

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young Sr., Circuit Court Judge

Case No. 2010-CP-10-9672

72422

RECEIVED

JUN 09 2014

SC Court of Appeals

Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Leslie Anne O'Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown,

Plaintiffs,

Of whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the

Respondents,

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC a/k/a East Bridge Lofts, LLC; Central 3, LLC; Creekstone East Bridge, LLC; Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Creekstone Management, Inc.; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical; Wasson Electric Heating & Air; BayClub Homes, LLC; Terracon Consultants, Inc.; Salvador Rubalcaba d/b/a Rubalcaba Construction,

Defendants,

Of whom East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC, Alexandra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett Jackson, Steve Keller, Edward Michael Washburn, and Kevin Ball are the

Appellants,

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and
Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone
Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward
Michael Washburn; Kevin Ball; and Bay Club Homes, LLC,

Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric
Heating & Air; and Charleston Chimney Services, Inc.,

Third-Party Defendants.

RESPONDENTS' MOTION TO DISMISS APPEAL

RECEIVED
JUN. 09 2014
SC Court of Appeals

YOUNG CLEMENT RIVERS, LLP
Edward D. Buckley Jr.
Russell G. Hines
P.O. Box 993
Charleston, South Carolina 29402
(843) 577-4000

-and-

JUSTIN O'TOOLE LUCEY, P.A.
Justin O'Toole Lucey
Joshua F. Evans
P.O. Box 806
Mount Pleasant, South Carolina
29465
(843) 849-8400

Attorneys for the Respondents

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COME NOW the Respondents (identified in the above case caption), by and through their undersigned counsel, and, upon the grounds set forth herein, move this Honorable Court to dismiss this appeal.

1. This appeal used to include two (2) groups of appellants that were identified as the Primary Appellants (comprised of certain of the defendants in this case) and the Secondary Appellants (comprised of certain of the plaintiffs in this case). (*See Exhibit A* attached hereto.)

2. The appeal taken by the former Secondary Appellants has since been dismissed. (*Id.*)

3. The group of appellants formerly known as the Primary Appellants are now the lone Appellants. (*Id.*)

4. The Appellants' appeal relates only to the circuit court's denial of a motion to compel Respondent Trivette C. Hatcher ("Hatcher") to arbitration. (*See Exhibits B* and *C* attached hereto.)

5. In the same order denying the Appellants' motion to compel Hatcher to arbitration, the circuit court expressly found that the plaintiffs in this case (individual unit owners) were not the proper parties to pursue the claims they alleged relating to the construction and development of the East Bridge Town Lofts condominium complex—the East Bridge Town Lofts Property Owners Association, Inc., which was/is pursuing a substantially identical lawsuit (the "East Bridge POA Lawsuit"), being the proper party to do so—and the circuit court dismissed "the present action . . . in its entirety, with prejudice." (*See Exhibit C.*)

6. In light of its dismissal of the action, the circuit court also found that the Appellants' motion to compel arbitration was moot. (Id.)

7. Now that the former Secondary Appellants' appeal from the circuit court's dismissal of their case has been dismissed, the dismissal of this case "in its entirety, with prejudice" is final. First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance"); *see also* Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

8. The Appellants' appeal, which, again, only pertains to the denial of a motion to compel one individual plaintiff in this case to arbitration, is moot, since the circuit court's dismissal of this case "in its entirety, with prejudice" is final.

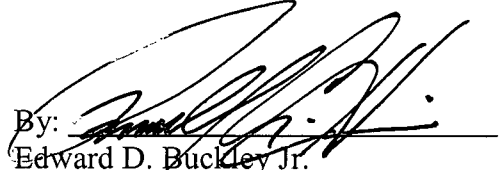
9. Also, in light of the status of the East Bridge POA Lawsuit, which has proceeded to trial, the undersigned counsel for the Respondents believes that the Appellants' counsel is in agreement that the appeal in this case need not continue.

WHEREFORE, the Respondent moves for this appeal to be dismissed. To the extent that this dismissal can be accomplished by express agreement of counsel (as referenced in Paragraph 9 above), the undersigned counsel for the Respondents will advise the Court of the same as soon as possible. Lastly, the Respondents would ask that—in accordance with Rule 240(b), SCACR—this appeal (specifically, the Respondents' present briefing deadline) be stayed until the Court acts on this motion.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

Edward D. Buckley Jr.
Russell G. Hines
25 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 577-4000

-and-

JUSTIN O'TOOLE LUCEY, P.A.
Justin O'Toole Lucey
Joshua F. Evans
P.O. Box 806
Mount Pleasant, SC 29465
(843) 849-8400

Attorneys for Respondents

Charleston, South Carolina

Dated: 6/5/14



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 03, 2012

Mr. Robert T. Lyles, Jr.
PO Box 773
Charleston SC 29402

Mr. John Calvin Hayes, IV
180 Meeting St., Ste. 330
Charleston SC 29401

Mr. Ivon Keith McCarty
1212 Wappoo Road
PO Box 30055
Charleston SC 29417

Mr. Michael S. Seekings
PO Box 59
Charleston SC 29402

Re: Hayden Jeffords v. East Bridge Town Lofts
Appellate Case No. 2012-213351

Dear Counsel:

This Court has received multiple notices of appeal in this matter. These appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on

Exhibit A

appeal. The times for perfecting this appeal will run from the service of the last notice of appeal.

In light of this consolidation, the title of this case is amended as follows:

Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Lesli Anne O'Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown, Plaintiffs,

Of whom Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown are the Secondary Appellants,

And

Of Whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the Respondents,

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC; Central 3, LLC; Creekstone East Bridge, LLC; Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Creekstone Management, Inc.; Donald K. Henry; Everett Jackson; Steve Keller; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical, Inc.; Wasson Electric Heating & Air; Bay Club Homes, LLC; Terracon Consultants, Inc.; and Salvador Rubalcaba d/b/a Rubalcaba Construction, Defendants,

Of Whom East Bridge Town Lofts, LLC a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC, Alexnadra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett

Jackson, Steve Keller, Edward Michael Washburn, and Kevin Ball are the Primary Appellants,

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; and Bay Club Homes, LLC, Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric Heating & Air; and Charleston Chimney Services, Inc., Third-Party Defendants.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Justin O'Toole Lucey
Joshua Fletcher Evans
Mary-Margaret Stuart Fitzhenry
Edward D. Buckley, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

69993

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.

RECEIVED

OCT 07 2013

Case No.: 2010-CP-10-9762

SC Court of Appeals

Appellate Case No: 2012-213351

Hayden Jeffords, individually and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Leslie Anne O'Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph Ladue, Deborah Ladue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown, Plaintiffs,

Of Whom, Hayden Jeffords, individually and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph Ladue, Deborah Ladue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown are the Secondary Appellants,

And

Of Whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the Respondents.

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC, Alexandra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett

Exhibit A

Jackson, Steve Keller, East Coast Carpentry a/k/a ECC Contracting, LLC, Fuller Drywall & Paint, Ltd., Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical, Wasson Electric Heating & Air, Bay Club Homes, LLC, Terracon Consultants, Inc., Salvador Rubalcaba d/b/a Rubalcaba Construction, Defendants,

Of Whom East Bridge Town Lofts, LLC a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC; Alexandra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett Jackson, Steve Keller, Edward Michael Washburn, and Kevin Ball are the Primary Appellants,

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; and Bay Club Homes, LLC, Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric Heating & Air; and Charleston Chimney Services, Inc., Third-Party Defendants.

MOTION TO WITHDRAW APPEAL

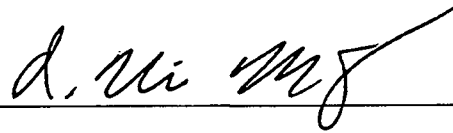
Appellant Hayden Jeffords, individually and on behalf of all others similarly situated, et al., respectfully moves this Court, Pursuant to Rule 260(c) SCAR, for an Order granting the withdrawal of the Notice of Appeal filed on November 16, 2012 on the grounds that this case has settled.

Signature on following page

RECEIVED
OCT 07 2013

SC Court of Appeals

Exhibit A



I. Keith McCarty
McCarty Law Firm, PC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
jhayes@hayeslaw.org

Michael S. Seekings
Leath Bouch & Crawford, LLP
92 Broad Street
Charleston, SC 29401
Phone: 843-364-8583
mseekings@leathbouchlaw.com

Attorneys for Appellants

Exhibit A

The South Carolina Court of Appeals

Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Leslie Anne O' Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brain Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown,

of whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the Respondents,

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC; a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC; Central 3, LLC; Creekstone East Bridge, LLC; Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Creekstone Management, Inc.; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical; Wasson Electric Heating & Air; Bay Club Homes, LLC; Terracon Consultants, Inc.; and Salvador Rubalcaba d/b/a Rubalcala Construction, Defendants,

of whom East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC, Alexandra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett Jackson, Steve Keller, Edward Michael Washburn, and

Kevin Ball are the Appellants.

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; and Bay Club Homes, LLC, Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric Heating & Air; and Charleston Chimney Services, Inc., Third-Party Defendants. AND Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Lesli Anne O'Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue; Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown, Plaintiffs,

Of whom Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown are the Appellants,

v.

Of Whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the Respondents,

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC; Central 3, LLC; Creekstone East Bridge, LLC;

Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Creekstone Management, Inc.; Donald K. Henry; Everett Jackson; Steve Keller; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical, Inc.; Wasson Electric Heating & Air; Bay Club Homes, LLC; Terracon Consultants, Inc.; and Salvador Rubalcaba d/b/a Rubalcala Construction, Defendants,

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; and Bay Club Homes, LLC, Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric Heating & Air; and Charleston Chimney Services, Inc., Third-Party Defendants.

Appellate Case No. 2012-213351

The Honorable Roger M. Young, Sr.
Charleston County
Trial Court Case No. 2010CP1009672

ORDER

It appears to the satisfaction of the Court that the above case has been fully and finally settled by agreement between the parties. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Exhibit A

FOR THE COURT

BY V. Claire Allan, Deputy
CLERK

FILED

HG 10-28-13

Columbia, South Carolina

cc:

Robert T. Lyles, Jr.

Justin O'Toole Lucey

Joshua Fletcher Evans

John Calvin Hayes, IV

Ivon Keith McCarty

Michael S. Seekings

Edward D. Buckley, Jr.

Russell Grainger Hines

Exhibit A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 13, 2013

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Hayden Jeffords v. East Bridge Town Lofts and Hayden Jeffords v. East
Bridge Town Lofts
Lower Court Case No. 2010CP1009672
Appellate Case No. 2012-213351

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A
copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Robert T. Lyles, Jr., Esquire
Justin O'Toole Lucey, Esquire

Exhibit A

Joshua Fletcher Evans, Esquire
John Calvin Hayes, IV, Esquire
Ivon Keith McCarty, Esquire
Michael S. Seekings, Esquire
Edward D. Buckley, Jr., Esquire
Russell Grainger Hines, Esquire

The South Carolina Court of Appeals

Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Leslie Anne O' Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brain Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown, Plaintiffs,

Of whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the Respondents,

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC; Central 3, LLC; Creekstone East Bridge, LLC; Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Creekstone Management, Inc.; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical; Wasson Electric Heating & Air; Bay Club Homes, LLC; Terracon Consultants, Inc.; and Salvador Rubalcaba d/b/a Rubalcala Construction, Defendants,

Of whom East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC, Alexandra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett Jackson, Steve Keller, Edward Michael Washburn, and

Kevin Ball are the Appellants.

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; and Bay Club Homes, LLC, Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric Heating & Air; and Charleston Chimney Services, Inc., Third-Party Defendants.

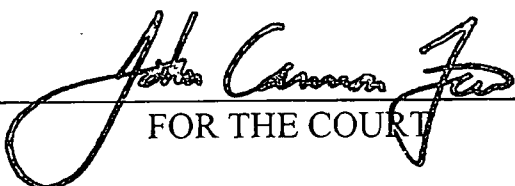
Appellate Case No. 2012-213351

ORDER

Appellants have filed a motion requesting that this Court recall the remittitur and reinstate this appeal. Appellants argue this appeal was dismissed and remitted in error because the appeal has not been fully and finally settled by the parties. Specifically, Appellant notes that the two groups of Plaintiffs settled, but Appellants "had no part in the settlement between the Plaintiffs."

Because the motion to withdraw appeal sought withdrawal of the notice of appeal filed on November 16, 2012, but not Appellant's notice of appeal, which was filed on November 9, 2012, this appeal was technically dismissed and remitted in error.

Accordingly, the remittitur is recalled and the appeal is reinstated. Respondents shall serve and file their initial brief and designation of matter within thirty days.


C.J.
FOR THE COURT

FILED

Exhibit A

Columbia, South Carolina

cc:

Robert T. Lyles, Jr., Esquire
Justin O'Toole Lucey, Esquire
Joshua Fletcher Evans, Esquire
John Calvin Hayes, IV, Esquire
Ivon Keith McCarty, Esquire
Michael S. Seekings, Esquire
Edward D. Buckley, Jr., Esquire
Russell Grainger Hines, Esquire

Exhibit A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.

Case No. 2010-CP-10-9762

HAYDEN JEFFORDS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, TITUS GUDEL, HAROLD S. MCEWAN, D. EVERETT WALKER, PAUL KANE, JEANNE DEBOSH, MARGARITA STAUDT, LESLIE ANNE O'NEAL, TRIVETTE C. HATCHER, WILLIAM SCANLON, DELIA SCANLON, CHRISTY C. PARISH, JOSEPH LADUE, DEBORAH LADUE, PAMELA SNYDER, STEVEN GOLDBERG, BRENT MCCLAINE, BRIAN RASMUSSEN, MCKENZIE HUTAFF, BRIAN KAVANAGH, LYNN HARRIS, AND KENNETH A. BROWN,Plaintiffs,

OF WHOM HAYDEN JEFFORDS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, TITUS GUDEL, HAROLD S. MCEWAN, D. EVERETT WALKER, PAUL KANE, JEANNE DEBOSH, MARGARITA STAUDT, WILLIAM SCANLON, DELIA SCANLON, CHRISTY C. PARISH, JOSEPH LADUE, DEBORAH LADUE, PAMELA SYNDER, STEVEN GOLDBERG, BRENT MCCLAINE, BRIAN RASMUSSEN, MCKENZIE HUTAFF, BRIAN KAVANAGH, LYNN HARRIS, AND KENNETH A. BROWN ARE THE SECONDARY APPELLANTS,

OF WHOM JOHN ZOHLNEN, MARY ZOHLNEN, LESLIE ANNE O'NEAL, AND TRIVETTE C. HATCHER ARE THE RESPONDENTS,

v.

EAST BRIDGE TOWN LOFTS, LLC, A/K/A EAST BRIDGE, LLC, A/K/A EAST RIDGE HOMES, LLC, A/K/A EAST BRIDGE LOFTS, LLC, CENTRAL 3, LLC, CREEKSTONE EAST BRIDGE, LLC, CREEKSTONE SC I, LLC, ALEXANDRA ROAD INVESTORS, LLC, CREEKSTONE MANAGEMENT, LLC, CREEKSTONE MANAGEMENT, INC., DONALD K. HENRY, EVERETT JACKSON, STEVE KELLER, EDWARD MICHAEL WASHBURN, KEVIN BALL, EAST COAST CARPENTRY A/K/A ECC CONTRACTING, LLC, FULLER DRYWALL & PAINT, LTD., DELTA MECHANICAL, INC. A/K/A CAROLINA DELTA MECHANICAL, WASSON ELECTRIC HEATING & AIR, BAY CLUB HOMES, LLC, TERRACON CONSULTANTS, INC., SALVADOR RUBALCABA D/B/A RUBALCABA CONSTRUCTION, ROBERT WASSON AND BARBARA WASSON, INDIVIDUALLY D/B/A WASSON ELECTRIC HEATING & AIR, INC. AND CHARLESTON CHIMNEY SERVICES, INC.Defendants,

OF WHOM EAST BRIDGE TOWN LOFTS, LLC, A/K/A EAST BRIDGE, LLC, A/K/A EAST RIDGE HOMES, LLC, A/K/A EAST BRIDGE LOFTS, LLC, CENTRAL 3, LLC, CREEKSTONE EAST BRIDGE, LLC, CREEKSTONE SC I, LLC, ALEXANDRA ROAD INVESTORS, LLC, CREEKSTONE MANAGEMENT, LLC, CREEKSTONE MANAGEMENT, INC., DONALD K. HENRY, EVERETT JACKSON, STEVE KELLER, EDWARD MICHAEL WASHBURN, AND KEVIN BALL ARE THE PRIMARY APPELLANTS,

v.

BRIDGE TOWN LOFTS, LLC, A/K/A EAST BRIDGE, LLC, A/K/A EAST RIDGE HOMES, LLC, A/K/A EAST BRIDGE LOFTS, LLC, CENTRAL 3, LLC, CREEKSTONE EAST BRIDGE, LLC, CREEKSTONE SC I, LLC, ALEXANDRA ROAD INVESTORS, LLC, CREEKSTONE MANAGEMENT, LLC, CREEKSTONE MANAGEMENT, INC., DONALD K. HENRY, EVERETT JACKSON, STEVE KELLER, EDWARD MICHAEL WASHBURN, KEVIN BALL; AND BAY CLUB HOMES, LLC.....THIRD-PARTY PLAINTIFFS,

v.

ROBERT WASSON AND BARBARA WASSON, INDIVIDUALLY AND D/B/A WASSON ELECTRIC HEATING & AIR, AND CHARLESTON CHIMNEY SERVICES, INC.....THIRD-PARTY DEFENDANTS.

INITIAL BRIEF OF APPELLANT

Robert T. Lyles, Esquire
Lyles & Lyles, LLC
342 East Bay Street
Post Office Box 773
Charleston, South Carolina
29401
T: 843.577.7730
rtl@lylesfirm.com
Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities 4

Statement of Issues on Appeal 5

Statement of the Case 5

Standard of Review 8

Argument 8

 I. THE DEMAND TO COMPEL MS. HATCHER TO ARBITRATE
 SHOULD HAVE BEEN GRANTED AS HER OBLIGATION TO
 ARBITRATE WAS NEITHER EXPIRED NOR MOOT 8

 II. THE COURT MADE NUMEROUS FACTUAL FINDINGS WHICH
 WERE IRRELEVANT TO THE ISSUES BEFORE IT, WERE
 ERRONEOUS, WERE NOT SUPPORTED BY ADMISSIBLE
 EVIDENCE AND WERE MADE WITHOUT DEFENDANTS HAVING
 AN OPPORTUNITY TO PRESENT EVIDENCE IN OPPOSITION .. 12

Conclusion 13

TABLE OF AUTHORITIES

CASES

Carolina Care Plan, Inc. v. United Healthcare Services, 361 SC 555, 44, 606 S.E.2d 752 (2004) 10

Deloitte & Touche, LLP v. Unisys Corp., 358 SC 179, 594 S.E.2d 523 (Ct. App. 2004). 8

Jackson Mills, Inc. v. BT Capital Corp., 312 S.C. 400, 440 S.E.2d 877 (1994) 10

Housing Authority of Columbia v. Cornerstone Housing, 356 SC 328, 588 S.E.2d 617 (Ct. App. 2003) 10, 11

New Hope Missionary Baptist Church v. Paragon, 379 SC 620, 667 S.E.2d 1 (Ct. App. 2008) 8, 10, 11

Prima Paint Corp. v. Flood & Conklin Mfg. Co., 338 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d. 1270 (1967) 11

South Carolina Public Service Authority v. Great Western Coal, 312 SC 559, 437 S.E.2d 22 (1993) 10, 11

STATUTES

S.C. Code Ann., § 15-48-10 9

S.C. Code Ann., § 15-48-20 9

S.C. Code Ann., § 27-31-430 7

South Carolina Rule of Civil Procedure, Rule 59 7

OTHER AUTHORITIES

Black's Law Dictionary 909 (5th Ed. 1979) 12

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN DENYING APPELLANTS MOTION TO STAY AND COMPEL ARBITRATION ON THE BASIS THAT THE ARBITRATION OBLIGATION HAD EXPIRED?
- II. DID THE COURT ERR IN HOLDING THAT THE MOTION TO COMPEL ARBITRATION WAS MOOT?
- III. DID THE TRIAL COURT ERR IN MAKING NUMEROUS FINDINGS OF FACT THAT WERE IRRELEVANT TO ITS ORDER, ARE HIGHLY DISPUTED AND ARE NOT SUPPORTED BY ADMISSIBLE TESTIMONY?

STATEMENT OF THE CASE

1. Procedural History of the Case

This appeal arises from a case involving two separate lawsuits. In both suits, Plaintiffs are seeking the recovery of damages arising from and relating to a project in Mount Pleasant, South Carolina known as East Bridge (“East Bridge”). East Bridge, an apartment conversion, is comprised of 200 condominiums. The homeowners’ association for East Bridge is known as East Bridge Town Lofts Property Owners Association, Inc. (the “POA”).

On October 19, 2010, a condominium owner, Hayden Jeffords, filed the first of the two lawsuits. Ms. Jeffords filed on her behalf and in a representative capacity for all of the other individual unit owners at East Bridge. In that suit, Ms. Jeffords seeks the recovery of damages associated with the repair of the common elements of East Bridge (the “Jeffords Suit”).

In response to the Jeffords’ Complaint, the Appellants, including the developer of East Bridge, East Bridge Lofts, LLC (“EBL”) and a number of entities and individuals alleged to be related to EBL, generally known as the Creekstone Defendants, answered on February 2, 2011. In the answer, EBL asserted an arbitration right, arising from the

original Purchase and Sales Contracts between it and a number of individual owners purported to be represented by Ms. Jeffords.

On July 25, 2011, the complaint in the Jeffords' Suit was amended and a number of other unit owners at East Bridge joined Ms. Jeffords as representative plaintiffs. One of those owners was Trivette Hatcher. Ms. Hatcher was an original purchaser of an East Bridge unit and her Purchase Agreement is dated February 28, 2005 (the "Purchase Agreement"). The Creekstone Defendants again answer on September 12, 2011 and assert an arbitration right.

After Ms. Hatcher became a named plaintiff, on August 25, 2011, a Non-Waiver Agreement was signed between the Jeffords/Hatcher attorneys in an effort to protect the right of the Creekstone Defendants to preserve their arbitration rights.

Subsequent to the filing of the Jeffords Suit, the POA filed its own suit on December 13, 2010 in which it also seeks the recovery of the cost to repair the common elements at East Bridge (the "POA Suit"). The POA is represented by Justin O'Toole Lucey and Edward D. Buckley, Jr., different lawyers than those who represented Ms. Jeffords and Ms. Hatcher.

Though there has been no substitution of counsel order, on January 9, 2012, Justin Lucey, counsel for the POA, filed a Notice of Appearance on behalf of Ms. Hatcher. At the same time, Ms. Hatcher filed a number of motions, including a motion to stay the Jeffords Suit in favor of arbitration.

Subsequently, on May 14, 2012, Ms. Hatcher re-filed her motions, but did not include her demand for arbitration of the Jeffords Suit. As a result, on June 4, 2012, the Creekstone Defendants filed their motion to compel arbitration of Ms. Hatcher's claim.

That matter was heard on September 12, 2012 and Judge Young issued an order dated October 10, 2012 denying the motion to arbitrate on two grounds. First, he concluded that the arbitration obligations of Ms. Hatcher had “expired.” Alternatively, he held that in light of other rulings he made, the motion to compel arbitration of Ms. Hatcher’s claim was moot. A timely Rule 59 motion was filed on October 19, 2012 and an order denying that motion was filed on October 30, 2012. The Creekstone Defendants filed a Notice of Appeal on November 9, 2012.

2. Relevant Facts

The East Bridge units were marketed and sold by EBL in approximately 2005 and 2006. The Purchase Agreement contains the following pertinent provisions:

“10. Survival Agreement. The terms, conditions, warranties and representations made herein shall survive the Closing hereof for a period of one (1) year from the date of Closing.” (Page 9)

“11. **ALTERNATIVE DISPUTE PROVISIONS.** If a dispute, controversy, or claim whether based upon contract, tort, statute common law or otherwise) (collectively a “Dispute”) arises from or relates directly or indirectly to the subject matter hereof, and if the Dispute cannot be settled through direct discussions, the parties shall first endeavor to resolve the Dispute by participating in a mediation administered by the American Arbitration Association (the “AAA”) under its Commercial Mediation Rules before resorting to arbitration. Thereafter, any unresolved Dispute shall be settled by binding arbitration administered by the AAA in accordance with its commercial Arbitration Rules ...” (Page 10)

In her claim, as part of the Jeffords Suit, Ms. Hatcher has asserted the following causes of action in an Amended Complaint dated January 5, 2012, against the Creekstone Defendants:

Negligence
Breach of Implied Warranty of Workmanlike Service
Breach of Implied Warranty of Habitability and Fitness
Negligent Misrepresentation
Unfair Trade Practices via the *SC HPR § 27-31-430*

Negligent Construction and Supervision
Breach of the Covenant of Good Faith and Fair Dealing
Alter Ego/Piercing the Corporate Veil
Breach of Fiduciary Duty
Illegal LLC Distributions
Individual Liability

Similarly, the POA also asserts the following causes of action, in its complaint, against the Creekstone Defendants:

Negligence/Gross Negligence
Breach of Warranty
Unfair Trade Practices Act
Breach of Fiduciary Duty
Illegal LLC Distributions
Civil Conspiracy

All of the causes of action arise from and relate to the conversion, development, and sale of the East Bridge units by EBL or other Creekstone Defendants. As previously noted, both the Jeffords Suit and the POA Suit seek to recover the cost associated with the repair of allegedly defective conditions at the East Bridge units.

STANDARD OF REVIEW

Appeal from the denial of a motion to compel arbitration is subject to *de novo* review. *New Hope Missionary Baptist Church v. Paragon*, 379 SC 620, 667 S.E.2d 1 (S.C. App. 2008); *Deloitte & Touche, LLP v. Unisys Corp.*, 358 SC 179, 594 S.E.2d 523 (Ct. App. 2004). However, a circuit court's factual finds will not be reversed on appeal if any evidence reasonably supports the findings. *Id*

ARGUMENT

I. THE DEMAND TO COMPEL MS. HATCHER TO ARBITRATE SHOULD HAVE BEEN GRANTED AS HER OBLIGATION TO ARBITRATE WAS NEITHER EXPIRED NOR MOOT.

The Purchase Agreement provides for arbitration of disputes between Ms. Hatcher and East Bridge Lofts pursuant to the South Carolina Uniform Arbitration Act § 15-48-10, *et seq.*, *S.C. Code Ann.* That Act provides, in pertinent part, as follows:

(a) A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration in a controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Section 15-48-20, *S.C. Code Ann.*, provides, in pertinent part, as follows:

(a) On application of a party showing an agreement described in §15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

As previously noted, a timely and appropriate motion to compel arbitration was filed by the Creekstone Defendants. Judge Young denied that motion. The extent of his ruling, in this regard, is as follows:

The Court finds the Developer Defendants' right to compel arbitration expired one year after closing according to the terms of Plaintiff Hatcher's original Purchase Agreement. Moreover, the Developer Defendants' motion to compel arbitration is moot in light of the other rules encompassed herein.

The Court's ruling in this regard was in error, as a matter of law, and should be reversed as Ms. Hatcher's obligation to arbitrate did not expire one year after closing and the Creekstone Defendants' motion was not rendered moot by any other ruling of the Court and is not moot.

a. Hatcher's Obligation to Arbitrate Has Not Expired.

There is nothing in Ms. Hatcher's arbitration obligation to suggest that it had "expired." Therefore, it was a valid and enforceable obligation and Judge Young's ruling to the contrary was reversible error.

South Carolina policy favors arbitration of disputes. *Carolina Care Plan, Inc. v. United Healthcare Services*, 361 SC 555, 44, 606 S.E.2d 752 (2004). Critically, with respect to this case, as first recognized by the South Carolina Supreme Court in *South Carolina Public Service Authority v. Great Western Coal*, 312 SC 559, 437 S.E.2d 22 (1993), an arbitration obligation is separable from the contract in which it is included. Because an arbitration claim is separable from the contract as a whole, the issue of an arbitration clause's validity is distinct from the substantive validity of the contract as a whole. *New Hope Missionary Baptist Church v. Paragon Builders*, 379 SC 620, 667 S.E.2d 1; and, *Housing Authority of Columbia v. Cornerstone Housing*, 356 SC 328, 588 S.E.2d 617 (Ct. App. 2003).

There are numerous examples in South Carolina of an arbitration obligation being found to be valid and enforceable where the underlying contract was not. For example, an arbitration clause has been found to be valid and enforceable in cases where it is alleged that underlying contract has been "terminated." See, *Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 440 S.E.2d 877 (1994). An arbitration clause has been found to be valid where the underlying contract has been rescinded See, *Carolina Care Plan v. United Healthcare*, 361 S.C. 544, 606 S.E.2d 752 (2005); and *South Carolina Public Service Authority v. Great Western Coal*, 312 S.C. 559, 437 S.E.2d. 22 (1993), ("We hold a party cannot avoid arbitration through a rescission of the entire contract when

there is no independent challenge to the arbitration clause.” *Id.*, at 24). South Carolina courts, relying on the United States Supreme Court decision of *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 338 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d. 1270 (1967), have even held that arbitration provision is enforceable, and can be compelled, when it is alleged that the contract containing an arbitration obligation is void and non-existent on the basis of fraud in the inducement. See, *South Carolina Public Service Authority v. Great Western Coal*, 312 SC 559, 437 S.E.2d 22 (1993); and, *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (S.C. App. 2008).

As succinctly stated by the Court of Appeals in *Housing Authority of Columbia v. Cornerstone*, 356 S.C. 328, 588 S.E.2d. 671 (S.C. App. 2003):

[E]ven if the overall content is unenforceable, the arbitration provision is not unenforceable unless the reason the overall content is unenforceable specifically relates to the arbitration provision. (Emphasis added.)

588 S.E.2d 617, at 623.

In line with those cases, absent some allegation that the arbitration clause in Ms. Hatcher’s contract itself was either defective or was limited in time, it is still valid and enforceable even if the remaining contractual obligations of the parties have expired.

While Hatcher and her attorneys may argue that the survival clause evidences an intent to impose a time limitation on her obligation to arbitrate of one year from closing (which occurred in April, 2005), that limitation is not specific to the arbitration clause itself, which contains no such limitation. Further, the most compelling fact preponderating against finding such an intention is the fact that Ms. Hatcher herself, on January 9, 2012, many years after her closing, moved to compel arbitration of the Jeffords Suit based upon the very same arbitration provision.

Absent an allegation, and proof, that the arbitration obligation between Hatcher and EBL is, for some reason, invalid or was specifically limited by time, the finding by the lower court that the arbitration obligation had expired is contrary to South Carolina law and is reversible error.

b. The Arbitration Obligation is Not Moot.

Curiously, Judge Young ruled, without explanation, that other rulings made by him in the same order rendered the motion to compel arbitration of the Hatcher claim moot. This is incorrect as a matter of law.

Moot is defined as follows:

A question is "moot" when it presents no actual controversy or where the issues have ceased to exist.

Black's Law Dictionary, 909 (5th Ed. 1979).

The only way the Creekstone Defendants' motion to compel arbitration of the Hatcher claim would be moot is if Ms. Hatcher's claim has been dismissed, which did not occur. Unless Ms. Hatcher's claim is dismissed, there is nothing about any aspect of Judge Young's order which renders the Creekstone Defendant's motion to compel arbitration of her claim moot.

II. THE COURT MADE NUMEROUS FACTUAL FINDINGS WHICH WERE IRRELEVANT TO THE ISSUES BEFORE IT, WERE ERRONEOUS, WERE NOT SUPPORTED BY ADMISSIBLE EVIDENCE AND WERE MADE WITHOUT DEFENDANTS HAVING AN OPPORTUNITY TO PRESENT EVIDENCE IN OPPOSITION.

Finally, Judge Young's order contains several factual recitations which could be construed as findings of fact that are highly prejudicial to the Creekstone Defendants and which are irrelevant to his order, are highly contested, and which are not supported by the evidence.

Specifically, Judge Young found that:

- (1) "The ABS report was completed in September of 2009, but was not released to the POA."
- (2) "The Master Deed amendment was approved by the POA members in the summer of 2010."
- (3) "The POA's counsel attended the meeting on behalf of the POA and pushed the Developer Defendants to release the one year old ABS report and submit an East Bridge repair protocol and funding source for the repairs."

None of these facts are relevant to any of the issues decided by Judge Young in his order. Since these facts were not relevant, there was no argument relative to these facts. No testimony was taken and opposing counsel was not given an opportunity to cross examine any witnesses, or engage in any due process that would have been fair to the Defendants.

CONCLUSION

Judge Young's denial of the Creekstone Defendants' Motion to Compel Arbitration of the Hatcher case was in error and is reversible as Hatcher's arbitration obligation was neither expired nor moot.

Respectfully submitted,



Robert T. Lyles
Lyles & Lyles, LLC
342 East Bay Street
Charleston, South Carolina 29401
(843) 577-7730
rtl@lylesfirm.com
Attorneys for Appellant

January 31, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

HAYDEN JEFFORDS, individually, and on behalf of ALL OTHERS SIMILARLY SITUATED, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Leslie Anne O'Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown,

Plaintiffs,

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC; Central 3, LLC; Creekstone East Bridge, LLC; Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Creekstone Management, Inc.; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical; Wasson Electric Heating & Air; Bay Club Homes, LLC; Terracon Consultants, Inc.; and Salvador Rubalcaba d/b/a Rubalcala Construction,

Defendants.

v.

East Bridge Lofts, LLC; Central 3, LLC;

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-10-9672

ORDER GRANTING MOTION TO STRIKE AND DISMISS COMPLAINT; DENYING MOTION TO COMPEL ARBITRATION; DENYING CLASS CERTIFICATION; DISMISSING MOTIONS TO STAY; AND DISMISSING MOTION TO CONSOLIDATE

BY
JULIE J. ARMSTRONG
CLERK OF COURT
2012 OCT 10 AM 9:41

FILED

R

Exhibit C

Blumberg No. 6119
EXHIBIT
A

Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; and Bay Club Homes, LLC,

Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric Heating & Air; and Charleston Chimney Services, Inc.,

Third-Party Defendants.

ORDER

THIS MATTER IS BEFORE THE COURT ON Plaintiffs Zohlens, O'Neal and Hatcher's (hereinafter "Zohlen Plaintiffs") Motion to Strike and Dismiss the Complaint; the Defendants East Bridge Lofts, LLC, et al.'s (hereinafter "Developer Defendants") Motion to Compel Arbitration as to Plaintiff Hatcher; and the Jeffords' Motion for Class Certification. Also pending are various Motions to Stay by various Subcontractor Defendants as well as a Motion to Consolidate by Defendant, Terracon Consultants, Inc. ("Terracon").

For the reasons set forth below, the Zohlen Plaintiffs' Motion to Strike and Dismiss the Complaint is GRANTED; the Developer Defendants' Motion to Compel is DENIED; the Jeffords' Motion for Class Certification is DISMISSED as moot; and the various Subcontractor Defendants' Motions to Stay as well as Terracon's Motion to Consolidate are DISMISSED as moot.

A handwritten signature or set of initials, possibly 'R', written in black ink.

Factual Background

The East Ridge Apartments, consisting of fourteen buildings and 200 individual units, were purchased in late 2004, and thereafter, converted into condominiums by the Developer Defendants. The project was renamed the East Bridge Town Lofts (hereinafter "East Bridge"). A master deed was filed creating the new East Bridge regime on February 7, 2005. By mid-2006, most of the two hundred East Bridge units had been sold.

The East Bridge POA became owner controlled by 2009. Concerned by signs of defective conditions at East Bridge, the POA engaged legal counsel in mid-2009 to represent the POA in its efforts to amend the Master Deed and facilitate the POA's holding appropriate parties responsible for any necessary repairs.¹

In June of 2009, Developers hired local professional engineer, Al Schweickhardt, of Applied Building Sciences ("ABS") to investigate East Bridge for defective conditions. The ABS Report was completed in September of 2009, but was not released to the POA.

The Master Deed amendment was approved by the POA members in the Summer of 2010. In an effort to head off litigation, the Developer Defendants and their counsel held a meeting on August 28, 2010, which was open to all East Bridge owners. The POA's counsel attended the meeting on behalf of the POA and pushed the Developer Defendants to release the one-year-old ABS report and submit an East Bridge repair protocol and funding source for the repairs. The Developer Defendants produced the ABS report, and shortly thereafter, entered into a tolling agreement with the POA for purposes of further investigation and negotiations.

Approximately one month after the release of the ABS report, the POA held an open meeting for East Bridge owners wherein the POA's counsel addressed the known defective

¹ Developer Defendants inserted a provision in the Master Deed designed to restrict the POA's ability to initiate actions on behalf of its members. Article 10.12 entitled, "Restriction on the Expense of Litigation," requires, e.g., 75% pre litigation membership approval and advance assessment of all anticipated litigation expenses.



conditions at East Bridge, the on-going investigation, and the POA's litigation objectives. Several times during the Fall of 2010, unit owner Hayden Jeffords familiarized herself with the POA's efforts to hold the Developer Defendants accountable. Thereafter, Jeffords initiated the present action for claims involving the defective construction of East Bridge. As a result, the POA terminated the tolling agreement and initiated its own action asserting claims involving the construction and development of East Bridge, which is currently pending (Case No. 2010-CP-10-10204). As part thereof, the POA contacted all East Bridge unit owners and asked they each assign their interest in any claims to the POA so the POA could make sure all rights were consolidated in a single suit. To date, more than half of the East Bridge unit owners have returned executed assignments to the POA.

Zohlen Plaintiffs' Motion to Dismiss

A.) Jeffords' Proposed Derivative Action Fails to Satisfy Rule 23(b), SCRCF

Initially, the Zohlen Plaintiffs seek dismissal on the grounds that the Complaint (hereinafter "Complaint" or "Jeffords' Complaint"), including all claims encompassed therein, fails to satisfy the procedural and substantive prerequisites for maintaining a derivative action as outlined by Rule 23(b), SCRCF.

Rule 23(b), SCRCF, governs derivative actions and stipulates the pleading requirements necessary to maintain derivative claims. Specifically, Rule 23(b), SCRCF, requires: (a) the verification of a derivative complaint; (b) particular allegations of the plaintiff's efforts to "obtain action he desires from the directors or comparable authority;" and (c) "the reason for the plaintiff's failure to obtain the action or for not making the effort."

Here, the record reflects the Complaint is admittedly unverified, and also fails to demonstrate that Jeffords has exhausted means within her reach to obtain, within the East Bridge



regime itself, the redress of her grievances. Accordingly, all derivative claims contained in the Complaint, must be dismissed. *See Clearwater Trust v. Bunting*, 367 S.C. 340, 351, 626 S.E.2d 334, 339 (2006) (“A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRCF, is properly dismissed pursuant to Rule 12(b)(6)”; *see also Carolina First Corp. v. White*, 343 S.C. 176, 185, 539 S.E.2d 402, 407 (Ct. App. 2000) (affirming dismissal under Rule 12(b)(6) for failing to satisfy pleading requirement of Rule 23(b)(1). To the extent any of the claims encompassed in the Complaint are not derivative, the East Bridge Master Deed and Bylaws intend for such claims to be pursued by the POA, on behalf of its members, as discussed below.

B.) The POA is the Proper Party to Pursue Claims Relating to the Construction and Development of East Bridge

The Zohlen Plaintiffs also seek dismissal on the grounds that the Jeffords' Plaintiffs cannot bring their present claims relating to the defective conversion of East Bridge because the Jeffords' Plaintiffs lack standing, as such claims have been vested in the POA by the governing documents for the East Bridge horizontal property regime.

Having reviewed the submissions of all parties and heard oral argument, the Court agrees the POA is the proper party to pursue claims involving the construction of East Bridge because: (a) the POA is designated to bring these claims under the regime's governing documents; and (b) the POA has the duty to repair and maintain the East Bridge properties. The language of the governing East Bridge Master Deed and Bylaws, as well as the language of the Horizontal Property Regime Act, indicate the POA has been assigned the right and responsibility to pursue claims relating to properties the POA has a duty to maintain and repair, including common elements and properties “incidentally” affected by such properties under the POA's management.



Specifically, the regulatory scheme of the Horizontal Property Regime Act (the "Act") provides for a preferred operation of the rights and obligations of the POA over the rights of individual East Bridge unit owners. Specifically, the Act condones the incorporation of the council of co-owners "for the purpose of the administration of the property . . ." S.C. Code § 27-31-90. "Property" is defined to include "(1) the land whether leasehold or in fee simple . . . (2) the building, all improvements, and structures on the land . . . (3) all easements, rights, and appurtenances belonging thereto." S.C. Code § 27-31-20 (k). The Act further requires the Master Deed and Bylaws provide for the proper form of property administration as well as the care, upkeep, and surveillance of regime property. See S.C. Code § 27-31-150. In addition, the Act stipulates each condominium owner must strictly comply with the bylaws and provisions of the Master Deed: "Each co-owner shall comply strictly with the bylaws . . . and with the covenants, conditions, and restrictions set forth in the master deed . . ." S.C. Code § 27-31-170.

Article 17.2(a) of the East Bridge Master Deed provides the POA shall maintain and keep in good repair the "Area of Responsibility," which includes, but is not limited to, all common elements, both general and limited. The POA is not only responsible for the repair of common and limited common areas, but also the incidental repair of the separately owned condominium units within themselves. According to Section 17.2(d) and (g) of the Master Deed, for example:

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association . . .

The POA's obligation to maintain East Bridge is further supported by a plain reading of Section 3.18(c) of the Bylaws:

The duties of the Board shall include, without limitation: providing for the operation, care, upkeep and maintenance of those portions of the Condominium as provided in the Master Deed.

Section 3.18(h) of the Bylaws further provides:

The duties of the Board shall include, without limitation: making or contracting for the making of repairs, additions, replacements and improvements to or alterations of the Common Elements. . .

Thus, the East Bridge Master Deed and Bylaws, to which every unit owner is bound by virtue of condominium ownership, specifies the POA is responsible for the maintenance and repair of the common and limited common elements, and for incidental damages arising from said repairs.

In addition to conferring the POA's duty to maintain and repair East Bridge, the Bylaws also confer upon the POA the authority to pursue claims, on behalf of its members, which concern, in any way, defects or damages to East Bridge:

3.18 Duties. The duties of the Board shall include, without limitation . . .

- (i). enforcing by legal means the provisions of the Master Deed, the Bylaws, and the rules of the Association *and bringing any proceedings which may be instituted on behalf of or against the Owners* concerning the Association . . .

Section 3.18(i) of Bylaws.

Moreover, the Master Deed and Bylaws provide the authority of the POA to take such action on behalf of its members is plenary:

The Association may exercise any right or privilege given to it expressly by this Master Deed, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 23.2 of Master Deed; *see also* Section 3.17 of Bylaws.

A handwritten signature or set of initials, possibly 'RZ', written in black ink in the bottom right corner of the page.

Because the POA is obligated to maintain and repair East Bridge, and has the plenary authority to bring suit in connection with the same, the POA is the proper party to pursue claims involving the construction and development of East Bridge. In other words, the POA, by virtue of its repair and maintenance of East Bridge, has an interest in pursuing claims which are related to the construction and development of the same. The POA's interest is superior to the interest of individual unit owners who are neither responsible for the maintenance of East Bridge, nor legally capable of performing the work under the regime's governing documents.

This conclusion is buttressed by the language of the Act which suggests a more organized approach to litigation, one spearheaded by diligent regimes, under the regime's governing documents, on behalf of regime members. Indeed, inherent in the Act, is a regulatory framework which provides for a preferred operation of a POA's rights and obligations in carrying out property administration pursuant to the regime's Master Deed and Bylaws – the same Master Deed and Bylaws each condominium unit owner must strictly comply.² See S.C. Code § 27-31-170. This finding is also consistent with the growing number of jurisdictions which have held a condominium association has exclusive standing to pursue claims relating to the condominium properties the association is duty-bound to maintain and repair.³

² Because the regulatory framework of the Act relies, in part, on a regime's governing documents, there may be occasions when it becomes proper for condominium unit owners, whose regime documents vary, to initiate action on behalf of a condominium association. Homeowner action may also be proper, perhaps in the form of a derivative action, when a regime is developer controlled and/or is unable to act properly on the regime's behalf. However, this Court needs not address this issue in the present case given the record reflects the regime properly acted on behalf of the regime and its members.

³ See *Murphy v. Yacht Cove Homeowners Ass'n*, 289 S.C. 367, 369, 345 S.E.2d 709, 710 (1986) (“We have noted that ‘[s]hould the Regime not uphold its duty to pursue a recovery for any alleged construction defects in the common elements which it maintains, it may be liable to the homeowners for its omissions.’”) (internal citations omitted); *Queen's Grant Villas Horizontal Property Regimes v. Daniel Int'l Corp.*, 286 S.C. 555, 335 S.E.2d 365, 366 (1985) (noting same); see also *Cigal v. Leader Dev. Corp.*, 557 N.E.2d 1119, 1122 (Mass. 1990) (holding individual unit owners lacked standing to bring a claim for negligent construction because the unit owners were to act by and through the association); *Siller v. Hartz Mountain Assoc.*, 461 A.2d 568, 573 (N.J. 1983) (“So long as [a regime] carries out its functions and duties, the unit owners may not pursue individual claims for damages to or defects in the common elements predicated upon their tenant in common interest.”); *Caprer v. Nussbaum*, 36 A.D.3d 176, 186 (N.Y. 2006) (noting individual unit owners “have no standing to sue individually for injury to common

Based upon the foregoing, the POA is the proper party to bring the condominium conversion defect case against the Developer Defendants, a duty which the POA has already fulfilled in the POA's diligent pursuit of its pending action against the same Developer Defendants. The record further reflects the Jeffords' Plaintiffs allege no particularized, individual injury which exists separate and apart from the injuries suffered by the POA. Notably, the Jeffords' Motion for Class Certification and Supporting Memorandum expressly indicate the Jeffords' action concerns only East Bridge common elements, the same common elements the POA is duty-bound to maintain. Given the East Bridge Master Deed and Bylaws entrust the POA with litigating claims involving the East Bridge properties, and the POA is diligently pursuing such claims, the Jeffords' Plaintiffs are not the real party in interest. Consequently, the Jeffords' action warrants dismissal in its entirety. Furthermore, the Jeffords' Plaintiffs will not be prejudiced by said dismissal, as the POA's case against the same Developer Defendants currently pending in state court provides a better forum for recovery.

C.) Jeffords' Plaintiffs' Arguments in Opposition to Striking and Dismissing the Jeffords' Complaint are Unpersuasive

In responding to the Zohlen Plaintiffs' Motion to Strike and Dismiss the Jeffords' Complaint, the Jeffords' Plaintiffs posit two primary arguments, both of which are unpersuasive. First, the Jeffords' Plaintiffs contend in their Brief the POA is not the proper party to bring suit concerning the East Bridge properties because: (a) homeowners are entitled to bring suit when the POA fails to act and/or is developer controlled; and (b) homeowners are entitled to bring suit upon common elements for which they have an ownership interest under *Roland v. Heritage*

elements or finances."); *Frantz v. CBI Fairmac Corp.*, 331 S.E.2d 390, 395 (Va. 1985) (noting same); *Greenstein v. Council of Unit Owners of Avalon Court Six Condominium, Inc.*, 29 A.3d 604, 614 (Md. App. 2011) (noting the duty to "maintain, repair and replace" condominium property, together with the exclusive right to initiate litigation regarding condominium property, creates a concomitant obligation on the part of the POA to pursue recovery from the Developers on behalf of unit owners); *Poulet v. H.F.O., LLC*, 817 N.E.2d 1054, 1068 (Ill. App. 2004) (holding individual unit owners lacked standing to bring claims which are of the "collective character" only an association has the authority to assert).

Litchfield, 372 S.C. 161, 641 S.E.2d 465 (2007). As noted above, the record reflects the POA neither failed to act nor is it developer controlled. Moreover, it is ownership of the right sought to be enforced which qualifies one as the proper party in interest, rather than absolute ownership of specific property. Thus, the Jeffords' Plaintiffs' reliance on *Roland v. Heritage Litchfield*, 372 S.C. 161, 641 S.E.2d 465 (2007) is misplaced, as "ownership" of specific property is not determinative when the right of enforcement is vested in another. Furthermore, In *Roland*, there was no evidence the right of enforcement had been vested in the regime or that the regime had diligently acted on its members' behalf.

Second, the Jeffords' Plaintiffs contended in oral argument the POA commenced its pending state court action in derogation of the East Bridge Master Deed, and specifically, Article 10.12 of the Master Deed. However, the Zohlen Plaintiffs filed the ratified Amendment with this Court and the Jeffords' Plaintiffs failed to demonstrate the purported invalidity of the Amendment. Furthermore, any right to challenge the validity of the Amendment removing Article 10.12 from the Master Deed expired one year after the date of the Amendment. See 23.3(b) of Master Deed. Thus, this ground is unpersuasive.

Developer Defendants' Motion to Compel

Concurrently, Developer Defendants seek to compel arbitration as to Plaintiff Hatcher pursuant to the terms of Plaintiff Hatcher's original purchase agreement (the "Contract") with Developer Defendants. Specifically, Developer Defendants aver their right to arbitrate was neither waived nor precluded by the merger doctrine at closing, and thus, Developer Defendants can compel arbitration as to Plaintiff Hatcher.

Having reviewed the submissions of all parties and heard oral argument, the Court agrees the Developer Defendants' right to arbitrate was not extinguished by the merger doctrine at



closing. However, the Court finds the Developer Defendants' right to compel arbitration expired one year after closing according to the terms of Plaintiff Hatcher's original purchase agreement. Moreover, the Developer Defendants' Motion to Compel Arbitration is moot in light of the other rulings encompassed herein. Lastly, even if the Court were to compel arbitration, it would not affect the other rulings herein, as only one of the three Zohlen Plaintiffs was ever subject to an arbitration agreement.⁴

Jeffords' Plaintiffs' Motion for Class Certification

The Jeffords' Plaintiffs seek to obtain class certification for the Jeffords' action pursuant to Rule 23, SCRP. Having determined the POA is the proper party to bring claims regarding the construction and development of East Bridge, the Jeffords' Plaintiffs' Motion for Class Certification is now moot, and warrants dismissal along with the striking and dismissal of Jeffords' Complaint.

Even assuming the Jeffords' Plaintiffs' Motion for Class Certification was not moot; the proposed Jeffords' Class Action fails to satisfy the class prerequisites outlined by Rule 23, SCRPC. *See Gardner v. South Carolina Dep't of Revenue*, 353 S.C. 1, 20, 577 S.E.2d 190, 200 (2003) (noting Plaintiffs bear the burden of proving each of the Rule 23, SCRPC, prerequisites). Specifically, Jeffords' fails to satisfy the adequacy, commonality, and typicality requirements necessary for obtaining class certification due to the intra-class conflicts existing between the one hundred and fourteen unit owners supporting the POA and eighteen homeowners asserting individual claims. Similarly stated, one hundred and fourteen owners would have recovery occur in the hands of the POA for a collective benefit whereas eighteen owners seek personal recovery without the right or obligation to make repairs.

⁴ The other two Zohlen Plaintiffs were secondary purchasers who did not sign purchase contracts with the Developer Defendants, the source of the arbitration clause.

Subcontractor Defendants' Motions to Stay

Also currently pending before the Court are several Motions to Stay filed by various subcontractor Defendants in the Jeffords' action. Specifically, Defendants, Wasson; East Coast Carpentry; Fuller Drywall & Paint, Ltd.; and Charleston Chimney Services, Inc. (hereinafter "Subcontractor Defendants"), all seek to stay the Jeffords' action until the Court determines the proper party to pursue said claims. According to the Subcontractor Defendants, a plain reading of both the Jeffords' Complaint and the POA's Complaint currently pending in state court allows recovery for the same damages, and therefore, prejudices said Subcontractor Defendants.

Having determined the POA is the proper party to bring claims regarding the construction and development of East Bridge, and therefore, striking and dismissing the Jeffords' Complaint in its entirety, the Subcontractor Defendants' Motions to Stay are moot, and similarly warrant dismissal.

Defendant Terracon's Motion to Consolidate

Finally pending before the Court is Terracon's Motion to Consolidate the Jeffords' action with the POA action currently pending in state court. In light of the foregoing, Terracon's Motion to Consolidate is also moot, and therefore, is dismissed.

Conclusion

Based upon the foregoing, the Jeffords' Complaint warrants dismissal in its entirety as well as the striking of all claims encompassed within the Jeffords' Complaint. The Jeffords' Complaint fails to satisfy the prerequisites necessary for maintaining a derivative action as outlined by Rule 23(b), SCRPC, and the POA is the proper party to pursue claims relating to the East Bridge properties it maintains. Additionally, any amendment of Jeffords' Complaint is futile given: (a) no notice was provided to the POA; (b) the POA is actively pursuing claims against

A handwritten signature in black ink, appearing to be a stylized 'R' followed by a flourish.

the Developer Defendants; and (c) the Jeffords' Plaintiffs cannot satisfy Rule 23, SCRPC class action requirements.

Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECREED Zohlen Plaintiff's Motion to Dismiss is **GRANTED**, as follows:

IT IS ORDERED, ADJUDGED, AND DECREED the POA is the proper party to pursue the construction claims involving East Bridge; and

IT IS ORDERED, ADJUDGED, AND DECREED the present action shall be dismissed, in its entirety, with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Developer Defendants' Motion to Compel Arbitration as to Plaintiff Hatcher is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Jeffords' Motion for Class Certification is **DISMISSED as moot**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Subcontractor Defendants' Motions to Stay are moot, and therefore, **DISMISSED as moot**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Terracon's Motion to Consolidate is moot, and therefore, **DISMISSED as moot**.

IT IS SO ORDERED.



The Honorable Roger Young

10/5
This _____ day of September, 2012
Charleston, South Carolina

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young Sr., Circuit Court Judge

Case No. 2010-CP-10-9672

Hayden Jeffords, individually, and on behalf of all others similarly situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Leslie Anne O'Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown,

Plaintiffs,

Of whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the

Respondents,

v.

East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC a/k/a East Bridge Lofts, LLC; Central 3, LLC; Creekstone East Bridge, LLC; Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Creekstone Management, Inc.; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical; Wasson Electric Heating & Air; BayClub Homes, LLC; Terracon Consultants, Inc.; Salvador Rubalcaba d/b/a Rubalcaba Construction,

Defendants,

Of whom East Bridge Town Lofts, LLC, a/k/a East Bridge, LLC, a/k/a East Ridge Homes, LLC, a/k/a East Bridge Lofts, LLC, Central 3, LLC, Creekstone East Bridge, LLC, Creekstone SC I, LLC, Alexandra Road Investors, LLC, Creekstone Management, LLC, Creekstone Management, Inc., Donald K. Henry, Everett Jackson, Steve Keller, Edward Michael Washburn, and Kevin Ball are the

Appellants,

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; Donald K. Henry; Everett Jackson; Steve Keller; Edward Michael Washburn; Kevin Ball; and Bay Club Homes, LLC,

Third-Party Plaintiffs,

v.

Robert Wasson and Barbara Wasson, individually and d/b/a Wasson Electric Heating & Air; and Charleston Chimney Services, Inc.,

Third-Party Defendants.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Edward D. Buckley Jr.
Russell G. Hines
P.O. Box 993
Charleston, South Carolina 29402
(843) 577-4000

-and-

JUSTIN O'TOOLE LUCEY, P.A.
Justin O'Toole Lucey
Joshua F. Evans
P.O. Box 806
Mount Pleasant, South Carolina
29465
(843) 849-8400

Attorneys for the Respondents

I, Aimee M. Justman, of Young Clement Rivers, LLP, do hereby certify that a copy of the **RESPONDENTS' MOTION TO DISMISS APPEAL** was sent to all counsel via United States Mail, postage pre-paid, on June 6, 2014, addressed as follows:

Justin Lucey, Esquire
Joshua F. Evans, Esquire
415 Mill Street
Mount Pleasant, SC 29465

Robert T. Lyles, Esquire
Jason A. Pittman, Esquire
Lyles & Lyles, LLC
342 East Bay Street
Charleston, SC 29401

Christy E. Mahon, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
P.O. Box 12129
Columbia, SC 29201

Kent T. Stair, Esquire
J. Patrick Norris, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401

James A. Atkins, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492

J. Blanton O'Neal, Esquire
William M. O'Neil, Esquire
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401


Preston B. Dawkins, Jr., Esquire
Aiken Bridges
181 East Evans Street, Suite 409
Florence, SC 29506

I. Keith McCarty, Esquire
McCarty Law Firm
P.O. Box 30055
Charleston, SC 29417

Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
P.O. Box 59
Charleston, SC 29402

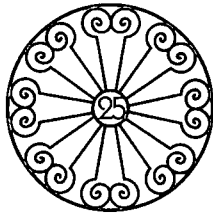
John C. Hayes, IV, Esquire
Mary-Margaret Fitzhenry, Esquire
Hayes Law Firm, LLC
180 Meeting Street Suite 330
Charleston, SC 29401

YOUNG CLEMENT RIVERS, LLP


Aimee M. Justman

Charleston, South Carolina

Dated: June 6, 2014



YCR LAW
Young Clement Rivers, LLP

Aimee M. Justman
Legal Assistant

Direct Dial: (843) 720-5460
Direct Fax: (843) 579-1385
E-mail: Ajustman@ycrlaw.com

June 6, 2014

RECEIVED

JUN 09 2014

SC COURT OF APPEALS

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Hayden Jeffords et al. vs. East Bridge Town Lofts et al.
Circuit Case No.: 2010-CP-10-9672
Appellate Case No.: 2012-213351
YCR File No.: 14096-20090424

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find the original and seven (7) copies of the **Respondents' Motion to Dismiss Appeal** along with the original and two (2) copies of the **Proof of Service** for the same and the required \$25 filing fee. Kindly return a stamped copy of the motion and proof of service to our office in the envelope provided. Of course, please let me know if you have any questions or concerns.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Aimee M. Justman
Legal Assistant

/amj

cc: (all below via U.S. Mail)
Justin O'Toole Lucey, Esquire, Justin O'Toole Lucey, P.A.
Joshua F. Evans, Esquire, Justin O'Toole Lucey, P.A.
Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC
Jason A. Pittman, Esquire, Lyles & Lyles, LLC
Christy E. Mahon, Esquire, Sweeny, Wingate & Barrow, P.A.
Kent T. Stair, Esquire, Carlock, Copeland & Stair, LLP

The Honorable Jenny Abbott Kitchings

June 6, 2014

Page 2 of 2

J. Patrick Norris, Esquire, Carlock, Copeland & Stair, LLP
James A. Atkins, Esquire, Clawson & Staubes, LLC
J. Blanton O'Neal, Esquire, Hood Law Firm, LLC
William M. O'Neil, Esquire, Hood Law Firm, LLC
Preston B. Dawkins, Jr., Esquire, Aiken Bridges
I. Keith McCarty, Esquire, McCarty Law Firm, LLC
Michael S. Seekings, Esquire, Leath Bouch & Seekings, LLP
John C. Hayes, IV, Esquire, Hayes Law Firm, LLC
Mary-Margaret S. Fitzhenry, Esquire, Hayes Law Firm, LLC

Hasler
06/06/2014
US POSTAGE

PRIORITY MAIL
ComBasPrice
\$006.16⁰



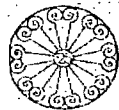
ZIP 29401
011D12603180

FIRST CLASS MAIL
FIRST CLASS MAIL

RECEIVED

JUN 09 2014

SC Court of Appeals



YCRLAW

25 Calhoun Street, Suite 400
P.O. Box 993
Charleston, SC 29402-0993

DDT
14096-
20090424

Jenny Abbott Kitchings, Clerk of
Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

