

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

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Case No.: 2008-CP-10-7217

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RECEIVED

APR 25 2012

SC Court of Appeals

Meeting Street at Tennyson Row Horizontal Property Regime by Meeting Street at  
Tennyson Row Homeowners Association, Inc.,.....Respondent/  
Appellant,

v.

Meeting Street Builders, LLC; Meeting Street Companies, LLC; MS Tenn Towns, LLC;  
and Builder Management Group, Inc .....Appellants/  
Respondents.

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**Appellants/ Respondents Meeting Street Builders, LLC's, Meeting Street  
Companies, LLC's, MS Tenn Towns, LLC's, and Builder Management Group,  
Inc.'s Motion for an Extension of Time and Response in Opposition to Respondent/  
Appellant Meeting Street at Tennyson Row Horizontal Property Regime by Meeting  
Street at Tennyson Row Homeowners Association, Inc.'s Motion to File  
Consolidated Response Brief and Cross-Appeal Brief**

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Meeting Street Builders, LLC, Meeting Street Companies, LLC, MS Tenn Towns,  
LLC, and Builder Management Group, Inc (collectively, "Meeting Street Parties") submit  
this motion for a first extension of time and response in opposition to Respondent/  
Appellant Meeting Street at Tennyson Row Horizontal Property Regime by Meeting  
Street at Tennyson Row Homeowners Association, Inc.'s ("Tennyson Row's") motion to  
file consolidated Response Brief and Cross-Appeal Brief.

**MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF**

The initial brief of Meeting Street Parties in this matter is currently due on May 14, 2012. Given the size of the transcript (more than 1,600 pages inclusive of pre- and post-trial motions), the Meeting Street Parties respectfully request a thirty day extension of time in which to file their initial brief, making it due June 13, 2012.

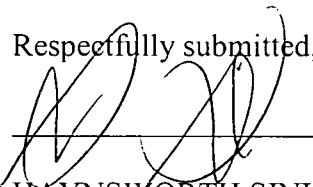
**RESPONSE IN OPPOSITION  
TO MOTION TO FILE CONSOLIDATED BRIEF**

The Meeting Street Parties submit that the standard briefing structure and schedule applied in cross-appeals should remain in place here because the two sides are not likely to raise the same issues on appeal. Given the apparent absence of overlap, separate briefing is the more appropriate approach and will preserve each party's ability to present their issues on appeal, respond to the opposing side's issues on appeal, and reply if they choose to do so.

Tennyson Row's Notice of Cross-Appeal lists the topics it plans to appeal. These topics include the trial court's grant of the Meeting Street Parties' motion to compel the election of remedies; the admission of certain evidence during the testimony of the Meeting Street Parties' experts; and the admission of circumstantial evidence of settlement with other parties.

Although the Meeting Street Parties have not yet identified their issues on appeal and expressly reserve their right to raise additional issues, many of their arguments are likely to track those raised in their post-trial motion (attached as Ex. 1). Those arguments include the treatment of defendants on the verdict form; the submission of punitive damages, loss of use damages, and certain expert costs as damages to the jury; and certain testimony by Tennyson Row's expert.

Based on the above, the Meeting Street Parties oppose Tennyson Row's request for consolidated briefing. Each side should have a chance to present their issues independently without adding the extra layer of complication that would come from trying to handle both sets of issues in the same brief. To the extent it would streamline the briefing, each party may incorporate common elements (such as statements of the case and facts) from their initial appellants' briefs as contemplated by Rule 208(6), SCACR. For these reasons, the motion to consolidate briefing should be denied.

Respectfully submitted,  
  
\_\_\_\_\_  
HAYNSWORTH SINKLER BOYD, P.A.

L. Dean Best  
Bachman S. Smith IV  
134 Meeting Street, 3<sup>rd</sup> Floor  
Charleston, SC 29401  
(843) 722-3366

Sarah P. Spruill  
75 Beattie Place, 11<sup>th</sup> Floor  
Post Office Box 2048  
Greenville, South Carolina 29602  
(864) 240-3220

*Attorneys for the Appellants/ Respondents*

April 24, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Meeting Street at Tennyson Row Horizontal  
Property Regime by Meeting Street at  
Tennyson Row Homeowners Association,  
Inc.,

Plaintiff,

v.

Meeting Street Builders, LLC; Meeting  
Street Companies, LLC; MS Tenn Towns,  
LLC; and Builder Management Group, Inc

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No.: 2008-CP-10-7217

2011 OCT -6 PM 2:41  
JULIE J. FARRIS, JR.  
CLERK OF COURT

DEFENDANTS MEETING STREET  
BUILDERS, LLC, MEETING STREET  
COMPANIES, LLC, MS TENN TOWNS,  
LLC AND BUILDER MANAGEMENT  
GROUP, INC.'S NOTICE AND MOTION  
FOR MOTION FOR NEW TRIAL  
ABSOLUTE OR, IN THE ALTERNATIVE,  
MOTION FOR TRIAL NISI REMITTITUR  
OR JUDGMENT NOTWITHSTANDING  
THE VERDICT

TO: JUSTIN O'TOOLE LUCEY, ESQUIRE, ATTORNEY FOR PLAINTIFF.

YOU WILL PLEASE TAKE NOTICE that the undersigned, on behalf of Defendants Meeting Street Builders, LLC, Meeting Street Companies, LLC, MS Tenn Towns, LLC, and Builder Management Group, Inc., moves, pursuant to SCRPC 50(b) and 59(a), for a new trial absolute or, in the alternative, a new trial *nisi remittitur* or for judgment notwithstanding the verdict. The grounds for this motion are as follows:

I. NEW TRIAL ABSOLUTE

(a) Amalgamation/Nonsegregation of Defendants on Verdict Form

Plaintiff presented no evidence at trial that would suffice to support a piercing of the corporate veil or to disregard the Defendants as separate jural entities.

Further, the verdict form was flawed in that it failed to separate the four individual Defendants and provide the jury an opportunity to consider and distinguish the respective liabilities, if any, of each. The jury's resulting inability to separate the Defendants' respective liabilities fatally taints the verdict.

(b) Lack of Other Defendants on Verdict Form

Plaintiff's Sixth Amended Complaint included allegations of defective construction against no less than sixteen (16) Defendants who had not been dismissed as of the time of trial. Plaintiff's experts' testimony as to construction defects was specifically related to the scope of work of these Defendants. Further Carol Blanchard's testimony reiterated Plaintiff's allegations that the sixteen Defendants were the proximate cause of the alleged construction defects and Plaintiff's alleged damages. As such, the sixteen Defendants should have been included on the verdict form.

(c) Punitive Damages – Lack of Clear and Convincing Evidence

The only evidence presented at trial concerning that would possibly support an award of punitive damages related to the alleged after-the-fact drilling of weep holes in brick masonry at a single unit and the installation of asphalt shingles on no more than fifteen (15) low-sloped roofs. The jury's award of \$1,000,000 in punitive damages far exceeds the alleged damages stemming from these (alleged) incidents and indicates the verdict was rendered as a result of passion, prejudice, and caprice.

(d) Loss of Use Damages

The only testimony at trial supporting Plaintiff's claim for loss of use was the speculative testimony of Carol Blanchard that she had heard the units would rent for \$1,500 per month. While the Defendants recognize that a homeowner may testify as to the actual value of her property, there was no foundation for Ms. Blanchard's testimony as to rental value and no testimony that she thought her unit should or could rent for \$1,500 per month. The only

testimony submitted to the jury was Blanchard's recounting of a hearsay statement by an unknown person. As there was no credible evidence supporting the Plaintiff's loss of use claim, this issue was improperly before the jury.

(c) Expert Forensic Costs as Damages

While an expert's fees associated with appearing at court may properly be considered an element of costs, the fees incurred by the Plaintiff for forensic investigations by its experts are not recoverable and should not have been submitted to the jury.

(f) Whitlock Testimony as to Windows and Doors

Dr. Rhett Whitlock should not have been permitted to testify regarding alleged defects in the windows and his testing of windows and doors. In support of this Motion, Defendants incorporate the arguments of all counsel made during pre-trial motions in limine and during *voir dire* of Dr. Whitlock at trial. Moreover, Dr. Whitlock's testimony regarding the labels on the windows, specifically labels as to Performance Grade and Design Pressure, was improperly confusing and in direct contradiction to the standards governing said labeling. Further, Dr. Whitlock testified that he found no evidence that the doors had an adequate design pressure rating. This testimony was confusing and improperly before the jury because Dr. Whitlock had no evidence the doors did not have an adequate design pressure rating.

2. NEW TRIAL NISI REMITTITUR

For the reasons stated above, Plaintiff's claims for punitive damages, loss of use, experts' forensic costs, and costs associated with replacing windows and doors should be deducted from the jury's award and the Plaintiffs be required to accept the reduced verdict.

3. JUDGMENT NOTWITHSTANDING THE VERDICT RENDERED

For the reasons set forth above, the affirmative relief ought to be stricken as a matter of law, notwithstanding the verdict rendered.

4. THIRTEENTH JUROR

Additionally, as a thirteenth juror, the Court should grant relief consistent with the relief sought above.

This motion is made pursuant to the South Carolina Rules of Evidence and is supported by other applicable law, the arguments of counsel, and any other material the court may receive.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

L. Dean Best

Bachman S. Smith IV

134 Meeting Street, Third Floor (29401)

P. O. Box 340

Charleston, SC 29402

*Attorneys for Defendants*

October 6, 2011  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

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**SC Court of Appeals**

Case No.: 2008-CP-10-7217

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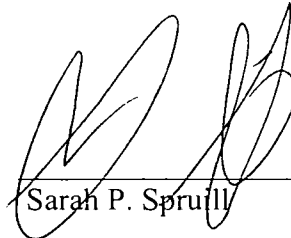
v.

Meeting Street Builders, LLC; Meeting Street Companies, LLC; MS Tenn Towns, LLC;  
and Builder Management Group, Inc .....Appellants/  
Respondents.

**PROOF OF SERVICE**

I, Sarah P. Spruill, hereby certify that I have this date served a copy of the  
attached and foregoing Motion for an Extension of Time and Response in Opposition to  
Respondent/ Appellant's Motion to File Consolidated Response Brief and Cross-Appeal  
Brief, on all parties by depositing the same in the United States Mail with sufficient  
postage attached, addressed as follows:

Justin O'Toole Lucey, Esq.  
415 Mill Street  
Mt. Pleasant, SC 29464  
(843) 849-8400



Sarah P. Spruill

April 24, 2012  
Greenville, South Carolina

64135

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April 24, 2012

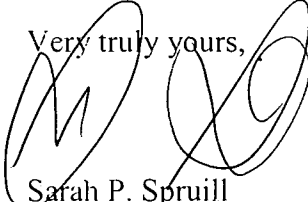
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APR 25 2012  
**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: *Meeting Street at Tennyson Row Horizontal Property Regime by Meeting Street at Tennyson Row Homeowners Association, Inc. v. Meeting Street Builders, LLC; et al.*  
Case No.: 2008-CP-10-7217  
HSB No.: 17381.0137

Dear Ms. Kitchings:

Enclosed herewith for filing, please find an original and seven (7) copies of the Motion for an Extension of Time and Response in Opposition to Respondent/ Appellant's Motion to File Consolidated Response Brief and Cross-Appeal Brief in the above-referenced matter. Also enclosed is my firm's check in the amount of \$25.00 to cover the fee for filing. Please return a file-stamped copy to our office in the self-addressed stamped envelope enclosed for your convenience.

Very truly yours,  
  
Sarah P. Spruill

Enclosures

cc: Justin O'Toole Lucey, Esq.  
Dean L. Best, Esq. (via e-mail)