

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.

Case No. 2010-CP-10-9762

RECEIVED
DEC 23 2013
SC Court of Appeals

HAYDEN JEFFORDS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, TITUS GUDEL, HAROLD S. MCEWAN, D. EVERETT WALKER, PAUL KANE, JEANNE DEBOSH, MARGARITA STAUDT, LESLIE ANNE O'NEAL, TRIVETTE C. HATCHER, WILLIAM SCANLON, DELIA SCANLON, CHRISTY C. PARISH, JOSEPH LADUE, DEBORAH LADUE, PAMELA SNYDER, STEVEN GOLDBERG, BRENT MCCLAIN, BRIAN RASMUSSEN, MCKENZIE HUTAFF, BRIAN KAVANAGH, LYNN HARRIS, AND KENNETH A. BROWN,Plaintiffs,

OF WHOM HAYDEN JEFFORDS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, TITUS GUDEL, HAROLD S. MCEWAN, D. EVERETT WALKER, PAUL KANE, JEANNE DEBOSH, MARGARITA STAUDT, WILLIAM SCANLON, DELIA SCANLON, CHRISTY C. PARISH, JOSEPH LADUE, DEBORAH LADUE, PAMELA SYNDER, STEVEN GOLDBERG, BRENT MCCLAIN, BRIAN RASMUSSEN, MCKENZIE HUTAFF, BRIAN KAVANAGH, LYNN HARRIS, AND KENNETH A. BROWN ARE THE SECONDARY APPELLANTS,

OF WHOM JOHN ZOHLN, MARY ZOHLN, LESLIE ANNE O'NEAL, AND TRIVETTE C. HATCHER ARE THE RESPONDENTS,

v.

EAST BRIDGE TOWN LOFTS, LLC, A/K/A EAST BRIDGE, LLC, A/K/A EAST RIDGE HOMES, LLC, A/K/A EAST BRIDGE LOFTS, LLC, CENTRAL 3, LLC, CREEKSTONE EAST BRIDGE, LLC, CREEKSTONE SC I, LLC, ALEXANDRA ROAD INVESTORS, LLC, CREEKSTONE MANAGEMENT, LLC, CREEKSTONE MANAGEMENT, INC., DONALD K. HENRY, EVERETT JACKSON, STEVE KELLER, EDWARD MICHAEL WASHBURN, KEVIN BALL, EAST COAST CARPENTRY A/K/A ECC CONTRACTING, LLC, FULLER DRYWALL & PAINT, LTD., DELTA MECHANICAL, INC. A/K/A CAROLINA DELTA MECHANICAL, WASSON ELECTRIC HEATING & AIR, BAY CLUB HOMES, LLC, TERRACON CONSULTANTS, INC., SALVADOR RUBALCABA D/B/A RUBALCABA CONSTRUCTION, ROBERT WASSON AND BARBARA WASSON, INDIVIDUALLY D/B/A WASSON ELECTRIC HEATING & AIR, INC. AND CHARLESTON CHIMNEY SERVICES, INC.Defendants,

OF WHOM EAST BRIDGE TOWN LOFTS, LLC, A/K/A EAST BRIDGE, LLC, A/K/A EAST RIDGE HOMES, LLC, A/K/A EAST BRIDGE LOFTS, LLC, CENTRAL 3, LLC, CREEKSTONE EAST BRIDGE, LLC, CREEKSTONE SC I, LLC, ALEXANDRA ROAD INVESTORS, LLC, CREEKSTONE MANAGEMENT, LLC, CREEKSTONE MANAGEMENT, INC., DONALD K. HENRY, EVERETT JACKSON, STEVE KELLER, EDWARD MICHAEL WASHBURN, AND KEVIN BALL ARE THE PRIMARY APPELLANTS,

v.

BRIDGE TOWN LOFTS, LLC, A/K/A EAST BRIDGE, LLC, A/K/A EAST RIDGE HOMES, LLC, A/K/A EAST BRIDGE LOFTS, LLC, CENTRAL 3, LLC, CREEKSTONE EAST BRIDGE, LLC, CREEKSTONE SC I, LLC, ALEXANDRA ROAD INVESTORS, LLC, CREEKSTONE MANAGEMENT, LLC, CREEKSTONE MANAGEMENT, INC., DONALD K. HENRY, EVERETT JACKSON, STEVE KELLER, EDWARD MICHAEL WASHBURN, KEVIN BALL; AND BAY CLUB HOMES, LLC.....THIRD-PARTY PLAINTIFFS,

v.

ROBERT WASSON AND BARBARA WASSON, INDIVIDUALLY AND D/B/A WASSON ELECTRIC HEATING & AIR, AND CHARLESTON CHIMNEY SERVICES, INC.....THIRD-PARTY DEFENDANTS.

MOTION FOR REHEARING

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COME NOW Appellants East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC, Alexandra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett Jackson, Steve Keller, Edward Michael Washburn, and Kevin Ball (hereinafter referred to collectively as the “Appellants”), by and through their undersigned counsel, pursuant to Rule 221(c), SCACR, and respectfully move this Honorable Court to grant their motion for rehearing of the court’s order remitting the entire matter, as said remittitur was done in error.

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This appeal arises from a case involving two separate lawsuits. In both suits, Plaintiffs are seeking the recovery of damages arising from and relating to a project in Mount Pleasant, South Carolina known as East Bridge (“East Bridge”). An individual condominium owner, Hayden Jeffords, filed the first of the two lawsuits on behalf of a number of individual condominium owners. (the “Jeffords Plaintiffs”). The homeowners’ association for East Bridge, known as East Bridge Town Lofts Property Owners Association, Inc. (the “POA Plaintiffs”), filed its lawsuit shortly after the Jeffords Plaintiffs.

Appellants’ appeal filed on January 31, 2013 requested the court to address two motions. The first of which concerned Appellants’ motion to compel arbitration of Ms. Jeffords. The second addressed error on the part of the trial court in making numerous findings of fact that were irrelevant to its underlying order and were both highly disputed and unsupported by any admissible testimony. Since that time, the majority of the Jeffords Plaintiffs moved to change representation and are now represented by counsel for the POA Plaintiffs. In early October of 2013, the Jeffords Plaintiffs and POA Plaintiffs entered a settlement that combined the two groups of Plaintiffs under the umbrella of the POA Plaintiffs in furtherance of their claims in the underlying litigation. At no time, however, did Appellants withdraw their appeal.

On October 28, 2013, the Court remitted the entire case to the trial court based on the settlement of the two groups of Plaintiffs.¹ In light of the Appellants having had no part in the settlement between the Plaintiffs, this remittitur was issued in error, as Appellants appeals were not impacted by that ruling and have not yet been heard.

¹ Attached as Exhibit 1 is correspondence from counsel for the POA Plaintiffs to the Honorable Roger Young on October 8, 2013 referencing that Appellants’ claims were still pending in this Court.

Appellants' motion is supported by Rule 221(c), SCACR, which allows for rehearing when the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. Additionally, the Court has jurisdiction over the matter despite the lapse of fifteen (15) days from the date the remittitur was originally sent due to the remittitur having been sent down by mistake, error or inadvertence. *Wise v. South Carolina Dept. of Corrections* (S.C. 2007) 372 S.C. 173, 642 S.E.2d 551.

WHEREFORE, the Appellants request that the Court grant their motion for rehearing of their appeals.

Respectfully submitted,

By: 

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Attorneys for Appellant

Charleston, South Carolina

Dated: 12/18

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OF WHOM EAST BRIDGE TOWN LOFTS, LLC, A/K/A EAST BRIDGE, LLC, A/K/A EAST RIDGE HOMES, LLC, A/K/A EAST BRIDGE LOFTS, LLC, CENTRAL 3, LLC, CREEKSTONE EAST BRIDGE, LLC, CREEKSTONE SC I, LLC, ALEXANDRA ROAD INVESTORS, LLC, CREEKSTONE MANAGEMENT, LLC, CREEKSTONE MANAGEMENT, INC., DONALD K. HENRY, EVERETT JACKSON, STEVE KELLER, EDWARD MICHAEL WASHBURN, AND KEVIN BALL ARE THE PRIMARY APPELLANTS,

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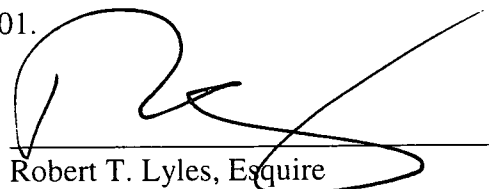
v.

ROBERT WASSON AND BARBARA WASSON, INDIVIDUALLY AND D/B/A WASSON ELECTRIC HEATING & AIR, AND CHARLESTON CHIMNEY SERVICES, INC.....THIRD-PARTY DEFENDANTS.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing by Appellant by electronically mailing a copy of it on December 19, 2013, addressed to Respondent's attorneys of record, Justin O'Toole Lucey, Esquire and Joshua F. Evans, Esquire, Justin O'Toole Lucey, P.A., 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina, 29465; John C. Hayes, IV, Esquire and Mary Margaret Fitzhenry, Esquire, Hayes Law Firm, LLC, 180 Meeting Street, Suite 330, Charleston, South Carolina, 29401; I. Keith McCarty, Esquire, McCarty Law Firm, LLC, 5558 Church Flats Road, Meggett, South Carolina, 29449; Michael S. Seekings, Esquire, Leath Bouch & Seekings, LLP, 92 Broad Street, Charleston, South Carolina, 29401; and Edward D. Buckley, Esquire, Young Clement Rivers, LLP, 25 Calhoun Street, Suite 400, Charleston, South Carolina, 29401.

December 19, 2013



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December 19, 2013

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SC Court of Appeals

The Honorable V. Claire Allen
Deputy Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Hayden Jeffords, et al. vs. East Bridge Lofts, LLC, et al.*
Charleston Case No. 2010-CP-10-9672

Dear Ms. Allen:

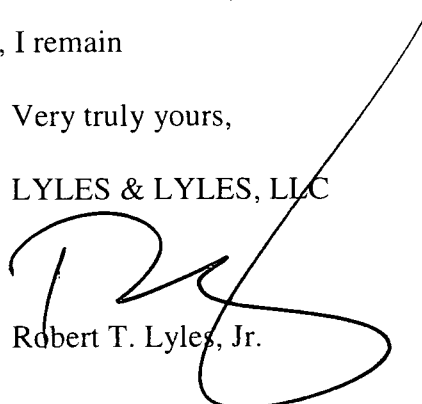
Enclosed for filing, please find Appellants' Original Petition for Rehearing with regard to the above matter. I have also included six (6) additional copies of the above referenced pleadings and would greatly appreciate your returning one (1) copy, *file-stamped*, to me in the envelope provided for your convenience.

Should you have any questions, please do not hesitate to contact me.

Thank you, and with kindest regards, I remain

Very truly yours,

LYLES & LYLES, LLC


Robert T. Lyles, Jr.

RTL/kl

Enclosures

cc: All Counsel of Record (via electronic mail only)

Justin O'Toole Lucey, Esquire

Edward D. Buckley, Esquire

John C. Hayes, IV, Esquire

Michael S. Seekings, Esquire

I. Keith McCarty, Esquire

Clients & Carriers (via electronic mail)