

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

~~**RECEIVED**
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The Honorable John C. Hayes, III, Circuit Court Judge

Consolidated Appellate Case No. 2012-213730
Civil Action No. 2010-CP-46-02326

Juontonio Pinckney, Trustee of the Pinckney Living Trust; Josephine Sciacca; Addie Smith; James and Deborah Barone; Ismael and Valerie Gonzales; and Joe and Sandra Moore.....Appellants,

v.

Epcon Communities, Inc.; Epcon Communities Franchising, Inc.; Brock L. Fankhauser; Fankhauser Property Group, Inc.; Stonecrest Villas of Tega Cay, LLC; and Stonecrest Villas of Tega Cay Home Owners Association, Inc. Respondents.

RESPONDENT STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S RETURN TO MOTION BY APPELLANTS PINCKNEY, ET AL. TO DESIGNATE RECORD ON APPEAL FILED BY PINCKNEY, ET AL. AS THE SUPPLEMENTAL RECORD VOLUMES 2 – VOLUME 5 AND MOTION TO FILE AMENDED FINAL BRIEF

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February 28, 2014

Attorneys for Stonecrest Villas of Tega Cay
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The Respondent, Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (incorrectly identified in the caption as “Stonecrest Villas of Tega Cay Home Owners Association, Inc.”) (“Stonecrest COA”), by and through its undersigned counsel and pursuant to Rule 240(e), SCACR, submits the following return to the Motion by Appellants Pinckney, et al. to Designate Record on Appeal Filed by Pinckney, et al. as the Supplemental Record Volumes 2 – Volume 5 and Motion to File Amended Final Brief (the “Motion”). Stonecrest COA does not oppose the Motion to the extent it seeks to designate the record served September 10, 2013 by J. Cameron Halford, Esquire as the Supplemental Record on Appeal.¹ However, Stonecrest COA does oppose the portion of the Motion which seeks the court’s permission for the Appellants to file the “Proposed Amended Final Brief of Appellants” attached to the Motion.

Had the Appellants merely sought to file an Amended Final Brief updating citations to the Record on Appeal to reflect the new page numbers contained in the proposed Supplemental Record on Appeal, Stonecrest COA would not oppose that request. Indeed, should the proposed Supplemental Record on Appeal be accepted by the court as such, Stonecrest COA will also need to revise its Final Brief to update references to the revised record. However, the “Proposed Amended Final Brief of Appellants” does much more than simply update references to the revised record. It contains numerous material changes, including the wholesale revision of certain arguments as well as the

¹ This is a consolidated appeal in which Appellate Case No. 2013-001248—which is the appeal filed by the Appellants—was consolidated with Appellate Case No. 2012-213730—an appeal pertaining solely to issues between Epcon Communities, Inc., Epcon Communities Franchising, Inc., Brock L. Fankhauser, and Fankhauser Property Group, Inc. The appellants in the respective cases filed separate Records on Appeal even though the cases had been consolidated. Having been informed by the Clerk of Court that there must be only one record, the Appellants move to re-file the Record on Appeal filed by their counsel, Mr. Halford, as the Supplemental Record on Appeal. Upon information and belief, the proposed Supplemental Record on Appeal is substantively identical to the Record on Appeal served by Mr. Halford on September 10, 2013, and relates only to Appellate Case No. 2013-001248.

addition and deletion of entire paragraphs. It also purports to respond to arguments contained in Stonecrest COA's Final Brief even though the Appellants did not file a Reply Brief. In short, the "Proposed Amended Final Brief of Appellants" is an entirely new brief, one to which Stonecrest COA has had no chance to respond. It clearly does not comply with Rule 211(b), SCACR, and its filing should, therefore, be disallowed.

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PROOF OF SERVICE

I, the undersigned attorney with Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on February 28, 2014 served a copy of the **RESPONDENT STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S RETURN TO MOTION BY APPELLANTS PINCKNEY, ET AL. TO DESIGNATE RECORD ON APPEAL FILED BY PINCKNEY, ET AL. AS THE SUPPLEMENTAL RECORD VOLUMES 2 – VOLUME 5 AND MOTION TO FILE AMENDED FINAL BRIEF** upon all other parties, through their attorney(s) of record, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

J. Cameron Halford, Esquire
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Attorneys for the Appellants

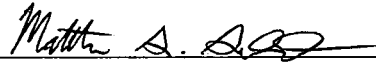
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