

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF YORK ) CASE NUMBER: 08-CP-46-2158

BRIAN AND DEBORAH C. PULLIAM,  
MONICA BRADSHAW, HELEN K.  
COOK, KALA CRAIG, VICTOR E.  
DIRIENZO, CYNTHIA DITURSI, J.  
SCOTT DREXEL, KATHLEEN KRAMER,  
ROBERT LOEBE, MELANIE McDANIEL,  
DAVID OSBORNE, CELESTE  
ARWOOD, VINCENT DIONNA,  
MIKEL MARCUSE, JAMES P.  
WHEATON, JR., JOSEPH MANFREDINI,  
ELENA MANFREDINI, DAVID COX,  
JONATHAN B. DILLARD, ERIC  
WILSON, DON AND DEBBIE NEFF, and  
MARIANNA JUNDA,

Plaintiffs,

vs.

M.U.I. CAROLINA CORPORATION, AND  
KENSINGTON PLACE OWNERS'  
ASSOCIATION, INC., and REGENT  
CAROLINA CORPORATION

Defendants.

**ORDER ON DEFENDANTS SUMMARY  
JUDGMENT MOTIONS**

2011 JAN 23 AM 11:07  
CLERK OF COURT  
YORK COUNTY, SC

On April 1, 2011, this Court issued its Order Denying Motions for Summary Judgment filed by Defendants Kensington Place Homeowners Association ("KPOA"), MUI Corporation ("MUI"), and Regent Carolina Corporation ("Regent"). These defendants have now renewed their Motions, and for the reasons stated in the Court's April 21, 2011 Order, as well as the reasons stated below, the Motions are Denied.

**KPOA'S SUMMARY JUDGMENT MOTIONS**

The KPOA, Inc., again urges the Court to grant it summary judgment on two theories: 1) that a suit by homeowners against the KPOA, Inc., a South Carolina non-profit corporation, is a suit by the plaintiffs against themselves, and 2) that the damages alleged are as a result of activities of

*Handwritten signature/initials*

defendants other than KPOA, Inc., or are as a result of original construction defects.

Additionally, KPOA Inc. takes the position that it has judicial immunity by virtue of the governing documents of the regime.

Plaintiffs retained an expert witness, Michael Parades, who has given testimony and submitted an affidavit. Mr. Parades, according to his affidavit, has been qualified in Court in the areas of community association governance, management, and fiduciary duties of Property Owner Associations. Mr. Parades opines in his affidavit that the KPOA, Inc., during the period of developer control of the KPOA was negligent and breached fiduciary duties in failing to investigate the building, failing to have it correctly maintained and repaired, and in failing to adequately fund a repair and replacement reserve fund, as well as permitting the turnover of a defective building. The regime Master Deed and By-Laws place the responsibility of maintenance of the Common Elements in the KPOA, Inc. The KPOA, Inc. has not produced a witness to counter the Parades affidavit and the evidence of record establishes that the Kensington Place Condominiums suffer from some degree due to deterioration, although that degree is in dispute.

This suit is not a suit by owners against each other; rather it is a suit by individuals against a corporate entity. There is no bar to the suit. Additionally, the By-Laws cited by the KPOA, Inc., in support of its immunity claim do not grant immunity to the corporation, but on the contrary, only grant a qualified immunity to individual directors. No individual directors are defendants. This By-Law has no applicability.

To the extent that other defendants may have liability, that does not insulate the KPOA, Inc. for liability for breach of its repair and maintenance obligations under the governing documents, nor for failing to require the developer to turn over the Common Elements in good repair.

The Court finds, therefore, that significant genuine issues of material fact exist which would preclude the grant of Summary Judgment in favor of the KPOA, Inc.

### MUI/REGENT SUMMARY JUDGMENT MOTIONS

Defendants MUI and Regent move for Summary Judgment on five grounds, constituting the same five grounds found in their Jan. 18, 2011 Motion for Summary Judgment, which motion was denied by the Court on April 1, 2011, and reaffirmed on April 15, 2011. This Motion is again denied.

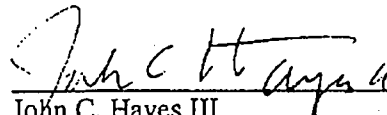
As to the issue of standing to pursue these claims against the developer defendants, this Court, and the South Carolina Court of Appeals has already ruled that these Plaintiffs have standing, and nothing has been advanced by these defendants to alter those rulings.

Regarding Regent and its claims of lack of developer responsibility, evidence has been introduced by Plaintiffs demonstrating a factual question as to the amalgamation of interests between Regent and MUI sufficient to withstand this motion.

As to the claims of lack of fiduciary duty and Statute of Limitations, these matters have been previously denied by this Court's April 1, 2011 Order, and its observations regarding the effect of the decision in Concerned Dunes West Residents, Inc. v. Georgia Pacific Corporation, 563 S.E. 2d 633 (Sup.Ct. 2002).

Based upon the foregoing, prior hearings, and the Court's prior rulings in this matter, the Summary Judgment Motions of the KPOA, Inc., and MUI and Regent, are hereby **DENIED**.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
John C. Hayes III  
Judge Sixteenth Judicial Circuit

H 3

January 22<sup>nd</sup>, 2014  
York, South Carolina