge and information, and are true and accurate to the best of my present recollection.

3. I am authorized by LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC to give this statement.

4. I have reviewed the Petition to Stay and/or for Writ of Supersedeas to which this statement is attached.

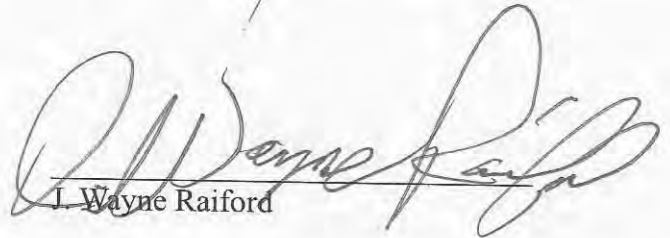
5. To the best of my knowledge, information, and belief, the factual circumstances set out in the petition are true and accurate, as are the documents provided as exhibits.

6. Respondents have claimed that Raiford Topsail Island Investments, LLC acquired developer rights for Mount Vintage in 2013, though it has always been Petitioners' understanding that LL of SC, LLC held those developer rights. This issue is very much disputed.

7. If Petitioners are required to proceed to trial while this appeal is pending, the Court of Appeals may render an opinion on the September 10 decision that is different than what Judge McIntosh decided, which may affect the outcome of trial.

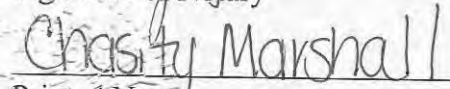
8. Additionally, Respondents are trying to use the September 10 decision to say that the homeowners association board is fake, or rogue, or has been without authority to act for the past more-than-ten years. That is just not the case. Petitioners would appreciate the opportunity to have their appellate rights so that the September 10 decision can be corrected.

9. I affirm, under penalty of perjury, that the facts and circumstances set out in this statement are true and accurate to the best of my knowledge, information, and belief.


J. Wayne Raiford

SIGNED AND SUBSCRIBED BEFORE ME

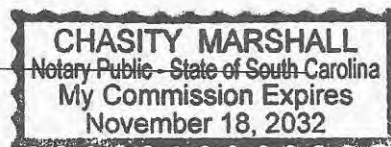

Signature of Notary


Printed Name

Notary Public for the State of South Carolina

This 11 Day of September, 2024.

My Commission Expires: _____



RECEIVED

Sep 23 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

CASE NO. C.A. No.: 2021-CP-19-00050

APPELLATE CASE NO. 2024-001510

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes,
Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski,
Nydza Vichroski, James Montellese, Roxann Montellese,
Individually, Derivatively, and on Behalf of all the Mount Vintage
Homeowners Association Members,.....Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc.....Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC, are the Appellants / Petitioners.

**RESPONDENTS' RETURN IN OPPOSITION TO APPELLANTS' PETITION
FOR A WRIT OF SUPERSEDEAS**

ROA_01129

JUSTIN O'TOOLE LUCEY, P.A.

Justin O'Toole Lucey, Esq. (SC Bar No.: 15438)

Anna Scarborough McCann, Esq. (SC Bar No.: 102314)

Amanda Nicole Funai, Esq. (SC Bar No.: 105424)

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amccann@lucey-law.com

Attorneys for Plaintiffs/Respondents

September 23, 2024

Mount Pleasant, South Carolina

Plaintiffs-Respondents, Elizabeth M. Ferraro, *et. al*, individually, and derivatively on behalf of the Mount Vintage Homeowners Association, (collectively, “Plaintiffs”), by and through undersigned counsel, submit this return in opposition to the Petition for a Writ of Supersedeas, filed on behalf of Appellants LL of SC, LLC (“LL”), Raiford Topsail Island Investments, LLC (“RTI”), and T R Sales Plantation, LLC (“T R Sales”) (collectively “Defendants”), to delay a trial which was set to begin on September 16, 2024 (the “Petition”). The Petition, filed on September 12, 2024, seeks to stay all proceedings in the lower court (including the trial) pending appeal of the Circuit Court’s September 10, 2024, order granting Plaintiffs’ motion for partial summary judgment (“Underlying Order” or “Order”). This Court temporarily granted Defendants’ Petition and asked for Respondents to serve and file a return to the Petition within ten (10) days.

The Order, which granted partial summary judgment on an issue of law, is not automatically appealable because it is interlocutory, and it is not otherwise immediately appealable because it does not involve the merits of the claims or defenses in this case, as that phrased has been interpreted to apply by our Courts. Furthermore, Defendants’ Petition is procedurally defective as Defendants failed to make their application for supersedeas to the lower court and failed to plead “extraordinary circumstances” which would make it impracticable to make the required application to the Trial Court.

Plaintiffs oppose any extension of the stay, and the scope of the stay. Frankly, this Honorable Court should not only overrule the Petition, but it should also dismiss the appeal on the Defendants’ failure to show jurisdiction.

INTRODUCTION

This lawsuit was filed on June 5, 2020, and has been amended several times since then, most recently on September 4, 2024. Plaintiffs are owners of lots and houses in Mount Vintage, a community located in Edgefield County, South Carolina. Plaintiffs are proceeding individually as

well as derivatively on behalf of the Mount Vintage Homeowners Association (“HOA”), which is still under the control of the Defendants. Plaintiffs seek to rectify the monetary and non-monetary harm suffered by the Mount Vintage Homeowners Association and its members caused by the negligent and wrongful conduct of the Defendants.

The two-week, specially arranged term of court trial which Defendants have now succeeded in delaying has been set for months to begin on September 16, 2024. The Honorable R. Lawton McIntosh, who was assigned this case in connection with the South Carolina Business Court Pilot Program on May 12, 2021, held two (2) full days of pre-trial hearings on August 28, 2024, and September 11, 2024. Judge McIntosh worked with Court Administration and the Chief Administrative Judge of the Eleventh Circuit to set aside two (2) weeks of trial time for this four-year-old case.

SUMMARY OF ARGUMENT

Defendants’ procedurally defective Petition for Supersedeas is a delay tactic stemming from appeal of a pre-trial, partial summary judgment order on an issue of law which is not immediately appealable. Importantly, *the ruling was invited by Defendants who conceded* that the Order which it seeks to use to delay trial *concerned an issue of law* for the court to decide and encouraged the Circuit Court to do so pre-trial.

As a threshold matter, Defendants did not move for a writ of supersedeas in the Circuit Court, which is required prior to filing the writ with the Appellate Court, nor did Defendants argue or otherwise plead extraordinary circumstances existed which prevented it from doing so.

Second, the Order is *not* immediately appealable under South Carolina Code § 14-3-330(1) because the Order is not “involving the merits of the case,” as the jurisdictional statute has been interpreted to mean, and Defendants have not shown or pled otherwise.

Third, the Order at issue is an interlocutory partial summary judgment order on a matter of law, improperly taken, and therefore does not result in an automatic stay under Rule 241(a), SCACR. Only a properly taken appeal—*i.e.*, an appeal taken where there is in fact a right of immediate appeal, affects jurisdiction—and then only as to matters affected by the appeal. If an appeal is not properly taken, it is a nonevent insofar as the continued progress of the case in the Circuit Court is concerned. *See S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 585, 340 S.E. 2d 535 (1986) (“Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay proceedings in the lower court.”). The Circuit Court has exercised its discretionary jurisdiction to find that “[t]he granting of Plaintiffs’ partial summary judgment as to “Developer Rights” as stated is interlocutory. Therefore, this matter is not stayed.” (*See* Sept. 6, 2024 Order).

FACTUAL BACKGROUND

As was recently briefed to the Circuit Court:

In 2009 LL of SC, LLC (“LL”) acquired its interest in Mount Vintage by aiding and abetting a principal of the prior developer (Talmadge Knight, principal of “K&H Development”) in giving a \$5.0m haircut to Carolina First Bank on its \$10.0m+ loans on Mount Vintage. LL did this through a \$2.5m loan to a shadow company (“Park Meridian Holdings”) to buy the Carolina First notes secured by the Mount Vintage developer rights and lots.¹ The security interest assigned by Carolina First included developer rights.² The deal was so good that LL/Raiford claims to have consummated the transaction without doing any due diligence on the collateral or borrowers.³

When the second developer, K&H, was unable to pay LL the 15% interest owed on the new note, LL filed a Lis Pendens and Foreclosure in 2012, and took a deed in lieu of foreclosure on September 3, 2013, which deed included developer rights.⁴ However, LL elected to continue the foreclosure to foreclose out all claims

¹ This transaction is described by a contemporaneous file memorandum by Attorney Byrd Warlick and is independently verifiable by review of the related instruments. (*See* Pl. Ex. 40.06, Warlick Memo dated December 2, 2009). Please note, all exhibits referenced in this “Factual Background” section were submitted and/or made available to the Circuit Court. They will not be appended here unless specifically stated otherwise.

² *See* Pl. Ex. 40.05, p. 8.

³ *See* 30(B)(6) Dep. of Raiford Topsail Isl., J. Wayne Raiford, at p. 53:3-17.

⁴ *See* Pl. Ex. 41.04.

of any kind. The Order of Foreclosure included the developer rights, LL won the foreclosure bid, and then assigned the winning bid to Raiford Topsail Island Investments, LLC (“RTI”), who received a Special Referee deed for the developer property and “all and singular rights ... in any way incident or pertaining thereto, and all the estate, right title, claim, and interest, whatsoever...” on November 11, 2013.⁵ Therefore, LL’s tenure as Mount Vintage’s developer ended on November 11, 2013, after two (2) months. Notwithstanding the Court Order granting all property and rights to RTI, LL continued to assert it was the developer, even inserting its name into the Covenants.⁶

It is important to note that neither LL nor RTI, nor any other Raiford development company, has employees: all personnel working for these entities are employed by a separate operating company. At the time of the foreclosure, the operating company was Georgialina Enterprises, Inc. (“Georgialina”). At some point in time between 2015 and 2019 (there is conflicting evidence on when), Georgialina assigned its managing and personnel roles to T R Sales Plantation, LLC (“T R Sales”), and Georgialina now receives a \$400,000 per year preferential payout from T R Sales. All employees of entities owned or controlled by Raiford now work for T R Sales, including Wayne Raiford and his daughter Leigh Ann Keels. Raiford, LL, T R Sales, and their CPA, Charles Fliflet, have all reported to the IRS that T R Sales manages LL and employs Raiford and Keels. The sole business of LL is the management, marketing, and sale of Mount Vintage. For the last five or more years, while Raiford and Keels have operated LL and controlled the Mount Vintage HOA (and, apparently, RTI), they have been employees of T R Sales.

In September of 2014, in what appears to be an attempt to mitigate the foregoing disconnect, Raiford backdated an assignment of his ownership of RTI to LL. However, this transfer is contradicted by Raiford’s original filed venue affidavit in this matter and all of LL’s tax returns, all of which answer in the negative as to LL’s ownership or control of any subsidiary.

Nonetheless, LL and RTI remain two (2) different corporate entities, whether they are affiliated or not, and there has never been an assignment from RTI to LL of developer rights.⁷

Defendants proceeded with allowing Mount Vintage to decline in value, even after the recession ended, until they could gather up enough cheap lots to make the redevelopment of Mount Vintage extremely profitable. T R Sales continued making millions at Raiford’s Aiken development, Three Runs, while Defendants 1) allowed Mount Vintage amenities to be lost to foreclosure; 2) delayed the completion of the Mount Vintage roads until they could consummate a road reimbursement deal with Edgefield County; 3) delayed all marketing until Raiford

⁵ The Special Referee issued a Corrective Deed on July 22, 2014, confirming that its prior deed to RTI included Developer Rights. (See Pl. Exs. 41.05, 41.06, 41.07, 41.08, and 41.11).

⁶ Its apparent that Defendants have always been aware of this developer identity disconnect. For example, when they drew up documents for a sale of Mount Vintage to the Chinese investor in 2013, they prepared a warranty deed from RTI to the buyers and a quitclaim deed from LL to the buyers. (See Pl. Ex. 2.2).

⁷ Eventually, most of the RTI lots were conveyed to LL, but developer rights were not conveyed or assigned.

could cause the LL-appointed-and-controlled HOA board to acquire the amenities from the bank at a grossly inflated price and without sufficient funds or reserves to operate them; and 4) purchased an additional one hundred (100) lots in distress sales before commencing marketing.

Of course, the foregoing events were all executed surreptitiously while LL represented itself to be the Developer and did not come to light until the Plaintiffs investigated the HOA's deteriorating financial condition after the homeowners were assessed in 2019 to cover operating shortfalls. Plaintiffs then realized the lack of Reserves for the properties the "Developer" caused the HOA to purchase were compounding and quickly becoming insurmountable.

(Pl. Mem. in Opp. to Defs' (2nd) Motion for Summary Judgment, p. 2-4.)⁸

PERTINENT LAW

Only final judgments are appealable unless an exception applies. *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). South Carolina Code § 14-3-330 sets forth exceptions to this final judgment rule and provides for the potential appeal of certain intermediate, or interlocutory, orders. *See Tillman v. Tillman*, 420 S.C. 246 at 249. Notably, Courts have construed exceptions to the final judgment rule narrowly "[t]o avoid circuitous litigation and needless appeals," and have considered "the nature and effect of the order, not merely its label." *Id.* at 250.

If, and only if, an intermediate order qualifies under the exceptions set forth in S.C. Code 14-3-330—*i.e.*, only if an appeal of an interlocutory order is properly taken pursuant to the conditions of S.C. Code 14-3-330—do the automatic stay provisions set forth in Rules 205 and 241, SCACR, come into effect. An appeal of an interlocutory order not permitted under S.C. Code 14-3-330 is not properly taken and does not immediately activate the automatic stay provisions of Rules 205 and 241, SCACR. *See S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986) (Where an order is not immediately appealable, "the notice of intent to appeal

⁸ Issues in this matter are more fully elucidated by the Memorandum in Opposition to Defendants' Motions for Summary Judgment (one of two opposition memorandums), which resulted in a denial of Defendants'/Petitioners' motions in full, attached hereto as Ex. A.

does not transfer jurisdiction to this Court, nor does it stay further proceedings in the lower court.”); *see also Crout v. S.C. Nat. Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982) (“[T]he notice of appeal from that order did not transfer jurisdiction to this Court or stay further proceedings in the trial court.”).

ARGUMENT

I. Defendants are Not Entitled to a Writ of Supersedeas and The Circuit Court Properly Exercised its Discretion to Retain Jurisdiction

Defendants did not make a motion to stay the proceedings in the Circuit Court (or otherwise ask the Circuit Court for a writ of supersedeas); rather, Defendants assumed that the Order was immediately appealable, that it operated to automatically stay all proceedings, and turned directly to this Court for relief. As such, Defendants failed to make the requisite showing on a critical element for this Court to issue a writ of supersedeas. Our appellate rules expressly require supersedeas applications to be brought *before the lower court*, unless extraordinary circumstances exist and make it impracticable to do so. Rule 241(d)(1), SCACR (stating “[e]xcept where extraordinary circumstances make it impracticable, an application for an order... for supersedeas must first be made to the lower court...which entered the order or decision on appeal.”). Because no application for a writ of supersedeas was made to the Circuit Court, Defendants’ petition did not contain a showing that the relief it seeks in this Court was “unjustifiably denied” by the Circuit Court. *See* Rule 241(d)(4)(C), SCACR (stating that a petition “shall contain... a showing that an application for this relief was made to the lower court....and was unjustifiably denied...”). In addition, Defendants made no mention of extraordinary circumstances and made no attempt to demonstrate such a circumstance would have made it impracticable to apply for supersedeas to the Circuit Court. This was Defendants’ burden, which they failed to carry. Defendants’ Petition fails as a matter of law independently on each of these grounds.

II. The Order is Not Immediately Appealable Under S.C. Code § 14-3-330(1)

Here, by invoking section 14-3-330(1) regarding appealability of intermediate orders, Defendants' Petition concedes that the partial summary judgment order is interlocutory; however, Defendants mistakenly assume (without support) that *all* orders granting partial summary judgment are automatically immediately appealable under section 14-3-330(1). They are not, and Defendants' argument in this regard runs directly contrary to this Court's directive "to focus on the effect of the order, not the label given to the motion or to the order granting it." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011).

Whether a pre-trial, interlocutory order is immediately appealable is a matter governed primarily by statute. *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 587, 671 S.E.2d 98, 100 (Ct. App. 2008). "An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable." *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005).

Defendants rely upon subsection (1)⁹ of S.C. Code § 14-3-330 to remove themselves from the final judgment rule and allow for immediate appeal of the Circuit Court's Order:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas [...]

S.C. Code Ann. § 14-3-330(1). "An order involves the merits, as that term is used in section 14-3-330(1), and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense." *Watson v. Underwood*, 407 S.C.

⁹ During a status conference with the Circuit Court and all parties on September 6, 2024, Defendants pointed out that the Plaintiffs were analyzing Defendants' argument under the wrong statutory section, specifically subsection (2) pertaining to an order affecting a substantial right. The Defendants clarified they are seeking relief under subsection (1). This note is included for the avoidance of any doubt should an argument regarding subsection (2) be raised, attempted, or construed at a later time from Defendants' vague phrasing contained in their Petition.

443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) (internal citations omitted). This Court in *Watson* went on to clarify that

[t]he phrase ‘involving the merits’ is narrowly construed. An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.

Id. at 458, 756 at 163 (Ct. App. 2014).

Here, Defendants ask this Court to *assume* that any order which is labeled as granting summary judgment before trial necessarily “involves the merits” and is immediately appealable, regardless of the nature and effect of the order itself. This argument is fallacious. Defendants’ Petition builds on this fallacy by failing to *quote* the Order itself and failing to *show or explain* how the *nature and effect* of the Order affects the merits of the case. Defendants’ position is therefore inconsistent with this Court’s own precedent to *ignore* the label of an interlocutory order and instead look to the nature and effect of the order itself. It is (or should be) Defendants’ burden to demonstrate why this concededly interlocutory Order is immediately appealable. They have made no such showing.

Plaintiffs will therefore address what Defendants failed to address—this Order is interlocutory, does not fall into the ambit of § 14-3-330(1), and is therefore not immediately appealable.

a. Background Regarding Plaintiffs’ Motion, Subsequent Briefing, and Eventual Order

Plaintiffs’ pre-trial motion for partial summary judgment sought a ruling from the Circuit Court as to the legal effect of a series of deeds transferred to and between the Defendants in the 2013–2014-time frame. (*See* Pltfs. Mot. for Partial SJ and Accompanying Exhibits, Aug. 13, 2024, attached hereto as Ex. B). Plaintiffs’ motion not only sought a declaration on the priority and effect of the deeds, but it also sought additional, follow-on rulings, such as a ruling on which Defendant

is the “current” Developer of Mount Vintage and whether developer status in Mount Vintage had been abdicated by that Defendant. (*See id.*).

After the pre-trial hearing on summary judgment motions, which was held on August 28, 2024, the Circuit Court invited additional briefing on whether the issue at hand—whether the developer rights had been transferred via the Deed in Lieu of Foreclosure or the Lis Pendens and subsequent Special Referee’s Deed (and/or the Corrective Special Referee Deed)—was an issue of law or fact. (*See Em. From J. McIntosh*, Aug. 30, 2024, attached hereto as Ex. C). Specifically, Judge McIntosh asked whether the issue was one at law for the court to decide, or whether the issue was one of fact which should go to the jury. *See id.* Defendants responded as follows:

In response to the Judge’s question, I think it might have 2 components. *The first component is the question of which chain of documents establishes the transfer of developer rights and into which entity. Candidly, I think that is a question of law.* The second component is the question of who presently has developer rights. That might involve questions of fact [...]

(*See Em. Resp. from S. Buckingham*, Sept. 3, 2024, attached hereto as Ex. D) (emphasis added). Defendants, rather than offering additional evidence, briefing, argument, or case law on the subject, responded (above) four (4) days later (and four days closer to jury selection and trial), and invited the Circuit Court to rule on the very issue which it now brings in front of this Court.¹⁰

The Order, which is *not* quoted in its entirety in Defendants’ Petition, reads as follows:

Based upon the Deed in Lieu of Foreclosure (09/13/13), the Assignment of Bid (11/18/13), the Master’s Report (11/18/13), the Special Referee’s Deed (11/18/13), and the Corrective Special Referee’s Deed (8/4/14), the Court finds that LL of SC assigned “Developer’s Rights” to Raiford Topsail Island Investments during this period of time and accordingly grants Plaintiff’s motion for partial summary judgment that LL of SC Assigned its Developer’s Rights to Raiford Topsail Island Investments during this period. The Court makes no further findings or rulings other than as stated.

¹⁰ *See RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332–33, 732 S.E.2d 166, 171 (2012), *citing Shearer v. DeShon*, 240 S.C. 472, 484, 126 S.E.2d 514, 520 (1962) (“Ordinarily, one cannot complain of an error which his own conduct has induced.”).

(See Order, attached hereto as Ex. E).

The Circuit Court ruled on the first component, which Defendants conceded was an issue of law *for the court*, and did not rule on the second component. In fact, the Circuit Court explicitly did not rule on whether Defendants LL or RTI abandoned developer rights, or who, if anyone, presently possesses developer rights. The Circuit Court only ruled as a matter of law on the legal effect of a Lis pendens, foreclosure, assignment of bid, and special referee deed (and/or special referee corrective deed): that developer rights had been transferred between Defendants at some point in time. The Circuit Court explicitly declined to rule, as a matter of law, who possessed developer rights, or that any Defendant “abdicated” his rights, as these are all issues of fact to be presented and proven at trial.

b. The Order Does Not Finally Determine Some Substantial Matter Forming the Whole or Part of Some Cause of Action or Defense

Plaintiffs’ principal causes of action include breach of fiduciary duty and negligence/gross negligence, both of which are pled against LL and RTI (and the management company that employs Raiford, TR Sales). Neither cause of action is dependent on the Circuit Court’s Order as to whether a Lis pendens and related Special Referee Deed supersede a subsequently filed quit claim deed, or whether LL transferred developer status to RTI for the period cited in the Order. The Order does not assure an eventual verdict in Plaintiffs’ favor on any of Plaintiffs’ causes of action, nor does it foreclose any of Defendants’ affirmative defenses. Plaintiffs must still prove each and every element of their fiduciary duty and negligence claims.

For example, LL has briefed to this Court that it acted as the developer. In fact, the Circuit Court has been provided in other briefings a memorandum by Raiford’s attorney, Mary Guynn, documenting LL’s “absolute control”, which memo was used at the urging of Raiford’s marketing team to show the homeowner board members “who was in charge.” (See Pls. Exs. 18.45, 18.46, attached hereto as Ex. F and Ex. G). Additionally, at the first meeting of the Association attended

by Raiford, LL announced its receipt of developer rights—which was repeated at the Association’s annual meeting a few days later. (*See* Pl. Ex. 8.4, attached hereto as Ex. H) (“On Thursday, January 9, 2014, an official HOA Board Meeting was held at which time the transfer of property and developer rights from K and H (Talmadge Knight) to LL of SC, LLC (Wayne Raiford) were noted.”). LL’s conduct and control, as well as its pervasive influence over the conduct of Association’s non-elected board of directors, gives rise to the duties which form the basis of the breach of fiduciary duty claim – whether or not LL possessed developer rights. *See Walbeck v. I’On Co., LLC*, 439 S.C. 568, 586, 889 S.E.2d 537, 546, fn. 11 (2023), *reh’g denied* (July 26, 2023).

Petitioners do not explain how this partial summary judgment finally determines any aspect of this case because they can’t.

The *partial* grant of Plaintiffs’ motion for *partial* summary judgment on an issue of law does not make Plaintiffs the prevailing party on any cause of action in this suit, nor does it strike or otherwise finally determine any of Defendants’ defenses. Does the Order affect the significance a juror is likely to attribute to the Quitclaim and Special Referee Deeds? The answer is yes. Does it decide a cause of action or defense or dictate an outcome? No. In fact, one of the Defendants’ factual defenses discussed in more detail *infra*—namely, that RTI and LL are “the same” and therefore the issue of who got developer rights when does not matter—is not foreclosed by the Order. Defendants can still argue this defense at trial.

The Order establishes which defendant became possessed of the developer’s rights during the foreclosure process, which simply clarifies the status (and therefore, the rights and liabilities of) two of the existing defendants, LL and RTI. Both are already a part of the case and have been since the case’s filing in 2020. TR Sales, the third defendant, employed Wayne Raiford, who provided his services to LL and RTI. TR Sales is alleged to have participated in LL and RTI’s

negligence and breach of fiduciary duty – regardless of in what capacity either one acted during the breaches.

c. Defendants Previously Called the Issue “Much Ado About Absolutely Nothing” and Have Not Explained or Justified Their About-Face on the Order’s Effect Or Explained How It Affects the Merits

Defendants have not answered these threshold questions which are necessary for this Court to evaluate whether the “nature and effect” of this Order—as opposed to merely its “label” (a grant of partial summary judgment)—involves the merits. *See Tillman*, 420 S.C. at 250. Defendants’ current position, that the Order has wide-ranging and sweeping effects on every aspect of the case, is revisionist history at best and flatly dishonest at worst. Plaintiffs have consistently questioned whether RTI or LL received developer rights through the foreclosure process, and Defendants have consistently taken the position that it does not matter which entity received these rights (or even which entity currently holds these rights) because RTI and LL are “the same.” (*See e.g.* Corrective Affidavit of J. Wayne Raiford, Aug. 20, 2021, attached hereto as Ex.I) (“Raiford Topsail Island Investments, LLC is wholly owned by LL of SC, LLC.”); *see also* (Dep. of J. Wayne Raiford, Feb. 27, 2023, pp. 322:23—323:19, attached hereto as Ex.J) (“[LL of SC], LLC and Raiford Topsail Island, all of it is one and the same”; “it’s all one and the same”). The Order did not rule one way or another on the issue of whether the two are “one and the same.”

The most recent example of Defendants’ longstanding position on this issue is in their opposition to Plaintiffs’ motion for partial summary judgment, where Defendants stated that “[t]he issue of who holds developer rights is much ado about absolutely nothing.” (See Defs. Mem. in Opp. to Pltfs. Partial MSJ, filed Aug. 26, 2024, attached hereto as Ex. K, at p. 8) (emphasis added). Defendants argued:

At its core, Plaintiffs’ argument is that Raiford Topsail Island Investments, LLC holds developer rights in Mount Vintage, not LL of SC. This leads to an obvious question: *Does it matter?*

(*See id.*). Again, Defendants’ argument *was* that the issue of who holds developer rights as between LL and RTI *does not matter* because the two companies are the same.

It was not until trial was mere days away and the Circuit Court ruled on what Defendants conceded was an issue of law for the court to decide that Defendants position on the issue shifted from “much ado about absolutely nothing” to their new posture, that:

[i]t’s hard to fathom how the issue of developer rights is anything other than a “substantial matter forming the whole or part of some cause of action or defense” which has now been finally decided [...]

(*See Em. fr. S. Buckingham*, Sept. 5, 2024, attached hereto as Ex. L).

Now, before this Court, to support their contention that the interlocutory Order “involves the merits” and is therefore immediately appealable, Defendants argue that “[e]ach and every aspect of Respondents’ claim touches, concerns, and even depends on the chain of developer rights.” (Pet. at 5). This new spin is Defendants’ argument in *toto* as to why the Order involves the merits. To *which* “claim” are Defendants referring, and *how* does the pithy Order cited above finally decide that claim? Not surprisingly, Defendants have not shown how the actual text of the two-sentence Order so radically affects the merits of this case when, for the three years preceding trial, the issue did not matter because the two entities were “the same”, and days before trial the issue was “much ado about absolutely nothing.”

Lastly, both of Defendants’ foregoing positions are difficult to square with its other representation to the Circuit Court at the summary judgment stage:

Finally, it is worth noting that, if Plaintiffs have ever intended to put the issue of who owns developer rights in question, it is nowhere alleged in any version of the Complaint they have ever filed. In short, this issue is not before the Court. And even if it were, it has no merit.

(*See Ex. K*, p. 10). How Petitioners can assert to the Circuit Court that the issue of “who owns developer rights” is not raised “in any version of the complaint; and “[i]n short, this issue is not before the Court [,] [and] [e]ven if it were, it has no merit”, and turn around and assert to this Court

that the same issue permeates every issue in this case, and affects the merits of every claim, is just beyond Plaintiffs' comprehension. It should trouble this Court, too.¹¹

d. The Order Decided an Issue of Law for the Court and Leaves Unsettled All Related Questions of Fact

The *only* issue decided in the Order is, as conceded by Defendants, one of law for the court to decide. The construction of deeds and the determination of their legal effects are questions of law for the court to decide. *Bennett v. Invs. Title Ins. Co.*, 370 S.C. 561, 570, 635 S.E.2d 660, 665 (Ct. App. 2006). As it relates to the immediate appealability of questions of law, this Court in *Watson* explained that:

[a] judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment. Additionally, a decree or judgment that leaves in doubt whether the plaintiff will prevail is not final. An order is not immediately appealable when appellants have not arrived at the end of the road and would be able to appeal the decision after the trial was finished.

See Watson, 407 S.C. at 459, 756 S.E.2d at 163 (Ct. App. 2014) (emphasis added) (internal citations omitted). A judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment. *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 41, 21 S.E.2d 209, 212 (1942).

Defendants may protest (now) about the Order affecting the validity of LL's dominance over the HOA for the last eleven years – but that has always been an issue – and still is an unresolved issue. It is undisputed that all developer lots went into RTI at the conclusion of the foreclosure. Not only does the Court deed obviously supersede the quit claim deed which was subject to the *Lis pendens*; but the Defendants' own records also showed that all the lots went into RTI. (*See e.g.* Ex. B; Ex. M, *infra*).

¹¹ *Tillman v. Tillman*, 420 S.C. 246, 251, 801 S.E.2d 757, 760 (Ct. App. 2017) (“There may be a strategy motivating the appeal other than tactical delay, but we cannot think of a rational one.”).

Defendants’ principal, Wayne Raiford, who executed the Verification for the instant Petition, appears to suggest otherwise in his sworn representations to this Court. However, this same person filed the 2015 Multi-Lot Discount Application for Edgefield County for all of the “developer lots” **held in the name of RTI**. (See Pl. Ex. 13.02, p. 1 extract, attached hereto as Ex. M). **To be clear**, Defendants are suggesting to this Court their belief that the Quitclaim Deed trumped as to the transfer of developer rights, and the subsequent Special Referee Deed trumped as to the transfer of the developer lots, and the “appurtenant rights” transferred in the Special Referee Deed and the “Developer Rights” transferred in the Corrective Special Referee Deed, both reaching back to the Lis Pendens filed before the Quitclaim Deed, are trumped by the Quitclaim Deed? This Petition and appeal should be tossed on this specious assertion and verification alone.

The issue has always been present in this case as to whether the developer lots and rights have been held by one entity or different entities as one of the Plaintiffs’ contentions raised early on in this case was that the non-developer affiliates should be paying association dues. (See Compl., filed June 5, 2020, ¶ 47). As referenced in section II(b), *supra*, LL announced its receipt of developer properties and rights at the 2014 Annual Meeting, and the homeowners never had any reason to believe otherwise until the Special Referee Deed was uncovered in counsel’s investigation of which affiliates should have been paying dues.

Defendants referred to what use Plaintiff intends to make with the Order – it doesn’t matter what Plaintiffs think about the Order, what matters is what is in the Order. Whether or not the Order gives Plaintiffs a “material procedural advantage” heading into trial is of no moment to whether the Order is immediately appealable, and this Court should not be persuaded otherwise by rank hyperbole. All questions of fact are left open; and interlocutory rulings on matters of law are not appealable. *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426

S.E.2d 777, 780 (1993) (“If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.”).

III. Defendants’ Remaining Arguments Regarding Rules 205 and 241, SCACR, Fail Because The Rules Do Not Apply to An Improper Appeal

Defendants’ remaining arguments invoking Rules 205 and 241, SCACR, fail and should be summarily overruled because, as illustrated above, the Order is interlocutory, is not immediately appealable, and does not result in any automatic stay or otherwise divest the Circuit Court of jurisdiction. While interlocutory partial summary judgment orders *may* be appealable under section 14–3–330(1), they are not *automatically* appealable, and therefore do not *automatically* fall within the purview of Rules 205 or 241, SCACR. *See Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011) (emphasis added).¹²

Judge McIntosh correctly found that the Order was interlocutory, not immediately appealable, and did not affect the Circuit Court’s jurisdiction to continue with the trial of this case that was days away from commencing. Following a status conference on September 6, 2024, Judge McIntosh issued a Form 4 Order finding that the Order at issue is interlocutory and that the matter is not stayed:

The granting of Plaintiff’s partial summary judgement as to “developer rights” as stated is interlocutory. Therefore, this matter is not stayed.

(*See Order*, Sept. 6, 2024).

IV. The Order Staying Lower Court Proceedings was Excessively Broad

¹² *Thornton* is particularly instructive here. In *Thornton*, this Court held that an interlocutory partial summary judgment, which resolves only a portion of the claims in a case, is generally not immediately appealable. This Court dismissed the appeal because the order did not fall within one of the limited exceptions for immediate appealability under South Carolina law. This Court reasoned that allowing immediate appeals of interlocutory partial summary judgments could lead to piecemeal litigation and delay the resolution of the entire case. Instead, the Court indicated that the parties would have to wait until the final judgment on the entire case to appeal the partial summary judgment. *See Thornton*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011).

Not only was the order staying this case improvidently issued, but it was also excessively broad. Even a properly taken appeal only stays matters on appeal. There are plenty of matters in this case which are not on appeal. For instance, the Circuit Court had instructed Plaintiffs' counsel to prepare an order formalizing the Circuit Court's ruling denying the Defendants' Motions for Summary Judgment. This Court's broad order staying all matters prevented Plaintiffs' counsel from completing their assigned task – without reasoned justification. There is no reason or justification for the breadth of the current stay.

In fact, the breadth of this stay exceeded that suggested or permitted by Rule 241(c)(1) “The effect of the granting of a supersedeas is to suspend or stay the matters decided in the prior order or decision...”, not all activity of any kind.

V. This Court Should Require that Defendants Post a Bond Pursuant to Rule 241, SCACR

Upon granting an immediate and far-reaching stay, this Court did not require Defendants to post a bond or undertaking to prevent damage during the delay, as is allowed under Rule 241:

(3) The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

Rule 241(c)(3), SCACR.

Plaintiffs respectfully submit that this was in error, as Plaintiffs and the Association controlled by Defendants are in danger of suffering immediate harm because of the delay and divestiture of jurisdiction from the Circuit Court. It was recently documented to the Circuit Court that Defendants are actively marketing the Association's golf course amenity (and developer rights) for sale to others. Wayne Raiford, testifying on behalf of Defendant LL, claimed in a recent deposition that he got the authority and price from the homeowner portion of the Board of

Directors. (*See* Ex. N, 30(b)(6) Dep. of LL of SC, LLC, J. Wayne Raiford, Aug. 23, 2024, at 117:10-118:8). This was so controversial that the homeowner serving as “Vice President” of the non-elected HOA Board executed an affidavit that the Board had neither voted to approve a sale, nor voted to approve the sales price the Defendants had offered to others. (*See* Aff. of Sharon Brady, Sept. 10, 2024, attached hereto as Ex. O).

Because of the breadth of the stay, Plaintiffs are foreclosed from seeking relief in the Circuit Court to prevent such a sale. At minimum, if this Court extends the stay and proceeds with considering the appeal, Plaintiffs respectfully request that this Court require Defendants to post a bond and seek advance Court approval for any transactions outside of the ordinary course of business, including another transfer of doubtful developer rights.

CROSS-MOTION TO DISMISS APPEAL

“The issue of whether a judgment is final is jurisdictional, which means that if the reviewing court determines that the judgment appealed from is not final, that court is obligated to dismiss the appeal on its own motion.” *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 379–80, 762 S.E.2d 44, 47 (Ct. App. 2014) (internal citations omitted).

In an abundance of caution and for the reasons set forth above, Plaintiffs/Respondents hereby cross-move to dismiss Defendants’ appeal, as it is an improper appeal of an interlocutory order.

CONCLUSION

As illustrated by the foregoing, Defendants do not have a right to an immediate appeal; and a notice of appeal without a right to an appeal does not deprive the Circuit Court of jurisdiction. For the reasons set forth above, this Court should not further delay the trial of this case on account of the instant Petition and/or pending appeal taken by Defendants. Plaintiffs respectfully request

that this Court vacate the temporary stay and deny Defendants' Petition and/or dismiss Defendants' appeal.

If the stay is maintained pending further consideration, it should be modified and limited to matters set forth in the appeal.

Respectfully submitted,

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September 23, 2024

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

ELIZABETH M. FERRARO, JAMES T.

FERRARO, EDWARD J. PRZYBYL,

MARCELLA GLEIE, JOHN E. GLEIE, JR.,

THOMAS BOWES, CONNIE BOWES, MOATAZ

ALASADI, VIRGINIA KIRKWOOD, BOB

KIRKWOOD, PAUL VICHROSKI, NYDZA

VICHROSKI, JAMES MONTELLESE,

ROXANN MONTELLESE, Individually,

Derivatively, and on Behalf of all the Mount

Vintage Homeowners Association Members,

Plaintiffs,

vs.

LL OF SC, LLC, RAIFORD TOPSAIL ISLAND

INVESTMENTS, LLC, T R SALES

PLANTATION, LLC, AND MOUNT VINTAGE

PLANTATION HOMEOWNERS ASSOCIATION,

INC. A/K/A MOUNT VINTAGE HOMEOWNERS

ASSOCIATION, INC.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
) CASE NO. 2021-CP-19-00050

) **BUSINESS COURT CASE,**
) **ASSIGNED TO:**

) **THE HONORABLE R. LAWTON**
) **MCINTOSH**

) **PLAINTIFFS' MEMORANDUM IN**
) **OPPOSITION TO DEFENDANTS'**
) **MOTIONS FOR SUMMARY JUDGMENT**

Plaintiffs, by and through their undersigned counsel, submit this Memorandum in Opposition to Defendants LL of SC, LLC, Raiford Topsail Island Investments, LLC and T R Sales Plantation, LLC's (hereinafter "Defendants" or "Developer")¹ various, untimely Motions for Summary Judgment as to Plaintiffs' claims² (*see* Defs. Motions, filed August 16, 2024), and respectfully show the Court as follows:

¹ There is a question in this case as to who the "Developer" is—*see* Pltfs. Motion for Summary Judgment filed August 13, 2024. Plaintiffs references herein to the Developer/Defendants is not intended to waive those arguments.

² Developer Defendants each filed a Motion for (Partial) Summary Judgment on August 16, 2024. Each motion contains largely identical grounds for summary judgment, with RTI's and T R Sales' motions containing a few grounds unique to those Defendants. Plaintiffs are filing a single memorandum in opposition to these Motions.

SUMMARY OF RELEVANT FACTS

Taken in the light most favorable to the non-moving party, the relevant facts are these:

In 2009 LL of SC, LLC (“LL”) acquired its interest in Mount Vintage by aiding and abetting a principal of the prior developer (Talmadge Knight, principal of “K&H Development”) in giving a \$5.0m haircut to Carolina First Bank on its \$10.0m+ loans on Mount Vintage. LL did this through a \$2.5m loan to a shadow company (“Park Meridian Holdings”) to buy the Carolina First notes secured by the Mount Vintage developer rights and lots.³ The security interest assigned by Carolina First included developer rights.⁴ The deal was so good that LL/Raiford claims to have consummated the transaction without doing any due diligence on the collateral or borrowers.⁵

When the second developer, K&H, was unable to pay LL the 15% interest owed on the new note, LL filed a Lis Pendens and Foreclosure in 2012, and took a deed in lieu of foreclosure on September 3, 2013, which deed included developer rights.⁶ However, LL elected to continue the foreclosure to foreclose out all claims of any kind. The Order of Foreclosure included the developer rights, LL won the foreclosure bid, and then assigned the winning bid to Raiford Topsail Island Investments, LLC (“RTI”), who received a Special Referee deed for the developer property and “all and singular rights ... in any way incident or pertaining thereto, and all the estate, right title, claim, and interest, whatsoever...” on November 11, 2013.⁷ Therefore, LL’s tenure as Mount Vintage’s developer ended on November 11, 2013, after two (2) months. Notwithstanding the

³ This transaction is described by a contemporaneous file memorandum by Attorney Byrd Warlick and is independently verifiable by review of the related instruments. (See Pl. Ex. 40.06, Warlick Memo dated December 2, 2009).

⁴ See Pl. Ex. 40.05, p. 8.

⁵ See *Exhibit A*, 30(B)(6) Dep. of Raiford Topsail Isl., J. Wayne Raiford, at p. 53:3-17. Please note all exhibits to this Memorandum will be filed separately with “Plaintiffs’ Notice of Filing of Exhibits.”

⁶ See Pl. Ex. 41.04.

⁷ The Special Referee issued a Corrective Deed on July 22, 2014, confirming that its prior deed to RTI included Developer Rights. (See Pl. Exs. 41.05, 41.06, 41.07, 41.08, and 41.11).

Court Order granting all property and rights to RTI, LL continued to assert it was the developer, even inserting its name into the Covenants.⁸

It is important to note that neither LL nor RTI, nor any other Raiford development company, has employees: all personnel working for these entities are employed by a separate operating company. At the time of the foreclosure, the operating company was Georgialina Enterprises, Inc. (“Georgialina”). At some point in time between 2015 and 2019 (there is conflicting evidence on when), Georgialina assigned its managing and personnel roles to T R Sales Plantation, LLC (“T R Sales”), and Georgialina now receives a \$400,000 per year preferential payout from T R Sales. All employees of entities owned or controlled by Raiford now work for T R Sales, including Wayne Raiford and his daughter Leigh Ann Keels. Raiford, LL, T R Sales, and their CPA, Charles Fliflet, have all reported to the IRS that T R Sales manages LL and employs Raiford and Keels. The sole business of LL is the management, marketing, and sale of Mount Vintage. For the last five or more years, while Raiford and Keels have operated LL and controlled the Mount Vintage HOA (and, apparently, RTI), they have been employees of T R Sales.

In September of 2014, in what appears to be an attempt to mitigate the foregoing disconnect, Raiford backdated an assignment of his ownership of RTI to LL. However, this transfer is contradicted by Raiford’s original filed venue affidavit in this matter and all of LL’s tax returns, all of which answer in the negative as to LL’s ownership or control of any subsidiary.

Nonetheless, LL and RTI remain two (2) different corporate entities, whether they are affiliated or not, and there has never been an assignment from RTI to LL of developer rights.⁹

⁸ Its apparent that Defendants have always been aware of this developer identity disconnect. For example, when they drew up documents for a sale of Mount Vintage to the Chinese investor in 2013, they prepared a warranty deed from RTI to the buyers and a quitclaim deed from LL to the buyers. (*See* Pl. Ex. 2.2).

⁹ Eventually, most of the RTI lots were conveyed to LL, but developer rights were not conveyed or assigned.

Defendants proceeded with allowing Mount Vintage to decline in value, even after the recession ended, until they could gather up enough cheap lots to make the redevelopment of Mount Vintage extremely profitable. T R Sales continued making millions at Raiford's Aiken development, Three Runs, while Defendants 1) allowed Mount Vintage amenities to be lost to foreclosure; 2) delayed the completion of the Mount Vintage roads until they could consummate a road reimbursement deal with Edgefield County; 3) delayed all marketing until Raiford could cause the LL-appointed-and-controlled HOA board to acquire the amenities from the bank at a grossly inflated price and without sufficient funds or reserves to operate them; and 4) purchased an additional one hundred (100) lots in distress sales before commencing marketing.

Of course, the foregoing events were all executed surreptitiously while LL represented itself to be the Developer and did not come to light until the Plaintiffs investigated the HOA's deteriorating financial condition after the homeowners were assessed in 2019 to cover operating shortfalls. Plaintiffs then realized the lack of Reserves for the properties the "Developer" caused the HOA to purchase were compounding and quickly becoming insurmountable.

STANDARD OF REVIEW

Summary judgment is inappropriate where material facts are in dispute and further inquiry into the facts is necessary to clarify the application of the law. Rule 56(c), SCRCP ("[s]ummary judgment may only be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.") (emphasis added); *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000) (summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts).

Summary judgment is also inappropriate “where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Jackson v. Swordfish Invs., L.L.C.*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). This is because a court considering summary judgment neither makes factual determinations nor considers the merits of conflicting evidence with respect to a disputed fact. *S.C. Prop & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001); *see also Anderson v. Liber Lobby, Inc.*, 477 U.S. 242, 249 (1986) (In deciding summary judgment, “the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”). Rather, the court must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. *Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 59, 518 S.E.2d 301, 304 (Ct. App. 1999); *see also Anderson*, 477 U.S. at 248 (“A disputed fact presents a genuine issue if the evidence is such that a reasonable jury could return a verdict for the non-moving party.”).

I. Defendants’ August 16, 2024, Motions Are Untimely

The hearing on pre-trial Motions for Summary Judgment is scheduled for August 28, 2024, and this date was communicated to the parties on July 25, 2024, and confirmed by the Court on July 26, 2024. All Summary Judgment motions were required to be filed fifteen (15) days in advance of the hearing. (See Rule 6(e), SCRCF, augmented by S.C Sup. Ct. Order dated May 27, 2022, Rule 4(e)(4) (regarding the addition of five days when using filing and service via electronic means)). Plaintiffs complied with this deadline; the Defendants did not. Therefore, for Defendants’ motions to be timely for the August 28, 2024, hearing, they must have been filed on or before August 13, 2024. On this basis alone, Defendants’ motions should be summarily overruled.¹⁰

II. Plaintiffs’ Cause of Action for Declaratory Judgment / “Reformation” is Legally and Factually Supported and Must Proceed to Trial

¹⁰ The purpose of this rule is well illustrated here where the filing occurred late on a Friday and were not available for download until after staff had departed for the day.

a. *Reformation Covenants are Construed as Contracts and are Subject to the Law on Contracts*

Restrictive covenants are contractual in nature and are subject to the rules applicable to the construction of contracts. *See* 17 S.C. Juris. Covenants § 69 (1993). Therefore, contract defenses such as fraud, duress, and unconscionability apply to a court’s evaluation of the enforceability of a restrictive covenant. Thus, if the Court finds a clause in a restrictive covenant to be unconscionable, the Court may refuse to enforce the clause or otherwise limit its application so as to avoid an unconscionable result. S.C. Code§ 36-3-302(1).

It is well established that South Carolina’s public policy is to protect homeowners. *See, e.g., Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343-46, 384 S.E.2d 730, 735-37 (1989) (expanding traditional tort concepts to provide innocent home buyers with protection, and taking “judicial cognizance” of the inherent unequal bargaining positions of a modern homebuyer as against the seller – be it builder, developer, or the like).¹¹ This public policy—as well as its recognition of the unequal bargaining power between homeowners and a developer—support Plaintiffs’ claims for reformation.

Reformation is appropriate where a contract or other document does not reflect the true agreement between the parties. *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 49, 747 S.E.2d 178, 185 (2013) (“[R]eformation is adjudged because the instrument, by reason of mistake or fraud, does not embody the true agreement of the parties.”) (quotations omitted). A determination of whether reformation is appropriate should be made on a case-by-case basis. *Id.*

¹¹ Pre-*Kennedy* cases also aimed to protect consumers in what is likely their largest purchase: a home. *See, e.g., Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 423, 321 S.E.2d 46, 51 (1984) (holding where lender undertook to repair defects in houses to facilitate further sales, the lender could be held liable in tort for negligent repairs); *Terlinde v. Neely*, 275 S.C. 395, 398-99, 271 S.E.2d 768, 769-70 (1980) (holding a subsequent purchaser of a home may pursue a claim in contract or tort against a developer).

at 51 (“[E]ach suit for reformation stands on its own peculiar facts.”) (quotations omitted). And, extrinsic evidence is admissible to show the parties' intent. *Id.* at 49 (In an action for reformation “the rules of construction, such as the ban on extrinsic evidence, do not apply.”)

b. Perpetual Contracts are Terminable at Will

South Carolina disfavors perpetual contracts and such contracts have only been upheld if the perpetual nature of the contract is an express term of the agreement itself. *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 101–02, 447 S.E.2d 199, 201 (1994), citing *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911). Further, a term which leaves a contract’s duration to a subjective event which one party can control renders a contract perpetual. *See, e.g., Tower St. Cap. Mgmt. Inc. v. KnightBrook Ins. Co.*, No. 3:17-CV-01781-JFA, 2020 WL 13065453, at *12 (D.S.C. June 15, 2020) (“The contractual provision at issue here has the force and effect of creating a perpetual contract by allowing unilateral perpetual power to renew.”). A perpetual contract is terminable at will by either party, subject only to reasonable notice. *See Carolina Cable*, 316 S.C. at 102.

c. Unconscionability and Contracts of Adhesion

The definition of unconscionability is “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Damico v. Lennar Carolinas, LLC*, 437, S.C. 596, 611 (2022) (internal citations omitted). In *Damico*, the Court clarified that the “touchstone of the [unconscionability] analysis begins with the presence or absence of meaningful choice.” 437 S.C. at 612-613 (“Whether one party lacks a meaningful choice typically speaks to the fundamental fairness of the bargaining process.”) (internal quotations omitted). A strong indicator of absence of meaningful choice exists when a contract is one of adhesion. *Id.* at 613.

“[A]n adhesion contract is a standard form contract offered on a “take-it-or-leave-it” basis with terms that are not negotiable.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26–27, 644 S.E.2d 663, 669 (2007). Additionally, terms which lack mutuality are “oppressive terms” under South Carolina law. *Damico*, 437 S.C. at 615; 879 S.E.2d at 757 *citing* 17A Am. Jur. 2d *Contracts* § 272 (“Mutuality [] is a paramount consideration when assessing the substantive unconscionability of a contract term.”).

d. *Perpetual Developer Control is Disfavored*

Other courts around the country, as well as the Restatement (Third) of Property, recognize that a developer has a duty to turn over control of the HOA within a reasonable time. *See, e.g. Innerimages, Inc. v. Newman*, 579 S.W.3d 29, 48 (Tenn. Ct. App. 2019) (recognizing that developer owes duty of good faith in his development of the property, and has a duty to turn over control of an HOA to the Owners after a time “reasonably necessary” to complete the project.”). A developer’s duty to turn over control within a reasonable time is a “common law” duty. *Id.* (Citing Restatement (Third) of Property (Servitudes) 6.19). This principle exists irrespective of the allowances provided in the governing documents crafted by the developer. *See Innerimages*, at 579 S.W. 3d at 47-49 (ordering developer to relinquish control despite provision in Covenants giving developer control until developer sells 75% of lots). The reason for this rule is to prevent a developer from abusing its status and robbing the homeowners from their bargained-for collective control of the Association. *See Id.* at 45 (recognizing that “[t]he longer the developer retains control, the greater the likelihood of conflict.”); *Id.* at 47 (“Requiring developers to ... turn over control after a reasonable time helps ensure that property owners can *actually obtain* the form of collective decision making that they bargained for when they purchased their property.”) (internal quotations omitted).

e. The MV HOA Covenants Are Perpetual in Duration The Covenants Are Contained in a Contract of Adhesion with Oppressive and One-Sided Terms Which Were Offered on a Take-it-Or-Leave-It Basis and Therefore Plaintiffs' Cause of Action for Reformation Must Proceed to Trial

The operable Covenants of Mount Vintage—which vest LL with complete, perpetual control of the homeowner’s association in which no other members have voting (or any other) rights—are perpetual in duration, are unconscionable and are unenforceable.

The “Effective Period” (Article XII) of the Covenants reads as follows:

This Amended and Restated Declaration and agreements [...] shall thereupon run with the land and be binding on all persons or parties and their heirs, successors or assigns claiming title under or through the Developer, until December 31, 2056, and shall be continued automatically and without further notice from that time for a period of ten (10) years thereafter and for successive periods of ten (10) years each without limitation, unless by a vote of a seventy-five percent (75%) majority of the then owners of the lots in Mount Vintage following the granting of voting privileges to Class B members, it is agreed to change said Amended and Restated Declaration in whole or in part.

[...]

So long as the Developer shall hold title to any portion of the hereinabove described property, or to any additional real estate added to the scheme of the development herein set forth in accordance with Article IX of this Amended and Restated Declaration, the Developer as well as its successors, assigns, or heirs, as the cause may be, shall have, and are hereby granted, the exclusive right, exercisable at any time and from time to time, to amend or to grant exceptions to this Amended and Restated Declaration and to waive, repeal or vary this Amended and Restated Declaration in any one or more respects whenever in the sole and controlled opinion of the Developer, such waiver, repeal or variance shall not be materially detrimental to the general nature in development of Mount Vintage as a residential area.

(See Art. XII, Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions of Mount Vintage, hereinafter “Covenants,” filed Dec. 12, 2022, Edgefield County Register of Deeds, at Bk. 2014, Pg. 173, Excerpts attached as Exhibit B). Article IX, entitled “Additional Property Subject to This Declaration,” provides:

Additional contiguous real estate which the Developer may decide to add to the scheme of the development herein set forth may be subjected to and placed within

the jurisdiction of the Association upon the written designation of the Developer, at the sole option of the Developer [...]

(*See id.*, Art. IX). And, as to when Class B Members are granted voting privileges:

Class B members shall not have voting privileges until the Developer shall have conveyed all residential lots and tracts within Mount Vintage including, but not limited to, additional phases, sections and developments which the Developer may decide to add to the scheme of the development as contemplated under Article IX of the Amended and Restated Declaration, unless and until the Developer, at its sole and exclusive discretion, elects to transfer such rights, voting privileges and duties to Class B members of the Association at which time Class B members shall become Class A members.

(*See id.*, Art. V(1)(b)).

These Covenants perfectly fit the definition of a perpetual contract with no durational limitation save at the option of one party, the Developer. The Covenants will continue in force until 75% of the Class B Members vote to change or alter them; Class B Members cannot vote until the Developer either sells his last tract/lot or decides to grant them such privileges; the Developer has the sole option to add lots and tracts to Mount Vintage at his sole discretion; and while the Developer owns any property in Mount Vintage, he can, at his sole option, modify, waive, or repeal any aspect of the Covenants. The Developer—and his successors and assigns--has unilateral power to renew these Covenants; this is a perpetual contract; and is therefore terminable at will by either party upon reasonable notice.

Here, the Developer continues to acquire assets in Mount Vintage, allowing for potentially indefinite control in a variety of scenarios. (*See, e.g.* Title to Real Estate, Edgefield SC Properties, LLC, to LL of SC, LLC, dated July 7, 2022, Edgefield Co. Register of Deeds, Bk. 1983, Pg. 97, attached as Exhibit C). Further, Raiford testified that he does not anticipate granting Class B Members voting rights until all Developer lots/tracts are sold, which he does not expect will happen:

- Q: When do you intend to turn over the control of Mount Vintage to the homeowners?
- A: When it's sold out the percentage I have to have sold out. I can't remember what it is. 95 or 98.
- Q: And when do you anticipate that occurring?
- A: I don't.

(See 30(b)(6) Dep. of LL of SC, LLC, Aug. 23, 2024, at 22:10-17, attached as Exhibit D).¹²

If the Court does not find the foregoing facts sufficient to clearly establish that the Covenants are terminable at will and/or subject to reformation, the Covenants additionally contain unconscionable terms that must be reformed. These Covenants, which were originally recorded in 2000, were clearly offered on a “take-it-or-leave-it” basis and are therefore considered contracts of adhesion. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (defining adhesion contracts as “standard form contract[s] offered on a take-it or leave-it basis with terms that are not negotiable”).

Further, the specific provisions above clearly lack mutuality, as the invocation of all material terms of the Covenants is subject to the “sole discretion” of one party—the Developer. “Mutuality is a paramount consideration when assessing the substantive unconscionability of a contract term.” *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 615, 879 S.E.2d 746, 757 (2022), *reh'g denied* (Nov. 17, 2022), *cert. denied*, 143 S. Ct. 2581, 216 L. Ed. 2d 1192 (2023), *citing* 17A Am. Jur. 2d *Contracts* § 272. These one-sided and oppressive terms, which are contained in a contract of adhesion, are unconscionable. The Court may choose to refuse to enforce the unconscionable provisions; or, if the Court finds that the unconscionable provisions are so pervasive that “blue-penciling” the agreement would result in “only a disintegrated fragment”

¹² If this were not bad enough, Raiford is negotiation with MV neighbor and Raiford's cousin, Blackston, regarding additional, contiguous, undeveloped land which either of them could add to Mount Vintage, further delaying the prospect of turnover. (See Ex. D, Dep. of LL of SC, pp. 7:7-8:5)

remaining, the Court can disregard the Covenants *in toto*. See *Damico*, 437 S.C. 596 at 618, 879 at 758 (2022).

South Carolina public policy, which seeks to protect homeowners¹³, disfavors one-sided terms which provide for perpetual and unilateral developer control, and they should be declared void or unenforceable at this point, 25 years after development of Mount Vintage began, with no end in sight, and/or the governing documents should be reformed accordingly.

III. Defendants, By Accepting the Benefits of “Developer Rights”, Also Accepted the Obligations; Which They Have Failed to Meet

Promissory estoppel requires a claimant to prove: (1) the presence of an unambiguous promise; (2) the promisee reasonably relied upon the promise; (3) the reliance was expected and foreseeable by promisor; and (4) the promisee was injured as a result of reliance upon the promise. *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005).

a. The Principle of “With the Benefits Come the Burdens” Applies Here

The legal and equitable principle—that with the benefits come the burdens—is firmly grounded in South Carolina jurisprudence. See, e.g., *Welling v. Crosland*, 129 S.C. 127, 123 S.E. 776, 780 (1924) (“The assignee of a contract, who acquires the right to enforce the executory provisions thereof, or to recover damages for the breach, assumes the burdens which are imposed upon the assignor by the contract.”) (internal quotations omitted); see also *Clardy v. Bodolosky*, 383 S.C. 418, 430, 679 S.E.2d 527, 533 (Ct. App. 2009) (citing *Welling*) (“However, with proof of a valid assignment of contract, an assignee can be bound to certain equities of the contract.”). Put differently, “it is well established that an assignee stands in the shoes of its assignor.” *Twelfth*

¹³ Wayne Raiford, through his various corporate entities, is an experienced developer who has developed and sold hundreds of residential lots in this state; as such, Developer’s contention that there are no public policy considerations at issue here is grossly misguided. See *Damico v. Lennar Carolinas, LLC*, 437 S.C. at 624, 879 S.E.2d at 761 (2022) (“[W]ith respect to the public policy considerations inherent in this type of consumer transaction (homebuying), the likelihood that refusal to enforce the bargain or term will further public policy is, we hope, high.”).

RMA Partners, L.P. v. Nat'l Safe Corp., 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999).

These principals support Plaintiffs' promissory estoppel *and other* causes of action.

b. Developers Are Bound By Their Marketing Representations

A developer is bound by his representations made in marketing and selling lots in a development. *See Chesus v. Watts*, 967 S.W.2d 97, 109 (Mo. Ct. App. 1998) ("When a development is a work in progress, a lot buyer should be able to rely on the developer's oral representations regarding amenities and basic services."). Therefore, a developer is not entitled to freely renege on promises regarding the development scheme or substantially alter fundamental aspects of the common areas/amenities after lots have already been sold and homes have been built in reliance on those promises. *Id.* at 110 ("Individuals purchasing lots in new developments in Missouri should be able to rely, within the limits of reasonableness, on the sales promises of the developer."). And, where certain aspects of a proposed development are used as a selling tool to induce purchasers, equity prohibits the developer from removing or substantially altering those features. *Knight v. City of Albuquerque*, 110 N.M. 265, 794 P.2d 739 (Ct.App.1990) (where developer used the golf course as a selling tool to induce purchasers into his planned development, the developer's retention of right to change use of course was unfair, violative of public policy, and would not be given effect).

c. Successor Developers Are Bound By Their Predecessor's Marketing Representations

A successor developer that takes ownership of a development and exercises developer rights over it assumes the obligations of the predecessor developer(s). *Bd. of Managers of Medinah on Lake Homeowners Ass'n v. Bank of Ravenswood*, 295 Ill. App. 3d 131, 137, 692 N.E.2d 402, 407 (1998) (A successor developer "acquire[s] the original developer's rights *and obligations*...") (emphasis added). The obligations assumed include the agreements and representations made by

its predecessor. *See Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 640 (Iowa 1996) (Developer's agreement to convey common areas to association no later than the end of its involvement in the project *bound successor* that purchased developer's remaining lots and common areas). A subsequent purchaser assumes such agreements because it is not a *bona fide* purchaser. *Id.* At 638 (in order to be a *bona fide* purchaser, “purchaser must show the purchase was made without either actual or constructive notice of existing rights in the property.”). Furthermore, the burden is on the land purchaser to establish that he/she is a *bona fide* purchaser. *Id.* And, in any case, a successor who explicitly takes an assignment of developer rights with knowledge of the development has a “duty to make further inquiry” as to the obligations attendant to his/her purchase and cannot claim ignorance. *Id.*

d. Defendants Are Bound by Obligations of Prior Developer

As the self-proclaimed successor developer, one or more Defendants are obligated to make good on the representations made by the original developer, MV Development Company, LLC.

To be sure, Defendants have taken full advantage of the benefits of the assignment of Developer Rights, including not paying dues on the lots owned by *any* of the Defendants, and taking advantage of the Edgefield County multi-lot discount for almost eleven (11) years, which discount is reserved for Developers.

Defendants failed to make good on the actionable promises and obligations of the original developer to the purchasers, to which it is obligated as an alleged successor developer, which it/they purport to be. Those promises include the unambiguous promise that the owners would have access to *optional* amenities (including optional first class athletic club and golf course), and that they would not own the amenities or be taxed for them unless they chose to enjoy them; the unambiguous promise that an Equestrian Center would be provided; and the unambiguous promise

that all homes within Mount Vintage would be custom built according to certain high and uniform construction standards and be architecturally significant.

i. The original developer promised that the amenities would be “optional”, which is an unambiguous promise

The original developer’s pitches, marketing, and development strategy consistently promised to the purchasers that the Mount Vintage facilities would be optional. The original developers stated that the owners would not be ‘buying a golf course,’ which is potentially a tremendous risk or financial burden; owners would not be required to support the golf course. (*See, e.g. Dep. of Marcella Gleie, 23:11—24:17, attached as Exhibit E*). This promise is unambiguous. Defendants have clearly failed to make good on the promise as it has caused the HOA to buy the Golf Course and the ACTC and take on the attendant financial and other responsibilities. Not only that, but Defendants have caused the Association to incur well over \$4,000,000 in debt to fund the purchases. In fact, *after* Defendants caused the HOA to purchase the golf course and ACTC, Defendants retroactively caused the Covenants to be amended to provide as follows:

Duties of the Association are as follows:

[...]

(c) Purchase, own, maintain, repair, operate, and finance the Athletic Club, Town Center, Mount Vintage Golf Course, and any additional amenities, common areas or other properties which the Association deems to be for the overall good of Mount Vintage, the Association and its members.

(*See Amended and Restated Declaration of Covenants, June 21, 2017, excerpt attached as Ex. F*).

The previous version(s) of the Covenants did not contain such a provision. This amendment evidences overt activity on the part of Defendants to alter the original scheme regarding ownership of the amenities.

ii. The original developer unambiguously promised that Mount Vintage would include the Equestrian Center

The original developer's promise that equestrian facilities and riding trails would be included in the amenity package of Mount Vintage is also unambiguous. (*See* Pl. Ex. 16.01, at pp. 29-31). And, Defendants have not provided an Equestrian Center. The riding trails are owned by a third party, who occasionally makes the trails "available" but places significant restrictions on their usage. And, of course, the need to board horses off premises significantly devalues the usefulness of that offering.

iii. The original developer unambiguously promised that only custom homes would be constructed in Mount Vintage

Houses in Mount Vintage were originally only built by a deliberate selection of approved, high-end, custom home builders, and, according to certain design standards, after approval by the Architectural Committee. This was for the purpose of maintaining home values by ensuring the quality of neighboring homes, and for preserving the aesthetics of Mount Vintage. This standard, while originally adopted and promulgated by Defendants (*see, e.g.* Pl. Ex. 16.02 at 12), was abandoned by Defendants in favor of quick, bulk sales by to a national builder. Defendants have sold dozens of lots to national tract builder Stanley Martin Homes and has and allowed "spec" homes to be constructed with inferior design standards, for example, permitting slab on grade construction and other variances. Plaintiffs and other homeowners relied on this unambiguous promise to their detriment. (*See* Section V(b), *infra*, for testimony of Plaintiffs regarding decreased home values due to the low-quality builds). For example, the sale prices of the Stanley Martin homes resulted in an average price per sq. ft reduction in Mount Vintage, as testified to by Raiford's captive real estate agent, Rick Atkins (*see* Section V(B), *infra*).

e. The reliance and injury elements are met

The testimony adduced to date illustrates that the Plaintiffs relied on the original developer's promises in acquiring lots and/or building residences. (*See* Section V(B), *infra*: Ex. E,

Dep. of Gleie; *see also* Dep. of V. Kirkwood attached as Exhibit H). Furthermore, Plaintiffs allege that the original developers expected and foresaw Plaintiffs' reliance. *Id.* Furthermore, Plaintiffs allege that their reliance on the aforementioned original developer promises resulted in harm – not only by having lost certain benefits of their bargained for exchange but also by the plummeting of their home investment. (*See* Section V(b), *infra* regarding loss of property values).

Raiford/LL had intimate knowledge of the development prior to taking ownership. Besides living across the street during the entire development of Mount Vintage, 1) Raiford was the primary lender who financed the second developer's purchase of interest from MV Development; 2) Raiford is a local, experienced developer who would not have purchased into or made a loan regarding Mount Vintage without doing his due diligence; and, 3) Mount Vintage has a slightly notorious, well-known history. Therefore, Raiford and LL cannot claim they took ownership without notice of the nature of the development and developer obligations. At minimum Raiford/LL had a duty to make inquiry and discover the promises made regarding the development; and, in any case, the burden to show otherwise is on LL. Moreover, after taking ownership, Defendants voluntarily assumed control of Mount Vintage, leaving behind and vestige of passive lender foreclosure ownership.

IV. This Court Should Deny Defendants' Motion for Summary Judgment Because Plaintiffs "Fairly and Adequately" Represent the Interests of the MV HOA and its Members

This Court should deny the Defendants' Motion for Summary Judgment because Plaintiffs' derivative action, brought on behalf of the MV HOA Members, fairly and adequately represents the interests of the other MV HOA Members in accordance with Rule 23(b)(1) of the South Carolina Rules of Civil Procedure ("SCRCP").

Rule 23(b)(1), SCRCF, governs derivative actions and stipulates the requirements necessary to maintain derivative claims. Specifically, Rule 23(b)(1), SCRCF, requires: (a) the verification of a derivative complaint; (b) particular allegations of the plaintiff's efforts to "obtain action he desires from the directors or comparable authority;" and (c) "the reason for the plaintiff's failure to obtain the action or for not making the effort."¹⁴ Rule 23(b)(1), SCRCF, further provides a plaintiff maintaining a derivative action must "fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association."

In determining whether an individual plaintiff is an adequate representative, South Carolina Courts consider two criteria: (1) the common interests between the plaintiff and the members he represents; and (2) the plaintiff's ability and commitment to prosecute said common interests. The recent Court of Appeals decision in *McMillan Pazdan Smith, LLC versus Mattison* augmented those criteria by citing to a Sixth Circuit Court of Appeals case, *Davis versus Comed., Inc.*, which listed factors courts have examined in determining whether a plaintiff can provide the requisite fair and adequate representation in a derivative action. Those factors are as follows:

[(1)] economic antagonisms between representative and class; [(2)] the remedy sought by plaintiff in the derivative action; [(3)] indications that the named plaintiff was not the driving force behind the litigation; [(4)] plaintiff's unfamiliarity with the litigation; [(5)] other litigation pending between the plaintiff and defendants; [(6)] the relative magnitude of plaintiff's personal interests as compared to his interest in the derivative action itself; [(7)] plaintiff's vindictiveness toward the defendants; and, finally, [(8)] the degree of support plaintiff was receiving from the shareholders he purported to represent.

McMillan Pazdan Smith, LLC v. Mattison, No. 2020-001645, 2024 WL 3688320, at *6 (S.C. Ct. App. Aug. 7, 2024), citing *Davis*, 619 F.2d 588 (6th Cir. 1980). As an initial matter, *the burden of*

¹⁴ None of the criteria set forth in Rule 23(b)(1)(a-c), SCRCF, are challenged in the instant Motions for Summary Judgment before the Court.

proof is on the Defendants to show that Plaintiffs do not fairly and adequately represent the interests of the other members of the Mount Vintage HOA. *See Mattison*, No. 2020-001645, 2024 WL 3688320, at *7 (S.C. Ct. App. Aug. 7, 2024) (“The burden is on the defendants to show that the plaintiff will not fairly and adequately represent the corporation and its shareholders.”) (internal citations omitted). Here, not only do Defendants fail to meet that burden, but the evidence adduced to-date shows the exact opposite.

a. *Plaintiffs Fairly and Adequately Represent the MV HOA Members*

In the present case, the record clearly reflects that derivative Plaintiffs (1) have a mutuality of interests with the other MV HOA Class “B” Members; and (2) have the ability and commitment to prosecute these common interests. Therefore, Plaintiffs are entitled to bring this derivative action on behalf of the Mount Vintage HOA.

First, there is a mutuality of interest between the named Plaintiffs and those of Mount Vintage members, as all Class “B” MV HOA members suffered from the same conduct of the Defendants, and it is that conduct which Plaintiffs seek to redress in this case. Most obviously, all Class B members are fiscally supporting the Developer’s operations without having any say in the matter. Additionally, when considering the other *Davis* factors, Derivative Plaintiffs have *no* personal, financial interests in this lawsuit which are antagonistic to or conflict with the interests of the other Members¹⁵; they have *no* “other litigation” with the Defendants in which the derivative suit could be used as leverage; should derivative Plaintiffs’ claims succeed at trial, there would be *no* adverse economic or other effect on the other Members; and derivative Plaintiffs are unquestionably familiar with the litigation and were, in various ways, the driving force(s) behind

¹⁵ *See McMillan Pazdan Smith, LLC v. Mattison*, No. 2020-001645, 2024 WL 3688320, at *8 (S.C. Ct. App. Aug. 7, 2024) (finding a conflict between derivative plaintiff and other minority members where derivative plaintiff admitted to using the derivative suit as leverage to increase her personal claim against majority members for increased value of her shares).

the litigation. Each of the foregoing are factors which weigh in favor of satisfying the “fair” and “adequate” representation inquiry. There is also *no* evidence that “vindictiveness” between the derivative Plaintiffs and the Defendants was the driving force behind this litigation.¹⁶ Of course, there is animus between the derivative Plaintiffs and the Defendants, which is to be expected: “charged emotions and economic antagonism are virtually endemic to disputes in closely held corporations.”¹⁷ However, and as the Court of Appeals held in the *Boathouse versus Stoney* case, the Court,

must look beyond the mere presence of economic and emotional conflict, placing more emphasis on whether the totality of the circumstances suggest that the plaintiff will vigorously pursue the suit and that the remedy sought is in the interest of the corporation.

Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney, 442 S.C. at 648, 900 S.E.2d 483 at 491.

Perhaps the most impactful show of mutuality of interests between derivative Plaintiffs and the other Class “B” Members of the MVHOA is the degree of opposition received when the other Members were notified of the derivative settlement in 2023. On June 27, 2023, the Court-approved Notice of the Partial Resolution was sent via U.S. Mail to four hundred and ninety-one (491) Class “B” Members of Mount Vintage. **One (1) objection was received; and the objector was not a disinterested member (see Section IV(c)(1), *infra*).**

Additionally, Plaintiffs have no **interests** which are antagonistic or adverse to other members of the MV HOA which further supports Plaintiffs’ ability to fairly and adequately

¹⁶ See *Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney*, 442 S.C. 633, 648, 900 S.E.2d 483, 491 (Ct. App. 2024), *reh’g denied* (Apr. 29, 2024) (considering and overruling a claim that vindictiveness was the motivating factor behind the derivative suit).

¹⁷ See *id.*

represent the MV HOA members in accordance with the South Carolina Rules of Civil Procedure. Rule 23(b)(1), SCRCP.

b. Other Evidence Testimony that Plaintiffs Represent the Interests of the HOA

There is ample evidence that Plaintiffs fairly and adequately represent the interests of the membership. As a recent example, and without the knowledge of the “Board,” Defendants gave their business partner, Stanley Martin, permission to convert an unbuildable green space at the North/second entrance of Mount Vintage into a buildable lot.¹⁸ It was only when Plaintiffs became aware of this, and brought the issue to the membership’s attention via the HOA Attorney, that the development of a green space was halted by the memberships objections prior to the zoning hearing. Plaintiffs’ detailed research of the chain of title forced the developer-controlled HOA to acknowledge that this was always intended to be green space and was included in the Covenants. Plaintiffs’ attention to the matter forced the Defendant-controlled Board to issue a statement to the membership on the subject, which created an uproar:

- Pl. Ex. 63.23 (5/7/2023 Email to HOA from non-Plaintiff HOA Member): “I am writing to express my disagreement with the decision to support Stanley Martin’s request to rezone Lot P1A for a single-family residential unit.”
- Pl. Ex. 63.22 (5/7/2024 Email to HOA from non-Plaintiff HOA Member): “We had planned to attend the meeting on the 9th about this lot, but that seems rather pointless. Our HOA feels they are entitled to make any decisions based on what you want and not the citizens of this community. It must be very satisfying to you all not having to inform the community about how we feel [sic] on anything.”
- Pl. Ex. 63.21 (5/7/2024 Email to HOA from non-Plaintiff HOA Member): “Hard to comprehend how a small brick home squeezed onto a lot in order to get HOA dues is better than green space.”
- Pl. Ex. 63.20 (5/3/2024 Email to HOA from non-Plaintiff HOA Member): “The fact that a builder has taken possession of this tract of land that is the corner of our restrictive neighborhood and is not bound by our construction requirements is unimaginable. [...]

¹⁸ See Pl. Ex. 49.05.

This should certainly warrant further review and possibly a legal injunction. This will have continued repercussions to all residents.”

This example provides additional evidence that Plaintiffs fairly and adequately represent the interests of the MV HOA and its members. Indeed, efforts to stop the Defendants from allowing their business partner to convert Mount Vintage dedicated green space into a lot could only be for the benefit of the MV HOA.

c. Defendants Fail to Meet Their Burden

Defendants have the burden to show that Plaintiffs do not fairly and adequately represent the interests of the MV HOA and its members. They have failed to meet this burden. Let’s examine what the Defendants have proffered to illustrate that Plaintiffs do not fairly and adequately represent the HOA’s interests:

- A 2020 Petition started by “Independent” resident, Dan Binz, which garnered 211 unworn signatures without any disclosures to the signatories;
- Testimony of five (5) “Mount Vintage Residents” who allegedly do not support the Plaintiffs’ efforts;
- That Plaintiffs have “abandoned” their class claims because of a lack of support;
- That there are only fourteen (14) Plaintiffs;
- That Plaintiffs’ opposition to the *Developer* controlled Board’s motion for release of escrow funds is evidence of “economic antagonism” between Plaintiffs and the HOA; and
- That there is evidence of “other litigation” pending between the Plaintiffs and Defendants, including liens filed by the HOA *during* the pendency of this action on three (3) of the Plaintiffs; previously filed South Carolina Department of Consumer Affairs complaints filed by certain Plaintiffs against Defendants’ operation of the HOA; and a police report filed by one Plaintiff against Wayne Raiford.

(*See Corp. Defs. Mot. for SJ, at 7-9*).

1. The 2020 Petition Has No Bearing on Plaintiffs’ Fair and Adequate Representation of the HOA or Its Members

First, the signatures on the 2020 Petition should be completely disregarded by this Court as evidence in support of a motion for summary judgment because the signatures are not sworn or

notarized. *See Mattison*, 2024 WL 3688320, at *9 (“We agree the circuit court erred in considering the signed members statements because the statements were not sworn or notarized.”).

Second, the Petition organizers—Dan Binz, Bob Porter, and Mike Bone—were each founding members of the failed golf course management entity known as Golf Gem, LLC, with Binz and Porter sitting on the Golf Gem Board with Leigh Ann Keels (part owner and member of Defendant LL of SC). While Plaintiffs do not have claims against Golf Gem, Golf Gem’s mismanagement of the golf course after it was purchased by the HOA certainly factored into the damages suffered by the HOA which are being sought in this derivative action.

Third, approximately sixty (60) of the signatories have either moved or sold their lots, and at least six (6) of the signatories are deceased. Stated differently, Movant has failed to document to this Court the number of legitimate signatures on the petition.

Fourth, approximately sixty (60) of the signatories to the 2020 Petition recently signed the petition submitted to this Court in support of the Developer-controlled HOA’s motion for disbursement of the escrow funds. In other words, while they may not have supported the lawsuit back in 2020, they are now in favor of the HOA receiving the benefit of the lawsuit in 2024. One can either be counted as opposed to the suit or in favor of the HOA receiving the funds of the suit—one cannot be both. Stated differently, the signatures on the petition are stale, and Movant presents no evidence that they are still valid.

Fifth, and to the extent any additional reasons are necessary, the solicitation sent out for signatures misrepresents the lawsuit as being “against the HOA” and makes no mention of the fact that the lawsuit primarily sought damages against the “Developer”/ Defendants. (*See* Email Solicitation, attached as Exhibit I). It is axiomatic that one cannot oppose the merits of something that they have not read or do not understand. **For these and additional reasons, this “evidence”**

does not assist Defendants in carrying their burden regarding fair and adequate representation by Plaintiffs.

2. Deposition Testimony of “MV Homeowners” Has No Bearing on Plaintiffs’ Fair and Adequate Representation of the HOA or Its Members

Defendants cite to the testimony of “multiple homeowners” who have testified that the Plaintiffs “do not represent their interests.” (LL Mot. for SJ at p. 7). Out of the five “homeowners” cited by Developer Defendants, one is Wayne Raiford’s cousin (Charles Blackston), who has an on-going business relationship with Raiford/LL of SC and is currently negotiating to become the successor developer; is no longer a homeowner (Patrick Bukszar)¹⁹ and is the owner of a company which is in business with Defendants, and one is Wayne Raiford/LL of SC’s exclusive listing agent in Mount Vintage and has made tens of thousands of dollars selling Mr. Raiford/LL of SC’s lots (Rick Atkins).

A fourth, former board member Duane Dotta, did not testify that the Plaintiffs “did not represent his interests,” as Defendants averred to the Court; rather, he testified that he did not want to get dragged into the lawsuit (*See* Dep. of Duane Dotta, Jan. 20, 2023, 131:13-22, attached as Exhibit K). Many of the grievances he aired as to the Developer are alleged in the lawsuit. For example, he testified that “Leigh Ann Keels should not have her hands on our checkbook” because “she’s the developer and its HOA money. It’s not developer money.” (*see id* at 25:2-7). He also testified that the mishandling of the \$300k Promissory Note by Leigh Ann Keels and the Defendants was the reason he resigned from the Board, calling the handling of it quickly and without board knowledge “sneaky” (*Id.* at 127:2-10), and testifying that he initially accused Leigh Ann Keels and Raiford of “fraud.” (*Id.* at 86:21-87:2). The fifth homeowner cited by Defendants,

¹⁹ *See* Bukszar Dep., 125:14-20, attached hereto as Exhibit J. Mr. Bukszar also did not testify that the lawsuit or the Plaintiffs did not represent his interests—the cite to which Defendants point to does not say anything of the sort.

former board member Bill Johnston, testified that he was “not sure everything [Wayne] did was above board” (*see* Dep. of Bill Johnston, Jan. 18, 2023, at 42:12-18, attached hereto as Exhibit L); that he agreed with Duane Dotta regarding the mishandling of the \$300k Promissory Note. (*see id.* at 108: 1-2); and that he objected to decisions being made unilaterally by the Developer (*see id.* at 62:20-63:4). Further, Mr. Johnston’s testimony evidenced that he did not understand the lawsuit and believed that the Plaintiffs were seeking damages from the HOA. (*See id.* at 140:23) (“We’re suing ourselves.”).

So, Defendants cannot point to any independent and non-biased homeowner²⁰ who has given sworn testimony who has (1) read the lawsuit papers; (2) understands the suit; (3) and is opposed to it. **This “evidence” does not assist Defendants in carrying their burden; and the additional testimony cited above clearly creates an issue of fact.**

3. Number of Plaintiffs and Voluntary Dismissal of Class Claims

One derivative Plaintiff is sufficient to bring a Rule 23, SCRCP, derivative action. There are fourteen named derivative Plaintiffs. Defendants have no idea how many homeowners have reached out to Plaintiffs and Plaintiffs’ counsel in a show of support. It is not Plaintiffs’ burden to win a popularity contest and dispel misinformation promulgated by interested parties, especially when Plaintiffs’ hard-fought efforts *on behalf of the HOA* have already accrued \$1.6 million dollars *for the benefit of the HOA*; rather, it is Defendants’ burden to show that Plaintiffs do not fairly and adequately represent the HOA or its members. Pointing to the number of named Plaintiffs does not

²⁰ A shareholder’s, or, here, a member’s, motivation for opposing a derivative suit is relevant when considering whether a derivative plaintiff adequately represents the interests of that member. *McMillan Pazdan Smith, LLC v. Mattison*, No. 2020-001645, 2024 WL 3688320, at *8 (S.C. Ct. App. Aug. 7, 2024) (“We hold that shareholders’ motivation for opposing the derivative action is relevant to determining the question of whether any shareholder is similarly situated to the derivative plaintiff.”) (internal citations omitted).

help Defendants reach its burden. Additionally, the fact that Plaintiffs’ voluntarily dismissed class claims does not benefit Defendants’ argument—in fact, it cuts directly against it. Plaintiffs’ class claims were seeking *individual* damages for *all* class members, as opposed to the derivative claims which seek damages on behalf of the HOA and its members *writ* large. Truth be known, the class damages were dropped because the derivative damages were already so large and there was an overlap between the two, so the Plaintiffs opted to favor the derivative claims *for the benefit of the HOA*.

4. “Economic Antagonisms” Do Not Exist Between the Plaintiffs and the Homeowner Members of the HOA

The “economic antagonism” contemplated by the *Mattison* Court is simply “whether the plaintiff’s interests are antagonistic to those parties it is seeking to represent.” 180 Am. Jur. Proof of Facts 3d 331 (Originally published in 2020). In *Mattison*, “economic antagonism” was present because there, the Plaintiff—a “class of one”—was seeking to increase the value of her own share payout, and if she succeeded in her derivative claims, other shareholders would be divested of their shares completely. (*See Mattison, generally*).

Here, there is no antagonism between Plaintiffs and the HOA members, as the most valuable damages being sought at trial are for the benefit of the HOA. If Plaintiffs succeed, the HOA receives additional funds. If Plaintiffs do not succeed, the HOA is not harmed. The Defendants’ attempt to spin Plaintiffs’ opposition to releasing the Escrow Funds to the *Developer* controlled board to pay off a loan which Plaintiffs allege should be borne by the Defendants does not illustrate economic antagonism between the Plaintiffs and the HOA; rather, it shows antagonism between the best interests of the HOA and the interests of the Defendants. Plaintiffs do not dispute that the Escrow Fund is for the benefit of the HOA; Plaintiffs do dispute whether the Escrow Fund should be handed over to the Defendants who control the HOA Board. **This**

“evidence” does not assist Defendants in carrying their burden regarding fair and adequate representation by Plaintiffs.

5. “Other Litigation” Between Derivative Plaintiffs and “Vindictiveness”

The fact that the Developer controlled Board placed liens (which have each been resolved and released) on three of the named Plaintiffs’ properties for non-payment of dues *during the pendency of this action* should not be given *any* consideration by the Court. Indeed, the rationale behind this factor as explained by the *Mattison* Court is that “the trial court should beware allowing a derivative suit to proceed where the representative could conceivably use the derivative action as leverage in other litigation.” *See Mattison*, 2024 WL 3688320, at *8 (S.C. Ct. App. Aug. 7, 2024). There are no pending liens, so there is no other litigation, and the suits were filed *by the HOA during the pendency of this case*, not by the derivative Plaintiffs. These liens are also not evidence of “vindictiveness” (at least on the part of Plaintiffs) because they were filed after the derivative Plaintiffs filed this action.

Nor are complaints made to the South Carolina Department of Consumer Affairs or police reports “litigation” or evidence of “vindictiveness.” Filing a complaint with the South Carolina Department of Consumer Affairs is a protocol established by the South Carolina Homeowners Association Act, Article 3, "Department of Consumer Affairs Services for Homeowners and Homeowners Associations Act". (*See* SC Code Ann. **SECTION 27-30-310**).

Here, derivative Plaintiffs have “vigorously pursue[d]” this suit—even the Defendants must admit that to be the case. The remedy sought—monetary damages for the HOA and homeowner control over the HOA—are squarely in the best interests of the HOA. Their dogged efforts have already resulted in a significant monetary recovery for the HOA.

This “evidence” does not assist Defendants in carrying their burden regarding fair and adequate representation by Plaintiffs.

V. Plaintiffs’ Individual Claims for Negligence, Breach of Fiduciary Duty, SCUTPA, Unjust Enrichment and Civil Conspiracy Are Legally and Factually Supported and Must Proceed to Trial

Defendants allege that “no plaintiff is competent to proceed in an individual capacity” because “each and every one of [Plaintiffs’] grievances pertains to actions or omissions that have allegedly had an adverse effect on the HOA—not on any particular Plaintiff or property owner.” (Defs. Mot. at 10). This argument is ironic, as the Defendants also allege that no Plaintiff may proceed derivatively on behalf of the HOA because they lack capacity to do so.

a. *Plaintiffs’ Individual Claims of Negligence* *ross Negligence Must Proceed to Trial*

Defendants appear to only be arguing that Plaintiffs have not suffered any damages which are distinct from the damages suffered by the HOA, and thus have wisely abandoned any claim that the Defendants do not owe any duties to the individual members of the HOA.

As for damages, Plaintiffs have set forth facts sufficient to show that the individual Plaintiffs have suffered damages which are distinct from those suffered by the MV HOA. For example, the Developer controlled HOA has issued at least two (2) assessments during the course of its tenure: one in 2019²¹ to subsidize the failing golf-course management entity, Golf Gem, LLC, and one in 2023²² to subsidize the ballooning interest of the golf-course loan. These assessments were issued to the members of the HOA, including the individual Plaintiffs, and thus constitute examples of monetary damages sustained by the individual Plaintiffs which are distinct

²¹ (See Pl. Ex. 8.8, 8.9, (excerpts), regarding assessments for 2019).

²² (See Pl. Ex. 43.04, notice of assessment, 2023).

from the damages suffered by the MV HOA writ large. The Defendants' conduct has also caused an increase in annual dues and are exposing Plaintiffs to future increases.

b. Plaintiffs' Individual Claims Breach of Fiduciary Duty Must Proceed to Trial

Similar to the above, it appears as though Defendants have wisely abandoned any argument as to whether they owe fiduciary duties to the individual Plaintiffs. To resolve all doubt, however, under South Carolina jurisprudence, a developer has a fiduciary duty to act in the best interests of property owners while controlling the development's property owners' association and/or the neighborhood. *See, e.g., Goddard v. Fairways Dev. Gen. Partn.*, 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993) (developer has a duty to place the ensuing neighborhood on stable financial footing). Thus, if a developer fails to act in the best interest of the property owners while in control of the property owners' association, the developer has breached its fiduciary duty, and therefore, is liable to individual property owners as a result. *Id.*

Many focus on the context of *Goddard* (and later, *Concerned Citizens of Dunes West*), which was the transfer of substandard and/or inadequately funded amenities. However, a close reading of *Goddard* suggests a broader, more basic proposition: a developer has a "promoter" like obligation (think *Duncan*,²³ cited by *Goddard*) to put the ensuing development on a stable financial footing. Both propositions are applicable to, and violated by, these Defendants.

The evidence adduced in this case has shown that, instead of acting in the best interests of the individual owners by, *e.g.*, contributing their fair share to amenity acquisition, the Defendants "pull[ed] as much cash from the PO's [property owners] as possible" to acquire amenities, because "[t]he importance of having control of the Town Center far outweighs any resistance to special assessments or dues increases." (*See* Pl. Ex. 19.2). These assessments, mentioned *supra*, represent

²³ *Duncan v. Brookview House, Inc.*, 262 S.C. 449, 205 S.E.2d 707 (1974).

actual damages sustained by the individual owners resulting from the Defendants placing their interests above those of the homeowners.

An additional example of damage suffered by the Plaintiffs individually is loss of value of the Plaintiffs' homes. It is widely conceded that the Defendants' delay in the completion of the roads and the marketing of the development damaged the neighborhood property values. Many of the individual Plaintiffs testified the Defendant's mishandling of the amenities, as did that the influx of Stanley Martin tract homes permitted by the Defendants adversely affected their property values. (*See, e.g.*, Dep. of Elizabeth Ferraro, Mar. 7, 2023, p. 68:24—69:21, attached as Exhibit M); (*see also* Dep. of V. Kirkwood, Mar. 6, 2023, p. 169:12-25, attached as Exhibit H). In fact, Defendant LL of SC's own captive insurance agent, Rick Atkins, confirmed that the influx of Stanley Martin tract homes had an adverse impact on home values in Mount Vintage:

Q. Sir, you testified last week that the property values of the custom homes in the new nine diminish as a result of the Stanley Martin construction there. Do you recall that?

A. Yeah. I'm not sure that -- I guess -- the Stanley Martin home values do have an impact on all other home values. Their square-foot prices are lower than some of the resale homes and the custom homes.

(*See* Dep. of Rick Atkins, Aug. 14, 2023, at 148:8-16, attached as Exhibit N). This is an additional example of damage suffered by the individual Plaintiffs which is distinct from that suffered by the MV HOA.

c. Plaintiffs' Individual SCUPTA Claims Must Proceed to Trial

Defendants repeat their unsupported refrain as to individual Plaintiffs' cause of action under the South Carolina Unfair Trade Practices Act ("SCUTPA"): the damages belong to the HOA, and not to the individual Plaintiffs. (*See* Defs. Mot. at 10). As laid out in the sections above, the individual Plaintiffs suffered damages separate and distinct from those suffered by the MV HOA, including in the form of assessments and loss of property values.

Defendants’ deceptive and unfair practices as it relates to, *e.g.*, advertising luxury communities with high architectural standards but sacrificing those promises in favor of corporate profits, not only have the possibility of repetition, but have already been repeated. Defendants are currently developing at least two (2) other neighborhoods in the Aiken area – Bridle Creek and Highland Hills—where homeowners are complaining about “plummeting home values” because of low-quality homes being approved by Defendants in direct contravention to Defendants’ marketing of the neighborhoods. (*See, e.g.*, LLSUPP_057895-057898, Em. From Bridle Creek Property Owner to Raiford).

This is sufficient for Plaintiffs to overcome Defendants’ motion for summary judgment as to violations of the SCUTPA. *See Daisy Outdoor Advert. Co. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996) (“[A]fter alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest. The plaintiff need not allege or prove anything further in relation to the public interest requirement.”).

d. Plaintiffs Civil Conspiracy and Unjust Enrichment Claims Must Proceed to Trial

Plaintiffs’ allegations of individual harm attributable to the Defendants listed above and supported by facts and evidence gleaned during the course of discovery, apply equally to Plaintiffs’ individual claims for Civil Conspiracy and Unjust Enrichment. Defendants’ two-sentence argument in support of summary judgment as to these claims must similarly be overruled.

VI. Any Attempt to Exclude Pre-2017 Damages Ignores (1) Complete Control of the MV HOA By Defendants; and (2) the Discovery Rule

In all three Motions, Defendants move for summary judgment that a large portion of Plaintiffs’ damages are unrecoverable. Defendants appear to seek a ruling that any damages accruing more than three years before the filing of suit, which Defendants date to mid-2017, are barred. Defendants’ one-sentence argument on the statute of limitations does not meet the moving

party's relatively low burden at the Rule 56 stage. *See Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004) ("Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact."). And, this argument certainly does not meet the Defendants' more robust burden as the party seeking to impose the statute of limitations as a defense. *Chabek v. AnMed Health*, 442 S.C. 61, 72, 897 S.E.2d 58, 63–64 (Ct. App. 2023), *reh'g denied* (Feb. 14, 2024) ("Further, the burden of establishing the statute of limitations defense is on the party seeking to impose it."). Regardless, Plaintiffs submit the below arguments to show that genuine issues of material fact regarding the application of the statute of limitations abound, and the issue should either be decided by the Court in favor of the Plaintiffs or proceed to the jury.

a. *Defendants Complete Control Over the MV HOA Tolls Any Applicable Statute of Limitations Under Applicable South Carolina Jurisprudence*

Defendants repeatedly allege that *all* of Plaintiffs' claimed damages were sustained by the MV HOA. (*See* Defs. Mot. at 10-11). Plaintiffs disagree that *all* damages were sustained by the MV HOA but do agree that the MV HOA has suffered significant damage at the hands of Defendants. Defendants also concede that "it is undisputed that Defendant continues to retain sole voting rights within the HOA[.]" (*See id.* at 12). With these two concessions in mind, it is difficult to understand how Defendants proffer a statute of limitations argument in the face of South Carolina jurisprudence like *Magnolia North*.

A property owners association lacks autonomy while controlled by the developer with sole voting rights. *See, e.g., Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 372, 725 S.E.2d 112, 125 (Ct. App. 2012) (tolling the statute of limitations during the period of developer control of the association, because the developers would not initiate litigation

against themselves during this period).²⁴ An association lacking autonomy does not have the freedom to bring suit against the developer that controls it. *See Magnolia North*, 397 S.C. at 372, 725 S.E.2d at 125 (finding “unpersuasive developers’ claim that an organization they controlled would have initiated an action against itself during [the developer control] period.”). As South Carolina law recognizes, a developer-controlled HOA will not sue itself – or authorize a suit to be brought against itself – and therefore commencement of the statute of limitations for developer wrongdoing is tolled until turnover. (*See id.*).

b. Defendants Ignore the “Discovery Rule” Applicable to the Statute of Limitations

Defendants also ignore an indisputable doctrine called the discovery rule. As documented by Plaintiffs further above, Defendants kept their subterfuge close to their chests, such that the homeowners would not know that their rights had been violated, even if they felt slightly damaged, incidentally or otherwise. Defendants can’t show one instance of full and frank advance disclosure which would trigger the commencement of the statute of limitations on damages. For example, Defendants might cite to the fact that the overpriced golf acquisition occurred in 2016, but they can’t show the Court a disclosure to the Members that the amenity was being acquired at nearly three times its value. And it wasn’t until years later that the Board clearly violated its prior promise that the homeowners would not have to subsidize the amenity operational deficits. Like the

²⁴ *See also Darner Realty Assocs., LLC v. 137 East 56th St. Owners, Inc.*, 214 F.3d 79 (2nd Cir. 2000) (finding a developer’s power to veto amendments gave “special developer control” as defined by the CCCP²⁴); *Aldea Dos Vientos v. Calatlantic Group, Inc.*, 44 Cal.App.5th 1073, 258 Cal.Rptr. 1073 (2nd Dist. 2020) (finding master deed provision gave developer veto power and control over HOA’s claims); *See also Resolution Trust Corp. v. Farmer*, 865 F. Supp. 1143, 1151 (E.D. Pa. 1994) (explaining the basis of the adverse domination doctrine: “the corporation which can only act through the controlling wrongdoers cannot reasonably be expected to pursue a claim which it has against them until they are no longer in control.”); *see also 15 U.S.C. § 3603(22)* (defining “Special Developer Control” as “any right arising under State law. . .condominium instruments, the association’s bylaws. . .through which the developer *may* control or direct the association or its executive board”).

developer entity in the *Walbeck* case (cited *infra*), the Defendants continuously, subtly eroded the homeowners rights, without every disclosing what they were doing.

In South Carolina, the statute of limitations begins to run “when the **underlying cause of action** reasonably ought to have been discovered.” *Holly Woods Ass’n of Residence Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (S.C. Ct. App. 2011) (emphasis added); *see also Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575, 593 S.E.2d 624, 627, 2004 S.C. App. LEXIS 41, *7 (S.C. Ct. App. 2004). The clock starts ticking when “the injured party knows, or should have known by the exercise of reasonable diligence that **a cause of action arises from the wrongful conduct.**” *See id.* (emphasis added).

Plaintiffs have testified that it was only when the Developer-controlled HOA issued assessments for the subsistence of the golf course that they realized the dire financial situation in Mount Vintage. (*See, e.g.* Ex. E, Dep. of Marcella Gleie, Mar. 22, 2023, p. 42:3—43:4; *see also* Ex. H, Dep. of V. Kirkwood, Mar. 6, 2023, p. 48:17—49:21).

Even if this Court finds conflicting evidence exists as to whether Plaintiffs knew or should have known they had a cause of action, the question is one for the jury. *See, e.g., Walbeck v. I’On Co., LLC*, 439 S.C. 568, 581, 889 S.E.2d 537, 543 (2023), *reh’g denied* (July 26, 2023) (“Specifically, the question of when a plaintiff discovered, or should have discovered the alleged harm is for the jury to decide because it is an objective question.”); *see also Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010); *See also Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (“When there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide.”); *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993) (“Whether a claimant knew or should have known that they had a cause of action is question for the jury.”).

VII. Defendants RTI and T R Sales Motions Must Also Be Denied

Defendants' other grounds for summary judgment, raised in the separately filed motions for RTI and T R Sales, which are supported by a one sentence argument, without legal precedent, also fail.

a. Conflating RTI and LL Does Not Save Defendants

LL and RTI both try to ignore or minimize their abuse of corporate structure by proffering a legally non-existent, self-serving and self-performed "piercing of the corporate veil" to collapse themselves into a single entity for their own benefit. For example, when questioned as to why the defendant(s) did not compel their non-developer affiliates to pay dues, Defendants have repeatedly responded in Depositions that Defendant LL and RTI (and even Mr. Raiford) are the same entity, so it does not matter. This is unheard of and ignores basic, hornbook, corporate law:

A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities. An individual shareholder, by virtue of his ownership of shares, does not own the corporation's assets and, as a result, does not own subsidiary corporations in which the corporation holds an interest. A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary; and, it follows with even greater force, the parent does not own or have legal title to the subsidiaries of the subsidiary.

Dole Food Co. v. Patrickson, 538 U.S. 468, 474 (2003) (internal citations omitted). It is clear that the assets of RTI do not belong to LL, even after the alleged backdated assignment; nor vice versa.

There is no precedent for Defendants to unilaterally choose to ignore their corporate structure to prevail over others. Veil piercing is an offensive doctrine employed to limit injustices perpetrated by controlling persons who ignore corporate formalities to the detriment of others:

In general, equitable principles govern the veil-piercing remedy, and it is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial reflection. If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. The

party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied.

Drury Development Corp. v. Foundation Ins. Co., 668 S.E.2d 798, 800, 380 S.C. 97, 101 (2008) (internal citations omitted); *see also Sturkie v. Sifly*, 280 S.C. 453, 458, 313 S.E.2d 316, 319 (Ct. App. 1984) (“The corporate form may be disregarded only where equity requires the action to assist a third party.”)

While ignoring the foregoing legal precedent, Developer repeatedly asserts that “it’s difficult to understand the legal basis...” for Plaintiffs complaint that the alleged subsidiary, RTI, is not paying dues since its parent was the Developer. Of course, “it’s difficult to understand the legal basis” on which Defendants rely as they fail to set forth any legal precedent whatsoever to support their attempts to pierce their own corporate veils in an attempt to pass liability to third parties. (In fact, in most instances where Movant indicates that “it’s difficult to understand the legal basis...”, the Movant itself fails to set forth any legal precedent to support its difficulty or position).

b. T R Sales MSJ Should be Summarily Overruled

T R Sales’ participation and potential liability is crystal clear from the summary of relevant facts, *supra*; however, it will be briefly addressed again, here.

T R Sales’ self-serving declaration that it “does not manage Mount Vintage” is amusing. For starters, it should garner as much credence as Raiford’s original declaration that T R Sales does not manage LL – “it does not manage LL of South Carolina.” (See Exhibit O, T R Sales 30(b)(6) Depo., at p.49:21-22). Now, of course, counsel for T R Sales conveniently advises the Court that T R Sales “functions primarily as a management and administrative service provider for LL.” (*see* T R Sales Mot. for SJ, pg. 2.) This is a complete about-face from T R Sales’ sworn testimony.

Presumably, Raiford abandoned his denial that T R Sales manages LL in light of the overwhelming evidence otherwise, including the fact that all three (3) entities repeatedly told the Federal Government otherwise on their tax returns, and that LL does not and never has had a human employee. LL uses Wayne Raiford and Leigh Ann Keels to get its work done and both Raiford and Keels are employed by T.R. Sales. (*see* Ex. O, T R Sales Dep. at pp.35-36).

During the T R Sales 30(b)(6) Deposition, Raiford went on to deny that he worked for T R Sales, even though he draws a salary from T R Sales, (*see id.* at p.47:4-16) and reported his T R Sales salary to the Federal government, because it was just “tax pay.” (*see id.* at pp. 46:22-47:14).

As testified by LL’s CPA Fliflet, the business of LL is the development of Mount Vintage and the sale of its Mount Vintage lots at a profit. (*see* Exhibit. P, Dep. of Charles Fliflet, CPA, at 38:21-39:11). A major tool in the development of Mount Vintage is LL’s management and control of the neighborhood and the HOA. LL has amended the Covenants numerous times (twice in 2017, twice in 2018, and again in 2022).²⁵ In the words of Fliflet, LL’s development activities include “enhancing the saleability (sic) of existing lots... working with the homeowners association... bringing the development back to life...” (*see id.*). By July 7, 2016, forecasts provided by LL to its CPA were showing a profit for the developmental period of \$9.5 million. (*see id.* at p. 134:10-24).

Besides spearheading LL’s management of Mount Vintage, T R Sales participated in the looting of the Mount Vintage orphan parcels on LL’s behalf. (*see* Ex. O, T R Sales Dep., at p. 38).

Raiford received his paycheck from T R Sales while he sat on the HOA Board of Directors for LL (and still does). (*see id.* at p. 40).

²⁵ The Amended Covenants will be made available for inspection rather than filed due to their large size.

LL's 2021 financial performance was so good that Fliflet had LL pay T R Sales an extra Two Hundred Thousand dollars (\$200,000.00) in management fees making management fees that year total Three Hundred Thousand dollars (\$300,000.00). (*see* Ex. P, Fliflet Dep., at p. 100:10-18).

As can be seen by the foregoing, T R Sales participated in all of LL's derelictions as it succeeded to T R Sales's predecessor, Georgialina, whose interests have been bought by T R Sales to the tune of \$400,000 per year, and for the next 5-10 years thereafter, by T R Sales itself, while it operated LL of SC and controlled and operated the Association's Board of Directors. T R Sales is just as responsible for LL for 99% of the derelictions complained of in this matter.

c. Negligent Development Permeates This Case

Defendants ridicule, and again, "fail to see any legal basis for," yet fail to set forth any legal basis against, a claim for *negligent development*. Plaintiffs brought a negligence/gross negligence claim for the Developer's negligent acts. The developer negligence is detailed *ad nauseum* in the applicable complaint, and in the deposition testimony, and exemplar derelictions have been discussed in this memorandum. In short, Defendants owed Plaintiffs and the HOA various duties, including the duty to put the neighborhood on sound financial footing, the duty do no harm, the duty to place the HOA's interests above those of the Developer, and the duty not to profit at the Association's and homeowners' expense. This has been conceded by Raiford in deposition testimony:

Q. Are you aware of whether or not a board of directors -- an HOA board of director member has a duty of loyalty to the HOA and its members?

A. Yes, and I have always been exactly that.

Q. Are you aware of whether an HOA director owes a duty of full and complete disclosure to the HOA and its members?

A. I am aware to do that.

Q. You agree with that?

A. I do.

[...]

Q. We're going to get to those details, sir, but first I want to find out if you agree with me that a developer board member has a duty not to put the developer's interests in front of the association and its members' interests?

A. I do.

(See Dep. of J. Wayne Raiford, 243:9-21; 245:6-12) (objections omitted).

Defendants violated these duties in many ways, including by failing to put Mount Vintage on sound financial footing, by self-dealing, and by profiting at the HOA and member's expense. The Defendants also had a duty to deal fairly with the individual and derivative Plaintiffs; instead of complying with that duty, defendants, *inter alia*, engaged in self-dealing at the HOA's expense, taking HOA assets for pennies, and causing the HOA to execute a back dated, inexplicable, \$300,000.00 note. Every which way one turns, these defendants have been negligent, and this summary judgment ground should be summarily overruled.

CONCLUSION

For any and all of the foregoing reasons, Defendants' Motions for Summary Judgment should be summarily overruled by this Court and this case should proceed to its September 16, 2024, trial.

Signature on following page.

Respectfully submitted,

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Attorneys for the Plaintiffs

August 27, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

ELIZABETH M. FERRARO, JAMES T. FERRARO,
 EDWARD J. PRZYBYL, MARCELLA GLEIE, JOHN
 E. GLEIE, JR., THOMAS BOWES, CONNIE BOWES,
 MOATAZ ALASADI, VIRGINIA KIRKWOOD, BOB
 KIRKWOOD, PAUL VICHROSKI, NYDZA
 VICHROSKI, JAMES MONTELLESE, ROXANN
 MONTELLESE, Individually, Derivatively, and on
 Behalf of all the Mount Vintage Homeowners
 Association Members,

Plaintiffs,

vs.

LL OF SC, LLC, RAIFORD TOPSAIL ISLAND
 INVESTMENTS, LLC, TR SALES PLANTATION,
 LLC, AND MOUNT VINTAGE PLANTATION
 HOMEOWNERS ASSOCIATION, INC. A/K/A
 MOUNT VINTAGE HOMEOWNERS ASSOCIATION,
 INC.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
) CASE NO. 2021-CP-19-00050
)

) **BUSINESS COURT CASE,**
) **ASSIGNED TO:**

) **THE HONORABLE R. LAWTON**
) **MCINTOSH**

) **PLAINTIFFS' MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT AS TO**
) **DEVELOPER RIGHTS AND CLASS A**
) **MEMBERSHIP**

EXHIBIT

B

PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned counsel, and pursuant to Rule 56, SCRCP, move this Court for an Order granting summary judgment in favor of Plaintiffs as to developer rights and Class A Membership. Specifically, the September 3, 2013 deed in lieu of foreclosure (hereinafter "Deed in Lieu"), granted after the October 23, 2012, Lis pendens (hereinafter "Lis Pendens"), was superseded by the November 11, 2013 Special Referee's Deed (hereinafter "Special Referee's Deed"), and LL of SC, LLC ("LL") is not the developer of Mount Vintage and is not a Class A Member under the Covenants. The current LL appointed and controlled Association Board is a nullity. There are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law.

SUMMARY JUDGMENT STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d

196, 203 (Ct. App. 2008). Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton*, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, “[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* at 198, 659 S.E.2d at 203. “It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). “Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Id.*

ARGUMENT

I. The Lis Pendens Pre-Dates the Deed in Lieu, and Therefore the Special Referee’s Deed Relates Back to the Filing of the Lis Pendens and Takes Precedence Over the Deed in Lieu.

The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct.App.1985); *Wooten v. Seanch*, 187 S.C. 219, 196 S.E. 877 (1938). **“A properly filed lis pendens binds subsequent purchasers or**

encumbrancers to all proceedings evolving from the litigation.” *South Carolina Nat’l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987) (emphasis added). Generally, the filing of a Lis pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved. *Shelley Constr.*, 287 S.C. at 24, 336 S.E.2d at 491–492.

Additionally, the South Carolina Code provides that subsequent purchasers shall be bound by all proceeding taken after the filing of the lis pendens:

From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and **shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action.** For the purposes of this section, an action shall be deemed to be pending from the time of filing such notice.

S.C. Code Ann. § 15-11-20 (emphasis added). Moreover, it is hornbook law that a later obtained judgment relates back to the filing of the lis pendens.

A "lis pendens" is a notice of litigation, placed in the real property records, asserting an interest in the property and notifying third parties that ownership of the property is disputed. "Lis pendens" is a common-law and statutory doctrine which has the effect of providing constructive notice to the world of an alleged claim of a lien or an interest in property. As lis pendens provides constructive notice of litigation, **any judgment later obtained in that litigation relates back to filing of the lis pendens.**

51 Am.Jur.2d *Lis Pendens* § 1 (2000) (emphasis added).

Although lis pendens has been defined as an "encumbrance" as that term has been traditionally defined, and may be applied to enforce an existing lien, some courts have stated that the doctrine of lis pendens does not impress affected property with a lien, or extend or prolong any existing lien, but rather, **binds third parties with notice that any interest they may acquire in property pending litigation will be subject to the outcome of the action.**

Id. § 3 (emphasis added).

Furthermore, the lis pendens **“notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject**

to the judgment, without any substantive rights.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (citing 51 Am.Jur.2d *Lis Pendens* § 2 (2000) (emphasis added). After the filing of the lis pendens, any conveyance of the property is now subject to the outcome of the litigation. *In re Shiver*, 598 B.R. 221 (Bankr. D. S.C. 2019); *see also Meliani v. Jade Dunn Loring Metro, LLC*, 286 F. Supp. 2d 741 (E.D. Va. 2003) (“**[O]nce recorded, lis pendens binds subsequent bona fide purchasers of disputed property such that subsequent purchaser, with or without actual notice of lis pendens, takes subject to outcome of pending litigation.**”) (emphasis added).

Here, the below is a chronology of relevant events showing that the Deed in Lieu to LL, granted after the Lis Pendens, was superseded by the Special Referee’s Deed to Raiford Topsail Island Investments, LLC (“RTI”):

1. Oct. 23, 2012: LL files a Lis Pendens (**Ex. A**);
2. Oct. 23, 2012: LL files a Summons & Complaint foreclosing on the real estate (**Ex. B**);
3. Sept. 3, 2013: Deed in Lieu of Foreclosure to LL (**Ex. C**);
4. Nov. 6, 2013: LL voluntary assignment of Foreclosure Bid to RTI (**Ex. D**);
5. Nov. 11, 2013: Filing of the Master’s Report on the Bid by RTI (**Ex. E**);
6. Nov. 11, 2013: Special Referee’s Deed filed in Favor of RTI (**Ex. F**); and
7. July 22, 2014: Corrective Special Referee Deed filed (**Ex. G**).

A. Supersession by the Special Referee’s Deed

The Special Referee’s Deed, executed and filed on November 11, 2013, provides the definitive terms regarding the ownership and development of Mount Vintage because it relates back in time to the filing of the Lis pendens, which was filed on October 23, 2012. The Deed in Lieu, executed on September 3, 2013, post-dates the Lis pendens and cannot alter or supersede

whatever judgment results from the Lis pendens and the related litigation. Under South Carolina law, this properly filed Lis pendens binds all subsequent purchasers or encumbrancers to all proceedings evolving from the litigation. *See Cook, supra*. Here, the culmination of the litigation which evolved from the filing of the Lis pendens is the Special Referee's Deed.

The superseding nature of the 2013 Special Referee's Deed was confirmed when all Defendants, through Raiford, had Defendants' long-time counsel, Mary Guynn, draft, submit, and secure a Corrective Special Referee Deed in 2014. While the Corrective Deed purports to be for the purpose of adding one lot to the legal description, it also expressly adds that the conveyance of developer rights to RTI was part of the original 2013 Special Referee's Deed.¹ There can be no doubt about the meaning or intent of this Order as the Defendants' attorney prepared it, solicited it, and filed it.²

B. Binding Effect of the Lis Pendens and Resulting Special Referee's Deed

The Special Referee's Deed (and the Corrective Special Referee's Deed), as the latest document, governs the rights and responsibilities related to the property. The Deed in Lieu does not impact the current status of the property or the parties' roles as defined in the Special Referee's Deed. This is consistent with the principle that subsequent legal documents and proceedings take precedence over earlier ones.

C. LL's Status

Because the Deed in Lieu of Foreclosure was a nullity, LL is not the "Developer" of Mount Vintage and is not a Class A member under the Covenants. Therefore, all actions taken by LL in the administration of the Homeowners' Association since 2013 are a nullity, and the current Board

¹ The appurtenant rights were originally referred to generally in the Special Referee deed as being granted "with all and singular rights, members, hereditaments and appurtenances to the said premises belonging or in any way incident or pertaining thereto, and all the estate, right title, claim, and interest, whatsoever...".

² See the "Return to" entry on the Corrective Master Deed, and the Guynn testimony which will be supplemented.

of Directors is not properly nominated, elected, or appointed and is non-existent. RTI has obviously abandoned its developer rights by allowing LL to conduct this charade. As there is no Developer, the Class B members are automatically elevated to Class A membership and a homeowner elected Board of Directors should be recognized by this Court before trial.

These and other grounds will be supported by the pleadings, discovery, affidavits, expert reports, memorandum of law, and oral argument at the hearing on this matter.

CONCLUSION

Since the Special Referee's Deed (original and corrected) supersedes the Deed in Lieu of Foreclosure and defines the present ownership rights, membership, and privileges, LL's purported status as the Developer/Class A Member must be vacated as there are no genuine issues of material fact. RTI's failure to assume Developer status after eleven years clearly constitutes abandonment; and the absence of a Class A member for eleven years should act to automatically elevate the Class B members to Class A status and permit a homeowner Board of Directors to replace the current null Board prior to trial. Plaintiff is entitled to judgment on these preliminary issues as a matter of law.

JUSTIN O'TOOLE LUCEY, P.A.

By: /s/ Anna McCann
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 Anna McCann
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August 13, 2024
 Charleston, South Carolina

EXHIBIT**A**EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBYSTATE OF SOUTH CAROLINA
2024 OCT 23 PM 2:03

COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS

LL OF SC, LLC,

PLAINTIFF

LIS PENDENS

vs.

C/A No: 12-LP-~~14~~-105

2012-CP-19-336

K & H DEVELOPMENT COMPANY, LLC
AND MOUNT VINTAGE PLANTATION
HOMEOWNERS ASSOCIATION, INC.,

DEFENDANTS.

NOTICE IS HEREBY GIVEN that an action has been commenced and is pending or is about to be commenced in the Circuit Court between the above-named Plaintiff against the above-named Defendants to foreclose on a mortgage between the Plaintiff, as Mortgagee, and K & H Development Company, LLC, as Mortgagor, which Mortgage is dated April 19, 2010, and was filed for record in the RMC Office for Edgefield County on April 22, 2010, in Record Book 1282 at Page 191. The property which is the subject of said action is described as follows:

PROPERTY DESCRIPTION:**LOTS IN SECTION "F"**

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots F-3 and F-4 on that certain plat by Newby-Procter and Associates dated April 8, 2003 and recorded November 6, 2003 in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,672. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot F-3 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map # 122-00-06-003 and Lot F-4 is shown on Tax Map # 122-00-06-004.

EXHIBIT**41.01**

ROA_01196

LOTS IN SECTION "H"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-1, H-2, H-12, H-15, H-20, H-65 and H-73 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,455. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-001; Lot H-2 on Tax Map # 122-00-09-002; Lot H-12 on Tax Map #122-00-09-012; Lot H-15 on Tax Map # 122-00-09-015; Lot H-20 on Tax Map #122-00-00-020; Lot H-65 on Tax Map # 122-00-09-065 and Lot H-73 on Tax Map # 122-00-09-073.

AND ALSO All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-43, H-44, H-45 and H-46 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,456. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-43 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-043; H-44 on Tax Map #122-00-09-044; Lot H-45 on Tax Map #122-00-09-045 and Lot H-46 on Tax Map #122-00-09-046.

LOTS IN SECTION "J"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots J-1 thorough J-9 inclusive, J-11, J-13 through J-20 inclusive, J-27, J-28, J-30, J-35, J-36, J-44 through J-47 inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot J-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-10-001; Lot J-2 on Tax Map #122-00-10-002; Lot J-3 on Tax Map #122-00-10-003; Lot J-4 on Tax Map #122-00-10-004; Lot J-5 on Tax Map #122-00-10-005; Lot J-6 on Tax Map #122-00-10-006; Lot J-7 on Tax Map #122-00-10-007; Lot J-8 on Tax Map #122-00-10-008; Lot J-9 on Tax Map #122-00-10-009; Lot J-11 on Tax Map #122-00-10-011; Lot J-13 on Tax Map #122-00-10-013; Lot J-14 on Tax Map #122-00-10-014; Lot J-15 on Tax Map #122-00-10-015; Lot J-16 on Tax Map #122-00-10-016; Lot J-17 on Tax Map #122-00-10-017; Lot J-

18 on Tax Map #122-00-10-018; Lot J-19 on Tax Map #122-00-10-019; Lot J-20 on Tax Map #122-00-10-020; Lot J-27 on Tax Map #122-00-10-027; Lot J-28 on Tax Map #122-00-10-028; Lot J-30 on Tax Map #122-00-10-030; Lot J-35 on Tax Map #122-00-10-035; Lot J-36 on Tax Map #122-00-10-036; Lot J-44 on Tax Map #122-00-10-044; Lot J-45 on Tax Map #122-00-10-045; Lot J-46 on Tax Map #122-00-10-046 and Lot J-47 on Tax Map #122-00-10-047.

LOTS IN SECTION "K"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots K-7 and K-11, on that certain plat by Newby-Procter and Associates dated July 21, 2005 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,031. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot K-7 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-11-007 and Lot K-11 is shown on Tax Map #122-00-11-011

LOTS IN SECTION "L"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots L-1 through L-3 inclusive, Lot L-7, Lot L-24 through L-29, inclusive, Lot L-31, Lots L-37 through L-39, inclusive, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "M"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots M-1 through M-10, inclusive, Lot M-12, Lot M-13, Lots M-18 through M-20, inclusive, Lot M-42, Lot M-44, Lots M-46 through M-49, inclusive and Lot M-53, on that certain plat by Newby-Procter and Associates dated June 28, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,387. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot M-29, Lot M-30 and Lot M-32 on that certain plat by Newby-Procter and Associates dated 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is

incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "N"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-1 through N-5, inclusive, Lot N-10, Lot N-11, Lot N-69, Lot N-70, Lot N-79 through N-83, inclusive, Lot N-85 and Lot N-86, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-27 through N-37, inclusive, and Lots N-39 through N-46, inclusive, on that certain plat by Newby-Procter and Associates dated June 26, 2008 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,662. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot N-47, Lot N-49, Lot N-51 and N-52, Lot N-57, through N-59, inclusive, on that certain plat by Newby-Procter and Associates dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lot N-27b

LOTS IN SECTION "O"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots O-1 through O-4, inclusive, Lots O-9 through O-14, inclusive, Lot O-17, Lot O-22 through O-27, Lot O-29, Lot O-33, Lot O-35 and Lot O-37 on that certain plat by Newby-Procter and Associates dated November 30, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,606. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot O-38, Lot O-41, Lots O-49 through Lot O-51, inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "P"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots P-2, P-5 through P-7, inclusive, Lot P-9, Lot P-13 through P-18, inclusive and Lots P-21 through P-23, inclusive, on that certain plat by Newby-Procter and Associates dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot P-26, Lot P-27, Lot P-31, and Lot P-42, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

PROPERTY B:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and containing 23.26 acres, more or less, designated on that plat of survey prepared by Newby-Procter and Associates dated May 11, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,002. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lots F-18, 20, 21, 22, 23, 24 and 26

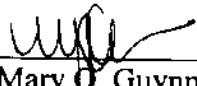
PROPERTY C:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, near Mount Vintage Plantation Drive, containing sixty-six hundredths (.066) of an acre, more or less, and designated as Lot P-3 on that plat prepared for MV Development

Company, LLC, by Newby-Procter and Associates, and recorded in Judgment Roll 38,150 in the Office of the Clerk of Court for Edgefield County, which said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

ALL of the aforesaid lots being a portion of the property conveyed to MV Development Company, LLC by Deed of the Special Referee for Edgefield County dated April 19, 2010 and recorded April 22, 2010 in Deed Book 1282, Page 180, Edgefield County Records.

**SMITH, MASSEY, BRODIE,
GUINN & MAYES, LLC**



Mary O. Guynn, Esquire
Post Office Box 519
Aiken, South Carolina 29802
(803) 643-4110
Attorney for Plaintiff

October 22, 2012
Aiken, South Carolina

EXHIBIT B

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

2012 OCT 23 PM 2:03

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

LL OF SC, LLC,

PLAINTIFF

vs.

K & H DEVELOPMENT COMPANY, LLC
AND MOUNT VINTAGE PLANTATION
HOMEOWNERS ASSOCIATION, INC.,

DEFENDANTS.

SUMMONS AND NOTICES

C/A No: 12-CP-~~11~~-330
(Non-Jury)

**FORECLOSURE OF REAL
ESTATE MORTGAGE
DEFICIENCY BALANCE WAIVED**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at her offices, 210 Colony Parkway, Post Office Box 519, Aiken, South Carolina, 29802, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to serve a copy of their Answer, exclusive of the date of service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the Complaint, the Plaintiffs will move for a general Order of Reference of this cause to the Master-In-Equity or Special Referee for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master-In-Equity or Special Referee is authorized and empowered to enter a final judgment in this case.

EXHIBIT 41.02

**SMITH, MASSEY, BRODIE,
GUINN & MAYES, LLC**



Mary O. Guynn, Esquire
Post Office Box 519
Aiken, South Carolina 29802
(803) 643-4110
Attorney for Plaintiff

October 22, 2012
Aiken, South Carolina

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

STATE OF SOUTH CAROLINA

2012 OCT 23

PM 2:03

COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS

LL OF SC, LLC,

PLAINTIFF

COMPLAINT

vs.

C/A No: 12-CP-~~12~~-320

(Non-Jury)

K & H DEVELOPMENT COMPANY, LLC
AND MOUNT VINTAGE PLANTATION
HOMEOWNERS ASSOCIATION, INC.,FORECLOSURE OF REAL
ESTATE MORTGAGE
DEFICIENCY BALANCE WAIVED

DEFENDANTS.

The Plaintiff above named, complaining of the Defendants herein, allege:

1. That Plaintiff, LL of SC, LLC f/k/a LL, Inc. is a limited liability company organized and existing pursuant to the laws of the State of South Carolina.
2. That Defendant K & H Development Company, LLC f/k/a Park Meridian Holdings SC Fund 2009-2, LLC is a limited liability company organized and existing pursuant to the laws of the State of South Carolina.
3. That Defendant Mount Vintage Homeowners Association, Inc. is a South Carolina nonprofit corporation.
4. This is an action for the foreclosure of a mortgage upon certain real estate in Edgefield County, South Carolina.
5. The subject loan is not eligible for modification pursuant to the Home Affordable Modification Program ("HMP") because the loan is not owned, securitized or guaranteed by either Federal National Mortgage Association or Federal Home Loan Mortgage Corporation nor has the servicing agent executed an agreement under HMP.
6. The subject loan is exempt from the requirements of South Carolina Supreme

Court Administrative Order 2011-05-02-01 in that the property which is the subject of the foreclosure is not an "owner-occupied dwelling" as defined in the aforesaid Administrative order.

7. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

8. Heretofore, on September 25, 2009, Defendant K & H Development Company, LLC f/k/a Park Meridian Holdings SC Fund 2009-2, LLC made, executed and delivered unto Plaintiff a certain Note in the principal sum of \$2,500,000.00 (the "Original Note").

9. Thereafter, Defendant K & H Development Company, LLC f/k/a Park Meridian Holdings SC Fund 2009-2, LLC made, executed and delivered unto Plaintiff a certain Replacement Note in the principal sum of \$2,500,000.00 dated October 13, 2009 but effective September 25, 2009 (the "Note") which expressly replaced the Original Note, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference.

10. In order to secure the payment of the Note according to the terms and conditions thereof, the aforesaid Defendant K & H Development Company, LLC executed and delivered unto Plaintiff a certain Mortgage of Real Estate (the "Mortgage") dated April 19, 2010 covering the property more particularly described on Exhibit "B" and made a part hereof by reference (the "Property").

11. The Mortgage was duly signed, witnessed and probated; thereafter the Mortgage was duly recorded in the office of the Register of Mesne Conveyance for Edgefield County on April 22, 2010 in Record Book 1282, Page 191, a copy of which is attached hereto as Exhibit "C" and made part hereof by reference.

12. The Mortgage evidences and secures the repayment of money advanced by the

Plaintiff to, or on behalf of, the Defendant K & H Development Company, LLC f/k/a Park Meridian Holdings SC Fund 2009-2, LLC and constitutes a first mortgage lien on the Property.

13. The monthly payments due on the Note are in default, the Defendant K & H Development Company, LLC f/k/a Park Meridian Holdings SC Fund 2009-2, LLC having failed to make the payments as and when due, and the conditions of the Note and Mortgage have been broken and the Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note as of October 17, 2012 principal of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00), interest of One Million Sixty-Nine Thousand Three Hundred Seventy-Four and 41/100 Dollars (\$1,069,374.41), with interest continuing to accrue at the rate of Fifteen Percent (15.0%) per annum and late fees of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) and also for the costs and disbursements of this action, including reasonable attorney's fees; all as more particularly set forth in Statement of Account which is attached hereto as Exhibit "D".

14. That Notice of Consumer's Right to Cure, as contemplated by S.C. Code Sections 37-5-110 and 37-5-111, was sent by the Plaintiff to the Defendant K & H Development Company, LLC f/k/a Park Meridian Holdings SC Fund 2009-2, LLC. Said Notice has been disregarded by the Defendant.

15. All persons having an interest or lien or possible claim in or upon the Property as of the date and time of the filing of the Lis Pendens herein have been made Defendants.

16. The hereinafter named party may have or claim some interest in or lien upon the Property set forth above, or some part thereof; said liens or interests are of record in the Office of the RMC and/or Clerk of Court of the aforesaid county and, upon information and belief, are junior to the Plaintiff's Mortgage. The claim or interest held by such Defendant is described as

follows:

- a. Mount Vintage Plantation Homeowners Association, Inc. by virtue of any lien enforceable assessments claimed as provided in the Declaration of Protective Covenants, Conditions and Restrictions of Mount Vintage recorded in the Real Estate Records for Edgefield County and any amendments or modifications thereto.

17. Plaintiffs' right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

1. Under the direction of this Court, ascertain and determine the amount due upon the Note held by Plaintiff together with attorney's fees and costs of this action as well as any sums advanced under the Note and Mortgage terms, including taxes and insurance.

2. Declare Plaintiff's lien a first priority lien and render judgment and foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due with reasonable attorney's fees and for the costs of this action.

3. Appoint a Receiver to collect the rents, issues and profits from the mortgagor(s) and/or tenant(s) occupying or exercising control over the Property during the pendency of this action and hold the same subject to the further order of this Court.

4. Under the direction of this Court, sell the Property, bar any equity of redemption, and apply the proceeds of sale as follows:

- a. First, to the costs and expenses of the within action and sale;
- b. Second, to the payment and discharge of the amount due on Plaintiff's Note

and Mortgage, together with attorney's fees as aforesaid; and

c. Third, the surplus, if any, be distributed according to law.

5. Issue an order directing the Sheriff of Edgefield County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Property should the same become necessary.

6. Order the reimbursement of all costs for inspecting and securing the Property incurred by the Plaintiff.

7. Order such other and further relief as may be just and proper.

**SMITH, MASSEY, BRODIE,
GUYNN & MAYES, LLC**



Mary O. Guynn, Esquire
Post Office Box 519
Aiken, South Carolina 29802
(803) 643-4110
Attorney for Plaintiff

October 22, 2012
Aiken, South Carolina

EXHIBIT
C

201300003061
Filed for Record in
EDGEFIELD COUNTY, SC
SHIRLEY F NEWBY, CLERK OF COURT
09-03-2013 At 02:36 PM.
DEED 18.00
DR Book 1445 Page 1 - 12
201300003061 EXEMPT
SHIRLEY F NEWBY
CLERK OF COURT
EDGEFIELD COUNTY, SC
09-03-2013 02:36 PM.
REC FEE: 18.00

STATE OF SOUTH CAROLINA)
) DEED IN LIEU OF FORECLOSURE
COUNTY OF EDGEFIELD)

KNOW ALL MEN BY THESE PRESENTS:

That **K & H DEVELOPMENT COMPANY, LLC A/K/A K & H, LLC F/K/A PARK MERIDIAN HOLDINGS SC FUND 2009-2, LLC**, a South Carolina limited liability company, (hereinafter called "Grantor"), for fair and adequate consideration, such being the full satisfaction of any and all debt evidenced by that certain Mortgage executed by Grantor in favor of **LL OF SC, LLC F/K/A LL, INC.**, (hereinafter called "Grantee") dated April 19, 2010 and recorded in Mortgage Book 1282, page 191, Edgefield County Records in the original principal amount of \$2,500,000.00 (the "Mortgage"), the receipt of which is hereby acknowledged, has absolutely granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, its successors and assigns, the following described real estate, to wit (the "Land") more particularly described on Exhibit A attached hereto and incorporated herein, together with those certain rights, to wit (the "Rights"; the Land and the Rights being collectively referred to as the "Property") more particularly described on Exhibit B attached hereto and incorporated herein.

Grantee's Address: 616 Edgefield Road Suite 115
North Augusta, South Carolina 29841

EXHIBIT

41.04

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto,

AND Grantor does hereby warrant to Grantee that the Deed is intended to be and is an absolute conveyance of the title to the Property to the Grantee, and it was not and is not intended as a mortgage, trust conveyance, or security device of any kind; that it is the intention of the Grantor that the Deed unconditionally and absolutely convey to the Grantee all of the Grantor's right, title, and interest in and to the Property; that the Grantor has no right, option or obligation to redeem the Property or to acquire, reacquire or repurchase any portion of the Property or any rights or interests with respect thereto; that Grantor has vacated the Property, and possession of the Property has been surrendered to the Grantee; that there are no other agreements, written or otherwise, between the Grantor and Grantee, relating to the Property or the Deed; that the Deed was not given as a fraudulent transfer or preference against any other creditors of the Grantor; that at the time it was given, there was no other persons or entities, other than the Grantee, interested, either directly or indirectly in the Property; that the Grantor is solvent and has no other creditors whose rights would be prejudiced by such conveyance, and that the Grantor is not obligated upon any debt or other mortgage whereby any lien has been created or exists against the Property; that in the execution and delivery of the Deed the Grantor fully understands the effects thereof, and acted freely and voluntarily, and was not acting under coercion, duress or undue influence; that the consideration for the Deed was and is the full and unconditional release and cancellation of all debts, liabilities, obligations, costs, and charges owed by the undersigned, and all guarantors, if any, and secured by the Mortgage and the release of record of the Mortgage; and that at the time of the making the Deed, the outstanding debt owed by the Grantor to the Grantee equaled or exceeded the fair market value of the Property; that these

representations are made for the protection and benefit of the Grantee, its successors and assigns, with knowledge and intention that they will rely hereon; that the undersigned will testify, declare, depose, and certify before any competent tribunal, officer, or person, in any case now pending or which may hereafter be instituted to the truth of the particular facts hereinabove set forth and that the undersigned has executed this Deed for and on behalf of said Grantor pursuant to the appropriate authorization of said Grantor.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, its successors and assigns forever, and the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against Grantor and its successors and assigns whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 3rd day of September, 2013.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness: Pat Knight

Witness: Unjell

K & H DEVELOPMENT
COMPANY, LLC

By: [Signature] (LS)
Name: Almadro Knight
Title: member

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Grantor by its duly authorized Member/Manager sign, seal and as its act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this
3rd day of September, 2013.



Notary Public for South Carolina



My Commission Expires: 6/10/2021

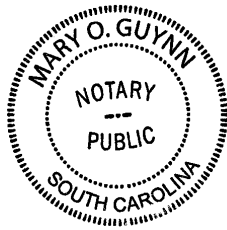


EXHIBIT A

THE LAND

LOTS IN SECTION "F"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots F-3 and F-4 on that certain plat by Newby-Procter and Associates dated April 8, 2003 and recorded November 6, 2003 in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,672. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot F-3 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map # 122-00-06-003 and Lot F-4 is shown on Tax Map # 122-00-06-004.

LOTS IN SECTION "H"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-1, H-2, H-12, H-15, H-20, H-65 and H-73 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,455. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-001; Lot H-2 on Tax Map # 122-00-09-002; Lot H-12 on Tax Map #122-00-09-012; Lot H-15 on Tax Map # 122-00-09-015; Lot H-20 on Tax Map #122-00-09-020; Lot H-65 on Tax Map # 122-00-09-065 and Lot H-73 on Tax Map # 122-00-09-073.

AND ALSO All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-43, H-44, H-45 and H-46 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,456. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-43 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-043; H-44 on Tax Map #122-00-09-044; Lot H-45 on Tax Map #122-00-09-045 and Lot H-46 on Tax Map #122-00-09-046.

LOTS IN SECTION "J"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots J-1 thorough J-9 inclusive, J-11, J-13 through J-20 inclusive, J-27, J-28, J-30, J-35, J-36 (to the extent such lot exists), J-44 through J-47 inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot J-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-10-001; Lot J-2 on Tax Map #122-00-10-002; Lot J-3 on Tax Map #122-00-10-003; Lot J-4 on Tax Map #122-00-10-004; Lot J-5 on Tax Map #122-00-10-005; Lot J-6 on Tax Map #122-00-10-006; Lot J-7 on Tax Map #122-00-10-007; Lot J-8 on Tax Map #122-00-10-008; Lot J-9 on Tax Map #122-00-10-009; Lot J-11 on Tax Map #122-00-10-011; Lot J-13 on Tax Map #122-00-10-013; Lot J-14 on Tax Map #122-00-10-014; Lot J-15 on Tax Map #122-00-10-015; Lot J-16 on Tax Map #122-00-10-016; Lot J-17 on Tax Map #122-00-10-017; Lot J-18 on Tax Map #122-00-10-018; Lot J-19 on Tax Map #122-00-10-019; Lot J-20 on Tax Map #122-00-10-020; Lot J-27 on Tax Map #122-00-10-027; Lot J-28 on Tax Map #122-00-10-028; Lot J-30 on Tax Map #122-00-10-030; Lot J-35 on Tax Map #122-00-10-035; Lot J-36 on Tax Map #122-00-10-036 (to the extent such lot exists); Lot J-44 on Tax Map #122-00-10-044; Lot J-45 on Tax Map #122-00-10-045; Lot J-46 on Tax Map #122-00-10-046 and Lot J-47 on Tax Map #122-00-10-047.

LOTS IN SECTION "K"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots K-7 and K-11, on that certain plat by Newby-Procter and Associates dated July 21, 2005 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,031. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot K-7 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-11-007 and Lot K-11 is shown on Tax Map #122-00-11-011

LOTS IN SECTION "L"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots L-1 thorough L-3 inclusive, Lot L-7, Lot L-24 through L-29, inclusive, Lot L-31, Lots L-37 through L-39, inclusive, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances

and location of subject property.

LOTS IN SECTION "M"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots M-1 through M-10, inclusive, Lot M-12, Lot M-13, Lots M-18 through M-20, inclusive, Lot M-42, Lot M-44, Lots M-46 through M-49, inclusive and Lot M-53, on that certain plat by Newby-Procter and Associates dated June 28, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,387. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot M-29, Lot M-30 and Lot M-32 on that certain plat by Newby-Procter and Associates dated 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "N"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-1 through N-5, inclusive, Lot N-10, Lot N-11, Lot N-69, Lot N-70, Lot N-79 through N-83, inclusive, Lot N-85 and Lot N-86, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-27 through N-37, inclusive, and Lots N-39 through N-46, inclusive, on that certain plat by Newby-Procter and Associates dated June 26, 2008 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,662. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot N-47, Lot N-49, Lot N-51 and N-52, Lot N-57, through N-59, inclusive, on that certain plat by Newby-Procter and Associates

dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lot N-27b

LOTS IN SECTION "O"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots O-1 through O-4, inclusive, Lots O-9 through O-14 (Lot O-12 being shown on said plat as "Reserved Property MV Development, LLC containing 1.32 acres), inclusive, Lot O-17, Lot O-22 through O-27 (Lot O-23 being shown on said plat as "Reserved Property MV Development, LLC containing 0.95 acres), Lot O-29, Lot O-33, Lot O-35 and Lot O-37 on that certain plat by Newby-Procter and Associates dated November 30, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,606. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot O-38, Lot O-41, Lots O-49 through Lot O-51, inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "P"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots P-2, P-5 through P-7, inclusive, Lot P-9, Lot P-13 through P-18, inclusive and Lots P-21 through P-23, inclusive, on that certain plat by Newby-Procter and Associates dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot P-26, Lot P-27, Lot P-31, and Lot P-42, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149.

Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

PROPERTY B:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and containing 23.26 acres, more or less, designated on that plat of survey prepared by Newby-Procter and Associates dated May 11, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,002. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lots F-18, 20, 21, 22, 23, 24 and 26

PROPERTY C:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, near Mount Vintage Plantation Drive, containing sixty-six hundredths (.066) of an acre, more or less, and designated as Lot P-3 on that plat prepared for MV Development Company, LLC, by Newby-Procter and Associates, and recorded in Judgment Roll 38,150 in the Office of the Clerk of Court for Edgefield County, which said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

ALL of the aforesaid lots being a portion of the property conveyed to MV Development Company, LLC by Deed of the Special Referee for Edgefield County dated April 19, 2010 and recorded April 22, 2010 in Deed Book 1282, Page 180, Edgefield County Records.

EXHIBIT B

THE RIGHTS

All rights appurtenant to the Property, including, but not limited to, all developer rights held by K&H Development Company, LLC as to Mount Vintage Plantation, including but not limited to any and all rights set forth in the Assignment of Developer's Rights recorded in Book 1331, Page 199, Edgefield County Records (the "Assignment"), all reserved rights held by K&H Development Company, LLC under the Covenants (as defined in the Assignment), the Class A membership interest, including voting privileges, in Mount Vintage Plantation Homeowners Association, Inc., options, conditions and powers including, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of nay entities or organizations within the Land as established or as may be established and the right to control the "Preferred Builder" program in Mount Vintage, including the right to collect any and all fees assessed to or for such Preferred Builder program.

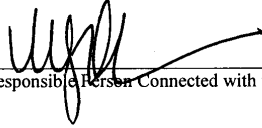
STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information of this affidavit and I understand such information.
2. The property being transferred is located in Aiken County, bearing Aiken County Tax Map Number (122-00-06-003et al.) was transferred by (K&H Development Company, Inc.) to (LL of SC, LLC) on the (3rd) day of (September), 2013.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X _____ exempt from the deed recording fee because (*See Information section of affidavit*):
#13
(If exempt, please skip items 4 – 7 and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
 - (b) _____ The fee is computed on the fair market value or the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: \$ _____
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this
3 day of September, 2013.
Cristal Brown
Notary Public for South Carolina
My Commission Expires: 6-28-15



Responsible Person Connected with the Transaction
Mary O. Guynn

Print or Type Name Here

INFORMATION:

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any rights. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

EXCEPTED FROM THE FEE ARE DEEDS:

1. transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
2. transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
3. that are otherwise exempted under the laws and Constitution of this State or the United States;
4. transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
5. transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
6. transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
7. that constitute a contract for the sale of timber to be cut;
8. transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty for a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
9. transferring realty from a family partnership to a partner or from family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
10. transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
11. transferring realty in a merger or consolidation from constituent partnership to the continuing or new partnership;
12. that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid to or is to be paid under the corrective or quitclaim deed; and,
13. transferring realty subject to a mortgage whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
14. transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
15. transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA

2013 NOV 18 AM 11:27 IN THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD

LL OF SC, LLC,

PLAINTIFF

vs.

ASSIGNMENT OF BID

K & H DEVELOPMENT COMPANY, LLC
AND MOUNT VINTAGE PLANTATION
HOMEOWNERS ASSOCIATION, INC.,

C/A NO: 12-CP-19-336

DEFENDANTS.

FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, LL of SC, LLC ("Assignor") does hereby assign its successful bid in the above-captioned mortgage foreclosure action unto Raiford Topsail Island Investments, LLC ("Assignee") and does hereby direct J. Martin Harvey, Esquire, as Special Referee for Edgefield County to execute unto and in favor of the aforesaid Assignee, the Foreclosure Deed to the subject real estate that was sold by public auction of the subject premises on November 4, 2013, at which sale the Assignor was the high bidder with the successful bid amount of \$100,000.00.

IN WITNESS WHEREOF, the undersigned Assignor by and through its duly authorized Member has hereunto set its hand and seal this 16th day of November, 2013.

Sworn to before me this 16
Day of November, 2013

Crystal Brown
Notary Public for South Carolina
My Commission Expires: 6-28-15

LL OF SC, LLC

By J. Wayne Raiford
J. Wayne Raiford, Member

[NOTARY SEAL]

CRYSTAL BROWN
Notary Public
State of South Carolina
Commission Expires June 28, 2015

EXHIBIT

41.06

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

LL OF SC, LLC,

PLAINTIFF

vs.

K & H DEVELOPMENT COMPANY, LLC
AND MOUNT VINTAGE PLANTATION
HOMEOWNERS ASSOCIATION, INC.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

EXHIBIT
E

MASTER'S REPORT ON SALE

C/A NO: 12-CP-19-336

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned Special Referee sold the property described thereto to the Plaintiff for the sum of \$100,000.00 that amount being the highest bid made on Sales Day, November 4, 2013. The Plaintiff thereafter paid only the costs as provided in said Order. Thereafter, the Plaintiff assigned its bid to Raiford Topsail Island Investments, LLC by Assignment of Bid dated November 6, 2013 and said entity became the grantee.
2. That I have executed and delivered unto said grantee a good and sufficient deed of conveyance of said property.
3. That I have received and disbursed the costs.

Nov 11, 20 13
Barnwell, South Carolina


J. Martin Harvey
Special Referee for Edgefield
County, South Carolina

EXHIBIT

41.07

Instrument Book Page
201300004040 OR 1455 297

201300004040
Filed for Record in
EDGEFIELD COUNTY, SC
SHIRLEY F NEWBY, CLERK OF COURT
11-18-2013 At 12:05 pm.
DEED 380.00
OR Book 1455 Page 297 - 305

201300004040
SHIRLEY F NEWBY
CLERK OF COURT
EDGEFIELD COUNTY, SC
11-18-2013 12:05 pm.
REC FEE: 10.00
STATE TAX \$ 260.00
COUNTY TAX \$ 110.00

EXHIBIT F

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD) SPECIAL REFEREE DEED

LL of SC, LLC
Plaintiff

v. K&H DEVELOPMENT COMPANY, LLC et al.
Defendant

Civil Action Number 2012-CP-19-336

BY VIRTUE OF and pursuant to the terms of a Decree in the above entitled action, the undersigned as the Special Referee for Edgefield County executes and delivers this Deed by direction of the Court.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, J. MARTIN HARVEY, Special Referee for Edgefield County, in consideration of the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents, does grant, bargain, sell and release the following described premises unto RAIFORD TOPSAIL ISLAND INVESTMENTS, LLC, 616 Edgefield Road, Suite 115, North Augusta, South Carolina 29841:

**SEE EXHIBIT A ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE**



EXHIBIT

41.08

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto, and all the estate, right, title, claim and interest, whatsoever, of the parties of the cause aforesaid, and for each of them in and to the same; and of all other persons rightfully claiming from, under, or by these or any of them.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said RAIKORD TOPSAIL ISLAND INVESTMENTS, LLC, its successors and assigns forever.

IN WITNESS WHEREOF, I, as the Special Referee for Edgefield County, have hereunto set my hand and seal this 11 day of November, 2013.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness:

Witness:

Kimberly Moore
Ashley Delile (LS)
J. Martin Harvey, Special Referee for
Edgefield County, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named J. Martin Harvey as Special Referee for Edgefield County, sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this
11th day of November 2013.

Kimberly Moore
Notary Public for South Carolina
My Commission Expires: Oct 13, 2020

Ashley Delile
Witness

After recording return to Smith, Massey, Brodie, Guynn & Mayes

#2

EXHIBIT A**LOTS IN SECTION "F"**

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots F-3 and F-4 on that certain plat by Newby-Procter and Associates dated April 8, 2003 and recorded November 6, 2003 in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,672. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot F-3 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map # 122-00-06-003 and Lot F-4 is shown on Tax Map # 122-00-06-004.

LOTS IN SECTION "H"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-1, H-2, H-12, H-15, H-20, H-65 and H-73 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,455. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-001; Lot H-2 on Tax Map # 122-00-09-002; Lot H-12 on Tax Map #122-00-09-012; Lot H-15 on Tax Map # 122-00-09-015; Lot H-20 on Tax Map #122-00-00-020; Lot H-65 on Tax Map # 122-00-09-065 and Lot H-73 on Tax Map # 122-00-09-073.

AND ALSO All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-43, H-44, H-45 and H-46 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,456. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-43 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-043; H-44 on Tax Map #122-00-09-044; Lot H-45 on Tax Map #122-00-09-045 and Lot H-46 on Tax Map #122-00-09-046.

LOTS IN SECTION "J"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield,



State of South Carolina, and being shown and designated as Lots J-1 thorough J-9 inclusive, J-11, J-13 through J-20 inclusive, J-27, J-28, J-30, J-35, J-36, J-44 through J-47 inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot J-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-10-001; Lot J-2 on Tax Map #122-00-10-002; Lot J-3 on Tax Map #122-00-10-003; Lot J-4 on Tax Map #122-00-10-004; Lot J-5 on Tax Map #122-00-10-005; Lot J-6 on Tax Map #122-00-10-006; Lot J-7 on Tax Map #122-00-10-007; Lot J-8 on Tax Map #122-00-10-008; Lot J-9 on Tax Map #122-00-10-009; Lot J-11 on Tax Map #122-00-10-011; Lot J-13 on Tax Map #122-00-10-013; Lot J-14 on Tax Map #122-00-10-014; Lot J-15 on Tax Map #122-00-10-015; Lot J-16 on Tax Map #122-00-10-016; Lot J-17 on Tax Map #122-00-10-017; Lot J-18 on Tax Map #122-00-10-018; Lot J-19 on Tax Map #122-00-10-019; Lot J-20 on Tax Map #122-00-10-020; Lot J-27 on Tax Map #122-00-10-027; Lot J-28 on Tax Map #122-00-10-028; Lot J-30 on Tax Map #122-00-10-030; Lot J-35 on Tax Map #122-00-10-035; Lot J-36 on Tax Map #122-00-10-036; Lot J-44 on Tax Map #122-00-10-044; Lot J-45 on Tax Map #122-00-10-045; Lot J-46 on Tax Map #122-00-10-046 and Lot J-47 on Tax Map #122-00-10-047.

LOTS IN SECTION "K"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots K-7 and K-11, on that certain plat by Newby-Procter and Associates dated July 21, 2005 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,031. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot K-7 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-11-007 and Lot K-11 is shown on Tax Map #122-00-11-011

LOTS IN SECTION "L"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots L-1 thorough L-3 inclusive, Lot L-7, Lot L-24 through L-29, inclusive, Lot L-31, Lots L-37 through L-39, inclusive, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "M"

Just #5

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots M-1 through M-10, inclusive, Lot M-12, Lot M-13, Lots M-18 through M-20, inclusive, Lot M-42, Lot M-44, Lots M-46 through M-49, inclusive and Lot M-53, on that certain plat by Newby-Procter and Associates dated June 28, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,387. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot M-29, Lot M-30 and Lot M-32 on that certain plat by Newby-Procter and Associates dated 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "N"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-1 through N-5, inclusive, Lot N-10, Lot N-11, Lot N-69, Lot N-70, Lot N-79 through N-83, inclusive, Lot N-85 and Lot N-86, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-27 through N-37, inclusive, and Lots N-39 through N-46, inclusive, on that certain plat by Newby-Procter and Associates dated June 26, 2008 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,662. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot N-47, Lot N-49, Lot N-51 and N-52, Lot N-57, through N-59, inclusive, on that certain plat by Newby-Procter and Associates dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this



description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lot N-27b

LOTS IN SECTION "O"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots O-1 through O-4, inclusive, Lots O-9 through O-14, inclusive, Lot O-17, Lot O-22 through O-27, Lot O-29, Lot O-33, Lot O-35 and Lot O-37 on that certain plat by Newby-Procter and Associates dated November 30, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,606. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot O-38, Lot O-41, Lots O-49 through Lot O-51, inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "P"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots P-2, P-5 through P-7, inclusive, Lot P-9, Lot P-13 through P-18, inclusive and Lots P-21 through P-23, inclusive, on that certain plat by Newby-Procter and Associates dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot P-26, Lot P-27, Lot P-31, and Lot P-42, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

PROPERTY B:



All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and containing 23.26 acres, more or less, designated on that plat of survey prepared by Newby-Procter and Associates dated May 11, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,002. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lots F-18, 20, 21, 22, 23, 24 and 26

PROPERTY C:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, near Mount Vintage Plantation Drive, containing sixty-six hundredths (.066) of an acre, more or less, and designated as Lot P-3 on that plat prepared for MV Development Company, LLC, by Newby-Procter and Associates, and recorded in Judgment Roll 38,150 in the Office of the Clerk of Court for Edgefield County, which said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

ALL of the aforesaid lots being a portion of the property conveyed to K&H Development Company, LLC by Deed of the Special Referee for Edgefield County dated April 19, 2010 and recorded April 22, 2010 in Deed Book 1282, Page 180, Edgefield County Records.



STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

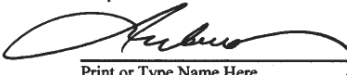
AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information of this affidavit and I understand such information.
2. The property being transferred is located in Edgefield County, bearing Edgefield County Tax Map Number: 122-00-06-003 et al. was transferred by J. Martin Harvey, Special Referee for Edgefield County to Raiford Topsail Island Investments, LLC on 11/11/23.
3. Check one of the following: The deed is
 - (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):
(If exempt, please skip items 4 – 7 and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 100,000.00
 - (b) ☐ The fee is computed on the fair market value or the realty which is _____.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$ 100,000.00
 - (b) Place the amount listed in item 5 above here: -0-
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ 100,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 370.00
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Attorney
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 11
Day of November
J. Martin Harvey
Notary Public for South Carolina
My Commission Expires: Nov 13, 2020

Responsible Person Connected with the Transaction


Print or Type Name Here

INFORMATION:

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any rights. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

EXCEPTED FROM THE FEE ARE DEEDS:

1. transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
2. transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
3. that are otherwise exempted under the laws and Constitution of this State or the United States;
4. transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
5. transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
6. transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
7. that constitute a contract for the sale of timber to be cut;
8. transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty for a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
9. transferring realty from a family partnership to a partner or from family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
10. transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
11. transferring realty in a merger or consolidation from constituent partnership to the continuing or new partnership;
12. that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid to or is to be paid under the corrective or quitclaim deed; and,
13. transferring realty subject to a mortgage whether by a deed in lieu or foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
14. transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
15. transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

Instrument	Book	Page
201400002260 OR	1486	235

201400002260
Filed for Record in
EDGEFIELD COUNTY, SC
SHIRLEY F NEWBY, CLERK OF COURT
08-04-2014 At 01:29 PM.
CORR DEED 15.00
OR Book 1486 Page 235 - 243

201400002260 EXEMPT
SHIRLEY F NEWBY
CLERK OF COURT
EDGEFIELD COUNTY, SC
08-04-2014 01:29 pm.
REC FEE: 15.00

EXHIBIT

G

STATE OF SOUTH CAROLINA) CORRECTIVE **
) SPECIAL REFEREE DEED
COUNTY OF EDGEFIELD) (Deed Book 1455, Page 297)

LL of SC, LLC
Plaintiff

v. K&H DEVELOPMENT COMPANY, LLC et al.
Defendant

Civil Action Number 2012-CP-19-336

BY VIRTUE OF and pursuant to the terms of a Decree in the above entitled action, the undersigned as the Special Referee for Edgefield County executes and delivers this Deed by direction of the Court.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, J. MARTIN HARVEY, Special Referee for Edgefield County, in consideration of the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), the receipt whereof is hereby acknowledged, and by way of correction, has granted, bargained, sold and released, and by these presents, does grant, bargain, sell and release the following described premises unto RAIFORD TOPSAIL ISLAND INVESTMENTS, LLC, 616 Edgefield Road, Suite 115, North Augusta, South Carolina 29841:

**SEE EXHIBIT A ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE**

**Corrective Deed being recorded to add Lot 0-8 erroneously omitted from prior Deed.

Print #1

EXHIBIT

41.11

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto, and all the estate, right, title, claim and interest, whatsoever, of the parties of the cause aforesaid, and for each of them in and to the same; and of all other persons rightfully claiming from, under, or by these or any of them including, but not limited to, all developer rights held by K&H Development Co., LLC as to Mount Vintage Plantation.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said RAIFFORD TOPSAIL ISLAND INVESTMENTS, LLC, its successors and assigns forever.

IN WITNESS WHEREOF, I, as the Special Referee for Edgefield County, have hereunto set my hand and seal this 22 day of July, 2014.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness:

Witness:

(LS)

J. Martin Harvey, Special Referee for
Edgefield County, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named J. Martin Harvey as Special Referee for Edgefield County, sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this

22nd day of July, 2014.

Kimberly Moore
Notary Public for South Carolina

My Commission Expires: Oct 13, 2020

Witness

After recording return to Smith, Massey, Brodie, Guynn & Mayes

#2

EXHIBIT A**LOTS IN SECTION "F"**

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots F-3 and F-4 on that certain plat by Newby-Procter and Associates dated April 8, 2003 and recorded November 6, 2003 in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,672. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot F-3 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map # 122-00-06-003 and Lot F-4 is shown on Tax Map # 122-00-06-004.

LOTS IN SECTION "H"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-1, H-2, H-12, H-15, H-20, H-65 and H-73 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,455. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-001; Lot H-2 on Tax Map # 122-00-09-002; Lot H-12 on Tax Map #122-00-09-012; Lot H-15 on Tax Map # 122-00-09-015; Lot H-20 on Tax Map #122-00-00-020; Lot H-65 on Tax Map # 122-00-09-065 and Lot H-73 on Tax Map # 122-00-09-073.

AND ALSO All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots H-43, H-44, H-45 and H-46 on that certain plat by Newby-Procter and Associates dated July 30, 2003 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 36,456. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot H-43 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-09-043; H-44 on Tax Map #122-00-09-044; Lot H-45 on Tax Map #122-00-09-045 and Lot H-46 on Tax Map #122-00-09-046.

LOTS IN SECTION "J"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield,



State of South Carolina, and being shown and designated as Lots J-1 thorough J-9 inclusive, J-11, J-13 through J-20 inclusive, J-27, J-28, J-30, J-35, J-36, J-44 through J-47 inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot J-1 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-10-001; Lot J-2 on Tax Map #122-00-10-002; Lot J-3 on Tax Map #122-00-10-003; Lot J-4 on Tax Map #122-00-10-004; Lot J-5 on Tax Map #122-00-10-005; Lot J-6 on Tax Map #122-00-10-006; Lot J-7 on Tax Map #122-00-10-007; Lot J-8 on Tax Map #122-00-10-008; Lot J-9 on Tax Map #122-00-10-009; Lot J-11 on Tax Map #122-00-10-011; Lot J-13 on Tax Map #122-00-10-013; Lot J-14 on Tax Map #122-00-10-014; Lot J-15 on Tax Map #122-00-10-015; Lot J-16 on Tax Map #122-00-10-016; Lot J-17 on Tax Map #122-00-10-017; Lot J-18 on Tax Map #122-00-10-018; Lot J-19 on Tax Map #122-00-10-019; Lot J-20 on Tax Map #122-00-10-020; Lot J-27 on Tax Map #122-00-10-027; Lot J-28 on Tax Map #122-00-10-028; Lot J-30 on Tax Map #122-00-10-030; Lot J-35 on Tax Map #122-00-10-035; Lot J-36 on Tax Map #122-00-10-036; Lot J-44 on Tax Map #122-00-10-044; Lot J-45 on Tax Map #122-00-10-045; Lot J-46 on Tax Map #122-00-10-046 and Lot J-47 on Tax Map #122-00-10-047.

LOTS IN SECTION "K"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots K-7 and K-11, on that certain plat by Newby-Procter and Associates dated July 21, 2005 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,031. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Lot K-7 is also shown in the Office of the Auditor and Tax Assessor for Edgefield County on Tax Map #122-00-11-007 and Lot K-11 is shown on Tax Map #122-00-11-011

LOTS IN SECTION "L"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots L-1 thorough L-3 inclusive, Lot L-7, Lot L-24 through L-29, inclusive, Lot L-31, Lots L-37 through L-39, inclusive, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.



LOTS IN SECTION "M"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots M-1 through M-10, inclusive, Lot M-12, Lot M-13, Lots M-18 through M-20, inclusive, Lot M-42, Lot M-44, Lots M-46 through M-49, inclusive and Lot M-53, on that certain plat by Newby-Procter and Associates dated June 28, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,387. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot M-29, Lot M-30 and Lot M-32 on that certain plat by Newby-Procter and Associates dated 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

LOTS IN SECTION "N"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-1 through N-5, inclusive, Lot N-10, Lot N-11, Lot N-69, Lot N-70, Lot N-79 through N-83, inclusive, Lot N-85 and Lot N-86, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots N-27 through N-37, inclusive, and Lots N-39 through N-46, inclusive, on that certain plat by Newby-Procter and Associates dated June 26, 2008 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,662. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot N-47, Lot N-49, Lot N-51 and N-52, Lot N-57, through N-59, inclusive, on that certain plat by Newby-Procter and Associates dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this



description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lot N-27b

LOTS IN SECTION "O"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots O-1 through O-4, inclusive, Lots O-9 through O-14, inclusive, Lot O-17, Lot O-22 through O-27, Lot O-29, Lot O-33, Lot O-35 and Lot O-37 on that certain plat by Newby-Procter and Associates dated November 30, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,606. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot O-38, Lot O-41, Lots O-49 through Lot O-51, inclusive, on that certain plat by Newby-Procter and Associates dated November 23, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,368. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

AND ALSO that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots O-8 on that certain plat by Newby-Procter and Associates dated November 30, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,606. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property. Tax Parcel Number 099-01-04-008

LOTS IN SECTION "P"

All those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lots P-2, P-5 through P-7, inclusive, Lot P-9, Lot P-13 through P-18, inclusive and Lots P-21 through P-23, inclusive, on that certain plat by Newby-Procter and Associates dated February 20, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,150. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.



AND ALSO ALL those certain pieces, parcels or lots of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and being shown and designated as Lot P-26, Lot P-27, Lot P-31, and Lot P-42, on that certain plat by Newby-Procter and Associates dated January 26, 2006 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 38,149. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

PROPERTY B:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, and containing 23.26 acres, more or less, designated on that plat of survey prepared by Newby-Procter and Associates dated May 11, 2004 and recorded in the Office of the Clerk of Court for Edgefield County in Judgment Roll 37,002. Said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

Less and Excepting as Released: Lots F-18, 20, 21, 22, 23, 24 and 26

PROPERTY C:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Edgefield, South Carolina, located approximately ten (10) miles South of the Town of Edgefield, State of South Carolina, near Mount Vintage Plantation Drive, containing sixty-six hundredths (.066) of an acre, more or less, and designated as Lot P-3 on that plat prepared for MV Development Company, LLC, by Newby-Procter and Associates, and recorded in Judgment Roll 38,150 in the Office of the Clerk of Court for Edgefield County, which said plat is incorporated herein and made a part and parcel of this description by reference thereto. Further reference being made to said plat for a more complete and accurate description of metes, bounds, distances and location of subject property.

ALL of the aforesaid lots being a portion of the property conveyed to K&H Development Company, LLC by Deed of the Special Referee for Edgefield County dated April 19, 2010 and recorded April 22, 2010 in Deed Book 1282, Page 180, Edgefield County Records.



Instrument Book Page
201400002260 OR 1486 242

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information of this affidavit and I understand such information.
2. The property being transferred is located in Edgefield County, bearing Edgefield County Tax Map Number: 122-00-06-003 et al. was transferred by J. Martin Harvey, Special Referee for Edgefield County to Raiford Topsail Island Investments, LLC on July 22, 2014
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X exempt from the deed recording fee because (See Information section of affidavit):
#12
(If exempt, please skip items 4 – 7 and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value or the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: -0-
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ _____
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Attorney _____
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 22nd
Day of July, 2014.

Notary Public for South Carolina
My Commission Expires: Oct 13, 2020

Responsible Person Connected with the Transaction

Print or Type Name Here

INFORMATION:

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any rights. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

EXCEPTED FROM THE FEE ARE DEEDS:

1. transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
2. transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
3. that are otherwise exempted under the laws and Constitution of this State or the United States;
4. transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
5. transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
6. transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
7. that constitute a contract for the sale of timber to be cut;
8. transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty for a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
9. transferring realty from a family partnership to a partner or from family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
10. transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
11. transferring realty in a merger or consolidation from constituent partnership to the continuing or new partnership;
12. that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid to or is to be paid under the corrective or quitclaim deed; and,
13. transferring realty subject to a mortgage whether by a deed in lieu or foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
14. transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
15. transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

From: [McIntosh, Lawton Law Clerk \(Kjursten Collier\)](#)
To: [Justin Lucey](#); [Steven Edward Buckingham](#); ckrawczyk@finkellaw.com; [Anna McCann](#); [Kristina Shernoff](#); [Lee Weiland](#); [Mandee Funai](#); tkelly@finkellaw.com
Cc: [McIntosh, Lawton Secretary \(Tammy Jennings\)](#)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
Date: Friday, August 30, 2024 3:27:18 PM

Good afternoon,

Judge McIntosh has asked me to relay the following:

“Counsel, after reviewing the following documents: Deed in Lieu of Foreclosure filed 09/03/2013, Assignment of Bid filed 11/06/2013, Master’s Report filed 11/11/2013, Special Referee Deed filed 08/13/24, and Corrective Special Referee Deed filed 08/13/24 it appears that LL of SC, LLC signed over developer rights to Raiford Topsail Island Investments, LLC. Accordingly, this letter is to inquire what makes the issue of who is properly invested with developer rights a question of fact for the jury as opposed to a question of law.”

Additionally, **Mr. Krawczyk**, in case you had missed my last email, Judge McIntosh would appreciate it if you would send over your material regarding your order of protection/attorney client privilege matter that you mentioned Wednesday.

Thank you,

Kjursten Collier
Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmcintoshlc@sccourts.org

From: Justin Lucey <jlucey@lucey-law.com>

Sent: Thursday, August 29, 2024 8:41 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; cKrawczyk@finkellaw.com

Cc: Kristina Shernoff <kshernoff@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Kjursten,

Good morning.

Yesterday, Judge McIntosh asked for a case demonstrating that Plaintiff can proceed against the developer on both negligence and breach of fiduciary duty, simultaneously. The first case excerpted below (and attached), Cohen, is a California case wherein the Plaintiff was permitted to proceed against the Developer for acts and omissions committed during his control of the association, for cause of action in both negligence and breach of fiduciary duty. The pertinent point is excerpted into this email under the signature line.

The second case excerpted below, Accident Ins., is not a developer case, but it is a local case, where the Plaintiff was permitted to proceed upon both negligence and breach of fiduciary duty simultaneously. Copy attached.

Claims for both negligence and breach of fiduciary duty have been permitted regularly in suits against developers for defective construction. See, e.g., Pope v. Heritage Communities, 395 SC 404, 717 SE2nd, 765 (Ct. App. 2011).

While the Walbeck Supreme Court decision did not address this issue, it may be worth noting that the derivative, HOA claim in Walbeck went to the jury on both negligence (negligent misrepresentation) and breach of fiduciary duty; but as Plaintiff elected to take under the breach of fiduciary duty verdict in lieu of the negligence verdict, and the Supreme Court sustained the breach of fiduciary duty verdict, it ultimately did not need to consider the Court of Appeals negative treatment of the negligence verdict. Copy of verdict form attached.

Respectfully submitted,

Justin Lucey

COHEN:

Plaintiffs seek damages for negligence , breach of fiduciary duty and breach of the duty of good faith and fair dealing, all based on the developer's alleged failure to properly administer and enforce the Declaration. Division Two has already determined these allegations are sufficient as against the Association; and we find them adequate as against S & S as well.

A developer's liability to a homeowner's association for breach of the basic fiduciary duty to act in good faith, exercise proper management and avoid conflicts of interest is well settled. (Raven's Cove Townhomes, Inc. v. Knuppe Development Co. (1981) 114 Cal.App.3d 783, 171 Cal.Rptr. 334.) This fiduciary duty extends to individual homeowners, not just the homeowners association. (Cohen v. Kite Hill Community Association, supra, 142 Cal.App.3d 642, 652–653, 191 Cal.Rptr. 209.) Efforts by S & S to distinguish Raven's Cove, supra, are unavailing. As the court there noted, “a developer ... may not make decisions for the Association that benefit [its] own interest at the expense of the association and its members...” (114 Cal.App.3d at p. 799, 171 Cal.Rptr. 334.) When the developer and its employees control the Association, and the Association thus controlled permits mismanagement, the developer may be liable. (Id., at p. 800, 171 Cal.Rptr. 334.) Accordingly, plaintiffs' allegations against S & S in the eighth, ninth and tenth causes are sufficient and the demurrer was improperly sustained. (Cohen, supra.)

Cohen v. S & S Constr. Co., 151 Cal. App. 3d 941, 945–46, 201 Cal. Rptr. 173, 175 (Ct. App. 1983)

ACCIDENT INS.:

Accordingly, the court finds that Plaintiff has sufficiently alleged that there exists an independent duty of good faith and care, which supports Plaintiff's claim for breach of fiduciary duty.

3. Negligence/Gross Negligence (Count 3)

Plaintiff repeats the allegations underlying its claim for breach of fiduciary duty, adding the adjectives “negligently, grossly negligently, recklessly, willfully, and wantonly” to the allegations. (ECF No. 1 ¶ 126.) As discussed above, the court finds that Plaintiff has sufficiently alleged that there exists an independent duty of good faith and care, which supports Plaintiff's claim for negligence/gross negligence.

Accident Ins. Co., Inc. v. U.S. Bank Nat'l Ass'n, No. 3:16-CV-2621-JMC, 2017 WL 4315141, at *9 (D.S.C. Sept. 28, 2017)

-----Original Message-----

From: McIntosh, Lawton Law Clerk (Kjursten Collier)

Sent: Wednesday, August 28, 2024 4:48 PM

To: Steven Edward Buckingham ; cKrawczyk@finkellaw.com

ROA_01243

Cc: Kristina Shernoff ; Anna McCann ; Mandeef Funai ; Lee Weiland ; tkelly@finkellaw.com; Justin Lucey ; McIntosh, Lawton Secretary (Tammy Jennings)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Mr. Krawczyk,

Our office can find no record of the cases you mentioned earlier today regarding the matters of attorney-client privilege. Judge McIntosh has asked me to reach out to you and ask you to send them to me so that he can look them over.

Thank you,

Kjursten Collier
Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmcintoshlc@sccourts.org

-----Original Message-----

From: Justin Lucey
Sent: Tuesday, August 27, 2024 10:44 AM
To: McIntosh, Lawton Secretary (Tammy Jennings) ; Steven Edward Buckingham
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier) ; Kristina Shernoff ; Anna McCann ; Mandeef Funai ; Lee Weiland ; ckrawczyk@finkellaw.com; tkelly@finkellaw.com
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Tammy,

Out of an abundance of caution, I wanted to clarify the below typo - that the summary judgment motions are being held tomorrow, Wednesday, August 28, in Anderson (not Thursday)

Plaintiffs Memorandum in Support of their motion for summary judgment was contained within the

From: [Steven Edward Buckingham](#)
To: [McIntosh, Lawton Law Clerk \(Kjursten Collier\)](#); [Justin Lucey](#); ckrawczyk@finkellaw.com; [Anna McCann](#); [Kristina Shernoff](#); [Lee Weiland](#); [Mandee Funai](#); tkelly@finkellaw.com
Cc: [McIntosh, Lawton Secretary \(Tammy Jennings\)](#)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
Date: Tuesday, September 3, 2024 10:49:00 AM

Good morning. In response to the Judge's question, I think it might have 2 components. The first component is the question of which chain of documents establishes the transfer of developer rights and into which entity. Candidly, I think that is a question of law. The second component is the question of who presently has developer rights. That might involve questions of fact, particularly when it comes to—in this case—whether LL of SC has always had developer rights, or whether—as it appears the judge is leaning—RTI was conveyed developer rights through the master's deed(s). If RTI was conveyed developer rights, then there may very well be issues of fact about LL of SC's exercise of those rights on behalf of RTI.

Either way, it would seem an adjudication of which entity received developer rights through the DIL/foreclosure process would be very important at this juncture.

Separately, Mr. Krawczyk called me a little while ago to say that he has been having trouble with email since Friday. He can apparently see emails come in, but he can't read them or respond to them. He says that his firm's email servers are being repaired and that he should have.

Thanks to all.

Steve Buckingham

From: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>
Sent: Friday, August 30, 2024 3:27 PM
To: Justin Lucey <jlucey@lucey-law.com>; Steven Edward Buckingham <seb@buckingham.legal>; ckrawczyk@finkellaw.com; Anna McCann <amccann@lucey-law.com>; Kristina Shernoff <kshernoff@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; Mandee Funai <mfunai@lucey-law.com>; tkelly@finkellaw.com
Cc: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good afternoon,

Judge McIntosh has asked me to relay the following:

“Counsel, after reviewing the following documents: Deed in Lieu of Foreclosure filed 09/03/2013, Assignment of Bid filed 11/06/2013, Master’s Report filed 11/11/2013, Special Referee Deed filed 08/13/24, and Corrective Special Referee Deed filed 08/13/24 it appears that LL of SC, LLC signed over developer rights to Raiford Topsail Island Investments, LLC. Accordingly, this letter is to inquire what makes the issue of who is properly invested with developer rights a question of fact for the jury as opposed to a question of law.”

Additionally, **Mr. Krawczyk**, in case you had missed my last email, Judge McIntosh would appreciate it if you would send over your material regarding your order of protection/attorney client privilege matter that you mentioned Wednesday.

Thank you,

Kjursten Collier

Law Clerk to the
Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
Cell: (864) 373-5766
Office: (864) 260-4059
lmcintoshlc@sccourts.org

From: Justin Lucey <jlucey@lucey-law.com>

Sent: Thursday, August 29, 2024 8:41 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; cKrawczyk@finkellaw.com

Cc: Kristina Shernoff <kshernoff@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

ROA_01246

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900050

EXHIBIT

E

Elizabeth Ferraro et al
PLAINTIFF(S)

LL of SC LLC et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

BASED UPON THE DEED IN LIEU OF FORECLOSURE (09/13/13), THE ASSIGNMENT OF BID (11/18/13), THE MASTER'S REPORT (11/18/13), THE SPECIAL REFEREE'S DEED (11/18/13), AND THE CORRECTIVE SPECIAL REFEREE'S DEED (8/4/14), THE COURT FINDS THAT LL OF SC ASSIGNED "DEVELOPER'S RIGHTS" TO RAIFORD TOPSAIL ISLAND INVESTMENTS DURING THIS PERIOD OF TIME AND ACCORDINGLY GRANTS PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT THAT LL OF SC ASSIGNED ITS DEVELOPER'S RIGHTS TO RAIFORD TOPSAIL ISLAND INVETSMENTS DURING THIS PERIOD. THE COURT MAKES NO FURTHER FINDINGS OR RULINGS OTHER THAN AS STATED.

PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER CONSISTENT WITH THIS ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2155 Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Edgefield Common Pleas

Case Caption: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al
Case Number: 2021CP1900050
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-09-04 12:29:37 page 3 of 3

MEMORANDUM

PLAINTIFF
EXHIBIT

18.45

TO: LL OF SC, LLC

FROM: MARY GUYNN

RE: MOUNT VINTAGE PLANTATION HOMEOWNERS ASSOCIATION
BOARD OF DIRECTORS

DATE: NOVEMBER 2, 2016

Pursuant to the Bylaws of the Mount Vintage Plantation Homeowners Association, as amended, there are two classes of membership. The developer is a Class A member and has one vote for each residential lot owned by it in Mount Vintage. All other owners of residential lots are Class B members. Class B members do not have voting rights until the earlier of (i) conveyance of all residential lots by the developer (i.e. Class A member) or (ii) voluntary election of the developer to grant voting privileges to Class B member prior to conveyance of all lots by the developer.

The original developer identified in the Bylaws was K&H Development Company, LLC. By Deed in Lieu of Foreclosure, K&H Development Company, LLC transferred all of the lots owned by it in Mount Vintage to LL of SC, LLC as well as all rights as a developer. Included in said deed was the transfer and assignment of the following rights:

"All rights appurtenant to the Property, including, but not limited to, all developer rights held by K&H Development Company, LLC as to Mount Vintage Plantation, including but not limited to any and all rights set forth in the Assignment of Developer's Rights recorded in Book 1331, Page 199, Edgefield County Records (the "Assignment"), all reserved rights held by K&H Development Company, LLC under the Covenants (as defined in the Assignment), the Class A membership interest, including voting privileges, in Mount Vintage Plantation Homeowners Association, Inc., options, conditions and powers including, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of nay entities or organizations within the Land as established or as may be established and the right to control the "Preferred Builder" program in Mount Vintage, including the right to collect any and all fees assessed to or for such Preferred Builder program."

Consequently, LL acquired the Class A membership voting rights previously held by K&H Development Company. My review of the real estate records does not disclose that K&H Development Company granted voting privileges to the Class B members prior to its assignment of these rights to LL of SC. In addition, LL of SC has not granted voting privileges to the Class B members since acquiring the rights of the developer. LL of SC still owns numerous lots in Mount Vintage. Consequently, it appears that only LL of SC has the ability to vote as a member of the Association.

South Carolina Code Annotated Section 33-31-804 provides that a nonprofit corporation with members shall elect the Board of Directors by vote of the members entitled to vote. Thereafter, such Board Members may also be removed without cause by the members elected to elect the Board. Consequently (except as set forth below), if the developer has sole voting authority, then the developer has the sole right to elect and thereafter remove directors.

The Bylaws do provide that if there is a vacancy created on the Board by resignation or removal prior to expiration of the current term, the vacancy shall be filled by election by the remaining Board of Directors. Consequently, if a director is removed or resigns from the Board before completing his or her term, the remaining directors would elect the individual(s) to fill the vacancy. This should be contrasted with the situation in which a director's term expires and the membership must elect a new director. In that case, the developer would have the ability to elect a new director.

Should you have any questions, please do not hesitate to contact me.

11-16-16 Meeting
Wayne, Jerry, Greg & Leigh Ann

EXHIBIT

G

PLAINTIFF
EXHIBIT

18.46

Mount Vintage

November 16, 2016

1:00 p.m.

Agenda

- **Organization and control of Mount Vintage HOA**
 - Memorandum from Mary Guynn
 - Wayne to know all decisions being made, before they are done
 - Potential foreclosure status
 - Property tax status
- **Update of Protective Covenants and Bylaws**
- **HOA dues and Town Center Fees**
 - Shaw Estates
 - Averett Letter
 - Dotta request
- **MV Roads & Other Properties at front entrance and behind HOA office**
 - Tax Sale
 - Large office building behind HOA office
- **Beautification project**
 - Fence repair and painting
 - Stop signs, speed limit signs & road signs
 - Roads
 - Restriping where golf paths reach the road
- **Other Business**
 - Golf Club management team & hours of operations
 - Town Center management team & hours of operations
 - Grille management team & hours of operations
 - HOA office new copier
- **Marketing**
 - Websites
 - Prospective buyers and complementary golf rounds
 - Lunch at the Grille
 - Signs
 - Brochures

Email: Gregg Karlberg, Jerry Shaffer

Re: Meeting
Monday, November 14, 2016
Mount Vintage

Gentlemen,

To assist you in preparing for Monday's meeting I have attached the following:

- Mary Guynn memo regarding the Mount Vintage Homeowners Association Board of Directors operation
- Agenda of topics for discussion

As the developer of Mount Vintage I have a tremendous vested interest in the management and operation of all aspects of the community.

So, I would like to meet to discuss moving forward with a full understanding among the BOD members as to how I would like to operate and handle any and all issues or challenges that may arise that impact the successful future of Mount Vintage.

Our amenities and the common property within the community are a critical component of life at Mount Vintage for current property owners and also directly impact future growth (additional property owners).

I think an open discussion will be of great benefit to all involved and help facilitate a clear process for moving the community forward on a positive note.

I Look forward to seeing you.



Wayne Ralford <ralford.office@gmail.com>

Fw: HOA Board Meeting

Wayne Ralford <jwwackyw@aol.com>
Reply-To: Wayne Ralford <jwwackyw@aol.com>
To: OFFICE <ralford.office@gmail.com>

Sat, Nov 5, 2016 at 6:48 PM

Remind me to talk about this Monday.

Wayne

— Forwarded Message —

From: "Gregg" <greggkarlberg@live.com>
To: "Wayne Ralford" <jwwackyw@aol.com>; "Jerry Schaefer" <dadjerzz@gmail.com>
Cc: "Gregg" <greggkarlberg@live.com>
Sent: 11/4/2016 1:49:21 PM
Subject: HOA Board Meeting

Wayne, Jerry -

Think we need to schedule a Board meeting to discuss a number of issues as follows:

- Tax sales strategy
- Dotta request for relief of HOA dues Cavalry run property
- Completion of beautification project
- Fence repair and painting
- Property tax status
- Averett letter
- Bylaw changes
- Shaw estates issue
- Stop and speeding signs plan
- Potential foreclosure status

I have availability on Tuesday and Wednesday as well as on Thursday early morning but am out Thursday afternoon and all day Friday.

Best Regards,
Gregg

Fw[2]: Old Edgefield Grille

Wayne Raiford <jwwackyw@aol.com>
Reply-To: Wayne Raiford <jwwackyw@aol.com>
To: OFFICE <raiford.office@gmail.com>

Mon, Nov 14, 2016 at 7:51 PM

Joan, print this out for me to take to HOA meeting

----- Forwarded Message -----

From: "Gregg" <greggkarlberg@live.com>
To: "Wayne Raiford" <jwwackyw@aol.com>
Sent: 10/30/2016 11:17:42 PM
Subject: Fw: Old Edgefield Grille

Wayne -

Kirby sent Jerry and me the attached note concerning the Edgefield Grille.

We have a policy of not sending out advertising for businesses outside of Mount Vintage - perhaps if it were labelled as a message from you, that would probably get around this (Not sure of Jerry's input on this).

Second, not sure of the logic behind this but I do not believe your note will be well received by the Mount Vintage residents who will wonder, as I did, why not a message about supporting our very own Grille - vital to the growth of the Mount Vintage community - something to think about.

If you want this to go out as a message from you to the Residents, let me know.

Thanks,

Gregg



Wayne Raiford <raiford.office@gmail.com>

Mt Vintage

garnermarketing@aol.com <garnermarketing@aol.com>
To: raiford.office@gmail.com

Thu, Nov 3, 2016 at 1:34 PM

Please tell Wayne the connector plug on the back of the phone had come out and the phone wasn't operating...I didn't know until I tried to make a call and got no dial tone!!! So his message was in cyber space. Sorry!!

John and I have read Mary's memo...it seems abundantly clear who is in charge.

John thinks Wayne should send the BOD this memo before the meeting. Give them a chance to digest. John would suggest in a cover memo to the BOD that Wayne ask them to review the memo and that he - Wayne - would like to meet as a follow-up to discuss moving forward with a full understanding among the BOD members as to how Wayne would like to handle issues and possible resolutions to all issues that impact MV.

Also want to mention - if Mary is revising the PC's and Bylaws for MV...that Wayne may want to refer back to our memo that flagged some things for him to consider. To get Mary's feedback in the process.

Remind Wayne that one item Jerry had a big problem with - was the possible elimination of an impact fee on builders (Wayne had said he wanted to eliminate this - didn't think it necessary). Now with our preferred builders in place it seems all the more reason to eliminate this fee.

Laurie Garner
Garner Marketing & Advertising Consultants
244 Wendover Heights Circle
Charlotte, NC 28211
704-770-0748
704-770-0716 Fax

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[Quoted text hidden]



Wayne Raiford <raiford.office@gmail.com>

Additional Follow-Up on MV BOD

garnermarketing@aol.com <garnermarketing@aol.com>
To: raiford.office@gmail.com

Thu, Nov 3, 2016 at 1:53 PM

Reminder that the proposed annual HOA dues and memberships in TC/AC and Golf will have great impact on potential lot buyers.

Jerry indicated that the increase for next year was being discussed - seemed major reason for increase was to cover HOA indebtedness on the TC/AC, etc.

We also discussed the possibility of folding TC/AC membership into the annual dues as an option in lieu of separate membership fees.

Wherever all this ends up - we will need resolved for marketing. Not to put in materials but we feel we'll be writing a script of sorts for Al and Rick - so everyone is on the same page and the information is shared (as asked for by prospects) in a way that is most beneficial to sales. We don't want Al or Rick freelancing on answers to these types of ket questions.

Laurie Garner

Garner Marketing & Advertising Consultants

244 Wendover Heights Circle

Charlotte, NC 28211

704-770-0748

704-770-0716 Fax

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Conversation w/ Laura — 11/1/14

Mount Vintage
Protective Covenants/Bylaws
Revisions and/or Changes
September 15, 2016
Page 1 of 3

This is a list of things that we have noticed and may need to be changed, revised, or at least reviewed in the preparation of Amended Protective Covenants and Bylaws. This is not intended to be a complete list of revisions that may be necessary from a legal standpoint.

Change legal name of "Developer"
Change name of subdivision to "Mount Vintage"
Change name of golf club to "Mount Vintage Golf Club"
Property Description?

Overall, do the PC's and Bylaws need to reflect HOA ownership of the Town Center/Athletic Club? Golf Club?
Do the PC's and Bylaws need to reflect HOA responsibilities for maintenance, potential property owner assessments for care/maintenance, degree of property owner (HOA) indemnity?

Do the PC's or Bylaws need to mention a Preferred Builder Program?

Additional Notes

- Builder Agreement needs to be drawn up and signed by participating builders before marketing materials include their info
- New sales contract should be drawn to reflect the builder program and marketing fee.

PROTECTIVE COVENANTS

Potential conflict in wording;

Article I – (1)

States lot is for construction of one single-family dwelling. No structure shall be erected, altered, placed or permitted to remain on any residential lot other than one single-family residence.

Article II – (1)

Refers to the submission of plans for "other buildings" in addition to main dwelling

Article III – (1)

No attic, shack, garage, barn or detached outbuilding....

Mount Vintage
Protective Covenants/Bylaws
Revisions and/or Changes
September 15, 2016
Page 2 of 3

Approval time on ACC plan submissions

Article II – (1)

Last sentence – ACC shall approve or reject any plans...within seven (7) days.

ACC Membership

Article II – (9)

ACC shall be composed of at least three (3) members

A simple majority of the members shall be required to bind the committee.

Article III – (12)

A uniform mailbox will be used. The ACC shall establish the design and specs of such mailbox. All mailboxes shall be designed, constructed and installed by the ACC.

Article III – (21)

Developer shall convey title to roadways, common areas and green spaces to the Association at such time as 80% of the residential building lots as contemplated in the overall plans shall have been conveyed by the Developer

*Jerry said Wayne doesn't own the roads.
mv Development*

Article V – (2)

Duties of the Association.

Does this section need to be revised to reflect HOA maintenance of the Town Center./Athletic Club

Article VI – (10, (2) and (3)

Does this need to be revised to include possible assessments for TC/AC and Golf Club

Addendums

Should review based on phases within Wayne's available lot list (or potential lots) – to be sure the particulars are still acceptable to Wayne

*which ones
still apply?*

"Jerry said, Wayne doesn't control the HOA, anyway."

*Shaw
related?*

BYLAWS

Bylaw Two – (3)

Revise to include ownership and maintenance of the TC/AC
What about Golf Club

Bylaw Seven – (2)

Should (a.) include a time frame or limit on number of increase within a period of time...i.e. within a fiscal or calendar year?

(b.) Reference to "Active Homeowner Association member is actually paragraph 6 in Bylaw Seven → *What is an active Homeowner*

Bylaw Seven – (4)

Should TC/.AC and/or Golf Club be mentioned?

Bylaw Seven – (8)

Impact Fees - should be deleted

Gerry does not want these deleted

Bylaw Ten

Revise recorded reference

Bylaw Eleven

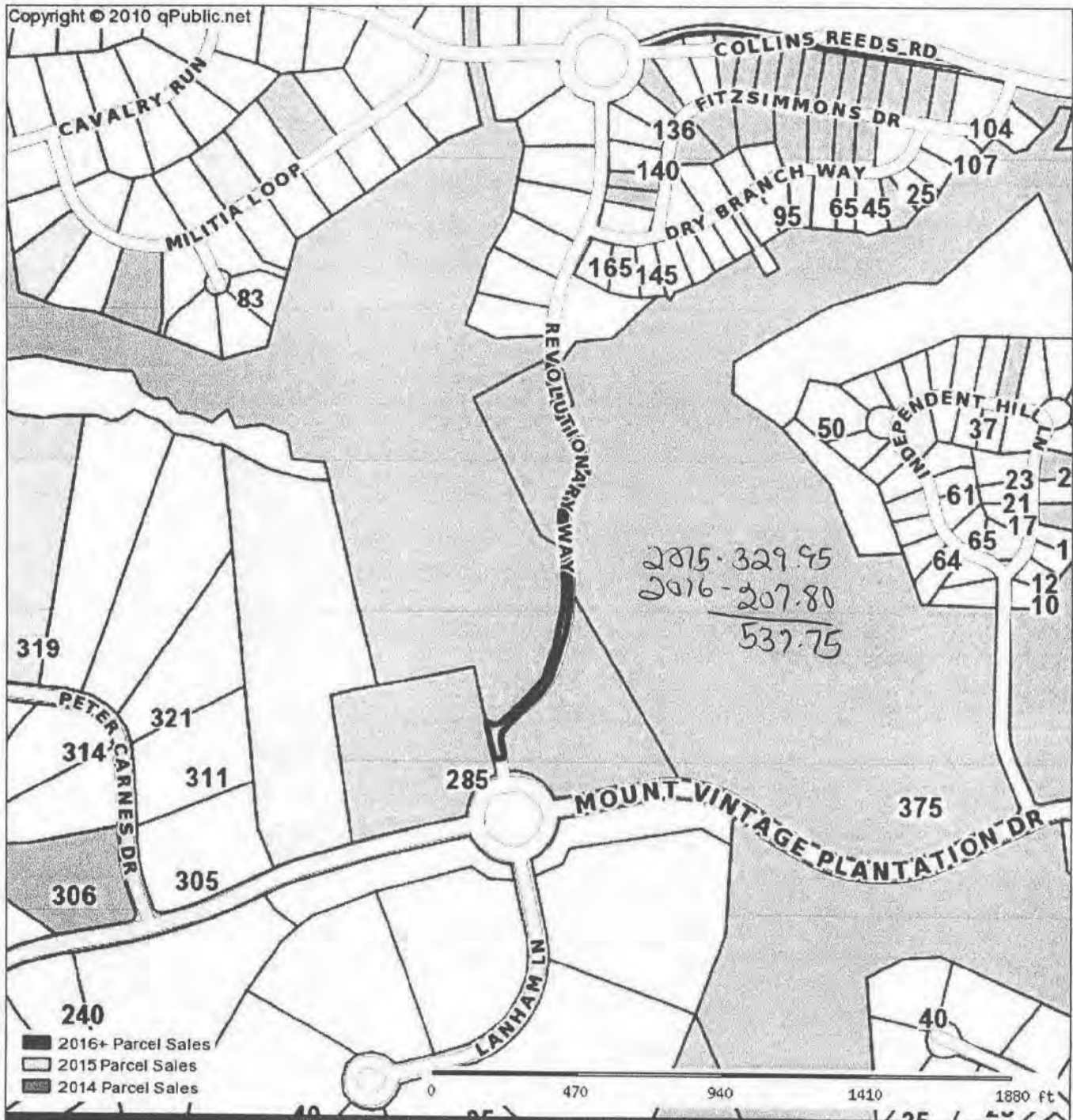
Advisory Committee

Does Wayne want to continue?

Working Committees

*Per Gerry
Naming of circles
Black females*

41

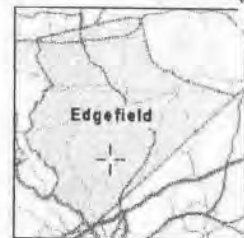


■ 2016+ Parcel Sales
 ■ 2015 Parcel Sales
 ■ 2014 Parcel Sales

Edgefield County Assessor

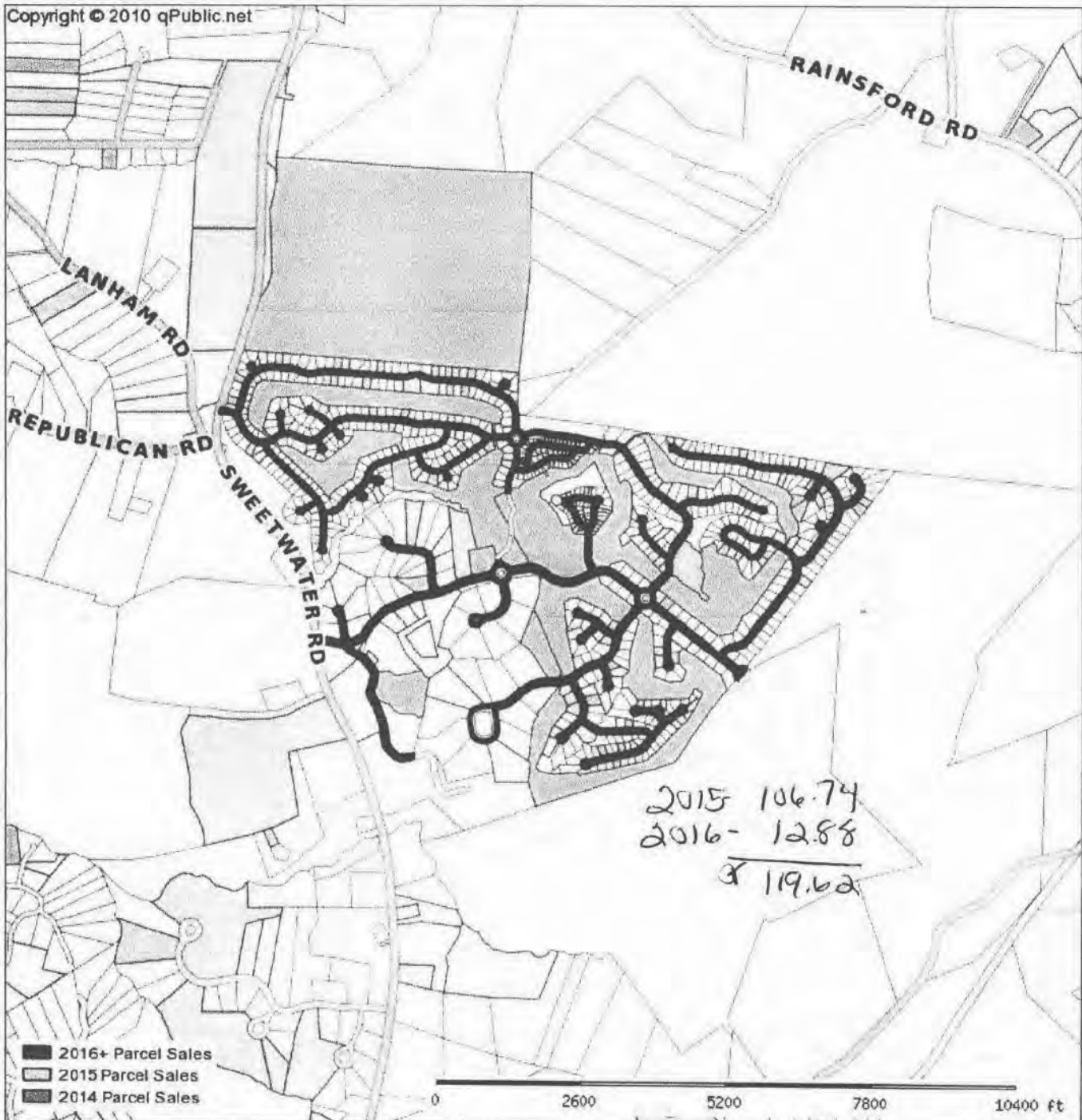
Parcel: 122-00-00-023-000 Acres: 1.17

Name:	HURT JAMES T	Land Value:	\$10,758.00
Site:	0	Improvement Value:	\$0.00
Sale:	\$112 on 01-2016 Reason=9 Qual=U	Accessory Value:	\$0.00
	10 BREEZY HILL DR	Total Value:	\$10,758.00
Mail:	GRANITEVILLE, SC 29829		



Edgefield County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

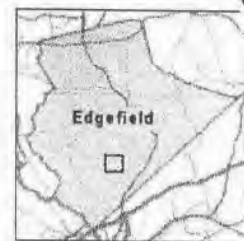
Date printed: 11/11/16: 11:27:49



Edgefield County Assessor

Parcel: 122-00-00-011-000 Acres: 116.17

Name:	M V DEVELOPMENT CO LLC	Land Value:	\$581.00
Site:	0	Improvement Value:	\$0.00
Sale:	\$0 on 11-1999 Reason=1 Qual=U	Accessory Value:	\$0.00
	PO BOX 388	Total Value:	\$581.00
Mail:	EDGEFIELD, SC 29824		



Edgefield County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

Date printed: 11/11/16 : 11:05:24



Wayne Raiford <raiford.office@gmail.com>

FW: New Copier

Kirby Holley <kirbyh@mountvintagehoa.com>

Mon, Nov 14, 2016 at 12:27 PM

To: greggkarlberg@live.com, dadjerzz@gmail.com, raiford.office@gmail.com

This information concerns a new copier to which Superior Office Systems wants us to upgrade. The payment will be the same and they will take care of any end of lease requirements for the old machine. Please let me know what you want to do. Kirby

-----Original Message-----

From: tanderson@superiorofficeonline.com

[mailto:tanderson@superiorofficeonline.com]

Sent: Friday, November 11, 2016 9:41 AM

To: kirbyh@mountvintagehoa.com

Subject: New Copier

Mrs, Kirby,

I have attached the brochure for the new copier that we have been discussing. The brochure is a standard advertisement and shows a staple finisher attached to it in the picture. That is an optional feature and not something we have included since you don't currently have a finisher. It will be the main machine, two trays and a stand with fax, scan and print. Just let me know when you want to proceed with upgrading and I can place the order. It should come in within a week to 10 days from the time we order it.

As we discussed, we will be able to honor the same payment you are paying now for the new machine. The newer technology and quality of this machine is much better than the one you currently have. The only feature this one will not have capability of is the 11X17 size paper like your current machine. Of course, we already determined that isn't a feature you have been using on your current machine. The new machine is 12 pages per minute faster than your machine, it is 1200X1200 dpi as opposed to the 600x600 dpi now and the scan speed is rated faster.

There are other features that are improvements, however, they aren't features that you will probably use since you don't have MAC Computers or use a lot of wireless features. All the way around though this is a much better machine for any customer who only needs to print letter and legal size paper.

Please let me know if you have any questions after you review the brochure. Of course, as always, we will set up, deliver and program the new machine. We will also satisfy any return or end of lease requirements required of your existing lease.

Have a great weekend,
Tracie Anderson
Customer Support/IT
Superior Office Systems
Cell (803) 540-5306

6:54 AM

11/1/18

Annual Basis

Mount Vintage Plantation Homeowners Assoc., Inc. Profit & Loss

June 1 through November 11, 2018

	Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 1 - 11, 18	TOTAL
Ordinary Income/Expense							
Income							
Revenue							
Member Dues	0.00	0.00	0.00	0.00	450.00	0.00	450.00
Garden Plot Fee	0.00	480.00	45.00	90.00	0.00	0.00	565.00
Golf Club Assessment	0.00	0.00	158,200.00	300.00	0.00	0.00	158,800.00
Town Center Dues	25,804.45	6,334.15	3,247.50	500.63	800.00	490.00	105,889.85
Impact Fees	500.00	0.00	0.00	0.00	0.00	0.00	500.00
Penalties and Fines	0.00	200.00	0.00	0.00	0.00	0.00	200.00
Total Revenue	26,304.45	5,984.15	159,562.50	890.63	1,350.00	490.00	264,304.65
Total Income	26,304.45	5,984.15	159,562.50	890.63	1,350.00	490.00	264,304.65
Gross Profit	26,304.45	5,984.15	159,562.50	890.63	1,350.00	490.00	264,304.65
Expense							
Town Center operating							
Theatre and special events	0.00	0.00	0.00	0.00	1,200.00	0.00	1,200.00
Renewal equipment	0.00	428.37	174.09	0.00	0.00	0.00	602.46
Landscaping maintenance	0.00	0.00	1,875.00	1,875.00	1,875.00	1,875.00	7,500.00
supplies	0.00	0.00	505.93	424.36	71.21	0.00	1,002.10
pest control	0.00	0.00	185.00	0.00	195.00	0.00	380.00
trash services	0.00	0.00	144.00	128.00	0.00	0.00	272.00
telephone and internet	0.00	0.00	771.64	150.09	148.22	181.38	1,251.33
Garden	0.00	0.00	83.52	0.00	10.79	0.00	94.31
cleaning services	0.00	1,800.00	1,800.00	0.00	2,010.00	1,800.00	7,500.00
pool maintenance	332.50	1,790.00	899.67	354.86	363.22	80.00	3,780.25
water	0.00	561.28	1,045.70	-173.23	442.87	145.50	2,011.12
pool chemicals	506.00	1,210.53	144.72	186.48	143.50	0.00	2,230.23
Tennis services	0.00	1,236.75	1,134.75	1,760.13	1,774.08	0.00	6,205.71
Electrical expenses	443.81	2,184.90	2,320.00	2,840.00	1,553.00	0.00	9,241.71
repairs and maintenance	470.15	1,020.25	1,530.70	162.25	0.00	0.00	3,183.35
Town Center operating - Other	2,135.00	3,184.11	-75.00	0.00	-74.78	0.00	5,169.32
Total Town Center operating	3,881.46	13,438.29	12,542.91	7,487.02	9,778.40	4,745.38	51,384.46
Admin. Expenses							
Legal fees	1,138.20	528.48	107.50	2,522.60	0.00	1,182.50	5,379.28
Computer expenses	173.85	448.37	51.20	47.40	47.40	0.00	710.22
Bank Service Charges	0.00	53.00	15.00	0.00	0.00	0.00	68.00
Printing & Reproduction Fees	208.28	208.28	208.28	208.28	208.28	0.00	1,033.32
Insurance	-258.00	0.00	157.00	0.00	0.00	0.00	-101.00
Newsletter/Directory	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Audit & Accounting Expenses	550.00	0.00	1,200.00	1,450.00	0.00	0.00	3,200.00
Taxes & Licenses	0.00	0.00	0.00	10.00	0.00	0.00	10.00
Interest expense	0.00	0.00	0.00	0.00	6.34	0.00	6.34
Income Taxes - Other	0.00	0.00	0.00	0.00	110.00	0.00	110.00
Total Admin. Expenses	6.00	6.00	6.00	6.00	116.34	6.00	116.34
Supplies							
Postage	26.20	72.40	15.11	24.55	12.52	0.00	153.78
Admin. Salaries	8.47	47.00	0.00	0.00	48.00	0.00	103.47
Payroll Tax Expense-Admin	3,100.00	4,650.00	3,100.00	5,100.00	3,100.00	1,550.00	16,600.00
Miscellaneous Expenses	237.15	478.34	237.15	237.15	237.15	118.57	1,545.51
Total Admin. Expenses	3,342.02	5,263.83	5,728.42	7,658.47	4,905.17	3,851.67	32,536.98
Beautification	378.79	568.00	-50.00	8,654.00	20,504.57	0.00	31,245.36
HSA Office reimbursement	181.84	0.00	0.00	0.00	0.00	0.00	181.84
Interest Expense	0.00	0.00	0.00	9,000.00	9,000.00	0.00	18,000.00
Operating Expenses							
Heating Expenses	295.00	0.00	0.00	0.00	0.00	0.00	295.00
Electricity Expenses	3,441.48	3,467.40	3,446.35	3,453.97	3,460.52	0.00	17,270.72
Internet Expenses	66.95	96.65	96.65	96.65	96.65	0.00	493.50
Telephone Expenses	13.30	117.19	120.50	131.33	131.40	112.87	626.59
Water Expense	702.82	648.09	1,154.13	865.50	858.79	872.86	5,203.39
Security	0.00	975.52	0.00	0.00	0.00	0.00	975.52
Vehicle maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Pest Usage-Security	0.00	568.54	0.00	0.00	0.00	0.00	568.54
Security - Other	0.00	5,446.79	18,488.57	11,008.24	9,225.97	0.00	44,170.57
Total Security	0.00	10,978.85	18,488.57	11,008.24	9,225.97	0.00	49,682.57
Common Area Maintenance	12,728.00	12,298.00	12,298.00	12,307.00	12,545.00	0.00	62,166.00

Page 1

CONFIDENTIAL

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9:54 AM

11/11/18

Mount Vintage Plantation Homeowners Assoc., Inc.
Profit & Loss

Accrual Basis

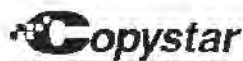
June 1 through November 11, 2018

	Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 1 - 11, 18	TOTAL
Social Activities							
Community Garden	0.00	70.48	0.00	0.00	0.00	0.00	70.48
4th of July Party	-1,800.00	5,328.27	0.00	0.00	0.00	0.00	3,418.27
Total Social Activities	-1,800.00	5,398.75	0.00	0.00	0.00	0.00	3,488.75
Operating Expenses - Other	95.00	0.00	0.00	0.00	0.00	0.00	95.00
Total Operating Expenses	15,524.06	33,157.20	35,558.50	27,790.95	28,730.57	1,065.58	136,377.85
Payroll Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Town Center Payment	0.00	0.00	0.00	334.19	4,630.63	0.00	4,964.82
Town Center refundment	90,628.45	97,912.38	0.00	-200,552.53	0.00	0.00	-101,911.70
Total Expense	105,961.70	151,357.70	53,775.83	-218,227.90	74,343.64	8,982.01	175,882.04
Net Ordinary Income	-9,857.25	-145,458.55	105,818.57	219,067.75	-72,903.64	-8,182.01	88,411.97
Other Income/Expense							
Other Income	0.00	0.00	17,748.98	0.00	0.00	0.00	17,748.98
Other Income	251.08	2.51	2.52	232.35	12.51	0.00	540.89
Total Other Income	251.08	2.51	17,752.48	232.35	12.51	0.00	18,260.92
Net Other Income	251.08	2.51	17,752.48	232.35	12.51	0.00	18,260.92
Net Income	-9,596.18	-145,457.04	123,568.15	218,330.11	-72,881.13	-8,182.01	106,672.89

Page 2

CONFIDENTIAL

ROA_01266 RAIFORD-029743



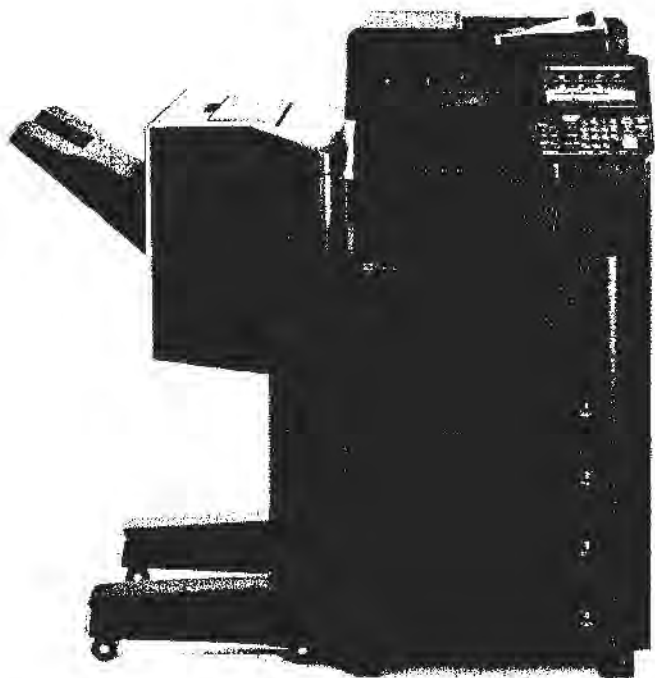
Kyocera Technology

› PRINT › COPY › SCAN › FAX

CS 356ci

COLOR MULTIFUNCTIONAL
SYSTEM

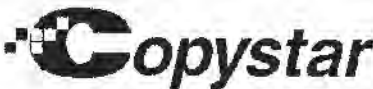
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The Copystar CS 356ci brings new meaning to efficient business performance in a compact footprint. Flexible functionality streamlines document processes while business color gets your message seen, making the Copystar CS 356ci a powerful solution that can grow with your business needs.

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Kyocera Technology

BASIC SPECIFICATIONS

Configurations: Color Multifunctional System—
Print/Scan/Copy/Optional Fax

Pages Per Minute:

Color and Black—Letter: 37 ppm; Legal: 30 ppm; A4: 35 ppm

Warm Up Time: 24 Seconds or Less (Power On)

First Page Out:

Copy: 5.9 Seconds or Less Black; 7.3 Seconds or Less Colors

Print: 5.5 Seconds or Less Black; 6.5 Seconds or Less Colors

Display: 7" Color Touch Screen (Control Panel)

Resolution: 600 x 600 dpi; 9600 dpi x 600 dpi; 1200 x 1200 dpi
(At reduced speed)

Memory: 2GB Standard

Hard Disk Drive: 320GB HDD Standard

Duplex: Standard Stackless Duplex Supports Statement to Legal
(5.5" x 8.5" – 8.5" x 14"), 16 lb Bond – 120 lb Index (60 – 220gsm)

Standard Output Tray: Statement – Legal / 500 sheets;

Up to 8.5" x 48" Banner / Single Sheet

Electrical Requirements: 120V, 60Hz, 10.8A; 220-240V, 50Hz, 5.9A

Typical Electricity Consumption (TEC):

120V: 3.1 kWh/week; 220V: 1.9 kWh/week

Dimensions: 21.65" W x 15.96" H x 24.13" D

Weight: 101.41 lbs (includes Optional Document Processor)

Maximum Monthly Duty Cycle: 100,000 Pages per Month

PAPER SUPPLY

Standard Paper Sources:

Single 500 Sheet Tray, 100 Sheet MPT

Optional Paper Sources:

500 Sheet Tray (PF-S120), Dual 500 Sheet Trays (PF-S130)*

2,000 Sheet Large Capacity Tray (PF-S140)*

Paper Capacity: Standard: 600 Sheets;

Maximum: 3,100 Sheets

Paper Size:

Tray 1 – PF-S120 and PF-S130: 5.5" x 8.5" – 8.5" x 14"

(Statement to Legal), PF-S140: 8.5" x 11"

MPT: 5.5" x 8.5" – 8.5" x 14" (Multiple Sheets);

Up to 8.5" x 48" Banner (Single Sheet)

Paper Weight:

Trays / MPT: 16 lb Bond – 120 lb Index (60 – 220gsm)

Input Materials:

Standard/Optional Drawers: Plain Paper, Bond Paper,

Recycled Paper, Envelopes;

MPT: Plain Paper, Bond Paper, Recycled Paper, Cardstock,

Transparencies, Labels, Envelopes

SECURITY SPECIFICATIONS

Standard: Local Authentication, Network Authentication, IPsec,
SNMPv3, IEEE802.1X, IPP over SSL/TLS, HTTPS, FTP over SSL/TLS,
SMTP over SSL/TLS, POP3 over SSL/TLS, Enhanced WSD over
SSL/TLS, LDAP over SSL/TLS

Optional: Data Security Kit (D): HDD Overwrite Mode, HDD Data
Encryption

PRINT SPECIFICATION

Standard Controller: Freescale QorIQ P1072 (Dual Core) / 800 MHz

PDLs / Emulations:

PREFERRIE, PCL6 (PCL-XL / PCL5c), KPDLS (PS3), XPS, OPEN XPS;

Optional (UG-34): IBM ProPrinter, Line Printer, LQ-850

Print Resolution: Up to 1200 x 1200 dpi (At reduced speed)

Fonts: 136 KPDLS, 93 PCL6, 8 Windows Vista, 1 BitMap

OS Compatibility: Windows 7/8/8.1/Server 2003/Server 2008/

Server 2008 R2/Server 2012/Server 2012 R2

Mac: OS Compatibility: Mac OS 10.5 and later, AirPrint enabled

Mobile Printing: Apple AirPrint, KYOCERA Mobile Print

Interfaces: Standard: 10/100/1000BaseTX, Hi-Speed USB 2.0,

3 USB Host Interfaces, 2 Expansion Slots;

Optional: 10/100/1000BaseTX (B-SO for Dual MII);

Optional: IEEE 802.11 b/g/n, B-S1 for Wireless LAN Interface)

Network Print and Supported Protocols:

TCP/IP, IPv4, IPv6; HTTP, LPD, FTP, IPP, RawPort, LPR, SNMP, DHCP,

SMTP, POP3, DNS, SNMPv1/v2, WSD Scan/Print

Drivers: XX Driver, PCL Mini Driver, KPD Mini Driver, XX Driver for

XPS, Network Fax Driver, TWAIN Driver, WIA Driver, PPD for MAC,

PPD for Linux

Utilities: KYOCERA Net Admin, KYOCERA Net Viewer, Command

Center RX

SCAN SPECIFICATIONS

Scan Type: Color and Black & White Scanner

Scan Resolution: 600 dpi, 400 dpi, 300 dpi, 200 dpi, 200 x 100

dpi, 200 x 400 dpi

File Formats: TIFF (MMR compression), PDF (MMR compression),

PDF (high compression), OpenXPS, XPS, JPEG

PDF Extension: Searchable PDF (JDL) Option

Scan Speeds (mono/color): @ 300 dpi:

DP-S100: Simplex: 60 ipm BW/40 ipm Color;

Duplex: 26 ipm BW/17 ipm Color

DP-S110: Simplex: 60 ipm BW/40 ipm Color;

Duplex: 120 ipm BW/80 ipm Color

Connectivity / Supported Protocols:

10/100/1000BaseTX, TCP/IP, Hi-Speed USB 2.0

Scanning Functions: Scan to folder (SMR), Scan to e-Mail, Scan to

FTP, Scan to FTP over SFTP, Scan to USB, WSD Scan, TWAIN Scan

Original Size:

Through DP: Statement to Banner (5.5" x 8.5" – 8.5" x 74.8");

Glass: up to 8.5" x 14"

Drivers: TWAIN / WIA Driver

COPY SPECIFICATIONS

Copy Resolution: 600 x 600 dpi

Image Mode: Text, Photo, Text/Photo, Graphiz/Map

Continuous Copy: 1 – 999 / Auto Reset to 1

Additional Features: Auto Magnification, Auto Paper Select,

Auto Start, Auto Uraser Change, Interrupt Copy

Job Management: 1,000 Department Codes

Magnification / Zoom: Full Size, 7 Reduction, 5 Enlargement

Preset Ratios: 25–400% in 1% Step increments

Document Box: Custom Box, Job Box, Removable Memory Box,

Fax Box (with optional Fax System)

OPTIONAL DOCUMENT PROCESSORS

Type / Capacity:

DP-S100: Reversing Automatin Document Processor / 75 Sheets;

DP-S110: Dual Scan Document Processor / 75 Sheets

Acceptable Originals: 5.5" x 8.5" – 8.5" x 74.8" (1900mm)

Acceptable Weights:

DP-S100: Simplex: 17 – 12 lb Bond (50 – 170gsm);

Duplex: 13 – 32 lb Bond (50 – 170gsm)

DP-S110: Simplex: 13 – 17 lb Bond (50 – 170gsm);

Duplex: 13 – 32 lb Bond (50 – 170gsm)

OPTIONAL FAX SPECIFICATIONS

Fax Type: Fax System 10

Compatibility / Data Compression: G3 Fax / MMR, MR, MH, BDI

Transmission Speed / Modem Speed:

Less than 3 seconds / 33.6 Kbps

Fax Memory: Standard 12 MB (Maximum 129 MB)

Driver: Network Fax Driver

Fax Functions: B/W Work fax, duplex transmission and reception,

encrypted transmission and reception, polling transmission and

reception, broadcast

OUTPUT & FINISHING OPTIONS

OPTIONAL 300 SHEET INTERNAL FINISHER DF-S100*

Stack / Staple Capacity: 300 Sheets / 50 Sheets

(up to 24 lb Bond (90gsm))

Paper Size: 5.5" x 8.5" – 8.5" x 14"

Paper Weight: 16 lb Bond – 120 lb Index (60 – 220gsm)

Edge Staple Position: 3 Positions: front 1 staple, Edge 1 staple,

Face 2 staple

Dimensions: 19.13" W x 15.55" D x 6.72" H

OPTIONAL 1,000 SHEET FINISHER DF-S110**

Stack / Staple Capacity:

Main Tray: 1,000 Sheets / 50 Sheets (up to 24 lb Bond (90gsm))

Paper Size: 5.5" x 8.5" – 8.5" x 14"

Paper Weight: 16 lb Bond – 120 lb Index (60 – 220gsm)

Edge Staple Position: 3 Positions: Top Left, Bottom Left, Center Bond

Optional Punch: PH-S100 2 and 3 Hole Punch Unit, Supports

5.5" x 8.5" – 8.5" x 14", 16 lb Bond – 120 lb Index (60 – 220gsm)

Dimensions: 23.27" W x 20.35" D x 39.58" H

OPTIONAL 3,200 SHEET FINISHER DF-S120**

Stack / Staple Capacity: Main Tray (A): 3,000 Sheets, Sub Tray (B):

200 Sheets / 50 Sheets (up to 24 lb Bond (90gsm))

Paper Size: 5.5" x 8.5" – 8.5" x 14"

Paper Weight: 16 lb Bond – 120 lb Index (60 – 220gsm)

Edge Staple Position: 3 Positions: Top Left, Bottom Left, Center Bond

Standard Punch: PH-S100 2 and 3 Hole Punch Unit, Supports

5.5" x 8.5" – 8.5" x 14", 16 lb Bond – 120 lb Index (60 – 220gsm)

Dimensions: 25.59" W x 20.94" D x 42.35" H

OPTIONAL MULTIBIN MAILBOX MT-S100**

MT-S100 includes 5 Trays:

Supports 16 lb Bond – 90 lb Index (60 – 163gsm);

Stack Capacity per bin: 100 sheet (5.5" x 8.5", 8.5" x 11";

50 sheet: 8.5" x 14" (20 lb Bond)

Paper Size: 5.5" x 8.5" – 8.5" x 14"

Paper Weight: Tray A: 16 lb Bond – 120 lb Index (60 – 220gsm);

Mail tray: 16 lb Bond – 90 lb Index (60 – 163gsm)

Stack Capacity:

Tray A: 500 sheet (5.5" x 8.5", 8.5" x 11"); 250 sheet (8.5" x 14")

Mail tray: 100 sheet (5.5" x 8.5", 8.5" x 11"); 50 sheet (8.5" x 14")

Dimensions: 16.30" W x 34.17" D x 29.92" H

ADDITIONAL OPTIONS

Bridge Unit Attachment Kit (AK-S100), Job Separator (JS-S100),

Internet Fax Kit (A), Optional Fax Memory, Card Authentication

Kit (B), Gigabit NIC (IB-S0), IEEE802.11b/g/n (IB-S1), iPrint

(UG-33), Emulation (UG-34), Document Tray (DT-S100), Scan

Extension Kit (A) for Searchable PDF/OCR, Key Counter, Key

Counter Attachment Kit, Card Reader Holder (F), Data Security

Kit (E)

*Requires PF-S120

**Only 1 Document Processor can be installed

*Only 1 option option can be installed

*Requires Bridge Unit Attachment Kit (AK-S100)

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REF: R551A00442



Mount Vintage

November 14, 2016

Restriping where
golf carts
path reach
the roads

Agenda

- Organization and control of Mount Vintage HOA
- Update of Protective Covenants and Bylaws
- HOA dues and Town Center fees
 - Shaw Estates
 - Averett Letter
 - Dotta request
- MV Roads
 - Tax sale
- Beautification project
 - Fence repair and painting
 - Stop signs and speed limit signs
- Other business

- Roads
- Sales office behind HOA office
Taking town center fees out and
increase HOA Dues to make
Town Center

- Exact figure of golf rounds

- All hours of operations - restaurant
who has keys town center
golf club

- HOA paying taxes on the roads

- Discuss properties coming into
mt Vintage - Wayne to purchase
then HOA purchase
who is on each board - for restaurant
town center
golf club

Wayne to
know

All decisions made before they are
done

Set up fees would be \$10, new homeowners
ie If I were purchasing a lot
how much would I owe.

meeting and greeting group when
new people come on
lot owners
-builders > anyone who purchases
a lot
(get off your high
horses)

Email: Gregg Karlberg, Jerry Shaffer

Re: Meeting
Monday, November 14, 2016
Mount Vintage

Gentlemen,

To assist you in preparing for Monday's meeting I have attached the following:

- Mary Guynn memo regarding the Mount Vintage Homeowners Association Board of Directors operation
- Agenda of topics for discussion

As the developer of Mount Vintage I have a tremendous vested interest in the management and operation of all aspects of the community.

So I want to meet to discuss moving forward with a full understanding among the BOD members as to how I would like to operate and handle any and all issues or challenges that may arise that impact the successful future of Mount Vintage.

Our amenities and the common property within the community are a critical component of life at Mount Vintage for current property owners and also directly impact future growth (additional property owners).

I think an open discussion will be of great benefit to all involved and help facilitate a clear process for moving the community forward on a positive note.

I look forward to seeing you.



Wayne Raiford <raiford.office@gmail.com>

Meeting, Monday, November 14, 2016

Gregg <greggkarlberg@live.com>

Fri, Nov 11, 2016 at 6:23 PM

To: Wayne Raiford Office <raiford.office@gmail.com>

Cc: "Dadjerzz@gmail.com" <Dadgerzz@gmail.com>

Wayne -

Was there supposed to be an attachment to this email? There was none.

I will not be able to make a Monday meeting, will now be tied up both Monday and Tuesday. Am available on Wednesday and Friday of next week and Wednesday of the following week.

Best Regards,
Gregg

Sent from my iPad
[Quoted text hidden]

Kirby Holley

From: Richard Anderson <dickmelinda0628@att.net>
Sent: Thursday, November 12, 2015 8:20 AM
To: Kirby Holley
Subject: MVP Security Contract Proposals for 2016 -- Recommendation

Hello Art,

As I mentioned on the phone earlier today, the MVP Security Advisory Committee (Dick Anderson, Bob Casazza and Greg Warycka) has concluded on a recommendation for our security contractor for 2016.

We reviewed the contract proposals from the following three companies: (1) Universal Protection Services (UPS), our current contractor, (2) Sizemore Security Services and (3) Securitas. In our deliberations, we reviewed written submissions from each of the contractors and oral presentations from Sizemore Security Services and Securitas. We analyzed four topics in particular -- Price, Scope of Work, Communications and Relationships. I have the notes of our discussions if you wish to see the details.

Summarizing, we found the three entities reasonably close in regards to scope of work, communications and relationships.

As for the annual contract cost, UPS has offered an annual cost of \$154,390.08. This includes all costs, including fuel. We are not clear on whether the UPS bid includes all vehicle repair and maintenance costs or merely the basic costs (monthly oil change and one tire change and one battery per yr.). The UPS bid excludes medical coverage costs of \$150/mo per covered employee and the cost of a GPS system. We requested UPS to re-submit their proposal with a single annual cost, excluding only actual fuel usage. We note, as we have previously discussed with you, that our preference, stated to each contractor, is to have fuel cost determined on an actual cost basis. Although we were advised that UPS would submit such a bid by Tuesday (one day after our deadline) we have not received it.

Sizemore Security Services has offered an annual cost of \$108,703.24. The Sizemore bid is all inclusive, except for actual fuel usage and the possibility of renegotiation of medical costs in the event the Affordable Care Act brings increases to individual coverage in 2016. A reasonably conservative projection for fuel usage would be \$5,000.00 per year. This would bring the Sizemore bid to \$113,703.24.

The Securitas bid is also all inclusive, with the exception of actual fuel costs and costs associated with vehicle repair and maintenance beyond the same basic annualized maintenance services mentioned above. Using the same fuel estimate as with Sizemore, the Securitas bid would become \$126,800.00 plus any maintenance or repair costs beyond the basic minimum.

Each Bidder would bill any overtime pay as an additional charge.

There are other pros and cons regarding each contractor, which we can elaborate upon, if desired.

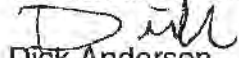
Looking at the total picture, we have decided that Sizemore is our preferred candidate

We also want to emphasize that, in the event UPS is not the successful bidder, we have raised the strong preference that the successful bidder hire Al Quiller as the security supervisor.. unless he and UPS decide that he will remain with them. Sizemore has indicated that Al will be hired, subject to his passing their routine criminal history background check and drug and alcohol testing.

We have also asked for the views of Rick Atkins, our prior security committee advisor, Kirby Holley, who interfaces regularly with the security supervisor and the contractor and, finally, Paul Goldhorn, a fellow member of the HOA Advisory Committee, with extensive background in contract bidding. Each of these individuals also recommends Sizemore Security Services.

I have attached copies of each of the contractor's written submissions for your review. Bob, Greg and I are available to further brief the Board, if requested, as a part of its decision making process.

On behalf of the Security Advisory Committee,


Dick Anderson

Proposed Discussion Points

MVP HOA Board of Directors meeting

Tuesday, January 12, 10:00 a.m.

Approve LaDuc bill – 10 hours at \$55.00 = \$550.00

Lease cancellation – 3 year lease – agree to end of 1st year (May) and release from last 2 years.

Lot sales – Lots M-45 and N-7. Sell for ½ of present market price of comparable lots.

Consideration for Plan B re Town Center.

Survey all HOA members as to changes to major components on existing 5-acre location.

Explain need to reconfigure interior – present.

3 offices no longer need by HOA.

Change use of downstairs locker space (pool area).

Present building may not meet expansion needs. Building and facilities may be insufficient when lot sales and buildouts occur.

Consider alternatives.

Status of building and land purchase from Red Tree Estate (Jeanette Ross).

Mount Vintage Plantation Homeowners Association Board of Directors meeting
January 9, 2014

PLAINTIFF
EXHIBIT

8.4

Present: Wayne Raiford, Art Biggs, Buddy Hodges and Kirby Holley

The meeting was brought to order by Vice President Art Biggs. As a result of the transfer of property and developer rights from K and H to LL of SC LLC, Wayne Raiford was brought onto the board to fill the vacancy left by Talmadge Knight. Buddy Hodges nominated Mr. Raiford as president of the Board of Directors. The nomination was seconded and passed unanimously. The other positions will continue on an interim basis.

Architectural Control Committee – Mr. Raiford appointed an ACC consisting of himself, Tanya Cooper and Leigh Ann Keels.

Approved Builders – Mr. Raiford will meet with all the builders on the list at his discretion. The 5% marketing fee will be discussed at that time.

Annual meeting – It was agreed that the annual meeting will be held on Tuesday, February 11, 2014, from 6:00 to 8:00 p.m. at the American Legion Post 71 in North Augusta.. The agenda was approved as published (see attached). An email will be distributed to all HOA members asking for questions they may have for the annual meeting. The board will meet again to look over the proposed questions.

Old Business – Parking tickets will begin to be issued by security officers as discussed previously. Mr. Hodges will let Rick Atkins (chairman of security for the Advisory committee) know and he will discuss with Universal Security. The board approved the transfer of \$60,000 that was borrowed from the road reserve fund to pay the special assessment back to the fund. There was an amount of \$71,000 left in the account from 2013.

New Business – Mr. Raiford would like to see new home owners belong to the golf club by perhaps giving 1 or 2 years free.

There being no further business, the meeting was adjourned.

Respectfully submitted,
Kirby Holley, Secretary

EXHIBIT

H

NEXT MEETING: 10:00 A. M. THURSDAY, JANUARY 30.

WELCOME

EVERYONE TO THE MOUNT VINTAGE HOA ANNUAL MEETING

MOVE RIGHT INTO THE MEETING WITH THE APPROVAL OF 2013 MINUTES. HAVE A MOTION TO APPROVE THE MINUTES AS CORRECTED? SECOND? DISCUSSION.

TREASURER'S REPORT

OPENING COMMENTS

FIRST, THE HOA IS IN GOOD FINANCIAL SHAPE AS YOU HAVE HEARD FROM OUR TREASURER. THIS YEAR'S REPORT VALIDATES THE CONSERVATIVE BUDGET APPROACH FOLLOWED BY THE BOARD OVER THE LAST 3 YEARS AND CONTINUED IN THE 2014 BUDGET. BARRING ANY EXTRAORDINARY EXPENSES THE BUDGET GENERATES SUFFICIENT REVENUE FOR OPERATIONS AND BY CONTINUING OUR PRESENT FISCAL POLICIES SHOULD GENERATE SUFFICIENT ADDITIONAL CASH RESERVES AT YEAR END.

FOR THE MEMBERSHIP, HOWEVER, IT WAS A TRYING AND DISAPPOINTING YEAR. A FORECLOSURE PROCESS WAS INITIATED ON THE 193 LOTS OWNED BY K AND H, FOLLOWED BY THE POSSIBLE PURCHASE OF ALL THE LOTS AND AMENITIES BY A GROUP FROM CHINA AND TAIWAN WHICH DETERIORATED MONTH AFTER MONTH THROUGHOUT THE MIDDLE OF THE YEAR. A PURCHASE DEAL WAS THEN RESURRECTED BY AN ENLARGED INVESTMENT GROUP OUT OF MAINLAND CHINA. THIS PROCESS PROMISED TO DEVELOP MOUNT VINTAGE AS WAS ORIGINALLY ENVISIONED BUT FELL APART AT THE VERY END OF THE PROCESS. ON DECEMBER 3RD THE BOD WAS ADVISED THE DEAL FELL THROUGH AND WE SO ADVISED THE COMMUNITY. WE HAVE RECEIVED A NUMBER OF QUESTIONS AS TO WHY. WE KNOW NOTHING MORE NOW THAN WHAT I ADVISED THE COMMUNITY THEN. "THERE WAS

INSUFFICIENT FUNDING TO ACCOMPLISH WHAT WAS ENVISIONED.” TO TRY TO GO BEYOND THAT WOULD BE PURE SPECULATION ON OUR PART. THE MEMBERS ARE SUPPORTIVE AND OUR COMMUNITY IS STABLE. IT HOLDS THE SAME PROMISE I BELIEVE WE ALL SAW WHEN WE MOVED HERE. WE JUST NEED TO BE RECOGNIZED AND WE NEED TO GROW.

ON THURSDAY, JANUARY 9, 2014, AN OFFICIAL HOA BOARD MEETING WAS HELD AT WHICH TIME THE TRANSFER OF PROPERTY AND DEVELOPER RIGHTS FROM K AND H (TALMADGE KNIGHT) TO LLOF SC LLC (WAYNE RAIFORD) WERE NOTED. MR RAIFORD WAS NOMINATED AND ELECTED PRESIDENT OF THE HOA BOARD. MR. RAIFORD APPOINTED AN ACC BOARD CONSISTING OF HIMSELF, TANYA COOPER AND LEIGH ANN KEELS. MR. RAIFORD ASKED THE OTHER DIRECTORS AND TREASURER TO REMAIN ON AN INTERIM BASIS.

WE ASKED FOR AND RECEIVED A GOOD NUMBER OF QUESTIONS REGARDING THE HAPPENINGS AND FUTURE OF THE COMMUNITY. THIS WAS EXPECTED. WE CONSOLIDATED QUESTIONS BY TOPIC AND AREA. WE ELIMINATED QUESTIONS CALLING FOR SPECULATION OR CONJECTURE AND ENDED UP WITH THE DISTRIBUTION YOU SHOULD HAVE RECEIVED BY EMAIL AND, IF NOT, COPEs ARE AVAILABLE ON YOUR TABLE.

MOVE TO Q AND A’S.

Mount Vintage Plantation Homeowners Association Annual Meeting

February 11, 2014 at 6:00 p.m.

The meeting was called to order by the vice president, Art Biggs. Approximately 147 members were in attendance. After the Pledge of Allegiance Mr. Biggs welcomed everyone and called for a motion to approve the minutes of the 2013 annual meeting as corrected. A motion was made, seconded and passed unanimously.

Treasurer Dan Falcone presented the financial report, beginning with the December, 2013, summary. Mr. Falcone pointed out that income was positive by \$24,000 due to the partial year dues revenue associated with the purchaser of Shaw Estates lots from Ag South in March, interest of \$3,500 in June associated with the repayment of the Town Center real estate taxes and other income of \$7,500 from declined special assessment repayments in September/October. Year to date all expense categories were favorable to budget. The cash balance of \$279,500 was \$2000 lower than budget due to the special assessment repayment (\$114,400 repaid in September/October). Mr. Falcone noted that the special assessment repayment did not impact the 2013 P&L as it was recognized in our 2010 P&L and has been carried as a payable/liability on the Balance Sheet. The cash impact of repaying the special assessment was substantially offset by lower expense levels (including the unbudgeted real estate tax repayment), interest received associated with the repayment of the Town Center taxes and dues payments to settle liens (\$10,700). 90.4% of budgeted dues have been collected. Dues have been paid on 99% of homes in Mount Vintage.

Mr. Falcone presented the 2014 budget with expected revenues of \$485,600 and total expenses of \$463,100. Expenses will follow the pattern evidenced in 2013 with the exception of the \$59,000 tax repayment which will not reoccur in 2014. The total cash balance at the end of 2014 is budgeted to remain unchanged from 2013. The 2014 budget is a realistic and conservative expectation for the year. The 2014 budget does not anticipate any major changes in operations. In January, 2013, the HOA is off to a good start with expenses less than budget and strong dues receipts. Approximately 70% of dues have been collected and commitments received for almost 80% of budgeted dues for the year. Dues have been paid on 96% of the homes in Mount Vintage.

Mr. Biggs thanked Mr. Falcone for all his hard work and noted that this year's report validated the conservative budget approach followed by the board over the last 3 years and continued in the 2014 budget. Our present fiscal policies should generate sufficient additional cash reserves at year end. He noted that it was a trying and disappointing year for the membership but despite that the members are supportive and our community is stable.

Mr. Biggs reported that on Thursday, January 9, 2014, an official HOA board meeting was held at which time the transfer of property and developer rights from Talmadge Knight to Wayne Raiford were noted. Mr. Raiford was nominated and elected president of the HOA board. Mr. Raiford appointed an Architectural Control Committee consisting of himself, Tanya Cooper and

Leigh Ann Keels. Mr. Raiford asked the other directors and the treasurer to remain on an interim basis.

Before introducing Mr. Raiford, Mr. Biggs went over questions that were solicited from members prior to the meeting and their answers.

1. Who owns what assets within the MVP confines? Our new Developer, Wayne Raiford, now owns approximately 193 lots that were previously owned by Talmadge Knight. As we understand, about 150 of those lots are located in the new nine and the balance are scattered throughout MVP. The unsold lots in Shaw Estates are owned by R. D. Brown, the barn is owned by Weldon Wyatt, the old and new sales offices are owned by Talmadge Knight and the roads are owned by Talmadge Knight.

2. Are Mr. Raiford's only holdings within MVP the 193 lots that he acquired through foreclosure? Yes

3. Does Mr. Knight still own property or roads in MVP? If so, does he still retain some type of developer status (even if not the "developer of record")? Talmadge Knight still owns some lots, tracts and the roads. He does not retain any developer status.

4. What will become of the residential lots owned by Knight? Any lots no longer protected by developer status have been invoiced for the 2014 HOA dues.

5. What are the plans for Shaw Estates? As answered previously, the unsold lots are owned by R. D. Brown. All lots within Shaw Estates remain as members of the MVP HOA. There is an outstanding HOA dues issue between the HOA and R. D. Brown which is under discussion. The issue resulted from the description of the property when sold. The HOA has invoiced dues for these lots. We expect this to be resolved thru our respective attorneys in the near future.

6. What are the plans, if any, for the Town Center? As we understand, the Town Center and Golf Course are still owned by Plantation Alliance, LLC and, as such, the HOA (and the new Developer) has no right or interest in engaging in speculative discussion on this subject.

7. Are there any plans afoot by the HOA to acquire any property? If so, what, why and at what price? No

8. What are the regulations or rules pertaining to hunting on MVP – both bow and gun? The By Laws & Covenants are silent of the issue of hunting. South Carolina law governs.

9. Has there been any consideration for provision of security by the Edgefield County Sheriff's department instead of a private security firm? Has a quote for security services been requested from the Sheriff's department? Several years ago, I believe in 2011, a study was conducted to develop a recommendation on how to handle/structure Security within MVP. At that time, all options were considered (continuing with our in-house security, outsourcing to a professional private security firm as well as utilizing the Edgefield County Sheriff Dept.) This option was discussed with the ECSD ... but not pursued to the point of securing a formal proposal from the ECSD. Preliminary study suggested a long leg of implementation and, most likely, a more expensive approach. This approach, however, remains an available option in the future, if needed.

10. Does anyone from the HOA actually drive around the plantation and see what is going on? No, we react/respond to member complaints or rely on Security sightings. (In such cases the Covenants are being enforced. The HOA has made numerous courtesy calls, issued 9 Cease &

Desist letters and 4 Hearing Notices. Thus far no violation has had to be taken to a Hearing with Fines imposed.....one hearing notice is pending at this time.)

11. Can the HOA collect dues from Mr. Knight on any of his properties? Yes, they have been invoiced for 2014.

Wayne Raiford was introduced by Mr. Biggs. Mr. Raiford reported that he is working with Edgefield County and DHEC to be able to sell property in Mount Vintage. He is looking for an outside buyer to purchase all the lots and/or he will work in sections to fix the problems in the development. There is a group from New York looking now but they are not interested in the golf course. He will continue to look for someone to take over and will help the bank find a buyer for the golf course. The county is working with him at this point. A question was asked whether or not he could do anything to own the roads. He does not feel he has any responsibility for the older roads. The end product would be to turn the roads over to the county for them to maintain. However, the roads do not meet county specifications. Mr. Raiford's priority is getting his property ready for sale. He will start out with things that are feasible and when lots sell, money will be reinvested in infrastructure. There is not a marketing plan in place at this time. As a developer, he cannot go against the county for not making the original developers have a performance bond. Questions were posed about the Town Center. Mr. Raiford does not think it will be closed long.

One resident spoke about the perception that the media gave that the community did not support the golf club. He pointed out that there were 4 major cash initiatives in the last 4 years earmarked for amenities - \$4600 initiation fee to re-join the golf club, raising over \$400,000, an \$1800 HOA assessment that one-third of homeowners contributed to (which became voluntary through a court action) generating \$121,000, a majority of residents signed up for 1 year of advanced dues to the Town Center when it was set to close (\$120,000 generated) and Foundation Memberships which generated \$800,000. He concluded that approximately one and a half million dollars of support came from the community for the amenities.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Kirby Holley

HOA secretary

**Mount Vintage Plantation Homeowners Association Board of Directors
meeting
Thursday, March 13, 2014
5:30 p.m.**

The meeting was called to order by the president, Wayne Raiford. Those present were Mr. Raiford, Art Biggs and Buddy Hodges.

The board approved the appointment of Tom Nidiffer to the treasurer's position as of March 29, 2014 at which time Dan Falcone will vacate the position.

Discussion was held concerning the Shaw Estates dues delinquent for 2013 and 2014. The board advised the board attorney to initiate liens against said delinquent properties in Shaw Estates.

The board discussed the previously approved parking ticket process with in Mount Vintage. The process needs to be finalized with the Advisory Committee and Security.

Developer update: Mr. Raiford indicated he is working with the county on getting appropriate approvals so that property can be sold. He also indicated that he has had a discussion with the county about the roads in Mount Vintage. It was requested of Mr. Raiford to have his road contractor make a survey of Mount Vintage Plantation Drive regarding what need to be done and a probable cost estimate. The best way to fix potholes was also discussed.

Mr. Hodges reported on the status of Property Liens (copy attached). Following his report he moved that the HOA start charging interest on all property liens on July 1, 2014 with a nominal interest rate of 15% (compounded monthly for an effective annual rate of 16.1%) The motion was approved unanimously.

Further discussion followed regarding the current HOA billing/collection process. Mr. Raiford suggested that we should consider abandoning the current procedure of discounting the dues \$25 for 'early' payment ... this year that amounted to a total of \$9600 in discounts. After discussion, it was decided that we would abandon the use of the early pay discount for the 2015 dues. In addition, we would also change the late pay penalty process. In 2015, a dues payment will be deemed late if paid after January 31, 2015 and a 10% late fee will be added to the amount due and this amount will be placed in a lien against the property and will incur interest thereafter. There was some discussion regarding starting the use of foreclosure. This process will be investigated further.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Kirby Holley (minutes provided by Mr. Biggs and Mr. Hodges)

Mount Vintage Plantation Homeowners Association Board of Directors Meeting

4/26/2011

The meeting was held at the HOA office. All three directors were in attendance – Mr. Knight, Mr. Biggs and Mr. Falcone.

1. It was agreed that the new directors (Biggs and Falcone) should be added as check signers. Mr. Knight agreed agreed accounts at Carolina First (Edgefield) where branch is closing could moved to North Augusta SRP Federal Credit Union.
2. Advisory committee candidates reviewed. Five members appointed and will be announced in accordance with by-law 11.
3. Receivables status discussed.
4. MVP HOA procedures were discussed and agreed to adopt. (attached)
5. Reimbursables were discussed.
6. Pending legal bills were reviewed, no final decision made regarding resolution.
7. Review of CNA settlement offer was discussed. Further action will be pursued upon advice of counsel.

Mount Vintage Plantation Homeowners Association Board of Directors meeting minutes

May 13, 2014

The meeting was called to order at 4:00 p.m. Those present were Wayne Raiford, Art Biggs, Buddy Hodges and Kirby Holley. Mr. Raiford discussed estimates from Satterfield Construction for paving Mount Vintage Plantation Drive up to the third circle. Mr. Biggs made a motion to accept the bid of \$210,000 from Satterfield the repair and paving Mount Vintage Plantation Drive including 2 circles. The motion was seconded by Mr. Raiford and passed unanimously. Mr. Raiford will be in touch with the contractors to find out when they will begin and how the work will be approached so that the membership can be informed.

Mr. Biggs reported that he will try to open up communication between the Bank of Camden and the HOA concerning the Town Center.

A discussion was held concerning the amount of dues owed by Walt Yeomans, the owner of the vacant lots and home in the Village and R. D. Brown, the owner of lots in Shaw Estates. A motion was made by Mr. Biggs to proceed with appropriate legal action as recommended by the HOA attorney. The motion passed unanimously.

The problem with Don Fryer parking his RV in his driveway was discussed. A motion was made to relieve Mr. Fryer of his fine if he removes the RV from his property within 7 days and there is no repeat violation. The motion passed 2 to 1, with Mr. Hodges opposed. Kirby will send Mr. Fryer an email informing him of the decision. There is an offer from Mr. Raiford to park his RV on his property.

A property owner would like to donate his empty lot to Habitat to Humanity. He has requested that the HOA dues be waived if Habitat for Humanity takes ownership. Mr. Biggs will explore the issue with the HOA attorney.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Kirby Holley, HOA secretary

Mount Vintage Plantation HOA Board of Directors meeting minutes.

July 11, 2014

The meeting was called to order by the president, Wayne Raiford. Those present were Mr. Raiford, Art Biggs, Buddy Hodges and Kirby Holley. The minutes of the last meeting were approved.

A request from Habitat for Humanity of North Augusta to help them with HOA dues for 2015 for a lot that was being donated to the organization was considered. The board unanimously approved the recommendation to charge dues for 2015 but to return the amount as a donation if the lot did not sell within 2015. Any such request after 2015 would have to be brought back up to the board.

A list of new liens on 11 properties that had not paid 2014 HOA dues was presented. Mr. Biggs made a motion to approve the placing of these liens. The motion was seconded by Mr. Hodges and unanimously approved.

A recommendation to reimburse Dr. and Mrs. Hass, Mr. and Mrs. Hilliard and Mr. and Mrs. Patton for the money spent on repairing Whiskey Road with rock was not passed. Mr. Biggs will prepare a letter to the three homeowners.

Work on the preparation of the entranceway in advance of paving is moving on schedule. Notice will be given when the paving will start and how residents will need to use the roads.

Mr. Biggs reported that the Board's attorney is waiting to hear from Walt Yeoman's attorney about action on his liens. Mr. Biggs will also meet with Haynes Waters on his delinquent payments of HOA dues and road impact fees.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Kirby Holley, HOA secretary

Mount Vintage Plantation Homeowners Association Board of Directors Meeting minutes

September 30, 2014

The meeting was called to order at 10:00 a.m. Those present were Wayne Raiford, Art Biggs, Buddy Hodges and Kirby Holley.

The 9/25/2014 letter from the HOA attorney to R. D. Brown's attorney was discussed (letter attached). Mr. Brown has 15 days to reply to the HOA.

Mr. Raiford reported that Satterfield Construction knows they have to come back to finish those areas throughout Mount Vintage that were designated as needing work. There will be an additional charge for those areas because of the type of problems they entail. When Satterfield begins work, Mr. Raiford will have them take a look at the dirt portion of Whiskey Road and give an estimate to grade it. The road will need gravel put down after the grading has taken place.

Tom Nidiffer offered his resignation as treasurer citing personal reasons. After discussion, it was agreed that Mr. Hodges would ask him to remain in the position until the end of the year. The board and the secretary will be responsible for the 2015 budget.

Mr. Biggs made a motion to approve \$3500 for the initial study for deer eradication. The findings will be brought back to the board for further action. Seconded by Mr. Hodges and passed unanimously.

Mr. Raiford suggested that a certified letter be sent to Haynes Waters showing the monies still owed to the HOA after the settlement of the property at 106 Whitney Court. At that closing all back dues plus penalties and interest for that property will be paid.

Mrs. Holley will call Tom Eckert and have him contact Daniel Landscaping and Mathis Landscaping concerning contracts for next year.

There being no further business, the meeting was adjourned.

Mount Vintage Plantation Homeowner's Association Board of Directors Meeting

November 20, 2014

Present: Wayne Raiford, Art Biggs, Buddy Hodges

New Business: 2015 HOA dues

Mr. Hodges made a motion that the dues remain at \$800 for 2015 and that the early payment discount be eliminated so that any additional funds generated will increase the Road Reserve balance. Dues will be due and payable by February 1 or late payment penalty fees of \$75 will be imposed on March 1 and if not paid before April 1 a lien in the amount of \$965 will be placed on the property and will accrue interest at the rate of 7.5% from April 1 until the lien is satisfied. In addition, one payment plan will be adopted - a monthly plan of \$75 per month which must be received before the end of each month or incur a late fee of \$10.

The motion was approved unanimously (see attached correspondence).

There being no further business, the meeting was adjourned.

Respectfully submitted,

Kirby Holley, secretary

Mount Vintage Planation Homeowners Association Board of Directors Meeting minutes

December 5, 2014

Present: Wayne Raiford, Art Biggs, Buddy Hodges

Order of business: to adopt a motion to establish an ad hoc committee to deal with issues with Edgefield County. A motion was made by Mr. Biggs and seconded by Mr. Hodges. The following motion was unanimously approved:

Motion to establish an ad-hoc committee consisting at present of Richard Anderson, Dan Binz, Gregg Karlberg and Bob Porter to address community concerns and issues with the county of Edgefield involving but not limited to roadways, infrastructure, property issues and improper action or inaction by county representatives now or in the past. Said committee will be responsible and answerable to the Board of Directors in the manner prescribed in the attached communication from the HOA attorney, Charles Krawczyk, and in the manner agreed to with Rivers Stilwell of the Nelson Mullins law firm hired to deal specifically with Edgefield County issues.

A memorandum from attorney Charles Krawczyk concerning this motion is attached.

Respectfully submitted,

Kirby Holley

secretary

Mount Vintage Plantation Homeowners Association Board of Directors meeting

Minutes

December 11, 2014

A special meeting was held to address filling the vacancy created by the resignation of Buddy Hodges effective January 1, 2015. Those present were Wayne Raiford, Art Biggs and Buddy Hodges.

Mr. Biggs made a motion nominating Jerry Schaefer as a director on the HOA Board of Directors effective January 1, 2015. The motion was seconded by Mr. Hodges and passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Kirby Holley, secretary

STATE OF SOUTH CAROLINA)

COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

ELIZABETH M. FERRARO; JAMES)
 T. FERRARO; EDWARD J.)
 PRZYBYL; MARCELLA GLEIE;)
 JOHN E. GLEIE, JR.; THOMAS)
 BOWES; CONNIE BOWES; MOATAZ)
 ALASADI; VIRGINIA KIRKWOOD;)
 BOB KIRKWOOD; PAUL)
 VICHROSKI; NYDZA VICHROSKI;)
 JAMES MONTELLESE; ROXANN)
 MONTELLESE; and JULIE)
 WILLIAMS, *Individually, Derivatively,*)
and on Behalf of all the Mount Vintage)
Homeowners Association Members,)

Plaintiffs,)

vs.)

J. WAYNE RAIFORD, *Individually and*)
as President of the Board of Directors of)
Mount Vintage Plantation Homeowners)
Association, Inc.; LL OF SC, LLC;)
 RAIFORD TOPSAIL ISLAND)
 INVESTMENTS, LLC; MOUNT)
 VINTAGE PLANTATION)
 HOMEOWNERS ASSOCIATION,)
 INC. *a/k/a* MOUNT VINTAGE)
 HOMEOWNERS ASSOCIATION,)
 INC.; GREGG KARLBERG; JERRY)
 SCHAEFFER; LEIGH ANN KEELS;)
 and JOHN DOE,)

Defendants.)

C.A. No.: 2021-CP-19-00050

PLAINTIFF
EXHIBIT

4.25

CORRECTIVE AFFIDAVIT OF J. WAYNE
RAIFORD

PERSONALLY APPEARED BEFORE ME the Affiant, and, after being placed under oath, did state and/or affirms as follows:

1. My name is J. Wayne Raiford. I am over the age of eighteen (18) years, am of sound mind, am not under the influence of any chemical substance that is likely to impair my capacity, and am competent to give testimony.

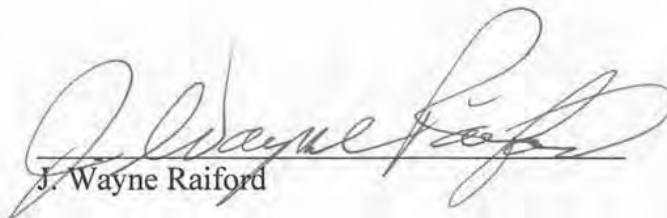
2. The facts and circumstances presented in this statement are made based upon my own personal knowledge and information, and are true and accurate to the best of my present recollection.

3. I previously provided an affidavit in this case that said that I am a member of Raiford Topsail Island Investments, LLC. At the time I made this statement, I had forgotten that I had previously been a member of Raiford Topsail Island Investments, LLC, but had subsequently transferred the totality of my membership interest in Raiford Topsail Island Investments, LLC to LL of SC, LLC. Currently, Raiford Topsail Island Investments, LLC is wholly owned by LL of SC, LLC.

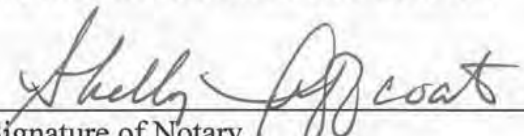
4. It was not my intent to create any confusion about the ownership of Raiford Topsail Island Investments, LLC, and am offering this corrective affidavit of my own free will to correct any misunderstanding.

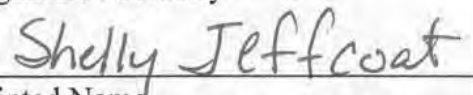
5. I affirm, under penalty of perjury, that the facts and circumstances set out in this statement are true and accurate to the best of my knowledge, information, and belief.

FURTHER THE AFFIANT SAYETH NAUGHT.


J. Wayne Raiford

SIGNED AND SUBSCRIBED BEFORE ME


Signature of Notary


Printed Name

Notary Public for the State of South Carolina

This 19 Day of August, 2021.

My Commission Expires: Shelly Jeffcoat
NOTARY PUBLIC
State of South Carolina
My Commission Expires 2/25/2031

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
EDGEFIELD COUNTY

EXHIBIT

J

DEPOSITION OF J. WAYNE RAIFORD, VOLUME 2

ELIZABETH M. FERRARO, JAMES T. FERRARO, EDWARD J.
PRZYBYL, MARCELLA GLEIE, JOHN E. GLEIE, JR.,
THOMAS BOWES, CONNIE BOWES, MOATAZ ALASADI,
VIRGINIA KIRKWOOD, BOB KIRKWOOD, PAUL VICHROSKI,
NYDZA VICHROSKI, JAMES MONTELLESE,
ROXANN MONTELLESE, AND JULIE WILLIAMS,
Individually, Derivatively, and on
Behalf of all the Mount Vintage Homeowners
Association Members,

Plaintiffs,

vs.

CASE NO. 2021-CP-19-00050

J. WAYNE RAIFORD, INDIVIDUALLY AND AS PRESIDENT
OF THE BOARD OF DIRECTORS OF MOUNT VINTAGE
PLANTATION HOMEOWNERS ASSOCIATION, INC.,
LL OF SC, LLC, RAIFORD TOPSAIL ISLAND
INVESTMENTS, LLC, MOUNT VINTAGE PLANTATION
HOMEOWNERS ASSOCIATION, INC. a/k/a MOUNT VINTAGE
HOMEOWNERS ASSOCIATION, INC., GREGG KARLBERG,
JERRY SCHAEFER, LEIGH ANN KEELS, and JOHN DOE,

Defendants.

DEPONENT: J. WAYNE RAIFORD

DATE: FEBRUARY 7, 2023

TIME: 9:15 A.M.

LOCATION: HAWK LAW FIRM
AIKEN, SOUTH CAROLINAREPORTED BY: TERI L. KENNELLY, RPR, CRR
NCRA CERTIFIED REPORTER
CLARK BOLEN
CHARLESTON, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM
Office@ClarkBolen.com

1 today. Do you see that at the top right where it
2 says the recording date is February 2nd, 2022?

3 A. I do.

4 Q. And Raiford Topsail Island Investments
5 is quitclaiming lot M47 to your other company, LL
6 of SC. Do you see that?

7 A. Yes.

8 Q. And you do see that this is just one
9 year ago, right?

10 A. Yes. Well, let's see.

11 MR. MAJOR: You can scroll a little
12 bit for him to see that?

13 Q. Do you want to see the signature line
14 too besides the recording data?

15 A. I see it.

16 Q. That's your signature, right?

17 A. It is.

18 Q. And the signature date is 18
19 January 2022?

20 A. Let me find it.

21 Q. Right above your signature.

22 A. Yes, I see it.

23 Q. And tell me, if you would, please, why
24 did you have Raiford Topsail Island a year ago
25 transfer lot M47 to LL of SC, LLC?

1 A. Have no idea, but LLC and Raiford
2 Topsail Island, all of it is one and the same.

3 Q. Now, who told you Raiford and Topsail is
4 one and the same?

5 A. I did.

6 Q. You told yourself?

7 A. Yeah, I know what they are.

8 Q. Where did you get the information
9 they're one and the same?

10 A. Because they are one and the same.

11 Q. Were they one and the same before you
12 assigned your assignment of interest?

13 A. It's always been just one -- one entity
14 owns it.

15 Q. Was it one and the same when the North
16 Carolina proceeds came in in December of 2013,
17 after the master's deed?

18 A. I have no idea, but I would say, yes,
19 it's all one and the same.

20 Q. And what is your basis for saying that
21 two different corporations are one and the same?

22 A. My attorneys drew all this up and fixed
23 it up for tax purposes.

24 Q. And when did they make -- in your mind,
25 when did they make LL and RTI one and the same?

EXHIBIT

K

STATE OF SOUTH CAROLINA)

COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

ELIZABETH M. FERRARO; JAMES)

T. FERRARO; EDWARD J.)

PRZYBYL; MARCELLA GLEIE;)

JOHN E. GLEIE, JR.; THOMAS)

BOWES; CONNIE BOWES;)

MOATAZ ALASADI; VIRGINIA)

KIRKWOOD; BOB KIRKWOOD;)

PAUL VICHROSKI; NYDZA)

VICHROSKI; JAMES)

MONTELLESE; and ROXANN)

MONTELLESE, *Individually,*)*Derivatively, and on Behalf of all the*)*Mount Vintage Homeowners Association*)*Members,*)

Plaintiffs,)

vs.)

LL OF SC, LLC; RAIFORD TOPSAIL)

ISLAND INVESTMENTS, LLC;)

MOUNT VINTAGE PLANTATION)

HOMEOWNERS ASSOCIATION,)

INC. *a/k/a* MOUNT VINTAGE)

HOMEOWNERS ASSOCIATION,)

INC.; and TR SALES PLANTATION,)

LLC,)

Defendants.)

C.A. No.: 2021-CP-19-00050

MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO DEVELOPER
RIGHTS AND CLASS A MEMBERSHIP

Defendants LL of SC, LLC and Raiford Topsail Island Investments, LLC respectfully submit this memorandum in opposition to Plaintiffs' motion for partial summary judgment as to developer rights and Class A membership. In short, Plaintiffs' argument is:

1. That LL of SC, LLC does not have developer rights in Mount Vintage, and does not hold the Class A membership interest in the community;

2. That Raiford Topsail Island Investments, LLC is the holder of developer rights, and is the holder of the Class A membership interest;
3. That this is so, allegedly, because the subsequent assignment of a successful bid at a mortgage foreclosure nullified LL of SC's deed in lieu, through which it acquired its developer rights and Class A membership interest;
4. That RTI has abdicated its rightful status as developer in Mount Vintage; and,
5. That, because of such abdication, the Court should judicially dissolve the existing Board of Directors and install its own Board.

Even if the Court could take such drastic action, it is not warranted. Plaintiffs' analysis of the pertinent facts is deeply misguided.

I. LL of SC's deed in lieu was not superseded by the Special Referee's deeds.

In 2010, LL of SC loaned the immediately preceding developer of Mount Vintage \$2.5 million, taking back a mortgage against the entirety of that party's interest in Mount Vintage as security for payment. (See 2010 Mortg. Excerpt, attached hereto as **Attachment 1.**)

By the latter months of 2012, the debtor-developer was in default of its note to LL of SC. Accordingly, during October 2012, LL of SC caused its legal counsel to commence foreclosure proceedings against the mortgage. (See Pls.' Mot. Partial Summ. Judg., Exhibits A & B.) Specifically, on October 23, 2012, a foreclosure action was commenced against the debtor-developer, and a lis pendens was recorded in connection therewith.

On September 3, 2013, a deed in lieu of foreclosure was recorded in the Office of the Register of Deeds for Edgefield County, transferring the entirety of the debtor-developer's interest in Mount Vintage to LL of SC in satisfaction of the debt. (See Pls.' Mot. Partial Summ. Judg., Exhibit C.)

A little more than 2 months later, on November 4, 2013, and in connection with the foreclosure proceedings against the debtor-developer that were still under way, LL of SC attended a foreclosure sale and “was the high bidder” of the debtor-developer’s remaining interest in Mount Vintage “with the successful bid amount of \$100,000.00.” (See Pls.’ Mot. Partial Summ. Judg., Exhibit D.) Payment was then tendered to the Special Referee. (See Pls.’ Mot. Partial Summ. Judg., Exhibit E.)

Two days later, on November 6, LL of SC caused its legal counsel to file an assignment of bid in the Edgefield County foreclosure action, directing that the Special Referee’s deed should be made out to Raiford Topsail Island Investments. (See Pls.’ Mot. Partial Summ. Judg., Exhibit D.) The Special Referee honored that instruction, and, on November 11, 2013, issued a foreclosure deed in favor of Raiford Topsail Island Investments.

It is on this factual basis that Plaintiffs claim the deed in lieu was a legal nullity, that it was superseded by the Special Referee’s foreclosure deed, and that Raiford Topsail Island Investments—not LL of SC—holds developer rights in Mount Vintage.

This leads to an exceedingly narrow question presented: *What is the net legal effect when the creditor in a foreclosure action purchases the same rights at a foreclosure sale that had been previously acquired by the same creditor through a deed in lieu?*

Plaintiffs have not cited to any case that resolves this issue. Instead, they have generally argued that a deed in lieu of foreclosure is trumped by an earlier filed lis pendens. And, in some circumstances, that may be accurate. But not in this case.

First of all, a lis pendens does not create a property right. It is merely a mechanism to put the world on notice that an adverse interest is claimed in the subject property. See, e.g., S.C. Code § 15-11-20 (explicitly describing the purpose of a lis pendens as constructive notice to

subsequent purchasers or encumbrancers). Whether the property right claimed in a lis pendens ultimately exists is a matter for a much later adjudication.

Second, and of particular importance to this case, the lis pendens at issue was recorded by LL of SC against the debtor-developer's property with respect to a pre-existing mortgage that LL of SC had against the same party and the same property. In other words, through the mortgage, LL of SC had an adverse interest in the debtor-developer's Mount Vintage property; and through the lis pendens, LL of SC was putting the world on notice that it was in the midst of foreclosing on the mortgage. The mortgage gave rise to the lis pendens.

Third, through the deed-in-lieu, LL of SC acquired the same rights and interest to the Mount Vintage property that it could have acquired through foreclosure.

And fourth, LL of SC was the winning bidder at the foreclosure auction. Only after winning the auction and paying what was owed did LL of SC assign its rights of ownership (if any) to Raiford Topsail Island Investments.

But why would a creditor proceed with a foreclosure sale after getting a deed-in-lieu? The reason is very simple: for the foreclosing creditor to be more assured of clean title. See, e.g., Decon Group, Inc. v. Prudential Mortg. Cap. Co., 227 Cal. App. 4th 665, 174 Cal. Rptr. 3d 205 (Cal. Ct. App. 2014). When a creditor takes title to property through a deed-in-lieu, he takes the property subject to all existing liens and encumbrances as of the date of transfer. By contrast, when a creditor takes title through a foreclosure sale, he takes the property free and clear of junior liens and encumbrances as of the date of sale. See, e.g., Green Tree Servicing v. Adams, 375 S.C. 583, 654 S.E.2d 100 (Ct. App. 2007). Therefore, by taking a belt-and-suspenders approach to foreclosure, a first-priority creditor may be able to get the best of both worlds: taking title to property more quickly and cheaply than waiting for a foreclosure sale, but using

foreclosure to ultimately extinguish junior liens, be they known or unknown. See CIT Bank, N.A. v. Buono, C.A. No. 14-CV-6610, *6 n. 3 (E.D.N.Y. Nov. 8, 2019) (“Generally, an experienced and careful lender will only rarely find the acceptance of a deed in lieu of foreclosure to be an appropriate avenue for settling or concluding a foreclosure action.” (citation and internal quotation omitted).)

LL of SC took the belt-and-suspenders approach. In fact, when LL of SC received the debtor-developer’s deed-in-lieu, it would very much seem as though LL of SC’s equitable interest—established by the mortgage—was united with ownership, establishing a merger that would nullify the relief sought in the foreclosure action. See, e.g., McCraney v. Morris, 170 S.C. 250, 170 S.E. 276 (1933) (applying the doctrine of merger). If that is accurate, then a foreclosure sale of the debtor-developer’s property would have absolutely no value to anyone—at least, to no one other than LL of SC.

All of this has previously been explained. During the course of this litigation, Plaintiffs took the deposition of Mary Guynn, Esq., a lawyer in Aiken who has worked with LL of SC for a very long time, and who was responsible for coordinating the debtor-developer deed-in-lieu / foreclosure transaction. (See Dep. Guynn, attached hereto as **Attachment 2**, 23:20-31:1.) In relevant part:

Q: And what is this?

...

A: This is a deed in lieu of foreclosure.

Q: And what’s the purpose of this document?

A: This document was K&H Development deeding over to LL of SC all of the property that was subject to the foreclosure action as well as developer rights.

Q: Okay. And is—why would this not halt the action—the foreclosure action?

A: We elected to proceed forward and complete the sale for two purposes—to ensure that title was clean. It would estop anyone that had filed a claim against the properties post-filing of the lis pendens, and it would also give any other named creditor the opportunity to voice or to assert a lien on the properties.

Q: So in your understanding, did developer rights transfer with this deed in lieu of foreclosure, or did they transfer with the special referee's deed at the conclusion of the foreclosure action.

A: They transferred with this deed in lieu of foreclosure.

...

Q: Do you believe that this document, the special referee deed, transferred developer rights to Raiford Topsail Island Investments?

A: No.

Q: And why is that?

A: The developer rights had already been transferred to LL of SC with the deed in lieu of foreclosure.

...

Q: So the special referee's deed that in essence finalized the foreclosure proceeding that was filed in 2012, why is—why does this special referee deed not supersede the deed in lieu of foreclosure?

A: The deed in lieu of foreclosure, which was filed after the foreclosure action had been instituted, transferred all of the property to LL of SC at that point.

Q: Well, that what was the—I guess, again, what was the purpose of going through the foreclosure proceedings and then assigning a bid—a successful bid to RTI?

A: If any creditor claimed an interest in the properties post lis pendens, filing of the lis pendens or if any named defendant claimed an interest in the properties, they would have the opportunity at the final hearing to assert the claim. And then the special referee or the master would determine whether there was a residual claim on the lots that were transferred to LL of SC.

...

Q: So does this deed, this special referee deed, does it grant anything to Raiford Topsail Island?

A: In my opinion, it does not.

Q: And why is that?

A: There was—the property had already been conveyed over to LL of SC with the deed in lieu of foreclosure.

(Id.)

Consistent with the foregoing discussion, there is no factual or legal basis on which to conclude that the Special Referee's deed divested LL of SC of its Class A membership or status as the holder of developer rights in Mount Vintage, much less to dissolve the current Board of Directors by judicial fiat.

II. The issue of who holds developer rights is much ado about absolutely nothing.

At its core, Plaintiffs' argument is that Raiford Topsail Island Investments, LLC holds developer rights in Mount Vintage, not LL of SC. This leads to an obvious question: *Does it matter?* Effective December 31, 2013 (and as part of his estate planning), Mr. Raiford assigned the totality of his interest in Raiford Topsail Island Investments, LLC to LL of SC, LLC. (See Assignment, attached hereto as **Attachment 3.**) At this point, Raiford Topsail Island became a wholly owned subsidiary of LL of SC.

Then, by deed recorded on May 31, 2018, Raiford Topsail Island Investments, LLC quitclaimed the ownership of whatever lots it may have acquired by the Special Referee's deed in 2013 over to LL of SC. (See 2018 Quitclaim Deed, attached hereto as **Attachment 4.**)

Accordingly, even if it were the case that Raiford Topsail Island Investments, LLC had ever acquired developer rights in Mount Vintage, that has since been addressed.

III. Literally no one—other than Plaintiffs' counsel—is contending that any party other than LL of SC or Wayne Raiford individually holds developer rights in Mount Vintage.

Following are relevant excerpts of depositions taken in this case of Plaintiffs or other homeowners:

1. Sharon Brady, current Vice President of the Mount Vintage Homeowners Association, excerpt attached as **Attachment 5.** at 35:7-11:

Q: Well, who's the developer of Mount Vintage.

A: Wayne Raiford.

Q: I thought it was LL of South Carolina.

A: That may be his company.

Q: Well, which one is it; do you know?

A: I don't know.

2. Ed Przybyl, Plaintiff, Att. 5, at 67:17-19:

Q: And when it says developer, who do you understand that to be?

A: Wayne Raiford.

3. Patrick Bukszar, Homeowner, Att. 5, at 77:9-14:

Q: So sitting here today, do you know one way or another whether the HOA has been turned over from the declarant to the homeowners?

A: I mean, I would say, no, it has not since Wayne Raiford is still listed as the declarant or LL of South Carolina. . . .

4. Virginia Kirkwood, Plaintiff, Att. 5, at 46:3-11:

Q: And do you recall who the developer was when Raiford first came onto the scene?

A: He became the developer.

Q: All right. And was it Wayne that became the developer, as far as you know, or was it one of his companies?

A: One of his companies.

Q: Do you remember which one?

A: LL of SC, LLC.

5. Marcella Gleie, Plaintiff, Att. 5, at 175:7-14, acknowledging that Raiford Topsail Island Investments, LLC is “not the developer company.”
6. Gaylord “Buddy” Hodges, Homeowner, Att. 5, at 44:21-24:

Q: And is it—who was the developer—who became the developer after that assignment, which entity?

A: LL of SC.
7. Elizabeth Ferraro, Plaintiff, Att. 5, at 67:4-11, acknowledging that LL of SC, LLC is the current holder of developer rights at Mount Vintage.
8. Charles L. “Rick” Atkins, Jr., Homeowner, Att. 5, at 129:10-12, referring to Wayne Raiford as the holder of developer rights.
9. Connie Bowes, Plaintiff, Att. 5, at 42:15-25, same.
10. Art Biggs, Homeowner, Att. 5, at 32:20-25, same.

Finally, it is worth noting that, if Plaintiffs have ever intended to put the issue of who owns developer rights in question, it is nowhere alleged in any version of the Complaint they have ever filed.

In short, this issue is not before the Court. And even if it were, it has no merit.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, Plaintiffs’ motion for partial summary judgment must be denied.

Respectfully submitted,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham, LLC
16 Wellington Avenue
Greenville, South Carolina 29609
(o) 864.735.0832
(e) seb@buckingham.legal

*Attorney for Defendants LL of SC, LLC and Raiford
Topsail Island Investments, LLC*

August 26, 2024
Greenville, South Carolina

From: [Steven Edward Buckingham](#)
To: [Justin Lucey](#); [McIntosh, Lawton Law Clerk \(Kjirsten Collier\)](#); [Anna McCann](#); cKrawczyk@finkellaw.com
Cc: [Mandee Funai](#); [Lee Weiland](#); tkelly@finkellaw.com; [McIntosh, Lawton Secretary \(Tammy Jennings\)](#); [Kristina Shernoff](#); [Carra Cicalese](#)
Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)
Date: Thursday, September 5, 2024 11:36:03 AM

With due respect, this matter is not resolved with reference to federal law, but to South Carolina law. Code Section 14-3-330(1) states that there is appellate jurisdiction with respect to “[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas.” That includes orders granting partial summary judgment. See, e.g., Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990).

The phrase “involving the merits” means that the issue decided “must finally determine some substantial matter forming the whole or part of some cause of action or defense.” Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993). Each and every aspect of Plaintiffs’ claim touches, concerns, and even depends on the chain of developer rights. In Plaintiffs’ email submissions from last evening, they are now suggesting that the consequences of the decision finding that RTI has developer rights means—as a matter of law—that there has been an abdication of the developer in Mount Vintage, and that the HOA must be forced to re-align as a Plaintiff. It’s hard to fathom how the issue of developer rights is anything other than a “substantial matter forming the whole or part of some cause of action or defense” which has now been finally decided.

The foregoing analysis is not my own. It is taken from Chief Justice Toal’s book, Appellate Practice in South Carolina, and specifically Chapter 8, Part IV, Subsection (B)(1) and (G)(3), which I relied on heavily before filing the notice of appeal.

Defendants’ notice of appeal is timely. And that implicates Rule 241(a), SCACR. “As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically say the relief ordered in the appealed order, judgment, or decree or decision.” The Court’s decision regarding developer rights is under the general rule, not any of the exceptions listed in Rule 241(b). And, since the matter involved in the Court’s decision fundamentally affects each aspect of the litigation, nothing is salvaged by Rule 205. “Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal,” except to the extent there are “matters not affected by the appeal,” which in this case is nothing.

In short, it would seem that Plaintiffs’ objection to the right of immediate appealability ought to be directed to the Court of Appeals, since it has now acquired exclusive jurisdiction over the entire case.

If a conference call would be useful, I’ll be happy to join whenever. But, in the interests of logistics and notice to witnesses, I am hopeful we can put this issue to rest swiftly. Thanks to

all.

Steve Buckingham

From: Justin Lucey <jlucey@lucey-law.com>

Sent: Thursday, September 5, 2024 10:48 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com

Cc: Mandeef Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>; Carra Cicalese <ccicalese@lucey-law.com>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Ms. Collier,

As previously communicated, there is not automatic stay in this matter:

No Automatic Stay for Interlocutory Appeals

An order of partial summary judgment is interlocutory in nature. *American Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 515-16 (4th Cir. 2003); *see also, e.g.*, 11 Moore's Federal Practice § 56.40[3] (Matthew Bender 3d ed.) ("A partial summary judgment order is interlocutory...."). See also, Rule 56(c), SCRCF.

Under the SCACR and SCRCF, the filing of a notice of appeal from an interlocutory order does not automatically result in a stay of proceedings in the trial court. This is a key distinction from appeals of final judgments, where an automatic stay is granted under Rule 62(a), SCRCF.

Rule 201, SCACR confirms that a notice of appeal serves to inform the appellate court of the intent to appeal but does not itself affect the trial court's proceedings. The notice of appeal from an interlocutory order does not trigger an automatic stay of the case's proceedings or the enforcement of the order being appealed.

See S.C. Pub. Serv. Auth. v. Arnold, 287 S.C. 584, 340 S.E.2d 535 (1986) ("Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay proceedings in the lower court . . . **Since [the order] was interlocutory, and not appealable, the Circuit Court never lost jurisdiction and properly proceeded to trial.**") (emphasis added).

This conforms with Rule 205, SCACR, which provides "Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal." Since interlocutory orders are not appealable (absent an enumerated exception, e.g., an order that

affects modes of trial), there is no valid appeal to affect any circuit court proceedings.

Respectfully submitted,

Justin Lucey

From: Justin Lucey

Sent: Thursday, September 5, 2024 9:42 AM

To: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>; Steven Edward Buckingham <seb@buckingham.legal>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com

Cc: Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Respectfully, No. There is no automatic stay for improper appeals of interlocutory orders. Plaintiff will brief this momentarily.

Justin Lucey

From: McIntosh, Lawton Law Clerk (Kjursten Collier) <lmcintoshlc@sccourts.org>

Sent: Thursday, September 5, 2024 9:33 AM

To: Steven Edward Buckingham <seb@buckingham.legal>; Justin Lucey <jlucey@lucey-law.com>; Anna McCann <amccann@lucey-law.com>; cKrawczyk@finkellaw.com

Cc: Mande Funai <mfunai@lucey-law.com>; Lee Weiland <lweiland@lucey-law.com>; tkelly@finkellaw.com; McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Kristina Shernoff <kshernoff@lucey-law.com>

Subject: RE: Elizabeth M Ferraro , plaintiff, et al VS J Wayne Raiford , defendant, et al//2021CP1900050 (Quarterly Update 12)

Good morning,

"Counsel,

In light of the appeal filed by LL of SC, LLC does everyone agree that the current trial scheduled to begin September 16, 2024 in Edgefield, SC cannot go forward. If everyone agrees, please indicate the same in a reply e-mail so that I may contact the Edgefield clerk and Court Administration. Thank you"

ROA_01310

* INFO AS OF 12-31-2014

EXHIBIT

M



Edgefield County Assessor's Office
129 Courthouse Square, Suite 109
Edgefield, SC 29824
803-637-4066 Phone / 803-637-4119 Fax

(Complete and return to The Assessor's Office)

May 1st Deadline

RECEIVED
MAR 06 2015
Edgefield County Tax Assessor

Tax Year 2015

Name of Sub-Division or Development MOUNT VINTAGE PLANTATION

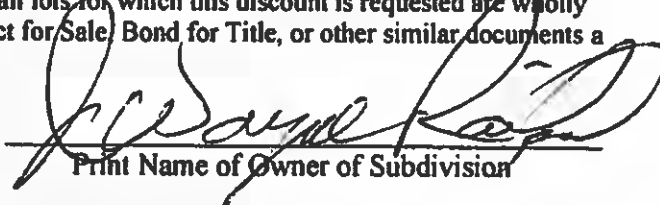
Developer (Address) 6116 EDGEFIELD ROAD

SUITE 115

NORTH AUGUSTA SC 29841

Telephone Number 803.278.7374

I hereby apply to have the unsold lots in the subdivision indicated below granted the multiple lot discount under the authority of Section 12-43-224, and 12-43-225, Code of Laws for South Carolina, 1976, as amended. I certify that all lots for which this discount is requested are wholly owned in fee and were not under a Contract for Sale, Bond for Title, or other similar documents as of December 31st, last.


Print Name of Owner of Subdivision

2-18-15
Date

RAYMOND TOPSAIL ISLAND INVESTMENTS LLC
Signature of Certifying Individual

Name of Subdivision MOUNT VINTAGE PLANTATION
Total # of Lots in SD _____ # of Lots Unsold Dec. 31, last _____
Plat Reference _____ Deed Book _____ Page _____
Tax District _____ Tax Map Reference # _____

** SEE ATTACHED SPREADSHEET FOR ABOVE DETAILS

Subdivision Improvements:

Streets: Paved ☒; Dirt ☒; Other _____
Electrical Power: Above Ground _____; Below Ground ☒
Community Water: Yes ☒; No _____ Sewage; Septic Tanks _____; Central _____
Do You Finance Lots? Yes _____; No _____ What Rate for Interest _____
No. of Years Financed _____ No. of Lots Sold Previous Year _____
What is Your Anticipated Sellout Period in Years? _____

EXHIBIT

13.02

REV. 12/17/10

ROA_01311

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
EDGEFIELD COUNTY

EXHIBIT

N

DEPOSITION OF WAYNE RAIFORD,
as 30(b)(6) representative of
LL OF SC, LLC

ELIZABETH M. FERRARO, JAMES T. FERRARO, EDWARD J.
PRZYBYL, MARCELLA GLEIE, JOHN E. GLEIE, JR.,
THOMAS BOWES, CONNIE BOWES, MOATAZ ALASADI,
VIRGINIA KIRKWOOD, BOB KIRKWOOD, PAUL VICHROSKI,
NYDZA VICHROSKI, JAMES MONTELLESE,
ROXANN MONTELLESE, AND JULIE WILLIAMS,
Individually, Derivatively, and on
Behalf of all the Mount Vintage Homeowners
Association Members,

Plaintiffs,

vs. CASE NO. 2021-CP-19-00050

J. WAYNE RAIFORD, INDIVIDUALLY AND AS PRESIDENT
OF THE board of directors OF MOUNT VINTAGE
PLANTATION HOMEOWNERS ASSOCIATION, INC.,
LL OF SC, LLC, RAIFORD TOPSAIL ISLAND
INVESTMENTS, LLC, MOUNT VINTAGE PLANTATION
HOMEOWNERS ASSOCIATION, INC. a/k/a MOUNT VINTAGE
HOMEOWNERS ASSOCIATION, INC., GREGG KARLBERG,
JERRY SCHAEFER, LEIGH ANN KEELS, and JOHN DOE,

Defendants.

DEPONENT: WAYNE RAIFORD
DATE: AUGUST 23, 2024
TIME: 12:31 P.M.
LOCATION: AIKEN AIRPORT
AIKEN, SOUTH CAROLINA
REPORTED BY: HANNAH MOORE
CLARK BOLEN
CHARLESTON, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM
Office@ClarkBolen.com

1 payment money.

2 A. I did not suggest any of that.

3 Q. Sharon Brady did?

4 A. I didn't talk to Sharon Brady about it
5 neither.

6 Q. Well, I'm sorry. I thought you talked
7 to the board of directors and they --

8 A. I did about what they wanted for the
9 golf course.

10 Q. And the board, Sharon Brady included,
11 came up with 2.1 million, which would leave the
12 five down payment homeowners short?

13 A. I don't know about that. I don't know
14 how much is owed to them.

15 Q. But it's clear to you that Sharon and
16 Steve came up with 2.1 million?

17 A. It is.

18 Q. And you had no input into it?

19 A. Huh?

20 Q. Was there a vote taken on that by the
21 board?

22 A. Yes.

23 Q. What board meeting will I find that vote
24 in?

25 A. The last one we had. I don't remember

1 the date. Last month, maybe a month before.

2 Q. June or July?

3 A. Yes.

4 Q. And what was the vote on that?

5 A. I don't know, but it's unanimous,
6 whoever was there.

7 Q. Including you?

8 A. Including me.

9 Q. So this same Exhibit 68 goes on to
10 say -- after it was Charles that was giving the
11 tour, goes on to say that, so Wayne's possibility
12 is still just between the board members, correct.
13 And the response by Perun is no, he talked to
14 David on Sunday.

15 So that's a confirmation David has
16 confirmed to Perun on the board that he's aware
17 of your potential sale, correct?

18 A. Correct.

19 Q. And that's because you two talked as we
20 saw earlier in the e-mails?

21 A. Yes.

22 Q. I'm going to walk through some other
23 communications in Exhibit 63 -- 63.01. It will
24 be on the screen momentarily. This is an e-mail
25 between you and Mary Guynn regarding the Great

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

Elizabeth M. Ferraro, et al,

Plaintiffs,

vs.

LL of SC, LLC, Raiford Topsail Island
Investments, LLC, TR Sales Plantation,
LLC, and Mount Vintage Plantation
Homeowners Association Inc. a/k/a
Mount Vintage Homeowners Association,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2021-CP-19-00050

EXHIBIT

O

AFFIDAVIT OF SHARON BRADY

PLAINTIFF'S
EXHIBIT

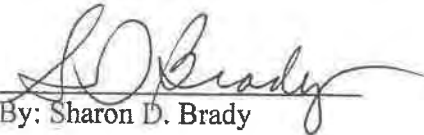
69

PERSONALLY APPEARED BEFORE ME, Sharon Brady, who first being duly sworn, deposes and states:

1. My name is Sharon Brady. I am currently the Vice-President of the Mt. Vintage HOA and have been since March 24, 2021. Prior to becoming Vice-President, I was a member of the Board of the HOA since February 25, 2020.
2. It is my understanding that a question has been raised regarding the possible sale of the golf course located within the Mt. Vintage development. My only knowledge concerning this issue is as follows: Immediately following the May 2, 2024 HOA Board meeting, Mr. Raiford inquired as to what it would take to sell the golf course. I responded that, off the top of my head, it would take at least the amount necessary to pay off the Apex Bank Loan for the course. Later in May, I was told by another Board member that Wayne Raiford had shown some builders the golf course. Since then, to my knowledge, there has never been any discussion between Mr. Raiford and the Board regarding a sale of the golf course; the course has never been marketed or otherwise advertised for sale; and no discussion of a

sale or motion regarding the golf course has ever been brought before the HOA Board for consideration. Nothing appears in the Minutes of Board Meetings regarding any such sale.

AFFIANT SAYETH NO MORE.

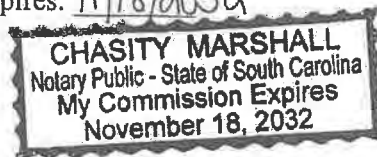
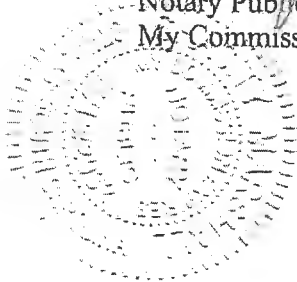

By: Sharon D. Brady

Sworn to and before me
this 10 day of September, 2024

Chasity Marshall

Notary Public for South Carolina

My Commission Expires: 11/18/2032



THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

CASE NO. C.A. No.: 2021-CP-19-00050

APPELLATE CASE NO. 2024-001510

RECEIVED

Sep 23 2024

SC Court of Appeals

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes,
Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski,
Nydza Vichroski, James Montellese, Roxann Montellese,
Individually, Derivatively, and on Behalf of all the Mount Vintage
Homeowners Association Members, ...Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC, are the Appellants / Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies that on this day, September 23, 2024, she served a true copy of the within and foregoing Return in Opposition to Appellant's Petition for a Writ of Supersedeas and/or Cross-Motion to Dismiss Appeal, upon all counsel of record to this matter via electronic mail to the e-mail addresses listed on the following pages:

Other Counsel of Record:

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham
16 Wellington Avenue
Greenville, South Carolina 29609
864.735.0832
seb@buckingham.legal
Attorney for Appellants

Charles A. Krawczyk, Esq.
Finkel Law Firm LLC
1201 Main Street / Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
803.765.2935
ckrawczyk@finkellaw.com
Attorney for Mount Vintage Plantation Homeowners Association, Inc.

cc: The Honorable R. Lawton McIntosh
lmccintoshlc@sccourts.org

September 23, 2024
Mount Pleasant, South Carolina

By: /s/ Anna S. McCann
Anna S. McCann, Esq.
Justin O'Toole Lucey, P.A.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001510

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants / Petitioners.

**APPELLANTS' RETURN TO RESPONDENTS' MOTION TO DISMISS
AND REPLY IN SUPPORT OF THE PETITION FOR SUPERSEDEAS**

On Monday, September 23, Respondents submitted a return to Appellants' Petition for a Stay of Underlying Proceedings and/or Writ of Supersedeas, and joined a Cross-Motion to Dismiss therewith. The arguments advanced by Respondents in support of the Motion to Dismiss are the same as those raised in opposition to the request for stay or supersedeas, which was granted by order of this Court dated September 13.

Appellants will be brief. To a certain extent, Appellants' brevity is the consequence of the undersigned having been displaced from his office by the continuing effects of Hurricane Helene. In any event, it would seem that Respondents' arguments are as follows:

- (1) That the September 10 decision is interlocutory and therefore not immediately appealable;
- (2) That interlocutory decisions resolving disputed questions of law are not immediately appealable;
- (3) That the September 10 decision does not involve the merits of the underlying action, in the sense that it finally determines some substantial matter forming the whole or part of some cause of action or defense;
- (4) That Appellants' Petition is procedurally defective because Appellants did not first file a motion for stay or supersedeas with the trial court; and,
- (5) That the scope of the stay imposed by the Court of Appeals is overly broad.

Each of these will be considered in turn.

The contention that the September 10 decision is interlocutory and therefore not immediately appealable is without merit. The plain text of S.C. Code § 14-3-330(1)

expressly contemplates the immediate appealability of “[a]ny intermediate judgment, order or decree in a law case.” There is simply no authority in South Carolina for the proposition that an order is not immediately appealable merely because it is interlocutory.

Nor is there any authority for the proposition that an interlocutory decision as to a disputed question of law cannot be immediately appealed. See, e.g., Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990) (observing that the trial court’s grant of partial summary judgment against plaintiff’s action for breach of contract was appealable under S.C. Code § 14-3-330(1) both at the time summary judgment was granted and after trial); Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986) (holding that a trial court’s order dissolving a lis pendens (in connection with the Rule 12(b)(6) dismissal of an action for fraudulent conveyance) was immediately appealable under S.C. Code § 14-3-330(1)).

Respondents further contend that the September 10 decision is not immediately appealable because it does not “finally determine[] some substantial matter forming the whole or part of some cause of action or defense.” Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993). This argument is untenable.

Respondents have brought suit over the alleged abuse and neglect of developer rights and obligations in the Mount Vintage community, going back to at least 2013. The chain of ownership of those rights is, therefore, of central importance to the case. After all, when Respondents complain that they have sustained damage as a result of a breach of common law fiduciary duties, the foundational question they must answer is *who owed those duties*, followed closely by the related question of *what conduct (and whose) violated those duties*.

Since 2013, everyone associated with the Mount Vintage community has regarded the holder of developer rights to be LL of SC, LLC.¹ This is by virtue of LL of SC, LLC having taken a deed-in-lieu of foreclosure in satisfaction of a pre-existing debt. Accordingly, over the past 11 years, LL of SC, LLC has exercised developer rights, which led Respondents to sue LL of SC, LLC over the sufficiency of its performance of responsibilities ostensibly owed to both homeowners and the homeowners' association.

That, now, has changed with the September 10 decision. The order from which this appeal is taken has injected Raiford Topsail Island Investments, LLC (“RTI”) into the chain of those who have held developer rights. In fact, if the transcript of the hearing on Respondents' motion for partial summary judgment were presently available (and not just on order), it would further reveal the totality of the position that Respondents have advanced, which is: (1) that, after RTI acquired developer rights through a foreclosure sale, such rights were never conveyed to LL of SC, LLC; and, therefore (2) that RTI continues to hold developer rights. Accordingly, in the absence of an appeal of the September 10 decision, Respondents would be arguing at trial that RTI—not LL of SC, LLC—is the party who owed common law and fiduciary duties to the Mount Vintage community by virtue of its past (and present) possession of developer rights, and that whatever actions were taken by LL of SC, LLC in furtherance of the interests of the

¹ This is why Appellants characterized Respondents' question of “who holds developer rights” at the summary judgment stage as “much ado about absolutely nothing.” For more than a decade, everyone—including Respondents and the HOA whose interests they claim to represent—has regarded LL of SC, LLC as the holder of developer rights to the Mount Vintage community. It is not “ado about nothing” because the question of who holds developer rights is unimportant. It is “ado about nothing” because the ownership, and exercise, of developer rights had not been thrust into question until the issuance of the order from which this appeal is taken.

community are immaterial, precisely because LL of SC, LLC did not hold developer rights.

In short, the September 10 decision answers the *who* questions that are foundational to this dispute. *Who owed Mount Vintage common law and fiduciary duties because of developer rights?* RTI. *Whose conduct breached those duties?* RTI. The conclusion is inescapable: the September 10 decision—holding that a foreclosure sale subsequent to a deed-in-lieu of foreclosure given to the same party who prevailed at a foreclosure sale trumps and nullifies the deed-in-lieu—constitutes a final decision on a contested issue involving the merits of the claims and defenses in the case. It is therefore immediately appealable under S.C. Code § 14-3-330(1).

With respect to their argument that this appeal is procedurally defective, Respondents are mistaken. Rules 205 and 241 explain that the filing of a notice of appeal divests the trial court of jurisdiction with respect to the underlying dispute in favor of the Court of Appeals, whose jurisdiction is exclusive, except to the extent that any issues remain with the trial court that are not affected by the appeal. Under the circumstances of this case, it is hard to imagine what issues are unaffected by the substance of this appeal. The question of the ownership of developer rights is fundamental to each and every claim that Respondents have brought, precisely because it affects the analyses regarding duty, breach, and causation. Accordingly, when Appellants filed the instant notice of appeal on September 10, the automatic stay established by Rule 241(a) was implicated, such that the trial court should have considered this entire matter stayed.

Initially, the trial court indicated its perception that the case was stayed by the filing of the notice of appeal.² However, as a result of a status conference convened by the trial court after the filing of the prior notice of appeal, the court determined that its jurisdiction was not divested by the filing of the appeal and that the case would proceed to trial as scheduled. Respondents did not file a motion to lift the stay with the trial court, as ostensibly required by Rule 241, SCACR. And, importantly, when the trial court decided that it had continuing jurisdiction to try the underlying case, it did not have the jurisdiction to do so. At that time, because of the filing of the notice of appeal, and pursuant to Rules 205 and 241(a), SCACR, the Court of Appeals had exclusive jurisdiction with regard to this dispute; with sincere respect to the trial court, it no longer had jurisdiction to decide its jurisdiction.

Therefore, if it is the case that the September 10 order is subject to immediate appeal, then the filing of the notice of appeal should have stayed the case automatically; there would be no need for Appellants to file a motion to stay or supersedeas with the trial court.

Furthermore, the Appellate Court Rules are not entirely clear as to the proper procedure to observe when a trial court incorrectly asserts the existence of its continuing jurisdiction in the face of appellate proceedings. It would seem futile to ask the trial court to impose a stay for an appeal when it has already indicated its perception that the filing of the notice of appeal has not stayed the case; nor is it clear how or why a trial court would (or could) grant a supersedeas with respect to its own assessment regarding the existence of its continuing jurisdiction, particularly when the determination was made

² This was reflected in an email from the trial judge circulated after the filing of the first notice of appeal.

without the issuance of an order. And, if the right to an immediate appeal exists under S.C. Code § 14-3-330, no certification under Rule 54(b), SCRCP, is necessary. See, e.g., Lebovitz, 289 S.C. 476, 347 S.E.2d 94.

It may be the case that the unusual circumstance where a trial court continues to exercise jurisdiction over a matter where exclusive jurisdiction resides with the Court of Appeals constitutes the very type of “extraordinary circumstance” contemplated by Rule 241(d)(1), though it does not appear there is much, if any, guidance from the appellate courts in the way of reported decisions to guide the practitioner’s analysis. Ultimately, there can be no question that the appellate courts have the power to protect their own jurisdiction, which is jeopardized when a trial court incorrectly determines that it continues to have jurisdiction despite the filing of a notice of appeal that ought to result in the imposition of the automatic stay.

The final of Respondents’ arguments is that the scope of stay granted by this Court is overly broad. It is not. As explained above, the order from which appeal is taken pertains to the chain of ownership of developer rights in Mount Vintage, which in turn implicates the identity of the party responsible for the performance of developer rights and obligations. That touches and concerns each and every aspect of this dispute. And the Appellate Court Rules already address the proper scope of the stay; it extends to all “matters decided in the order, judgment, decree, or decision on appeal.” Rule 241(a), SCACR. Accordingly, when this Court issued a stay as to all proceedings below, that scope was commensurate with the issues involved in this appeal.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, the Court of Appeals is respectfully requested to extend its order imposing a stay of the underlying trial court proceedings for the duration of these appellate proceedings, and for such other and further relief as the Court deems just and proper.

Respectfully,

s/ Steven Edward Buckingham

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Attorney for Appellants / Petitioners

October 3, 2024
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001510

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie
Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood,
Paul Vichroski, Nydza Vichroski, James Montellese, and
Roxann Montellese, Individually, Derivatively, and on Behalf of
All the Mount Vintage Homeowners Association Members Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales
Plantation, LLC, and Mount Vintage Plantation Homeowners
Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. Defendants,

Of which LL of SC, LLC, Raiford Topsail Island
Investments, LLC, and TR Sales Plantation, LLC are the Appellants.

PROOF OF SERVICE

The undersigned counsel for Appellants hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

Document(s): Appellants' Return to Respondents' Motion to Dismiss and Reply
in Support of the Petition for Supersedeas

Counsel Served: For Respondents

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Means of Delivery: *Via Email Only*

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Means of Delivery: *Via Email Only*

Courts Served: Office of the Clerk of the Court of Appeals
ctappfilings@sccourts.org

Means of Delivery: *Via Email Only*

Date: October 3, 2024

Respectfully,

s/ Steven Edward Buckingham

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Attorney for Appellants



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Bettis C Rainsford VS Talmadge Et Al Knight , defendant, et al

Case Number:	2012CP1900388	Court Agency:	Common Pleas	Filed Date:	12/20/2012
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Settled	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Withdrawn or Settled by Parties	Disposition Date:	12/23/2014	Disposition Judge:	Addy, Frank R Jr
Original Source Doc:		Original Case #:			
Judgment Number:	2012CP1900388	Court Roster:			

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Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Licata, Steven Barry	Order/Form 4/Case Settled	Order		12/23/2014-09:01		
Klosinski, Scott J.	Roster/Notice of Case Roster Publication Sent	Action		11/10/2014-13:49	12/23/2014-13:49	
Zier, Kelly F.	Roster/Notice of Case Roster Publication Sent	Action		11/10/2014-13:49	12/23/2014-13:49	
Rainsford, Bettis C	Roster/Notice of Case Roster Publication Sent	Action		11/10/2014-13:49	12/23/2014-13:49	
Licata, Steven Barry	Roster/Notice of Case Roster Publication Sent	Action		11/10/2014-13:49	12/23/2014-13:49	
Guynn, Mary Olivia	Roster/Notice of Case Roster Publication Sent	Action		11/10/2014-13:49	12/23/2014-13:49	
Cosper, Christopher A.	Roster/Notice of Case Roster Publication Sent	Action		11/10/2014-13:49	12/23/2014-13:49	
Cosper, Christopher A.	Roster/Notice of Motions Roster Publication Sent	Action		11/06/2014-11:58	12/23/2014-11:58	
Guynn, Mary Olivia	Roster/Notice of Motions Roster Publication Sent	Action		11/06/2014-11:58	12/23/2014-11:58	
Licata, Steven Barry	Roster/Notice of Motions Roster Publication Sent	Action		11/06/2014-11:58	12/23/2014-11:58	
Rainsford, Bettis C	Roster/Notice of Motions Roster Publication Sent	Action		11/06/2014-11:58	12/23/2014-11:58	
Zier, Kelly F.	Roster/Notice of Motions Roster Publication Sent	Action		11/06/2014-11:58	12/23/2014-11:58	
Klosinski, Scott J.	Roster/Notice of Motions Roster Publication Sent	Action		11/06/2014-11:58	12/23/2014-11:58	

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Rainsford, Bettis C	Order / Form 4 Continuance	Order		03 / 19 / 2014-09:14	12 / 23 / 2014-09:14	
Rainsford, Bettis C	Certificate / Certificate of Service	Filing		03 / 17 / 2014-08:59	12 / 23 / 2014-08:59	
Rainsford, Bettis C	Answer / Amended Answer And Counterclaim	Filing		03 / 17 / 2014-08:59	12 / 23 / 2014-08:59	
Rainsford, Bettis C	Affidavit / Affidavit of Bettis Rainsford	Filing		03 / 17 / 2014-08:58	12 / 23 / 2014-08:58	
Rainsford, Bettis C	Affidavit / Affidavit of Bettis Rainsford	Filing		03 / 17 / 2014-08:48	12 / 23 / 2014-08:48	
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Klosinski, Scott J.	Roster / Notice of Motions Roster Publication Sent	Action		03 / 06 / 2014-09:36	12 / 23 / 2014-09:36	
Zier, Kelly F.	Roster / Notice of Motions Roster Publication Sent	Action		03 / 06 / 2014-09:36	12 / 23 / 2014-09:36	
Guynn, Mary Olivia	Roster / Notice of Motions Roster Publication Sent	Action		03 / 06 / 2014-09:36	12 / 23 / 2014-09:36	
Cosper, Christopher A.	Roster / Notice of Motions Roster Publication Sent	Action		03 / 06 / 2014-09:36	12 / 23 / 2014-09:36	
Cosper, Christopher A.	Roster / Notice of Case Roster Publication Sent	Action		02 / 18 / 2014-09:40	12 / 23 / 2014-09:40	
Guynn, Mary Olivia	Roster / Notice of Case Roster Publication Sent	Action		02 / 18 / 2014-09:40	12 / 23 / 2014-09:40	
Zier, Kelly F.	Roster / Notice of Case Roster Publication Sent	Action		02 / 18 / 2014-09:40	12 / 23 / 2014-09:40	
Klosinski, Scott J.	Roster / Notice of Case Roster Publication Sent	Action		02 / 18 / 2014-09:40	12 / 23 / 2014-09:40	
Licata, Steven Barry	Roster / Notice of Case Roster Publication Sent	Action		02 / 18 / 2014-09:40	12 / 23 / 2014-09:40	
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Guynn, Mary Olivia	Roster / Notice of Motions Roster Publication Sent	Action		02 / 17 / 2014-15:23	12 / 23 / 2014-15:23	
Cosper, Christopher A.	Roster / Notice of Motions Roster Publication Sent	Action		02 / 17 / 2014-15:23	12 / 23 / 2014-15:23	
Guynn, Mary Olivia	Order / Order Granting Motion for Summary Judgment by LL of SC	Order		12 / 03 / 2013-10:36	12 / 23 / 2014-10:36	

L L of SC LLC Et al	Judgment / Summary Judgment	Judgment		12/03/2013-10:22	12/23/2014-10:22	
Rainsford, Bettis C	Judgment / Summary Judgment	Judgment		12/03/2013-10:22	12/23/2014-10:22	
Zier, Kelly F.	Affidavit / Affidavit of Barbara Hooker	Filing		12/02/2013-09:17	12/23/2014-09:17	
Zier, Kelly F.	Affidavit / Affidavit of Michael R Hooker	Filing		12/02/2013-09:17	12/23/2014-09:17	
Zier, Kelly F.	Affidavit / Affidavit of Robert E Stepp, Esquire	Filing		12/02/2013-09:17	12/23/2014-09:17	
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Zier, Kelly F.	Affidavit / Affidavit of Mailing	Filing		11/08/2013-14:20	12/23/2014-14:20	
Zier, Kelly F.	Motion / Summary Judgment by Plantation Alliance; Michael Hook	Motion		11/07/2013-12:36	11/13/2014-12:36	
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Klosinski, Scott J.	Roster / Notice of Case Roster Publication Sent	Action		10/08/2013-10:12	12/23/2014-10:12	
Rainsford, Bettis C	Roster / Notice of Case Roster Publication Sent	Action		10/08/2013-10:12	12/23/2014-10:12	
Licata, Steven Barry	Roster / Notice of Case Roster Publication Sent	Action		10/08/2013-10:12	12/23/2014-10:12	
Guynn, Mary Olivia	Roster / Notice of Case Roster Publication Sent	Action		10/08/2013-10:12	12/23/2014-10:12	
Cosper, Christopher A.	Roster / Notice of Case Roster Publication Sent	Action		10/08/2013-10:12	12/23/2014-10:12	
Guynn, Mary Olivia	Roster / Notice of Case Roster Publication Sent	Action		09/04/2013-10:50	12/23/2014-10:50	
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Cosper, Christopher A.	Roster / Notice of Motions Roster Publication Sent	Action		09/04/2013-10:46	12/23/2014-10:46	
Guynn, Mary Olivia	Roster / Notice of Motions Roster Publication Sent	Action		09/04/2013-10:46	12/23/2014-10:46	
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Cosper, Christopher A.	Answer / Answer of Defendant SunTrust Bank	Filing		05/15/2013-11:39	12/23/2014-11:39	
Guynn, Mary Olivia	Certificate / Certificate of Service	Filing		05/06/2013-08:55	12/23/2014-08:55	
Guynn, Mary Olivia	Affidavit / Affidavit of J Wayne Raiford	Filing		05/06/2013-08:47	12/23/2014-08:47	
Guynn, Mary Olivia	Memo / Memo in Support of Def LL of SC Motion for Summary Jud	Filing		05/06/2013-08:46	12/23/2014-08:46	
Guynn, Mary Olivia	Motion / Summary Judgment by LLC Against Plaintiff	Motion		05/06/2013-08:45	12/03/2013-08:45	
Zier, Kelly F.	Affidavit / Affidavit of Mailing	Filing		04/23/2013-13:35	12/23/2014-13:35	
Zier, Kelly F.	Request / Request for Production	Filing		04/23/2013-13:34	12/23/2014-13:34	
Zier, Kelly F.	Interrogatories	Filing		04/23/2013-13:34	12/23/2014-13:34	
Guynn, Mary Olivia	Certificate / Certificate of Service	Filing		04/09/2013-17:27	12/23/2014-17:27	
Guynn, Mary Olivia	Answer / Answer & Counterclaim of Def LL of SC, LLC	Filing		04/09/2013-17:26	12/23/2014-17:26	
Zier, Kelly F.	Answer / Answer of Michael Hooker to Amended Complaint	Filing		03/21/2013-13:09	12/23/2014-16:29	
Zier, Kelly F.	Answer / Answer of Barbara Hooker to Amended Complaint	Filing		03/21/2013-13:09	12/23/2014-16:31	
Zier, Kelly F.	Answer / Answer of Def Plantation Alliance to Amended Complain	Filing		03/21/2013-13:09	12/23/2014-16:32	
Zier, Kelly F.	Affidavit / Affidavit of Mailing	Filing		03/21/2013-13:09	12/23/2014-16:34	
Klosinski, Scott J.	Answer / Answer & Certificate of Mailing	Filing		03/20/2013-13:15	12/23/2014-13:15	
Licata, Steven Barry	Notice of Case Roster Publication Sen	Action		03/19/2013-16:20	12/23/2014-16:20	
Rainsford, Bettis C	Notice of Case Roster Publication Sen	Action		03/19/2013-16:20	12/23/2014-16:20	
Licata, Steven Barry	Certificate / Certificate of Service	Filing		01/14/2013-10:39	12/23/2014-10:39	
Licata, Steven Barry	Answer / Answer of Branch Banking and Trust Company	Filing		01/14/2013-10:39	12/23/2014-10:39	
Rainsford, Bettis C	Exhibits filed	Filing		01/10/2013-09:49	12/23/2014-09:49	
Rainsford, Bettis C	Amended / Amended Lis Pendens	Filing		01/10/2013-09:48	12/23/2014-09:48	
Rainsford, Bettis C	Amended / Amended Summons and Complaint	Filing		01/10/2013-09:48	12/23/2014-09:48	
Rainsford, Bettis C	Lis Pendens Filed	Filing		12/20/2012-13:03	12/23/2014-13:03	
Rainsford, Bettis C	Summons & Complaint	Filing		12/20/2012-13:01	12/23/2014-13:01	



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LL Of SC, LLC VS K&H Development Company, LLC, Et Al , defendant, et al

Case Number:	2012CP1900336	Court Agency:	Common Pleas	Filed Date:	10/23/2012
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Judgment	Disposition Date:	07/19/2013	Disposition Judge:	Special Referee G S And C P
Original Source Doc:		Original Case #:			
Judgment Number:	2012CP1900336	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Guynn, Mary Olivia	Order/Form 4	Order		11/18/2013-11:45		
Guynn, Mary Olivia	Master / Master's Report of Sale	Filing		11/18/2013-11:43		
Guynn, Mary Olivia	Order/Order	Order		11/18/2013-11:43		
Guynn, Mary Olivia	Assignment Of Bid	Filing		11/18/2013-11:43		
Guynn, Mary Olivia	Affidavit / Publication	Filing		11/04/2013-15:48		
Guynn, Mary Olivia	Notice / Foreclosure Sale	Filing		11/04/2013-15:47		
Mount Vintage Plantation Homeowners Assoc. et al	Judgment/Foreclosure	Judgment		07/19/2013-10:58	07/19/2013-10:58	
LL Of SC, LLC	Judgment/Foreclosure	Judgment		07/19/2013-10:58	07/19/2013-10:58	
LL Of SC, LLC	Judgment/Foreclosure	Judgment		07/19/2013-10:58	07/19/2013-10:58	
K&H Development Company, LLC, Et Al	Judgment/Foreclosure	Judgment		07/19/2013-10:58	07/19/2013-10:58	
Guynn, Mary Olivia	Order/Judgment of Foreclosure and Sale	Order		07/19/2013-10:55	07/19/2013-10:55	
Guynn, Mary Olivia	Order/Form 4	Order		07/19/2013-10:55	07/19/2013-10:55	
Guynn, Mary Olivia	Certificate / Certificate of Service	Filing		05/01/2013-12:26	07/19/2013-12:26	
Guynn, Mary Olivia	Notice / Notice of Hearing	Filing		05/01/2013-12:26	07/19/2013-12:26	
Guynn, Mary Olivia	Certificate / Certificate of Service	Filing		04/29/2013-10:03	07/19/2013-10:03	
Guynn, Mary Olivia	Amended / Amended Lis Pendens	Filing		04/29/2013-09:58	07/19/2013-09:58	
Guynn, Mary Olivia	Amended / Amended Complaint	Filing		04/29/2013-09:58	07/19/2013-09:58	

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Guynn, Mary Olivia	Order / Referred to Master	Order		03/19/2013-08:57	07/19/2013-08:57	
Guynn, Mary Olivia	Motion / Refer to Master	Motion		03/19/2013-08:56	03/19/2013-08:56	
Guynn, Mary Olivia	Affidavit / Default	Filing		01/28/2013-09:52	07/19/2013-09:52	
Klosinski, Scott J.	Answer / Answer And Certificate of Service	Filing		01/25/2013-16:23	07/19/2013-16:23	
Guynn, Mary Olivia	Service / Proof Of Service as to Def K&H Develop Co LLC / Affida	Filing		12/28/2012-11:15	07/19/2013-11:15	
Guynn, Mary Olivia	Verification / Verification	Filing		10/23/2012-14:34	07/19/2013-14:34	
Guynn, Mary Olivia	Certificate / Certificate of Exemption from Adminstrative Orde	Filing		10/23/2012-14:33	07/19/2013-14:33	
LL Of SC, LLC	Property Description	Filing		10/23/2012-14:05	07/19/2013-14:05	
LL Of SC, LLC	Summons & Complaint	Filing		10/23/2012-14:03	07/19/2013-14:03	