

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2012-CP-18-2826

Monique Frazier, individually and on behalf of all similarly  
situated Plaintiffs.....Appellant

v.

Somerset South Carolina, LLC, d/b/a Somerset Apartments, Multifamily Management, Inc. a/k/a  
Mitchell Management Inc., Allen Harken, Kathi Barfield Ducharme, John Doe Leasing Agents,  
and John Doe Premises Managers.....Respondents

Response in Opposition to Motion to Dismiss Appeal



Roy T. Willey IV, Esquire  
Eric M. Poulin, Esquire  
Ryan C. Andrews, Esquire  
Anastopoulo Law Firm, LLC  
2557 Ashley Phosphate Rd.  
North Charleston, SC 29418  
(843) 614-8888  
Attorneys for Appellant

**RECEIVED**  
MAR 31 2014  
SC Court of Appeals

## **INTRODUCTION**

The Respondents Somerset South Carolina, LLC (“Somerset”) and Multifamily Management, Inc. (“Multifamily”), have moved for an order dismissing this appeal for lack of jurisdiction based upon (1) the Order compelling arbitration and staying this action is interlocutory and not appealable under the South Carolina Uniform Arbitration Act or the Federal Arbitration Act; and (2) the Order denying class certification is interlocutory and not appealable under the requirements of S.C. Code Ann. § 14-3-330. Respondents therefore argue that there is no “final judgment, appealable order or decision” giving rise to the right to appeal pursuant to Rule 201 SCACR. Respondents additionally argue that because a Rule 59, SCRPC, motion to alter or amend judgment was pending when the Appeal was filed, it should further be dismissed.

## **ARGUMENT**

### **I. The appeal of the Order compelling arbitration and dismissing the action should not be dismissed, as it was timely filed.**

The underlying motions included Appellant’s Motion for Class Certification, Respondent Harken’s Motion to Dismiss for lack of service, and Respondent Somerset and Multifamily’s Motion to Dismiss Action and Compel Arbitration. (Respondent Somerset and Multifamily’s Motion attached as Ex. A). On November 21, 2013, the Court entered its Order denying Respondent’s Motion and granting Defendant Somerset’s Motion, while finding the remainder of the Motions moot, including Respondent Harken’s Motion to Dismiss for lack of service. (attached as Ex. B). Appellant filed her notice of Appeal on December 16, 2013.

Thereafter, Harken filed a Rule 59(e) Motion to Alter or Amend Judgment seeking a ruling as to his Motion to Dismiss for lack of proper service, since that was not ruled upon in the

Court's original Order. (attached as Ex. C). No other issue was raised with respect to the Court's ruling. In ruling on that issue, the trial Court denied Harken's Motion – effectively ruling in Appellant's favor. Therefore, that ruling is not an issue that has been raised in this appeal.

**II. The appeal of the Order compelling arbitration and dismissing the action should not be dismissed, as it was a final judgment.**

Appellants appeal the Order of the Court, granting Somerset's Motion to Dismiss and Compel Arbitration. While Appellant's recognize both the *Heffner* and *Toler's Cove* decisions as cited by Respondents, Appellant's contend this case is more analogous to this Court's decision in *Widener*. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 538, 471 S.E.2d 135, 136 (S.C. 1995); *Toler's Cove Homeowners Assoc. v. United Health Care Services*, 355 S.C. 605, 610-11, 586 S.E.2d 581, 584-85 (S.C. 2003); *Widener v. Fort Mill Ford and WFS*, 381 S.C. 522, 574 S.E.2d 172 (Ct.App. 2009). In *Widener*, this Court held that an Order dismissing an action and compelling arbitration are immediately appealable citing cases in other jurisdictions. *Id. citing Salim Oleochemicals v. M/V Shropshire*, 278 F.3d 90, 93 (2d. Cir. 2002); *Interactive Flight Techs., Inc. v. Swissair Swiss Air Transport Co., Ltd.* 249 F.3d 1177, 1179 (9th Cir. 2001). As Respondent recognizes in their brief, S.C. Code § 14-3-330 gives appellate courts jurisdiction to review:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas...;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action...

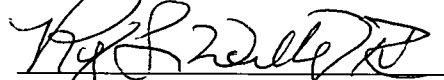
To protect her rights, Appellant filed this Appeal based upon Respondent's Motion being titled a Motion to Dismiss and Compel Arbitration. Appellant understood the Court's ruling as

granting Respondent Somerset and Multifamily's entire Motion, which was a Motion to Dismiss and Compel Arbitration. While waiting for an arbitration decision and any appeal, Appellant's statute of limitations could pass. As a result, she is prejudiced by any dismissal of the underlying claims. Clearly, and as this Court held in the *Widener* case, a dismissal in this instance entitles Appellant to appeal.

**CONCLUSION**

For all of these reasons, Appellant would respectfully request Respondent Somerset and Multifamily's Motion to Dismiss Appeal be denied.

Respectfully submitted,



Roy T. Willey IV, Esquire  
Eric M. Poulin, Esquire  
Ryan C. Andrews, Esquire  
Anastopoulo Law Firm, LLC  
2557 Ashley Phosphate Rd.  
North Charleston, SC 29418  
(843) 614-8888  
Attorneys for Appellant

March 26, 2014

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-18-2826

Monique Frazier, individually, and on behalf of all )  
similarly situated Plaintiffs, )

**MOTION AND ORDER INFORMATION**

**FORM AND COVERSHEET**

Plaintiffs, )

vs. )

Somerset South Carolina, LLC d/b/a Somerset )  
Apartments, Multifamily Management, Inc., a/k/a )  
Mitchell Management, Inc., Allen Harken, Kathi )  
Barfield Ducharme, John Doe Leasing Agents and )  
John Doe Premises Managers, )

Defendant. )

Plaintiffs' Attorney: Eric Marc Poulin, Esq. Daniel John Crooks, III, Esq. Anastopoulos Law Firm 2557 Ashley Phosphate Rd. North Charleston, SC 29418	Defendant's Attorney: Steven W. Ouzts Jonathan G. Roquemore Joshua D. Shaw 1901 Main Street, 17th Floor (29201) Post Office Box 1473 Columbia, South Carolina 29202
--	---

- MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)  
 **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)  
 **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

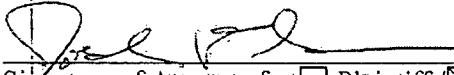
**SECTION I: Hearing Information**

Nature of Motion: Notice of Motion and Motion of Defendants Somerset South Carolina, LLC, and Multifamily Management, Inc., to Dismiss Action and Compel Arbitration  
Estimated Time Needed: 30 mins Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant

09/18/2013  
Date submitted

**SECTION III: Motion Fee**

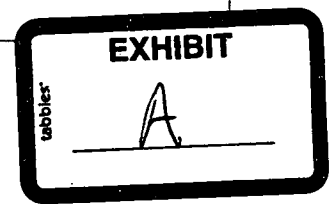
- PAID - AMOUNT: \$ 25  
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCP)
  - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.  
 Other:

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_



CLERK'S VERIFICATION

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \$ \_\_\_\_\_

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )  
Monique Frazier, individually, and on behalf of )  
all similarly situated Plaintiffs, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Somerset South Carolina, LLC d/b/a Somerset )  
Apartments, Multifamily Management, Inc., )  
a/k/a Mitchell Management, Inc., Allen Harken, )  
Kathi Barfield Ducharme, John Doe Leasing )  
Agents and John Doe Premises Managers, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
CASE NO: 2012-CP-18-2826

**NOTICE OF MOTION AND MOTION OF  
DEFENDANTS SOMERSET SOUTH  
CAROLINA, LLC, AND MULTIFAMILY  
MANAGEMENT, INC., TO DISMISS ACTION  
AND COMPEL ARBITRATION**

---

TO: ERIC M. POULIN, ESQUIRE, AND ROY T. WILLEY, IV, ESQUIRE, ATTORNEYS  
FOR THE PLAINTIFF

Please take notice that the Defendants Somerset South Carolina, LLC, and Multifamily Management, Inc., (hereinafter, "Defendants") will move before the presiding judge of the Dorchester County Court of Common Pleas, on such day and time as the Court may appoint, for an Order dismissing the action and compelling arbitration of all individual claims of Plaintiff Monique Frazier, as required by the written contract governing their relations. The Defendants make this Motion pursuant to the Federal Arbitration Act on the following grounds:

- (1) A written agreement between the Plaintiff Monique Frazier and Somerset South Carolina, LLC, provides that any dispute of any controversy arising under Plaintiff's lease, except for actions for lease termination, eviction, recovery of unpaid rent, or action against tenant for damages to the unit, shall be settled by arbitration. (See Ex. A, Arbitration Addendum.) The agreement to arbitrate includes any action seeking

damages for personal injury or property damage, and each of Plaintiff's claims alleged in the Complaint is within the scope of the arbitration agreement.

- (2) The Plaintiff has failed or refused to submit to arbitration as provided in the agreement.
- (3) The agreement out of which the controversy among the parties arises in this action involves interstate commerce, and is, therefore, subject to the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16.
- (4) The written arbitration agreement is valid, irrevocable, and enforceable by the Court under the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16.
- (5) Based on the foregoing, Plaintiff Monique Frazier's individual claims should be referred to binding arbitration. Further, the arbitration agreement does not contain an agreement to arbitrate class-action claims, and, therefore, pursuant to *Stolt-Nielsen S.A. v. Animalfeeds International*, 559 U.S. 662, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010) and the Federal Arbitration Act, the alleged class-action claims should be dismissed.


Therefore, based upon the facts, exhibits, pleadings, motions, arguments and legal authorities set forth herein and in such supporting memorandum as may be filed by Defendants, Defendants request that the Court enter an Order compelling arbitration of every claim asserted by the Plaintiff Monique Frazier, individually, in accordance with the arbitration agreement, and otherwise dismissing the lawsuit and all claims allegedly brought on behalf of a putative class pursuant to *Stolt-Nielsen S.A. v. Animalfeeds International*, 559 U.S. 662, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010) and the Federal Arbitration Act.

**Affirmation**

Pursuant to Rule 11, SCRCP, the undersigned counsel hereby certifies that he has in good faith conferred with counsel for Plaintiff in an effort to resolve the dispute without court action, but was unable to do so.

TURNER, PADGET, GRAHAM & LANEY, P.A.

By:



Steven W. Ouzts

[soutz@turnerpadget.com](mailto:soutz@turnerpadget.com)

Jonathan G. Roquemore

[jroquemore@turnerpadget.com](mailto:jroquemore@turnerpadget.com)

Joshua D. Shaw

[jshaw@turnerpadget.com](mailto:jshaw@turnerpadget.com)

Post Office Box 1473

Columbia, South Carolina 29202

(803) 254-2200

ATTORNEYS FOR DEFENDANTS SOMERSET  
SOUTH CAROLINA, LLC, D/B/A SOMERSET  
APARTMENTS, AND MULTIFAMILY  
MANAGEMENT, INC., A/K/A MITCHELL  
MANAGEMENT, INC.

Columbia, South Carolina  
September 18, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of September, 2013 a copy of the above and foregoing Notice of Motion and Motion of Defendants Somerset South Carolina, LLC, and Multifamily Management, Inc., to Dismiss Action and Compel Arbitration has been mailed to all counsel of record, postage prepaid and properly addressed as follows:

Albert A. Lacour, III, Esq.  
Clawson and Staubes, LLC  
126 Seven Farms Dr., Ste. 200  
Charleston, SC 29492

Roy Wiley, Esq.  
Anastopoulo Law Firm  
2557 Ashley Phosphate Rd.  
North Charleston, SC 29418

Paul Eliot Sperry, Esq.  
Carlock Copeland and Stair  
40 Calhoun St., Ste. 400  
Charleston, SC 29401

  
\_\_\_\_\_  
DANYA B. FRIEDMAN



ARBITRATION ADDENDUM

Addendum to lease dated the 28 Day of Nov, 20011, between Somerset Apartments (Lessor) and Francis (Lessee) for apartment number E6 at 1225 Boone Hwy RD.

By execution of this document, I/We hereby agree to following:

ARBITRATION UNDER AMERICAN ARBITRATION ASSOCIATION RULES

Any dispute of any controversy arising under this lease, except for actions for lease termination, eviction, recovery of unpaid rent, or action against tenant for damages to the unit, shall be settled by arbitration in Mobile, Alabama/ or (site of property at which the alleged action arises) in accordance with the commercial rules and regulations of the American Arbitration Association or its successor organization. This shall include any action seeking damages by tenant for personal injury or property damage, or any person claiming a duty arising under this lease or the condition of the premises. A judgment on any award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction and shall be final and binding on the parties. Each party shall bear its own expense in connection with the arbitration. The arbitrators shall not have the authority or power to modify any express condition or provision of this lease or to render any award which by its terms has the affect of altering or modifying any express condition or provision of this lease.

JURY WAIVER

Tenant and Landlord hereby waive any right to a trial by jury on any claim, counterclaim, setoff, demand, action or cause of action brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way pertaining or relating to: (i) this lease; (ii) the relationship of the Landlord and Tenant; (iii) the use and occupancy of the Premises; or (iv) in any way connected with or pertaining to relating to or incidental to any dealings of the parties hereto with respect to this Lease, or any other matter or controversy whatsoever between the parties; in all of the foregoing cases whether now existing or hereafter arising. Tenant and Landlord agree that either or both of them may file a copy of this provision with any court as written evidence of the knowing, voluntary, and bargained agreement between the parties irrevocably to waive trial by jury, and that any dispute or controversy whatsoever between them shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury.

RESIDENT(S):

X
X

Monique Frazier

MANAGEMENT:

By:

Agent [Signature]

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Monique Frazier

Plaintiff

v.

Multifamily Management, Inc., a/k/a Mitchell Management, Inc., Allen Harken, Kathi Barfield Ducharme, John Doe Leasing Agents, and John Doe Premises Managers

Defendant

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-02826

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: Roy T. Willey, IV, Esquire Bar No. Address: Anastopoulo Law Firm, LLC 2557 Ashley Phosphate Rd. North Charleston, SC 29418  Phone: 843-614-8888 Fax: email: Roy@akimlawfirm.com Other:	Defendant's Attorney: Albert A. Lacour, III Bar No. 3099 Address: CLAWSON AND STAUBES, LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492-8144  Phone: (843) 577-2026 Fax: (843) 722-2867 email: alacour@clawsonandstaubes.com Other:
---	---

- MOTION HEARING REQUESTED (Attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend Judgment - Rule 59(e)

Estimated Time Needed: 15 Minutes

Court Reporter Needed:  YES  NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Submitted Signature of Attorney for  Plaintiff /  Defendant

Date

SECTION III: Motion Fee

PAID - AMOUNT: \$25.00

- EXEMPT: (Check Reason)
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCP)
  - Proposed order submitted at request of the court; or reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: \_\_\_\_\_
- Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE \_\_\_\_\_

CODE: \_\_\_\_\_

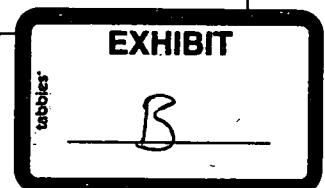
Date: \_\_\_\_\_

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_ (Print Name)

DATE FILED: \_\_\_\_\_

- MOTION FEE COLLECTED: \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \_\_\_\_\_





Although there were other pending discovery motions before the Court which were agreed among counsel to be considered moot if the Court granted the Co-Defendant's motion to compel arbitration (such as the motions for protective order filed by Defendant DuCharme and by others which are also not listed on the Form 4 Judgment), there was no agreement by Harken that his motion to dismiss was in any way affected by the ruling on the motion to compel arbitration. Harken therefore argued his motion and submitted a proposed Order after review by opposing counsel. Harken requests that the Court please rule on his motion and execute the proposed Order as submitted to the Court under cover of counsel's letter of November 18, 2013.

CLAWSON AND STAUBES, LLC



Albert A. Lacour, III  
CLAWSON AND STAUBES, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492-8144  
(843) 577-2026

Attorneys for Allen Harken

Charleston, South Carolina

December 3, 2013

SOUTH CAROLINA RULES OF CIVIL PROCEDURE  
RULE 11 CERTIFICATION

I certify that consultation with opposing counsel on the subject of the within Motion would serve no useful purpose.



Albert A. Lacour, III

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed thereto on this 3rd day of December, 2013.

Nancy Martz

**CLAWSON  
AND  
STAUBES**  
LLC

Albert A. Lacour, III  
alacour@clawsonandstaubes.com

November 18, 2013

File No.: 2013-0281

VIA US MAIL

The Honorable Kristi L. Harrington  
300B California Ave.  
Moncks Corner, SC 29461

Re: Monique Frazier, individually, and on behalf of all similarly situated Plaintiffs v. Somerset South Carolina, LLC, d/b/a Somerset Apartments; Multifamily Management, Inc., a/k/a Mitchell Management, Inc., Allen Harken, Kathi Barfield Ducharme, John Doe Leasing Agents, and John Doe Premises Managers  
Case No: 2012-CP-18-02826

Dear Judge Harrington:

Enclosed herewith please find the original proposed Order on the motion which you heard on Tuesday, November 12, 2013. If the Order meets with your approval, please be so kind as to sign it and return it to me in the enclosed envelope so that I can send it up to the Clerk in St. George for filing.

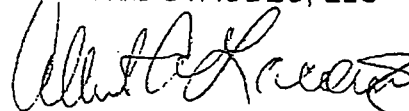
This Order has been previously reviewed by opposing counsel and any objections have been accommodated.

Thank you very much for your attention to the above.

With best regards I remain,

Very truly yours,

CLAWSON AND STAUBES, LLC



Albert A. Lacour, III

AALIII/nm  
Enclosure  
cc: Roy T. Willey, IV, Esquire (via email w/enclosure)

www.clawsonandstaubes.com  
126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492  
Fax: (843) 722-2867 / Office: (843) 577-2026

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
Monique Frazier, individually, and on )  
behalf of all similarly situated Plaintiffs, )  
) )  
Plaintiffs, )  
vs. )  
Somerset South Carolina, LLC, d/b/a )  
Somerset Apartments, Multifamily )  
Management, Inc., a/k/a Mitchell )  
Management, Inc., Allen Harken, Kathi )  
Barfield Ducharme, John Doe Leasing )  
Agents, and John Doe Premises )  
Managers, )  
) )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-18-02826

**ORDER ON THE MOTION TO  
DISMISS OF DEFENDANT ALLEN  
HARKEN**

This matter came before the Court on Tuesday, November 12, 2013 upon the Notice of Motion and Motion Under Rule 12 of the Defendant Allen Harken. Harken moves to dismiss all claims against him in this litigation pursuant to SCRCP Rule 12(b)(2), 12(b)(4), and 12(b)(5). Numerous motions were argued in this case on November 12, 2013, but the attorneys heard on this motion were Albert A. Lacour, III, for the Defendant Allen Harken, and Roy T. Willey, IV, on behalf of the Plaintiffs.

The Plaintiffs have published the Summons against the Defendant Harken after being unable to successfully locate him and serve him personally. Harken challenges the publication procedure as not applicable upon the facts of this case. Specifically, Harken argues that S.C. Code Ann. §15-9-710 provides only eight circumstances in which publication is allowed. Those eight circumstances are numerated in the statute. Sub paragraphs (6), (7) and (8) apply only to family court matters and allow for publication in adoption proceedings, termination of parental rights, and annulment proceedings. Sub

paragraphs (4) and (5) apply any time a Defendant allegedly has or claims an interest in real property and those provisions are likewise inapplicable to the present case. Sub paragraph one applies to foreign corporations that have property within the state and is inapplicable.

Sub paragraphs (2) and (3) both provide for publication against Defendants who are residents of the State of South Carolina. Sub paragraph (2) allows for publication when a resident of this state, with intent to defraud his creditors, either leaves the state or remains concealed within the state. I find that this provision is not applicable to the present proceedings because Defendant Harken is not alleged to be a debtor, and his status as a Defendant in the case does not automatically result in a judgment against him. Sub paragraph (3) provides that service by publication can be made upon a Defendant who is a resident of the state, but cannot be found after a diligent search. This statute does not provide anywhere on its face, for publication against a Defendant whose last known address was within the state, but rather only allows for publication against resident Defendants. Upon the plain language of the statute, publication is not appropriate in this case because the record, specifically the Affidavit filed by the Plaintiff in support of the Motion for an Order of Publication indicates that the Sheriff made inquiry at the Defendants last known address and confirmed that the Defendant Harken's current whereabouts are "unknown". There is, therefore, no record that the Defendant Harken was at the time of the petition for publication a resident of the State of South Carolina. I conclude that publication pursuant to the statute is improper and therefore any published Summons was not sufficient to obtain jurisdiction of the Court over Allen Harken; it is therefore

ORDERED that all claims herein against the Defendant Allen Harken be, and the same are hereby, Dismissed upon the grounds that the Court lacks jurisdiction over the person of the Defendant Allen Harken;

AND IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2013  
at \_\_\_\_\_, South Carolina.

---

Kristi L. Harrington  
Presiding Judge First Judicial Circuit

CERTIFIED COPY

Monique Frazier

Somerset South Carolina, LLC, et al

2013 NOV 21 PM 4:04

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

CLERK OF COURT  
DORCHESTER COUNTY

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: This case came before the Court on November 12, 2013, on Plaintiff's Motion for Class Certification, Defendant Harken's Motion to Dismiss, Defendant Somerset's Motion to Compel Arbitration, and Defendant Somerset's Motion for Protective Order. This Court hereby DENIES Plaintiff's Motion and GRANTS Defendant Somerset's Motion to Compel Arbitration. The additional motions are hereby MOOT as this case is to be arbitrated.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.



STATE OF SOUTH CAROLINA  
COUNTY OF Dorchester  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-18-2826

CERTIFIED COPY

Monique Frazier

Somerset South Carolina, LLC, et al

2013 NOV 21 PM 4:04

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

CLERK OF COURT  
DORCHESTER COUNTY

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: This case came before the Court on November 12, 2013, on Plaintiff's Motion for Class Certification, Defendant Harken's Motion to Dismiss, Defendant Somerset's Motion to Compel Arbitration, and Defendant Somerset's Motion for Protective Order. This Court hereby DENIES Plaintiff's Motion and GRANTS Defendant Somerset's Motion to Compel Arbitration. The additional motions are hereby MOOT as this case is to be arbitrated.

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

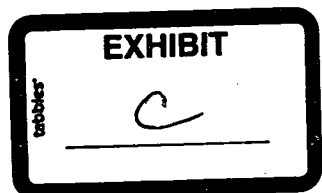
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.





# ANASTOPOULO

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## LAW FIRM

Akim A. Anastopoulos (SC)  
Renee M. Anderson (SC)  
Ryan C. Andrews (SC)  
John I. Henderson (SC)  
Marianthe L. Kolokithas (SC)  
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Roy T. Willey, IV (SC)  
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Reply to North Charleston Office  
[www.AkimLawFirm.com](http://www.AkimLawFirm.com)

Wednesday, March 26, 2014

The Honorable Jenny Abbot Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

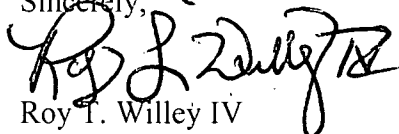
RE: *Somerset Apartments Class Action*  
Case No.: 2012-CP-18-2826

Dear Ms. Kitchings:

Please find enclosed the original (unbound) and seven (7) copies of Appellant's Response in Opposition to Motion to Dismiss Appeal. Please file the original in your office and return a clocked copy of each to us in the self-addressed stamped envelope provided.

Thank you for your assistance in this matter. If you should have any questions, please do not hesitate to contact us.

Sincerely,



Roy T. Willey IV

Cc: Steven Ouzts, Esq.  
Jonathan Roquemoire, Esq.  
Joshua Shaw, Esq.  
Paul Eliot Sperry, Esq.  
Albert A. Lacour, III, Esq.

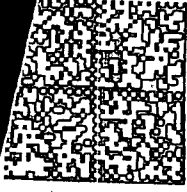
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Mailing: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418  
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