IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

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SC Court of Appeals

DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended……...Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association ,…....……………………………………………………………….....Respondents.

RECORD ON APPEAL – VOL. III

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Civil Action No. 2019-CP-40-00919

EMAD TADROS, et al,	)	
	)	
Plaintiff,	)	TRANSCRIPT
vs.	)	OF
	)	WEBEX
	)	PROCEEDINGS
HOLDER PROPERTIES, et al,	)	
	)	
Defendant.	)	

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January 7, 2021

B E F O R E:

HONORABLE DeANDREA BENJAMIN
RICHLAND COUNTY COURTHOUSE
COLUMBIA, SOUTH CAROLINA

A P P E A R A N C E S:

For the Plaintiff:

CHARLES G. BLACKBURN, Attorney at Law

For the Defendant:

KEVIN K. BELL, Attorney at Law and
MICHAEL C. MASCIALE, Attorney at Law

BY: Karen A. Kocsis, CCR

THE COURT: All right. We're on going to go on the record.

Again, this is the case of Emad Tadros versus Holder Properties, 2019-CP-40-00919.

And if you can, if everyone please say your appearances and who you represent for the court reporter. Thank you.

MR. MASCIALE: Judge, may it please the Court.

Judge, I'm Michael Masciale, I represent the ADESSO Horizontal Property Regime and the ADESSO Homeowners Association.

MR. BELL: And Your Honor, Kevin Bell, and with me is Paul Heffer, representing Holder Properties and ADESSO/COLUMBIA LLC.

MR. BLACKBURN: Good morning, Judge.

THE COURT: All right. Good morning.

All right. And this is a motion for summary judgment filed by Defendant Holder Properties; is that correct?

MR. MASCIALE: That's correct, Your Honor.

And Your Honor, before we begin, just one housekeeping matter I wanted to bring to the Court's attention. The ADESSO HOA and Horizontal Property Regime filed a motion for summary judgment back on, I believe, December 28th, which would have been at least ten days before this hearing. We gave notice of the date and time of the hearing, as required under the rule, to hear our motion for summary judgment today as well.

THE COURT: It is not noticed for today. So if everyone consents, I'll hear it considering we have y'all, I guess the last ones. But that will require a consent of all parties.

MR. BLACKBURN: Plaintiffs consent, Your Honor.

MR BELL: Certainly we do as well. Doesn't affect us.

THE COURT: All right. All right. I'd be glad to get some background. I'll be glad to hear it. I guess, (inaudible) is it Mr. Bell, is it your motion about -- yes, on behalf of the defendants.

(Loud background noise interference.)

THE REPORTER: Judge, could we get everybody else to mute first?

THE COURT: Can we get everybody to mute so we won't have any background noise, and we'll do the same. They're working on the light post or something outside my office, so there's a lot of noise outside.

All right. Here we go.

Yes, sir, Mr. Bell.

MR. BELL: Okay. Thank you, Your Honor.

As mentioned, I represent Holder Properties, ADESSO/COLUMBIA LLC. I'll refer to those today just as Holder. John R. Holder was also named -- (inaudible) -- the fact that he was never served so he is not a party to this action.

And with the Court's permission, I'm going to share my screen. I have a PowerPoint that I think will help facilitate the argument today.

THE COURT: Yes, sir. My law clerk will have to give you -- share something with you in order for you to do that.

MR. BELL: Okay.

THE COURT: You still there, Mr. Bell?

MR. BELL: Yeah. I'll stop -- I hit the wrong button, instead of share I hit cut off video.

THE COURT: Okay. There you go.

MR. BELL: Okay. There we go.

Okay. As Your Honor requested of me, I'll give you a little background about the motion and then the case before we get to the merits.

The nature of this dispute is this, ADESSO/COLUMBIA is a mixed-use residential and retail development here in downtown Columbia. Your Honor may be familiar with it. It is across

Assembly Street from the coliseum. It also fronts South Main Street below the old law school. It has ground floor retail, several floors of residential condominiums above it, has a pool, garage. A typical mixed-use retail -- a big mixed-use residential/retail development that we see here (indicating.)

The plaintiff is the owner of the ground floor retail units at ADESSO. There are four of them. He alleges that he does not have the number of parking spaces for his retail units that he's entitled to have under the master deed and he claims damages from it.

All of the defendants dispute this allegation, defendants say he does have exactly the parking he's supposed to have. But the City of Columbia, who is in charge of enforcing zoning, plat and parking at ADESSO says the plaintiff has all of the parking to which he's entitled to.

I know it just sounds like a buildup to a parking dispute today. This motion is not concerned with who is right or wrong about parking. But this motion for summary judgment is because Plaintiff's claims were released in a prior lawsuit that Plaintiff brought against Holder and 38 other defendants. And the prior settlement is the only focus of our motion today as opposed to the substance of Plaintiff's claims.

To give you a few dates and facts to put this in perspective. From 2008 to 2013 Holder served as the developer and the property manager for ADESSO, because it was developer that also controlled the homeowners association.

In 2013, April of 2013, after the target number of units had been sold, Holder released control of the HOA. He did, however, continue to be the property manager.

In December 2014, Plaintiff purchased all four of the retail units at ADESSO. He did not purchase those from Holder, he purchased them from the original purchaser of the retail space.

In February 2016 the owners of the ADESSO residential and retail units filed suit against Holder and 38 additional defendants. This was a big lawsuit here in Columbia. The residential owners asserted their claims through a class action. Plaintiff was not in the class action.

Plaintiff's claims relating to the retail units were served -- (inaudible) -- and the causes of action were widespread, breach fiduciary duty, unfair dealing, breach of contract, improper management, negligence. You name it, it was all in there.

In May of 2016 Holder was terminated as the property managers. And after that point Holder had no involvement with ADESSO/COLUMBIA. They were out at that point.

In May of 2017, a full year later, the plaintiff settled all claims against Holder and the 38 additional defendants. Plaintiff's individual settlement is a separate document, captioned Retail Settlement Agreement and Release, it only applies to Plaintiff's claims. The class action settlement was separate.

The release was executed by Plaintiff and all 39 defendants, including Holder. And there was a stipulation of dismissal with prejudice that was entered as to all claims, quote, that were or have been asserted, end quote. And I underlined that because -- we'll discuss it shortly -- but that alone is dispositive of this motion. But we will get to that in just a few minutes.

Now I'd like to turn to the substance of the arguments. There's four issues today. The first one involves the settlement agreement documents.

There are three provisions of that document, the release provision, a waiver provision and a warranty provision, which all indicated that the plaintiff's claims are conclusively barred.

The prelude to those provisions is that the settling parties that are entering this agreement which will bring about the whole, complete, final resolution of all matters to Plaintiff. This is the release provision: (Reading)

> Tadros does fully and completely release and discharge the settling defendants from any and all claims and action, causes of action whether known or unknown, including the claims made in the action or that could have been made in the action arising out of or relating to any work performed by settling defendants --

THE REPORTER: Wait, wait, wait. There's some kind of feedback.

THE COURT: Hold on.

(Off-the-record discussion.)

THE COURT: All right. Mr. Bell, can you go back --

MR. BELL: Sure.

THE COURT: -- to -- no, no, no, I don't want -- not all the way back. Just you were -- go back to the next slide. No, no, no, go forward, I guess. I'm sorry.

MR. BELL: This is -- this is where I stopped.

THE COURT: Okay. So just start at the beginning of this again. Okay.

(Noise static.)

MR. BELL: Okay. This is about the release document. There's three provisions, the release provision, the waiver provision and a warranty provision. The preface to those provisions was that this was to bring about the full, complete and final resolution of all matters between the parties.

And the release -- it's the middle paragraph where: (Reading)

> Tadros does fully, completely release and discharge the settling defendants from any and all claims, actions, causes of actions known or unknown, including any claims arising out or relating to any work performed by the settling defendants.

The only limitation on scope of that release is arising out of or related to any work performed by the settling defendants. Dr. Tadros, in his testimony, brings his current claims within the scope of that. Because he agreed at his deposition that management of ADESSO in assigning parking was part of Holder's work at ADESSO/COLUMBIA. So there's no question, the allegations that are being made were within the scope of the release that was entered in 2017.

There is a separate waiver provision that the settling parties expressly waive. There's damages which exist as of this date.

There's no limitation on scope. All claims for damages were -- for damages which exist as of this date. Plaintiff agreed at his deposition that all actions by Holder, that are the subject of the complaint, occurred prior to Holder being dismissed in 2016. And that was a year prior to settlement. And Plaintiff acknowledged that he and his counsel were fully aware of the parking issues at the time of the settlement, in May of '17.

So, again, it's a separate provision of the settlement document that also says we waive any claims that exist as of today.

The warranty provision, it's going to come back around in connection with attorneys' fees.

First, just to say what a release is, it is to abandonment or relinquishment of a right or claim. And that concept is embedded in this provision. (Reading)

> Tadros warrants and represents that he's the owner of all claims for lost rents, lost profits and all of the personal damage claims related to or associated with the retail or commercial units at ADESSO, and that such claims are released, cannot be asserted against the settling defendants.

So as to the release to claims, he gives the warranty --

THE REPORTER: Please do not read so fast. Excuse me, please just -- slow down, please.

MR. BELL: I can.

THE REPORTER: Thank you.

MR. BELL: All right. Sorry.

In this provision Dr. Tadros has given a warranty that the claims that are released cannot be asserted against the settling defendants, those would include the claims that he's brought in this action.

The scope of the release was discussed between Dr. Tadros and his counsel. Plaintiff complained to his counsel about the scope of the release before he executed it. Plaintiff states in his affidavit, as I mentioned, that he was -- that counsel was fully aware of issues he had with parking that were supposed to be for his use and his view.

And this was the response by counsel. And he -- (Reading)

> As it relates to what we're being asked to sign, the release is very broad at the defendants' request. They want to make sure they are protected from any future claims from the HOA or any others.

And he goes on to say: (Reading)

> They only want to ensure they get a complete release.

Further to this point, Plaintiff requested modifications to the release as to Holder, which did not occur. The release was signed as it was presented.

South Carolina law on release of contracts, a release is a contract just subject to general rules of contract. The Court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or the parties failure to guard their rights secured.

We believe as a settlement document, the unambiguous release, waiver and warranty provisions must be enforced as written. And they are -- they entitle Holder to judgment as a matter of law as such.

There is a second issue that is related to the settlement, but it is separate because there is a separate body involved that applies to us. The federal civil action was ended with broad stipulations, dismissed with prejudice. Here it is: (Reading)

> There were or that could have been asserted by or between any or all parties in the referenced action are dismissed and forever ended with prejudice.

Here's what that means under federal law. Sort of an obvious housekeeping point, because it was a federal action that was dismissed, federal law has a preclusive effect of any stipulation of dismissal. And what that preclusive effect is, is that a dismissal with prejudice constitutes a final judgment with the preclusive effect, a res judicata, not only as to all matters litigated and decided by, but as to all relevant issues litigated in the suit.

And that's interesting, because in federal court if you just stipulate to dismissal with prejudice and say no more, the effect is all claims that are or could have been litigated. But in this case, of course, the document says that as well. So it's both under the law and the document.

But to give you a couple of -- or a few examples of how the federal courts have dealt with this. In the major case itself, which is the second bullet point, he contended that his counsel didn't envision such a broad stipulation in that report. And the Court said in the Second Circuit -- that had intended to preserve that right, he should not have entered this type of risk with prejudice stipulation.

Ellis is very similar. Ellis said -- tried to advance the point that, well, the parties who created the stipulation, their intent controls. And the Ninth Circuit said there's no authority for that, that stipulation with prejudice means what it means.

And, finally, relevant here, this is a Citibank versus Data Lease. That's a somewhat notable case that's cited very frequently for: (Reading)

> -- represented by counsel entered into the stipulation dismissing its claims against the agent, directors with prejudice. Represented by new counsel Data Lease cannot avoid the consequences of such a prior act.

So that is a second basis, Your Honor, that all claims -- there's no inference that Plaintiff couldn't have brought his parking claims in the prior lawsuit, all about it. Those claims have been -- they are res judicata at this point because of the stipulation dismissal.

Plaintiff has made allegations of duress, notably the duress is by his own counsel in the earlier case. Counsel threatened a lawsuit by the HOA, which was also his joint client in that case. This is the threat of the lawsuit, which I won't read, but I'll give you the backstory on it.

Plaintiff and the HOA had entered an agreement pursuant to which the HOA agreed to indemnify the plaintiff against certain claims by its tenants.

And in exchange the plaintiff agreed to sign the settlement agreement release. And so what his lawyer was telling him is, if you don't do that, I expect the HOA will sue you. And so the consequences of his action is duress, but that's not an issue in our motion.

What is at issue is the law of duress that renders that allegation a moot point as to Holder. So the law of duress, *Williams* is probably the best case on that. It says: (Reading)

> If one of the parties to an agreement is in a position to dictate its terms, then it's not a mutual or voluntary agreement.

And I'm going to come back to why I underlined one of the parties to the agreement. *Williams* is cited for the proposition that if a party's manifest -- (inaudible, sound cut out) -- by an improper threat by the other party, then the contract is voidable, or can be voidable if there is no reason to apply.

Why does that -- how -- why does that language matter. Plaintiff admits that his counsel, and perhaps indirectly the HOA, was the only source of duress. Plaintiff's counsel and the HOA were not parties to the commercial settlement agreement. The only parties were the Plaintiff and the 39 defendants. The plaintiff admits he did not inform Holder or anyone else that he was executing the release under duress. Plaintiff admits he did not speak to Holder during settlement.

What that adds up to is that because Holder was not a party to this alleged duress by somebody who wasn't a party to the agreement, the claims of duress at the hands of some counsel are inapplicable to Holder as a matter of law. It simply doesn't match up to that.

And so that's our motion as it relates to the plaintiff's complaint. The summary judgment in Holder Properties in Plaintiff's complaint are the first claims are barred by release, waiver and warranty provisions of the settlement agreement. Under federal law, Plaintiff's claims are barred by the preclusive effects of the stipulation of dismissal with prejudice. And duress is inapplicable because Holder was not involved in the alleged duress by a non-party. So that -- that is that portion of our motion.

The final issue, Your Honor, is liability of Plaintiff for attorneys' fees incurred by Holder in this action. Holder has asserted counter-claims seeking attorneys' fees, breach of contract, and pursuant to the frivolous Civil Procedure Sanctions Act. The contract portion is the partial settlement agreement has attorneys' fee provision. The motion for summary judgment today is only concerned with the breach of contract, not -- we're not here for you on the frivolous Civil Procedure Sanctions Act.

Here is the provision, LinkPage: (Reading)

> In the event of a breach of any party and its obligations under this agreement, the prevailing party in any action or proceedings in any other party in connection therewith shall be entitled to recover such its costs and expenses to a reasonable -- (inaudible) -- degree and extent expenses.

That's the provision we're counter-claiming under. How that adds up, as we discussed previously, in the personal settlement agreement Plaintiff gave Holder a warranty that he could not bring this action. (Reading)

> Tadros warrants and represents that such claims released cannot be

asserted against a settlement claim.

We have requested Plaintiff, on multiple occasions, to dismiss his lawsuit -- (inaudible) -- the cause of the commercial settlement agreement. And by our presence here today, you can tell that he has declined. But he has breached the warranty provision in the commercial settlement agreement, and that entitles Holder to summary judgment, non-liability for attorneys' fees and costs.

We are not asking you to set the amount of attorneys' fees today. We are only asking that the complaint -- that judgment as a matter law be entered against Dr. Tadros on his complaint, and that the Court rule that Holder is entitled to his attorneys' fees. And we will address the amount of if that's necessary.

That is our motion today. I will unshare my screen. And if the Court has any questions for me, I'll be happy to address those. It's pretty straightforward. But, otherwise, I will step back and let Mr. Blackburn respond on behalf of the plaintiff.

THE COURT: All right. Mr. Blackburn, do you wish to -- is -- Mr. Masciale, is your motion similar in nature? I can let you present and then

Mr. Blackburn to do them individually, or would you respond to them jointly?

MR. MASCIALE: Your Honor, my motion is slightly different and goes to the substance of the case. So I'm happy to wait and let Mr. Blackburn respond to Mr. Bell's motion, or however the Court would like.

THE COURT: All right. Yes, sir, Mr. Blackburn. Okay. Let's unmute him.

Can you hear him now -- hold on one second. There you are. My law clerk -- okay. Now. All right.

MR. BLACKBURN: Thank you, Your Honor. May it please the Court.

Mr. Bell proposed an argument that left out some -- (inaudible) -- such as the 2017 settlement agreement arose out -- it's in my memorandum, and I'm sure Your Honor had a chance to read all the briefs and memorandums afforded in this action -- but included in Mr. Bell's memorandum is a 2016 complaint. That's how this whole action started. It was amended on the Fourth Amended Complaint, it was also attached to Holder's memo, Exhibit Number 2, Fourth Amended Complaint, to request a jury trial.

The master deed, which was included -- I opposed Mr. Holder's, HOA's memo, which I've agreed to here today, it's included in Exhibit 3. The HOA's master deed is a contract too, it requires arbitration right there on the top. And it's -- it's conspicuous and noticeable. Nobody -- and they filed this 2016 complaint, by the way, with not complying with arbitration provisions in the master deed, which is contract, and not giving my client notice of the 2016 complaint, which by the way he is a named party on that complaint.

And Your Honor, I -- maybe you have, but I never heard of bringing a complaint on somebody without their consent or knowledge, which is exactly what Frank Smith, the HOA's attorney -- which Mr. Bell's talking about -- did. He filed this complaint three months before Holder left. Holder left because of Exhibit A to my memo, which is an engineering report performed in 2015 outlining all of the construction defects, in anticipation of the 2016 lawsuit. And by the way, none of those damages have been corrected to date.

The main point is arbitration provision was completely violated and ignored by the HOA's -- class counsel. It also seeks a jury trial, which is not allowed in this action -- and that's in the bylaws, that anyone who -- and it's in my memo, Your Honor -- to my memo, and I'll pull out my memo if I can find it -- it's in my memo where under miscellaneous provisions in B: (Reading)

> Anyone who attempts to bring a jury trial will be barred.

"Will be barred." And that's exactly what Mr. Bell's client allowed to be done. And in those -- and under B it says: (Reading)

> Holder -- Mr. Bell's client -- will fully-enforce the provisions of the master deed.

So how -- my question, Judge, is how can he come in and say my client breached the commercial settlement agreement, which he didn't know anything about until May '17. That's in the e-mails that Mr. Bell referenced. He left out a lot of things in that nice presentation he gave. A lot of issues that arise through questions of fact, but it should be submitted to this jury.

And it -- a lot things, including the arbitration provision was not invoked, including the fact that while Holder owned the property he leased, parking spaces, which is violative of the master deed itself. That's another violation. They didn't invoke the arbitration provision.

They also -- if you look at Section 7 of the master deed -- restriction -- (inaudible) -- separate conveyance of the common elements. And goes on to Page 16 and it says, including parking spaces, commercial parking spaces.

And so they try to argue about constructive notice -- we'll bounce around on that -- but constructive notice of what? The commercial spaces -- I'll get to that later -- it came back to seven -- I don't want confuse, Your Honor -- seven, on page 16 says: (Reading)

> May not be subject to a lease between the unit owners or the association and another party.

Loren Smith, who worked for Holder, sent my client demanding e-mails -- the last one is March 31st. It's uncontroverted that Mr. Holder was gone in May, but yet, Loren Smith on behalf of Holder Properties, Inc., was sending my client invoices demanding payment for the three parking spaces that were part of one of his units that were controlled and rented through the Marine Corps, which is right up there on Blossom Street, as you're going up Blossom, on the left, there's that Marine recruiting station. (Inaudible) -- involved in this lawsuit, that and three others on top of that.

And the Marines had an agreement with Holder that included three spaces, okay, it's Exhibit 22 to Mr. Holder's deposition. Mr. Holder claimed ignorance of a lot things when I took his deposition. As a matter of fact, when asked about the master deed, he said, you know, I had my attorneys read it to me. I'm kind of familiar with it, but not really.

You would think that an attorney, such as Frank Smith, would -- we'll get to Frank Smith in a minute -- you would think an attorney would say, hey, Mr. Holder, guess what, this master deed -- (inaudible) -- or miscellaneous deed 4, he entered in this master deed so that the arbitration would be instituted or brought. That's why he did a master deed.

And then he also found himself to defend the jury trial actions, which are fraud. He did neither. Especially in the 2016 complaint, which is Mr. Holder's memo, which he didn't mention.

2016 -- February 9th, 2016, he filed a complaint against Holder because of all these deficiencies outlined in the ABS report. So the HOA filed a suit through ultra vires actions, pursuant to my expert, Mike Paradis, which is included in my memorandum. Mr. Paradis opines that Defendants' motions for summary judgment should be vacated because it's based on settlement agreements that should be vacated due to being obtained through ultra vires actions taken by Mr. Masciale's clients in addition to Holder.

So Holder not only violates -- talk about violating a contract -- and I appreciate all the case law -- but when it talks about breach of contract and you're talking about a master deed, its strict compliance. That's what the HOA statute says, any violations to the bylaws, regulations -- I've got it somewhere around here, again as cited in my brief. Strictly complied with. Strict compliance with the master deed.

Well, when the master deed says this is subject to arbitration, and neither Holder or any other of the 38 defendants invoke arbitration provisions, that's a violation right there. He let it go through a settlement, a settlement.

Then when it came time to settle it, he came to my client and said, by the way, you got to sign the commercial release agreement -- and that's included as Exhibit 9 to Mr. Bell's argument. And then he -- you know how it goes. Mr. Smith and Mr. Therow, I appreciate ADESSO e-mailed me for the first time -- this is May 21st, 2017 -- Mr. Bell made several references to '17 -- well, my client responds to you, I appreciate for the first time e-mailing me the ABS report. He looked at it, because Mr. Smith said, you got to sign it, you got to sign it. You have an obligation under the master deed. Master deed says you got to sign it, have all unit owners sign it or you will get sued. Right.

Mr. Smith conveniently forgot to mention to my client, by the way, that a master deed requires arbitration, binding arbitration. Mr. Smith didn't tell that to my client, because Mr. Smith wanted my client to sign the commercial settlement agreement so they could settle the case. And they settled it in 2017, but my client said -- (inaudible) -- affidavit, which is attached to my memorandum.

He struck through the first one. He got an indemnification provision because the building still leaks. It leaks all into the Marines and it leaks into the three units above that, because the HOA -- now run by Mr. Masciale's client -- hasn't done anything to stop the roof leaks that were known in 2015. It still leaks causing -- giving my client -- my client's failure of business, lease turnover is unbelievable because it still leaks as of today.

So the indemnification that my client got from Mr. Smith is totally protected from all damages through the construction repairs. That was back in 2017, almost four years ago.

And now the HOA -- just to bring you current to it -- the HOA is trying to put an assessment on those unit owners for almost $16 million, and they entered into a settlement agreement for $7 million of which unit owners only got 4.8 million. Mr. Smith walked away with the balance.

And now the unit owners over there are left with a building that is in the same -- (inaudible) -- as before. No repairs have been done. And so now they come back, and say, well, we got to fix these repairs. It's going to cost somewhat similar to the estimate that Mr. Smith produced in the construction repair defect claim brought in 2016. And the repairs still haven't been done. My client still has an indemnification provision that protects him -- and it's in the contract too, signed.

So -- and the other things that Mr. Bell conveniently forgot in his PowerPoint presentation is this fourth amended complaint -- (inaudible, sound cut out) -- already testified, it's the fourth amended complaint. Mr. -- the Plaintiff's counsel, Mr. Smith -- never seen anything like this either -- he includes that -- he includes negligent misrepresentation -- which we'll get into in Mr. Masciale's argument. But he also includes a provision barring the defendants from invoking any of their rights pursuant to the master deed.

And that gets back to the start. Mr. Smith says he's going to waive -- and this is in his fourth amended complaint -- you're going to waive any arguments as to delay or statute or repose -- and I can get to that part -- it's -- again, it's in Exhibit 2 to Mr. Bell's memorandum.

Not only has Mr. Smith tried to strip provisions of the arbitration provision in the contract, master deed, he also says both defenses are relied upon using statute of limitations, statute arose as a defense.

So it's almost what my expert, Mike Paradis says, incredulous that Mr. Bell and Mr. Masciale can come before this Court and say that that commercial settlement agreement is of any force or effect. And meanwhile, my expert, Mike Paradis, who hasn't been deposed yet, he says settlement should be vacated, the entire lawsuit should be vacated, because it's brought about by breaches of the master deed and ultra vires actions taken on behalf of the HOA.

The HOA knew about the arbitration provision in their own master deed. They didn't invoke it. Mr. Holder, yeah, he -- I didn't name him individually, I took his deposition where he testified, yeah, I kind of read the master deed, and my attorneys explained to me the important parts. But that's not enough, he got sued.

What about the important parts? The important parts where he agreed to hold Defendants to the arbitration provision, which Mr. Smith tried to strip from the defendants of which Holder was one. He never came forward and said, oh, by the way, guys, this lawsuit is pursuant to arbitration, not a jury trial. And the fourth amended complaint demanded a jury trial by class counsel, Mr. Smith.

So it's all through the master deed, which is included as Exhibit 3, I believe, from Mr. Masciale's argument. The whole master deed. And -- all of these. So not only did Mr. Holder breach his contract by not invoking arbitration, he also breached it by not enforcing arbitration, which was incumbent upon him pursuant to the contract. He also leased, according to Article 7, commercial parking spaces and got money as of late.

So, Your Honor -- and I could go on -- this argument would take all day, because, you know -- (inaudible) -- it involved that Mr. Bell and Mr. Masciale failed to acknowledge.

And Mr. Bell's associate, Mr. Heffer, called me when I first filed this lawsuit in 2019, well, Holder's gone. And I had to show him these e-mails from Holder's own representative, Mr. Loren Smith. Mr. Loren Smith saying they're still charging my client for parking spaces, which is violative of the master deed.

It took this for me to give them -- which I produced to them a long time ago -- by the way, we beat the statute by three months. You're still invoicing my client in March of 31 (sic). Holder left in May of 31 (sic). I know, Judge, this is some -- and it is -- it's incredulous to me that it comes to this. So there's issues of fact all throughout this.

And by the way -- and I'll address this

later -- but Mr. Bell's argument is all about the breach of the commercial settlement agreement, which was brought about by undue influence. Read the affidavit of Darrell Carey that is included in my memo. Mr. Carey signed the release agreement. Mr. Carey was very well-versed in that master deed.

Mr. Carey said: (Reading)

> To the best of my knowledge, none of us as owners, including Dr. Tadros, were given the opportunity to exempt ourselves from the lawsuit or settlement. Me, myself, and other owners, including Dr. Tadros, might have other claims, but no other recourse but to sign the settlement agreement and release.

So Mr. Bell talks about substituting someone's mind with somebody else's, Mr. Herring, who's a board -- on the board at that time and a board president: (Reading)

> We were left no other choice.

I don't know what -- I don't know what duress could be other than that. And I think the Williams case that Mr. Bell quoted talks about substituting one's mind for another, giving them no other choice, so -- but duress active, it's viable and there's so many issues of fact that if the Court rules consistent with the case law, a scintilla of evidence, there's way more than a scintilla of evidence in this case that I could talk about that narrow's Mr. Bell's request. I ask that Mr. Bell's motion be denied. I also request, before Mr. Masciale even talks about his arguments, because I can address those too -- because there's issues of fact in his. For instance, had Dr. Tadros, when he first became aware -- this will go into my estoppel argument. My estoppel argument is, based on Defendants' conduct, Holder knew arbitration, Holder knew -- Holder posted signs similar to this as the City of Columbia came out there in 2018 and took down. Which was (inaudible) until the City came out there and changed the sign and that is consistent with the master deed -- exclusive use of the commercial tenants. They changed it. Because it says -- yes -- and this is Exhibit 4 to Mr. Holder's deposition -- they changed the signs to correctly reflect retail parking only.

So if you go into a McDonald's and you want to buy a Big Mac. And you go in and they tell you, no, no, this isn't a McDonald's, this is Hardee's, we don't serve Big Macs here. Similar to the signage that says Guests/Retail, what are you going to think? Is that ambiguous or vague? I think Mr. Paradis addresses that and other things in his affidavit.

In addition to the settlement of 2016, which wharfed into a fourth amended complaint in 2017, which arose in 2016, three months before Holder left. And Holder knew about that lawsuit and still failed to invoke the arbitration provision. Clearly violative of the contract, master deed. Clearly violative of leasing the parking spaces, like Loren Smith was trying to do, and Mr. Holder did up until he left in May of 2016.

So there's so many breaches. And I can go into a lot more breaches in that master deed, if the Court wants. But, clearly -- not clearly -- it's up to a jury trial to determine if that commercial settlement agreement, which Mr. Bell hangs his hat on, is legitimate. Not in my expert, Mr. Paradies' opinion.

He says it was obtained by A) ignoring the arbitration provision. It was also obtained by improper actions of the HOA board, the board control, Mr. Masciale's client. It was never -- the settlement was never approved. There was never a vote to approve the settlement. There was never -- the Court took it upon themselves just to do it in their own time. They never told the board.

And by the way, the board is over there right now, in addition to being hit with a potential $16 million assessment, there's several of those unit owners over there in ADESSO right now that are upset.

Mike Munson is the property manager now. And Mike Munson has been trying to attempt to buy this ABS report and repair contract. Which if you read, Mr. Paradies' affidavit, the repair contract right now they're trying to hit them with is something they should have settled for in 2017.

But they fast tracked -- I've been doing construction litigation for over 20 years, I've never seen a horizontal property regime case brought in 2016 -- February in 2016, and settled about a year-and-a-half later for $7.5 million.

I just found out the other day, yeah, they took a couple depositions, but they never invoked the arbitration provision. And Mr. Holder just rode along with it the whole time and never said, oh, by the way, this is subject to arbitration. And also, I have the duty to Defendant to make sure it's invoked.

THE COURT: All right, thank you. All right. Mr. Bell, any reply? Brief reply?

MR. BELL: Briefly, Your Honor.

We're not here on the substance of what happened way back when. But there was no argument that the release doesn't say exactly what we said it says. It's a general release, very common. As Mr. Smith noted, Defendants want a complete release.

The arguments about arbitration, here's what I'll say about that. Arbitration can be waived. We all know that. She's engaged in the civil court process with -- with the Court Common Pleas in the District Court. You waive the right to compel arbitration.

The plaintiff is subject to the same arbitration provision and jury trial waiver that everyone else is, yet, here we are in this lawsuit with a jury demand. So that's little out there.

I feel obligated to -- even though I have to take it as true today, I feel obligated to defend Frank Smith. I've known him as a lawyer for 29 years. I don't think he did the things he's accused of doing, but we have to take it at face value.

But what matters for purposes of Holder's motion is that the release is a contract. He acknowledges he signed it. And duress doesn't apply to Holder. He can say whatever he wants. He can sue Frank Smith. He can sue the HOA, as he has. It's all immaterial to Holder. He cannot sue Holder because he released him. And under South Carolina law, acts of alleged duress by Frank Smith and the HOA do not have anything to do with Holder.

We would ask that the release be -- and stipulation of dismissal be enforced as written. That Holder be handed judgment as a matter of law. And that the Court enter an order finding that Dr. Tadros is liable to Holder for attorneys' fees that will be determined later. That's all I have.

MR. MASCIALE: Your Honor, if I may reply to that. I've known Frank Smith for 20 years. He's a fine lawyer. I get along with Mr. Smith. He just so happened to be the attorney representing the HOA. So Mr. Smith is as well-versed or more than I am in construction litigation. (Inaudible) Mr. Smith didn't invoke arbitration. He didn't. And he let it run to a jury trial.

And we're not -- Mr. Smith is just Mr. Smith.

I mean, he came -- he came to my client and said, You need to sign it or you're going to get sued. He did that. He didn't talk about what other parts of the master deed were involved, like arbitration.

In essence, what we're here right now, Judge, is to have that settlement, that settlement and release agreement voided, set aside, because it was obtained by ultra vires actions. It's also obtained -- it breached the master deed -- (inaudible) -- of which provision Mr. Smith knew the arbitration provision, and he -- he violated that. And the commercial release and settlement agreement was just a natural process of the settlement.

He already signed a release of settlement agreement. Mr. Smith deemed -- and Dr. Tadros didn't -- he didn't know about it until May of 2017 when Mr. Smith said, Hey, you need to sign this. Dr. Tadros said, Wait a minute, hold on. I never knew anything about this. He -- Mr. Smith said, well, we'll -- you know, you need to sign it or you're going to get sued.

And by the way, he'll -- (inaudible) -- so he got Dr. Tadros to sign it. But he didn't -- didn't bring up the fact that it was subject to arbitration.

And yes, we -- I'm glad Mr. Bell brought that up. Yeah, we're -- we're -- as the holding in the *Gates* of the Williams-Brice case I cited in my memo, the *Gates* case held that arbitration provisions are enforceable. And it was set aside because -- I know the plaintiff's lawyer in that one, from Charleston, and a Howard Van Dine of Nelson Mullins. After -- (inaudible) -- ruled on the lower court, circuit court, the court of appeals overturned it saying the arbitration provision is valid. But the plaintiff is entitled to a non-jury trial. And we'll be -- we'll be more than happy to have this matter heard before a non-jury.

THE COURT: All right. Let's hear from Mr. Masciale, because I know you all requested 30 minutes --

MR. BLACKBURN: Yes.

THE COURT: -- and we're over that time.

Mr. Masciale, I'll be glad to hear from you, and then, Mr. Blackburn, I'll hear from you.

MR. MASCIALE: Thank you, Your Honor. May it please the Court. I will try -- (inaudible, sound cut out)

It's a simple lawsuit with -- (inaudible) -- despite what Mr. Blackburn has told you. And I don't use this word lightly, but this is a frivolous lawsuit in which the plaintiff and his hired-representative failed to do, really, any due diligence at the time the plaintiff purchased these commercial units at the ADESSO in 2014.

Which, I would add, the purchase price was slightly under $2 million, so this was a substantial purchase. And now because the plaintiff's units, some of his -- (inaudible) -- the plaintiff regrets his purchase. I think he's having some buyer's remorse. And he's seeking to blame anyone other than himself for failing to do his own due diligence.

So some additional factual background -- Mr. Bell did a good job with most of the facts -- but just to give you kind of context of the dates we're talking about.

The master deed that established the ADESSO Horizontal Property Regime was recorded in 2008 in the Richland County Register of Deeds office. And in the master deed, specifically Section 5(C)5, it allocates that a specific amount of commercial parking spaces. In the initial master deed it was 17, that's's since been bumped up to 21. But, anyway, it allocates those as limited common elements which specifically benefit only the commercial units, and they're reserved only to their use.

So it's stated clearly in the master deed that those specific spaces are only supposed to be allocated to the commercial units. And that was recorded in 2008.

Now, in 2013, which was a year before the plaintiff purchased his units, the owner of the ADESSO, ADESSO/COLUMBIA, LLC, recorded a fourth amendment to the master deed which reallocated those same spaces -- and as Mr. Blackburn said -- to the use of both the commercial and residential guests.

So it effectively contradicted the master deed and -- such that the commercial spaces were no longer used -- or no longer dedicated solely to the use of the commercial units. And that was commercial spaces 1 through 17, 108, 157, and then 220 through 221.

Now, in 2008 Holder, as the developer of the property, submitted an amendment to the planned unit development documents on file with the City of Columbia zoning, which, as the zoning administrator testified, controls the parking allocation for the ADESSO. The normal City of Columbia zoning does not apply when there is a PUD document which specifically references parking requirements.

So Holder submitted that to the city based an assumption of about 4,000 square feet for the commercial units, which would entitle the plaintiff to 17 spaces -- oh, no -- oh, I'm sorry, 19 spaces within the ADESSO itself and seven on-street parking, public parking, which could be used to satisfy that requirement.

Now, the plaintiff takes issue -- and I think his memorandum -- or his affidavit from his purported expert also takes issue with what they call the fraudulent conversion -- or fraudulent alteration of the PUD to reduce the amount of square footage that the commercial units comprise.

However, the PUD amendment, which is -- I believe it's an -- (inaudible) -- I think it's Exhibit 2 -- or Exhibit 5 to the deposition of Rachel Bailey, the zoning administrator, which is Exhibit 7 to my memo. The PUD provides a formula for scaling to determine the required parking requirements, based on increases or decreases in square footage.

So I will get -- I'll get to that more later, but suffice it to say there was no -- there was no fraudulent concealing or alteration of the square footage. This is a baseline requirement for -- (inaudible) -- as this increases, this is how the parking will be calculated moving forward. So just to -- I wanted to address that.

But, as I said, both the master deed, the fourth amendment to the master deed, and the 2008 PUD amendment were all public records and matters of public knowledge by the time Dr. Tadros, the plaintiff, purchased his units in 2014.

So under -- under the equitable statute of limitation Dr. Tadros would have to have brought his claims within three years of their -- (inaudible). The plaintiff is -- or what Mr. Blackburn is attempting to argue that Dr. Tadros' actual knowledge is not necessarily or not particularly relevant to a discovery rule analysis under the statute of limitations.

The test for when a cause of action accrues is when a person of common knowledge and experience in the exercise of reasonable diligence should have known or would have known the operative facts giving rise to their claim.

And it's interesting to note that in their memo they cite a case, which I believe -- (inaudible) --

is *Cerone versus Kressler* case, which stands directly against the proposition they're trying to make, that is, his actual knowledge is what governs here. And the case specifically states, the Supreme Court said, the appellate time starts at the time of discovery, the time the -- and this is a med mal case -- when the treating physician's actual negligence becomes known.

We rejected the same contention. It's not a subjective inquiry, Your Honor, it's an objective standard applied to the facts of the case. And here -- (inaudible) -- with constructive notice of the documents that are in the public record at the time he purchased his units.

He purchased them in December of 2014, and as I said, those three documents -- which Dr. Tadros testified before that he understood the fourth amendment to the master deed violate both the ADESSO master deed and the ADESSO PUD documents. When he finally looked into them in 2017, there was nothing prohibiting him from examining those records in 2014 when he purchased the property.

And, in fact, anybody who's purchasing commercial property, especially of that -- that significant of -- (inaudible) -- of title, zoning and other related documents. However, that was just simply not done. Dr. Tadros testified that he personally did not review any of those documents, and that his agent, hired to help with the transaction, also didn't review any of those documents.

In fact, it should be noted that Dr. Tadros is currently in a lawsuit against that agent for the very same negligence, essentially, that occurred here, where he did not review any of those relevant documents.

So -- (inaudible) -- that the fourth amendment violated all of those documents. And that he had or his agent looked into those before he purchased the units in 2014, he would have been made aware of those violations, and would have been able to either not purchase the units or he would have been in a position after to pursue those claims.

And it's interesting to note that prior to the 2014 transaction, Dr. Tadros has testified he had -- he had purchased another four commercial properties. I believe three of which were for investment purposes before this. So he was not -- (inaudible) -- so-to-speak. He was relatively sophisticated and experienced, but for some reason chose not to review any of these title, zoning or parking issues when he purchased the units in 2014.

In fact, he testified that he didn't even personally visit these units until 2016 or 2017, which would be two to three years after he bought them. And that's the constructive knowledge piece of that. So he's charged with knowledge of all those facts, which if he had investigated, he would have found out his claims.

But it gets even -- we can go even further than that. And I think as Mr. Blackburn had mentioned, in early 2015 -- (inaudible) -- that there might be some issues relating to the parking at the ADESSO. He received notification from both Holder Properties, the property manager, regarding the leasing of three of the commercial spaces back to him. Which he testified he knows now, now that he looked into it, violates Section 7 of the master deed which prohibits leasing of those spaces in that manner. And he also received an e-mail from one of his tenants, the United States Marine Corps, threatening to vacate their space unless they were given sufficient parking.

So he had actual notice, in addition to his constructive notice, that there were some issues with the parking that had he pursued those, investigated them, he would have discovered those claims, that the current -- or the allocation of the parking spaces at the time violated the master deed and City of Columbia zoning, the PUD requirements. For some reason he didn't do that until 2017.

However, Your Honor, again, under the discovery rule, the plaintiff's claims regarding parking accrued at the latest -- we'll just say at the latest -- by 2015. And so he was required to bring an action to enforce those claims by 2018, at the latest. As we've established, he didn't file his complaint until February of 2019, one year after the statute.

And so with regard to the parking, his claims are barred by the statute of limitations. And so we would ask the Court to add our judgment as a matter of law in favor of the association and the Horizontal Property regime on that basis.

There are no genuine issues of facts here that he should have -- and there were facts existing at the time he purchased the property and right thereafter, that would have given him notice of the claim -- his claims, and that he failed to bring his claims within the required statute of limitations.

Now, briefly, with regard to his claims for declaratory injunctive relief. We have testimony from Rachel Bailey, again, the City of Columbia's zoning administrator, who testified all to the current parking requirements applicable to the ADESSO commercial units.

Namely, that with the current square footage -- which the parties do not disagree about of 8,139 square feet, based on the formula contained in the 2008 PUD amendment regarding parking spaces. Now, under a city zoning ordinance applicable to PUDs, as Rachel Bailey testified, up to 50 percent of that requirement can be satisfied by public on-street parking.

There's no genuine-issue of fact here, Your Honor. That the plaintiff currently has 21 parking spaces within the building itself for his commercial units, and there are at least 17 public spaces along Blossom Street on either side of -- or I'm sorry, along Main Street within a hundred feet of the building, which can be used to satisfy those parking requirements.

So, according to Rachel Bailey's testimony, which has not been controverted, the plaintiff has at least 38 spaces that are devoted to his -- the use of his commercial units.

So with regard to the standard for injunctive relief, Your Honor, the appellate courts of South Carolina have made clear that injunctive relief is a drastic remedy that should be applied with caution. And one of the things that courts should consider would be weighing the benefits to the plaintiff of a prospective injunction -- (inaudible) -- or to Defendants.

Well, here the plaintiff would not get any benefit with an injunction being imposed. He's already gotten the relief he seeks, which is the proper allocation of parking spaces under the master deed and the PUD. And as we have, again, uncontested testimony -- and I would note that if the plaintiff is looking to use the affidavit of their purported expert, Michael Paradis, I see nothing in there that qualifies him as a zoning expert competent to testify about any of those matters, not to mention a lot of the -- (inaudible) -- just a lot of lack of secondhand knowledge and do not assert things that would be admissible evidence, which is required under Rule 56.

But not withstanding that, there's been nothing seriously controverting the City of Columbia's zoning administrator's testimony about the spaces meeting the zoning requirements and there being no current zoning violation at the ADESSO. So, again, the plaintiff would not have a benefit from injunctive relief here.

And it's really the same argument for his declaratory judgment claim, because to present a justiciable controversy under the declaratory judgment act, as Your Honor knows -- (inaudible) -- here that the claim is moot. The plaintiff has the relief he's seeking. He has the spaces he's entitled to. And there's no genuine issue of facts about that.

Moving on to the plaintiff's claims for negligent misrepresentation and constructive fraud, and this seems to be a point on which the plaintiff and the ADESSO defendants agree. Your Honor, an essential element of both claims is that a false representation has to be made.

The ADESSO defendants never were in contact with the plaintiff when he purchased his units and that -- (inaudible) -- my clients made representations to him that had induced him into purchasing the commericial units. The plaintiff admitted in his deposition that he never spoke to either -- or to the ADESSO defendants and nor did his agent, before the transaction.

So there's no genuine issue of facts here. That one of the essential elements of these two torts is -- is missing. There were no representations, at all, made to the plaintiff that induced him into purchasing these units.

The plaintiff, as was said earlier, purchased them from the prior owner, which was a man named Ford Elliott who was not associated with the ADESSO defendants. The Plaintiff's memo -- memorandum, which he submitted, admits the same. He stated as much by saying he never -- he didn't purchase the units from my clients.

And to the extent that -- if the plaintiff -- if Plaintiff's counsel here is trying to argue that somehow leaving the retail/guest size in place until 2018 somehow constitutes the negligent misrepresentation or the constructive fraud, one of the elements of both of those torts is that the plaintiff has to justifiably rely on any such representations.

And as I stated before, everything that would show the plaintiff that he had these claims related to parking were all matters of public record since 2013. And where the party has the means -- or he has actual knowledge of the falsity of a statement or the means of obtaining that knowledge, the party can't justifiably rely on any of those representations. And that's -- that's *Quail Hill, LLC versus County of Richland*, which was 387 South Carolina reports 223.

So to the extent they're trying to argue that somehow leaving those signs up misled the plaintiff into not bringing claims or anything to that effect, he had no right to rely on any of that.

First of all, we don't contend there were any representations about that. But even if there were, he had the means to know that -- the errors of those, quote, unquote, representations as early as 2014.

So -- (inaudible) -- again, he knew that his claims fail -- his claims for negligent misinterpretation and constructive fraud fail as a matter of law on those grounds as well.

And that -- regarding Plaintiff's claims about the assessments. Your Honor, the master deed is essentially a contract between the owners of the -- in the association. And the master deed states, with regard to the calculation of assessments, that -- and the bylaws also state this -- generally, each unit owner is assessed a portion of the HOA's total annual expenses in proportion to his interest in the HOA.

Well, in Plaintiff's case, his two units comprise a total of 8.544279 percent in the entire HOA. But Section 5(A)(3) of the master deed also states that: (Reading)

> Separate budgets for the commercial and residential units shall be developed annually, and no cost, expenses and budget items specifically attributed to residential units shall be included -- (inaudible). So, likewise, cost, expenses and budget items which affect residential and commercial units shall be appropriately allocated in relation to use by the owners of such units.

As set forth in the affidavit of Michael Munson, who has over 30 years of property management experience, and who also has personal knowledge of the calculation of these budgets because he was involved with them, these budgets to the plaintiff's commercial units were calculated properly. (Inaudible) -- which he should be assessed under the bylaws. But because the master deed requires the allocation of budget items between the residential and commercial units, the plaintiff's annual assessment is reduced by the budget items which are only -- as per the master deed -- which are specifically attributable to the residential units.

Anything else which benefits either of them, which is the large majority of the common and limited common elements at the ADESSO, are properly attributable to the commercial use. And they have to be further reduced in proportion -- (inaudible) -- of those.

And so using that formula as set forth in the master deed, Mr. Munson calculated that, for example, in the 2018 budget, the plaintiff was assessed a total of slightly over $19,000 -- and this is paragraph 23 of Mr. Munson's affidavit. That's a total of 2.77 percent of the total amount of cost and expenses for the association that year. Paragraph 24, 2019 is similar, 2.85 percent of the total. And then 1 percent -- (inaudible).

But the point is, those -- the assessments charged to Plaintiff's units are in compliance with the master deed and the rest of the governing documents for the ADESSO. Plaintiff pays significantly less than the amount he should if we're just going off of the -- his entire percentage interest in the regime.

So, Your Honor, I know there's -- and I'm going to wrap it up here pretty soon -- but there's really no genuine issue here of fact that these comply with the requirements of the master deed. And I know that the plaintiff has the affidavit of Mr. Paradis. However, he doesn't set forth a formula or any conclusions about how these assessments should be calculated instead.

In fact, he -- I think he just states something to the effect of he thinks these assessments are slightly high, or that some shouldn't be allocated to the commercial use. But he doesn't say which specific ones that he takes issue with, nor did the plaintiff in his deposition.

All of their conclusions are based, really, only on personal conjecture or the hearsay statements that the plaintiff spoke with some of the commercial tenants, which wouldn't know how they're calculated anyway because they're not members of the association.

And I know Mr. Blackburn will probably raise the scintilla of evidence standard to try and oppose our motion on this point. However, there is another important point when reviewing -- or when taking into consideration the standard for summary judgment. And that is when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.

And that's in the *Holmes versus East Cooper Community Hospital*, 408 South Carolina 138. And then that's cited in my memo under procedural standard.

And based on the evidence we have, there's no real genuine issue of fact on this point. We have an affidavit of the property manager with personal knowledge of how these budgets were calculated, setting forth a formula of how they were calculated based on the master deed. And so far the plaintiff has only been able to put forth just speculation and no real formula to counter that.

So we'd also ask the Court to enter summary judgment on that point, that the association did not -- (inaudible). Now, with regard to assessments, did not breach any duty owed to the plaintiff with regard to assessments, and that the assessments comply with all the association's governing documents.

And then on the last point, Your Honor, there's a matter -- and I don't believe Plaintiff addressed it in his memorandum, but I did want to bring up that the plaintiff has -- has agreed to withdraw his unfair trade practices claim as it relates to the ADESSO defendants. And that's included in his answer to Interrogatory -- our interrogatory No. 12, which is Exhibit 9 to my memorandum. And he also in his deposition, which Exhibit 8 in my memorandum.

So we would also ask the Court to dismiss that claim on that basis, that he is withdrawing his unfair trade practices claims.

And so, Your Honor, just in conclusion, based on everything we have so far in discovery, there is no genuine issue of facts, that all of these claims are either barred by the statutes of limitations, or the ADESSO defendants have complied with the relevant provisions of the ADESSO governing documents.

And for that reason, we would ask the Court to enter a judgment as a matter of law on -- (inaudible) -- defendants on all of Plaintiff's claims and to dismiss them with the prejudice. And we reserve the right, as well, to visit the attorneys' fees issues and South Carolina frivolous civil proceedings sanctions issues at a later date.

Thank you.

THE COURT: All right. Mr. Blackburn, I'm going to give you exactly 15 minutes to respond, because we are way over the time that was requested. And my court reporter has to take a lunch break, my staff has to take a lunch break, and so do I. All right.

MR. BLACKBURN: An hour.

THE COURT: This is only a 30-minute -- supposed to be a 30-minute hearing, and now we're well over --

MR. BLACKBURN: An hour.

THE COURT: Yes. Maybe like an hour and a half now. But go ahead.

MR. BLACKBURN: Your Honor, thank you. I respect that. Great. And the 15 minutes --

And I'll start with Mike Munson, as reported that Mike Munson's a property manager under CMM Management at ADESSO right now. I issued a subpoena to Mike Munson, and it was -- documents were due December 30th.

Mr. Masciale called me that Monday, the 30th, and he asked me for an extension of time for an affidavit that was signed -- (inaudible). Mr. Masciale asked me for extension of time to respond to the subpoena for the documents I requested from Mr. Munson, including the items that my expert, my purported expert -- which I named by the way -- Mr. Masciale's very well of aware that I named Mr. Paradis as an expert.

Mr. Paradis said I need this, this and this from Mr. Munson so I can further -- (inaudible) to get into more detail on Mr. Munson's affidavit and how it's improper. And Mr. Paradis did explain -- and I'll get my memo -- on page 13 of Document 8 -- (inaudible) -- Plaintiff relates to the monthly assessment he's being charged by ADESSO HOA. It's all in my memorandum.

He had asked -- he's asked repeatedly for an explanation on how the commercial property budget is determined and never got a response until the affidavit from Michael Munson dated December 28th, 2020. Okay. My response to the subpoena issues were due December 30th.

Mr. Munson was preparing an affidavit and there was -- in support of Mr. Masciale's client. It was filed with a motion for summary judgment the day after Mr. Masciale asked me for an extension to respond to Mr. Munson's documents.

So for them to come in and claim that he's -- Mr. Paradis is not an expert and all that kind of stuff. Mr. Paradis opined, and so did Mr. Holder when I took his deposition, and so did Dr. Tadros. You know, they're conveniently ignoring the fact that Dr. Tadros was deposed right here, he brings legitimate issues about the prices he was charged. (inaudible) -- required by the master deed related to the resident and commercial units.

Mr. Paradis says, I have reviewed the affidavit and the information provided. Sadly, there is, quote, all caps: (Reading)

> No explanation of the methodology used to establish the various line item fees, only a statement that they are consistent year-to-year.

And I could go on, Your Honor, but I'd be using my 15 minutes. But contrary to what Mr. Masciale argues, Mr. Paradis does include in his affidavit issues he has with Mr. Munson's calculation of the operating budget, and in addition to my client's questions. And that's why he didn't pay them. And he was threatened with foreclosure because he was -- had questions, and he never could get a response from the HOA.

And I'll move on from that. But as far as negligent misrepresentation, again, the signs that were kept there until 2018. Based on my client's continued complaint through the HOA, CMM Management had -- their misleading. It says, Guests and Retail Customer parking only. Well, guests for what? Guests for one of the other 110 units in there, or just for the retail? So they changed those signs, 2018.

And so when I -- when we're talking about the case law, there's the case that I'll cite to you, *Hooper versus Ebenezer Senior Services*. This stands for equitable estoppel of the statute of limitations. (Reading)

> The equitable estoppel (a) permit sought through the statute of limitations as a defense. The Defendant will be estopped to assert the statute of limitations and bar of a Plaintiff's claim, or Defendants, when the delay that otherwise would

give operation of the statute has been induced by the defendant's conduct.

Which it has been in this case.

I'll address one other significant point. Mr. Masciale cited *Eman*. *Eman* is a medical malpractice case. It also says this: (Reading)

When there is conflicting testimony regarding time of discovery of facts, including those of medical malpractice claims, date on which discovery should have been made becomes an issue for the jury to decide.

And, Your Honor, I'm going to finish within my 15 minutes, and I respect your time today. But I would humbly request that the defendants' motions for summary judgment to be dismissed, because there's several issues of fact involved in this case, pursuant to *Hancock* which -- and similar cases of that ilk, that preclude summary judgment.

And I would respectfully request that Your Honor enter a judgment by denying both defendants' motions for summary judgments based on the matters heard here and my memorandum and other supporting documents.

THE COURT: All right. Mr. Blackburn, just -- so on the question of statute of limitations that Mr. Masciale brought up. How is this not -- on the issue with the parking spaces, he is saying that -- that there is -- the statute is limited, you are barred by the -- the client is barred on the parking claims because of the statute of limitations. Can you address that, briefly?

MR. BLACKBURN: Yes, Your Honor, briefly.

My client made several complaints after he purchased it in December of 2014, about the parking. And in 2017 -- just as in my memorandum -- a letter dated February 15th, 2017, he brought those matters directly to the attention of the ADESSO HOA, Mr. Masciale's client. And that's what perpetrated a changing of the signs.

So the defendants' conduct, similar to the holding in *Hooper*, their conduct allowing these signs to remain by charging him rent for the Marines.

My client in his deposition, he testifies, who would assume that they are in compliance. When he found out they weren't, he wrote that letter on February 15th, 2017 saying, Because I assume you're an honest person, you're in compliance. He wrote that letter when he found out they weren't in compliance.

And, again, certain -- Mr. Holder -- to the point of statute of limitations and actual knowledge, those PUD documents are not -- (inaudible) -- and was not recorded. So what kind of constructive knowledge must you have. Okay. I asked Mr. Holder, I said, you can't -- you can't think of an answer as to why the master deed identifying anyone other than Mr. Hedges, who worked for Holder, committed a minor amendment on February 8th of 2008. So after the master deed had been filed, Mr. Hedges missed a minor amendment, assuming that it's 4,675 square feet, it was 8139. But Mr. Hedges, who works for Holder, says, no, no, no, let's assume -- let's make an assumption. And it does give the calculation, any increase above 4675 shall result in three-and-a-half parking spaces for the commercial unit.

And I asked Mr. Blackburn, I said -- I asked Mr. Holder, I said does that make any sense to you, Mr. Holder? And Mr. Heffer objected. Mr. Masciale objected. So the witness says, again, Hell no. To me, I don't know, does make any sense or not.

So based upon the equitable estoppel, you don't have to say -- (inaudible) -- representation like the signage, like my client's complaints through the HOA, Mr. Masciale's clients, like Loren Smith's continuing charges for Holder of the parking spaces.

I would respectfully request that -- or submit that the statute of limitations began to toll in, at least in '17, February 15th of '17, or at the latest '18, when my client filed his suit in February of 2019.

And one other point too. When Mr. Bell says this is a second action brought by Plaintiff, well, that's only because he owned those units. He was never made aware of that until 2017, tried to hold to the commercial settlement.

And, hopefully, that answers your questions, Your Honor. And I'll be glad to address any more that you may have.

THE COURT: All right. And my next question is regarding Holder. My understanding is Holder was terminated as the property manager in 2016. Is that correct?

MR. BLACKBURN: Yes. In May 2016.

THE COURT: All right. And they settled the claims against Holder in May 2017?

MR. BLACKBURN: Yes, ma'am. And Mr. Holder testified that he didn't even know if it settled.

THE COURT: All right. So, I guess what I'm -- I guess what I'm -- so the claim -- in the -- and I'm -- in looking at the settlement agreement, and I understand that there was an arbitration -- I know you're going to start on the arbitration agreement -- and you don't -- I'm guessing your argument is you don't think the settlement is -- agreement is valid because they failed to follow the mandatory arbitration agreement. Is that --

MR. BLACKBURN: Yes, ma'am. And that's very similar to the *Gates* case, *Gates* at Williams-Brice. It's right on point, like I've mentioned. And the reason it was -- the circuit court was overturned by the court of appeals, and then the plaintiff said, oh, we'll -- we'll just go ahead and settle before it was bumped from the supreme court. So they entered into a settlement agreement. The *Gates* case said that arbitration provisions are enforceable.

THE COURT: Okay. I understand they're enforceable, but I'm guessing -- do you think that by entering into the settlement agreement, then you end up waiving your right to the arbitration? I think that's what Mr. Bell asserted.

MR. BLACKBURN: Well, you -- you can't waive your right to arbitration because -- it's similar to a Poison Tree, that commercial settlement -- (inaudible) -- required a non-jury trial. Which is the case file said that's okay, we can have a non-jury trial, but you can't have a jury trial. And that commercial settlement agreement was proof of a jury trial demand without my client's knowledge of the suit and violative of the master deed, Your Honor.

THE COURT: All right. Thank you.

MR. BLACKBURN: Thank you, Your Honor.

MR. MASCIALE: Your Honor, if I may just to address some points very briefly?

THE COURT: Yes, sir. Very briefly.

MR. MASCIALE: Yes, ma'am.

With regard to the documents that are relevant to that request have already been produced back in February -- I think back in February. And Mr. Paradis' affidavit even makes a reference to those documents, it's paragraph 17 under documents to review. It says: (Reading)

> Defendant's production of 3,824 pages of documents, which included meeting minutes from 2012

through December 31st, 2019.

So to the extent Plaintiff's counsel is saying he needs the documents requested in the subpoena for his expert to review, he's already obtained them and his expert has already reviewed them in preparing this affidavit.

Conflicting testimony about the -- when the plaintiff discovered the violations. Again, there is no conflicting testimony on this. We know Plaintiff actually discovered these in 2017. But under the discovery rule and the statute of limitations for those purposes, it's essentially irrelevant when he actually knew, it's when he should have known.

And for the facts -- and under the facts of -- you know, as I've already laid out, he should have known, at the latest, 2015. And he failed to bring his claims within the time required by the statutes.

And then on -- to the equitable estoppel argument. I believe equitable estoppel -- (inaudible) -- of the existence of those claims. There was no evidence that the HOA concealed anything. And the fact that they changed the signs when requested to do so by the City of Columbia zoning, to bring them into compliance with the master deed and the PUD requirements, is not an act of concealment of the claims at all.

And the fact is the plaintiff should have known about his claims three years before that, and failed to take any efforts to investigate them until 2017. Almost three years after he purchased them.

So, again, Your Honor, we would ask the Court to establish -- (inaudible) -- on all of Plaintiff's claims. Thank you.

THE COURT: All right.

MR. BLACKBURN: Your Honor, one minute, one minute.

THE COURT: Yes, sir.

MR. BLACKBURN: The documents I have obtained were from Mr. Masciale's clients. They weren't from Mike Munson. And, yes, my expert, Mike Paradis, did review all those documents. They were incomplete. It took me six months to get the HOA's documents. I worked with Mr. Masciale, I gave extensions. Like I said, it took me six months to get those documents. So my expert says they're not complete, therefore I need them from property manager, Mr. Munson. We still haven't gotten them yet, Your Honor. And I so appreciate your time today, Your Honor, but I believe -- again, I'll reiterate, those motions for summary judgment should be denied because there's several issues of fact that need to be addressed to a jury and they -- and -- (inaudible) -- therefore results and the motion for summary judgment be denied, in my opinion.

THE COURT: All right. Thank you.

And anything else from you, Mr. Bell? Since I let everybody else speak, I believe in giving equal time.

MR. BELL: I just want to say thank you, Your Honor.

THE COURT: All right.

MR. MASCIALE: Thank you, Your Honor.

THE COURT: So what I want to do is take it under advisement. I'd like to take a look at it. I'll probably have my law clerk issue a Form 4 over a -- and with directions regarding any proposed orders to -- after I make a decision, I'll have the direction in Form 4 requiring proposed orders.

MR. BELL: Your Honor, I appreciate your time.

MR. BLACKBURN: Yes, Your Honor. Thank you.

THE COURT: All right. Thank you.

(Matter concluded.)

CERTIFICATE OF REPORTER)
STATE OF SOUTH CAROLINA)
RICHLAND COUNTY)

I, KAREN ANN KOCSIS, a Certified Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on Page 1 and the proceedings were recorded stenographically by and were thereafter transcribed under my direction; that the foregoing transcript as typed is an accurate and complete record of the proceedings io the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on this 13th day of March at Columbia, Richland County, South Carolina.

Karen A. Kocsis

Karen A. Kocsis, CCR
Notary Public
State of South Carolina at Large
My Commission expires August 9, 2031

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) CASE NO.: 2019-CP-40-00919

Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,

Plaintiff,

vs.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,

Defendants.

ORDER GRANTING ADESSO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Motions for Summary Judgment of Defendants Holder Properties, Inc.; John R. Holder, Individually; Adesso/Columbia, LLC ("Holder Defendants' Motion"); Adesso Horizontal Property Regime; and Adesso Homeowners' Association ("Adesso Defendants' Motion") (collectively, "Defendants' Motions"), filed September 24, 2020 and December 28, 2020, respectively. Defendants' Motions came on for hearing before the undersigned on January 7, 2021. The Court has been informed of an agreement between Plaintiff and the Holder Defendants to dismiss Plaintiff's claims against the Holder Defendants with prejudice, thereby making a formal Order on the Holder Defendants' Motion unnecessary. Therefore, this Order will only address the Adesso Defendants' Motion.

Upon consideration of the pleadings, evidence, written briefs, and arguments of counsel, the Adesso Defendants' Motion is hereby GRANTED. In support of this Order, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Defendant Adesso Homeowners' Association ("Association") is a nonprofit corporation organized and existing under the laws of the State of South Carolina, with its principal place of business being in Richland County.

2. Defendant Adesso Horizontal Property Regime ("Regime") is a horizontal property regime organized pursuant to the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et seq.*

3. Defendant Holder Properties, Inc. ("Holder") is a corporation organized and existing under the laws of the State of Georgia and is authorized to conduct business in South Carolina.

4. Defendant Adesso/Columbia, LLC is a limited liability company organized and existing under the laws of the State of Georgia and is authorized to conduct business in South Carolina.

5. Defendant John R. Holder is a citizen and resident of the State of Georgia, and at times relevant hereto, transacted business in Richland County as the sole member of Adesso/Columbia, LLC.

6. The Adesso is a mixed-use development comprising 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements.

7. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201.

8. Holder developed the Adesso. On January 14, 2008, Defendant Adesso/Columbia, LLC established the Regime by recording the Adesso Master Deed in the Office of the Register of Deeds for Richland County, in Book 1392 at Page 855 ("Master Deed"). The Master Deed is

attached as Exhibit 3 to the Adesso Defendants' Memorandum in Support of their Motion for Summary Judgment and is incorporated, in full, in this Order by reference.

9. The Master Deed also created the Association to, among other things, manage the Regime's affairs, prescribe rules for the use of the Regime's General Common Elements, and to "maintain[], repair[], and replace[] all of the General and Limited Common Elements...".

10. Each owner of a unit at the Adesso is a member of the Regime and the Association, and he or she is subject to the Master Deed, Bylaws, and other governing documents of the Association.

11. The Association, acting through its Board of Directors ("Board"), possesses the authority "[t]o make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association."

12. To calculate annual assessments to unit owners, the Master Deed generally requires that each unit owner be assessed an amount for his or her share of the Association's expenses equal to the share of the interest his or her unit bears in relation to the entire undivided interest of the Regime.

13. The Plaintiff's Commercial Units at issue in this case ("Commercial Units") comprise a total 8.54279% interest in the total undivided interest of the Regime.

14. To develop annual assessment budgets for the Adesso, the Master Deed also requires the allocation of residential and commercial assessments as follows:

> "[S]eparate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and <u>vice versa</u>; likewise, costs, expenses, and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units..."

15. The Master Deed identifies certain Limited Common Elements benefitting either Residential and Commercial Units, or solely Commercial Units.

16. Section V(A)(3) of the Master Deed sets forth examples of Limited Common Elements benefitting both Commercial and Residential Units. Such Limited Common elements include, but are not limited to: (1) "Sidewalks, Plantings, and Lighting along Main and Blossom and all appurtenances thereof;" (2) "Trash Chute;" (3) "Trash Compactor;" (4) "Service Elevator;" (5) "Loading Dock and all appurtenances thereof;" (6) Exterior security cameras and all appurtenances thereof;" and (7) "Roof." Additionally, Section V(B) of the Master Deed sets forth examples of General Common Elements benefitting the Adesso as a whole.

17. Further, any budget items for Adesso Common Elements, whether Limited or General, which affect both Residential and Commercial Units are properly chargeable to the owner of the Commercial Units, in proportion to his or her use of such Common Elements.

18. The Adesso budget items for which Plaintiff's Commercial units have been assessed are properly chargeable to Plaintiff's units, and the Adesso Defendants have complied with the terms of the Master Deed in doing so.

19. Pursuant to § V(C)(5) of the Master Deed, "Retail Parking Spaces as identified in Exhibit 'C' [to the Master Deed] shall be Limited Common Elements, limited to the use of the Commercial Unit it/they serve. Such spaces shall be marked with identification information designating the limited use of such...[and]...may not be reassigned and shall remain a Limited Common Element relating to the Commercial Unit."

20. The Fourth Amendment to Master Deed of Adesso Horizontal Property Regime ("Fourth Amendment") was recorded on April 22, 2013 in the Richland County

Register of Deeds Office, in Book 1854 at Page 818. The Fourth Amendment is attached as Exhibit 6 to the Adesso Defendants' Memorandum in Support of their Motion for Summary Judgment and is incorporated in this Order by reference.

21. The Fourth Amendment contravened § V(C)(5) of the Master Deed by reassigning the Retail Parking Spaces—specifically spaces numbered 001-017, 108, 157, and 220-221—either to the use of both Commercial and Residential guests, or as leased spaces to the United States Marine Corps and one Adesso resident.

22. The reassignment of the Retail Parking Spaces also violated the commercial parking requirements established by the governing zoning ordinance, the Adesso Planned Unit Development ("PUD"), as amended by letter of Holder Properties, Inc. dated January 24, 2008 ("January 2008 Amendment"). The January 2008 Amendment is attached as Plaintiff's Exhibit 5 to the Deposition of Rachel Lynn Bailey, City of Columbia Zoning Administrator, and is incorporated in this Order by reference.

23. Per the January 2008 Amendment, the Adesso Commercial Units were required to have a total of at least twenty-six (26) dedicated parking spaces, with nineteen (19) restricted access spaces within the building itself, and seven (7) spaces located along Main and Blossom Streets. The January 2008 Amendment also sets forth a formula to calculate the required number of parking spaces based upon future increases or decreases in the Commercial Units' square footage.

24. The Adesso PUD, as amended, rather than general City of Columbia zoning ordinances, controls the parking requirements for the Adesso.

25. Plaintiff purchased the Adesso Commercial Units on December 5, 2014. He did not purchase the properties from the Adesso Defendants or Holder Defendants; rather, Plaintiff purchased them from Ford Elliott, the current owner at the time.

26. By 2014, Plaintiff—who is a well-educated, board-certified Psychiatrist—possessed significant prior experience with commercial real estate acquisitions, having previously acquired four (4) commercial properties—three of which were acquired for investment purposes.

27. Despite his prior experience, Plaintiff did not personally inspect the Commercial Properties or review any of the recorded documents relating to the Adesso development prior to his purchase. Further, Plaintiff did not actually visit the Adesso Commercial Units until late 2016 or early 2017—between two and three years after his purchase of the units.

28. Neither Plaintiff nor his hired professional communicated with the Adesso Defendants with regard to Plaintiff's acquisition of the Commercial Units, and the Adesso Defendants made no statements or other representations to Plaintiff in connection therewith.

29. On March 4, 2015, Plaintiff was notified by a representative of Holder—which provided property management services to the Association until May, 2016—that a lottery would be held among the Adesso owners to determine leasing rights for three of the Adesso Commercial Parking Spaces. Plaintiff was informed that such rights would be sold to the highest bidder.

30. The Adesso Master Deed specifically prohibits the leasing of the Commercial Parking Spaces in this manner.

31. Around March of 2015, one of Plaintiff's tenants, the United States Marine Corps ("Marines"), notified Plaintiff of insufficient parking and of their intent to vacate their leased recruiting center space in one of Plaintiff's Commercial Units if Plaintiff was not able to secure parking for them.

32. Despite being made aware of the Marines' complaints regarding parking, as well as being required to lease back Commercial Parking Spaces almost immediately after he took ownership of the Commercial Units, Plaintiff took no action to investigate the parking requirements of the Adesso Master Deed or the Adesso PUD until 2017.

33. Further, Plaintiff has paid assessments to the Association since the date he purchased the commercial units, and he took no action to investigate any potential claims relating to the charging of assessments until 2017.

34. In June, 2018, the Adesso Defendants changed the signage for, or otherwise restricted access to, 21 parking spaces within the Adesso, to limit the spaces designated for the use of the Commercial Units to "retail use only," to bring the allocation of Commercial Parking Spaces into compliance with Section V of the Master Deed.

35. In addition to the 21 parking spaces within the Adesso, there is sufficient on-street parking within 400 feet of the Adesso to serve Plaintiff's Commercial Units, such that the parking spaces available for the use of Plaintiff's units also comply with the Adesso PUD, which is the applicable City of Columbia Zoning Ordinance.

36. Plaintiff took no action to investigate his potential claims until 2017.

37. Plaintiff did not file this action until February 14, 2019.

38. Plaintiff has agreed to withdraw his South Carolina Unfair Trade Practices (SCUTP) claim as to the Adesso Defendants.

Based upon the foregoing, the undersigned finds and concludes as follows:

CONCLUSIONS OF LAW

39. This Court has proper jurisdiction over the parties to this action and the claims herein asserted.

40. Venue is proper in Richland County.

41. The Adesso Defendants have not breached the Master Deed.

42. The Adesso Defendants have complied with the provisions of the Adesso Master Deed in charging assessments to Plaintiff's Commercial Units.

43. The allocation of Adesso Retail Parking Spaces limited to the use of Plaintiff's Commercial Units complies with the Master Deed.

44. Further, the allocation of Adesso Retail Parking Spaces available for the use of Plaintiff's Commercial Units complies with the requirements of the Adesso PUD, which is the controlling City of Columbia Zoning Ordinance.

45. By as early as December, 2014, at the time Plaintiff purchased the Commercial Units, Plaintiff knew or should have known of the existence of his claims regarding the allocation of parking spaces at the Adesso and the charging of assessments. At the time of purchase, information regarding parking-related conditions and charging of assessments, about which Plaintiff complains, were matters of public record.

46. Further, by as late as March, 2015, Plaintiff knew or should have known of his parking-related claims because Plaintiff possessed actual knowledge regarding matters of Commercial parking allocation, raised by both Holder and the Marines, which conflicted with Section V of the Master Deed.

47. Plaintiff's claims, if any, regarding the allocation of parking spaces at the Adesso and the charging of assessments to his Commercial Units accrued as early as December, 2014, and by no later than March, 2015.

48. Pursuant to the discovery rule, as articulated by the Court of Appeals in *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (S.C. Ct. App. 1998) and the Supreme Court in *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520, 443 S.E.2d 537 (1994)), the undersigned finds that a person of common knowledge and experience, through the

exercise of reasonable diligence, would have discovered Plaintiff's parking-related claims and assessment claims by as early as December, 2014, and in any event, no later than March, 2015. Prior to and at the time he purchased the Commercial Units, Plaintiff had ample opportunity to investigate the public record—which would have disclosed the state of Commercial parking allocation at the Adesso and the method by which assessments would be charged to Plaintiff's Commercial Units—had he chosen to do so.

49. A person of common knowledge and experience, through the exercise of reasonable diligence under the facts of this case, would have investigated any matters potentially affecting Plaintiff's Commercial Units prior to purchasing them—including the publicly-available: (1) Adesso Master Deed; (2) amendments to the Master Deed; (4) other Adesso governing documents; and (5) Adesso PUD and other City of Columbia Zoning documents.

50. Plaintiff made no attempts to investigate the matters underlying his claims until 2017, and Plaintiff did not file this action February 14, 2019.

51. The doctrines of equitable estoppel and equitable tolling are inapplicable to this case because Plaintiff has failed to produce sufficient evidence that the Adesso Defendants made any false representations to Plaintiff. Further, Plaintiff knew or had the means to know the truth as to the facts in question by no later than March, 2015, and Plaintiff could not have justifiably relied on representations, if any, made by Defendants.

52. Pursuant to S.C. Code Ann. § 15-3-530, Plaintiff was required to bring his claims for Negligence/Gross Negligence, Breach of Master Deed, Declaratory Judgment, Injunctive Relief, Negligent Misrepresentation, and Constructive Fraud by 2018, or his claims were forever barred.

53. Pursuant to S.C. Code Ann. § 39-5-150, Plaintiff was required to bring an action to enforce his Unfair Trade Practices Act claim by 2018, or his claim was forever barred. Additionally, even if such claim were not time-barred, Plaintiff has withdrawn it as to the Adesso Defendants.

54. Therefore, pursuant to Rule 56, SCRCP, and upon consideration of all the evidence and arguments presented by the parties, the undersigned finds there is no genuine issue of material fact that Plaintiff had at least constructive knowledge of the existence of his potential parking-and-assessment-related claims by no later than March, 2015, and further, that Plaintiff failed to bring an action to enforce his claims by 2018. Therefore, the Adesso Defendants are entitled to judgment as a matter of law that Plaintiff's claims are time-barred by the above statutes of limitations.

55. In addition to the grounds set forth in Paragraph 54, the undersigned also finds there is no genuine issue of material fact that: (1) the allocation of Commercial parking spaces at the Adesso complies with both the Master Deed and the Adesso PUD, which is the applicable City of Columbia Zoning ordinance; and (2) the Adesso Defendants have complied with the terms of the Master Deed in charging assessments to Plaintiff's Commercial Units. Further, because the Commercial parking allocation and charging of assessments comply with the Adesso Master Deed and City of Columbia Zoning requirements, Plaintiff has failed to demonstrate facts and circumstances warranting an injunction in this action. *See Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Therefore, the Adesso Defendants are entitled to judgment as a matter of law regarding Plaintiff's claims for Declaratory Judgment, Injunctive Relief, Breach of Master Deed, and Negligence/Gross Negligence.

Therefore, it is ORDERED, ADJUDGED, AND DECREEED that:

A. The Adesso Defendants' Motion for Summary Judgment is hereby GRANTED as to all claims asserted in this action by Plaintiff.

B. This action, and all claims asserted herein against the Adesso Defendants, are hereby **dismissed with prejudice**.

IT IS SO ORDERED.

____
The Honorable DeAndrea G. Benjamin
Fifth Judicial Circuit

[Signature Page to Follow]

6639372v.1

Richland Common Pleas

Case Caption: Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al

Case Number: 2019CP4000919

Type: Order/Summary Judgment

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2021-09-21 12:33:21 page 12 of 12

T. Jeff Goodwyn, Jr.*†
Charles G. Blackburn**
Jefferson D. Turnipseed**

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October 11, 2023

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: ***Emad Tadros, M.D. v. Holder Properties, Inc.***
Appellate Case No.: 2022-001434
Our File No.: 4000-0007

Dear Ms. Kitchings:

Enclosed for filing, please find the original and one copy of a Motion to Remand for new Hearing to Create Transcript and Record from Hearing in regards to the above referenced matter. Please file the original and return a filed copy of same to me in the self-addressed stamped envelope provided. Also, enclosed is a check in the amount of $50.00 representing the filing fees.

As evidenced in the Proof of Service, I have served all interested parties with a copy of this Motion.

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,

Charles G. Blackburn

CGB/msb
Enclosures
cc: Douglas W. Mackelcan, Esquire
Skyler C. Wilson, Esquire
Emad Tadros

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended..Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association ,...Respondents.

MOTION TO REMAND FOR NEW HEARING TO CREATE TRANSCRIPT AND RECORD FROM HEARING

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Appellant hereby moves to remand the case to the trial court to allow for the creation of a transcript of record, given the approximately fifty-four (54) inaudible and noise interference contained in a sixty-nine (69) page transcript to be used in the appeal.

Factual Background

This case involves ADESSO ("ADESSO") condominiums and commercial units located at 601 Main Street, Columbia, South Carolina 29201. ADESSO is constructed over a two-level parking garage with four (4) commercial units owned by Appellant on the first ground floor. The commercial units are part of ADESSO Horizontal Property Regime and members of ADESSO Homeowners' Association.

Respondent ADESSO/Columbia, LLC is identified, in the Master Deed, as the Grantor and sole owner of the land and improvements of ADESSO and responsible for compliance with the Master Deed. The Master Deed set forth many contractual obligations including, but not limited to, complying with all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over ADESSO. The Master Deed assigns a certain number of parking spaces to the exclusive use of the commercial units owned by Appellant and the City of Columbia Planning and Zoning Development requires that a certain number of parking spaces be allocated for the exclusive use of the commercial units.

The Respondents have converted, changed and altered the commercial unit parking spaces so that the parking spaces do not comply, and have never complied, with the Master Deed or the City of Columbia Planning and Zoning Development's ordinances. Respondents knew its actions in failing to comply with the City of Columbia Planning and Zoning Department parking space requirements for the commercial units violated the City of Columbia Planning and Zoning Department parking space requirements from the beginning of construction of the project. Respondents did not take necessary actions to correct the violations of the zoning requirements set forth in the Master Deed and amendments to the Master Deed.

The Respondents, through deception and misrepresentation, created a parking situation for the commercial units that did not comply with the City of Columbia Planning and Zoning Department's ordinances. Appellant was not aware of the zoning violations when he purchased the commercial units in December 2014 and relied upon the false and misleading information, he received regarding the parking spaces during his purchase of the commercial units all to his detriment.

Furthermore, ADESSO HOA, required Appellant to pay monthly rent for certain parking spaces that should have been allocated to the commercial units I addition to costs, expenses, and budget items that should have been specifically attributable only to the residential units and not to the commercial units in violation of the Master Deed. Respondents refused to provide Appellant with a clear explanation, itemization or quantification of annual budgets applicable to the costs for maintenance of the common areas of the commercial units compared to that of the residential condominiums and refused to provide Appellant with an accounting of the monthly fees charged to the commercial units when Appellant purchased the commercial units in 2014.

In 2017 ADESSO HOA filed suit against the original developer and several subcontractors concerning construction defects existing at ADESSO. The Plaintiff was not aware of the lawsuit, even though Plaintiff was named as a Plaintiff, and refused to execute the Settlement Agreements and Releases as part of the 2017 settlement. However, the HOA's attorney assured the Appellant that the execution of the Settlement Agreements and Releases would not preclude Appellant from pursuing the claims he had against the developer and contractor.

The Respondents moved for summary judgment and were heard on January 7, 2021. The circuit court waited a year before ruling on, and granting, the Respondents' motions for summary judgment. The transcript from the January 7, 2021, hearing, took almost a year to be produced and contains approximately fifty-four (54) "inaudible" and "noise interference" notations in the transcript from the hearing. The numerous inaudible and noise interference make a meaningful record of the hearing impossible.

Argument

The transcript of the case does not provide the court with the ability to conduct a meaningful appellant review given the 50+ sections that are inaudible.

"The transcript in the case should provide the court with the ability to conduct a meaningful appellate review." *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (S.C. Ct. App. 2007). Appellant argued at the hearing that the provisions of the Master Deed were violated in several ways, including the parking allocated to the commercial units and the Release and Settlement Agreement. The transcript of the Respondents' Motion for Summary Judgment hearing makes a clear record of Appellant's argument in opposition to Respondents' Motion for Summary Judgment impossible.

For example, Appellant was threatened to execute the Release and Settlement under duress. This portion of the transcript is completely missing as being noted as "inaudible, sound cut out." Appellant, in addition to the execution of the Release and Settlement Agreement, the Appellant complained of the regime fees charged to Appellant's commercial units. There are approximately five (5) "inaudibles" in three (3) pages of the transcript concerning the regime fees charged to the Appellant. The regime fees charged to the Appellant is one of the grounds for the Appellant's appeal and a clear record of the hearing is meaningful and necessary for the Court to understand Appellant's full argument on appeal. "A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." *Adams v. H.R. Allen, Inc., CNA, and Zurich North America*, 397 S.C. 652, 726 S.E.2d 9 (S.C. App. 2012).

Because the transcript has significant omissions and inaudible sections, the court cannot conduct a meaningful appellate review. As a result, the court should remand the case to the Circuit Court for another summary judgment hearing.

Respectfully submitted,

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Attorneys for Appellant

Columbia, South Carolina
October 11, 2023

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2019-CP-40-00919

Emad Tadros, M.D.,...Appellant,

v.

Holder Properties, Inc.,..Respondents.

PROOF OF SERVICE

I certify that I have served a copy of a **Motion to Remand for New Hearing to Create Transcript and Record from Hearing** on Douglas W. Mackelcan, Esquire, and Skylar C. Wilson, Esquire, counselors for the Respondents at the address below via email and by depositing a copy of same in the United States Mail, postage prepaid, on October 11, 2023.

Douglas W. Mackelcan, Esquire
Skyler C. Wilson, Esquire
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
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(Signature on next page)

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Columbia, South Carolina
October 11, 2023

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REPLY TO SC OFFICE

October 20, 2023

VIA EMAIL and REGULAR MAIL
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Appellant,
v. ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Respondents
Appellate Case No. 2022-001434

Dear Ms. Kitchings:

Enclosed for filing, please find *Respondents' Return to Appellant's Motion to Remand* in this case, together with Exhibits 1-7 and Proof of Service. By copy of this letter, we are providing the Return to Appellant's counsel. If anything further is required from these Respondents at this time, please advise.

Sincerely,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:tjr
Enclosures
cc:
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via email only w/enclosures

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge
Case No.: 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association are the Respondents.

Respondents' Return to Appellant's Motion to Remand

Respondents, by and through their undersigned attorneys, file this Return to Appellant's Motion to Remand the Appeal, which they received via email on October 11, 2023.

Introduction

Appellant's motion for remand—filed exactly one year after he filed his notice of appeal and on the day his initial brief and designation of matter were due—is unsupported in fact and law, and appears to be an attempt to further delay this Court's review of his appeal despite this Court's leniency towards Appellant's prior violations of its rules and orders. The appeal has languished long enough, and this Court should deny Appellant's motion, and dismiss the appeal for failure to comply with the rules and this Court's orders. In the alternative, this Court should require Appellant to prosecute the appeal with the current transcript, but require Appellant demonstrate good cause why the appeal should continue.

Background

Appellant Emad Tadros owns two commercial properties comprising four individual units within the Adesso Columbia mixed-use condominium development (Adesso) that he purchased in December 2014. He filed suit in February 2019 against Respondents—the Homeowners' Association, Horizontal Property Regime, and the former owner of Adesso—challenging the parking allocation for his units and arguing Respondents violated the Adesso Master Deed and City of Columbia zoning restrictions. Appellant also asserted the Homeowners' Association improperly charged him costs and expenses under the Master Deed, and had made misrepresentations to him. ***See* Ex. 1 (Amend. Cmplt.).**

Respondents moved for summary judgment, arguing Appellant's claims were time-barred by the three-year statute of limitations. The evidence gathered in discovery showed that Appellant knew or should have known of a potential claim related to the parking allocation, and the Master Deed and zoning requirements, when he purchased his units in 2014 or in 2015 when he was made aware of additional information on the parking. Respondents also argued that the parking allocation complied with the Master Deed and zoning requirements, and that Appellant was charged in compliance with the Master Deed. ***See* Ex. 2 (MSJ Memo).**

The circuit court agreed with Respondents, granting them summary judgment on September 21, 2021, on the grounds Respondents argued in their motion. ***See* Ex. 3 (Order granting Summary Judgment).** Appellant moved the circuit court to reconsider, which was denied, and then appealed the order granting summary judgment to this Court on October 11, 2022.

Appellant asserts he encountered issues with ordering the hearing transcript for the motion for summary judgment. As the appeal languished and the transcript had not been acquired, Respondents moved to dismiss the appeal. **Ex. 4 (MTD Appeal)**. The Motion to Dismiss, Return, and Reply (incorporated herein by reference) contain the factual background and supporting documents establishing how the appeal has failed to progress despite this Court's leniency towards Appellant with deadlines. Appellant's counsel's communications with the court reporter make clear he was on notice there could be issues with the transcript because it was recorded via WebEx. Appellant received that transcript on August 11, 2023, and certainly knew by that point of issues with the transcript. ***See* Ex. 5 (App. Return to MTD).** This Court denied the Motion to Dismiss and granted Appellant an additional 30 days to file the initial brief and designation of matter. ***See* Ex. 6 (Order Denying MTD).**

Now, precisely one year since Appellant noticed his appeal, he moves to remand the case for another hearing on the motion for summary judgment because the transcript has errors. However, Appellant has not shared that transcript with Respondents' counsel or the Court, and did not file the transcript with the motion to remand. Respondents request this Court deny the motion to remand and dismiss the appeal. In the alternative, Respondents request this Court deny the motion to remand, and require Appellant to proceed with the appeal if he can demonstrate good cause.

Argument

I. Appellant has not met his burden to obtain a remand because he did not file the transcript with his motion and neither the Court nor Respondents can evaluate or respond to the claims there are errors in the transcript.

When the record on appeal has not been filed or when the facts relied on in support of a motion are not in the record, a party filing a motion must file affidavits or other documents in support of their position. Rule 240(c)(3), SCACR. If a moving party fails to perform an act required by Rule 240, the moving party has abandoned the motion. *See* Rule 240(g).

Appellant claims the transcript contains numerous omissions that warrant remanding the case back to the circuit court. The record on appeal has not been filed and the facts upon which Appellant relies to support his motion are outside of anything filed with the Court thus far. As indicated in Respondents' Motion to Dismiss the appeal, Appellant did not copy the Court or opposing counsel on any communications with the court reporter and Appellant has not otherwise produced the transcript. Therefore, Appellant was required to provide the transcript with his motion. Appellant failed to do so. Without the transcript, it is impossible for this Court to evaluate the substance of Appellant's position that the omissions warrant remand. Without the transcript, it is impossible for Respondents' counsel to respond to Appellant's position that the omissions warrant remand. Because the Appellant failed to file the transcript to support his motion, he has failed to comply with Rule 240(c)(3). Pursuant to Rule 240(g), this Court should deem Appellant's failure an abandonment of the motion to remand.

In addition, to the extent Appellant provides the transcript in reply to this return, there is no mechanism in the Appellate Court Rules that would allow Respondents' counsel to file another return to the motion, thereby depriving Respondents' counsel from meaningfully responding to Appellant's arguments. Therefore, if Appellant files the transcript along with his reply, this Court should still find the motion abandoned under Rule 240(g), SCACR.

II. Even if Appellant provided the transcript, Appellant has not established any prejudice or that this Court cannot perform a meaningful review without the transcript.

As a threshold matter, it is unclear what relief Appellant is seeking. Appellant asserts in his introduction the appeal should be remanded "to allow for the creation of a transcript of record," but then asks this Court to remand for "another summary judgment hearing."

Case law governing remand due to transcript issues appears to follow a two-step process: (1) a motion to remand to the circuit court to reconstruct the record or transcript, and (2) the Court of Appeals evaluating the reconstructed record to determine if it can perform a meaningful appellate review of the issues without prejudicing the appellant. *See State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273 (Ct. App. 2007) (remanding to the circuit court to reconstruct the record of the three-day trial and, when returned, the Court of Appeals evaluated the reconstructed record to determine if it could perform a meaningful review of the issues without prejudicing the appellant).

To the extent Appellant requests a new summary judgment hearing, that would be improper at this stage because the appellate court would need a reconstructed record before ordering a new hearing. To the extent Appellant requests a remand to the circuit court to reconstruct the record, a remand is not necessary because this Court can evaluate the claims on appeal without the transcript or with the transcript as is.

An appellant has the burden of presenting the court with an adequate record. *Harkins v. Greenville Cnty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000). A judgment should not be reversed for insubstantial errors not affecting the result. *Jensen v. Conrad*, 292 S.C. 169, 172, 355 S.E.2d 291, 293 (Ct. App. 1987).

The inability to prepare a complete transcript does not necessarily present a ground for reversal. *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273 (Ct. App. 2007). To warrant reversal, or remand for reconstruction, the appellant must identify specific claims the court would not be able to effectively review. *Id.* at 325, 644 S.E.2d at 273. When the omissions or errors in the record do not prejudice the appellant, remand for reconstruction or a new trial is not necessary. *See Sweat v. Crawford*, 292 S.C. 324, 327, 356 S.E.2d 147, 149 (Ct. App. 1987) (finding omissions from the record did not prejudice appellant because the evidence included in the record sufficiently supported the findings of fact made by the referee); *Koon v. State*, 358 S.C. 359, 368, 595 S.E.2d 456, 460-61 (2004) (refusing to remand for a reconstruction hearing based on *Brady* violation because the petitioner did not provide specifics on how counsel was ineffective or whether the issue was preserved for review), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Furthermore, the party requesting remand must establish prejudice. *See Ladson*, 373 S.C. at 325, 644 S.E.2d at 273 ("We believe our supreme court would follow a rule requiring the party challenging a reconstructed record on appeal to demonstrate prejudice flowing from an inadequate record."). After reconstructing a record, to warrant a new trial the appellant must establish the court cannot perform a meaningful appellate review because of an incomplete transcript. *Id.*, 644 S.E.2d at 274. In fact, most cases around the country dealing with transcript issues on appeal involve only a portion of the transcript missing and meaningful appellate review is still possible without prejudicing the parties. *Id.* at 326-27, 644 S.E.2d at 274.

For example, in *Ladson* a new trial was warranted because the appellate court could not perform a meaningful review of the issues without the record and it would prejudice Ladson. *Id.* at 325-26, 644 S.E.2d at 274. There was no transcript of the proceedings for a three-day criminal trial resulting in 25-year non-parolable sentence. *Id.* On remand to reconstruct the trial record, the parties and judge attempted to recall the testimony from all of the witnesses and arguments, but could really only provide conclusory summaries. *Id.* Prejudice existed because the reconstructed record was conclusory, with references to generic motions and objections, but no context for the motions or objections. *Id.* at 327. There was a significant list of unknowns from the reconstructed record, including disputes about whether the defendant testified, expert qualifications, chain of custody, and the identity of witnesses and the substance of their testimony. *Id.* at 322-23, 644 S.E.2d at 272. Because the reconstructed record lacked completeness and reliability, the court reversed and remanded for a new trial. *Id.* at 327-28, 644 S.E.2d at 275.

In contrast to *Ladson*, the Court of Appeals found in *Sweat v. Crawford* that omissions in a transcript, consisting of portions that were "inaudible" and missing one witness's testimony, were not prejudicial because the evidence in the record was sufficient to support the underlying court's determination. 292 S.C. at 327, 356 S.E.2d at 149.

Here, Appellant asserts he argued at the hearing that he "was threatened to execute the Release and Settlement under duress" and that argument is missing from the transcript. ***See* Mot. for Remand, at 4.** Appellant asserts he also argued at the hearing over the regime fees charged to his commercial units, but there are five "inaudibles" in the three pages of that argument. ***Id.*** These are the only two specific issues that Appellant argues warrant remand. First, Appellant's complaints that his arguments are not contained in full in the transcript are inconsequential to the appeal. It is well settled that arguments of counsel, and statements of fact contained in arguments of counsel not supported in the record, are not evidence and will not be considered. *See, e.g.*, *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105 n.8, 590 S.E.2d 511, 513 n.8 (Ct. App. 2003). Thus, the absence or incompleteness of the arguments in the transcript are inconsequential to the appeal.

Second, the arguments allegedly missing from the transcript are briefed in Appellant's Memorandum in Opposition to Summary Judgment with exhibits. ***See* Ex. 7 at 5 (Pltf's Memo. In Opp. to MSJ)** (outlining the facts regarding the settlement agreement with emails and an affidavit); ***id.* at 12-13** (arguing against Respondents' position on legality of assessments charged to Appellant, referencing an affidavit in support). Therefore, this Court can review the substance of Appellant's arguments without the complete transcript and without prejudicing Appellant.

Further, the circumstances of cases that find a new hearing is necessary based on a missing transcript are significantly different from the circumstances of this case. *Ladson* involved a missing transcript from a three-day criminal trial with many factual disputes, where the reconstructed record contained conclusory statements that were inaccurate. The other case Appellant cites, *Adams v. H.R. Allen, Inc.*, is also distinguishable. In *Adams*, the court of appeals remanded the case for a new hearing based on due process violations because, when the single commissioner in a workers' compensation case attempted to reconstruct a previous hearing he allowed the employee to testify anew but would not allow the employer to ask any questions different from the prior hearing or ask follow up questions. Unlike *Ladson*, this case does not involve a criminal appeal where the entire record of a three-day trial is missing and the reconstructed record is woefully insufficient. Unlike *Adams*, there are no procedural due process concerns in this case. This matter is more similar to *Sweatt*, in that the omissions in the transcript are inconsequential because there is sufficient information in the expected record on appeal permitting this Court to meaningfully review the circuit court's decision without prejudicing Appellant. Accordingly, no remand is necessary.

Last, even if it was necessary to remand to reconstruct the transcript, the remand would have to go to the judge who held the summary judgment hearing and that would be impossible. Judge DeAndrea Benjamin heard the motion for summary judgment. *See* **Ex. 3 (Order granting MSJ)**. Judge Benjamin is now a federal appellate court judge with the Fourth Circuit Court of Appeals. Undoubtedly, this Court would not be able to remand the case to a judge who is no longer within the state judiciary.

III. Appellant's initial brief and designation of matter are late and, therefore, this Court should enter an order dismissing the appeal and permit Appellant an opportunity to reinstate the appeal if Rule 260, SCACR, is met.

"Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260." Rule 208(a)(4), SCACR; *see Roberts v. LaConey*, 375 S.C. 97, 100, 650 S.E.2d 474, 475 (2007) (dismissing exceptions to special referee's report and recommendations because the appellant failed to file a record or brief under Rule 208(a)(4) as instructed).

"Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition." Rule 240(b), SCACR. A motion to dismiss does stay the time limits, but the Appellate Court Rules treat motions to remand separately. *See* Rule 240(b), SCACR (stating a motion to dismiss an appeal stays time limits); Rule 240(a), SCACR (noting Rule 240 governs all motions, including “motions to remand or dismiss”). To reinstate an appeal, the moving party must show good cause. Rule 260(a), SCACR.

In ruling on Respondents’ prior motion to dismiss, this Court ordered Appellant to file his initial brief and designation of matter by October 11, 2023. ***See* Ex. 6 (Order on MTD)**. The due date was exactly two months after Appellant received the transcript. Pursuant to Rule 208, Appellant’s initial brief and designation of matter, as ordered by this Court, was due October 11. On October 11, however, Appellant filed the present motion to remand. Appellant did not request a stay or additional time to file the initial brief in the event the Court denies his motion. Pursuant to Rule 240(a) & (b), the motion to remand did not stay the deadline by which Appellant had to file his initial brief and designation of matter. Thus, Appellant’s initial brief and designation of matter is late under Rule 208, SCACR, and this Court (or the clerk) should dismiss the appeal under Rule 208(a)(4) and give Appellant an opportunity to reinstate the appeal if he meets the requirement of Rule 260 to show good cause.

Conclusion

This Court should find Appellant abandoned his motion to remand because he did not include the necessary documents or information (i.e. the transcript) to support his claims the omissions in the transcript warrant remand. Even if the transcript contains the errors Appellant claims, remanding for reconstruction is not necessary because the expected record on appeal will contain the motions, responses, exhibits, and orders that have the information needed for this Court to meaningfully review the issues. Ultimately, this Court should discontinue its leniency towards Appellant, dismiss the appeal because Appellant has repeatedly failed to abide by the Appellate Court Rules and did not file his initial brief and designation of matter on time, and reinstate the appeal only if Appellant meets Rule 260’s requirement of good cause.

Respectfully submitted,

This 20th day of October, 2023.

s/Skyler C. Wilson
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SKYLER C. WILSON
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Attorneys for Respondents Adesso Horizontal Property Regime, and Adesso Homeowners' Association

The South Carolina Court of Appeals

Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Appellant

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association are the Respondents.

Appellate Case No. 2022-001434

ORDER

Appellant filed a notice of appeal from an order granting Respondents' motion for summary judgment. Appellant has now moved for a new hearing on the motion for summary judgment because the sixty-nine-page transcript contains fifty-four instances of "inaudible" or "noise interference," making meaningful appellate review impossible. Respondents filed a return, opposing the motion. We deny Appellant's motion to remand for a new hearing, but we hold the appeal in abeyance and remand this appeal to the circuit court for reconstruction of the record.

Counsel for Appellant shall contact opposing counsel and the Honorable Jocelyn Newman, the Chief Administrative Judge for Common Pleas for the Fifth Circuit, within 10 days of the date of this order. Judge Newman shall schedule such hearings as she deems appropriate. If Judge Newman determines reconstruction is not possible, she shall immediately notify this court and all parties. If the record is reconstructed, Appellant's counsel shall immediately notify this court so that the appropriate appellate timelines can be set.

Appellant's counsel shall provide an update to the clerk of this court no later than 30 days from the date of this order, and every 30 days thereafter until Judge Newman resolves this matter, or the appeal will be dismissed.

Bettie H. Verdin
FOR THE COURT

Columbia, South Carolina

FILED
Nov 06 2023

cc:
Thomas Jefferson Goodwyn, Jr., Esquire
Charles Grant Blackburn, Esquire
Douglas Walker MacKelcan, III, Esquire
Skyler Cole Wilson, Esquire

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REPLY TO SC OFFICE

July 10, 2024

VIA EMAIL
Karen Kocsis, CCR
Court Reporter
kkocsis@sccourts.org

Court Reporting Section Management
transcripts@sccourts.org

Re: Emad Tadros v. ADESSO/Columbia, LLC, et al.
Case No.: 2019-CP-40-00919
Appellate Case No. 2022-001434

Dear Ms. Kocsis and Court Reporting Section Management:

My firm and I represent Defendants Adesso Horizontal Property Regime and Adesso Homeowners Association in the above-referenced case, and we are writing to submit a challenge to the accuracy of a hearing transcript.

This case involves an appeal of the circuit court's order granting Defendants summary judgment. In the process of perfecting the appeal, Plaintiff/Appellant ordered the transcript of the hearing and that transcript had notations indicating the sound was inaudible and could not be transcribed. Plaintiff/Appellant brought this to the Court of Appeal's attention, who remanded the case to Judge Jocelyn Newman for reconstruction of the record. Judge Newman has yet to hold a hearing on the reconstruction. We are now attempting to do what we can to reconstruct the record, which involves trying to cure the issues in the transcript. The order for reconstruction and the transcript are attached to the email to which this letter is attached. The details for the hearing, transcript and challenge are below.

The transcript is of a January 7, 2021 summary judgment hearing before Judge Benjamin in the above-referenced case. The transcript was prepared by Ms. Kocsis from a WebEx recording, presumably on March 13, 2023, but the certificate is unclear. Charles G. Blackburn represents Plaintiff/Appellant Emad Tadros and was present at the hearing. It is our understanding Mr. Blackburn did not receive the transcript until August 2023.

The transcript contains numerous instances of "inaudible", "sound cut out", and "noise interference." The nature of this challenge is to have the court reporter review the audio file and attempt to cure those instances that could not be transcribed. If they cannot be cured, however, we ask that the court reporter indicate or estimate the length of time that the audio was inaudible, cut out, or there was interference. The specific areas of inquiry are as follows:

	Page:Line	Speaker	Reason for non-transcription
1	3:14	Bell	(inaudible)
2	3:16	“”	(Loud background noise interference.)
3	4:5	“”	(inaudible)
4	6:24	“”	(inaudible)
5	9:9	“”	(Noise static.)
6	16:18	“”	(inaudible, sound cut out)
7	18:17	“”	(inaudible)
8	19:3	“”	(inaudible)
9	20:16	Blackburn	(inaudible)
10	23:4	“”	(inaudible)
11	24:2	“”	(Inaudible)
12	24:16	“”	(inaudible)
13	26:19	“”	(inaudible)
14	27:17	“”	(inaudible)
15	28:3-4	“”	(inaudible, sound cut out)
16	30:8	“”	(inaudible)
17	32:16	“”	(inaudible)
18	36:17	???	Speaker is Mr. Blackburn, not Masciale?
19	36:22	“”	(inaudible)
20	37:10	“”	(inaudible)
21	37:22	“”	(inaudible)
22	38:8	“”	(inaudible)
23	38:22-23	Masciale	(inaudible, sound cut out)
24	38:24	“”	(inaudible)
25	39:9	“”	(inaudible)
26	41:17	“”	(inaudible)
27	42:3	“”	(inaudible)
28	42:13	“”	(inaudible)
29	42:25	“”	(inaudible)
30	43:12	“”	(inaudible)
31	43:25	“”	(inaudible)
32	44:12	“”	(inaudible)
33	44:24	“”	(inaudible)
34	45:12	“”	(inaudible)
35	48:8	“”	(inaudible)
36	48:21	“”	(inaudible)
37	49:10	“”	(inaudible)
38	49:23	“”	(inaudible)
39	51:18	“”	(inaudible)
40	52:16	“”	(inaudible)
41	53:3	“”	(Inaudible)
42	53:15	“”	(inaudible)
43	53:24	“”	(inaudible)

44	55:24	“”	(inaudible)
45	56:25	“”	(inaudible)
46	58:3	Blackburn	(inaudible)
47	58:11	“”	(inaudible)
48	58:15	“”	(inaudible)
49	59:11	“”	(inaudible)
50	63:7	“”	(inaudible)
51	64:2	“”	(inaudible)
52	66:4	“”	(inaudible)
53	67:21	Masciale	(inaudible)
54	68:8	“”	(inaudible)
55	69:3	Blackburn	(inaudible)

Please let us know if there are any questions regarding the challenge and if you require any further information from us. Opposing counsel are copied on this communication and email.

Sincerely,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:tjr
Enclosures: *Order for reconstruction of the record; Hearing Transcript*
cc:
T. Jeff Goodwyn, Jr., Esq. **via email only w/enclosures**
Charles G. Blackburn, Esq.
jgoodwyn@goodwynlaw.com; cblackburn@goodwynlaw.com
Counsel for Appellant

From:	Holmes, Tammie
To:	Mackelcan, Douglas W.; Wilson, Skyler C.
Cc:	jgoodwyn@goodwynlaw.com; Charles Blackburn; Karen Kocsis
Subject:	Emad Tadros v. ADESSO Columbia, LLC response.docx
Date:	Wednesday, October 9, 2024 12:28:41 PM
Attachments:	Emad Tadros v. ADESSO Columbia, LLC response.docx

Good afternoon.

Attached please find the formal results from the transcript challenge that was submitted by Mr. Mackelcan.

Ms. Kocsis will amend the transcript and send each of you the amended page 36 for your copy of the transcript.
Please let me know if you have any questions.

Thank you,

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

SUPREME COURT OF SOUTH CAROLINA
NIL ULTRA

South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

October 9, 2024

Douglas W. Mackelcan
40 Calhoun Street, Ste 400
Charleston, SC 29401
Via email dmackelcan@csvl.law
swilson@csvl.law

Re: Transcript Challenge

Good afternoon Mr. Mackelcan.

I have received your transcript challenge and reviewed the transcript in question. Please see my findings below regarding your challenge.

The references to inaudible on pages 3 through 69 are correctly stated in the transcript. The audio (which seemed to be a cellular phone) for the attorneys did not have appropriate service at times. Parts of the conversation would cut out and you could not hear the complete statements.

The reference that was made regarding page 36, line 17 in that Mr. Blackburn was the speaker and not Mr. Masciale. That is correct in that Mr. Blackburn was the speaker and the transcript needs be amended to show that Mr. Blackburn was the speaker and not Mr. Masciale.

My review of the transcript you challenged stands as is with no changes except the one referenced above on page 36, line 17. I will instruct Ms. Karen Kocsis to amend the transcript to reflect the change in speaker. The transcript reflects what was said in court on January 7, 2021.

Resectfully,

Tammie M. Holmes
Court Reporter Manager

cc: T. Jeff Goodwyn jgoodwyn@goodwynlaw.com
Charles G. Blackburn cblackburn@goodwynlaw.com
Karen Kocsis kkocsis86@gmail.com

Wilson, Skyler C.

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Monday, September 9, 2024 5:25 PM
To: Holmes, Tammie
Cc: kkocsis86@gmail.com
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

Thank you, Tammie!

COPELAND STAIR VALZ & LOVELL LLP

Skyler C. Wilson
Partner
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From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Monday, September 9, 2024 9:51 AM
To: Wilson, Skyler C. <swilson@csvl.law>
Cc: kkocsis86@gmail.com
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

Good morning Skyler,

This was a WebEx hearing that was completely remote. It sounds like a few of the attorneys were on cell phones in their cars. There were several times (almost all of the inaudible) where the cell just cut out for a second or two. The court reporter kept reminding them to mute themselves if they were not talking. Even the court reporter was remote and working from her home for this hearing.

Thank you,

Tammie M. Holmes
Court Reporter Manager
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1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Friday, September 6, 2024 5:02 PM
To: Holmes, Tammie <tholmes@sccourts.org>
Cc: kkocsis86@gmail.com
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

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

Tammie,

Thanks for the update! That is a shame. I've never been involved in a challenge before so I am a bit unfamiliar with what might be produced if the inaudibles can't be cured. Would it be possible to indicate how long the inaudible lasts even if only a second or two? I am also curious if this was a remote hearing recorded via WebEx or an in-person hearing recorded via Webex.

I appreciate you all taking a second look at it. Have a great weekend.

Best regards,

Skyler

COPELAND STAIR VALZ & LOVELL LLP

Skyler C. Wilson
Partner
d: 843.266.8221 | f: 843.727.2995
swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Friday, September 6, 2024 2:52 PM
To: Wilson, Skyler C. <swilson@csvl.law>
Cc: kkocsis86@gmail.com
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

Good afternoon Skyler.

I am over halfway complete with the transcript challenge and the inaudible remarks are really inaudible. A lot of the times the phone sounds like it cuts out while the attorneys are speaking. It is not looking good as far as getting any of these inaudibles populates.

Thank you,

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Wednesday, September 4, 2024 11:40 AM
To: Holmes, Tammie <tholmes@sccourts.org>
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

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

Good morning Tammie,

Hope you are doing well. I figured I'd follow up with you on the status of the challenge to see where it stood, if you can let me know. Every month one of the parties must submit an update to the Court of Appeals on the status of the case. The other party provided an update just now, so it prompted me to follow back up with you.

Please let me know if you need anything further from us on the challenge.

Best regards,

Skyler

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From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Friday, August 9, 2024 10:00 AM
To: Wilson, Skyler C. <swilson@csvl.law>
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

Thank you Skyler. I will look at this and get with Karen regarding the challenge.

Thank you,

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Friday, August 9, 2024 9:05 AM
To: Holmes, Tammie <tholmes@sccourts.org>
Cc: Kocsis, Karen <kkocsis@sccourts.org>; LeBlanc, Jeffrey R. <jleblanc@sccourts.org>; Rewt, Teri J. <trewt@csvl.law>
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

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

Good morning Tammie,

We sent the attached email to Karen and transcripts@sccourts.org with our challenge. We did not copy you on it, but I thought we were just supposed to submit to the "transcripts" email. Apologies if that is an oversight on our part. Please let me know if you need anything further from us to process the challenge.

Best regards,

Skyler

CSVL
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swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Friday, August 9, 2024 9:01 AM
To: Wilson, Skyler C. <swilson@csvl.law>
Cc: Kocsis, Karen <kkocsis@sccourts.org>; LeBlanc, Jeffrey R. <jleblanc@sccourts.org>
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

Good morning Skyler.

I received your e-mail of July 10, 2024 where you said that you were going to following the instructions sent and send something. I have not received anything else regarding the challenge.

Thank you.

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Thursday, August 8, 2024 11:34 AM
To: Holmes, Tammie <tholmes@sccourts.org>
Cc: Kocsis, Karen <kkocsis@sccourts.org>; LeBlanc, Jeffrey R. <jleblanc@sccourts.org>
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

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

Hi Tammie,

I hope you all are staying dry and safe with Debby rolling through the state. They raised the alarms here in Charleston but it ended up being generally alright.

I figured I would follow up with you about the challenge we submitted on July 10. I wasn't sure if there was a timeframe for when to expect a response. Let me know if you all need anything further from me.

Best regards,

Skyler

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swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Wednesday, July 10, 2024 4:45 PM
To: Wilson, Skyler C. <swilson@csvl.law>
Cc: Kocsis, Karen <kkocsis@sccourts.org>; LeBlanc, Jeffrey R. <jleblanc@sccourts.org>
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

You don't often get email from tholmes@sccourts.org. Learn why this is important

Thank you Skyler.

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Wednesday, July 10, 2024 10:20 AM
To: Holmes, Tammie <tholmes@sccourts.org>
Cc: Kocsis, Karen <kkocsis@sccourts.org>; LeBlanc, Jeffrey R. <jleblanc@sccourts.org>
Subject: RE: Tadros v. Adesso, Case No.: 2019-CP-40-00919

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

Tammie,

Thank you so much for the guidance. We will submit something as instructed below.

Best regards,

Skyler

Skyler C. Wilson
Partner
d: 843.266.8221 | f: 843.727.2995
swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

COPELAND STAIR VALZ & LOVELL LLP

From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Wednesday, July 10, 2024 9:13 AM
To: Wilson, Skyler C. <swilson@csvl.law>
Cc: Kocsis, Karen <kkocsis@sccourts.org>; LeBlanc, Jeffrey R. <jleblanc@sccourts.org>
Subject: FW: Tadros v. Adesso, Case No.: 2019-CP-40-00919

Good morning Skyler.

The South Carolina Judicial Branch does not release audio or video of court hearings, as the official record is the written transcript. If you would like to challenge the transcript, please see the procedure below.

A. Challenge Procedures

When a party has concerns about the accuracy of a transcript, the party must submit his or her challenge in writing to the court reporter and copy the Court Reporting Section Management at transcripts@sccourts.org with the word CHALLENGE in the subject line. The challenge may also be submitted by postal mail to: SC Court Administration, Transcript Challenge, 1220 Senate St. Suite 200, Columbia, SC 29201. The written challenge must include the following:

1. Their name and contact information;

2. Date of the court proceeding;

3. Case name and caption;

4. Court reporter name;

5. Name and contact information of opposing counsel/parties; and

6. A list of items that specifically identifies what the party is disputing, such as page and line numbers. It is not acceptable to say the whole transcript is being challenged.

Upon receipt of a challenge to the accuracy of a transcript, the Court Reporting Section Management will respond to the challenger in writing and copy the court reporter and the other parties. The Court Reporting Section Management will then review the record and submit their findings to the challenger, the court reporter, and the other parties. Any inaccuracies will be corrected and the pages forwarded to the challenger at no cost.

Thank you,

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

From: LeBlanc, Jeffrey R. <jleblanc@sccourts.org>
Sent: Monday, July 8, 2024 2:40 PM
To: Holmes, Tammie <tholmes@sccourts.org>
Subject: FW: Tadros v. Adesso, Case No.: 2019-CP-40-00919

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Monday, July 8, 2024 11:01 AM
To: Kocsis, Karen <kkocsis@sccourts.org>
Cc: Rewt, Teri J. <trewt@csvl.law>
Subject: Tadros v. Adesso, Case No.: 2019-CP-40-00919

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

Good morning Karen,

I am reaching out about the above-referenced case because you prepared a transcript of a summary judgment hearing based on a Webex recording (see attached email). Due to interference in the recording, the transcript has a few instances of "inaudible" or "interference."

Would it be possible for you to release a copy of the audio recording to the parties so we can listen to it or have another person take a look? The interferences in the recording have become an issue. If I need a court order, please let me know.

Best regards,

Skyler

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VALZ & LOVELL
LLP

Skyler C. Wilson
Partner
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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.

Summary of Instances of "Inaudible" in Transcript of 9.21.21 Hearing

	Page:Line	Speaker	Reason	Content	Argument
1	3:14	Court	Inaudible		
2	3:16	Court	Loud background noise interference		
3	4:5	Bell	Inaudible		Mr. Bell Argument for Holder MSJ
4	6:24	Bell	Inaudible		
5	9:9	Court	Noise Static		
6	16:18	Bell	Inaudible, sound cut out		
7	18:17	Bell	Inaudible		
8	19:3	Bell	Inaudible		
9	20:16	Blackburn	Inaudible	Arguing Mr. Bell left out in his argument the 2017 settlement agreement.	Mr. Blackburn Argument opposing Holder MSJ
10	23:4	Blackburn	Inaudible	Referencing section 7 of the Master Deed about common elements, including parking.	
11	24:2	Blackburn	Inaudible	Mentioning commercial tenants involved in the lawsuit.	
12	24:16	Blackburn	Inaudible	Mentioning the Master Deed has an arbitration provision.	
13	26:19	Blackburn	Inaudible	Arguing with reference to the settlement agreement what Dr. Tadros said, referring to Dr. Tadros' affidavit.	
14	27:17	Blackburn	Inaudible	Arguing that the building is in the same condition as before the settlement.	
15	28:3-4	Blackburn	Inaudible, sound cut out	Arguing Mr. Bell left out an argument referencing the fourth amended complaint in the other action.	
16	30:8	Blackburn	Inaudible	Arguing Mr. Bell and Mr. Masciale failed to acknowledge the settlement agreement arguments.	

Summary of Instances of "Inaudible" in Transcript of 9.21.21 Hearing

17	32:16	Blackburn	Inaudible	Arguing that there were signs on the property that the City took down in 2018 to be retail only parking, referencing deposition testimony.	
18	36:22	*Blackburn	Inaudible	Noting the attorney in a past action did not invoke arbitration under the Master Deed.	
19	37:10	*Blackburn	Inaudible	Arguing the settlement agreement should be voided because it breached the master deed's arbitration provision.	
20	37:22	*Blackburn	Inaudible	Mentioning Attorney Smith had Dr. Tadros sign the settlement and did not bring up arbitration.	
21	38:8	*Blackburn	Inaudible	Making arguments based on *Williams Brice* case and arbitration enforcement.	
22	38:22-23	Masciale	Inaudible, sound cut out		Masciale Argument for Adesso MSJ
23	38:24	Masciale	Inaudible		
24	39:9	Masciale	Inaudible		
25	41:17	Masciale	Inaudible		
26	42:3	Masciale	Inaudible		
27	42:13	Masciale	Inaudible		
28	42:25	Masciale	Inaudible		
29	43:12	Masciale	Inaudible		
30	43:25	Masciale	Inaudible		
31	44:12	Masciale	Inaudible		
32	44:24	Masciale	Inaudible		
33	45:12	Masciale	Inaudible		
34	48:8	Masciale	Inaudible		
35	48:21	Masciale	Inaudible		
36	49:10	Masciale	Inaudible		
37	49:23	Masciale	Inaudible		
38	51:18	Masciale	Inaudible		

Summary of Instances of "Inaudible" in Transcript of 9.21.21 Hearing

39	52:16	Masciale	Inaudible		
40	53:3	Masciale	Inaudible		
41	53:15	Masciale	Inaudible		
42	53:24	Masciale	Inaudible		
43	55:24	Masciale	Inaudible		
44	56:25	Masciale	Inaudible		
45	58:3	Blackburn	Inaudible	Extension on subpoena to Mike Munson.	Blackburn Argument Opposing Adesso MSJ
46	58:11	Blackburn	Inaudible	Arguing Munson's affidavit improper	
47	58:15	Blackburn	Inaudible	Reference to Memo in Opposition, Doc 8, page 13, in relation to the HOA assessment, stating "It's all in my memorandum."	
48	59:11	Blackburn	Inaudible	Arguing Dr. Tadros raises issues about the prices he was charged under the master deed.	
49	63:7	Blackburn	Inaudible	Noting PUD documents not recorded and mentioning constructive knowledge.	
50	64:2	Blackburn	Inaudible	Arguing equitable estoppel based on signage and complaints to HOA.	
51	66:4	Blackburn	Inaudible	Arguing you can't waive arbitration and the settlement agreement required a non-jury trial.	
52	67:21	Masciale	Inaudible		Masciale Argument for Adesso MSJ
53	68:8	Masciale	Inaudible		
54	69:3	Blackburn	Inaudible	Arguing summary judgment should be denied because there are issues of fact for a jury.	Blackburn Argument Opposing Adesso MSJ

*Transcript incorrectly identifies speaker as Mr. Masciale

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	) CASE NO.: 2019-CP-40-00919
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,	) **HOA'S MEMORANDUM ON RECONSTRUCTION**
Plaintiff,	)
vs.	)
Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,	)
Defendants.	)

Defendants ADESSO Horizontal Property Regime and ADESSO Homeowners' Association (collectively "HOA") submit this Memorandum for the Court's consideration on reconstructing the record.

Introduction

This lawsuit involves Plaintiff's claims that HOA violated its Master Deed and City of Columbia zoning ordinances in allocating parking for his commercial units, and violated the Master Deed in assessing Plaintiff for costs, expenses, and other budget items for the maintenance and upkeep of common areas. After a hearing, then-circuit court Judge Benjamin granted HOA's motion for summary judgment. Plaintiff appealed and, upon receiving the transcript of the hearing, asked the Court of Appeals for a new summary judgment hearing because of errors in the transcript. The Court of Appeals declined Plaintiff's request, but remanded the matter to the circuit court "for reconstruction of the record."

Relevant Background

The Adesso is a mixed-use development comprised of 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201. The Master Deed for Adesso established the Adesso Horizontal Property Regime and created the Association to, among other things, manage the Regime's affairs, and prescribe rules for the use of the Regime's General Common Elements.

Plaintiff purchased his Commercial Units at Adesso on December 5, 2014, becoming a member of the Association. After becoming an owner, Plaintiff took issue with how parking spaces were allocated to Commercial Units. Plaintiff also believed he was not assessed costs appropriately under the Master Deed. As a result, Plaintiff filed suit against HOA and others on February 14, 2019.

After discovery, HOA moved for summary judgment, arguing that Plaintiff's claims were barred by the applicable statutes of limitation, the parking issue was moot, and Plaintiff was being assessed appropriately under the Master Deed. **Ex. 1 (Motion for Summary Judgment).** Plaintiff contested the motion for summary judgment. **Ex. 2 (Pltf's Memo. In Opp. to MSJ).** Judge DeAndrea G. Benjamin held a virtual hearing on the motion on January 7, 2021. **Ex. 3 (Transcript)**. Present at the hearing were Attorney Mike Masciale on behalf of Adesso, Attorney Charles Blackburn for Plaintiff Emad Tadros, and Attorney Kevin Bell for Holder Properties. **Ex. 3, at p. 1**. Judge Benjamin granted HOA summary judgment on September 21, 2021. **Ex. 4 (9.21.21 Order)**. Plaintiff moved to reconsider, which was denied on September 19, 2022.

Appeal

Plaintiff filed his Notice of Appeal on October 11, 2022. Plaintiff ordered the transcript of the summary judgment hearing, but ran into issues acquiring it. Plaintiff eventually acquired the transcript, which contained numerous instances of "inaudible" or other notes that reflected the court reporter's inability to transcribe arguments from both counsel. Accordingly, Plaintiff moved the Court of Appeals to remand the case for a new hearing on summary judgment on October 11, 2023. **Ex. 5 (Motion to Remand).** HOA contested the motion to remand. **Ex. 6 (Adesso Opp. to Remand).**

The Court of Appeals declined to remand for a new summary judgment hearing. On November 6, 2023, however, the Court of Appeals held the appeal in abeyance and remanded it "to the circuit court for reconstruction of the record." **Ex. 7 (11.6.23 Order).** The Order further stated:

> Counsel for [Plaintiff] shall contact opposing counsel and the Honorable Jocelyn Newman, the Chief Administrative Judge for Common Pleas for the Fifth Circuit, within 10 days of the date of this order. Judge Newman shall schedule such hearings as she deems appropriate. If Judge Newman determines reconstruction is not possible, she shall immediately notify this court and all parties.

Ex. 7.

Prior to a hearing on reconstruction, on July 10, 2024, Adesso's counsel submitted a transcript challenge to court administration to review the audio file for the summary judgment hearing and determine if any of the inaudible instances could be transcribed. **Ex. 6 (Ltr. to Court Reporter re Transcript Challenge).** Court administration reviewed the audio file for the summary judgment hearing and issued its findings on the challenge on October 9, 2024. **Ex. 9 (Transcript Challenge Results).** Mrs. Tammie Holmes with court administration found that the "references to inaudible . . . are correctly stated in the transcript. The audio (which seemed to be a cellular phone) for the attorneys did not have appropriate service at times. Parts of the conversation would cut out and you could not hear the complete statements." **Ex. 9.** Mrs. Holmes also noted that there was a misstatement in the transcript attributing the speaker on Page 36, line 17 as Mr. Masciale when it was actually Mr. Blackburn. **Ex. 9.**

During the challenge process, Adesso's counsel communicated with Mrs. Holmes about the progress on the challenge. **Ex. 10 (Emails with Court Admin.).** Mrs. Holmes indicated that the hearing was entirely remote, and that almost all of the "inaudible" notations occurred "where the cell just cut out for a second or two." **Ex. 10.** Although court administration indicated they would send a corrected transcript, they have not sent one to Adesso's counsel.

After a status conference with Judge Coble, it was decided counsel for Adesso would move the court to begin the process for reconstruction. A hearing was set for April 16, 2025, before the Honorable Judge Newman. Adesso submits this Memorandum on its position on reconstruction.

Argument

I. This Court should find that there is sufficient information in the transcript and filings to resolve any concern over the inaudible portions of the transcript, such that the record is "reconstructed."

A remand for reconstruction of the transcript follows a two-step process: (1) a motion to remand to the circuit court to reconstruct the record or transcript; and (2) the Court of Appeals evaluating the reconstructed record to determine if it can perform a meaningful appellate review of the issues without prejudicing the appellant. *See State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273 (Ct. App. 2007) (remanding to the circuit court to reconstruct the record of the three-day trial and, when returned, the Court of Appeals evaluated the reconstructed record to determine if it could perform a meaningful review of the issues without prejudicing the appellant).

An appellant has the burden of presenting the court with an adequate record. *Harkins v. Greenville Cnty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000). The appellant must identify specific claims the court would not be able to effectively review. *Ladson*, 373 S.C. at 325, 644 S.E.2d at 273. When the omissions or errors in the record do not prejudice the appellant, reconstruction is not necessary. *See, e.g.*, *Sweat v. Crawford*, 292 S.C. 324, 327, 356 S.E.2d 147, 149 (Ct. App. 1987) (finding omissions from the record did not prejudice appellant because the evidence included in the record sufficiently supported the findings of fact made by the referee); *Koon v. State*, 358 S.C. 359, 368, 595 S.E.2d 456, 460-61 (2004) (refusing to remand for a reconstruction hearing based on *Brady* violation because the petitioner did not provide specifics on how counsel was ineffective or whether the issue was preserved for review), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

During the reconstruction hearing, the parties and the court attempt to reconstruct the record based on the filings, pleadings, and recollections of the parties. For example, *Ladson* involved a three-day criminal trial in which the defendant was convicted of first-degree burglary, but on appeal there was no transcript of the trial. The court of appeals remanded to the circuit court to reconstruct the trial transcript. The judge and counsel for the parties convened a hearing during which the parties submitted affidavits and discussed witness testimony, experts, evidence, objections and motions. *Id.* at 322-23, 644 S.E.2d at 272. At the conclusion of the hearing, the trial court issued an "Order for the Record on Appeal." *Id.* at 323, 644 S.E.2d at 272. When examining the record, the court looks to see if the substance of the motions and evidence is present. *Id.* at 327, 644 S.E.2d at 274. The courts are particularly concerned with gaps in the record contributing to preservation issues. *See id.* at 326, 644 S.E.2d at 274 (noting the record must permit meaningful review "in light of our preservation rules").

Other cases involving reconstruction of a transcript have considered affidavits of witnesses and counsel to resolve deficiencies in the record. *See, e.g., Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 382, 418 S.E.2d 319, 320-21(Ct. App. 1992) (accepting affidavit of party to resolve deficiencies in the record of an evidentiary hearing where portions of the tape recordings were unable to be transcribed).

The court on reconstruction may also review the other areas of the record to determine if there is sufficient information to complete the gaps in the transcript. *See, e.g., Sweat*, 292 S.C. at

327, 356 S.E.2d at 149 (explaining how the evidence in the record other than the transcript with portions "inaudible" and missing a witness's testimony were sufficient to support the underlying court's determination).

Here, this Court should find that the inaudible portions of the transcript contain information that is immediately apparent from the context of the other arguments in the transcript or from other material in the record.

First, this Court must discern the content and extent of the inaudible portions of the record. A summary of the inaudible portions is attached as **Exhibit 11.** The transcript contains 54 instances of "inaudible" in total. However, the relevant portions to this hearing are far fewer. The transcript is of counsel for the parties arguing two motions—Holder's Motion for Summary Judgment and Adesso's Motion for Summary Judgment, argued in that order. The appeal concerns only the circuit court granting Adesso summary judgment. The portion of the transcript where Plaintiff's counsel and Adesso's counsel argue Adesso's Motion for Summary Judgment contains 33 instances of inaudible. Further, of those 33, only 8 are within Plaintiff's counsel's argument against Adesso's Motion for Summary Judgment. As a result of the transcript challenge and discussing with court administration, the length of time for each "inaudible" is only one to two seconds. Thus, the extent of the information missing from the record is, on its face, only seconds of Plaintiff's counsel's argument.

Also, the character of the allegedly missing content is important to consider. The missing portions contain words or phrases of attorney argument, not evidence or witness testimony. "Arguments made by counsel are not evidence." *S.C. Dept. of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered." (quoting *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933)). Because the inaudible portions of the transcript are arguments made by counsel, which are not evidence, the character of that missing information is insubstantial to the appeal.

Second, this Court must consider what Plaintiff claims is missing from the transcript and compare those claims to what is actually in the transcript and in other relevant records. In his Motion to Remand before the Court of Appeals, Plaintiff asserted he argued at the summary judgment hearing that he "was threatened to execute the Release and Settlement under duress" and that argument is missing from the transcript. ***See*** **Ex. 5, at 4.** Plaintiff asserts he also argued at the hearing over the regime fees charged to his commercial units, but there are five "inaudibles" in the three pages of that argument. ***Id.***

The arguments Plaintiff claims are missing from the transcript are contained in the transcript or other areas of the relevant filings. Plaintiff made arguments on duress at the summary judgment hearing. **Ex. 3 (30:25 – 32:7).** Moreover, Plaintiff's Memorandum in Opposition to Summary Judgment contained detailed arguments and references to submitted affidavits on "undue influence" and the settlement agreement. ***See*** **Ex. 2, p. 5**. Similar to the duress arguments, the transcript makes clear Plaintiff's counsel was able to make his regime fees argument. **Ex. 3 (57:19 – 60:4).** In his supporting memo, Plaintiff also argued against Adesso's position on the legality of the assessments Plaintiff was charged, referencing the affidavit filed in support of that argument. **Ex. 2, pp. 12-13**. In addition, the content of the "inaudible" portions of the transcript is apparent from the surrounding portions of the transcript, such that there is no concern for argument preservation issues. For example, the "inaudible" at page 58, lines 3 and 11 are in the context of disputing an affidavit from Mike Munson. The other "inaudible" sections in Plaintiff's arguments against Adesso's Motion for Summary Judgment are equally capable of being discerned from surrounding areas of the transcript. ***See*** **Ex. 11.**

Because the extent and content of the missing information in the transcript designated "inaudible" is only seconds of attorney argument that is apparent from the surrounding areas of the transcript and represented in other filings relevant to the summary judgment motion and order, this Court should find that the record is "reconstructed" from the other filings and transcript, entering an Order for the Record on Appeal.

This 15th day of April, 2025.

COPELAND, STAIR, VALZ & LOVELL, LLP

By: s/Skyler C. Wilson
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Attorneys for Respondents Adesso Horizontal Property Regime, and Adesso Homeowners' Association

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CASE NO.: 2019-CP-40-00919

Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,

Plaintiff,

vs.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,

Defendants.

DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants Adesso Horizontal Property Regime ("Regime") and Adesso Homeowners' Association ("Association") (collectively, "HOA Defendants"), by and through their undersigned counsel, and respectfully submit this Memorandum of Law in Support of HOA Defendants' Motion for Summary Judgment, filed December 28, 2020 ("HOA Defendants' Motion for Summary Judgment"). In support of HOA Defendants' Motion for Summary Judgment, HOA Defendants would respectfully show this Court as follows:

INTRODUCTION

This is a frivolous action in which Plaintiff alleges HOA Defendants' allocation of parking spaces serving Plaintiff's two (2) commercial properties ("Commercial Units")—comprising a total of four (4) individual units—within the Adesso Columbia mixed-use condominium development (the "Adesso") violates City of Columbia zoning ordinances and the Master Deed of Adesso Horizontal Property Regime ("Master Deed"). Plaintiff further alleges that HOA Defendants have failed to comply with the Master Deed in assessing Plaintiff's Commercial Units amounts for certain costs, expenses, and budget items for the maintenance and upkeep of the Adesso.

Plaintiff purchased the Commercial Units in 2014, at which time all of the parking-related conditions about which Plaintiff complains were matters of public record and/or open and obvious at the Adesso site. However, as will be discussed below, Plaintiff purchased the properties without having first completed the necessary due diligence involved in a large commercial property transaction—including failing to personally visit and inspect the properties, failing to review any title or zoning documents affecting the properties, and failing to hire competent representation with regard to the transaction. More than four (4) years have elapsed since Plaintiff's purchase of the Adesso commercial units, and now, due to recent economic downturns and poor performance by some of Plaintiff's business tenants, Plaintiff seeks to recover from the Defendants named in this lawsuit for his own poor investment choices.

RELEVANT FACTUAL BACKGROUND

The Adesso is a mixed-use development comprising 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements. Ex. 1 (Pltf.'s Fourth Amend. Compl.) at ¶ 6. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201. *Id.* Defendant Holder Properties, Inc. ("Holder") developed the Adesso. Ex. 2 (Pltf.'s Amend. Compl.) at ¶ 11. On January 14, 2008, Defendant ADESSO/Columbia, LLC—as then-owner of the Adesso—recorded the Master Deed in the Office of the Register of Deeds for Richland County, in Book 1392 at Page 855. *Id.* at ¶ 2. The Master Deed established the Adesso Horizontal Property Regime and created the Association to, among other things, manage the Regime's affairs, prescribe rules for the use of the Regime's General Common Elements, Ex. 3 (Adesso Master Deed), p. 20

at § XV, and to "maintain[], repair[], and replace[] all of the General and Limited Common Elements…". *Id.*, pp. 23-24, § XXII.

Moreover, in furtherance of the above powers, the Association, acting through its Board of Directors ("Board"), possesses the authority "[t]o make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association." Ex. 4 (Adesso Bylaws), p. 6 at § 4(j)(i). Generally, in calculating annual assessments to unit owners, each owner is assessed an amount for his or her share of the Association's expenses equal to the share of the interest his or her unit bears in relation to the entire undivided interest of the Regime. Ex. 5 (Affidavit of C. Michael Munson) at ¶¶ 9-10. The Plaintiff's Commercial Units comprise a total 8.54279% interest in the total undivided interest of the Regime. *Id.* at ¶ 11. However, of particular relevance to this action, in the development of annual assessment budgets for the Adesso, the Master Deed also requires the following:

> "[S]eparate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and <u>vice versa</u>; likewise, costs, expenses, and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units…"

Ex. 3, p.12 at § V(A)(3)(iii).

Additionally, the Master Deed identifies certain Limited Common Elements benefitting either Residential and Commercial Units, or solely Commercial Units. Ex. 5 at ¶¶ 14-15. Pursuant to § V(C)(5) of the Master Deed, "Retail Parking Spaces as identified in Exhibit 'C' [to the Master Deed] shall be Limited Common Elements, limited to the use of the Commercial Unit it/they serve. Such spaces shall be marked with identification information designating the limited use of such…[and]…may not be reassigned and shall remain a Limited Common Element relating to the Commercial Unit." Ex. 3, p. 14 at § V(C)(5). Notwithstanding this provision, ADESSO/Columbia, LLC, with the consent and joinder of the required number of unit owners, recorded a certain Fourth Amendment to Master Deed of Adesso Horizontal Property Regime ("Fourth Amendment") on April 22, 2013 in the Richland County Register of Deeds Office, in Book 1854 at Page 818, attached hereto as Exhibit 6. On April 23, 2013, Holder—which by virtue of its status as developer, had controlled the Association and its Board—relinquished control of the Association to the condominium owners. Ex. 1 at ¶ 85.

In contravention of the Master Deed, the Fourth Amendment reassigned the Retail Parking Spaces—specifically spaces numbered 001-017, 108, 157, and 220-221—either to the use of both Commercial and Residential guests, or as leased spaces to the United States Marine Corps and one Adesso resident. Ex. 6 at pp. 6-7. Further, the reassignment of the Retail Parking Spaces violated the commercial parking requirements established by the governing zoning ordinance, the Adesso Planned Unit Development ("PUD"), as amended by letter of Holder Properties, Inc. dated January 24, 2008 ("January 2008 Amendment"). Ex. 7 (Deposition of Rachel Lynn Bailey), Pltf.'s Ex. 5. Per the January 2008 Amendment, the Adesso Commercial Units were required to have a total of at least twenty-six (26) dedicated parking spaces, with nineteen (19) restricted access spaces within the building itself, and seven (7) spaces located along Main and Blossom Streets. Ex. 7 at 51:1-12. The January 2008 Amendment also provided a formula to calculate the required number of parking spaces based upon future increases or decreases in the Commercial Units' square footage. *Id.* at 128:25-129:15. The Adesso PUD, as amended, rather than general City of Columbia zoning ordinances controls the parking requirements for the Adesso. *Id.* at 98: 24-25, 99: 1-12.

Plaintiff purchased the Adesso Commercial Units on December 5, 2014. Ex. 2 at ¶ 16. He did not purchase the properties from Defendants or Holder; rather, Plaintiff purchased them from Ford Elliott, the current owner at the time. Ex. 8 (Deposition of Emad Tadros, M.D.) at 169: 17-19. Plaintiff is a sophisticated and well-educated physician who holds a board certification in psychiatry from the American Board of Psychiatry and Neurology and has been in private practice since 1993. *Id.* at 9: 12-15. Additionally, by 2014, Plaintiff possessed significant prior experience with commercial real estate acquisitions, having previously acquired four (4) commercial properties—three of which were acquired for investment purposes. *Id.* at 13:23-15:14.

However, despite his prior experience, Plaintiff did not personally inspect the Commercial Properties or review any of the recorded documents relating to the Adesso development prior to his purchase. *Id.* at 66:21-67:1; 89:24-90:7. Plaintiff did not actually visit the Adesso Commercial Units until late 2016 or early 2017—between two and three years after his purchase of the units. *Id.* at 229:19-230:2. Plaintiff did not personally communicate with HOA Defendants at all prior to purchasing the Commercial Units. *Id.* at 125: 17-25, 127: 15-19. Moreover, Plaintiff's hired professional advisor did not communicate with HOA Defendants with regard to the transaction. *Id.* at 126: 3-5; 127: 2-5, 7-11; 129: 17-25[1].

On March 4, 2015, Plaintiff was notified by a representative of Holder—which provided property management services to the Association until May, 2016—that a lottery would be held among the Adesso owners to determine leasing rights for three of the Adesso Commercial Parking Spaces. *Id.* at 90:12-19. Plaintiff was informed that such rights would be sold to the highest bidder. *Id.* The Adesso Master Deed specifically prohibits the leasing of the Commercial Parking Spaces in this manner. *Id.* at 90: 20-22. Plaintiff further testified that had he known this at the time, he would not have agreed to lease the parking spaces. *Id.* at 88: 10-89:17. Additionally, around March of 2015, Plaintiff was notified by one of his tenants—the United States Marine Corps ("Marines")—of issues relating to the allocation of Commercial Parking Spaces at the Adesso. *Id.* at 91:5-92:7. Specifically, the Marines informed Plaintiff of their intent to vacate their

[1] It should be noted that Plaintiff has brought a negligence action against his former advisor regarding Plaintiff's purchase of the Adesso Commercial Units, which is pending in the Richland County Court of Common Please, C/A No. 2017-CP-40-07120.

leased recruiting center space in one of Plaintiff's Commercial Units if Plaintiff was not able to secure parking for them. *Id.*

Despite being made aware of the Marines' complaints regarding parking, as well as being required to lease back Commercial Parking Spaces almost immediately after he took ownership of the Commercial Units, Plaintiff took no action to investigate the parking requirements of the Adesso Master Deed or the Adesso PUD until 2017. *Id.* at 92:8-12. Similarly, Plaintiff paid assessments to the Association for two (2) years, without taking any action to determine or investigate their propriety under the Adesso governing documents until around February 15, 2017. *Id.* at 37:18-24; 130:23-132:3. Around that time, Plaintiff formed the belief that the assessments being charged to his Commercial Units violated the Master Deed, and although Plaintiff has failed to specifically identify what he believes is a proper formula for calculating such assessments, he determined any such formula by speaking with his tenants regarding their usage of the Adesso building. *Id.* at 132:4-7.

Plaintiff did not file this action until February 14, 2019—over four (4) years after his purchase of the Adesso Commercial Units. Plaintiff's Amended Complaint asserts causes of action for: (1) Negligence/Gross Negligence; (2) Breach of Master Deed; (3) Declaratory Judgment; (4) Injunctive relief; (5) Violation of the South Carolina Unfair Trade Practices Act; (6) Negligent Misrepresentation; and (7) Constructive Fraud. As set forth in more detail below, HOA Defendants are entitled to judgment as a matter of law in their favor regarding all of Plaintiff's claims.

PROCEDURAL STANDARD

Pursuant to Rule 56, SCRCP, "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to Interrogatories, and admissions on file, together with affidavits, if any, show 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." In ruling on a Motion for Summary Judgment, the Court must view the facts and inferences therefrom in a light most favorable to the nonmoving party. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449, S.E.2d 495, 496 (Ct. App. 1994).

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading..." Rule 56(e), SCRCP. The nonmoving party must establish specific facts showing there is a genuine issue of material fact for trial, or the court must grant summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 (1986). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Holmes v. East Cooper Community Hosp., Inc.*, 408 S.C. 138, 154, 758 S.E.2d 483, 492 (2014) (internal citation omitted). Nevertheless, when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted. *Id.*

ARGUMENT

I. Plaintiff failed to file this lawsuit within the applicable statute of limitations.

Pursuant to S.C. Code Ann. § 15-3-530(1), "an action upon a contract, obligation, or liability, express or implied," such as Plaintiff's claims asserted herein, must be brought within three (3) years of the date on which the cause of action accrues. The date of accrual for a cause of action is the time in which a plaintiff knew or, by exercise of reasonable diligence, should have known that he/she had a cause of action. The objective test is whether a person of common knowledge and experience should have known the operative facts. *Wilson v. Shannon*, 299 S.C. 512, 386 S.E.2d 257 (Ct. App. 1989). A statute of limitations analysis requires "very little to start the clock." *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998) (citation omitted). Whether the plaintiff understands the full extent of the damages is immaterial to the issue of whether the statute begins to run. *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996). Furthermore, the statute begins to run on the date the plaintiff discovered or should have discovered the injury, not on the date that the plaintiff discovers the identity of the wrongdoer. *Tollison v. B & J Machinery Co., Inc.*, 812 F. Supp. 618 (D.S.C. 1993).

Plaintiff purchased his Commercial Units at the Adesso in December, 2014. Plaintiff's own testimony indicates he failed to exercise even the slightest diligence—much less reasonable diligence, required for statute of limitations purposes—with regard to his purchase. Plaintiff did not personally inspect the Commercial Properties or review any of the recorded documents relating to the Adesso development prior to his purchase. Ex. 8 at 66:21-67:1; 89:24-90:7. Plaintiff made no visits to the Adesso Commercial Units until late 2016 or early 2017—between two and three years after his purchase of the units. *Id.* at 229:19-230:2. Further, Plaintiff did not personally communicate with HOA Defendants at all prior to the consummation of the transaction. *Id.* at 125: 23-25, 127: 15-19.

Plaintiff testified that prior to his purchase in 2014, he was not specifically aware of the Adesso Master Deed or other recorded documents governing the Regime and Association. *Id.* at 27:21-28:1-9, 22-25; 29:1-3. However, Plaintiff did testify that his agent hired to represent him in connection with the transaction may have reviewed the Master Deed prior to the transaction. *Id.* at 28:12-21..

Regardless, it is immaterial whether Plaintiff actually knew about the Adesso Master Deed, its amendments, and any other recorded Adesso governing documents because South Carolina law charges Plaintiff with constructive notice under these facts. "Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts. Therefore, this person is presumed to have actual knowledge of the undisclosed facts." *Spence v. Spence*, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) (citing *Strother v. Lexington County Recreation Com'n*, 332 S.C. 54, 64 n.6, 504 S.E.2d 117, 122 n. 6 (1998)).

Moreover, "constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world." *Id.* As previously discussed, the Adesso Master Deed was recorded on January 14, 2008 in the Office of the Register of Deeds for Richland County, in Book 1392 at Page 855. The January 2008 Amendment to the Adesso PUD, which is also a public record, was submitted to the City of Columbia Zoning Department and approved in 2008. Both documents control the allocation of Commercial Parking Spaces at the Adesso. Additionally, the Fourth Amendment to the Adesso Master Deed was recorded on April 22, 2013 in the Richland County Register of Deeds Office, in Book 1854 at Page 818. Accordingly, the Master Deed, 2008 PUD Amendment, and Fourth Amendment to the Master Deed were all of matters of public record at the time Plaintiff purchased the Commercial Units in December, 2014.

Moreover, Plaintiff testified that he understood the Fourth Amendment's allocation of Commercial Parking Spaces to violate the Master Deed, Ex. 8 at 62:10-63:15, and that he was also able to determine the allocation of spaces at the Adesso violated the 2008 PUD Amendment. *Id.* at 70:16-71:3. By late 2014, Plaintiff had at least constructive knowledge of the existence of the three preceding public records. The recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. *Spence*, 628 S.E.2d 869 at 876 (citing *Epps v. McCallum Realty Co.*, 139 S.C. 481, 499 138 S.E. 297, 303 (1927) ("recording amounts to notice, whether known or unknown, because the means of information are at hand.")). Similarly, had Plaintiff or his agent exercised reasonable diligence in connection with the Commercial Units purchase, they would have examined the publicly-available Adesso PUD documents—including the 2008 PUD Amendment—and would have been able to determine the Fourth Amendment's allocation of Commercial Parking Spaces violated the zoning requirements of the Adesso PUD.

In addition to the public records providing Plaintiff at least constructive notice of his claims, Plaintiff admitted he had actual knowledge in early 2015 of parking-related issues raised by both Holder and the Marines. Ex. 8 at 88: 10-89:17; 90:12-19; 91:5-92:7. Had Plaintiff further investigated these issues, he would have discovered his Commercial Units did not have all the parking spaces to which they were entitled under the Master Deed or the Adesso PUD. Therefore, as early as December, 2014—when Plaintiff purchased the Commercial Units—and as late as early 2015, there was sufficient information, of public record and otherwise, relating to the then-existing improper allocation of Adesso Commercial Parking Spaces to put a person of common knowledge and experience, in the exercise of reasonable diligence, on notice of the existence of Plaintiff's parking-related claims. As such, Plaintiff's claims accrued by early 2015 at the latest, the date by which Plaintiff would have discovered his claims. Despite this, Plaintiff took no action to investigate the parking issues, or to even visit the Adesso, until 2017.

Pursuant to S.C. Code Ann. § 15-3-530(1), Plaintiff was required to bring an action to enforce his parking-related claims by 2018 at the latest. Plaintiff did not file this action until February 14, 2019. Therefore, as they relate to the allocation of Commercial Parking Spaces at the Adesso, Plaintiff's claims are barred by the applicable statute of limitations. HOA Defendants are entitled to judgment as a matter of law on this ground, and the Court should dismiss Plaintiff's claims with prejudice.

II. The current allocation of Commercial Parking Spaces at the Adesso complies with the Master Deed, the Adesso PUD Documents, and applicable City of Columbia Zoning Ordinances.

The Court should also dismiss with prejudice Plaintiff's claims for Declaratory and Injunctive relief, as they relate to Plaintiff's parking claims, because there is no genuine issue of material fact that the number of parking spaces in and around the Adesso available for the Commercial Units' use and/or in their possession has complied with the requirements of the Master Deed, the Adesso PUD Documents, and applicable City of Columbia Zoning Ordinances since 2018. The South Carolina Declaratory Judgment Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citing S.C.Code Ann. § 15–53–20).

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Id.* A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. *Id.* Moreover, "[a] declaratory judgment should not address moot or abstract matters." *Sunset Cay, LLC*, 593 S.E.2d 462 at 466 (*citing Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951)).

Plaintiff seeks a declaratory judgment decreeing he is "entitled to have the number of parking spaces as required by the City of Columbia Planning and Zoning Department ordinances applicable to the exclusive use of the commercial units in the Adesso." Ex. 2 at ¶ 59. However, the parking-related matters underpinning Plaintiff's declaratory judgment claim are moot. There is no genuine issue of material fact that Plaintiff's Commercial Units have the requisite number of parking spaces to which they are entitled under the Adesso PUD and applicable City of Columbia zoning ordinances. In June, 2018, Defendants changed the signage for, or otherwise restricted access to, 21 parking spaces within the Adesso, to limit the spaces designated for the use of the Commercial Units to "retail use only," Ex. 7 at 99: 16-19; 104: 2-20, to bring the allocation of Commercial Parking Spaces into compliance with Section V of the Master Deed.

Moreover, based upon the availability of sufficient additional on-street parking within 400 feet of the Adesso to serve the Commercial Units, the City of Columbia Zoning Administrator has made a final determination that no known zoning violations relating to parking exist at the Adesso. *Id.* at 99: 20-101: 21; 103: 9-104: 25; Pltf.'s Ex. 2 to Dep. of Rachel Lynn Bailey. Therefore, with regard to Plaintiff's parking-related claims, Plaintiff has failed to present a justiciable controversy, and the Court should enter judgment for HOA Defendants and dismiss Plaintiff's Declaratory Judgment claim with prejudice.

Similarly, Plaintiff seeks a permanent injunction "requiring Defendants to take action to allocate and designate the correct number of parking spaces for the exclusive use of the commercial units." Ex. 2 at ¶ 43. However, the facts and circumstances of this case do not warrant the grant of a permanent injunction. "The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (*citing Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct.App.1984)). The remedy of an injunction is a drastic one and ought to be applied with caution. *Id.* (*citing Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950)). Moreover, "[i]n deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant." *Id.*

Here, Plaintiff would not benefit from the grant of an injunction in his favor. As previously established, Defendants took the action Plaintiff desires in June, 2018, such that Plaintiff's Commercial Units have been allocated the correct number of parking spaces pursuant to the Adesso Master Deed, the Adesso PUD documents, and applicable City of Columbia zoning ordinances. Accordingly, because Plaintiff has already obtained the relief he seeks with regard to the allocation of Commercial Parking Spaces at the Adesso, the Court should enter judgment for Defendants and dismiss with prejudice Plaintiff's claim for injunctive relief.

III. The assessments charged to Plaintiff's Commercial Units comply with the requirements set forth by the Adesso Master Deed.

HOA Defendants are entitled to judgment in their favor regarding Plaintiff's assessment-related claims because the costs, expenses, and budget items assessed annually to Plaintiff's Commercial Units comply with the Master Deed's requirements for calculating such assessments. Specifically, the Master Deed states:

> "[S]eparate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; likewise, costs, expenses, and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units..."

Section V(A)(3) of the Master Deed sets forth examples of Limited Common Elements benefitting both Commercial and Residential Units. Such Limited Common elements include, but are not limited to: (1) "Sidewalks, Plantings, and Lighting along Main and Blossom and all appurtenances thereof;" (2) "Trash Chute;" (3) "Trash Compactor;" (4) "Service Elevator;" (5) "Loading Dock and all appurtenances thereof;" (6) Exterior security cameras and all appurtenances thereof;" and (7) "Roof." Ex. 5 at ¶ 14. Additionally, Section V(B) of the Master Deed sets forth examples of General Common Elements benefitting the Adesso as a whole. *Id.* at ¶ 16.

The above list of examples set forth in the Master Deed is not exhaustive. Any budget items for Adesso Common Elements, whether Limited or General, which affect both Residential and Commercial Units are properly chargeable to the owner of the Commercial Units, in proportion to his or her use of such Common Elements. *Id.* at ¶ 17. Pursuant to the Affidavit of C. Michael Munson ("Munson"), a witness with 35 years of property management experience, Plaintiff's share of each cost, expense, or budget item assessed against his Commercial Units for the years 2018-2020 was the result of the proper allocation of such items between the Adesso Commercial and Residential units pursuant to the Master Deed. *Id.* at ¶ 25.

Moreover, Munson states: "[E]ach budget item, cost, or expense contained in the 2018, 2019, and 2020 Budgets, for which there is a charge to the Plaintiff's Commercial Units ("Retail 1 & 2"), is not specifically attributable to the Adesso Residential Units, and is therefore, properly includable in Plaintiff's annual assessment amount." *Id.* at ¶ 26. To date, Plaintiff has relied merely on the allegations in his pleadings, non-specific, hearsay conversations with Commercial Unit tenants, and personal speculation to support his claims regarding the impropriety of assessments charged to his Commercial Units.

Accordingly, Plaintiff has failed to set forth specific facts demonstrating a genuine issue of material fact regarding the subject assessments. Defendants are entitled to judgment as a matter of law that: (1) the assessments charged to Plaintiff's Commercial Units comply with the applicable requirements of the Adesso Master Deed; (2) HOA Defendants have not breached the Master Deed; and (3) HOA Defendants have not breached any duties owed to Plaintiff with regard to the calculation or collection of assessments against his Commercial Units. Therefore, the Court should dismiss Plaintiff's claims, as they relate to assessments against the Commercial Units, with prejudice.

IV. Plaintiff's claims for Negligent Misrepresentation and Constructive Fraud fail because HOA Defendants did not make false representations to Plaintiff in connection with Plaintiff's purchase of the Adesso commercial units.

HOA Defendants are entitled to judgment as a matter of law regarding Plaintiff's claims for Negligent Misrepresentation and Constructive Fraud because there is no genuine issue of material fact that HOA Defendants made no false representations to Plaintiff in connection with his 2014 purchase of the Adesso Commercial Units. "To establish liability for negligent misrepresentation, the plaintiff must show by a preponderance of the evidence," among other elements, that "the defendant made a false representation to the plaintiff." *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769 (2011) (listing the 6 required elements of the tort of Negligent Misrepresentation). Similarly, "[t]o establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct. App. 2002) (*citing Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App.1993)). An essential element of the tort of Constructive Fraud is a false representation. *See id.* at 334, 431 S.E.2d at 509 (*citing Ardis* at 515, 431 S.E.2d at 269) (setting forth the 9 elements required to establish a claim for actual fraud).

Here, HOA Defendants made no representations to Plaintiff in connection with his purchase of the Adesso Commercial Units. Plaintiff has admitted he did not have any communications with HOA Defendants at all prior to the transaction. Ex. 8 at 125: 17-25, 127: 15-19. Moreover, Plaintiff's hired professional advisor also did not communicate with HOA Defendants with regard to the transaction. *Id.* at 126: 3-5; 127: 2-5, 7-11; 129: 17-25. As discussed above, Plaintiff purchased the Commercial Units from Ford Elliott, *Id.* at 169:19, not HOA Defendants. With regard to the allocation of Commercial Parking Spaces, Plaintiff could only testify that he "would assume [Defendants] [were] in compliance [with applicable Columbia Zoning ordinances]..." because "[Plaintiff] can't walk around and ask people questions." *Id.* at 128: 18-19, 24-25. However, Plaintiff and/or his agent never communicated with HOA Defendants to confirm Plaintiff's assumptions. Therefore, Plaintiff has failed to establish that HOA Defendants made any representations—much less false representations—to him in connection with his purchase of the Adesso Commercial Units, and HOA Defendants are entitled to judgment in their favor, as a matter of law, with regard to Plaintiff's Negligent Misrepresentation and Constructive Fraud Claims.

V. Plaintiff has abandoned his South Carolina Unfair Trade Practices Act claim as to HOA Defendants.

Finally, the Court should dismiss with prejudice Plaintiff's South Carolina Unfair Trade Practices Act ("SCUTPA") claim, as to HOA Defendants, because there is no genuine issue of material fact that Plaintiff has abandoned this claim. Plaintiff's Answer to Interrogatory Number 12, contained in Defendants' First Set of Interrogatories to Plaintiff—attached hereto as Exhibit 9— evidences Plaintiff's desire to withdraw his SCUTPA claim as to HOA Defendants. Plaintiff further confirmed his intent to withdraw the claim during his deposition. Ex. 8 at 232:22-233:15. Therefore, the Court should dismiss Plaintiff's SCUTPA claim, as to HOA Defendants, with prejudice.

CONCLUSION

Based on the foregoing, as well as any oral argument made at a future hearing on HOA Defendants' Motion for Summary Judgment, HOA Defendants are entitled to judgment in their favor, as a matter of law, with regard to all claims asserted against them in this action by Plaintiff. HOA Defendants seek an Order granting their Motion for Summary Judgment and dismissing all of Plaintiff's claims with prejudice. HOA Defendants further seek any additional relief this Court deems just and proper, including an award of attorney's fees and costs, pursuant to Rule 54, SCRCP, the *South Carolina Frivolous Civil Proceedings Sanctions Act*, S.C. Code Ann. § 15-36-10, *et seq.*, and any other applicable statutory authority.

[SIGNATURE PAGE TO FOLLOW]

This 5th day of January, 2021.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

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EXHIBIT 3

Adesso Master Deed

EXHIBIT
Adesso
1

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT

Exhibit No. 1
Tadros, Emad M.D.
08/26/2020

MASTER DEED

OF

ADESSO
HORIZONTAL PROPERTY REGIME

Columbia, South Carolina

Owner:

ADESSO/Columbia, LLC

Developer:

Holder Properties, Inc.

Book 1392-855
2008002778, 01/14/2008 11:33:25.250 Master Deed
Fee:$122.00 County Tax:$0.00 State Tax:$0.00
2008002778 Richard W. Rodden Richland County ROD

Prepared by:

Glen Paul Caulk, Esquire

Law Offices of
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Post Office Box 11070
Columbia, South Carolina 29211-1070
(803) 799-2000

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION UNDER THE SOUTH CAROLINA ARBITRATION ACT

Storage Units S15, S16, S17, S18, S19, S20, S21, S22, S23, S24 and S25 are located on the Northern side of the building on Parking Level One.

Storage Units S26, S27, S28, S29, S30, S31, S32 and S33 are located on the Southwest corner of the building on Parking Level Two.

Storage Units S34, S35, S36 and S37 are located on the Northwestern interior corner of the Living Level 1.

Storage Units S38, S39, S40 and S41 are located on the Northwestern interior corner of Living Level 2.

Storage Units S42, S43, S44 and S45 are located on the Northwestern interior corner of Living Level 3.

Storage Units S46, S47, S48 and S49 are located on the Northwestern interior corner of Living Level 4.

Storage Units S50, S51, S52 and S53 are located on the Northwestern interior corner of Living Level 5.

Notwithstanding anything herein to the contrary, and to the fullest extent allowed by law: (i) the Commercial Unit Owner shall not have rights to use certain common elements which are residential in nature such as (for example and not by way of limitation) the swimming pool, fitness center; lobby area; (ii) the value of the Commercial Unit has a corresponding value as set forth in the Table of Values on Exhibit "D"; (iii) separate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; likewise, costs, expenses and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units, for purposes of example but not limitation:

Limited Common Elements that benefit Commercial and Residential Units:

1. Retail/Guest Parking; specifically, parking spaces 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, and 217
2. Sidewalks, Plantings, & Lighting along Main and Blossom and all appurtenances thereof
3. Trash Chute
4. Trash Compactor
5. Service Elevator
6. Loading Dock and all appurtenances thereof
7. Overhead entry and exit devices to the secure parking area and all appurtenances thereof

(8) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety; and

(9) The common area containing such areas as are shown on said plat and shown on Exhibit "C".

C. **Limited Common Elements means and includes:**

(1) Any mailboxes, porches, balconies, patios, entrance or exit ways, and all exterior doors and windows or other fixtures designed to serve one or more but less than all Units, are Limited Common Elements allocated exclusively to such Unit or Units.

(2) If any flue, duct, wire, conduit, load bearing wall, load bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit. Insofar as possible, the Limited Common Elements are shown graphically and described in detail in words and figures in the plat and plot plans.

(3) The air-conditioning units/compressors as indicated in Exhibit "C" shall be Limited Common Elements, limited to the use of the Unit it serves.

(4) Designated Parking Spaces as identified in Exhibit "C" shall be Limited Common Elements, limited to the use of the Unit it/they serve and marked with a corresponding Unit number to identify such. As set forth in Section VII hereinbelow, Designated Parking Spaces may not be assigned and shall remain a Limited Common Element relating to a specific Unit and may not be reassigned, swapped or otherwise transferred to non-owners nor with other Co-Owners.

(5) Retail Parking Spaces as identified in Exhibit "C" shall be Limited Common Elements, limited to the use of the Commercial Unit it/they serve. Such spaces shall be marked with identification information designating the limited use of such. As set forth in Section VII hereinbelow, Retail Parking Spaces may not be re-assigned and shall remain a Limited Common Element relating to the Commercial Unit. The Owner of the Commercial Unit, insofar as it partitions the Commercial Unit for rental to different vendors, stores, restaurants, etc. may designate certain Retail Parking Spaces to each lessee of a portion of the Commercial Unit in the Commercial Unit Owner's reasonable discretion.

The buildings and other Common Elements are in accordance with plans and specifications prepared by Niles Bolton Associates, 3060 Peachtree Road, NW, Suite 600, Atlanta, GA 30305, for ADESSO-Mixed Use Development, 601 Main Street, Columbia, South Carolina, and are incorporated herein by reference.

VI. OWNERSHIP OF UNITS AND APPURTENANT INTEREST IN GENERAL COMMON ELEMENTS

(11) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit; and

(12) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

XIV. RESIDENTIAL USE RESTRICTION APPLICABLE TO RESIDENTIAL UNITS AND COMMERCIAL USE RESTRICTIONS APPLICABLE TO COMMERCIAL UNITS

Each Residential Unit is hereby restricted to residential use by the Co-Owner or Co-Owners thereof, their immediate families, guests, tenants, lessees, licensees, and invitees; provided, however, that so long as the Grantor shall retain any interest in the Regime, it may utilize a Unit or Units of its choice owned or leased by Grantor from time to time, for a sales office, model, or other usage for the purpose of selling or closing the sale of Units in said Regime or outside of the Regime. Grantor may assign this commercial usage right to such other persons or entities as it may choose; provided, however, that when all Units have been sold this right of commercial usage shall immediately cease. No "For Sale" or "For Rent" signs or the like shall be permitted on any General or Limited Common Element or any Unit so as to be visible from any General or Limited Common Element or public street or area, other than any sign placed upon the Unit, Office Unit, sales office or model by Grantor. Nothing herein shall prevent the Association from leasing portions of the Common Elements to management companies for use as an office, model or other purpose connected with the management of the Regime or to grant licenses and easements over the common areas for utilities, roads, and other purposes reasonably necessary or usable for the proper maintenance and operation of the Regime. Any lease or rental agreement concerning the use of the Unit must be in writing and subject to the requirements of the Master Deed and the rules and regulations of the Association.

XV. USE OF GENERAL COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION

The use of General Common Elements by the Co-Owner or Co-Owners of all Units, and all other parties authorized to use the same shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such or which may hereafter be prescribed and established by the Association.

XVI. HORIZONTAL PROPERTY REGIME TO BE USED FOR LAWFUL PURPOSES, RESTRICTION AGAINST NUISANCES, ETC.

A. No immoral, improper, offensive, or unlawful use shall be made of any Unit or of the General and Limited Common Elements, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction over the Regime shall be observed. No Co-Owner of any Unit shall permit a pet or pets which weigh(s) in excess of forty (40) pounds to enter the Property or be kept in his Unit, or on the General or modifications or alterations to General Common Elements or Limited Common Elements) if such modifications or alterations affect the patio fence gates which provide access to the pool for Unit Nos. 102, 104, 110, 112, 116, 118, 126, 128, and 130 without having first received written permission to do so from the South Carolina Department of Health and Environmental Control ("DHEC"). The cost of such alterations, modifications, or improvements shall be assessed as common expenses and collected from the Co-Owners of all Units according to their percentage of ownership of the General and Limited Common Elements.

XXI. MAINTENANCE AND REPAIR BY CO-OWNERS OF UNITS

Every Co-Owner must perform promptly all maintenance and repair work within his Unit which, if omitted, would adversely affect the Regime in its entirety or in a part belonging to other Co-Owners, and is expressly responsible for the damages and liability which his failure to do so may engender. The Co-Owner of each Unit shall be liable and responsible for the maintenance, repair, and replacement, as the case may be, of all air-conditioning and heating equipment located within the Unit, hot water heaters, stoves, refrigerators, garbage disposals, dishwashers, fans, or other appliances or equipment, including any fixtures and/or their connections or receptacles required to provide water, light, power, telephone, television, and sewerage and sanitary service to his Unit and which may now or hereafter be situated in his Unit including toilets, lavatories, sinks, tubs, and showers. Such Co-Owner shall further be responsible and liable for maintenance, repair, and replacement of any and all window glass, glass doors, wall, ceiling and floor surfaces or coverings, painting, decorating and furnishings, and all other accessories which such Co-Owner may desire to place or maintain in his Unit. Whenever the maintenance, repair, and replacement of any items for which the Co-Owner of a Unit is obligated to maintain, repair, or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee (as defined in the Code Section mentioned below) hereinafter designated, shall be used for the purpose of making such maintenance, repair, and replacement. Any cost of maintenance, repair, or replacement, by reason of the applicability of any deductibility provision of such insurance which is not paid by the insurance of the Association, shall be paid by such Co-Owner. Reference is made to S. C. Code Ann. §27-31-250 (1976) as amended, which defines the terms referenced above and is controlling of insurance proceeds use when said Code Section is applicable by its terms.

XXII. MAINTENANCE AND REPAIR OF GENERAL AND LIMITED COMMON ELEMENTS BY THE ASSOCIATION

The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of all of the General and Limited Common Elements, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring, and other facilities located in the General or Limited Common Elements for the furnishing of utility services to the Units and said General and Limited Common Elements. Should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any

General or Limited Common Elements, the Association shall, at its expense, repair such incidental damage. Excepted herefrom, however, are the maintenance of the floor and interior walls of the balcony, balconies or patio attached to the Unit, which shall be maintained by the Co-Owner at his expense. Also excepted therefrom is the air-conditioning compressor which shall be maintained, repaired, and replaced by the Unit Co-Owner, unless such maintenance, repair, replacement is covered by the insurance maintained by the Association. To the extent that a Co-Owner must cross a Common Element area to effectuate such maintenance, repair or replacement, the Co-Owner and his agents and contractors have an easement across any such Common Elements in order to access and perform such work on such air-conditioning compressor.

XXIII. CO-OWNERS' AND ASSOCIATION'S RESPONSIBILITIES REGARDING MOLD AND MILDEW

Mold and/or mildew can grow in any portion of the Regime that is exposed to elevated levels of moisture. The Association and each Co-Owner agree to: (i) regularly inspect the parts of the Regime that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Regime that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Regime that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Regime that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Units' Co-Owners, and each Co-Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Regime that they respectively maintain.

Notwithstanding anything to the contrary herein, Developer shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this Master Deed, and shall not be held liable for any loss or damage caused by the failure of the Association or a Co-Owner to perform their obligations herein.

XXIV. PERSONAL LIABILITY AND RISK OF LOSS OF CO-OWNER AND UNIT AND SEPARATE INSURANCE COVERAGE, ETC.

The Co-Owner of each Unit may, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other personal property belonging to such Co-Owner and may, at his own expense and option, obtain insurance coverage against personal liability or injury to the person or property of another while within such Co-Owner's Unit or upon the General or Limited Common Elements. All such insurance obtained by the Co-Owner of each Unit shall, where available, provide that the insurer waives its right of subrogation as to any claims against other Co-Owners of Units, the Association, and the

Signed, sealed and delivered
in the presence of:

ADESSO/COLUMBIA, LLC, a Georgia limited liability company

By: Drake/Adesso, LLC, a Georgia limited liability company, its manager

By: Holder Adesso, LLC, a Georgia limited liability company, its manager

By: JRH Adesso, LLC, a Georgia limited liability company, its manager

By: JRH, LLC, a Georgia limited liability company, its manager

(SEAL)

__________________ By: __________________

__________________ John R. Holder, its sole member

STATE OF Georgia)
COUNTY OF Cherokee) ACKNOWLEDGMENT

I, Emily D. Nixon, Notary Public for the State of South Carolina, do hereby certify that the above-named John R. Holder as the sole member of JRH, LLC, a Georgia limited liability company, in its capacity as manager for JRH Adesso, LLC, a Georgia limited liability company, in its capacity as manager for Holder Adesso, LLC, a Georgia limited liability company, in its capacity as manager for Drake/Adesso, LLC, a Georgia limited liability company, in its capacity as manager for ADESSO/COLUMBIA, LLC, a Georgia limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

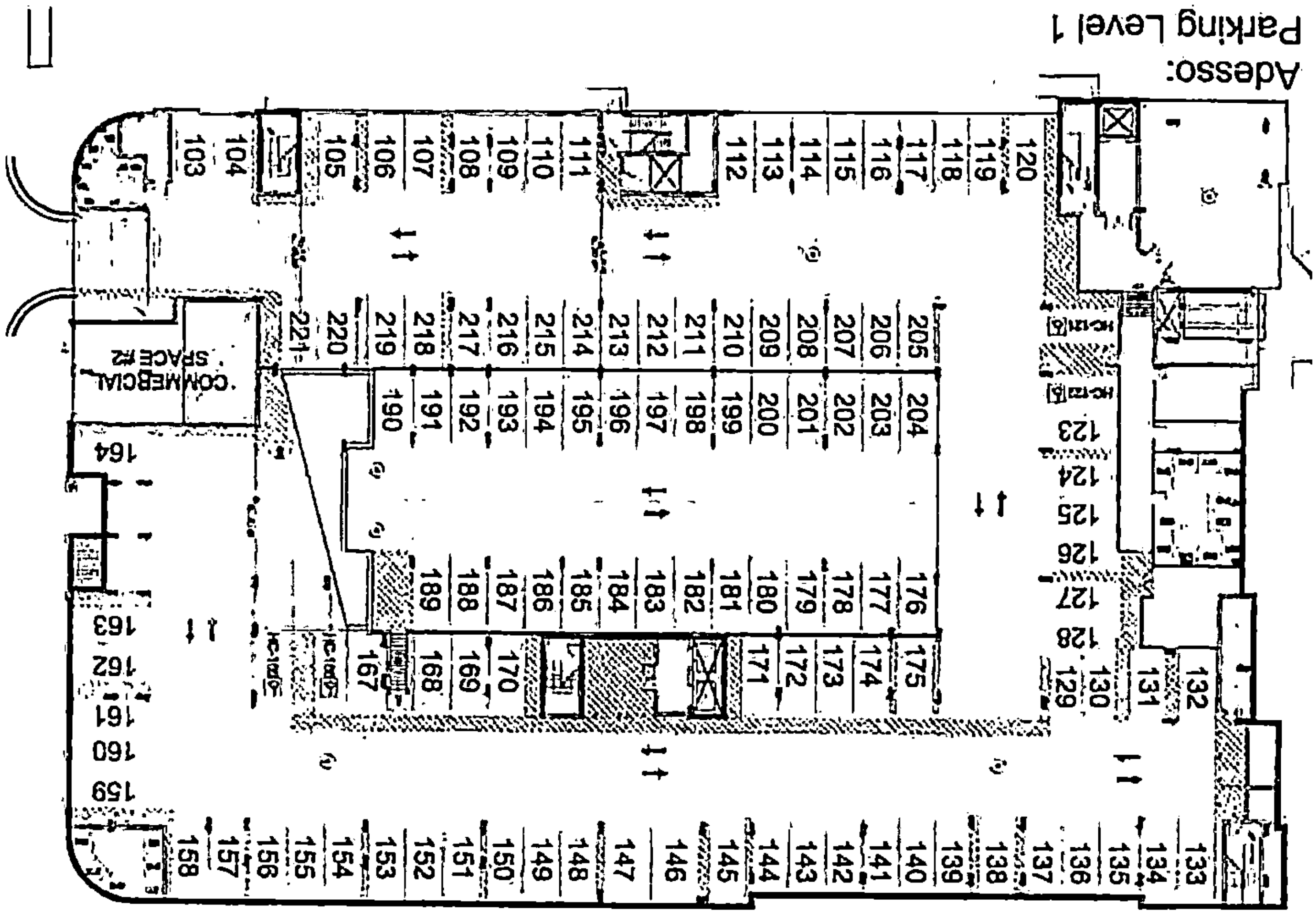
Witness my hand and official seal this 11th day of January, 2008.

Emily D. Nixon
Notary Public for ~~South Carolina~~ Georgia
My commission expires: Feb. 22, 2010

(NOTARY SEAL)

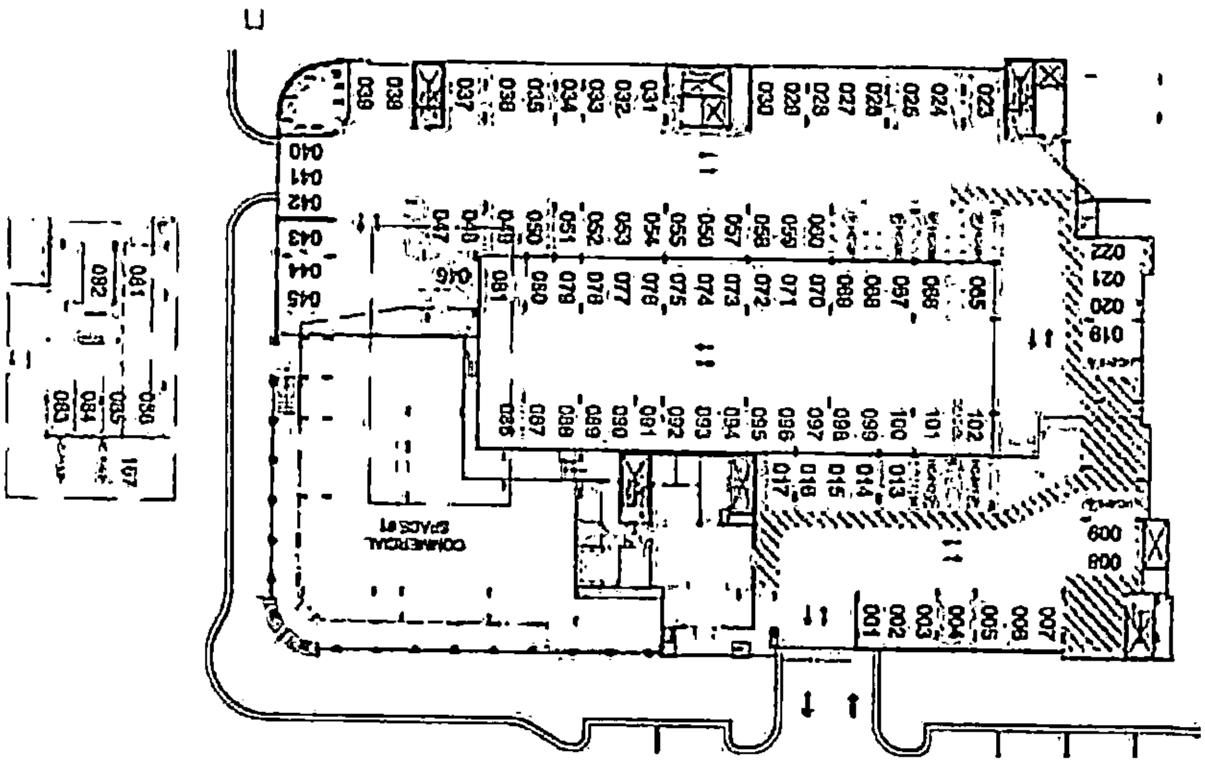
<u>EXHIBIT "C"</u>

Plot Plans, consisting of
(Site Plans, Building Plans, Elevations
and Floor Plans of Building)



PLT_00599
1142

Adesso:
Parking Level 2



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1143

EXHIBIT 4

Adesso Bylaws

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT

BYLAWS
OF
ADESSO HOMEOWNERS' ASSOCIATION

A corporation not for profit organized
under the laws of the State of South Carolina

[redacted]

BYLAWS
ADESSO Homeowners' Association

TABLE OF CONTENTS

BY-LAWS

OF

ADESSO HOMEOWNERS' ASSOCIATION

1. IDENTITY

These are the By-Laws of the ADESSO Homeowners' Association, a non-profit corporation existing under the laws of the State of South Carolina (hereinafter called "the Association"), which has been organized for the purpose of administering the ADESSO Horizontal Property Regime, a horizontal property regime established pursuant to S.C. Code Ann. §27-31-10 et seq. (1976) (hereinafter called "the Regime"). The Regime is identified by the name ADESSO and is located upon the real property in the City of Columbia, Richland County, South Carolina, described on Exhibit "A" attached hereto and made a part hereof by reference.

(a) The provisions of these By-Laws are applicable to the Regime, and the terms and provisions hereof are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Articles of Incorporation and which may be contained in the formal Master Deed which will be recorded in the public records of Richland County, South Carolina, at the time said property and the improvements now or thereafter situate thereon are submitted to the plan of condominium ownership, the terms and provisions of said Articles and Master Deed to be controlling whenever the same may be in conflict herewith.

(b) All present or future co-owners, tenants, future tenants, or their employees, or any other person that might use the Regime or any of the facilities thereof in any manner are subject to the regulations set forth in these By-Laws and in said Charter and Master Deed.

(c) The office of the Association shall be at 601 Main Street, Columbia, South Carolina or such other place as the Board of Directors of the Association may designate from time to time;

(d) The fiscal year of the Association shall be the calendar year;

(e) The seal of the Association shall bear the name of the Association and the words "South Carolina."

2. MEMBERSHIP, VOTING, QUORUM, PROXIES

(a) The qualification of members, the manner of their admission to membership and termination of such membership, and voting by members, shall be as set forth in the Articles of Incorporation of the Association, the provisions of which Articles are incorporated herein by reference.

(b) The quorum at members' meetings shall consist of persons entitled to cast a majority (51% of the value of the property) of the votes of the entire membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining quorum.

(c) The vote of the co-owners of a Unit owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the co-owners of the Unit and filed with the Secretary of the Association. Such certificate shall be valid until revoked by subsequent certificate. If such a certificate is not on file, the vote of such co-owners shall not be considered in determining the requirement for a quorum, nor for any other purpose.

(d) Votes may be cast in person or by proxy. Proxies must be filed with the secretary before the appointed time of the meeting for which the use is sought.

(e) Approval or disapproval of a Unit co-owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such co-owner in an Association meeting.

(f) Except where otherwise required under the provisions of the Articles of Incorporation of the Association, these By-Laws, the Master Deed, or where the same may otherwise be required by law, the affirmative vote of the co-owners of a majority of the Units represented at any duly called members' meeting at which a quorum is present shall be binding upon the members.

3. <u>ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP</u>

(a) The annual members' meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, at 6:00 P.M., Eastern Daylight Time, on the last Tuesday in April, of each year, or at such other date and time as set by the Board of Directors after proper notice for the purpose of electing directors and of transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding Tuesday. The first annual meeting shall be held in 2008.

(b) Special members' meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from the members of the Association owning a majority of the Units.

(c) Notice of all members' meetings, regular or special, shall be given by the President, Vice President, or Secretary of the Association, or other officers of the Association in the absence of said officers, to each member, unless waived, in writing. Such notice is to be written or printed and shall include a description of any matter as required by §33-31-705, of the Code of Laws of South Carolina (1976), as amended, and shall state the time and place of the member's meeting and shall be given to each member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting. Notice shall be mailed first class or

 [redacted]

registered mail or presented personally to each member within said time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed properly given five (5) days after being deposited in the United States Mail, addressed to the member at his post office address as it appears in the records of the Association, the postage thereon prepaid or where otherwise provided by Section 33-31-141 of the Code of Laws of South Carolina (1976), as amended from time to time. Proof of such mailing shall be given by Affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members' meeting cannot be organized because a quorum has not been attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws, or the Master Deed, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance greater than a quorum, is present.

(d) At meetings of membership, the President shall preside or, in the absence of him, the membership present shall select a chairman.

(e) The order of business at annual members' meeting, and, as far as practical, at any other members' meeting, shall be:

- i) Calling of the roll and certifying proxies;
- ii) Proof of notice of meeting or waiver of notice;
- iii) Reading of Minutes;
- iv) Reports of officers, president and chief financial officer;
- v) Reports of committees;
- vi) Appointment by chairman of inspectors of election;
- vii) Election of directors;
- viii) Unfinished business;
- ix) New business; and
- x) Adjournment.

4. BOARD OF DIRECTORS

(a) The initial Board of Directors of the Association (hereinafter sometimes referred to as the "Board") shall be comprised of three (3) directors until the first members' meeting, at which time five (5) directors will be elected. The three (3) Grantor-appointed directors shall serve at the discretion of Grantor; however, should Grantor not choose to terminate such directors, such directors' initial terms are as follows: the first (1st) appointee shall serve for five (5) years; the second (2nd) appointee shall serve for four (4) years, and the third (3rd) appointee shall serve for three (3) years. Thereafter, the Board shall consist of five (5) directors. Subject to the remainder of this paragraph, the Grantor may appoint and remove members of the Board for a period not exceeding five (5) years from the date of the first conveyance of a Unit to a person other than the Grantor. The period of Grantor control terminates no later than sixty (60) days after conveyance of one hundred (100%) percent of the Units to Unit owners other than the Grantor. The Grantor may voluntarily surrender the right to appoint and remove members of the Board before termination of that time period.

Whenever Grantor shall be entitled to designate and select any person or persons to serve on any Board of Directors of Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association and Grantor shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed for the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by Grantor need not be a resident in the Regime. Anything to the contrary notwithstanding, the power in the Grantor to designate directors shall terminate five (5) years from the recording date hereof.

Any representative of Grantor serving on the Board shall not be required to disqualify himself upon any vote upon any management contract or other matter between Grantor and Association where the said Grantor may have a pecuniary or other interest. Similarly, Grantor as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between Grantor and Association where Grantor may have a pecuniary or other interest. This provision does not limit or restrict the requirement of Section 33-31-831, Code of Laws of South Carolina (1976), as amended.

An individual Co-owner other than Grantor engaged by the Regime in a commercial operation or otherwise earning monies from servicing the premises, i.e. rental company, contractor, hardware store, painter, or property manager may not serve on the Board as long as the individual is engaged in a business performing a service in connection with the Regime without the unanimous consent of all remaining members of the Board.

(b) Election of directors shall be conducted in the following manner:

i) Grantor, as Sponsor of the Regime, shall, at the beginning of the election of the Board designate and select that number of the members of the Board which it should be entitled to designate and select in accordance with the provisions of these By-Laws, and upon such designation and selection by Grantor by written instrument presented to the meeting at which such election is held, said individuals so designated and selected by Grantor shall be deemed and considered for all purposes directors of the Association, and shall thenceforth perform the duties of such directors until their successors shall have been selected or elected in accordance with the provisions of these By-Laws;

ii) All members of the Board whom Grantor shall not be entitled to designate and select under the terms and provisions of these By-Laws shall be elected by a plurality of the votes cast at the annual meeting of the members of the Association immediately following the designation and selection of the members of the Board whom Grantor shall be entitled to designate and select;

iii) Vacancies in the Board may be filled until the date of the next annual meeting by the remaining directors, except that should any vacancy in the Board be created in any directorship previously filled by a person designated and selected by Grantor, such vacancy shall be filled by Grantor designating and selecting, by written instrument delivered to any officer of the Association, the successor director to fill the vacated directorship for the unexpired term thereof;

iv) At the first annual meeting of the members held after the property identified herein has been submitted to the plan of condominium ownership, the Master Deed has been recorded in the public records of Richland County, South Carolina, and the termination of Grantor control as contemplated in Paragraph (a) and this Paragraph (b) of this Section 4, the term of office of the three (3) directors receiving the highest plurality of votes shall be established as two (2) years, and the terms of office of the other two (2) directors shall be established as one (1) year. Thereafter, as many directors of the Association shall be elected at the annual meeting as there are regular terms of office of directors expiring at such time, and the term of the directors so elected at the annual meeting of the members each year shall be for two (2) years expiring at the second annual meeting following their election, and thereafter until their successors are duly elected and qualified or until removed in the manner elsewhere provided or as may be provided by law for the removal of directors of South Carolina Nonprofit Corporation Act. If, at the time of such annual meeting, Grantor still has the right to appoint directors, then Grantor shall have the right to designate and select two (2) directors whose term of office shall be established at two (2) years, and one (1) director whose term of office shall be established at one year;

v) In the election of directors, there shall be appurtenant to each Unit as many votes for directors as there are directors to be elected, provided, however, that no member or co-owner of any Unit may cast more than one vote for any person nominated as director, it being the intent hereof that voting for directors shall be non-cumulative;

vi) In the event that Grantor, in accordance with the privilege granted unto it, selects any person or persons to serve on any Board, the said Grantor shall have the absolute right at any time, in its sole discretion, to replace any such person or persons with another person or persons to serve on said Board. Replacement of any person or persons designated by Grantor to serve on any Board shall be made by written instrument delivered to the President or Secretary of the Association or to the presiding officer of the Board, which instrument shall specify the name or names of the person or persons designated as successor or successors to the person or persons so removed from said Board. The removal of any director and designation of his successor shall be effective immediately upon delivery of such written instrument by Grantor to such officer of the Association and the director;

(c) The organizational meeting of the newly elected Board shall be held within ten (10) days of its election, at such time and at such place as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary provided a quorum shall be present;

(d) Regular meetings of the Board may be held without notice at such time and place as shall be determined from time to time by a majority of the directors; such meetings shall not be public but open only to members of the Association;

(e) Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board or upon written petition signed by the Co-owners of one-third (1/3) of the Units. Not less than two (2) days notice of a meeting shall be given to each director personally, or by mail, telephone, or telegram, which notice shall state the time, place, and purpose of the meeting;

(f) Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice;

(g) A quorum at a directors' meeting shall consist of the directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board, except as specifically otherwise provided in the Articles of Incorporation, these By-Laws, or the Master Deed. If any director's meeting cannot be organized because a quorum has not attended or because the greater percentage of the directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws, or the Master Deed, the directors who are present may adjourn the meeting, from time to time, until a quorum, or the required percentage of attendance greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum;

(h) The presiding officer of directors' meetings shall be the President. In the absence of the President, the directors present shall designate one of their number to preside;

(i) Directors' fees, if any, shall be determined by the members of the Association;

(j) The Board shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, by the Master Deed, or these By-Laws, may exercise all of the powers of the Association subject only to approval by the members when such is specifically required of these By-Laws. The Board shall exercise such duties and responsibilities as shall be incumbent upon it by law, the Master Deed, or these By-Laws, as it may deem necessary or appropriate in the exercise of its powers and shall include, without limiting the generality of the foregoing, the following:

i) To make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;

ii) To carry out the maintenance, care, upkeep, repair, replacements, operation, surveillance, and the management of the general and limited elements, services, and facilities of the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members;

iii) To carry out the reconstruction of improvements after casualty and the further improvement of the property, real and personal;

iv) To make and amend regulations, after Notice and Consent; governing the use of the property, real and personal, in the Regime, to make, enforce and modify from time to time regulations regarding rental use of Units within the Regime and rental licenses as such term is contemplated in the Master Deed, and to establish fines for the violation of same, so long as such regulations or amendments thereto and fines do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles of Incorporation and Master Deed;

v) To acquire, operate, lease, manage, and otherwise trade and deal with property, real and personal, including Units in the Regime, as may be necessary or convenient in the operation and management of the Regime, and in accomplishing the purposes set forth in the Master Deed; provided, however, that any agreement for professional management of the Regime, or any other contract providing for services of the Grantor, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice; provided, further, that any contract entered into prior to passage of control of the Association from the Grantor may be terminated by the Association without cause and without penalty at any time after the transfer of control upon not more than ninety (90) days' notice to the other party thereto unless ratified by a majority of the Board after passage of control;

vi) By competitive bidding, to contract for the management of the common areas and facilities in the Regime and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Master Deed to have approval of the Board or membership of the Association;

vii) To enforce by legal means the provisions of the Articles of Incorporation and By-Laws of the Association, the Master Deed, and the regulations and fines hereinafter promulgated governing use of the property in the Regime;

viii) To pay all taxes and assessments which are liens against any property of the Regime, other than Units and the appurtenances thereto, and to assess the same against the members and their respective Units subject to such liens;

ix) To carry insurance for the protection of the members and the Association against casualty and liability;

x) To pay all costs of power, water, sewer, and other utility services rendered to the condominium and not billed to the owners of the separate Units; and

xi) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association, as well as to dismiss said personnel; and

xii) To assign, reassign, or designate parking spaces for exclusive use to such Co-Owners as it shall decide and to revoke such assignment or designation from time to time.

(k) The first Board shall be comprised of three (3) persons designated to act and serve as directors in the Articles of Incorporation. Said persons shall serve until their successors are elected or appointed at the first meeting of the members of the Association called after the property identified herein has been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Richland County, South Carolina, and the termination of the Grantor control as contemplated in Paragraphs (a) and (b) of this Section 4. Should any member, which was not appointed by the Grantor, of said first Board be unable to serve for any reason, a majority of the remaining members of the Board shall have the right to select and designate a party to act and serve as a director for the unexpired term of said director who is unable to serve;

(l) The undertakings and contracts authorized by said first Board shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by the first Board duly elected by the membership after the property identified herein has been submitted to the plan of condominium ownership and said Master Deed has been recorded in the Richland County public records, so long as any undertakings and contracts are within the scope of powers and duties which may be exercised by the Board in accordance with all applicable Regime Documents;

(m) Directors may be removed from office in the manner provided by law for the removal of directors of South Carolina nonprofit corporations.

5. <u>ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS AND DIRECTORS</u>

(a) Notwithstanding anything contained in these By-Laws to the contrary, any meeting of members or Board may be held at any place within or without the State of South Carolina or by telephone conference.

(b) To the extent now or from time to time hereafter permitted by the laws of South Carolina, the Board may take any action which they might take at a meeting of directors without a meeting. One or more written consents of any such action so taken, signed by each director, is to be retained in the Association's minute book and given equal dignity by all persons to the minutes of meetings duly called and held.

(c) Any action of the members may be taken by written ballot in accordance with

§33-31-704, Code of Laws of South Carolina (1976), as amended, or by written consent in accordance with §33-31-704 of said Code.

6. OFFICERS

(a) The executive officers of the Association shall be a President, who shall be a director, a Vice President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. No person may hold more than two (2) offices. The Board, shall from time to time, elect such other officers or committees and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

(b) The President shall be the principal executive officer of the Corporation and subject to the control of the Board. He shall, in general, supervise and control all of the business and affairs of the Corporation. He shall preside at all meetings of the shareholders and of the Board. He may sign, with the Secretary or any other proper officer of the Corporation authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board.

(c) The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

(d) The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, perform all other duties incident to the office of Secretary of any association, and as may be required by the directors or President.

(e) The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls, the accounts of members, and the books of the Association in accordance with good accounting practices. He shall perform all other duties incident to the office of Treasurer.

(f) The compensation (if applicable) of all officers and employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing the Grantor as an employee of the Association, nor preclude the contracting with the Grantor for management of the Regime. Officers need not be Unit owners.

7. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Master Deed and Articles of Incorporation shall be supplemented by the following provisions:

(a) The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. Such an account shall designate the name and address of the Co-owner or Co-owners, the amount of each assessment against the amounts paid upon the account and, the balance due upon assessments;

(b) The initial Board shall adopt a budget for the period commencing upon submission of the property to Horizontal Property Regime, continuing through the end of the following calendar year, and shall establish assessments for that period;

(c) The Board shall adopt a budget for each calendar year, which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:

i) Common expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of General Common Elements, landscaping, street and walkways, office expenses, swimming pool, utility services, casualty insurance, liability insurance, administration, and reserves (operating and replacement); and

ii) Proposed assessments against each member. Copies of the budget and proposed assessments shall be given to each member at each annual meeting. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished to each concerned member. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget of amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board, at any time, in their sole discretion to levy an additional assessment in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

(d) The Board shall determine the method of payment of such assessments and the due dates thereof and shall notify the members thereof. The assessments will initially be on a monthly-in-advance basis unless changed by a vote of the majority of the Board;

(e) The depository of the Association shall be such bank, savings and loan, or other Federally Insured depositories as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors.

 [redacted]

(f) The Board shall require fidelity bonds from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least the amount of the total annual estimated operating expense and revenues. Likewise, the Board shall maintain for each officer of the Association and each director on the Board a policy of insurance covering the errors and omissions of such insured parties. The premiums on such bonds and policies shall be paid by the Association as a common expense.

8. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-Laws or with the statutes of the State of South Carolina.

9. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Board, as and for the co-owners, is given the authority to administer the operation and management of the Regime, it being recognized that the delegation of such duties to one entity is in the best interests of the co-owners of all Units. To properly administer the operation and management of the project, the Association will incur, for the mutual benefit of all of the co-owners of Units, costs and expenses which will be continuing or non-recurring costs, as the case may be, which costs and expenses are sometimes herein referred to as "common expense." To provide the funds necessary for such proper operation and management, the said Board is hereby granted the right to make, levy, and collect assessments against the co-owners of all Units and said Units. In furtherance of said grant of authority to the Board to make, levy, and collect assessments to pay the costs and expenses for the operation and management of the Regime, the following provisions shall be operative and binding upon the co-owners of all Units, to wit:

(a) All assessments (except for special assessments which may be assessed to specific Unit(s) and its/their Co-Owner(s) as determined by the Board) levied against the co-owners of Units and said Units shall be uniform and, unless specifically otherwise provided for in these By-Laws, the assessments made by the Board shall be in such proportion that the amount of assessment levied against each co-owner of an Unit and his Unit shall bear the same ratio to the total assessment made against all co-owners of Units and their Units as does the undivided interest in General Common Elements appurtenant to each Unit bear to the total undivided interest in the Regime;

(b) The Board, in establishing said annual budget for operation, management, and maintenance of the project shall include therein a sum to be collected and maintained as reserve fund for replacement of General Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the General Common Elements as well as the replacement of personal property which may constitute a portion of the General Common Elements held for the joint use and benefit of all the co-owners of all Units. The amount to be allocated to such reserve fund for replacements shall be established by said Board so as to accrue and maintain at all

 [redacted]

times a sum reasonably necessary to anticipate the need for replacements of said General Common Elements. The amount collected and allocated to the reserve fund for replacements from time to time shall be maintained in a separate account by the Association, although nothing herein contained shall prohibit the Association from applying any monies in such reserve fund for replacements to meet other needs or requirements of the Association in operating or managing the project in the event of emergencies or in the event the sums collected from the co-owners of Units are insufficient to meet the then fiscal financial requirements of the Association, but it shall not be a requirement that these monies be used for such latter purposes, as a separate assessment may be levied therefor if deemed to be preferable by the Board in the sole discretion of said Board;

(c) Additionally, the Board shall establish an initial budget for operating expenses and reserves from the date of closing of the first unit to the end of the calendar year. This budget shall include income from a working capital fund, assessments, each Unit's pro-rata share of the first year insurance premium and expenses incurred in start-up and operation of the Association, including, but not limited to; additional personnel, additional equipment, interest incurred in financing the Association's insurance premium, utility deposits and other one-time costs associated with the start-up of the Association. A working capital fund must be established for the initial months of the project operation equal to at least a two months' estimated common area charge for each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Unit estate and maintained for the use and benefit of the Association. The contribution to the working capital fund for each unsold Unit shall be paid to the Association within sixty (60) days after the date of the conveyance of the first Unit in the project. The purpose of the fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessment. The Grantor shall not use the working capital funds to pay any of its expenses, reserve contributions, construction costs, or to make up any budget deficits while it is in control of the Association. However, when unsold Units are sold, the Grantor may reimburse itself for funds it paid the Association for an unsold Unit's share of the working capital fund by using funds collected at Closing when the Unit is sold;

(d) The Board, in establishing said annual budget for operation, management, and maintenance of the project, shall include therein a sum to be collected as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies existing from time to time as a result of delinquent payment of assessments by co-owners of Units, emergencies, or other reasons placing financial stress upon the Association;

(e) All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the said Association to the payment of any expense of operating and managing the Regime or to the proper undertaking of all acts and duties imposed upon it by virtue of these By-Laws and the Articles of Incorporation and Master Deed of the said Association. As the monies for any assessment are paid unto the Association by any co-owner of an Unit the same may be commingled with the monies paid to the Association by the other Co-owners of Units. All funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the collection of rental license fees, or from the leasing or use of General Common Elements, shall be held for the benefit of the members of the Association, who shall own any common surplus in the proportions of their percentage of undivided interest in the Regime. No member of the Association shall have the right to assign, hypothecate, pledge, or in any manner transfer this interest therein, except as an appurtenance to his Unit;

(f) The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid unto the Association on or before the due dates for such payment. When in default, the Board may accelerate the remaining installments of the annual assessment upon notice thereof to the Unit co-owner, whereupon the entire unpaid balance of the annual assessment shall become due upon the date stated in the notice which shall not be less than ten (10) days after the date of the notice. In the event any assessment, installment, or accelerated assessments are not paid within twenty (20) days after their due date, the Association, through its Board, may proceed to enforce and collect the said assessments against the Unit co-owner owing the same in any manner provided for by the Act, including the right of foreclosure and sale. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the highest rate allowed by law until such delinquent assessment or installment thereof and all interest due thereon has been paid to the Association. If any assessment or installment thereof is not paid when due, the Board may assess such late fees and interest as it deems appropriate from time to time;

(g) The co-owner or co-owners of each Unit shall be personally liable to the Association for the payment of all assessments, regular or special, which may be levied by the Association while such party or parties are co-owner or co-owners of an Unit in the Regime. In the event that any co-owner or co-owners are in default in payment of any assessment or installment thereof owed to the Association, such co-owner or co-owners of any Unit shall be personally liable for interest or fees on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit is brought or not.

(h) No co-owner may exempt himself from liability for any assessment levied against such co-owner and his Unit by waiver of the use or enjoyment of any of the General Common Elements, by abandonment, or in any other manner.

(i) Recognizing that the necessity for providing proper operation and management of the project entails the continuing payment of costs and expenses therefor which results in benefit to all of the co-owners of Units and that the payment of such common expense represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of the co-owner of each Unit, the Association is hereby granted a lien upon such Unit and its appurtenant undivided interest in General Common Elements, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the co-owner of each Unit, such lien shall also secure interest or fees, if any, which may be due on the amount of any delinquent assessments owing to the

Association and all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the General Common Elements. The lien granted to the Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of South Carolina. In any suit for the foreclosure of said lien, the Association shall be entitled to rental income or payments from the co-owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a receiver for said Unit The rental required to be paid shall be equal to the rental payment charged on comparable type of Units in Columbia, South Carolina. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. The Association shall further be entitled to interest at the highest rate allowed by law on any such advance made for such purpose. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, are hereby placed on notice of the lien granted to Association and shall acquire such interest in any Unit expressly subject to such lien. The lien shall be subordinate to all mortgages or other liens duly recorded prior to the filing of the lien encumbering the Unit;

(j) The lien herein granted unto the Association shall be effective from and after the time of recording in the public records of Richland County, South Carolina, a claim of lien stating the description of the Unit encumbered thereby, the name of the record co-owner, the amount, and the date when due. The lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, fees, costs, attorney fees, advances to pay taxes and prior encumbrances, and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record;

(k) In the event that any person, firm, or corporation shall acquire title to any Unit and its appurtenant undivided interest in General Common Elements by virtue of any foreclosure, judicial sale, or deed in lieu of foreclosure, such person, firm, or corporation so acquiring title shall only be liable and obligated for assessments as shall accrue and become due and payable for said Unit and its appurtenant undivided interest in General Common Elements subsequent to the date of acquisition of such title and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquires such title. In the event of the acquisition of title to a Unit by foreclosure, judicial sale, or deed in lieu of foreclosure, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all co-owners of all Units as part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure;

(l) Whenever any Unit may be sold or mortgaged by the co-owner thereof, which sale shall be concluded only upon compliance with other provisions of these By-Laws, the Association, upon written request of the co-owner of such Unit, and a transfer fee ("Transfer Fee") of $750 (which amount may be modified by the Board, in its discretion) from such co-owner, shall furnish a statement verifying the status of payment of any assessment which shall be due and payable to Association by the owner of such Unit to the proposed purchaser or mortgagee. Such statement shall be executed by an officer of the Association and any purchaser or mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction, as Association shall be bound by such statement Any holder of any mortgage on any Unit shall have the right at all reasonable times and frequency to inquire as to the past due status of any assessment payments. The Association shall, upon request, promptly notify any such mortgagee when any assessment payment becomes more than sixty (60) days past due or when any default in the performance of any obligation required by the Master Deed or these By-Laws as to such Unit is not cured within sixty (60) days;

(m) In the event that an Unit is to be sold or mortgaged at the time when payment of any assessment against the co-owner of said Unit is due to the Association such Unit shall be in default, whether or not a claim of lien has been recorded by the Association. Then the proceeds of such purchase or mortgage shall be applied by the purchaser or mortgagee first to payment of any then delinquent assessment or installment thereof due to the Association before the payment of any proceeds of purchase or mortgage proceeds to the co-owner of any Unit who is responsible for payment of such delinquent assessment;

(n) Institution of a suit at law to attempt to effect the collection of payment of delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing it; and

(o) Notwithstanding anything in these By-Laws to the contrary and to the fullest extent allowed by law, it is declared that until December 31, 2008, but no later than sixty (60) days after conveyance by Grantor of the first Unit to a co-owner, each Unit shall be exempt from the assessment created herein until such time as the Unit is conveyed by the Grantor to a Co-owner. Except as expressly provided herein, no Unit and its appurtenant percentage interest shall be exempt from said assessment.

10. MANAGER

(a) Employment. The Board may employ a professional Manager to assist in or take charge of the administration of the Council and the Property. The Board shall solicit competitive bids for such management.

(b) Authority and Duties. The Manager shall have such authority and duties as may be determined by the Board and shall report to the Board or to the President, as the Board may determine.

(c) Compensation. The Manager shall receive such compensation as the Board may determine.

11. DEFINITIONS

The definitions contained in § 27-31-20 S.C. Code Ann. (1976), are hereby incorporated herein and made a part hereof by reference. The word "Unit" shall have the same meaning as "Unit".

12. CONFLICTS

In the event of any conflict between the provisions of the Master Deed and the provisions of these By-Laws, the provisions of the Master Deed shall control.

13. SEVERABILITY

The provisions of these By-Laws are severable, and the invalidity of one or more provisions thereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder hereof.

14. CAPTIONS

The captions herein are inserted only as a matter of convenience and or reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision hereof.

15. GENDER AND NUMBER

All pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, as well as and the singular and the plural whenever the context requires or permits.

16. AMENDMENT TO BY-LAWS

Amendments to these By-Laws shall be proposed and adopted in the following manner:

(a) Amendments to these By-Laws may be proposed by the Board acting upon vote of the majority of the directors, or by members of the Association owning a majority of the total value of the property in the Regime, whether meeting as members or by instrument in writing signed by them;

(b) Upon any amendment or amendments to these By-Laws being proposed by said Board or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in absence of the President, who shall thereupon call a special joint meeting of the members of the Board and the membership for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members is required as set forth herein;

 [redacted]

(c) In order for amendment or amendments to become effective, the same must be approved by an affirmative vote of the members owning not less than two-thirds (2/3) of the total value of the property in the Regime and the vote of any Mortgagees as required by the Master Deed. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof recorded in the public records of Richland County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members;

(d) At any meeting held to consider such amendment or amendments to the By-Laws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting; and

(e) Notwithstanding the foregoing provisions of this Article 16, no amendment to these By-Laws which shall suspend, remove, abridge, amend or alter the rights of the Grantor to (i) designate and select members of the Board, as provided in Article 4 hereof, or (ii) sell the Units in Grantor's ordinary course of business and in Grantor's reasonable discretion, may be adopted or become effective without the prior written consent of the Grantor. No amendment shall be effective until all the requirements of the Master Deed have been met.

17. <u>RIGHT TO NOTICE AND COMMENT</u>. Before the Board adopts or amends Rules, whenever the Master Deed or By Laws or Articles of Incorporation require that an action be taken after "Notice and Comment," and at any other time the Board determines, the Co-owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Co-owner in writing and shall be delivered personally or by mail to all Co-owners at such address as appears in the records of the Association or published in a newsletter or similar publication routinely circulated to all Co-owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Co-owner to be heard at a formally constituted meeting.

18. <u>RIGHT TO NOTICE AND HEARING</u>. Whenever the Master Deed or By Laws or Articles of Incorporation require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Co-owners or Occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, the affected person shall have the right., personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidenced shall be considered in making the decision, but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given. Failure to provide such notice shall not invalidate any action taken.

19. <u>APPEALS</u>. Any person having a right to Notice and Hearing shall have the right to appeal to the Board from a decision of persons other than the Board by filing a written notice of appeal 'with the Board within ten (10) days after being notified of the decision. The Board of shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

The foregoing is the original set of By-Laws adopted this 11th day of January.

C Smith

Secretary of ADESSO Homeowners' Association

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Civil Action No. 2019-CP-40-00919

EMAD TADROS, et al,	)	
	)	
Plaintiff,	)	TRANSCRIPT
vs.	)	OF
	)	WEBEX
	)	PROCEEDINGS
HOLDER PROPERTIES, et al,	)	
	)	
Defendant.	)	

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January 7, 2021

B E F O R E:

HONORABLE DeANDREA BENJAMIN
RICHLAND COUNTY COURTHOUSE
COLUMBIA, SOUTH CAROLINA

A P P E A R A N C E S:

For the Plaintiff:

CHARLES G. BLACKBURN, Attorney at Law

For the Defendant:

KEVIN K. BELL, Attorney at Law and
MICHAEL C. MASCIALE, Attorney at Law

BY: Karen A. Kocsis, CCR

THE COURT: All right. We're on going to go on the record.

Again, this is the case of Emad Tadros versus Holder Properties, 2019-CP-40-00919.

And if you can, if everyone please say your appearances and who you represent for the court reporter. Thank you.

MR. MASCIALE: Judge, may it please the Court.

Judge, I'm Michael Masciale, I represent the ADESSO Horizontal Property Regime and the ADESSO Homeowners Association.

MR. BELL: And Your Honor, Kevin Bell, and with me is Paul Heffer, representing Holder Properties and ADESSO/COLUMBIA LLC.

MR. BLACKBURN: Good morning, Judge.

THE COURT: All right. Good morning.

All right. And this is a motion for summary judgment filed by Defendant Holder Properties; is that correct?

MR. MASCIALE: That's correct, Your Honor.

And Your Honor, before we begin, just one housekeeping matter I wanted to bring to the Court's attention. The ADESSO HOA and Horizontal Property Regime filed a motion for summary judgment back on, I believe, December 28th, which would have been at least ten days before this hearing. We gave notice of the date and time of the hearing, as required under the rule, to hear our motion for summary judgment today as well.

THE COURT: It is not noticed for today. So if everyone consents, I'll hear it considering we have y'all, I guess the last ones. But that will require a consent of all parties.

MR. BLACKBURN: Plaintiffs consent, Your Honor.

MR BELL: Certainly we do as well. Doesn't affect us.

THE COURT: All right. All right. I'd be glad to get some background. I'll be glad to hear it. I guess, (inaudible) is it Mr. Bell, is it your motion about -- yes, on behalf of the defendants.

(Loud background noise interference.)

THE REPORTER: Judge, could we get everybody else to mute first?

THE COURT: Can we get everybody to mute so we won't have any background noise, and we'll do the same. They're working on the light post or something outside my office, so there's a lot of noise outside.

All right. Here we go.

Yes, sir, Mr. Bell.

MR. BELL: Okay. Thank you, Your Honor.

As mentioned, I represent Holder Properties, ADESSO/COLUMBIA LLC. I'll refer to those today just as Holder. John R. Holder was also named -- (inaudible) -- the fact that he was never served so he is not a party to this action.

And with the Court's permission, I'm going to share my screen. I have a PowerPoint that I think will help facilitate the argument today.

THE COURT: Yes, sir. My law clerk will have to give you -- share something with you in order for you to do that.

MR. BELL: Okay.

THE COURT: You still there, Mr. Bell?

MR. BELL: Yeah. I'll stop -- I hit the wrong button, instead of share I hit cut off video.

THE COURT: Okay. There you go.

MR. BELL: Okay. There we go.

Okay. As Your Honor requested of me, I'll give you a little background about the motion and then the case before we get to the merits.

The nature of this dispute is this, ADESSO/COLUMBIA is a mixed-use residential and retail development here in downtown Columbia. Your Honor may be familiar with it. It is across

Assembly Stréet from the coliseum. It also fronts South Main Street below the old law school. It has ground floor retail, several floors of residential condominiums above it, has a pool, garage. A typical mixed-use retail -- a big mixed-use residential/retail development that we see here (indicating.)

The plaintiff is the owner of the ground floor retail units at ADESSO. There are four of them. He alleges that he does not have the number of parking spaces for his retail units that he's entitled to have under the master deed and he claims damages from it.

All of the defendants dispute this allegation, defendants say he does have exactly the parking he's supposed to have. But the City of Columbia, who is in charge of enforcing zoning, plat and parking at ADESSO says the plaintiff has all of the parking to which he's entitled to.

I know it just sounds like a buildup to a parking dispute today. This motion is not concerned with who is right or wrong about parking. But this motion for summary judgment is because Plaintiff's claims were released in a prior lawsuit that Plaintiff brought against Holder and 38 other defendants. And the prior settlement is the only focus of our motion today as opposed to the substance of Plaintiff's claims.

To give you a few dates and facts to put this in perspective. From 2008 to 2013 Holder served as the developer and the property manager for ADESSO, because it was developer that also controlled the homeowners association.

In 2013, April of 2013, after the target number of units had been sold, Holder released control of the HOA. He did, however, continue to be the property manager.

In December 2014, Plaintiff purchased all four of the retail units at ADESSO. He did not purchase those from Holder, he purchased them from the original purchaser of the retail space.

In February 2016 the owners of the ADESSO residential and retail units filed suit against Holder and 38 additional defendants. This was a big lawsuit here in Columbia. The residential owners asserted their claims through a class action. Plaintiff was not in the class action.

Plaintiff's claims relating to the retail units were served -- (inaudible) -- and the causes of action were widespread, breach fiduciary duty, unfair dealing, breach of contract, improper management, negligence. You name it, it was all in there.

In May of 2016 Holder was terminated as the property managers. And after that point Holder had no involvement with ADESSO/COLUMBIA. They were out at that point.

In May of 2017, a full year later, the plaintiff settled all claims against Holder and the 38 additional defendants. Plaintiff's individual settlement is a separate document, captioned Retail Settlement Agreement and Release, it only applies to Plaintiff's claims. The class action settlement was separate.

The release was executed by Plaintiff and all 39 defendants, including Holder. And there was a stipulation of dismissal with prejudice that was entered as to all claims, quote, that were or have been asserted, end quote. And I underlined that because -- we'll discuss it shortly -- but that alone is dispositive of this motion. But we will get to that in just a few minutes.

Now I'd like to turn to the substance of the arguments. There's four issues today. The first one involves the settlement agreement documents.

There are three provisions of that document, the release provision, a waiver provision and a warranty provision, which all indicated that the plaintiff's claims are conclusively barred.

The prelude to those provisions is that the settling parties that are entering this agreement which will bring about the whole, complete, final resolution of all matters to Plaintiff. This is the release provision: (Reading)

> Tadros does fully and completely release and discharge the settling defendants from any and all claims and action, causes of action whether known or unknown, including the claims made in the action or that could have been made in the action arising out of or relating to any work performed by settling defendants --

THE REPORTER: Wait, wait, wait. There's some kind of feedback.

THE COURT: Hold on.

(Off-the-record discussion.)

THE COURT: All right. Mr. Bell, can you go back --

MR. BELL: Sure.

THE COURT: -- to -- no, no, no, I don't want -- not all the way back. Just you were -- go back to the next slide. No, no, no, go forward, I guess. I'm sorry.

MR. BELL: This is -- this is where I stopped.

THE COURT: Okay. So just start at the beginning of this again. Okay.

(Noise static.)

MR. BELL: Okay. This is about the release document. There's three provisions, the release provision, the waiver provision and a warranty provision. The preface to those provisions was that this was to bring about the full, complete and final resolution of all matters between the parties.

And the release -- it's the middle paragraph where: (Reading)

> Tadros does fully, completely release and discharge the settling defendants from any and all claims, actions, causes of actions known or unknown, including any claims arising out or relating to any work performed by the settling defendants.

The only limitation on scope of that release is arising out of or related to any work performed by the settling defendants. Dr. Tadros, in his testimony, brings his current claims within the scope of that. Because he agreed at his deposition that management of ADESSO in assigning parking was part of Holder's work at ADESSO/COLUMBIA. So there's no question, the allegations that are being made were within the scope of the release that was entered in 2017.

There is a separate waiver provision that the settling parties expressly waive. There's damages which exist as of this date.

There's no limitation on scope. All claims for damages were -- for damages which exist as of this date. Plaintiff agreed at his deposition that all actions by Holder, that are the subject of the complaint, occurred prior to Holder being dismissed in 2016. And that was a year prior to settlement. And Plaintiff acknowledged that he and his counsel were fully aware of the parking issues at the time of the settlement, in May of '17.

So, again, it's a separate provision of the settlement document that also says we waive any claims that exist as of today.

The warranty provision, it's going to come back around in connection with attorneys' fees.

First, just to say what a release is, it is to abandonment or relinquishment of a right or claim. And that concept is embedded in this provision. (Reading)

> Tadros warrants and represents that he's the owner of all claims for lost rents, lost profits and all of the personal damage claims related to or associated with the retail or commercial units at ADESSO, and that such claims are released, cannot be asserted against the settling defendants.

So as to the release to claims, he gives the warranty --

THE REPORTER: Please do not read so fast. Excuse me, please just -- slow down, please.

MR. BELL: I can.

THE REPORTER: Thank you.

MR. BELL: All right. Sorry.

In this provision Dr. Tadros has given a warranty that the claims that are released cannot be asserted against the settling defendants, those would include the claims that he's brought in this action.

The scope of the release was discussed between Dr. Tadros and his counsel. Plaintiff complained to his counsel about the scope of the release before he executed it. Plaintiff states in his affidavit, as I mentioned, that he was -- that counsel was fully aware of issues he had with parking that were supposed to be for his use and his view.

And this was the response by counsel. And he -- (Reading)

> As it relates to what we're being asked to sign, the release is very broad at the defendants' request. They want to make sure they are protected from any future claims from the HOA or any others.

And he goes on to say: (Reading)

> They only want to ensure they get a complete release.

Further to this point, Plaintiff requested modifications to the release as to Holder, which did not occur. The release was signed as it was presented.

South Carolina law on release of contracts, a release is a contract just subject to general rules of contract. The Court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or the parties failure to guard their rights secured.

We believe as a settlement document, the unambiguous release, waiver and warranty provisions must be enforced as written. And they are -- they entitle Holder to judgment as a matter of law as such.

There is a second issue that is related to the settlement, but it is separate because there is a separate body involved that applies to us. The federal civil action was ended with broad stipulations, dismissed with prejudice. Here it is: (Reading)

> There were or that could have been asserted by or between any or all parties in the referenced action are dismissed and forever ended with prejudice.

Here's what that means under federal law. Sort of an obvious housekeeping point, because it was a federal action that was dismissed, federal law has a preclusive effect of any stipulation of dismissal. And what that preclusive effect is, is that a dismissal with prejudice constitutes a final judgment with the preclusive effect, a res judicata, not only as to all matters litigated and decided by, but as to all relevant issues litigated in the suit.

And that's interesting, because in federal court if you just stipulate to dismissal with prejudice and say no more, the effect is all claims that are or could have been litigated. But in this case, of course, the document says that as well. So it's both under the law and the document.

But to give you a couple of -- or a few examples of how the federal courts have dealt with this. In the major case itself, which is the second bullet point, he contended that his counsel didn't envision such a broad stipulation in that report. And the Court said in the Second Circuit -- that had intended to preserve that right, he should not have entered this type of risk with prejudice stipulation.

Ellis is very similar. Ellis said -- tried to advance the point that, well, the parties who created the stipulation, their intent controls. And the Ninth Circuit said there's no authority for that, that stipulation with prejudice means what it means.

And, finally, relevant here, this is a Citibank versus Data Lease. That's a somewhat notable case that's cited very frequently for: (Reading)

> -- represented by counsel entered into the stipulation dismissing its claims against the agent, directors with prejudice. Represented by new counsel Data Lease cannot avoid the consequences of such a prior act.

So that is a second basis, Your Honor, that all claims -- there's no inference that Plaintiff couldn't have brought his parking claims in the prior lawsuit, all about it. Those claims have been -- they are res judicata at this point because of the stipulation dismissal.

Plaintiff has made allegations of duress, notably the duress is by his own counsel in the earlier case. Counsel threatened a lawsuit by the HOA, which was also his joint client in that case. This is the threat of the lawsuit, which I won't read, but I'll give you the backstory on it.

Plaintiff and the HOA had entered an agreement pursuant to which the HOA agreed to indemnify the plaintiff against certain claims by its tenants.

And in exchange the plaintiff agreed to sign the settlement agreement release. And so what his lawyer was telling him is, if you don't do that, I expect the HOA will sue you. And so the consequences of his action is duress, but that's not an issue in our motion.

What is at issue is the law of duress that renders that allegation a moot point as to Holder. So the law of duress, *Williams* is probably the best case on that. It says: (Reading)

> If one of the parties to an agreement is in a position to dictate its terms, then it's not a mutual or voluntary agreement.

And I'm going to come back to why I underlined one of the parties to the agreement. *Williams* is cited for the proposition that if a party's manifest -- (inaudible, sound cut out) -- by an improper threat by the other party, then the contract is voidable, or can be voidable if there is no reason to apply.

Why does that -- how -- why does that language matter. Plaintiff admits that his counsel, and perhaps indirectly the HOA, was the only source of duress. Plaintiff's counsel and the HOA were not parties to the commercial settlement agreement. The only parties were the Plaintiff and the 39 defendants. The plaintiff admits he did not inform Holder or anyone else that he was executing the release under duress. Plaintiff admits he did not speak to Holder during settlement.

What that adds up to is that because Holder was not a party to this alleged duress by somebody who wasn't a party to the agreement, the claims of duress at the hands of some counsel are inapplicable to Holder as a matter of law. It simply doesn't match up to that.

And so that's our motion as it relates to the plaintiff's complaint. The summary judgment in Holder Properties in Plaintiff's complaint are the first claims are barred by release, waiver and warranty provisions of the settlement agreement. Under federal law, Plaintiff's claims are barred by the preclusive effects of the stipulation of dismissal with prejudice. And duress is inapplicable because Holder was not involved in the alleged duress by a non-party. So that -- that is that portion of our motion.

The final issue, Your Honor, is liability of Plaintiff for attorneys' fees incurred by Holder in this action. Holder has asserted counter-claims seeking attorneys' fees, breach of contract, and pursuant to the frivolous Civil Procedure Sanctions Act. The contract portion is the partial settlement agreement has attorneys' fee provision. The motion for summary judgment today is only concerned with the breach of contract, not -- we're not here for you on the frivolous Civil Procedure Sanctions Act.

Here is the provision, LinkPage: (Reading)

> In the event of a breach of any party and its obligations under this agreement, the prevailing party in any action or proceedings in any other party in connection therewith shall be entitled to recover such its costs and expenses to a reasonable -- (inaudible) -- degree and extent expenses.

That's the provision we're counter-claiming under. How that adds up, as we discussed previously, in the personal settlement agreement Plaintiff gave Holder a warranty that he could not bring this action. (Reading)

> Tadros warrants and represents that such claims released cannot be

asserted against a settlement claim.

We have requested Plaintiff, on multiple occasions, to dismiss his lawsuit -- (inaudible) -- the cause of the commercial settlement agreement. And by our presence here today, you can tell that he has declined. But he has breached the warranty provision in the commercial settlement agreement, and that entitles Holder to summary judgment, non-liability for attorneys' fees and costs.

We are not asking you to set the amount of attorneys' fees today. We are only asking that the complaint -- that judgment as a matter law be entered against Dr. Tadros on his complaint, and that the Court rule that Holder is entitled to his attorneys' fees. And we will address the amount of if that's necessary.

That is our motion today. I will unshare my screen. And if the Court has any questions for me, I'll be happy to address those. It's pretty straightforward. But, otherwise, I will step back and let Mr. Blackburn respond on behalf of the plaintiff.

THE COURT: All right. Mr. Blackburn, do you wish to -- is -- Mr. Masciale, is your motion similar in nature? I can let you present and then

Mr. Blackburn to do them individually, or would you respond to them jointly?

MR. MASCIALE: Your Honor, my motion is slightly different and goes to the substance of the case. So I'm happy to wait and let Mr. Blackburn respond to Mr. Bell's motion, or however the Court would like.

THE COURT: All right. Yes, sir, Mr. Blackburn. Okay. Let's unmute him.

Can you hear him now -- hold on one second. There you are. My law clerk -- okay. Now. All right.

MR. BLACKBURN: Thank you, Your Honor. May it please the Court.

Mr. Bell proposed an argument that left out some -- (inaudible) -- such as the 2017 settlement agreement arose out -- it's in my memorandum, and I'm sure Your Honor had a chance to read all the briefs and memorandums afforded in this action -- but included in Mr. Bell's memorandum is a 2016 complaint. That's how this whole action started. It was amended on the Fourth Amended Complaint, it was also attached to Holder's memo, Exhibit Number 2, Fourth Amended Complaint, to request a jury trial.

The master deed, which was included -- I opposed Mr. Holder's, HOA's memo, which I've agreed to here today, it's included in Exhibit 3. The HOA's master deed is a contract too, it requires arbitration right there on the top. And it's -- it's conspicuous and noticeable. Nobody -- and they filed this 2016 complaint, by the way, with not complying with arbitration provisions in the master deed, which is contract, and not giving my client notice of the 2016 complaint, which by the way he is a named party on that complaint.

And Your Honor, I -- maybe you have, but I never heard of bringing a complaint on somebody without their consent or knowledge, which is exactly what Frank Smith, the HOA's attorney -- which Mr. Bell's talking about -- did. He filed this complaint three months before Holder left. Holder left because of Exhibit A to my memo, which is an engineering report performed in 2015 outlining all of the construction defects, in anticipation of the 2016 lawsuit. And by the way, none of those damages have been corrected to date.

The main point is arbitration provision was completely violated and ignored by the HOA's -- class counsel. It also seeks a jury trial, which is not allowed in this action -- and that's in the bylaws, that anyone who -- and it's in my memo, Your Honor -- to my memo, and I'll pull out my memo if I can find it -- it's in my memo where under miscellaneous provisions in B: (Reading)

> Anyone who attempts to bring a jury trial will be barred.

"Will be barred." And that's exactly what Mr. Bell's client allowed to be done. And in those -- and under B it says: (Reading)

> Holder -- Mr. Bell's client -- will fully-enforce the provisions of the master deed.

So how -- my question, Judge, is how can he come in and say my client breached the commercial settlement agreement, which he didn't know anything about until May '17. That's in the e-mails that Mr. Bell referenced. He left out a lot of things in that nice presentation he gave. A lot of issues that arise through questions of fact, but it should be submitted to this jury.

And it -- a lot things, including the arbitration provision was not invoked, including the fact that while Holder owned the property he leased, parking spaces, which is violative of the master deed itself. That's another violation. They didn't invoke the arbitration provision.

They also -- if you look at Section 7 of the master deed -- restriction -- (inaudible) -- separate conveyance of the common elements. And goes on to Page 16 and it says, including parking spaces, commercial parking spaces.

And so they try to argue about constructive notice -- we'll bounce around on that -- but constructive notice of what? The commercial spaces -- I'll get to that later -- it came back to seven -- I don't want confuse, Your Honor -- seven, on page 16 says: (Reading)

> May not be subject to a lease between the unit owners or the association and another party.

Loren Smith, who worked for Holder, sent my client demanding e-mails -- the last one is March 31st. It's uncontroverted that Mr. Holder was gone in May, but yet, Loren Smith on behalf of Holder Properties, Inc., was sending my client invoices demanding payment for the three parking spaces that were part of one of his units that were controlled and rented through the Marine Corps, which is right up there on Blossom Street, as you're going up Blossom, on the left, there's that Marine recruiting station. (Inaudible) -- involved in this lawsuit, that and three others on top of that.

And the Marines had an agreement with Holder that included three spaces, okay, it's Exhibit 22 to Mr. Holder's deposition. Mr. Holder claimed ignorance of a lot things when I took his deposition. As a matter of fact, when asked about the master deed, he said, you know, I had my attorneys read it to me. I'm kind of familiar with it, but not really.

You would think that an attorney, such as Frank Smith, would -- we'll get to Frank Smith in a minute -- you would think an attorney would say, hey, Mr. Holder, guess what, this master deed -- (inaudible) -- or miscellaneous deed 4, he entered in this master deed so that the arbitration would be instituted or brought. That's why he did a master deed.

And then he also found himself to defend the jury trial actions, which are fraud. He did neither. Especially in the 2016 complaint, which is Mr. Holder's memo, which he didn't mention.

2016 -- February 9th, 2016, he filed a complaint against Holder because of all these deficiencies outlined in the ABS report. So the HOA filed a suit through ultra vires actions, pursuant to my expert, Mike Paradis, which is included in my memorandum. Mr. Paradis opines that Defendants' motions for summary judgment should be vacated because it's based on settlement agreements that should be vacated due to being obtained through ultra vires actions taken by Mr. Masciale's clients in addition to Holder.

So Holder not only violates -- talk about violating a contract -- and I appreciate all the case law -- but when it talks about breach of contract and you're talking about a master deed, its strict compliance. That's what the HOA statute says, any violations to the bylaws, regulations -- I've got it somewhere around here, again as cited in my brief. Strictly complied with. Strict compliance with the master deed.

Well, when the master deed says this is subject to arbitration, and neither Holder or any other of the 38 defendants invoke arbitration provisions, that's a violation right there. He let it go through a settlement, a settlement.

Then when it came time to settle it, he came to my client and said, by the way, you got to sign the commercial release agreement -- and that's included as Exhibit 9 to Mr. Bell's argument. And then he -- you know how it goes. Mr. Smith and Mr. Therow, I appreciate ADESSO e-mailed me for the first time -- this is May 21st, 2017 -- Mr. Bell made several references to '17 -- well, my client responds to you, I appreciate for the first time e-mailing me the ABS report. He looked at it, because Mr. Smith said, you got to sign it, you got to sign it. You have an obligation under the master deed. Master deed says you got to sign it, have all unit owners sign it or you will get sued. Right.

Mr. Smith conveniently forgot to mention to my client, by the way, that a master deed requires arbitration, binding arbitration. Mr. Smith didn't tell that to my client, because Mr. Smith wanted my client to sign the commercial settlement agreement so they could settle the case. And they settled it in 2017, but my client said -- (inaudible) -- affidavit, which is attached to my memorandum.

He struck through the first one. He got an indemnification provision because the building still leaks. It leaks all into the Marines and it leaks into the three units above that, because the HOA -- now run by Mr. Masciale's client -- hasn't done anything to stop the roof leaks that were known in 2015. It still leaks causing -- giving my client -- my client's failure of business, lease turnover is unbelievable because it still leaks as of today.

So the indemnification that my client got from Mr. Smith is totally protected from all damages through the construction repairs. That was back in 2017, almost four years ago.

And now the HOA -- just to bring you current to it -- the HOA is trying to put an assessment on those unit owners for almost $16 million, and they entered into a settlement agreement for $7 million of which unit owners only got 4.8 million. Mr. Smith walked away with the balance.

And now the unit owners over there are left with a building that is in the same -- (inaudible) -- as before. No repairs have been done. And so now they come back, and say, well, we got to fix these repairs. It's going to cost somewhat similar to the estimate that Mr. Smith produced in the construction repair defect claim brought in 2016. And the repairs still haven't been done. My client still has an indemnification provision that protects him -- and it's in the contract too, signed.

So -- and the other things that Mr. Bell conveniently forgot in his PowerPoint presentation is this fourth amended complaint -- (inaudible, sound cut out) -- already testified, it's the fourth amended complaint. Mr. -- the Plaintiff's counsel, Mr. Smith -- never seen anything like this either -- he includes that -- he includes negligent misrepresentation -- which we'll get into in Mr. Masciale's argument. But he also includes a provision barring the defendants from invoking any of their rights pursuant to the master deed.

And that gets back to the start. Mr. Smith says he's going to waive -- and this is in his fourth amended complaint -- you're going to waive any arguments as to delay or statute or repose -- and I can get to that part -- it's -- again, it's in Exhibit 2 to Mr. Bell's memorandum.

Not only has Mr. Smith tried to strip provisions of the arbitration provision in the contract, master deed, he also says both defenses are relied upon using statute of limitations, statute arose as a defense.

So it's almost what my expert, Mike Paradis says, incredulous that Mr. Bell and Mr. Masciale can come before this Court and say that that commercial settlement agreement is of any force or effect. And meanwhile, my expert, Mike Paradis, who hasn't been deposed yet, he says settlement should be vacated, the entire lawsuit should be vacated, because it's brought about by breaches of the master deed and ultra vires actions taken on behalf of the HOA.

The HOA knew about the arbitration provision in their own master deed. They didn't invoke it. Mr. Holder, yeah, he -- I didn't name him individually, I took his deposition where he testified, yeah, I kind of read the master deed, and my attorneys explained to me the important parts. But that's not enough, he got sued.

What about the important parts? The important parts where he agreed to hold Defendants to the arbitration provision, which Mr. Smith tried to strip from the defendants of which Holder was one. He never came forward and said, oh, by the way, guys, this lawsuit is pursuant to arbitration, not a jury trial. And the fourth amended complaint demanded a jury trial by class counsel, Mr. Smith.

So it's all through the master deed, which is included as Exhibit 3, I believe, from Mr. Masciale's argument. The whole master deed. And -- all of these. So not only did Mr. Holder breach his contract by not invoking arbitration, he also breached it by not enforcing arbitration, which was incumbent upon him pursuant to the contract. He also leased, according to Article 7, commercial parking spaces and got money as of late.

So, Your Honor -- and I could go on -- this argument would take all day, because, you know -- (inaudible) -- it involved that Mr. Bell and Mr. Masciale failed to acknowledge.

And Mr. Bell's associate, Mr. Heffer, called me when I first filed this lawsuit in 2019, well, Holder's gone. And I had to show him these e-mails from Holder's own representative, Mr. Loren Smith. Mr. Loren Smith saying they're still charging my client for parking spaces, which is violative of the master deed.

It took this for me to give them -- which I produced to them a long time ago -- by the way, we beat the statute by three months. You're still invoicing my client in March of 31 (sic). Holder left in May of 31 (sic). I know, Judge, this is some -- and it is -- it's incredulous to me that it comes to this. So there's issues of fact all throughout this.

And by the way -- and I'll address this

later -- but Mr. Bell's argument is all about the breach of the commercial settlement agreement, which was brought about by undue influence. Read the affidavit of Darrell Carey that is included in my memo. Mr. Carey signed the release agreement. Mr. Carey was very well-versed in that master deed.

Mr. Carey said: (Reading)

> To the best of my knowledge, none of us as owners, including Dr. Tadros, were given the opportunity to exempt ourselves from the lawsuit or settlement. Me, myself, and other owners, including Dr. Tadros, might have other claims, but no other recourse but to sign the settlement agreement and release.

So Mr. Bell talks about substituting someone's mind with somebody else's, Mr. Herring, who's a board -- on the board at that time and a board president: (Reading)

> We were left no other choice.

I don't know what -- I don't know what duress could be other than that. And I think the Williams case that Mr. Bell quoted talks about substituting one's mind for another, giving them no other choice, so -- but duress active, it's viable and there's so many issues of fact that if the Court rules consistent with the case law, a scintilla of evidence, there's way more than a scintilla of evidence in this case that I could talk about that narrow's Mr. Bell's request. I ask that Mr. Bell's motion be denied. I also request, before Mr. Masciale even talks about his arguments, because I can address those too -- because there's issues of fact in his. For instance, had Dr. Tadros, when he first became aware -- this will go into my estoppel argument. My estoppel argument is, based on Defendants' conduct, Holder knew arbitration, Holder knew -- Holder posted signs similar to this as the City of Columbia came out there in 2018 and took down. Which was (inaudible) until the City came out there and changed the sign and that is consistent with the master deed -- exclusive use of the commercial tenants. They changed it. Because it says -- yes -- and this is Exhibit 4 to Mr. Holder's deposition -- they changed the signs to correctly reflect retail parking only.

So if you go into a McDonald's and you want to buy a Big Mac. And you go in and they tell you, no, no, this isn't a McDonald's, this is Hardee's, we don't serve Big Macs here. Similar to the signage that says Guests/Retail, what are you going to think? Is that ambiguous or vague? I think Mr. Paradis addresses that and other things in his affidavit.

In addition to the settlement of 2016, which wharfed into a fourth amended complaint in 2017, which arose in 2016, three months before Holder left. And Holder knew about that lawsuit and still failed to invoke the arbitration provision. Clearly violative of the contract, master deed. Clearly violative of leasing the parking spaces, like Loren Smith was trying to do, and Mr. Holder did up until he left in May of 2016.

So there's so many breaches. And I can go into a lot more breaches in that master deed, if the Court wants. But, clearly -- not clearly -- it's up to a jury trial to determine if that commercial settlement agreement, which Mr. Bell hangs his hat on, is legitimate. Not in my expert, Mr. Paradies' opinion.

He says it was obtained by A) ignoring the arbitration provision. It was also obtained by improper actions of the HOA board, the board control, Mr. Masciale's client. It was never -- the settlement was never approved. There was never a vote to approve the settlement. There was never -- the Court took it upon themselves just to do it in their own time. They never told the board.

And by the way, the board is over there right now, in addition to being hit with a potential $16 million assessment, there's several of those unit owners over there in ADESSO right now that are upset.

Mike Munson is the property manager now. And Mike Munson has been trying to attempt to buy this ABS report and repair contract. Which if you read, Mr. Paradies' affidavit, the repair contract right now they're trying to hit them with is something they should have settled for in 2017.

But they fast tracked -- I've been doing construction litigation for over 20 years, I've never seen a horizontal property regime case brought in 2016 -- February in 2016, and settled about a year-and-a-half later for $7.5 million.

I just found out the other day, yeah, they took a couple depositions, but they never invoked the arbitration provision. And Mr. Holder just rode along with it the whole time and never said, oh, by the way, this is subject to arbitration. And also, I have the duty to Defendant to make sure it's invoked.

THE COURT: All right, thank you. All right. Mr. Bell, any reply? Brief reply?

MR. BELL: Briefly, Your Honor.

We're not here on the substance of what happened way back when. But there was no argument that the release doesn't say exactly what we said it says. It's a general release, very common. As Mr. Smith noted, Defendants want a complete release.

The arguments about arbitration, here's what I'll say about that. Arbitration can be waived. We all know that. She's engaged in the civil court process with -- with the Court Common Pleas in the District Court. You waive the right to compel arbitration.

The plaintiff is subject to the same arbitration provision and jury trial waiver that everyone else is, yet, here we are in this lawsuit with a jury demand. So that's little out there.

I feel obligated to -- even though I have to take it as true today, I feel obligated to defend Frank Smith. I've known him as a lawyer for 29 years. I don't think he did the things he's accused of doing, but we have to take it at face value.

But what matters for purposes of Holder's motion is that the release is a contract. He acknowledges he signed it. And duress doesn't apply to Holder. He can say whatever he wants. He can sue Frank Smith. He can sue the HOA, as he has. It's all immaterial to Holder. He cannot sue Holder because he released him. And under South Carolina law, acts of alleged duress by Frank Smith and the HOA do not have anything to do with Holder.

We would ask that the release be -- and stipulation of dismissal be enforced as written. That Holder be handed judgment as a matter of law. And that the Court enter an order finding that Dr. Tadros is liable to Holder for attorneys' fees that will be determined later. That's all I have.

MR. MASCIALE: Your Honor, if I may reply to that. I've known Frank Smith for 20 years. He's a fine lawyer. I get along with Mr. Smith. He just so happened to be the attorney representing the HOA. So Mr. Smith is as well-versed or more than I am in construction litigation. (Inaudible) Mr. Smith didn't invoke arbitration. He didn't. And he let it run to a jury trial.

And we're not -- Mr. Smith is just Mr. Smith.

I mean, he came -- he came to my client and said, You need to sign it or you're going to get sued. He did that. He didn't talk about what other parts of the master deed were involved, like arbitration.

In essence, what we're here right now, Judge, is to have that settlement, that settlement and release agreement voided, set aside, because it was obtained by ultra vires actions. It's also obtained -- it breached the master deed -- (inaudible) -- of which provision Mr. Smith knew the arbitration provision, and he -- he violated that. And the commercial release and settlement agreement was just a natural process of the settlement.

He already signed a release of settlement agreement. Mr. Smith deemed -- and Dr. Tadros didn't -- he didn't know about it until May of 2017 when Mr. Smith said, Hey, you need to sign this. Dr. Tadros said, Wait a minute, hold on. I never knew anything about this. He -- Mr. Smith said, well, we'll -- you know, you need to sign it or you're going to get sued.

And by the way, he'll -- (inaudible) -- so he got Dr. Tadros to sign it. But he didn't -- didn't bring up the fact that it was subject to arbitration.

And yes, we -- I'm glad Mr. Bell brought that up. Yeah, we're -- we're -- as the holding in the *Gates* of the Williams-Brice case I cited in my memo, the *Gates* case held that arbitration provisions are enforceable. And it was set aside because -- I know the plaintiff's lawyer in that one, from Charleston, and a Howard Van Dine of Nelson Mullins. After -- (inaudible) -- ruled on the lower court, circuit court, the court of appeals overturned it saying the arbitration provision is valid. But the plaintiff is entitled to a non-jury trial. And we'll be -- we'll be more than happy to have this matter heard before a non-jury.

THE COURT: All right. Let's hear from Mr. Masciale, because I know you all requested 30 minutes --

MR. BLACKBURN: Yes.

THE COURT: -- and we're over that time.

Mr. Masciale, I'll be glad to hear from you, and then, Mr. Blackburn, I'll hear from you.

MR. MASCIALE: Thank you, Your Honor. May it please the Court. I will try -- (inaudible, sound cut out)

It's a simple lawsuit with -- (inaudible) -- despite what Mr. Blackburn has told you. And I don't use this word lightly, but this is a frivolous lawsuit in which the plaintiff and his hired-representative failed to do, really, any due diligence at the time the plaintiff purchased these commercial units at the ADESSO in 2014.

Which, I would add, the purchase price was slightly under $2 million, so this was a substantial purchase. And now because the plaintiff's units, some of his -- (inaudible) -- the plaintiff regrets his purchase. I think he's having some buyer's remorse. And he's seeking to blame anyone other than himself for failing to do his own due diligence.

So some additional factual background -- Mr. Bell did a good job with most of the facts -- but just to give you kind of context of the dates we're talking about.

The master deed that established the ADESSO Horizontal Property Regime was recorded in 2008 in the Richland County Register of Deeds office. And in the master deed, specifically Section 5(C)5, it allocates that a specific amount of commercial parking spaces. In the initial master deed it was 17, that's's since been bumped up to 21. But, anyway, it allocates those as limited common elements which specifically benefit only the commercial units, and they're reserved only to their use.

So it's stated clearly in the master deed that those specific spaces are only supposed to be allocated to the commercial units. And that was recorded in 2008.

Now, in 2013, which was a year before the plaintiff purchased his units, the owner of the ADESSO, ADESSO/COLUMBIA, LLC, recorded a fourth amendment to the master deed which reallocated those same spaces -- and as Mr. Blackburn said -- to the use of both the commercial and residential guests.

So it effectively contradicted the master deed and -- such that the commercial spaces were no longer used -- or no longer dedicated solely to the use of the commercial units. And that was commercial spaces 1 through 17, 108, 157, and then 220 through 221.

Now, in 2008 Holder, as the developer of the property, submitted an amendment to the planned unit development documents on file with the City of Columbia zoning, which, as the zoning administrator testified, controls the parking allocation for the ADESSO. The normal City of Columbia zoning does not apply when there is a PUD document which specifically references parking requirements.

So Holder submitted that to the city based an assumption of about 4,000 square feet for the commercial units, which would entitle the plaintiff to 17 spaces -- oh, no -- oh, I'm sorry, 19 spaces within the ADESSO itself and seven on-street parking, public parking, which could be used to satisfy that requirement.

Now, the plaintiff takes issue -- and I think his memorandum -- or his affidavit from his purported expert also takes issue with what they call the fraudulent conversion -- or fraudulent alteration of the PUD to reduce the amount of square footage that the commercial units comprise.

However, the PUD amendment, which is -- I believe it's an -- (inaudible) -- I think it's Exhibit 2 -- or Exhibit 5 to the deposition of Rachel Bailey, the zoning administrator, which is Exhibit 7 to my memo. The PUD provides a formula for scaling to determine the required parking requirements, based on increases or decreases in square footage.

So I will get -- I'll get to that more later, but suffice it to say there was no -- there was no fraudulent concealing or alteration of the square footage. This is a baseline requirement for -- (inaudible) -- as this increases, this is how the parking will be calculated moving forward. So just to -- I wanted to address that.

But, as I said, both the master deed, the fourth amendment to the master deed, and the 2008 PUD amendment were all public records and matters of public knowledge by the time Dr. Tadros, the plaintiff, purchased his units in 2014.

So under -- under the equitable statute of limitation Dr. Tadros would have to have brought his claims within three years of their -- (inaudible). The plaintiff is -- or what Mr. Blackburn is attempting to argue that Dr. Tadros' actual knowledge is not necessarily or not particularly relevant to a discovery rule analysis under the statute of limitations.

The test for when a cause of action accrues is when a person of common knowledge and experience in the exercise of reasonable diligence should have known or would have known the operative facts giving rise to their claim.

And it's interesting to note that in their memo they cite a case, which I believe -- (inaudible) --

is *Cerone versus Kressler* case, which stands directly against the proposition they're trying to make, that is, his actual knowledge is what governs here. And the case specifically states, the Supreme Court said, the appellate time starts at the time of discovery, the time the -- and this is a med mal case -- when the treating physician's actual negligence becomes known.

We rejected the same contention. It's not a subjective inquiry, Your Honor, it's an objective standard applied to the facts of the case. And here -- (inaudible) -- with constructive notice of the documents that are in the public record at the time he purchased his units.

He purchased them in December of 2014, and as I said, those three documents -- which Dr. Tadros testified before that he understood the fourth amendment to the master deed violate both the ADESSO master deed and the ADESSO PUD documents. When he finally looked into them in 2017, there was nothing prohibiting him from examining those records in 2014 when he purchased the property.

And, in fact, anybody who's purchasing commercial property, especially of that -- that significant of -- (inaudible) -- of title, zoning and other related documents. However, that was just simply not done. Dr. Tadros testified that he personally did not review any of those documents, and that his agent, hired to help with the transaction, also didn't review any of those documents.

In fact, it should be noted that Dr. Tadros is currently in a lawsuit against that agent for the very same negligence, essentially, that occurred here, where he did not review any of those relevant documents.

So -- (inaudible) -- that the fourth amendment violated all of those documents. And that he had or his agent looked into those before he purchased the units in 2014, he would have been made aware of those violations, and would have been able to either not purchase the units or he would have been in a position after to pursue those claims.

And it's interesting to note that prior to the 2014 transaction, Dr. Tadros has testified he had -- he had purchased another four commercial properties. I believe three of which were for investment purposes before this. So he was not -- (inaudible) -- so-to-speak. He was relatively sophisticated and experienced, but for some reason chose not to review any of these title, zoning or parking issues when he purchased the units in 2014.

In fact, he testified that he didn't even personally visit these units until 2016 or 2017, which would be two to three years after he bought them. And that's the constructive knowledge piece of that. So he's charged with knowledge of all those facts, which if he had investigated, he would have found out his claims.

But it gets even -- we can go even further than that. And I think as Mr. Blackburn had mentioned, in early 2015 -- (inaudible) -- that there might be some issues relating to the parking at the ADESSO. He received notification from both Holder Properties, the property manager, regarding the leasing of three of the commercial spaces back to him. Which he testified he knows now, now that he looked into it, violates Section 7 of the master deed which prohibits leasing of those spaces in that manner. And he also received an e-mail from one of his tenants, the United States Marine Corps, threatening to vacate their space unless they were given sufficient parking.

So he had actual notice, in addition to his constructive notice, that there were some issues with the parking that had he pursued those, investigated them, he would have discovered those claims, that the current -- or the allocation of the parking spaces at the time violated the master deed and City of Columbia zoning, the PUD requirements. For some reason he didn't do that until 2017.

However, Your Honor, again, under the discovery rule, the plaintiff's claims regarding parking accrued at the latest -- we'll just say at the latest -- by 2015. And so he was required to bring an action to enforce those claims by 2018, at the latest. As we've established, he didn't file his complaint until February of 2019, one year after the statute.

And so with regard to the parking, his claims are barred by the statute of limitations. And so we would ask the Court to add our judgment as a matter of law in favor of the association and the Horizontal Property regime on that basis.

There are no genuine issues of facts here that he should have -- and there were facts existing at the time he purchased the property and right thereafter, that would have given him notice of the claim -- his claims, and that he failed to bring his claims within the required statute of limitations.

Now, briefly, with regard to his claims for declaratory injunctive relief. We have testimony from Rachel Bailey, again, the City of Columbia's zoning administrator, who testified all to the current parking requirements applicable to the ADESSO commercial units.

Namely, that with the current square footage -- which the parties do not disagree about of 8,139 square feet, based on the formula contained in the 2008 PUD amendment regarding parking spaces. Now, under a city zoning ordinance applicable to PUDs, as Rachel Bailey testified, up to 50 percent of that requirement can be satisfied by public on-street parking.

There's no genuine-issue of fact here, Your Honor. That the plaintiff currently has 21 parking spaces within the building itself for his commercial units, and there are at least 17 public spaces along Blossom Street on either side of -- or I'm sorry, along Main Street within a hundred feet of the building, which can be used to satisfy those parking requirements.

So, according to Rachel Bailey's testimony, which has not been controverted, the plaintiff has at least 38 spaces that are devoted to his -- the use of his commercial units.

So with regard to the standard for injunctive relief, Your Honor, the appellate courts of South Carolina have made clear that injunctive relief is a drastic remedy that should be applied with caution. And one of the things that courts should consider would be weighing the benefits to the plaintiff of a prospective injunction -- (inaudible) -- or to Defendants.

Well, here the plaintiff would not get any benefit with an injunction being imposed. He's already gotten the relief he seeks, which is the proper allocation of parking spaces under the master deed and the PUD. And as we have, again, uncontested testimony -- and I would note that if the plaintiff is looking to use the affidavit of their purported expert, Michael Paradis, I see nothing in there that qualifies him as a zoning expert competent to testify about any of those matters, not to mention a lot of the -- (inaudible) -- just a lot of lack of secondhand knowledge and do not assert things that would be admissible evidence, which is required under Rule 56.

But not withstanding that, there's been nothing seriously controverting the City of Columbia's zoning administrator's testimony about the spaces meeting the zoning requirements and there being no current zoning violation at the ADESSO. So, again, the plaintiff would not have a benefit from injunctive relief here.

And it's really the same argument for his declaratory judgment claim, because to present a justiciable controversy under the declaratory judgment act, as Your Honor knows -- (inaudible) -- here that the claim is moot. The plaintiff has the relief he's seeking. He has the spaces he's entitled to. And there's no genuine issue of facts about that.

Moving on to the plaintiff's claims for negligent misrepresentation and constructive fraud, and this seems to be a point on which the plaintiff and the ADESSO defendants agree. Your Honor, an essential element of both claims is that a false representation has to be made.

The ADESSO defendants never were in contact with the plaintiff when he purchased his units and that -- (inaudible) -- my clients made representations to him that had induced him into purchasing the commericial units. The plaintiff admitted in his deposition that he never spoke to either -- or to the ADESSO defendants and nor did his agent, before the transaction.

So there's no genuine issue of facts here. That one of the essential elements of these two torts is -- is missing. There were no representations, at all, made to the plaintiff that induced him into purchasing these units.

The plaintiff, as was said earlier, purchased them from the prior owner, which was a man named Ford Elliott who was not associated with the ADESSO defendants. The Plaintiff's memo -- memorandum, which he submitted, admits the same. He stated as much by saying he never -- he didn't purchase the units from my clients.

And to the extent that -- if the plaintiff -- if Plaintiff's counsel here is trying to argue that somehow leaving the retail/guest size in place until 2018 somehow constitutes the negligent misrepresentation or the constructive fraud, one of the elements of both of those torts is that the plaintiff has to justifiably rely on any such representations.

And as I stated before, everything that would show the plaintiff that he had these claims related to parking were all matters of public record since 2013. And where the party has the means -- or he has actual knowledge of the falsity of a statement or the means of obtaining that knowledge, the party can't justifiably rely on any of those representations. And that's -- that's *Quail Hill, LLC versus County of Richland*, which was 387 South Carolina reports 223.

So to the extent they're trying to argue that somehow leaving those signs up misled the plaintiff into not bringing claims or anything to that effect, he had no right to rely on any of that.

First of all, we don't contend there were any representations about that. But even if there were, he had the means to know that -- the errors of those, quote, unquote, representations as early as 2014.

So -- (inaudible) -- again, he knew that his claims fail -- his claims for negligent misinterpretation and constructive fraud fail as a matter of law on those grounds as well.

And that -- regarding Plaintiff's claims about the assessments. Your Honor, the master deed is essentially a contract between the owners of the -- in the association. And the master deed states, with regard to the calculation of assessments, that -- and the bylaws also state this -- generally, each unit owner is assessed a portion of the HOA's total annual expenses in proportion to his interest in the HOA.

Well, in Plaintiff's case, his two units comprise a total of 8.544279 percent in the entire HOA. But Section 5(A)(3) of the master deed also states that: (Reading)

> Separate budgets for the commercial and residential units shall be developed annually, and no cost, expenses and budget items specifically attributed to residential units shall be included -- (inaudible). So, likewise, cost, expenses and budget items which affect residential and commercial units shall be appropriately allocated in relation to use by the owners of such units.

As set forth in the affidavit of Michael Munson, who has over 30 years of property management experience, and who also has personal knowledge of the calculation of these budgets because he was involved with them, these budgets to the plaintiff's commercial units were calculated properly. (Inaudible) -- which he should be assessed under the bylaws. But because the master deed requires the allocation of budget items between the residential and commercial units, the plaintiff's annual assessment is reduced by the budget items which are only -- as per the master deed -- which are specifically attributable to the residential units.

Anything else which benefits either of them, which is the large majority of the common and limited common elements at the ADESSO, are properly attributable to the commercial use. And they have to be further reduced in proportion -- (inaudible) -- of those.

And so using that formula as set forth in the master deed, Mr. Munson calculated that, for example, in the 2018 budget, the plaintiff was assessed a total of slightly over $19,000 -- and this is paragraph 23 of Mr. Munson's affidavit. That's a total of 2.77 percent of the total amount of cost and expenses for the association that year. Paragraph 24, 2019 is similar, 2.85 percent of the total. And then 1 percent -- (inaudible).

But the point is, those -- the assessments charged to Plaintiff's units are in compliance with the master deed and the rest of the governing documents for the ADESSO. Plaintiff pays significantly less than the amount he should if we're just going off of the -- his entire percentage interest in the regime.

So, Your Honor, I know there's -- and I'm going to wrap it up here pretty soon -- but there's really no genuine issue here of fact that these comply with the requirements of the master deed. And I know that the plaintiff has the affidavit of Mr. Paradis. However, he doesn't set forth a formula or any conclusions about how these assessments should be calculated instead.

In fact, he -- I think he just states something to the effect of he thinks these assessments are slightly high, or that some shouldn't be allocated to the commercial use. But he doesn't say which specific ones that he takes issue with, nor did the plaintiff in his deposition.

All of their conclusions are based, really, only on personal conjecture or the hearsay statements that the plaintiff spoke with some of the commercial tenants, which wouldn't know how they're calculated anyway because they're not members of the association.

And I know Mr. Blackburn will probably raise the scintilla of evidence standard to try and oppose our motion on this point. However, there is another important point when reviewing -- or when taking into consideration the standard for summary judgment. And that is when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.

And that's in the *Holmes versus East Cooper Community Hospital*, 408 South Carolina 138. And then that's cited in my memo under procedural standard.

And based on the evidence we have, there's no real genuine issue of fact on this point. We have an affidavit of the property manager with personal knowledge of how these budgets were calculated, setting forth a formula of how they were calculated based on the master deed. And so far the plaintiff has only been able to put forth just speculation and no real formula to counter that.

So we'd also ask the Court to enter summary judgment on that point, that the association did not -- (inaudible). Now, with regard to assessments, did not breach any duty owed to the plaintiff with regard to assessments, and that the assessments comply with all the association's governing documents.

And then on the last point, Your Honor, there's a matter -- and I don't believe Plaintiff addressed it in his memorandum, but I did want to bring up that the plaintiff has -- has agreed to withdraw his unfair trade practices claim as it relates to the ADESSO defendants. And that's included in his answer to Interrogatory -- our interrogatory No. 12, which is Exhibit 9 to my memorandum. And he also in his deposition, which Exhibit 8 in my memorandum.

So we would also ask the Court to dismiss that claim on that basis, that he is withdrawing his unfair trade practices claims.

And so, Your Honor, just in conclusion, based on everything we have so far in discovery, there is no genuine issue of facts, that all of these claims are either barred by the statutes of limitations, or the ADESSO defendants have complied with the relevant provisions of the ADESSO governing documents.

And for that reason, we would ask the Court to enter a judgment as a matter of law on -- (inaudible) -- defendants on all of Plaintiff's claims and to dismiss them with the prejudice. And we reserve the right, as well, to visit the attorneys' fees issues and South Carolina frivolous civil proceedings sanctions issues at a later date.

Thank you.

THE COURT: All right. Mr. Blackburn, I'm going to give you exactly 15 minutes to respond, because we are way over the time that was requested. And my court reporter has to take a lunch break, my staff has to take a lunch break, and so do I. All right.

MR. BLACKBURN: An hour.

THE COURT: This is only a 30-minute -- supposed to be a 30-minute hearing, and now we're well over --

MR. BLACKBURN: An hour.

THE COURT: Yes. Maybe like an hour and a half now. But go ahead.

MR. BLACKBURN: Your Honor, thank you. I respect that. Great. And the 15 minutes --

And I'll start with Mike Munson, as reported that Mike Munson's a property manager under CMM Management at ADESSO right now. I issued a subpoena to Mike Munson, and it was -- documents were due December 30th.

Mr. Masciale called me that Monday, the 30th, and he asked me for an extension of time for an affidavit that was signed -- (inaudible). Mr. Masciale asked me for extension of time to respond to the subpoena for the documents I requested from Mr. Munson, including the items that my expert, my purported expert -- which I named by the way -- Mr. Masciale's very well of aware that I named Mr. Paradis as an expert.

Mr. Paradis said I need this, this and this from Mr. Munson so I can further -- (inaudible) to get into more detail on Mr. Munson's affidavit and how it's improper. And Mr. Paradis did explain -- and I'll get my memo -- on page 13 of Document 8 -- (inaudible) -- Plaintiff relates to the monthly assessment he's being charged by ADESSO HOA. It's all in my memorandum.

He had asked -- he's asked repeatedly for an explanation on how the commercial property budget is determined and never got a response until the affidavit from Michael Munson dated December 28th, 2020. Okay. My response to the subpoena issues were due December 30th.

Mr. Munson was preparing an affidavit and there was -- in support of Mr. Masciale's client. It was filed with a motion for summary judgment the day after Mr. Masciale asked me for an extension to respond to Mr. Munson's documents.

So for them to come in and claim that he's -- Mr. Paradis is not an expert and all that kind of stuff. Mr. Paradis opined, and so did Mr. Holder when I took his deposition, and so did Dr. Tadros. You know, they're conveniently ignoring the fact that Dr. Tadros was deposed right here, he brings legitimate issues about the prices he was charged. (inaudible) -- required by the master deed related to the resident and commercial units.

Mr. Paradis says, I have reviewed the affidavit and the information provided. Sadly, there is, quote, all caps: (Reading)

> No explanation of the methodology used to establish the various line item fees, only a statement that they are consistent year-to-year.

And I could go on, Your Honor, but I'd be using my 15 minutes. But contrary to what Mr. Masciale argues, Mr. Paradis does include in his affidavit issues he has with Mr. Munson's calculation of the operating budget, and in addition to my client's questions. And that's why he didn't pay them. And he was threatened with foreclosure because he was -- had questions, and he never could get a response from the HOA.

And I'll move on from that. But as far as negligent misrepresentation, again, the signs that were kept there until 2018. Based on my client's continued complaint through the HOA, CMM Management had -- their misleading. It says, Guests and Retail Customer parking only. Well, guests for what? Guests for one of the other 110 units in there, or just for the retail? So they changed those signs, 2018.

And so when I -- when we're talking about the case law, there's the case that I'll cite to you, *Hooper versus Ebenezer Senior Services*. This stands for equitable estoppel of the statute of limitations. (Reading)

> The equitable estoppel (a) permit sought through the statute of limitations as a defense. The Defendant will be estopped to assert the statute of limitations and bar of a Plaintiff's claim, or Defendants, when the delay that otherwise would

give operation of the statute has been induced by the defendant's conduct.

Which it has been in this case.

I'll address one other significant point. Mr. Masciale cited *Eman*. *Eman* is a medical malpractice case. It also says this: (Reading)

When there is conflicting testimony regarding time of discovery of facts, including those of medical malpractice claims, date on which discovery should have been made becomes an issue for the jury to decide.

And, Your Honor, I'm going to finish within my 15 minutes, and I respect your time today. But I would humbly request that the defendants' motions for summary judgment to be dismissed, because there's several issues of fact involved in this case, pursuant to *Hancock* which -- and similar cases of that ilk, that preclude summary judgment.

And I would respectfully request that Your Honor enter a judgment by denying both defendants' motions for summary judgments based on the matters heard here and my memorandum and other supporting documents.

THE COURT: All right. Mr. Blackburn, just -- so on the question of statute of limitations that Mr. Masciale brought up. How is this not -- on the issue with the parking spaces, he is saying that -- that there is -- the statute is limited, you are barred by the -- the client is barred on the parking claims because of the statute of limitations. Can you address that, briefly?

MR. BLACKBURN: Yes, Your Honor, briefly.

My client made several complaints after he purchased it in December of 2014, about the parking. And in 2017 -- just as in my memorandum -- a letter dated February 15th, 2017, he brought those matters directly to the attention of the ADESSO HOA, Mr. Masciale's client. And that's what perpetrated a changing of the signs.

So the defendants' conduct, similar to the holding in *Hooper*, their conduct allowing these signs to remain by charging him rent for the Marines.

My client in his deposition, he testifies, who would assume that they are in compliance. When he found out they weren't, he wrote that letter on February 15th, 2017 saying, Because I assume you're an honest person, you're in compliance. He wrote that letter when he found out they weren't in compliance.

And, again, certain -- Mr. Holder -- to the point of statute of limitations and actual knowledge, those PUD documents are not -- (inaudible) -- and was not recorded. So what kind of constructive knowledge must you have. Okay. I asked Mr. Holder, I said, you can't -- you can't think of an answer as to why the master deed identifying anyone other than Mr. Hedges, who worked for Holder, committed a minor amendment on February 8th of 2008. So after the master deed had been filed, Mr. Hedges missed a minor amendment, assuming that it's 4,675 square feet, it was 8139. But Mr. Hedges, who works for Holder, says, no, no, no, let's assume -- let's make an assumption. And it does give the calculation, any increase above 4675 shall result in three-and-a-half parking spaces for the commercial unit.

And I asked Mr. Blackburn, I said -- I asked Mr. Holder, I said does that make any sense to you, Mr. Holder? And Mr. Heffer objected. Mr. Masciale objected. So the witness says, again, Hell no. To me, I don't know, does make any sense or not.

So based upon the equitable estoppel, you don't have to say -- (inaudible) -- representation like the signage, like my client's complaints through the HOA, Mr. Masciale's clients, like Loren Smith's continuing charges for Holder of the parking spaces.

I would respectfully request that -- or submit that the statute of limitations began to toll in, at least in '17, February 15th of '17, or at the latest '18, when my client filed his suit in February of 2019.

And one other point too. When Mr. Bell says this is a second action brought by Plaintiff, well, that's only because he owned those units. He was never made aware of that until 2017, tried to hold to the commercial settlement.

And, hopefully, that answers your questions, Your Honor. And I'll be glad to address any more that you may have.

THE COURT: All right. And my next question is regarding Holder. My understanding is Holder was terminated as the property manager in 2016. Is that correct?

MR. BLACKBURN: Yes. In May 2016.

THE COURT: All right. And they settled the claims against Holder in May 2017?

MR. BLACKBURN: Yes, ma'am. And Mr. Holder testified that he didn't even know if it settled.

THE COURT: All right. So, I guess what I'm -- I guess what I'm -- so the claim -- in the -- and I'm -- in looking at the settlement agreement, and I understand that there was an arbitration -- I know you're going to start on the arbitration agreement -- and you don't -- I'm guessing your argument is you don't think the settlement is -- agreement is valid because they failed to follow the mandatory arbitration agreement. Is that --

MR. BLACKBURN: Yes, ma'am. And that's very similar to the *Gates* case, *Gates* at Williams-Brice. It's right on point, like I've mentioned. And the reason it was -- the circuit court was overturned by the court of appeals, and then the plaintiff said, oh, we'll -- we'll just go ahead and settle before it was bumped from the supreme court. So they entered into a settlement agreement. The *Gates* case said that arbitration provisions are enforceable.

THE COURT: Okay. I understand they're enforceable, but I'm guessing -- do you think that by entering into the settlement agreement, then you end up waiving your right to the arbitration? I think that's what Mr. Bell asserted.

MR. BLACKBURN: Well, you -- you can't waive your right to arbitration because -- it's similar to a Poison Tree, that commercial settlement -- (inaudible) -- required a non-jury trial. Which is the case file said that's okay, we can have a non-jury trial, but you can't have a jury trial. And that commercial settlement agreement was proof of a jury trial demand without my client's knowledge of the suit and violative of the master deed, Your Honor.

THE COURT: All right. Thank you.

MR. BLACKBURN: Thank you, Your Honor.

MR. MASCIALE: Your Honor, if I may just to address some points very briefly?

THE COURT: Yes, sir. Very briefly.

MR. MASCIALE: Yes, ma'am.

With regard to the documents that are relevant to that request have already been produced back in February -- I think back in February. And Mr. Paradis' affidavit even makes a reference to those documents, it's paragraph 17 under documents to review. It says: (Reading)

> Defendant's production of 3,824 pages of documents, which included meeting minutes from 2012

through December 31st, 2019.

So to the extent Plaintiff's counsel is saying he needs the documents requested in the subpoena for his expert to review, he's already obtained them and his expert has already reviewed them in preparing this affidavit.

Conflicting testimony about the -- when the plaintiff discovered the violations. Again, there is no conflicting testimony on this. We know Plaintiff actually discovered these in 2017. But under the discovery rule and the statute of limitations for those purposes, it's essentially irrelevant when he actually knew, it's when he should have known.

And for the facts -- and under the facts of -- you know, as I've already laid out, he should have known, at the latest, 2015. And he failed to bring his claims within the time required by the statutes.

And then on -- to the equitable estoppel argument. I believe equitable estoppel -- (inaudible) -- of the existence of those claims. There was no evidence that the HOA concealed anything. And the fact that they changed the signs when requested to do so by the City of Columbia zoning, to bring them into compliance with the master deed and the PUD requirements, is not an act of concealment of the claims at all.

And the fact is the plaintiff should have known about his claims three years before that, and failed to take any efforts to investigate them until 2017. Almost three years after he purchased them.

So, again, Your Honor, we would ask the Court to establish -- (inaudible) -- on all of Plaintiff's claims. Thank you.

THE COURT: All right.

MR. BLACKBURN: Your Honor, one minute, one minute.

THE COURT: Yes, sir.

MR. BLACKBURN: The documents I have obtained were from Mr. Masciale's clients. They weren't from Mike Munson. And, yes, my expert, Mike Paradis, did review all those documents. They were incomplete. It took me six months to get the HOA's documents. I worked with Mr. Masciale, I gave extensions. Like I said, it took me six months to get those documents. So my expert says they're not complete, therefore I need them from property manager, Mr. Munson. We still haven't gotten them yet, Your Honor. And I so appreciate your time today, Your Honor, but I believe -- again, I'll reiterate, those motions for summary judgment should be denied because there's several issues of fact that need to be addressed to a jury and they -- and -- (inaudible) -- therefore results and the motion for summary judgment be denied, in my opinion.

THE COURT: All right. Thank you.

And anything else from you, Mr. Bell? Since I let everybody else speak, I believe in giving equal time.

MR. BELL: I just want to say thank you, Your Honor.

THE COURT: All right.

MR. MASCIALE: Thank you, Your Honor.

THE COURT: So what I want to do is take it under advisement. I'd like to take a look at it. I'll probably have my law clerk issue a Form 4 over a -- and with directions regarding any proposed orders to -- after I make a decision, I'll have the direction in Form 4 requiring proposed orders.

MR. BELL: Your Honor, I appreciate your time.

MR. BLACKBURN: Yes, Your Honor. Thank you.

THE COURT: All right. Thank you.

(Matter concluded.)

CERTIFICATE OF REPORTER)
STATE OF SOUTH CAROLINA)
RICHLAND COUNTY)

I, KAREN ANN KOCSIS, a Certified Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on Page 1 and the proceedings were recorded stenographically by and were thereafter transcribed under my direction; that the foregoing transcript as typed is an accurate and complete record of the proceedings io the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on this 13th day of March at Columbia, Richland County, South Carolina.

Karen A. Kocsis

Karen A. Kocsis, CCR
Notary Public
State of South Carolina at Large
My Commission expires August 9, 2031

2019CP4000919 : Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al

Common Pleas

Case Number 2019CP4000919
Case Subtype Real Prop/Other 499
Filed Date 02-14-2019
Status Appeal

Plaintiff Emad Tadros et al
Defendant Adesso Homeowners Association et al
Assigned Judge Clerk Of Court C P, G S, And Family Court
File Type Jury

⊞ Show/Hide Participants

Name	Description	Type	File Date	
Adesso Homeowners Association	NEF(12-01-2025 08:46:50 AM) Order/Other	Filing	12-01-2025	08:47:08 AM
Adesso Homeowners Association	Order on Reconstructing the Record	Order	12-01-2025	08:46:50 AM
Adesso Homeowners Association	NEF(10-14-2025 10:25:41 AM) Proposed Order/Other	Filing	10-14-2025	10:29:29 AM
Adesso Homeowners Association	Order/Order Cover Sheet $25.00	Filing	10-14-2025	10:25:41 AM
Charles Grant Blackburn	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Paul Hamilton Hoefer	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Walter B. Todd, Jr.	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Douglas Walker MacKelcan, III	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Kevin Kendrick Bell	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Michael Christopher Masciale	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Thomas Jefferson Goodwyn, Jr.	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Skyler Cole Wilson	6/17/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	05-14-2025	10:04:01 AM
Emad Tadros	NEF(04-22-2025 11:53:28 AM) Order/Electronic Form 4	Filing	04-22-2025	11:53:42 AM
Emad Tadros	Form 4 Defendant's Motion for Reconstruction of the Record (	Order	04-22-2025	11:53:28 AM
Adesso Homeowners Association	NEF(04-15-2025 12:20:42 PM) Memo/Memo	Filing	04-15-2025	12:39:28 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_1	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_2	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_3	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_4	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_5	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_6	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_7	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_8	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_9	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_10	Filing	04-15-2025	12:20:42 PM
Adesso Homeowners Association	Memo/Memo on Reconstruction-EX_11	Filing	04-15-2025	12:20:42 PM
Charles Grant Blackburn	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Paul Hamilton Hoefer	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Walter B. Todd, Jr.	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Douglas Walker MacKelcan, III	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Kevin Kendrick Bell	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Michael Christopher Masciale	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Thomas Jefferson Goodwyn, Jr.	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Skyler Cole Wilson	4/16/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-25-2025	03:57:34 PM
Emad Tadros	NEF(03-23-2025 06:36:09 PM) Order/Continuance	Filing	03-23-2025	06:36:20 PM
Emad Tadros	Order/Continuance	Order	03-23-2025	06:36:09 PM
Emad Tadros	NEF(03-19-2025 03:36:21 PM) Proposed Order/Continuance	Filing	03-20-2025	08:47:11 AM
Emad Tadros	Order/Order Cover Sheet $25.00	Filing	03-19-2025	03:36:21 PM
Charles Grant Blackburn	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Paul Hamilton Hoefer	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Walter B. Todd, Jr.	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Douglas Walker MacKelcan, III	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Kevin Kendrick Bell	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Michael Christopher Masciale	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Thomas Jefferson Goodwyn, Jr.	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Skyler Cole Wilson	4/8/2025_MOTION_Roster/Notice of Motions Roster Publication	Action	03-06-2025	04:19:43 PM
Adesso Homeowners Association	NEF(12-20-2024 11:46:29 AM) Motion/Other	Filing	12-20-2024	12:12:34 PM
Adesso Horizontal Property Regime	Motion For Reconstruction Of The Record	Motion	12-20-2024	11:46:29 AM
Adesso Horizontal Property Regime	Motion For Reconstruction Of The Record-EX_1	Motion	12-20-2024	11:46:29 AM
Adesso Homeowners Association	NEF(07-08-2024 01:55:38 PM) Notice/Notice of Appearance	Filing	07-08-2024	03:52:38 PM
Adesso Homeowners Association	Notice/Notice of Appearance	Filing	07-08-2024	01:55:38 PM
Adesso Homeowners Association	Letter	Filing	07-08-2024	01:55:38 PM
Adesso Homeowners Association	Letter-EX_1	Filing	07-08-2024	01:55:38 PM

Adesso Homeowners Association	Letter-EX_2	Filing	07-08-2024	01:55:38 PM
Emad Tadros	NEF(01-05-2023 11:29:48 AM) Order/Other	Filing	01-05-2023	11:38:55 AM
Emad Tadros	Order/court reporter that covered the hearing on January 7,	Order	01-05-2023	11:29:48 AM
Emad Tadros	NEF(01-04-2023 04:16:59 PM) Proposed Order/Other	Filing	01-05-2023	08:48:01 AM
Emad Tadros	Order/Order Cover Sheet $25.00	Filing	01-04-2023	04:16:59 PM
Emad Tadros	Appeal/Notice of Appeal to Court of Appeals	Action	10-12-2022	02:27:04 PM
Emad Tadros	NEF(10-11-2022 02:27:04 PM) Appeal/Notice of Appeal to C...	Filing	10-11-2022	03:06:19 PM
Emad Tadros	Notice/Notice of Appearance	Filing	10-11-2022	02:27:04 PM
Adesso Homeowners Association	NEF(09-19-2022 02:03:21 PM) Order/Form 4	Filing	09-19-2022	02:03:31 PM
Adesso Homeowners Association	Form 4 Therefore, the Order entered by this Court on Septemb	Order	09-19-2022	02:03:21 PM
Adesso Homeowners Association	NEF(11-08-2021 01:24:25 PM) Order/Signed Order/Protectio...	Filing	11-08-2021	02:57:17 PM
Adesso Homeowners Association	Order/Protection from Court Appearance	Filing	11-08-2021	01:24:25 PM
Adesso Homeowners Association	NEF(10-22-2021 01:52:50 PM) Memo/Memo in Opposition	Filing	10-22-2021	02:15:25 PM
Adesso Homeowners Association	Memo/Memo in Opposition To Plaintiff's Motion To Reconsider	Filing	10-22-2021	01:52:50 PM
Emad Tadros	Motion/Reconsider 59e	Motion	10-01-2021	04:51:00 PM
Emad Tadros	Motion/Reconsider 59e	Motion	10-01-2021	04:51:00 PM
Emad Tadros	Certificate/Certificate of Technical Failure or Difficulties	Filing	10-01-2021	11:08:54 AM
Adesso Homeowners Association	NEF(09-21-2021 03:58:00 PM) Order/Summary Judgment	Filing	09-21-2021	03:58:23 PM
Adesso Homeowners Association	ORDER GRANTING ADESSO DEFENDANTS� MOTION FOR SUMMARY JUDGMEN	Order	09-21-2021	03:58:00 PM
Charles Grant Blackburn	10/11/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	09-16-2021	01:49:56 PM
Paul Hamilton Hoefer	10/11/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	09-16-2021	01:49:56 PM
Walter B. Todd, Jr.	10/11/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	09-16-2021	01:49:56 PM
Douglas Walker MacKelcan, III	10/11/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	09-16-2021	01:49:56 PM
Kevin Kendrick Bell	10/11/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	09-16-2021	01:49:56 PM
Michael Christopher Masciale	10/11/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	09-16-2021	01:49:56 PM
Emad Tadros	NEF(09-14-2021 03:58:14 PM) Stipulation Of Dismissal	Filing	09-14-2021	04:16:20 PM
Emad Tadros	Stipulation Of Dismissal as to Holder Defendants	Filing	09-14-2021	03:58:14 PM
Adesso Homeowners Association	NEF(08-31-2021 03:27:19 PM) Proposed Order/Summary Judgm...	Filing	08-31-2021	03:56:15 PM
Adesso Horizontal Property Regime	Order/Order Cover Sheet $25.00	Filing	08-31-2021	03:27:19 PM
Case Party Inactive	NEF(08-02-2021 12:00:50 PM) Proposed Order/Summary Judgm...	Filing	08-02-2021	12:26:36 PM
Case Party Inactive	Order/Order Cover Sheet $25.00	Filing	08-02-2021	12:00:50 PM
Case Party Inactive	NEF(07-15-2021 12:48:26 PM) Order/Form 4	Filing	07-15-2021	12:48:43 PM
Case Party Inactive	Form 4 Order Defendants� Motion for Summary Judgement is her	Order	07-15-2021	12:48:26 PM
Emad Tadros	NEF(07-06-2021 04:11:37 PM) Order/Form 4	Filing	07-06-2021	04:24:34 PM
Emad Tadros	Form 4 Form 4 Pursuant to status conference, this case is no	Order	07-06-2021	04:11:37 PM
Adesso Homeowners Association	NEF(06-01-2021 02:49:30 PM) Order/Signed Order/Protectio...	Filing	06-01-2021	03:09:19 PM
Adesso Homeowners Association	Order/Signed Order/Protection from Court Appearance	Filing	06-01-2021	02:49:30 PM
Charles Grant Blackburn	6/21/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	05-19-2021	02:22:26 PM
Paul Hamilton Hoefer	6/21/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	05-19-2021	02:22:26 PM
Walter B. Todd, Jr.	6/21/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	05-19-2021	02:22:26 PM
Douglas Walker MacKelcan, III	6/21/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	05-19-2021	02:22:26 PM
Kevin Kendrick Bell	6/21/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	05-19-2021	02:22:26 PM
Michael Christopher Masciale	6/21/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	05-19-2021	02:22:26 PM
Grace Living Trust	NEF(05-07-2021 05:52:18 PM) Service/Certificate Of Servi...	Filing	05-10-2021	08:38:55 AM
Grace Living Trust	Service/Certificate Of Service	Filing	05-07-2021	05:52:18 PM
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Paul Hamilton Hoefer	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	04-14-2021	10:21:02 AM
Walter B. Todd, Jr.	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	04-14-2021	10:21:02 AM
Douglas Walker MacKelcan, III	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	04-14-2021	10:21:02 AM
Kevin Kendrick Bell	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	04-14-2021	10:21:02 AM
Michael Christopher Masciale	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	04-14-2021	10:21:02 AM
Charles Grant Blackburn	4/28/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-29-2021	11:51:35 AM
Paul Hamilton Hoefer	4/28/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-29-2021	11:51:35 AM
Walter B. Todd, Jr.	4/28/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-29-2021	11:51:35 AM
Douglas Walker MacKelcan, III	4/28/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-29-2021	11:51:35 AM
Kevin Kendrick Bell	4/28/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-29-2021	11:51:35 AM
Michael Christopher Masciale	4/28/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-29-2021	11:51:35 AM
Charles Grant Blackburn	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	03-11-2021	11:22:42 AM
Paul Hamilton Hoefer	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	03-11-2021	11:22:42 AM
Walter B. Todd, Jr.	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	03-11-2021	11:22:42 AM
Douglas Walker MacKelcan, III	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	03-11-2021	11:22:42 AM
Kevin Kendrick Bell	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	03-11-2021	11:22:42 AM
Michael Christopher Masciale	1/4/2021_J1_Roster/Notice of Case Roster Publication Sent	Action	03-11-2021	11:22:42 AM
Charles Grant Blackburn	3/24/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-03-2021	11:47:16 AM
Paul Hamilton Hoefer	3/24/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-03-2021	11:47:16 AM
Walter B. Todd, Jr.	3/24/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-03-2021	11:47:16 AM

Douglas Walker MacKelcan, III	3/24/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-03-2021	11:47:16 AM
Kevin Kendrick Bell	3/24/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-03-2021	11:47:16 AM
Michael Christopher Masciale	3/24/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	03-03-2021	11:47:16 AM
Case Party Inactive	NEF(01-08-2021 03:39:04 PM) Order/Electronic Form 4	Filing	01-08-2021	03:39:13 PM
Case Party Inactive	Electronic Form 4 Order The Motions for Summary Judgment (fi	Order	01-08-2021	03:39:04 PM
Adesso Homeowners Association	NEF(01-05-2021 04:26:40 PM) Memo/Memo in Support	Filing	01-05-2021	04:36:28 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_1	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_2	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_3	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_4	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_5	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_6	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_7	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_8	Filing	01-05-2021	04:26:40 PM
Adesso Homeowners Association	Memo/Memo in Support Of Motion For Summary Judgment-EX_9	Filing	01-05-2021	04:26:40 PM
Emad Tadros	NEF(01-05-2021 01:02:04 PM) Memo/Memo in Opposition	Filing	01-05-2021	01:40:48 PM
Emad Tadros	Memo/Memo in Opposition To Motion For Summary Judgment	Filing	01-05-2021	01:02:04 PM
Emad Tadros	Memo/Memo in Opposition To Motion For Summary Judgment-EX_1	Filing	01-05-2021	01:02:04 PM
Emad Tadros	Memo/Memo in Opposition To Motion For Summary Judgment-EX_2	Filing	01-05-2021	01:02:04 PM
Emad Tadros	Memo/Memo in Opposition To Motion For Summary Judgment-EX_3	Filing	01-05-2021	01:02:04 PM
Emad Tadros	Memo/Memo in Opposition To Motion For Summary Judgment-EX_4	Filing	01-05-2021	01:02:04 PM
Adesso Homeowners Association	NEF(12-28-2020 05:50:18 PM) Motion/Summary Judgment	Filing	12-29-2020	03:05:39 AM
Adesso Horizontal Property Regime	Motion/Summary Judgment	Motion	12-28-2020	05:50:18 PM
Adesso Horizontal Property Regime	Motion/Summary Judgment-EX_1	Motion	12-28-2020	05:50:18 PM
Charles Grant Blackburn	1/7/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	12-21-2020	01:11:34 PM
Paul Hamilton Hoefer	1/7/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	12-21-2020	01:11:34 PM
Walter B. Todd, Jr.	1/7/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	12-21-2020	01:11:34 PM
Douglas Walker MacKelcan, III	1/7/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	12-21-2020	01:11:34 PM
Kevin Kendrick Bell	1/7/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	12-21-2020	01:11:34 PM
Michael Christopher Masciale	1/7/2021_MOTION_Roster/Notice of Motions Roster Publication	Action	12-21-2020	01:11:34 PM
Case Party Inactive	NEF(09-24-2020 04:11:43 PM) Memo/Memo in Support	Filing	09-24-2020	04:24:06 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_1	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_2	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_3	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_4	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_5	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_6	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_7	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_8	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_9	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_10	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_11	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Memo/Memo in Support Of Morion For Summary Judgment-EX_12	Filing	09-24-2020	04:11:43 PM
Case Party Inactive	Motion/Summary Judgment	Motion	09-24-2020	04:11:43 PM
Emad Tadros	NEF(09-09-2020 02:34:44 PM) Order/Consent Order	Filing	09-09-2020	02:34:57 PM
Emad Tadros	Consent Order Regarding Adesso Horizontal Property Regime an	Order	09-09-2020	02:34:44 PM
Charles Grant Blackburn	9/10/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	08-27-2020	11:10:58 AM
Paul Hamilton Hoefer	9/10/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	08-27-2020	11:10:58 AM
Walter B. Todd, Jr.	9/10/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	08-27-2020	11:10:58 AM
Douglas Walker MacKelcan, III	9/10/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	08-27-2020	11:10:58 AM
Kevin Kendrick Bell	9/10/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	08-27-2020	11:10:58 AM
Michael Christopher Masciale	9/10/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	08-27-2020	11:10:58 AM
Adesso Homeowners Association	NEF(08-05-2020 10:26:35 AM) Motion/Sanctions	Filing	08-05-2020	10:32:07 AM
Adesso Horizontal Property Regime	Motion/Sanctions	Motion	08-05-2020	10:26:35 AM
Emad Tadros	NEF(07-17-2020 02:12:53 PM) Order/Other	Filing	07-17-2020	02:13:10 PM
Emad Tadros	CONSENT ORDER REGARDING PLAINTIFF'S ANSWERS TO ADESSO HORIZO	Order	07-17-2020	02:12:53 PM
Adesso Homeowners Association	NEF(07-17-2020 12:53:06 PM) Proposed Order/Consent Order	Filing	07-17-2020	01:39:40 PM
Adesso Horizontal Property Regime	Order/Order Cover Sheet $25.00	Filing	07-17-2020	12:53:06 PM
Emad Tadros	NEF(07-16-2020 04:07:13 PM) Service/Certificate Of Servi...	Filing	07-16-2020	04:13:58 PM
Emad Tadros	Service/Certificate Of Service	Filing	07-16-2020	04:07:13 PM
Emad Tadros	NEF(07-10-2020 01:36:43 PM) Notice/Other	Filing	07-10-2020	05:02:26 PM
Emad Tadros	Notice Of Transfer Within Firm	Filing	07-10-2020	01:36:43 PM
Charles Grant Blackburn	7/20/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	07-09-2020	04:20:09 PM
Paul Hamilton Hoefer	7/20/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	07-09-2020	04:20:09 PM

Walter B. Todd, Jr.	7/20/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	07-09-2020	04:20:09 PM
Douglas Walker MacKelcan, III	7/20/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	07-09-2020	04:20:09 PM
Kevin Kendrick Bell	7/20/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	07-09-2020	04:20:09 PM
Michael Christopher Masciale	7/20/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	07-09-2020	04:20:09 PM
Case Party Inactive	7/20/2020_MOTION_Roster/Notice of Motions Roster Publication	Action	07-09-2020	04:20:09 PM
Emad Tadros	ADR/Deferred	Action	06-26-2020	10:33:53 AM
Adesso Homeowners Association	NEF(06-02-2020 11:40:25 AM) Order/Protection from Court ...	Filing	06-02-2020	11:40:38 AM
Adesso Homeowners Association	Order/Protection from Court Appearance	Order	06-02-2020	11:40:25 AM
Adesso Homeowners Association	NEF(06-02-2020 10:30:22 AM) Proposed Order/Protection fr...	Filing	06-02-2020	10:37:22 AM
Adesso Horizontal Property Regime	Order/Order Cover Sheet $25.00	Filing	06-02-2020	10:30:22 AM
Adesso Homeowners Association	NEF(05-27-2020 02:00:59 PM) Motion/Compel	Filing	05-27-2020	02:54:04 PM
Adesso Horizontal Property Regime	Motion/Compel	Motion	05-27-2020	02:00:59 PM
Adesso Horizontal Property Regime	Motion/Compel-EX_1	Motion	05-27-2020	02:00:59 PM
Adesso Horizontal Property Regime	Motion/Compel-EX_2	Motion	05-27-2020	02:00:59 PM
Adesso Horizontal Property Regime	Motion/Compel-EX_3	Motion	05-27-2020	02:00:59 PM
Adesso Homeowners Association	NEF(03-16-2020 08:48:14 AM) Order/Protection from Court ...	Filing	03-16-2020	08:48:30 AM
Adesso Homeowners Association	Order/Protection from Court Appearance	Order	03-16-2020	08:48:14 AM
Adesso Homeowners Association	NEF(03-09-2020 03:54:55 PM) Answer/Amended Answer	Filing	03-09-2020	04:17:00 PM
Adesso Homeowners Association	Answer/Amended Answer To Amended Complaint	Filing	03-09-2020	03:54:55 PM
Adesso Homeowners Association	NEF(03-02-2020 04:50:47 PM) Proposed Order/Protection fr...	Filing	03-03-2020	09:45:50 AM
Adesso Homeowners Association	Order/Order Cover Sheet $25.00	Filing	03-02-2020	04:50:47 PM
Adesso Homeowners Association	NEF(02-18-2020 10:34:05 AM) Order/Scheduling Order	Filing	02-18-2020	10:34:13 AM
Adesso Homeowners Association	Consent Scheduling Order trial not before September 1, 2020	Order	02-18-2020	10:34:05 AM
Adesso Homeowners Association	NEF(02-14-2020 03:21:43 PM) Proposed Order/Scheduling Or...	Filing	02-14-2020	03:41:09 PM
Adesso Homeowners Association	Order/Order Cover Sheet $25.00	Filing	02-14-2020	03:21:43 PM
Charles Grant Blackburn	2/17/2020_J1_Roster/Notice of Case Roster Publication Sent	Action	01-15-2020	02:54:53 PM
Paul Hamilton Hoefer	2/17/2020_J1_Roster/Notice of Case Roster Publication Sent	Action	01-15-2020	02:54:53 PM
Walter B. Todd, Jr.	2/17/2020_J1_Roster/Notice of Case Roster Publication Sent	Action	01-15-2020	02:54:53 PM
Douglas Walker MacKelcan, III	2/17/2020_J1_Roster/Notice of Case Roster Publication Sent	Action	01-15-2020	02:54:53 PM
Kevin Kendrick Bell	2/17/2020_J1_Roster/Notice of Case Roster Publication Sent	Action	01-15-2020	02:54:53 PM
Michael Christopher Masciale	2/17/2020_J1_Roster/Notice of Case Roster Publication Sent	Action	01-15-2020	02:54:53 PM
Case Party Inactive	2/17/2020_J1_Roster/Notice of Case Roster Publication Sent	Action	01-15-2020	02:54:53 PM
Emad Tadros	NEF(01-14-2020 05:06:53 PM) Reply/Other	Filing	01-15-2020	08:40:07 AM
Emad Tadros	Reply To Defendants Amended Answer And Counterclaims	Filing	01-14-2020	05:06:53 PM
Emad Tadros	Service/Certificate Of Service	Filing	01-14-2020	05:06:53 PM
Case Party Inactive	NEF(12-31-2019 10:09:06 AM) Answer/Amended Answer And Co...	Filing	12-31-2019	10:29:35 AM
Case Party Inactive	Answer/Amended Answer And Counterclaim	Filing	12-31-2019	10:09:06 AM
Emad Tadros	NEF(12-30-2019 02:38:16 PM) Order/Amend	Filing	12-30-2019	02:38:26 PM
Emad Tadros	Order Granting Motion to Amend	Order	12-30-2019	02:38:16 PM
Case Party Inactive	NEF(12-20-2019 04:45:31 PM) Proposed Order/Amend	Filing	12-23-2019	09:33:33 AM
Emad Tadros	NEF(12-20-2019 07:07:00 PM) Order/Order Cover Sheet $25....	Filing	12-23-2019	09:17:04 AM
Emad Tadros	Order/Order Cover Sheet $25.00	Filing	12-20-2019	07:07:00 PM
Emad Tadros	NEF(12-20-2019 06:59:59 PM) Notice/Notice of Appearance	Filing	12-20-2019	07:00:16 PM
Emad Tadros	Notice/Notice of Appearance	Filing	12-20-2019	06:59:59 PM
Case Party Inactive	Order/Order Cover Sheet $25.00	Filing	12-20-2019	04:45:31 PM
Emad Tadros	NEF(12-16-2019 03:55:57 PM) Affidavit/Affidavit of	Filing	12-16-2019	04:19:35 PM
Emad Tadros	NEF(12-16-2019 03:48:48 PM) Affidavit/Affidavit of	Filing	12-16-2019	04:12:31 PM
Emad Tadros	Affidavit/Affidavit of Franklin J Smith Jr	Filing	12-16-2019	03:55:57 PM
Emad Tadros	Affidavit/Affidavit of Franklin J Smith Jr-EX_1	Filing	12-16-2019	03:55:57 PM
Emad Tadros	Affidavit/Affidavit of Franklin J Smith Jr-EX_2	Filing	12-16-2019	03:55:57 PM
Emad Tadros	Affidavit/Affidavit of Darrekk A Terry PhD	Filing	12-16-2019	03:48:48 PM
Emad Tadros	NEF(12-13-2019 11:44:56 AM) Order/Form 4	Filing	12-13-2019	11:45:07 AM
Emad Tadros	Form 4 On 12/12/19 the Motion to Amend Answer is hereby take	Order	12-13-2019	11:44:56 AM
Emad Tadros	NEF(12-08-2019 08:57:09 PM) Affidavit/Affidavit of	Filing	12-09-2019	09:01:02 AM
Emad Tadros	Affidavit/Affidavit of	Filing	12-08-2019	08:57:09 PM
Emad Tadros	Affidavit/Affidavit of-EX_1	Filing	12-08-2019	08:57:09 PM
Emad Tadros	Affidavit/Affidavit of-EX_2	Filing	12-08-2019	08:57:09 PM
Emad Tadros	Affidavit/Affidavit of-EX_3	Filing	12-08-2019	08:57:09 PM
Emad Tadros	Affidavit/Affidavit of-EX_4	Filing	12-08-2019	08:57:09 PM
Case Party Inactive	NEF(12-04-2019 04:11:28 PM) Reply/Other	Filing	12-04-2019	04:23:11 PM
Case Party Inactive	Reply By Holder Defendants To Plaintiff's Oppostion To Motio	Filing	12-04-2019	04:11:28 PM
Case Party Inactive	Reply By Holder Defendants To Plaintiff's Oppostion To Motio	Filing	12-04-2019	04:11:28 PM
Emad Tadros	ADR/Notice of ADR	Action	12-04-2019	09:03:10 AM
Charles Grant Blackburn	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-21-2019	11:56:52 AM
Paul Hamilton Hoefer	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-21-2019	11:56:52 AM
Walter B. Todd, Jr.	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-21-2019	11:56:52 AM

Douglas Walker MacKelcan, III	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-21-2019	11:56:52 AM
Kevin Kendrick Bell	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-21-2019	11:56:52 AM
Michael Christopher Masciale	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-21-2019	11:56:52 AM
Charles Grant Blackburn	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-20-2019	03:37:14 PM
Paul Hamilton Hoefer	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-20-2019	03:37:14 PM
Walter B. Todd, Jr.	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-20-2019	03:37:14 PM
Douglas Walker MacKelcan, III	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-20-2019	03:37:14 PM
Kevin Kendrick Bell	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-20-2019	03:37:14 PM
Michael Christopher Masciale	12/12/2019_MOTION_Roster/Notice of Motions Roster Publicatio	Action	11-20-2019	03:37:14 PM
Adesso Homeowners Association	NEF(10-30-2019 11:05:57 AM) Notice/Notice of Appearance	Filing	10-30-2019	11:06:20 AM
Adesso Homeowners Association	Notice/Notice of Appearance	Filing	10-30-2019	11:05:57 AM
Case Party Inactive	NEF(10-25-2019 04:56:03 PM) Notice/Notice of Appearance	Filing	10-25-2019	04:56:24 PM
Case Party Inactive	Notice/Notice of Appearance	Filing	10-25-2019	04:56:03 PM
Emad Tadros	NEF(10-25-2019 04:32:47 PM) Service/Certificate Of Servi...	Filing	10-25-2019	04:35:23 PM
Emad Tadros	Service/Certificate Of Service	Filing	10-25-2019	04:32:47 PM
Emad Tadros	NEF(10-25-2019 04:12:34 PM) Reply/Other	Filing	10-25-2019	04:23:30 PM
Emad Tadros	Reply/In Opposition to Motion to Amend Answer to Amended Com	Filing	10-25-2019	04:12:34 PM
Emad Tadros	Reply/In Opposition to Motion to Amend Answer to Amended Com	Filing	10-25-2019	04:12:34 PM
Emad Tadros	Reply/In Opposition to Motion to Amend Answer to Amended Com	Filing	10-25-2019	04:12:34 PM
Case Party Inactive	NEF(09-27-2019 11:37:40 AM) Motion/Alter and/or Amend	Filing	09-27-2019	11:56:56 AM
Case Party Inactive	Motion/Amend Answer	Motion	09-27-2019	11:37:40 AM
Case Party Inactive	Motion/Amend Answer-EX_1	Motion	09-27-2019	11:37:40 AM
Emad Tadros	ADR/Alternative Dispute Resolution (Workflow)	Action	09-12-2019	02:50:04 PM
Adesso Homeowners Association	NEF(09-09-2019 09:57:03 AM) Proposed Order/Protection fr...	Filing	09-09-2019	10:32:42 AM
Adesso Horizontal Property Regime	Order/Order Cover Sheet $25.00	Filing	09-09-2019	09:57:03 AM
Emad Tadros	NEF(09-05-2019 09:03:10 AM) ADR/Notice of ADR	Filing	09-05-2019	09:03:16 AM
Emad Tadros	NEF(08-16-2019 04:04:06 PM) Service/Certificate Of Servi...	Filing	08-16-2019	04:09:15 PM
Emad Tadros	Service/Certificate Of Service	Filing	08-16-2019	04:04:06 PM
Emad Tadros	Filing/Plaintiffs First Set of Interrogatories	Filing	08-16-2019	04:04:06 PM
Emad Tadros	Filing/Plaintiffs First Set of Requests For Production of Do	Filing	08-16-2019	04:04:06 PM
Emad Tadros	NEF(08-16-2019 01:36:08 PM) Letter/Letter	Filing	08-16-2019	03:48:48 PM
Emad Tadros	Letter/Interrogatories & Requests filed 8/16/19 were filed i	Filing	08-16-2019	01:36:08 PM
Emad Tadros	NEF(08-16-2019 11:19:40 AM) Filing/Other	Filing	08-16-2019	11:27:49 AM
Emad Tadros	Plaintiff's First Set of Interrogatories	Filing	08-16-2019	11:19:40 AM
Emad Tadros	Plaintiff's First Set Of Requests For Production Of Document	Filing	08-16-2019	11:19:40 AM
Emad Tadros	NEF(08-16-2019 11:10:44 AM) Service/Certificate Of Servi...	Filing	08-16-2019	11:18:42 AM
Emad Tadros	Service/Certificate Of Service	Filing	08-16-2019	11:10:44 AM
Adesso Homeowners Association	NEF(08-02-2019 02:14:51 PM) Notice/Notice of Appearance	Filing	08-02-2019	02:15:08 PM
Adesso Homeowners Association	Notice/Notice of Appearance	Filing	08-02-2019	02:14:51 PM
Adesso Homeowners Association	NEF(07-08-2019 02:04:40 PM) Answer/Answer To Amended Com...	Filing	07-08-2019	04:34:40 PM
Adesso Homeowners Association	Answer/Answer To Amended Complaint	Filing	07-08-2019	02:04:40 PM
Adesso Homeowners Association	Service/Certificate Of Service	Filing	07-08-2019	02:04:40 PM
Case Party Inactive	NEF(06-04-2019 01:10:35 PM) Answer/Answer To Amended Com...	Filing	06-04-2019	02:08:28 PM
Case Party Inactive	Answer/Answer To Amended Complaint	Filing	06-04-2019	01:10:35 PM
Emad Tadros	NEF(05-10-2019 09:16:59 AM) Filing/Other	Filing	05-10-2019	02:02:50 PM
Emad Tadros	verification	Filing	05-10-2019	09:16:59 AM
Emad Tadros	NEF(05-09-2019 12:16:13 PM) Reply/Reply to Counterclaim	Filing	05-09-2019	12:40:16 PM
Emad Tadros	NEF(05-09-2019 12:13:29 PM) Amended/Amended Summons And ...	Filing	05-09-2019	12:37:35 PM
Emad Tadros	Reply/Reply to Counterclaim	Filing	05-09-2019	12:16:13 PM
Emad Tadros	Amended/Amended Summons And Complaint	Filing	05-09-2019	12:13:29 PM
Adesso Homeowners Association	NEF(04-29-2019 03:13:31 PM) Answer/Answer	Filing	04-29-2019	03:42:40 PM
Adesso Homeowners Association	Answer Of Adesso Homeowners Association And Adesso Horizonta	Filing	04-29-2019	03:13:31 PM
Adesso Homeowners Association	Notice/Notice of Appearance	Filing	04-29-2019	03:13:31 PM
Case Party Inactive	NEF(04-15-2019 04:04:58 PM) Answer/Answer & Counterclaim	Filing	04-15-2019	04:20:35 PM
Case Party Inactive	Answer/Answer & Counterclaim	Filing	04-15-2019	04:04:58 PM
Case Party Inactive	NEF(04-15-2019 03:59:55 PM) Notice/Notice of Appearance	Filing	04-15-2019	04:00:11 PM
Case Party Inactive	Notice/Notice of Appearance	Filing	04-15-2019	03:59:55 PM
Emad Tadros	NEF(03-06-2019 04:40:04 PM) Order/Substitution Of Counse...	Filing	03-06-2019	04:40:22 PM
Emad Tadros	Consent Order for Substitution of Counsel	Order	03-06-2019	04:40:04 PM
Emad Tadros	NEF(03-05-2019 02:14:32 PM) Proposed Order/Substitution ...	Filing	03-05-2019	04:06:08 PM
Emad Tadros	Order/Order Cover Sheet $25.00	Filing	03-05-2019	02:14:32 PM
Emad Tadros	NEF(02-27-2019 03:07:28 PM) Service/Affidavit Of Service	Filing	02-27-2019	03:46:34 PM
Emad Tadros	Service/Affidavit Of Service	Filing	02-27-2019	03:07:28 PM
Emad Tadros	Service/Affidavit Of Service	Filing	02-27-2019	03:07:28 PM
Emad Tadros	Service/Affidavit Of Service	Filing	02-27-2019	03:07:28 PM
Emad Tadros	Service/Affidavit Of Service	Filing	02-27-2019	03:07:28 PM

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Appellate Case No. ...

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Case Information: 2022-001434

Court:	Court of Appeals	**Classification:**	Appeal - Common Pleas - Other
Short Title:	Emad Tadros, M.D. v. Holder Properties, Inc. View Full Title	**Case Status:**	Final Briefing / Record
Consolidated:			
Filed Date:	10/11/2022	**Oral Argument Date:**	
Disposition Date:		**Disposition Type:**	
Remittitur Date:			
Lower Court or Tribunal:	Richland (2019CP4000919)		

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Emad Tadros, M.D.	N	Thomas Jefferson Goodwyn, Jr. Charles Grant Blackburn
Respondent	ADESSO Homeowners' Association	N	Michael Christopher Masciale (Former) Douglas Walker MacKelcan, III Skyler Cole Wilson
Respondent	ADESSO Horizontal Property Regime	N	Michael Christopher Masciale (Former) Douglas Walker MacKelcan, III Skyler Cole Wilson
Respondent	ADESSO/Columbia, LLC	N	Michael Christopher Masciale (Former) Douglas Walker MacKelcan, III Skyler Cole Wilson

Views

Display: Descending Go!

Event Information

Filed Date	Event Information	Doc
06/16/2026	Correspondence - Outgoing (Record on Appeal Overdue)	
05/07/2026	Correspondence - Outgoing (One Bound Copy)	
04/22/2026	Initial Brief - Reply	
04/13/2026	Designation of Matter - Designation of Matter Filed (Respondent)	
04/13/2026	Initial Brief - Respondent	
03/13/2026	Designation of Matter - Designation of Matter Filed (Appellant)	
03/13/2026	Initial Brief - Appellant	
03/05/2026	Non-Dispositional Decision - Extension Granted (1st - Appellant's Initial Brief)	
01/09/2026	Motion - Extension of Time (1st - Appellant's Initial Brief)	
12/12/2025	Correspondence - Outgoing (Timeline for Appellant's Initial Brief)	
12/01/2025	Correspondence - Incoming (Status Update)	
10/14/2025	Correspondence - Incoming (Status Update)	
10/07/2025	Correspondence - Outgoing (Status Update Overdue)	
09/23/2025	Transcript Documents - (Respondents' Transcript Request)	
08/21/2025	Correspondence - Incoming (Status Update)	
08/21/2025	Correspondence - Outgoing (Status Update Overdue)	
07/09/2025	Transcript Documents - Confirmation of Transcript Request	
06/26/2025	Correspondence - Incoming (Status Update)	
06/25/2025	Correspondence - Outgoing (Status Update Overdue)	

04/28/2025	Correspondence - Incoming (Status Update)
04/25/2025	Correspondence - Outgoing (Status Update Overdue)
03/18/2025	Correspondence - Incoming (Copy of Appellant's Request for Continuance in Richland County Court of Common Pleas)
03/04/2025	Correspondence - Incoming (Status Update)
02/20/2025	Correspondence - Incoming (Status Update)
02/19/2025	Correspondence - Outgoing (Status Update Overdue)
01/09/2025	Correspondence - Incoming (Status Update)
01/09/2025	Correspondence - Outgoing (Status Update Overdue)
12/03/2024	Correspondence - Incoming (Status Update)
11/04/2024	Correspondence - Incoming (Status Update)
10/03/2024	Correspondence - Incoming (Status Update)
09/04/2024	Correspondence - Incoming (Status Update)
08/07/2024	Correspondence - Incoming (Status Update)
08/07/2024	Correspondence - Outgoing (Status Update Overdue)
07/03/2024	Correspondence - Incoming (Status Update)
06/03/2024	Correspondence - Incoming (Status Update)
05/03/2024	Correspondence - Incoming (Status Update)
04/11/2024	Correspondence - Incoming (Status Update)
03/11/2024	Correspondence - Incoming (Status Update)
02/16/2024	Non-Dispositional Decision - Order (Respondents' Petition for Rehearing)
02/13/2024	Correspondence - Incoming (Status Update)
02/09/2024	Correspondence - Outgoing (Status Update Overdue Letter)
01/03/2024	Correspondence - Incoming (Status Update)
12/08/2023	Correspondence - Incoming (Status Update)
11/27/2023	Rehearing - Appellant's Return to Respondents' Petition for Rehearing
11/17/2023	Rehearing - Respondents' Petition for Rehearing
11/06/2023	Non-Dispositional Decision - Order (Appellant's Motion to Remand)
10/20/2023	Motion - Respondents' Return to Appellant's Motion to Remand
10/11/2023	Motion - Appellant's Motion to Remand
09/11/2023	Non-Dispositional Decision - Order
09/01/2023	Motion - Reply
08/28/2023	Motion - Return
08/18/2023	Motion - Dismiss
03/30/2023	Non-Dispositional Decision - Withdrawn or Ended
03/30/2023	Correspondence - Incoming (Proof of Payment)
03/29/2023	Correspondence - Outgoing (Letter to Counsel Regarding Transcript)
03/20/2023	Motion - Extension of Time (2nd)
02/02/2023	Non-Dispositional Decision - Order (Order Granting Motion to Substitute as Counsel)
01/30/2023	Deficiency - Correction
01/25/2023	Deficiency - Deficiency Letter Sent
01/24/2023	Motion - Relieve / Withdraw / Substitute as Counsel
01/20/2023	Non-Dispositional Decision - Extension Granted
01/18/2023	Motion - Extension of Time (1st)
12/19/2022	Correspondence - Outgoing (Letter Regarding Transcript)
12/13/2022	Transcript Documents - Other Correspondence from Appellant
12/07/2022	Correspondence - Outgoing (Transcript Order OverDue)
10/13/2022	Correspondence - Outgoing (Notice of Appeal Initial Letter)
10/11/2022	Notice of Appeal (Civil) - Initial

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

RECEIVED
JUN 26 2026
SC Court of Appeals

DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended……..Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association ,…....…………………………………………………………......Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal, submitted with the consent of all attorneys of record pursuant to Rule 212(b), SCACR, contains all materials proposed to be included by any of the parties and not any other material.

GOODWYN LAW FIRM, LLC

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Attorney for Appellant

Columbia, South Carolina
June 25, 2026