

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Hon. John C. Hayes, III  
Presiding Circuit Court Judge

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Consolidated case no. 2013-000-327

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**RECEIVED**

MAY 28 2014

**SC Court of Appeals**

172305

Juontonio Pinckney, et al. .... 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 Owners' Association, Inc. .... Respondent

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APPELLANTS' RETURN TO MOTION TO STRIKE BY RESPONDENT  
AND MOTION SEEKING RELIEF IN THE ALTERNATIVE  
AND MEMORANDUM IN SUPPORT

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Appellants herein respond to the May 14, 2014 Motion by Respondent to Strike and would respectfully allege and show the following: Appellants' counsel received the Court's 4/24/14 Order to file an Amended Brief on or before 5/5/14 citing to the now agreed upon and consolidated Record on Appeal. Appellant's counsel attempted to timely comply with the court's order but in so doing inadvertently reverted to an interim draft version from Counsel's computer files different than the initial brief filed on 7/12/2013. The May 5, 2014 filing, of necessity, contained streamlined language, different verbiage and more accurate citations, etc., than the prior version. Counsel admits the interim version was submitted in error under SCACR 211(b), but respectfully submits that such error was harmless, constituting

merely streamline argument, elimination of duplicative verbiage, and nothing constituting unfair surprise, material change<sup>1</sup>, or “wholesale revision of argument”. Further, the same does not prejudice Respondent. All parties have agreed on the Record on Appeal Volumes I-V,<sup>2</sup> and are familiar with the testimony, documents and facts cited to, including the legal issues, and underlying arguments in the case that now present this court with important, novel and complex issues of first impression.

Appellants respectfully move that the relief sought by Respondents is drastic, far beyond an appropriate remedy, and would permit triumph of form over substance. As such, the relief should be denied and counsel for Appellants would request that the court consider one of the following equitable resolutions as relief to be ordered by the court in response:

1. Deny the relief requested, and allow Appellant Counsel’s 5/5/14 Final Amended Brief to stand as submitted, but GRANT Respondent reasonable addition time to respond to any alleged “new” material by final reply.
2. Allow Appellants’ counsel additional time as assigned by the court to substitute proper version of the Appellants’ Final Brief <sup>2</sup> containing only updated citations to the now consolidated Record on Appeal, Volumes (1) through (5).

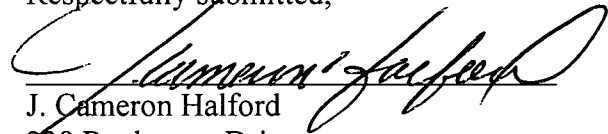
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<sup>1</sup> As cited previously by Respondents’ North Carolina counsel, this is a consolidated appeal in which Appellate Case No. 2013-001248 – which is the appeal filed by the Appellants Pinckney, et al. - was *consolidated with* Appellate Case No. 2012-213730 – an appeal pertaining solely to issues between the Epcon defendants, Brock L. Fankhauser and Fankhauser Property Group, Inc. (“FPG”). The Appellants in the respective cases filed *separate* Records on Appeal, which have now, without objection, been consolidated under the prior orders of the court where “the proposed supplemental record on appeal is substantively identical (sic) to the Record on Appeal served by Mr. Halford on September 10, 2013....” [Resp. 2/28/14 Return filing]. As such, all counsel have been privy to record filings in this case that were not available for citing to under the initial brief filed 7/12/2013 by Appellants because the Record on Appeal at the time was not consolidated.

<sup>2</sup> Were the court to grant relief under paragraph (2) above, appellant counsel would be updating and citing the Initial Brief filed with the court on July 12, 2013.

3. Allow for redaction and strike of any and all alleged “new” language or material cited and designated by Respondents’ motion filing of May 14, 2014 and allow the existing final briefs to stand for review by the court.
4. Such other remedy as the Court may think proper.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Hon. John C. Hayes, III  
Presiding Circuit Court Judge

---

2013-000-327  
Case No. 2010-CP-46-2326

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Juontonio Pinckney, et al. .... Apellants,

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 Owners' Association, Inc. .... Respondent

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PROOF OF SERVICE

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Counsel for Appellants hereby certifies that a copy of the Appellants' Motion and Return to Motion to Strike was served on the below listed parties by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows the 23<sup>rd</sup> day of May, 2014.

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Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, L.L.P.



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J. Cameron Halford, LLC  
Matthew R. Niemiec, LLC  
P. John Freeman, LLC

May 23, 2014

Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

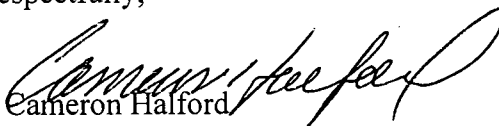
Re: *Juontonio Pinckney, et al. v. Brock L. Fankhauser, et al.*  
South Carolina Appellate Case No.: 2013-000327  
York County Consolidated Case No.: 2010-CP-46-2326

Dear Ms. Kitchings:

Please find enclosed an original and one copy of the Appellants' Return to Motion to Strike and Motion along with proof and service regarding the above-referenced matter and the filing fee. Please file the original and return a filed copy in the envelope provided. Please contact me with any questions or concerns, and thank you for your assistance.

With regards, I remain

Respectfully,

  
J. Cameron Halford

JCH:tml

Enclosures

cc: Curtis Dowling, Esquire  
Brett Dressler, Esquire  
Graham P. Powell, Esquire  
Bradford Cranshaw, Esquire  
Michael B.T. Wilkes, Esquire

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**SC Court of Appeals**

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