

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Michael Baxley
Horry County

Case No. 00-CP-26-05411

RECEIVED

DEC 29 2011

S.C. Supreme Court

Brenda R. Babb.....Appellant,

v.

Carey E. Graham, Southbridge Cable Television, LLC,
and Cable Plus of Carolina, Inc, Defendants

Of Whom Carey E. Graham is.....Respondent.

APPENDIX

Brenda R. Babb

Calabash, North Carolina 28467
843-249-3700
843-249-3700 Facsimile
Petitioner Appearing Pro se

J. Jackson Thomas, Esquire
Thompson & Henry, P.A.
P.O. Box 1290
Myrtle Beach, South Carolina 29578
Attorney for Respondent
(843) 692-2628

INDEX

Document No.

Unpublished Opinion No. 2011-UP-441 (October 11, 2011).....	1
Appellant's Petition for Rehearing (October 24, 2011).....	2
Respondents' Return to Petition for Rehearing (November 1, 2011).....	3
Order of the South Carolina Court of Appeals Denying Petition for Rehearing (November 28, 2011).....	4

DOCUMENT #1

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Brenda R. Babb, Appellant,

v.

Carey E. Graham, Southbridge
Cable Television, LLC, and
Cable Plus of Carolina, Inc., Defendants,

Of whom Carey E. Graham is
the Respondent.

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Unpublished Opinion No. 2011-UP-441
Submitted October 1, 2011 – Filed October 11, 2011

AFFIRMED

Brenda R. Babb, pro se, of Calabash, North Carolina.

J. Jackson Thomas, of Myrtle Beach, for Respondent.

PER CURIAM: Brenda R. Babb appeals the circuit court's order granting summary judgment on her breach of contract cause of action based on the statute of limitations. Babb contends the statute of limitations had not run because her cause of action related back to the date of her original complaint pursuant to Rule 15(c), SCRCP. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 15-3-530 (2005) (providing a party must commence "an action upon a contract" within three years); Rule 15(c), SCRCP (providing that an amendment of pleadings relates back to the date of the original pleading only "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings").

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

DOCUMENT #2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Michael Baxley
Horry County

Case No. 00-CP-26-05411

Brenda R. Babb.....Appellant,

v.

Carey E. Graham, Southbridge Cable Television, LLC,
and Cable Plus of Carolina, Inc,...Defendants

Of Whom Carey E. Graham is.....Respondent.

PETITION FOR REHEARING

Brenda R. Babb
Post Office Box 4800
Calabash, North Carolina 28467
(843)249-3700
(843)249-3700 *Facsimile*
Appellant Appearing Pro se

This Court issued Unpublished Opinion No. 2011-UP-441 filed October 11, 2011, affirming the Order of the Honorable J. Michael Baxley which held that Appellant Brenda R. Babb's ("Babb") cause of action for Breach of Contract was barred by the statute of limitations. Babb respectfully petitions this Court for rehearing of this Opinion pursuant to Rule 221 and Rule 224, SCRAP.

NATURE OF THE CASE

The issue on appeal in this case arises from the failure of Respondent Carey E. Graham ("Graham") Graham to close on an offer to purchase Appellant Brenda R. Babb's stock in Cable Plus of Carolina, Inc. ("Cable Plus"), for \$250,000.00. On July 15, 1998 Graham offered to purchase Babb's interest in Cable Plus for \$250,000.00. Cable Plus provided the cable television signal to Southbay Lakes condominiums. Babb accepted Graham's offer in writing but Graham refused to close alleging that he was purchasing all of Babb's interest in Cable Plus and Southbridge Cable Television, LLC ("Southbridge"), not just Cable Plus.

The original Complaint in this action was filed on November 29, 2000 alleging two causes of action, Breach of Fiduciary Duty and Misappropriation of Corporate Opportunity/Accounting. On June 6, 2003 Babb filed a Motion to Amend with attached Amended Complaint substituting Southbridge as the corporation in the first two causes of action and adding a cause of action for Breach of Contract (R.p. 20). The Motion to Amend was granted by the Honorable John M. Milling by order filed June 17, 2004 (R.p. 2). By order filed June 19, 2009 the Honorable J. Michael Baxley

granted Graham's Motion for Summary Judgment dismissing Babb's cause of action for Breach of Contract based on the statute of limitations.

ARGUMENT

Babb would submit that the Court of Appeals erred in finding that the statute of limitations barred Babb's Breach of Contract cause of action in this case and that Rule 15(c), SCRCP, permitted her amendment adding the Breach of Contract cause of action.

STATUTE OF LIMITATIONS

The Court of Appeals applied S.C. Code Ann §15-3-530 wherein a party must commence "an action upon a contract" within three years and Rule 15(c), SCRCP, which provides for the amendment to pleadings whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to set forth in the original pleadings. Babb contends that Rule 15(c) permits her to amend her pleadings to include a cause of action for breach of contract because Graham's offer to purchase Babb's interest in Cable Plus was directly related to his scheme to benefit from and control all of the cable television business in the Surfside Beach area.

In 1997 Graham became a member of Crystal Cable while president of Cable Plus and managing member of Southbridge. The purpose of forming Crystal Cable was to provide cable television signal to the Southbridge Villa condominium project located directly across the street from the condominiums in which Cable

Plus and Southbridge were providing cable television signal. Graham went into competition with the companies in which he held management positions. Graham's offer to purchase Babb's interest in Cable Plus came about the time that Southbridge Villas came on line for television signal. If Graham's offer to purchase had been drafted, as Graham alleged it was meant, and accepted By Babb for her interests in both Cable Plus and Southbridge Cable, Graham would have held 50 percent of the cable television rights at Southbay Lakes condominiums, 100 percent of the cable television rights at Southbridge condominiums, 100 percent of the cable television rights at the Southbay East condominiums, and 25 percent of the cable television rights at Southbridge Villas through Crystal.

Graham's conduct in offering to purchase Babb's interest in the cable television business at the Southbay Lakes, and allegedly Southbridge and Southbay East condominiums, is directly related to his scheme to profit from the cable television business in Surfside Beach, South Carolina.

Babb has alleged a cause of action for Breach of Fiduciary Duty based on Graham's actions in becoming a 25 percent owner in Crystal Cable while acting as president of Cable Plus and managing member of Southbridge. If Graham had closed on the contract to purchase Babb's interest in Cable Plus there would not be a cause of action for Breach of Fiduciary duty as it applies to Cable Plus. Further, if the contract to purchase had been drawn specifically for both Cable Plus and Southbridge as Graham asserts it was meant to be, there would be no cause of action for breach of fiduciary duty for either Cable Plus or

Southbridge. Babb is the identical Plaintiff in both the Breach of Contract and Breach of Fiduciary Duty causes of action just as Graham is the identical Defendant.

Under Rule 15(c), SCRPC, "allowing amendment to pleading to relate back to date of original pleading is based on concept that once litigation involving particular conduct or given transaction or occurrence has been instituted, parties are not entitled to protection of statute of limitations against later assertion by amendment of defenses or claims that arise out of same conduct, transaction, or occurrence as set forth in original pleading," *Thomas v. Grayson*, 456 S.E.2d 377, 318 S.C. 82 (1995).

The Merriam-Webster dictionary defines conduct as "a mode or standard of personal behavior especially as based on moral principles." Graham's conduct in breaching his fiduciary duty to Babb, a shareholder in Cable Plus and member of Southbridge, his contract to purchase Babb's interests in Cable Plus and purportedly Southbridge, all attest to his conduct and scheme to own, profit and control these cable television rights.

Rule 15, SCRPC, permitted Babb to add her cause of action for Breach of Contract. It was error for the Court of Appeals to find that the amendment did not relate back to the date of her original pleading.

Conclusion

Based on the foregoing, Appellant Brenda R. Babb respectfully requests the Court of Appeals to consider this Petition and modify its Order in the particulars set out above.

Respectfully submitted,

Brenda R. Babb

Brenda R. Babb

Post Office Box 4800

Calabash, North Carolina 28467

(843) 249-3700

Appellant Appearing Pro se

October 24, 2011

DOCUMENT #3

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable J. Michael Baxley, Circuit Court Judge

Case No. 00-CP-26-5411

Brenda R. Babb Appellant,

v.

Carey E. Graham, Southbridge Cable Television, LLC, and
Cable Plus of Carolina, Inc., Defendants

Of whom Carey E. Graham is the Respondent.

RESPONDENT'S RETURN TO
APPELLANT'S PETITION FOR REHEARING

J. Jackson Thomas
THOMPSON & HENRY, P.A.
1314 Professional Dr.
Post Office Box 1290
Myrtle Beach, SC 29578
(843) 692-2628

Attorneys for Respondent

ARGUMENT

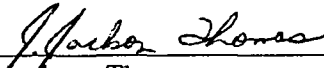
Appellant's Petition for Rehearing contends the Court of Appeals committed error when it found that her later asserted claim for breach of contract, asserted in a different capacity (i.e. individually as opposed to derivatively), did not "relate back" under Rule 15(c), SCRCP. This is the identical and only issue raised by the Appellant in her initial appeal, and was fully explored in the appellate briefs filed by Appellant and Respondent. The Petition for Rehearing contains no reference to the Record on Appeal to support its argument nor any citation of authority not already contained in the Appellant's briefs. Appellant has failed to state with particularity points supposedly overlooked or misapprehended by the Court as required by Rule 221, SCACR. In essence, Appellant seeks to have her case tried by the Court a second time, which is not the purpose of a petition for rehearing. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532; 564 S.E.2d 322.

Rule 15(c), SCRCP provides that an amendment of pleadings relates back to the date of original pleading only "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings". In the case at bar, not only is the breach of claim asserted on behalf of a different party-in-interest (i.e. by Mrs. Babb individually and not as a representative of Cable Plus of Carolina, Inc.), the claims arise from a matter entirely separate, distinct and discrete from the conduct, transaction or occurrence mentioned in the original pleading. Appellant's original Complaint (R. pp. 011-014) alleges in clear and unmistakable terms a shareholder derivative suit brought on behalf of Defendant Cable Plus of Carolina, Inc.

alleging breach of fiduciary duty by the Respondent in depriving Cable Plus of Carolina, Inc. of the corporate opportunity to provide cable television service to the South Bay East Subdivision. Appellant's Second Amended Complaint (R. p. 033) makes the entirely separate, distinct and discrete claim that Respondent breached an alleged contract to purchase Appellant's stock in Cable Plus for \$250,000.00.

Respondent respectfully submits the Court of Appeals correctly determined that the Appellant's amendment did not "relate back" because the breach of contract claim did not arise out of the "...conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings."

For the reasons set forth above, Respondent respectfully submits Appellant's Petition for Rehearing should be denied.



J. Jackson Thomas
THOMPSON & HENRY, P.A.
P.O. Box 1290
Myrtle Beach, SC 29578
Phone: (843) 692-2628
Facsimile: (843) 692-0928

Attorneys for Respondent

November 1, 2011

DOCUMENT #4

The South Carolina Court of Appeals

Brenda R. Babb,

Appellant,

v.

Carey E. Graham, Southbridge Cable
Television, LLC, and Cable Plus of
Carolina, Inc., Defendants

Of Whom Carey E. Graham is the

Respondent.

The Honorable J. Michael Baxley
Horry County
Trial Court Case No. 2000-CP-26-05411

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.

Paul E. Short, Jr.

H B V

J.

J. O. Nestle

J.

Columbia, South Carolina

FILED

28 Nov 2011

cc: Brenda R. Babb
J. Jackson Thomas, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Michael Baxley
Horry County

Case No. 00-CP-26-05411

Brenda R. Babb.....Appellant,

v.

Carey E. Graham, Southbridge Cable Television, LLC,
and Cable Plus of Carolina, Inc., Defendants

Of Whom Carey E. Graham is.....Respondent.

RECORD ON APPEAL

Brenda R. Babb
Calabash, North Carolina 28467
(843)249-3700
Appellant Appearing Pro se

J. Jackson Thomas, Esquire
Thompson & Henry, P.A.
Post Office Box 1290
Myrtle Beach, South Carolina 29578
(843)692-2628
Attorney for Respondent Carey E. Graham

INDEX

Order Granting Motion for Summary Judgment filed 6/19/09.....	1
Order Denying Plaintiff's's Motion for Reconsideration filed 8/6/09.....	1A
Order Judge Milling Granting Plaintiff's Motion to Amend filed June 17, 2004.....	2
Order of Judge Gregory dated July 28, 2004.....	5
Summons and Complaint filed 11/29/00.....	9
Answer dated 1/19/01.....	16
Motion to Amend with attached Amended Complaint filed 6/6/03...	20
Second Amended Complaint filed 6/23/04.....	29
Answer to Second Amended Complaint filed 7/1/04.....	36
Amended Answer to Second Amended Complaint filed 9/30/08.....	43
Motion for Summary Judgment filed 11/13/08.....	51
Motion to Reconsider 6/19/09 Order filed 7/21/09.....	56
Memorandum in Opposition to Motion for Summary Judgment filed 6/18/09.....	63
Letter Offer to Purchase dated July 15, 1998.....	67
Letter Acceptance of Offer to Purchase dated July 28, 1998.....	69
Facsimile Transmission dated 8/14/98 containing Stock Purchase Agreement.....	70
September 8, 1998 Default Letter from H. Franklin Burroughs to Daniel G. Hall.....	75
Transcript of June 18, 2009 hearing.....	77

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE #: 2000 -CP-26-5411

BRENDA R. BABB

CAREY E. GRAHAM, ETAL

VS.

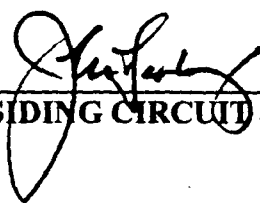
PLAINTIFF(S)

DEFENDANT(S)

ORDER
DISPOSITION OF MOTIONS

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED AS TO # 1 AND # 2
CAUSES OF ACTION. SUMMARY JUDGMENT AS TO CAUSE OF ACTION # 3 BREACH
OF CONTRACT IS GRANTED. based on statute of limitations.

AND IT IS SO ORDERED.


PRESIDING CIRCUIT JUDGE

DATED AT CONWAY, SOUTH CAROLINA THIS 18TH DAY OF JUNE, 2009.

BRENDA BABB, PRO SE

J. JACKSON THOMAS, ATTY

PLAINTIFF'S ATTORNEY(S)

DEFENDANT'S ATTORNEY(S)

STATE OF SOUTH CAROLINA

HORRY COUNTY

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

2009 AUG -6 AM 10:29

FIFTEENTH JUDICIAL CIRCUIT

Brenda R. Babb,

MELANIE HUGGINS
CLERK OF COURT

C/A No. 00-CP-26-5411

Plaintiff,

v.

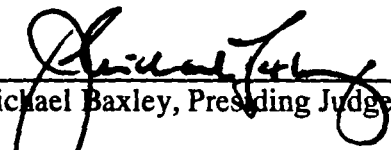
**ORDER DENYING MOTION
FOR RECONSIDERATION****COPY**Carey E. Graham, Southbridge Cable Television,
LLC, and Cable Plus of Carolina, Inc.

Defendants.

IT IS ORDERED AND ADJUDGED: Plaintiff moves this Court to reconsider its June 19, 2009 decision finding that the Breach of Contract cause of action was asserted outside the statute of limitations. The basis of the motion for reconsideration is that the Court erred in finding as a matter of law that the amended Complaint, including the new cause of action, related back to the original date of filing. Upon review, the Court finds its initial decision to be correct under the prevailing law and the facts of this case, and denies the motion for reconsideration. The Breach of Contract cause of is dismissed.

IT IS SO ORDERED.

August 4, 2009


 J. Michael Baxley, Presiding Judge

This judgment was entered on the ____ day of August 2009, and a copy mailed first class this ____ day of August, 2009 to attorneys of record or to parties as follows:

Pro Se Plaintiff

Brenda R. Babb

Calabash, NC 29467

Attorney for Defendant

J. Jackson Thomas
Thompson & Henry, PA
P.O. Box 1290
Myrtle Beach, SC 29578

CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BRENDA R. BABB,)

Plaintiff,)

v.)

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

**ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND**

THIS MATTER comes before me on Plaintiff's Motion to Amend her Complaint. It appears that the Plaintiff's Motion should be granted, and accordingly Plaintiff is hereby given leave to amend her Complaint consistent with the Amended Complaint attached to her Motion. The Defendants, Carey E. Graham and Cable Plus of Carolina, Inc., shall have fifteen (15) days from the receipt of this Order by Defendants' counsel within which to answer or otherwise plead to the Amended Complaint.

The Amendment to the Complaint also adds a Party-Defendant, to wit: Southbridge Cable Television, LLC. Plaintiff shall serve the Amended Summons and Complaint on the additional Defendant within thirty (30) days from the date of receipt of this Order by Plaintiff's counsel. Pursuant to Rule 40(a), due to the addition of the new party, the case is not eligible to be called for trial until one hundred twenty (120) days after the date of this Order.

It is further ordered that the caption of the case is hereby amended consistent with the caption of this Order to reflect the addition of the party.

[Handwritten signature]

002

AND, IT IS SO ORDERED.



John M. Milling, Judge
Court of Common Pleas

Dated: June 16, 2004
Conway, South Carolina

#2 

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BRENDA R. BABB,

Plaintiff,

v.

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,

Defendants.

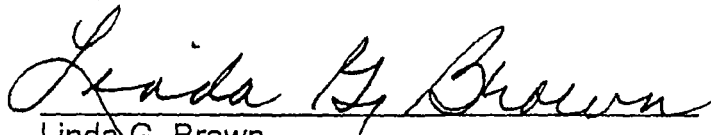
) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 00-CP-26-5411

) **AFFIDAVIT OF SERVICE BY MAIL**
)

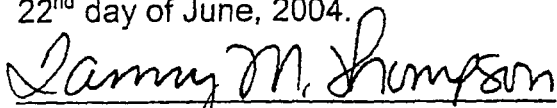
PERSONALLY APPEARED BEFORE ME, Linda G. Brown, who states that she is an employee of THOMPSON & HENRY, P.A., and that faxed and additionally deposited in the United States Mail, with proper postage affixed thereto on June 22, 2004, the following document(s) to the addressee(s) listed below:

TO: Cynthia Graham Howe, Esq.
VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
1303 Azalea Court
Myrtle Beach, SC 29577

DOCUMENT(S): Order Granting Plaintiff's Motion to Amend
Dated: June 16, 2004


Linda G. Brown

Sworn to before me this
22nd day of June, 2004.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 9/23/2007

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
CASE NO. 00-CP-26-5411

BRENDA BABB,

Plaintiff,

vs.

CAREY E. GRAHAM, SOUTHBRIDGE,
CABLE TELEVISION, LLC, and
CABLE PLUS OF CAROLINA, INC.,

Defendants.

ORDER GRANTING
THE VAN OSDELL LAW FIRM'S
MOTION TO WITHDRAW
AS PLAINTIFF'S COUNSEL

TRIAL JUDGE: Jackson V. Gregory
DATE OF HEARING: July 19, 2004
PARTIES PRESENT: Brenda Babb, plaintiff
Cindy Graham Howe, moving attorney

HORRY COUNTY
04 AUG -3 PM 3:53
CLERK OF COURT

Van Osdell, Lester, Howe & Jordan, P.A., the law firm presently representing Plaintiff, moves to withdraw as her counsel. The firm makes this motion pursuant to Rule 1.16 of the Rules of Professional Conduct, Rule 407, SCACR. The motion was served and filed with the supporting affidavit of Attorney James B. Van Osdell. Defendants' counsel, Jack Thomas, Esquire, did not appear; instead, the Van Osdell law firm presented Mr. Thomas's letter consenting to the firm's withdrawal. Plaintiff filed a memo in opposition to the firm's withdrawal. After carefully considering the motion to withdraw, I conclude that it should be granted.¹

Attorney Van Osdell states by affidavit that he finds it unreasonably difficult to

¹At Plaintiff's request, the Court heard this matter in chambers.

continue representing the Plaintiff because he does not understand her litigation objectives and because someone other than the Plaintiff makes the decisions involved in this case. Plaintiff conceded that she confers with her husband, Mac Babb, on all decisions concerning this litigation. Plaintiff does not, however, consent to the firm's withdrawal.

Rule 1.16(b)(6), RPC, Rule 407, SCACR provides that a lawyer may withdraw from representing a client if "good cause" exists for his withdrawal. Based upon counsel's affidavit, Plaintiff's memo of law, and arguments made at the hearing, I conclude that Van Osdell, Lester, Howe & Jordan, P.A. does have "good cause" to withdraw from representing Plaintiff. The attorney claims that either Plaintiff's objectives in the litigation have changed since he undertook representation, or he no longer understands her objectives.

When an attorney does not understand his client's objectives in litigation, he is unable to represent the client competently and zealously. Here, that problem is confounded because the Plaintiff is not solely in control of her case and the litigation objectives are not necessarily those of the plaintiff. Furthermore, the relationship between Plaintiff and the law firm has become such that it is in the interests of justice that counsel be allowed to withdraw.

Plaintiff has asked that her fees be refunded if counsel is allowed to withdraw. Rule 1.16(d), RPC, Rule 407, SCACR provides that upon an attorney's termination of representation, he shall refund "any advance payment of fee that has not been earned."

Here, however, Plaintiff has not asserted that the law firm did not earn its fee. Instead, she simply requests that the "legal fees paid in this case be refunded" if counsel is

permitted to withdraw. No evidence of fees was presented. The Plaintiff failed to present evidence of what she has paid in fees and, what, if any she considers unearned.

Furthermore, there was no evidence presented of what fees the law firm contends it has earned. Therefore, I have not made a determination of the legal fees issue. Instead, I encourage the Plaintiff and the law firm to settle this issue on their own. If no agreement is reached, Plaintiff and/or the law firm may seek the assistance of the Fee Disputes Board pursuant to Rule 416, SCACR.

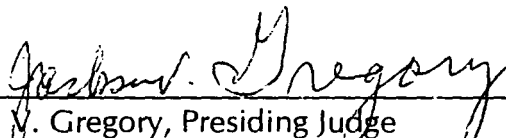
The Resolution of Fee Disputes Board of the South Carolina Bar is the appropriate authority, not this Court, to determine the legal fees issue. See "Disputes Over Fees", a comment to Rule 1.5, RPC, Rule 407, SCACR. Its purpose is to assist a client and the attorney in resolving a fee dispute "expeditiously, fairly and professionally." Rule 2 of the Rules for Fee Disputes, Rule 416, SCACR. The Board may "receive, inquire into, take proofs, and make findings and final determination of disputes between attorneys and clients . . . arising out of disagreements over fees, costs and/or disbursements." Rule 4 of the Rules for Fee Disputes, Rule 416, SCACR. Therefore, I conclude that if the parties are unable to resolve the legal fees issue, they may present the issue to the Fee Disputes Board.

Accordingly,

IT IS HEREBY ORDERED that the motion to withdraw be granted. Plaintiff shall have 45 days from the date of this Order to retain new counsel and notify the Court and defense counsel. Until the expiration of that period or until Plaintiff retains new counsel, whichever occurs first, this case shall not proceed any further. If Plaintiff fails to

inform the Court and defense counsel of her new attorney within that period, defense counsel may assume that Plaintiff is proceeding *pro se* and may directly serve her with any and all documents at 4668 Little River Road, Little River, South Carolina or at P.O. Box 4800, Calabash, North Carolina 28467-9820.

AND IT IS SO ORDERED.



Jackson V. Gregory, Presiding Judge
Fifteenth Judicial Circuit

July 28, 2004

STATE OF SOUTH CAROLINA)

IN THE CIRCUIT COURT FOR THE

HORRY

COUNTY)

Fifteenth

JUDICIAL CIRCUIT

BRENDA R. BABB

Plaintiff)

COVER SHEET FOR
CIVIL ACTIONSCAREY E. GRAHAM AND CABLE
PLUS OF CAROLINA, INC.

Defendant)

Docket No. 2000-CP-24-5411

The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

NATURE OF ACTIONS: (check one category for the main cause of action)

- () TORT - Motor Vehicle
 () TORT - Professional Malpractice
 () TORT - Unfair Trade Practices and
 Other Economic or
 Business-Related Wrongs
 () TORT - Products Liability
 () TORT - General or Other

- () CONTRACT - Debt Collection
 () CONTRACT - Employment
 () CONTRACT - Construction
 () CONTRACT - Wrongful Breach
 () CONTRACT - General or Other

() REAL PROPERTY

() PCR

- () GOV/ADM - Property Seizure
 () GOV/ADM - General or Other

- () MINOR SETTLEMENTS
 () DOMESTICATE FOREIGN JUDGMENT
 (X) OTHER (Please describe)
Shareholder derivative suit

CLERK OF COURT

00 NOV 29 PM 3:58

FILED
HORRY COUNTY

JURY DEMAND () YES (X) NO

Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does NOT constitute a demand for or a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION (Check one box.)

- () This case is subject to arbitration (all cases with monetary damages less than \$25,000 are subject to arbitration, unless other wise exempt).
 (X) This case is subject to mediation (all cases not subject to arbitration must be mediated, unless otherwise exempt).
 () This case is exempt from ADR, and certificate is attached.

JAMES B VAN OSDELL

VAN OSDELL, LESTER, HOWE & JORDAN, P.A.

Name of Plaintiff/Plaintiffs' Attorney (please type or print clearly)

Signature of Plaintiff/Plaintiffs' Attorney

1303 AZALEA COURT

Mailing Address

MYRTLE BEACH, SC 29577

City, State, Zip Code

(843) 449-9464

Telephone

Date: November 28, 2000

MED-

(1/95) SEE REVERSE SIDE FOR FURTHER IMPORTANT INFORMATION

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BRENDA R. BABB,)

Plaintiff,)

vs.)

CAREY E. GRAHAM and CABLE PLUS)
OF CAROLINA, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 00-CP-26-

SUMMONS

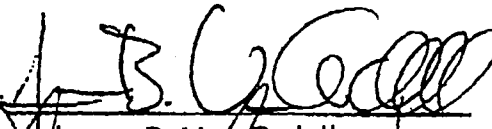
SHAREHOLDER DERIVATIVE SUIT
Breach of Fiduciary Duty/Misappropriation
of Corporate Opportunity

TO THE DEFENDANTS ABOVE NAMED:

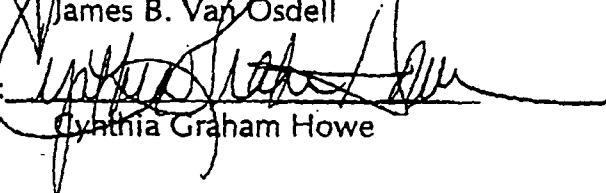
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorneys, Van Osdell, Lester, Howe & Jordan, P.A., at 1303 Azalea Court, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina, on the 27 day of November, 2000.

VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
1303 Azalea Court
Myrtle Beach, SC 29577
(843) 449-9464 (phone)
(843) 449-9466 (fax)

BY: 

James B. Van Osdell

BY: 

Cynthia Graham Howe

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 00-CP-26-
BRENDA R. BABB,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
CAREY E. GRAHAM and CABLE PLUS	)	SHAREHOLDER DERIVATIVE SUIT
OF CAROLINA, INC.,	)	Breach of Fiduciary Duty/Misappropriation
	)	of Corporate Opportunity
Defendants.	)	

FILED
HORRY COUNTY
00 NOV 29 PM 3:58
CLERK OF COURT

Plaintiff Brenda R. Babb, complaining of Defendants, respectfully would allege and show unto this Honorable Court as follows:

1. Plaintiff Brenda R. Babb is a citizen and resident of Horry County, South Carolina. Defendant Carey E. Graham is a citizen and resident of Horry County. Defendant Cable Plus of Carolina, Inc. (Cable Plus) is a South Carolina corporation with its principal place of business in Horry County, South Carolina. Plaintiff brings this action in her role as a shareholder on behalf of Defendant Cable Plus of Carolina, Inc.; this is a shareholder derivative action. This Court has jurisdiction of this matter.
2. Plaintiff and Defendant Graham are equal shareholders of Defendant Cable Plus. Plaintiff was a shareholder at the time of the transaction of which she complains. Defendant Graham is a director of Defendant Cable Plus and also serves as president of Cable Plus.
3. Defendant Cable Plus is in the business of providing cable television service to individual residences.
4. In approximately August 1989, Defendant Cable Plus and Glenn's Bay, Inc.,

the developer of South Bay Lakes, a residential subdivision in Horry County, entered into a contract whereby Defendant Cable Plus received the exclusive rights to provide cable television services to all residences in the South Bay Lakes subdivision for 15 years.

5. Subsequently, in June 1995, Plaintiff and Defendant Graham formed a separate corporation, Southbridge Cable Television, LLC, and received the exclusive right to provide television cable services to residential units to the Southbridge Homeowners Association, Inc., another residential development, for 10 years.

AS A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

6. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

7. As a director and an officer of Cable Plus, Defendant Graham has a duty to discharge his duties to Cable Plus in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.

8. Defendant Graham breached his duties to the Defendant Cable Plus by secretly forming a separate corporation, Crystal Cablevision LLC, to compete in the cable television services business against Defendant Cable Plus. Defendant Graham concealed from Plaintiff his interest in Crystal Cablevision LLC.

9. Defendant Graham was instrumental in obtaining for Crystal Cablevision LLC a contract for the exclusive rights to cable television services in South Bay East, a subdivision located near the other subdivision that Defendant Cable Plus services and in which Defendant Cable Plus had intended to expand into and serve.

10. As a result of Defendant Graham's breach of fiduciary duties, Defendant Cable Plus has been damaged; Defendant Cable Plus lost to Crystal Cablevision LLC a corporate opportunity which rightfully belonged to Cable Plus. Plaintiff is informed and believes that the corporation, Cable Plus, is entitled to actual damages in an amount to be determined.

AS A SECOND CAUSE OF ACTION

(Misappropriation of Corporate Opportunity/Accounting)

11. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

12. As stated above, Defendant Graham formed a separate corporation, Crystal Cablevision LLC, and entered a contract for the exclusive rights to provide cable television services to South Bay East, a residential subdivision, in spite of Defendant Cable Plus's expectancy to provide cable television services to the same residential subdivision.

13. Defendant Cable Plus had hoped to expand, and had the financial ability to expand, its cable television services to the South Bay East residential subdivision, and Defendant Graham's usurping Cable Plus's corporate opportunity is unfair to Cable Plus.

14. The contract which Defendant Graham entered into on behalf of his newly formed corporation, Crystal Cablevision, LLC, with South Bay East, Inc. includes activities which Cable Plus has the fundamental knowledge, practical experience, and the ability to pursue.

15. Defendant Graham has fraudulently diverted profits from Defendant Cable Plus to his new corporation, Crystal Cablevision, LLC, by usurping a corporate opportunity which rightfully belongs to Defendant Cable Plus. Accordingly, Plaintiff is informed and

believes that Defendant should account to Cable Plus for all profits flowing from the South Bay East, Inc. contract to Crystal Cablevision, LLC.

16. Prior to bringing this lawsuit, Plaintiff specifically requested that Defendant Graham turn over to Defendant Cable Plus all diverted profits which Defendant Graham and his newly formed corporation, Crystal Cablevision, LLC, had usurped from Cable Plus, but Defendant Graham refused.

WHEREFORE, Plaintiff prays as follows:

- H
LH+J
- A. That Plaintiff be granted, on behalf of the Defendant Cable Plus of Carolina, Inc., a judgment against defendant Graham for actual damages;
 - B. That Plaintiff be granted, on behalf of the Defendant Cable Plus of Carolina, Inc., an accounting for all profits flowing from the South Bay East, Inc. contract to Crystal Cablevision, LLC;
 - C. That Plaintiff be granted attorney's fees pursuant to the common fund principle;
 - D. That Plaintiff be granted the costs of this action; and
 - E. That Plaintiff be granted such further and other relief as this Court may deem just and proper.

VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
Attorneys for Plaintiff
1303 Azalea Court
Myrtle Beach, South Carolina 29577
843-449-9464

BY:

BY:

James B. Van Osdel

Cynthia Graham Howe

NOV. 27, 2000

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

VERIFICATION

PERSONALLY appeared before me Brenda R. Babb, who being duly sworn, deposes and states: that she is the Plaintiff; that she has read the within Complaint; that the allegations contained therein are true and correct as to her own knowledge, except as to those allegations based upon information and belief, and as to those she believes them to be true and correct.

Brenda R. Babb
Brenda R. Babb

SWORN TO before me this

28 day of November, 2000.

Wesley David
Notary Public for South Carolina

My commission expires: 2010

FILED
HORRY COUNTY
00 NOV 29 PM 3:58
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BRENDA R. BABB,)

Plaintiff,)

v.)

CAREY E. GRAHAM and CABLE PLUS)
OF CAROLINA, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

ANSWER

The Defendants, making Answer to the Complaint of the Plaintiff, would respectfully show the Court:

AS AND FOR A FIRST DEFENSE

1. The Complaint fails to state a claim for which relief may be granted and accordingly the Defendants move its dismissal pursuant to Rule 12 (b) (6) S.C.R.C.P.

AS AND FOR A SECOND DEFENSE

2. These Defendants admit so much of paragraph one (1) of the Plaintiff's Complaint as alleges that Defendant Carey E. Graham is a citizen and resident of Horry County, South Carolina; that the Defendant Cable Plus of South Carolina, Inc. ("Cable Plus") is a South Carolina Corporation with its principal place of business in Horry County, South Carolina; and that this Court has jurisdiction of this matter; the balance of the allegations contained in said paragraph one (1) are denied.
3. Defendants admit so much of paragraph two (2) as alleges that Defendant Graham is a Director of Cable Plus and also serves as President of the Cable Plus, but the remaining allegations contained in said paragraph two (2) are denied.

4. Paragraph three (3) is denied; further answering said paragraph three (3) these Defendants will show and allege that the Defendant Cable Plus is in the business of being a partner in South Bay Lake Cablevision, a South Carolina General Partnership, which provides service to the South Bay Lakes subdivision pursuant to a service provider contract with Glenn's Bay, Inc.
5. These Defendant's deny the characterization of the contract between Defendant Cable Plus and Glenn's Bay, Inc. contained in paragraph four (4) of the Plaintiff's Complaint and crave reference to the contract itself for the full and complete terms thereof.
6. Paragraph five (5) is denied.
7. Paragraph six (6) of the Plaintiff's Complaint is a pleading paragraph, and no response is required thereto; however to the extent that a response may be deemed to be required, it is denied.
8. Paragraph seven (7) is admitted.
9. Paragraph eight (8) is denied.
10. Paragraph nine (9) is denied.
11. Paragraph ten (10) is denied.
12. Paragraph eleven (11) is a pleading paragraph, and no response is required thereto; however to the extent that a response may be deemed to be required, the same is denied.
13. Paragraphs twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16) of the Plaintiff's Complaint are denied.
14. All allegations contained in the Complaint not hereinbefore specifically admitted, qualified or explained, are expressly denied; the Defendants would expressly deny that the interest of the Defendant Graham in Crystal Cablevision, LLC is a "corporate opportunity" of the Defendant Cable Plus.

AS AND FOR A THIRD DEFENSE

15. The Defendants specifically plead the applicable statute of limitations as a complete bar and defense to the action.

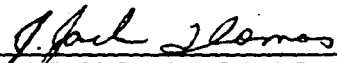
AS AND FOR A FOURTH DEFENSE

16. These Defendants specifically plead laches as a complete bar and defense to the action.

WHEREFORE, having made answer to the Complaint of the Plaintiff, these Defendants pray as follows:

1. The Complaint be dismissed.
2. They have their costs.
3. For such other and further relief as to the Court may seem just and proper.

THE THOMPSON LAW FIRM, P.A.



J. JACKSON THOMAS
SC Bar #5527
1314 Professional Drive
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Phone: 843-692-2628
Fax: 843-692-0918

Attorney for Defendant

Dated January 19, 2001
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

AFFIDAVIT OF SERVICE BY MAIL

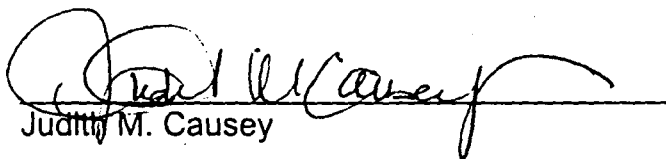
PERSONALLY APPEARED BEFORE ME, Judith M. Causey, who states that she is an employee of THE THOMPSON LAW FIRM, P.A., and that she deposited in the United States Mail, with proper postage affixed thereto the following document(s) to the addressee(s) listed below:

TO: James Van Osdel
VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
1303 Azalea Court
Myrtle Beach, SC 29577

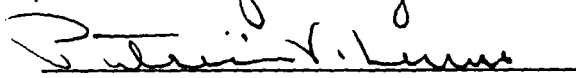
DOCUMENT(S): Answer

RE: Brenda R. Babb v. Carey E. Graham, et.al.
Case No.: 00-CP-26-5411

Dated: January 26, 2001
Myrtle Beach, South Carolina


Judith M. Causey

Sworn to before me this
26th day of January, 2001.


NOTARY PUBLIC
FOR SOUTH CAROLINA

My Commission Expires: 7/29/03

STATE OF SOUTH CAROLINA
COUNTY OF Horry

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Brenda Babb

☒ Plaintiff

CASE NO.

v.

00 - CP - 26 - 5411

Carey E. Graham and

Cable Plus of Cable Plus of Carolina, Inc.

**MOTION INFORMATION FORM
AND COVER SHEET**

☐ Defendant

check box above indicating submitting party

name S.C. Bar no. and address of plaintiff's attorney

Cynthia Graham Howe #002688

VAN OSDELL LESTER HOWE & JORDAN, P.A.

1303 Azalea Court

Myrtle Beach, SC 29577

telephone: 843-449-9464

e-mail:

fax: 843-449-9466

other:

name, S.C. Bar no. and address of defendant's attorney

J. Jackson Thomas

The Thompson Law Firm

P. O. Box 1290

Myrtle Beach, SC 29578

telephone:

e-mail:

fax:

other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion to Amend

Estimated Time Needed:

Court Reporter Needed: YES / XX

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion -

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

Signature of Attorney for Plaintiff/xxxxxxx

6/6/03

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

(Check reason)

☐ 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, SCRPC)

☐ 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

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 00-CP-26-5411

BRENDA BABB,

Plaintiff,

vs.

) PLAINTIFF'S MOTION TO
) AMEND
)
)
)

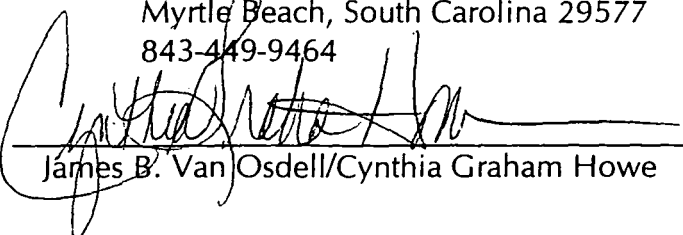
CAREY E. GRAHAM and CABLE PLUS
OF CAROLINA, INC.,
Defendants.

TO: J. JACKSON THOMAS, ESQUIRE, ATTORNEY FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, through her undersigned attorneys, will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the Presiding Judge of the Fifteenth Judicial Circuit, Horry County Courthouse, Conway, South Carolina, for an Order allowing Plaintiff to amend her Complaint.

This Motion is made pursuant to Rule 15(a), SCRPC. A copy of the proposed Amended Complaint is attached to this Motion. Plaintiff makes this Motion because justice requires it. Defendants would not be prejudiced by the amendment.

VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
Attorneys for Plaintiff
1303 Azalea Court
Myrtle Beach, South Carolina 29577
843-449-9464

BY: 

James B. Van Osdel/Cynthia Graham Howe

June 5, 2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 00-CP-26-5411
BRENDA R. BABB,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	
CAREY E. GRAHAM and SOUTHBRIDGE)		SHAREHOLDER DERIVATIVE SUIT
CABLE TELEVISION, LLC, AND)		Breach of Fiduciary Duty/Misappropriation
CABLE PLUS OF CAROLINA, INC.)		of Corporate Opportunity/Breach of
	)	Contract
Defendants.	)	
	)	

Plaintiff Brenda R. Babb, complaining of Defendants, respectfully would allege and show unto this Honorable Court as follows:

1. Plaintiff Brenda R. Babb is a citizen and resident of Horry County, South Carolina. Defendant Carey E. Graham is a citizen and resident of Horry County. Defendant Southbridge is a South Carolina limited liability corporation with its principal place of business in Horry County, South Carolina. Plaintiff brings this action in her role as a shareholder on behalf of Defendant Southbridge Cable Television, LLC and Cable Plus of Carolina, Inc.; this is a shareholder derivative action. This Court has jurisdiction of this matter.

2. Plaintiff and Defendant Graham are equal shareholders of Defendant corporations. Plaintiff was a shareholder at the time of the transaction of which she complains. Defendant Graham is a director, managing member and president of Defendant corporations.

3. In 1988 or 1989, Plaintiff and/or her spouse, Mac Babb, with Defendant

Graham formed Cable Plus of Carolina, Inc. Cable Plus became a general partner in South Bay Lakes Cablevision, a South Carolina general partnership. South Bay Lakes Cablevision provides cable television service to the South Bay Lakes residential project pursuant to a contract with the developer whereby South Bay Lakes Cablevision received the exclusive rights to provide the cable service for 15 years plus possible extensions.

4. In 1995, Plaintiff and/or her spouse, Mac Babb, formed Southbridge Cable Television, LLC with Defendant Graham, with Plaintiff and or her spouse and Defendant Graham each owning 50% of the corporation. Southbridge Cable Television, LLC provides cable television service to the South Bay Lakes East and South Bridge residential projects pursuant to a contract with the developer whereby it received the exclusive rights to provide the cable service for a certain period of time.

AS A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

5. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

6. As a director, member and officer of Southbridge and Cable Plus, Defendant Graham has a duty to discharge his duties to Southbridge in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporations and its shareholders.

7. Defendant Graham breached his duties to the corporations by secretly forming a separate corporation, Crystal Cablevision LLC, to compete in the cable television services business against Defendant corporations. Defendant Graham concealed from

Plaintiff his interest in Crystal Cablevision LLC.

8. Defendant Graham was instrumental in obtaining for Crystal Cablevision LLC a contract for the exclusive rights to cable television services in South Bridge Villas, a subdivision located near the other subdivision that Defendant Southbridge services and in which Defendant Southbridge had intended to expand into and serve.

9. As a result of Defendant Graham's breach of fiduciary duties, Defendant Southbridge has been damaged; Defendant Southbridge lost to Crystal Cablevision LLC a corporate opportunity which rightfully belonged to Southbridge. Plaintiff is informed and believes that the corporation, Southbridge, is entitled to actual damages in an amount to be determined.

AS A SECOND CAUSE OF ACTION

(Misappropriation of Corporate Opportunity/Accounting)

10. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

11. As stated above, Defendant Graham formed a separate corporation, Crystal Cablevision LLC, and entered a contract for the exclusive rights to provide cable television services to South Bridge Villas, a residential subdivision, in spite of Defendant Southbridge's expectancy to provide cable television services to the same residential subdivision.

12. Defendant Southbridge had hoped to expand, and had the financial ability to expand, its cable television services to the South Bridge Villas residential subdivision, and Defendant Graham's usurping Southbridge's corporate opportunity is unfair to Southbridge.

13. The contract which Defendant Graham entered into on behalf of his newly formed corporation, Crystal Cablevision, LLC, includes activities which Southbridge has the fundamental knowledge, practical experience, and the ability to pursue.

14. Defendant Graham has fraudulently diverted profits from Defendant Southbridge to his new corporation, Crystal Cablevision, LLC, by usurping a corporate opportunity which rightfully belongs to Defendant Southbridge. Accordingly, Plaintiff is informed and believes that Defendant should account to Southbridge for all profits flowing from the South Bay East, Inc. contract to Southbridge.

15. Prior to bringing this lawsuit, Plaintiff specifically requested that Defendant Graham turn over to Defendant Southbridge all diverted profits which Defendant Graham and his newly formed corporation, Crystal Cablevision, LLC, had usurped from Southbridge, but Defendant Graham refused.

AS A THIRD CAUSE OF ACTION

Breach of Contract

16. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

17. Plaintiff and Defendant Graham had a contract whereby Plaintiff was to sell and Defendant Graham was to purchase Plaintiff's stock in Cable Plus for \$250,000.

18. Plaintiff performed all obligations of the contract required; nevertheless, Defendant Graham breached his contract with Plaintiff by failing to purchase the Plaintiff's shares of stock for \$250,000.

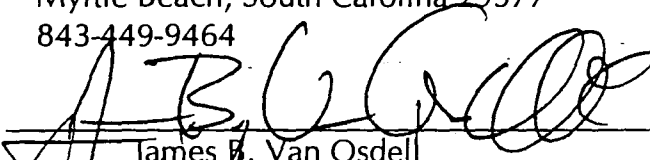
19. As a result of Defendant Graham's breach of contract, Plaintiff has been damaged in the amount of \$250,000 plus prejudgment interest.

WHEREFORE, Plaintiff prays as follows:

- A. That Plaintiff be granted, on behalf of the Defendant Southbridge, a judgment against defendant Graham for actual damages;
- B. That Plaintiff be granted, on behalf of the Defendant Southbridge, an accounting for all profits flowing from the South Bay East, Inc. contract to Crystal Cablevision, LLC;
- C. That Plaintiff be granted attorney's fees pursuant to the common fund principle;
- D. That Plaintiff be granted \$250,000 against Defendant Graham for breach of contract;
- E. That Plaintiff be granted the costs of this action; and
- F. That Plaintiff be granted such further and other relief as this Court may deem just and proper.

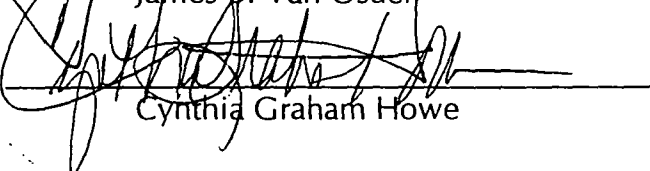
VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
Attorneys for Plaintiff
1303 Azalea Court
Myrtle Beach, South Carolina 29577
843-449-9464

BY:



James B. Van Osdel

BY:



Cynthia Graham Howe

June 5, 2003

Defendants.

AFFIRMATION FOR MOTION
TO AMEND

027

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BRENDA BABB,)

Plaintiff,)

vs.)

CAREY E. GRAHAM, SOUTHBRIDGE,)
CABLE TELEVISION, LLC, and)
CABLE PLUS OF CAROLINA, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 00-CP-26-5411

SUMMONS

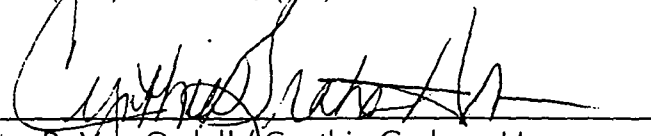
CLERK OF COURT
JAMES B. ROBERTS
01 JUN 23 PM 2:34

TO: DEFENDANT SOUTHBRIDGE CABLE TELEVISION, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorneys, Van Osdell, Lester, Howe & Jordan, P.A., at 1303 Azalea Court, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina, on the 23rd day June, of 2004.

VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
1303 Azalea Court
Myrtle Beach, SC 29577
(843) 449-9464 (phone)
(843) 449-9466 (fax)

BY: 

James B. Van Osdell / Cynthia Graham Howe

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BRENDA R. BABB,

Plaintiff,

vs.

CAREY E. GRAHAM and SOUTHBRIDGE)
CABLE TELEVISION, LLC, AND)
CABLE PLUS OF CAROLINA, INC.)

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 00-CP-26-5411

) 2nd AMENDED COMPLAINT

) SHAREHOLDER DERIVATIVE SUIT
) Breach of Fiduciary Duty/Misappropriation
) of Corporate Opportunity/Breach of
) Contract

FILED
CLERK OF COURT
OCTOBER 23 PM 2:30
PAGE 1

Plaintiff Brenda R. Babb, complaining of Defendants, respectfully would allege and show unto this Honorable Court as follows:

1. Plaintiff Brenda R. Babb is a citizen and resident of North Carolina.

Defendant Carey E. Graham is a citizen and resident of Horry County. Defendant Southbridge is a South Carolina limited liability corporation with its principal place of business in Horry County, South Carolina. Plaintiff brings this action in her role as a shareholder on behalf of Defendant Southbridge Cable Television, LLC and Cable Plus of Carolina, Inc.; this is a shareholder derivative action. This Court has jurisdiction of this matter.

2. Plaintiff and Defendant Graham are equal shareholders of Defendant corporations. Plaintiff was a shareholder at the time of the transaction of which she complains. Defendant Graham is a director, managing member and president of Defendant corporations.

3. In 1988 or 1989, Plaintiff and/or her spouse, Mac Babb, with Defendant

Graham formed Cable Plus of Carolina, Inc. Cable Plus became a general partner in South Bay Lakes Cablevision, a South Carolina general partnership. South Bay Lakes Cablevision provides cable television service to the South Bay Lakes residential project pursuant to a contract with the developer whereby South Bay Lakes Cablevision received the exclusive rights to provide the cable service for 15 years plus possible extensions.

4. In 1995, Plaintiff and/or her spouse, Mac Babb, formed Southbridge Cable Television, LLC with Defendant Graham, with Plaintiff and or her spouse and Defendant Graham each owning 50% of the corporation. Southbridge Cable Television, LLC provides cable television service to the South Bay Lakes East and South Bridge residential projects pursuant to a contract with the developer whereby it received the exclusive rights to provide the cable service for a certain period of time.

AS A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

5. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

6. As a director, member and officer of Southbridge and Cable Plus, Defendant Graham has a duty to discharge his duties to Southbridge and Cable Plus in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporations and its shareholders.

7. Defendant Graham breached his duties to the corporations by secretly forming a separate corporation, Crystal Cablevision LLC, to compete in the cable television services business against Defendant corporations. Defendant Graham concealed from

Plaintiff his interest in Crystal Cablevision LLC.

8. Defendant Graham was instrumental in obtaining for Crystal Cablevision LLC a contract for the exclusive rights to cable television services in South Bridge Villas, a subdivision located near the other subdivision that Defendant Southbridge services and in which Defendant Southbridge had intended to expand into and serve.

9. As a result of Defendant Graham's breach of fiduciary duties, Defendant Southbridge has been damaged; Defendant Southbridge lost to Crystal Cablevision LLC a corporate opportunity which rightfully belonged to Southbridge. Plaintiff is informed and believes that the corporation, Southbridge, is entitled to actual damages in an amount to be determined.

3
14+5

AS A SECOND CAUSE OF ACTION

(Misappropriation of Corporate Opportunity/Accounting)

10. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

11. As stated above, Defendant Graham formed a separate corporation, Crystal Cablevision LLC, and entered a contract for the exclusive rights to provide cable television services to South Bridge Villas, a residential subdivision, in spite of Defendant Southbridge's expectancy to provide cable television services to the same residential subdivision.

12. Defendant Southbridge had hoped to expand, and had the financial ability to expand, its cable television services to the South Bridge Villas residential subdivision, and Defendant Graham's usurping Southbridge's corporate opportunity is unfair to Southbridge.

13. The contract which Defendant Graham entered into on behalf of his newly formed corporation, Crystal Cablevision, LLC, includes activities which Southbridge has the fundamental knowledge, practical experience, and the ability to pursue.

14. Defendant Graham has fraudulently diverted profits from Defendant Southbridge to his new corporation, Crystal Cablevision, LLC, by usurping a corporate opportunity which rightfully belongs to Defendant Southbridge. Accordingly, Plaintiff is informed and believes that Defendant should account to Southbridge for all profits flowing from the South Bay East, Inc. contract to Crystall Cablevision, LLC

15. Prior to bringing this lawsuit, Plaintiff specifically requested that Defendant Graham turn over to Defendant Southbridge all diverted profits which Defendant Graham and his newly formed corporation, Crystal Cahlevision, LLC, had usurped from Southbridge, but Defendant Graham refused.

AS A THIRD CAUSE OF ACTION

Breach of Contract

16. Plaintiff realleges each and every allegation stated above as fully as if repeated here.

17. Plaintiff and Defendant Graham had a contract whereby Plaintiff was to sell and Defendant Graham was to purchase Plaintiff's stock in Cable Plus for \$250,000.

18. Plaintiff performed all obligations of the contract required; nevertheless, Defendant Graham breached his contract with Plaintiff by failing to purchase the Plaintiff's shares of stock for \$250,000.

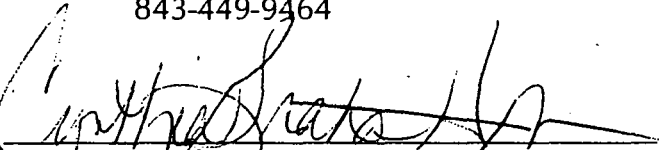
19. As a result of Defendant Graham's breach of contract, Plaintiff has been damaged in the amount of \$250,000 plus prejudgment interest.

WHEREFORE, Plaintiff prays as follows:

- 5
10 A + J
- A. That Plaintiff be granted, on behalf of the Defendant Southbridge, a judgment against defendant Graham for actual damages;
 - B. That Plaintiff be granted, on behalf of the Defendant Southbridge, an accounting for all profits flowing from the South Bay East, Inc. contract to Crystal Cablevision, LLC;
 - C. That Plaintiff be granted attorney's fees pursuant to the common fund principle;
 - D. That Plaintiff be granted \$250,000 against Defendant Graham for breach of contract;
 - E. That Plaintiff be granted the costs of this action; and
 - F. That Plaintiff be granted such further and other relief as this Court may deem just and proper.

VAN OSDELL, LESTER, HOWE & JORDAN, P.A.
Attorneys for Plaintiff
1303 Azalea Court
Myrtle Beach, South Carolina 29577
843-449-9464

BY:


James B. Van Osdel / Cynthia Graham Howe

June 23, 2004

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 00-CP-26-5411

BRENDA BABB,

)
)
) Plaintiff,
)

vs.

) PROOF OF SERVICE
)

CAREY E. GRAHAM, SOUTHBRIDGE
CABLE TELEVISION, LLC, and
CABLE PLUS OF CAROLINA, INC.,

)
)
) Defendants.
)
)

Susan F. Stone certifies that she is a paralegal with the law firm of Van Osdell, Lester, Howe & Jordan, P.A., attorneys for the Plaintiff, and that she has mailed the document(s) listed below in the above entitled action to the addressee(s) below on June 23, 2004 and proper postage was attached thereto.

DOCUMENT(S): 2nd Amended Complaint

ADDRESSEE(S): J. Jackson Thomas, Esquire
THE THOMPSON LAW FIRM
P. O. Box 1290
Myrtle Beach, SC 29578

Susan F. Stone

Susan F. Stone

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

**ANSWER TO SECOND AMENDED
COMPLAINT OF PLAINTIFF**

BY

DEFENDANT

CARY E. GRAHAM, INDIVIDUALLY

AND AS SHAREHOLDER OF

CABLE PLUS OF CAROLINA, IN

AND MEMBER OF

**SOUTHBRIDGE CABLE
TELEVISION, LLC**

HERRY COUNTY
04 JUL -1 AM10:48
JEANNE J ROBERTS
CLERK OF COURT

AS AND FOR A FIRST DEFENSE

AS AND FOR A SECOND DEFENSE

AS AND FOR A THIRD DEFENSE

036

WPS

state a claim for which relief may be granted as to any Defendant, and accordingly this Defendant moves its dismissal pursuant to Rule 12(b)(6), SCRPC.

AS AND FOR A FOURTH DEFENSE

1. Defendant admits so much of Paragraph 1 as alleges that Carey E. Graham is a citizen and resident of Horry County and that the Court has jurisdiction of this matter; the balance of the allegations contained in said Paragraph 1 are denied.

2. Paragraph 2 is denied, except so much thereof as alleges that Defendant Graham is (or was) a director and president of Cable Plus of Carolina, Inc. ("Cable Plus") and a member of Southbridge Cable Television, LLC ("Southbridge").

3. Paragraph 3 is denied, except so much thereof as alleges that Cable Plus is a general partner in South Bay Lakes Cablevision, a South Carolina general partnership, providing service to the South Bay Lakes Horizontal Property Regime.

4. Paragraph 4 of the Plaintiff's Second Amended Complaint is denied, except so much thereof as alleges that the Defendant Graham and Mac Babb formed Southbridge and that said Southbridge provided cable television service for a period of time to the Southbridge Horizontal Property Regime and the South Bay Lakes East Horizontal Property Regime.

5. Paragraph 5 is denied.

6. Paragraph 6 is denied, and reference is had to the South Carolina Code of Laws for such duty as the Defendant Graham may have had to Southbridge and Cable Plus.

7. Paragraph 7 is denied.

8. Paragraph 8 is denied; further answering said Paragraph 8, Defendant

Graham was involved in obtaining for Crystal Cablevision, LLC a contract for the exclusive right to provide cable television services in Southbridge Villas.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied; further answering said Paragraph 11, Defendant Graham was formerly a member of Crystal Cablevision, LLC, a limited liability company, which provided cable television service to property in Horry County.

12. Paragraph 12, 13, 14, 15, 16, 17, 18, and 19 are denied.

13. All allegations contained in the Complaint, not specifically hereinbefore admitted, qualified or explained are expressly denied and strict proof thereof demanded.

AS AND FOR A FIFTH DEFENSE

14. Defendant pleads the doctrine of laches as a complete bar to the action.

AS AND FOR A SIXTH DEFENSE

15. Defendant pleads the absence or failure of consideration as a defense to the Plaintiff's Third Cause of Action.

WHEREFORE, having made Answer to the Second Amended Complaint of the Plaintiff, Defendant prays as follows:

- A. That the Second Amended Complaint be dismissed;
- B. That he have his costs;
- C. For such other and further relief as to the Court may seem just and proper.

THOMPSON & HENRY, P.A.


J. JACKSON THOMAS

SC Bar #5527

1314 Professional Drive

Post Office Box 1290

Myrtle Beach, South Carolina 29578

Phone: 843-692-2628

Fax: 843-692-0918

Attorney for Carey E. Graham,
individually and as Shareholder of
Cable Plus of Carolina, Inc. and as
Member of Southbridge Cable
Television, LLC

Dated: June 29, 2004
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT OF CAREY E. GRAHAM

PERSONALLY APPEARED BEFORE ME, Carey E. Graham, who being duly sworn states as follows:

1. I am Carey E. Graham, one of the Defendants in Civil Action 00-CP-26-5411 brought against me and others by Brenda R. Babb.

2. I was, for a period of time, a Director and President of Cable Plus of Carolina, Inc. ("Cable Plus") and a member of Southbridge Cable Television, LLC ("Southbridge"). Cable Plus was, at one time, a general partner in South Bay Lakes Cablevision, a South Carolina General Partnership. Affiant and Plaintiff's husband Mac Babb formed Southbridge and were originally its members. Southbridge provided cable television service for a period of time to the Southbridge Horizontal Property Regime and to the South Bay Lakes East Horizontal Property Regime, both residential projects in the Surfside Beach area of Horry County.

3. I specifically deny that I have ever breached any duty owed by me either as shareholder, member, director or president of Cable Plus or Southbridge to any member or stockholder of Cable Plus or Southbridge.

4. I deny that Southbridge ever had the right or intent to provide cable television service to Southbridge Villas; I further deny that the provision of cable television service to Southbridge Villas was ever a corporate opportunity belonging to Southbridge; further Defendant Southbridge never had an expectancy to provide cable television service to Southbridge Villas.

5. Affiant denies that Southbridge ever had the intent or financial ability to expand cable television services to the Southbridge Villas residential subdivision, nor did it ever have the right

so to do, and Defendants did not in any way usurp any corporate opportunity due and owing to Southbridge.

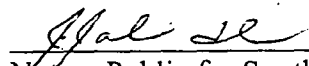
6. Affiant denies he was ever a party to an enforceable contract for the sale of Plaintiff's stock in Cable Plus.

FURTHER THIS AFFIANT SAYETH NOT.



Carey E. Graham

SWORN to before me this
10 day of September, 2008



Notary Public for South Carolina
My Commission Expires 2/10/09

COUNTY OF HORRY

BRENDA R. BABB,

Plaintiff,

V.

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY APPEARED BEFORE ME, Tammy M. Thompson, who states that she is an employee of THOMPSON & HENRY, P.A., and that she deposited in the United States Mail, with proper postage affixed thereto on September 10, 2008, the following document(s) to the addressee(s) listed below:

TO: Brenda R. Babb
Little River, SC 29566

DOCUMENT(S): Return of Defendants to Plaintiff's Motion for Summary Judgment.

Tammy M. Thompson
Tammy M. Thompson

Sworn to before me this
10 day of September, 2008

Kaye O. Champion
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5/5/14

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BRENDA R. BABB

☐ Plaintiff

v.

Carey E. Graham, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2000-CP-26-5411

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: _____, Bar No. ____ Address: _____ phone: _____ fax: _____ e-mail: _____ other: _____	Defendant's Attorney: J. Jackson Thomas, Bar No. 5527 Address: _____ P.O. Box 1290 Myrtle Beach, SC 29578 phone: 692-2628 fax: 692-0928 e-mail: jthomas@thomsonlaw.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: To Amend Answer 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.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant September 30, 2008 Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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: _____	

Horry County
CLERK OF COURT
SEP 30 PM 1:12
J. JACKSON THOMAS

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BRENDA R. BABB,

Plaintiff,

v.

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

NOTICE OF MOTION AND MOTION
TO AMEND ANSWER

HORRY COUNTY
08 SEP 30 PM 1:12
JENNIFER J. JENNINGS
CLERK OF COURT

TO: PLAINTIFF BRENDA R. BABB, *PRO SE*:

You are hereby advised and given Notice that the Defendant, by and through its undersigned attorney, will move on the 10th day after service hereof or as soon thereafter as the matter can be heard before a presiding judge at the Court of Common Pleas for Horry County at chambers at the Horry County Courthouse, Conway, South Carolina, for an Order permitting the filing by the Defendant of the Amended Answer attached hereto.

This motion will be based upon Rule 15, S.C.R.C.P., information obtained during discovery, and in the interest of justice.

THOMPSON & HENRY, P.A.


J. JACKSON THOMAS

SC Bar #5527

1314 Professional Drive

Post Office Box 1290

Myrtle Beach, South Carolina 29578

Phone: 843-692-2628

Fax: 843-692-0918

Attorney for Carey E. Graham,
individually and as Shareholder of
Cable Plus of Carolina, Inc. and as
Member of Southbridge Cable
Television, LLC

Dated: September 30, 2008
Myrtle Beach, South Carolina

044

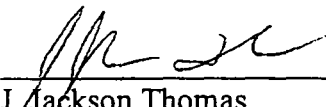
RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- X A. He has communicated, orally or in writing, with apposing counsel
 and has attempted in good faith to resolve the matter contained in
 the motion; or
- B. Such consultation would serve no useful purpose or could not be
 timely held; or
- C. Due to the nature of the motion, there is no duty to consult
 opposing counsel in that this is a motion:
- a. To Dismiss
- b. For Summary Judgment
- c. For New Trial
- d. For Judgment NOV

Horry County
08 SEP 30 PM 1:12
MELBA J. JENNINGS
CLERK OF COURT

THOMPSON & HENRY, P.A.



J. Jackson Thomas
1314 Professional Drive
Post Office Box 1290
Myrtle Beach, SC 29578
(843) 692-2628

September 30, 2008

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 00-CP-26-5411

BRENDA R. BABB,

Plaintiff,

v.

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,

Defendants.

) AMENDED
) ANSWER TO SECOND AMENDED
) COMPLAINT OF PLAINTIFF
) BY
) DEFENDANT
) CAREY E. GRAHAM, INDIVIDUALLY
) AND AS SHAREHOLDER OF
) CABLE PLUS OF CAROLINA, INC.
) AND MEMBER OF
) SOUTHBRIDGE CABLE
) TELEVISION, LLC

HORRY COUNTY
08 SEP 30 PM 1:12
CLERK OF COURT

Defendant, Carey E. Graham, individually and as Shareholder of Cable Plus of Carolina, Inc., and Member of Southbridge Cable Television, LLC, making answer to the Second Amended Complaint of the Plaintiff, would respectfully show the Court:

AS AND FOR A FIRST DEFENSE

Plaintiff has previously filed an action against the Defendant Carey E. Graham, to wit: Civil Action 2003-CP-26-6413 filed October 31, 2003, seeking the identical relief; Defendant accordingly moves the dismissal of the within action pursuant to Rule 12(b)(8), SCRPC.

AS AND FOR A SECOND DEFENSE

Plaintiff has failed to join, pursuant to Rule 19, SCRPC, a person needed for just adjudication, and accordingly this Defendant moves dismissal pursuant to Rule 12(b)(7), SCRPC.

AS AND FOR A THIRD DEFENSE

The allegations contained in the Plaintiff's Second Amended Complaint fail to state a claim for which relief may be granted as to any Defendant, and accordingly this Defendant

moves its dismissal pursuant to Rule 12(b)(6), SCRPC.

AS AND FOR A FOURTH DEFENSE

1. Defendant admits so much of Paragraph 1 as alleges that Carey E. Graham is a citizen and resident of Horry County and that the Court has jurisdiction of this matter; the balance of the allegations contained in said Paragraph 1 are denied.

2. Paragraph 2 is denied, except so much thereof as alleges that Defendant Graham is (or was) a director and president of Cable Plus of Carolina, Inc. ("Cable Plus") and a member of Southbridge Cable Television, LLC ("Southbridge").

3. Paragraph 3 is denied, except so much thereof as alleges that Cable Plus is a general partner in South Bay Lakes Cablevision, a South Carolina general partnership, providing service to the South Bay Lakes Horizontal Property Regime.

4. Paragraph 4 of the Plaintiff's Second Amended Complaint is denied, except so much thereof as alleges that the Defendant Graham and Mac Babb formed Southbridge and that said Southbridge provided cable television service for a period of time to the Southbridge Horizontal Property Regime and the South Bay Lakes East Horizontal Property Regime.

5. Paragraph 5 is denied.

6. Paragraph 6 is denied, and reference is had to the South Carolina Code of Laws for such duty as the Defendant Graham may have had to Southbridge and Cable Plus.

7. Paragraph 7 is denied.

8. Paragraph 8 is denied; further answering said Paragraph 8, Defendant Graham was involved in obtaining for Crystal Cablevision, LLC a contract for the exclusive right to provide cable television services in Southbridge Villas.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied; further answering said Paragraph 11, Defendant Graham was formerly a member of Crystal Cablevision, LLC, a limited liability company, which provided cable television service to property in Horry County.

12. Paragraph 12, 13, 14, 15, 16, 17, 18, and 19 are denied.

13. All allegations contained in the Complaint, not specifically hereinbefore admitted, qualified or explained are expressly denied and strict proof thereof demanded.

AS AND FOR A FIFTH DEFENSE

14. Defendant pleads the doctrine of laches as a complete bar to the action.

AS AND FOR A SIXTH DEFENSE

15. Defendant pleads the absence or failure of consideration as a defense to the Plaintiff's Third Cause of Action.

AS AND FOR A SEVENTH DEFENSE

16. Defendant pleads the statute of limitations as a complete bar to the Plaintiff's action.

AS AND FOR A EIGHTH DEFENSE AND SETOFF

17. Defendant is the holder of a judgment against the Plaintiff as to such judgment, this Defendant is entitled to a setoff.

WHEREFORE, having made Amended Answer and Setoff to the Second Amended Complaint of the Plaintiff, Defendant prays as follows:

- A. That the Second Amended Complaint be dismissed;
- B. That they have their costs; and

C. For such other and further relief as to the Court may seem just and proper.

THOMPSON & HENRY, P.A.

J. JACKSON THOMAS

SC Bar #5527

1314 Professional Drive

Post Office Box 1290

Myrtle Beach, South Carolina 29578

Phone: 843-692-2628

Fax: 843-692-0918

Attorney for Carey E. Graham,
individually and as Shareholder of
Cable Plus of Carolina, Inc. and as
Member of Southbridge Cable
Television, LLC

September 30, 2008
Myrtle Beach, South Carolina

COUNTY OF HORRY

BRENDA R. BABB,

Plaintiff,

V.

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY APPEARED BEFORE ME, Tammy M. Thompson, who states that she is an employee of THOMPSON & HENRY, P.A., and that she deposited in the United States Mail, with proper postage affixed thereto on September 30, 2008, the following document(s) to the addressee(s) listed below:

TO: Brenda R. Babb
Little River, SC 29566

DOCUMENT(S): Notice of Motion and Motion to Amend Answer.

document(s) to the
JERRY COUNTY
CLERK OF COURT
08 SEP 30 PM 1:12
MILLIE HUGGINS


Tammy M. Thompson

Sworn to before me this
30 day of September, 2008

Kaye O. Champion
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5/5/14

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BRENDA R. BABB

☐ Plaintiff

v.

Carey E. Graham, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2000-CP-26-5411

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: _____, Bar No. Address: phone: _____ fax: _____ e-mail: _____ other: _____	Defendant's Attorney: J. Jackson Thomas, Bar No. 5527 Address: P.O. Box 1290 Myrtle Beach, SC 29578 phone: 692-2628 fax: 692-0928 e-mail: jthomas@thomsonlaw.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: Summary Judgment Estimated Time Needed: 30 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. Signature of Attorney for ☐ Plaintiff / ☒ Defendant <i>J. Jackson Thomas</i> November 12, 2008 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ Date Filed: _____	

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

BRENDA R. BABB,

Plaintiff,

v.

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,

Defendants.

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT

FILED
08 NOV 13 PM 12:01
CLERK OF COURT

TO: PLAINTIFF BRENDA R. BABB, *PRO SE*:

YOU ARE HEREBY ADVISED and given notice that the Defendants, by and through their undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas on the 10th day after service hereof or as soon thereafter as the matter can be heard for an Order granting summary judgment to Defendants pursuant to Rule 56, S.C.R.C.P. on the three causes of action asserted by the Plaintiff in her Second Amended Complaint.

The grounds for the Defendants' motion are as follows:

I. Plaintiff's first cause of action asserts a shareholder's derivative claim on behalf of Defendant Southbridge Cable Television, LLC asserting that Defendant Graham breached a fiduciary duty which resulted in the loss to Defendant Southbridge of the opportunity to provide cable television services to a subdivision known as Southbridge Villas. Plaintiff asserts Defendant Graham owns an interest in a competing company known as Crystal Cablevision, LLC which contracted to provide cable television services to Southbridge Villas as a result of Defendant Graham's breach of duty.

Plaintiff's original Complaint was filed November 29, 2000, and is virtually identical to Plaintiff's Second Amended Complaint, except that Plaintiff alleges that the corporate opportunity to serve Southbridge Villas belonged to Cable Plus of Carolina, Inc. Although Plaintiff was obviously aware of Defendant Graham's alleged activities regarding provision of cable television service to South Bay Villas by Crystal Cablevision, LLC by the filing date of the original Complaint, she never asserted a claim on behalf of Southbridge Cablevision, LLC until the filing of her Second Amended Complaint on June 23, 2004, which filing was more than three (3) years after the filing of her original Complaint. Plaintiff's claim is accordingly barred by the statute of limitations.

II. Plaintiff's second cause of action asserts that Defendant Graham has misappropriated a corporate opportunity rightfully belonging to Southbridge Cable Television, LLC with regard to the provision of cable service to Southbridge Villas by Crystal Cablevision, LLC. Defendants are entitled to summary judgment on this cause of action for the same reasons expressed in their arguments with regard to Plaintiff's first cause of action i.e. Plaintiff was aware of the claim at least as early as the filing of her original Complaint on November 29, 2000, yet she never asserted any claim on behalf of Southbridge Cablevision, LLC until the filing of her Second Amended Complaint on June 23, 2004. Plaintiff's claim is barred by the statute of limitations.

III. Plaintiff's third cause of action asserts a claim for breach of contract against Defendant Graham to purchase her stock in Defendant Cable Plus of Carolina, Inc. for the sum of \$250,000.00. Her claim was first asserted in her Second Amended Complaint filed June 23, 2004. Not only was Plaintiff aware of the facts constituting an alleged breach at least as early September 8, 1998, she had hired an attorney to write the letter attached as Exhibit "A" threatening litigation

related to Defendant Graham's claimed breach of contract. By waiting until June 23, 2004, to make her claim for breach of contract, she is clearly barred by the statute of limitations.

THOMPSON & HENRY, P.A.



J. JACKSON THOMAS
SC Bar #5527
1314 Professional Drive
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Phone: 843-692-2628
Fax: 843-692-0918

Attorney for Carey E. Graham,
individually and as Shareholder of
Cable Plus of Carolina, Inc. and as
Member of Southbridge Cable
Television, LLC

Dated: November 14, 2008
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 00-CP-26-5411

BRENDA R. BABB,
Plaintiff,

v.

CAREY E. GRAHAM, CABLE PLUS
OF CAROLINA, INC., and
SOUTHBRIDGE CABLE TELEVISION,
LLC,
Defendants.

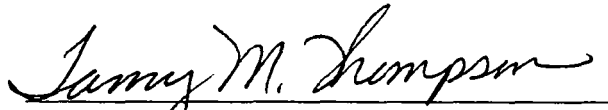
AFFIDAVIT OF SERVICE BY MAIL

HORRY COUNTY
08 NOV 13 PM 12:01
CLERK OF COURT

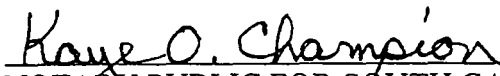
PERSONALLY APPEARED BEFORE ME, Tammy M. Thompson, who states that she is an employee of THOMPSON & HENRY, P.A., and that she deposited in the United States Mail, with proper postage affixed thereto on November 13, 2008, the following document(s) to the addressee(s) listed below:

TO: Brenda R. Babb
Little River, SC 29566

DOCUMENT(S): Notice of Motion and Motion for Summary Judgment.


Tammy M. Thompson

Sworn to before me this
13 day of November, 2008


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5/5/14

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 00-CP-26-5411

BRENDA R. BABB,)
Plaintiff,)
vs.)
CAREY E. GRAHAM, SOUTHBRIDGE)
CABLE TELEVISION, LLC, and)
CABLE PLUS OF CAROLINA, INC.)
Defendants.)

**MOTION TO RECONSIDER
JUNE 19, 2009 ORDER**

CLERK OF COURT
JUL 21 PM 1:42
HARRIS HUGHES

TO: THE HONORABLE J. MICHAEL BAXLEY AND J. JACKSON THOMAS,
ESQUIRE, ATTORNEY FOR DEFENDANTS

YOU WILL TAKE NOTICE the Plaintiff Brenda R. Babb will move before the Honorable J. Michael Baxley, Presiding Judge for Horry County, at the Horry County Courthouse, 1301 Second Avenue, Conway, South Carolina, upon ten days notice, or as soon thereafter as convenient for the Court and counsel, for reconsideration of the Court's June 19, 2009 Order. This Motion is made pursuant to Rule 59(e), SCRPC. This Order was received on July 14, 2009 from the Horry County Clerk of Court's office by regular U.S. Mail.

As Plaintiff understands the purpose of a Motion to Reconsider such motions serve two distinct and separate purposes. The first purpose is to request the Court review its findings and reconsider its ruling. The second purpose is for the Appellant Court to accurately determine the issues actually raised below and addressed by the lower court. Consequently, the following grounds are set out for the Trial Court to reconsider and modify its Order filed June 18, 2009:

The Trial Court erred in granting summary judgment on Plaintiff's third cause of action, Breach of Contract, based on the statute of limitations. As argued during the June 18, 2009 hearing, the cause of action for Breach of Contract was timely filed and should not be dismissed.

Defendant Carey E. Graham offered to purchase Plaintiff's interest in Cable Plus of Carolina, Inc., for \$250,000.00 on July 15, 1998. An acceptance of offer was made in writing on July 28, 1998, and a contract of purchase drafted. When Defendant Graham failed to close as agreed, Plaintiff sent Defendant Graham a default notice on September 8, 1998.

On December 21, 1999, a shareholders meeting was held at the law offices of Van Osdell, Lester and Howe. The meeting was attended by Plaintiff, Defendant Graham and Plaintiff's counsel. During the course of the meeting Plaintiff discovered the fraud alleged in her complaint. Plaintiff filed her original Complaint on November 29, 2000, approximately one year from the date the alleged fraud was discovered.

The original Complaint in this action was filed November 29, 2000, two years and two months after Defendant Graham was sent the default notice for failure to close on the \$250,000.00 purchase of Plaintiff's stock in Cable Plus of Carolina, Inc., and one year after the discovery of Defendant Graham's fraudulent activity.

The November 29, 2000 Complaint alleged a shareholder's derivative claim on behalf of Cable Plus of Carolina, Inc. On

June 5, 2003 counsel for Plaintiff filed a Motion to Amend and Amended Complaint substituting Southbridge Cable Television, LLC, as the corporation in the first two causes of action, and added a cause of action for Breach of Contract. The amendment was filed two years and seven months after the filing of Plaintiff's original Complaint on November 29, 2000. The amended Complaint falls well within three (3) years after the filing of the original Complaint.

On June 23, 2004 Plaintiff's counsel filed a second Amended Complaint correcting minor scrivener's errors. The causes of action and parties as set out in the June 5, 2003 First Amended Complaint remained the same as in the June 24, 2004 Second Amended Complaint.

The causes of action in the June 5, 2003 and June 23, 2004 Amended Complaints relate back to the filing of the original Complaint on November 29, 2000, under Rule 15(c), SCRCP.

Our Supreme Court has specifically addressed the question of when Rule 15(c) enables a party to avoid the statute of limitations in the case of Thomas v. Grayson, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995) stating:

"The test to be used in determining whether or not an amendment should be allowed to relate back under Rule 15(c) to the date of the original pleading to avoid the statute of limitations, is found in the language of the Rule; specifically, whether the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in

the original pleading."

In Federal practice the factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the defending party against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back. Moore's Federal Practice § 15.19.

Defendant Graham had notice of allegations of fraud in the original Complaint. The same kind of evidence would be used to prove all three causes of action. There would be no unfair surprise to Defendant Graham because the allegations of fraud had been made as early as 2000.

As to the cause of action for Breach of Contract, it to sounds in fraud. Defendant Graham offered to purchase Plaintiff's interest in Cable Plus of Carolina, Inc., for \$250,000.00. An offer to purchase was made in writing on July 15, 1998; an acceptance of offer was made in writing on July 28, 1998, and a contract of purchase was drafted. On September 8, 1998 Plaintiff sent Defendant Graham a default notice. The timeline in this case is as follows:

Cable Plus of Carolina, Inc., formed September 15, 1989;
Southbridge Cable Television, LLC, formed June 1, 1995;
Crystal Cablevision, LLC, formed March 21, 1997;

Offer to purchase to Plaintiff July 15, 1998;
Acceptance of offer to purchase July 28, 1998;
Default notice to Defendant Graham September 8, 1998;
Ownership in Crystal Cablevision, LLC, discovered
December 21, 1999;
Summons and Complaint filed November 29, 2000;
Motion to Amend and Amended Complaint filed
June 6, 2003 adding Breach of Contract cause of action;
Second Amended Complaint filed June 23, 2004.

From the time-line set out above one can conclude that Defendant Graham was operating behind Cable Plus of Carolina, Inc., and Southbridge Cable Television, LLC. The offer to purchase Plaintiff's interest in Cable Plus of Carolina, Inc., was part of a scheme to defraud Plaintiff and gain control of the cable television business. Ultimately Time Warner Cable purchased the cable television system operated by Crystal Cable Television as part of a \$27,000,000.00 buy out of cable systems in the Surfside Beach, South Carolina area. Defendant Graham participated in the \$27,000,000.00 based on his membership in Crystal Cablevision, LLC.

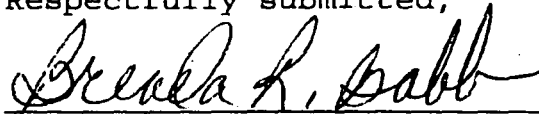
The cause of action for Breach of Contract was timely with the filing of the Motion to Amend and Amended Complaint on June 6, 2003. Defendant Graham's actions giving rise to Breach of Contract relate back to the filing of the Original Complaint on November 29, 2000 pursuant to Rule 15(c), SCRCp. Therefore, the third cause of action for Breach of Contract was timely filed and

summary judgment should have been denied.

CONCLUSION

Based upon the foregoing arguments, Plaintiff Brenda Babb requests the Trial Court reconsider and reverse its June 19, 2009 Order granting summary judgment on the Breach of Contract cause of action.

Respectfully submitted,



Brenda R. Babb
Plaintiff Appearing Pro se

Calabash, North Carolina 28467
Office (843)249-3700

July 18, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

BRENDA R. BABB,)
)
Plaintiff,)
vs.)
)
CAREY E. GRAHAM, SOUTHBRIDGE)
CABLE TELEVISION, LLC, and)
CABLE PLUS OF CAROLINA, INC.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 00-CP-26-5411

CERTIFICATE OF SERVICE

2009 JUL 21 PM 1:42
CLERK OF COURT
JULY 21 2009
JULY 21 2009

I, the undersigned, do hereby certify that I served by
Regular U.S. Mail on July 20, 2008 Plaintiff's MOTION TO
RECONSIDER JUNE 19, 2009 ORDER on the following:

The Honorable J. Michael Baxley
531 E. Carolina Avenue
Hartsville, South Carolina 29550

J. Jackson Thomas, Esquire
Thompson & Henry, P.A.
P.O. Box 1290
Myrtle Beach, South Carolina 29578



Brenda R. Babb

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 00-CP-26-5411

BRENDA R. BABB,)
Plaintiff,)

vs.)

CAREY E. GRAHAM, SOUTHBRIDGE)
CABLE TELEVISION, LLC, and)
CABLE PLUS OF CAROLINA, INC.)

Defendants.)

**MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT**

Defendant Carey E. Graham has moved for summary judgment on the three causes of action in this lawsuit, Breach of Fiduciary Duty, Misappropriation of Corporate Opportunity/Accounting and Breach of Contract, asserting that the statute of limitations is a bar to this action and the case should be dismissed.

The original Complaint in this action was filed November 29, 2000 alleging a shareholder's derivative claim on behalf of Cable Plus of Carolina, Inc. On June 5, 2003 counsel for Plaintiff filed a Motion to Amend and Amended Complaint substituting Southbridge Cable Television, LLC, as the corporation in the first two causes of action and added a cause of action for Breach of Contract. On June 23, 2004 Plaintiff's counsel filed a second amended Complaint correcting minor scrivener's errors. The causes of action and parties remained the same.

The amended Complaint filed June 5, 2003 falls well within the the three (3) years after the filing of the original Complaint. Consequently, a bar of the three (3) year statute of limitations does not apply. Even if the second Amended Complaint filed June 23, 2004 was outside the three (3) statute, the causes of action

relate back to the filing of the original Complaint under Rule 15(c), SCRPC.

Our Supreme Court specifically addressed the question of when Rule 15(c) enables a party to avoid the statute of limitations in the case of Thomas v. Grayson, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995) stating:

"The test to be used in determining whether or not an amendment should be allowed to relate back under Rule 15(c) to the date of the original pleading to avoid the statute of limitations, is found in the language of the Rule; specifically, whether the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading."

In Federal practice the factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the defending party against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back. Moore's Federal Practice § 15.19.

In this case all of these parameters have been met. Defendant Graham certainly had notice of allegations of fraud in the original Complaint. The same kind of evidence will be used to prove all of the causes of action so there will be no unfair surprise if the amendment relates back.

As to the cause of action for Breach of Contract, it to sounds in fraud. Defendant Graham offered to purchase Plaintiff's interest in Cable Plus of Carolina, Inc., for \$250,000.00. An offer to purchase was made in writing on July 15, 1998; an acceptance of offer was made in writing on July 28, 1998, and a contract of purchase of drafted. On September 8, 1998 Plaintiff sent Defendant Graham a default notice.

It is not the date Defendant Graham failed to close on the contract that controls but rather the date that the fraud was discovered. On December 21, 1999, a shareholders meeting was held at the law offices of Van Osdell, Lester and Howe. The meeting was attended by Plaintiff and Defendant Graham. During the course of the meeting, moderated by Attorney Van Osdell, Defendant Graham admitted that he "might" have interests in other cable television companies. It was at that time that Plaintiff Babb discovered the fraud that is the foundation of her complaint.

The original Complaint was filed on November 29, 2000, approximately one year from the date the fraud was discovered. Pursuant to discovery requests Plaintiff found that Crystal Cablevision, LLC, was formed on March 21, 1997. It was also determined that Defendant Graham held a 25% membership in Crystal Cablevision, LLC.¹ Plaintiff knew the breach of the contract had occurred but did not know of the fraud until December 21, 1999.

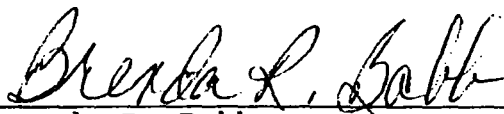
¹ Defendant Graham was President of Cable Plus of Carolina, Inc., and Managing Member of Southbridge Cable Television, LLC, at the time Crystal Cablevision, LLC, was formed. Crystal Cablevision, LLC, was in direct competition with Cable Plus of Carolina, Inc., and Southbridge Cable Television, LLC.

The timeline in this case is as follows:

Cable Plus of Carolina, Inc., formed September 15, 1989;
Southbridge Cable Television, LLC, formed June 1, 1995;
Crystal Cablevision, LLC, formed March 21, 1997;
Offer to purchase to Plaintiff July 15, 1998;
Acceptance of offer to purchase July 28, 1998;
Default notice to Defendant Graham September 8, 1998;
Fraud discovered December 21, 1999;
Summons and Complaint filed November 29, 2000;
Motion to Amend and Amended Complaint filed June 6, 2003;
Second Amended Complaint filed June 23, 2004.

From the timeline set out above one can conclude that Defendant Graham was operating behind Cable Plus of Carolina, Inc., and Southbridge Cable Television, LLC. The offer to purchase Plaintiff's interest in Cable Plus of Carolina, Inc., was part of a scheme to defraud Plaintiff and gain control of the cable television business. Ultimately Time Warner Cable purchased the system operated by Crystal Cable Television for \$27,000,000.00 as part of a buy out of cable systems in the Surfside Beach area. Plaintiff has been damaged in the amount of \$250,000.00 by Defendant Graham's fraudulent actions on the breach of contract. Fraud is an issue for the jury and fraud keeps this lawsuit viable.

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law," *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003). The causes of action in this lawsuit were timely and summary judgment should be denied.


Brenda R. Babb

June 18, 2009

Calabash, N.C. 29467
Office: 843-249-3700
Facsimile: 843-249-370

DANIEL G. HALL
ATTORNEY AT LAW
1293 D PROFESSIONAL DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

TELEPHONE (803) 449-9541
FACSIMILE (803) 497-9848

July 15, 1998

Robert M. Erwin, Jr., Esquire
Nelson, Mullens, Riley & Scarborough
301 North Main Street
Greenville, S.C. 29601

Re: Cable Plus of Carolina, Inc.

Dear Bob:

Subsequent to our conversation last Friday, I have had the opportunity to review your proposals with Mr. Graham regarding both a potential buy-out of Mr. Babb's interest in Cable Plus of Carolina, Inc. ("Cable Plus") and an evaluation of the current business and market for the company's product and establishment of the value of the parties' interests in the enterprise. We appreciate what appears to be a constructive effort to resolve the issues that have been outstanding for some time and a rational approach to effecting a final resolution to the corporate ownership positions of the parties.

Mr. Graham has, in the interim, spent a significant amount of time attempting to evaluate Mr. Babb's offer in terms of the current and potential future business opportunities for Cable Plus and is prepared to make a formal offer for the purchase of Mr. Babb's interest in the company. While we certainly believe that substantial value can be established for the business of Cable Plus, we believe that Mr. Babb's evaluation is significantly higher than is justified under the current competitive business climate in the industry, the competition faced by Cable Plus from both Horry Telephone Cooperative and Jones Intercable in its local area of operation, the possibility for the company to be forced into a bulk-rate agreement, and therefore a much lower profit margin business arrangement, by the community associations presently served, and the high rate of technological advancement in the cable and in-home entertainment service industry.

Mr. Graham is prepared to make the following offer:

1. Mr. Graham will purchase all of the Babbs' right, title and interest in Cable Plus of Carolina, Inc., to be evidenced by the delivery to Mr. Graham, at the time of closing of the transaction, properly prepared stock certificates or other verifiable evidence of transfer of the Babbs' equity interest in the corporation if the stock certificates are not available and documentation that fully and finally releases and discharges any and all claims that the Babbs' may have against Cable Plus or any of its officers, agents, employees, contractors or affiliates and

Robert M. Erwin, Jr., Esq.

Page 2

further, covenants not to, at any time in the future, sue, bring action or make a claim against Cable Plus or any of its officers, agents, employees, contractors or affiliates.

2. The consideration to be paid for the Babbs' interest in Cable Plus, and the releases and covenants set forth above, shall be the sum of Two Hundred, Fifty Thousand (\$250,000.00) Dollars, to be paid in cash or immediately available funds at the time of closing.

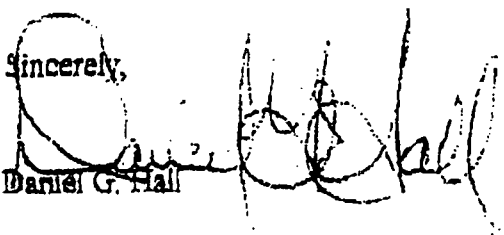
3. Closing of the transaction shall be subject to the satisfactory completion of the various contracts and documents of transfer required to effect the transaction in accordance with the terms set forth in this offer, but shall be no later than thirty (30) days from the date of the Babbs' acceptance of this offer.

4. This offer shall remain effective and available for acceptance for a period of fifteen (15) days from the date of this letter. Thereafter, whether formal written notice of withdrawal of this offer is given, or not so given, the offer shall be considered as withdrawn.

In the event that the foregoing offer is acceptable to the Babbs, I request that you provide to me notice, in writing of their acceptance and the date thereof. Upon receipt of such notice, I will begin preparation, for your review, of the necessary documentation to effect the transaction.

Thank you for your assistance and cooperation in this matter. I look forward to hearing from you in the near future. In the interim, if you have any questions about the foregoing proposal, please contact me.

Sincerely,


Daniel G. Hall

DGH/mbt

Malcolm M. Babb

Little River, SC 29566
July 28, 1998

Mr. Daniel G. Hall
Attorney at Law
1293 D Professional Drive
Myrtle Beach, SC 29577

RE: Cable Plus of Carolina, Inc.

Dear Mr. Hall:

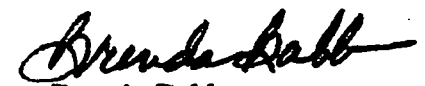
This letter is in reference to your letter of July 15, 1998 concerning the buy-out of the Babbs' interest in Cable Plus of Carolina, Inc.

Brenda Babb and Malcolm M. Babb hereby accept such offer pursuant to the terms and conditions set forth in such letter dated July 15, 1998, a copy of which is attached hereto and by reference made a part hereof.

Very truly yours.



Malcolm M. Babb



Brenda Babb

Received by
Pat Smith
July 29, 1998
10:03 AM

DANIEL G. HALL
ATTORNEY AT LAW
1293 D PROFESSIONAL DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

TELEPHONE (803) 449-9541
FACSIMILE (803) 497-9848

FACSIMILE TRANSMISSION

DATE: 8/14/98

PLEASE DELIVER THE FOLLOWING PAGE(S)

TO: ROBERT M. ERWIN, JR., ESQ

FIRM: NELSON, MULLINS, RILEY & SCARBOROUGH

FAX #: (864) 250-2394

FROM: DAN HALL

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

SUBJECT: BABB - GRAHAM STOCK TRANSFER

COMMENTS:

Please give me your comments on the attached Agreement. We would like to schedule closing for the week of August 24, 1998.

Thanks
Dan Hall

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service.

Thank you.

Stock Purchase Agreement

This Agreement, made this _____ day of August 1998, by and between CAREY E. GRAHAM, hereinafter (the "Purchaser"), MALCOLM M. BABB and BRENDA BABB, his wife, hereinafter (the "Seller") and CABLE PLUS OF CAROLINA, INC., A South Carolina Corporation, hereinafter (the "Corporation").

WITNESSETH:

Whereas, Purchaser currently owns and possesses one half (1/2) of all of the issued and outstanding shares of common stock of the Corporation, the sum of Three Hundred, Thirty-three and One-third (333 1/3) shares of the said issued and outstanding common stock, and

Whereas, Seller currently owns and possesses the remaining one half (1/2) of the issued and outstanding shares of the Corporation, the sum of Three Hundred, Thirty-three and One-third (333 1/3) shares of the said issued and outstanding common stock, and

Whereas, the Corporation is a requisite party to this Agreement as a third party beneficiary of certain terms, provisions, obligations and understandings of the Purchaser and Seller hereinafter set forth, and

Whereas, Purchaser desires to purchase and Seller desires to sell to Purchaser all of Seller's common stock of the Corporation and, therefore, all of seller's right, title and interest in and to the Corporation, and,

Whereas, the parties hereto desire to formalize the purchase and sale transaction and to set forth and establish the terms, provisions, and conditions of the purchase and sale transaction.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein and the monetary consideration established and specifically stated herein, the parties agree as follows:

1. Purchaser hereby agrees to purchase and Seller hereby agrees to sell Three Hundred, Thirty-three and One-Third (333 1/3) shares of common stock of the Corporation, (the "Common Stock") representing all of Seller's interest in and ownership of the Corporation and its successors, assigns or subsidiaries, if any exist, and being one-half (1/2) of all of the issued and outstanding shares of common stock of the Corporation.
2. Purchaser hereby agrees to pay to Seller, upon delivery of stock certificates bearing proper signatures and documentation of transfer to Purchaser, or other certification of transfer of Seller's interest if the stock certificates have been lost, destroyed or are otherwise unavailable for transfer, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in cash or immediately available funds at the time of transfer.
3. The Seller, MALCOLM M. BABB, hereby acknowledges that, on the books and transfer records of the Corporation and pursuant the official minutes and records of the Corporation, he is the record owner of the shares of Common Stock to be

transferred to Purchaser, but represents that he has transferred, or has intended to transfer, his ownership of the said Common Stock to his wife, BRENDA BABB. The Seller, BRENDA BABB, hereby expressly acknowledges her agreement to transfer all of her right, title and interest in and to the shares of Common Stock of the Corporation and all of her right, title, interest and ownership in, to and of the Corporation to be transferred pursuant to the terms of this Agreement and expressly agrees to be bound by all of the other and remaining terms, provisions, and obligations of Seller herein.

4. Seller expressly warrants that Seller is the lawful owner of the Common Stock to be transferred pursuant to this Agreement; Seller has a legal right to sell the said Common Stock; that the Common Stock is free from all liens and encumbrances; that the Seller will defend the Common Stock and the transfer thereof against the claims and demands of any and all persons or entities; and that the Common Stock transferred pursuant to this Agreement constitutes all of the right, title, interest and ownership of Seller in, to and of the Corporation and any successors, assigns or subsidiaries of the Corporation.
5. Seller hereby expressly covenants and agrees to not, either directly or indirectly, alone or with others, enter into, manage, acquire or hold ownership in, or in any manner engage in the business of the provision of cable television service or cable television signals, or other related in-home entertainment services for private residences, residential communities or businesses within the geographic limits of Horry and Georgetown Counties, in the State of South Carolina, for a period of two (2) years from the date of execution of this Agreement. Further, Seller shall not, for the said two-year period in Horry and Georgetown Counties, South Carolina, divulge, communicate, use to the detriment of Purchaser or the Corporation, or for the benefit of any other person or persons, or misuse in any way, any confidential information or trade secrets of the Corporation, including customer lists, personnel or contract information, or any operational or technical data of the Corporation. Seller also agrees, subsequent to the execution of this Agreement, to refrain directly or indirectly from the statement, utterance, publication or any other means of dissemination, of any disparaging remarks, statements or information about or relating to the Corporation, its operations, or any of its offices, employees, agents, contractors or affiliates.
6. Seller agrees, at the time of the closing of the transaction contemplated by this Agreement, to tender to the Purchaser and the Corporation, in a form legally binding and acceptable to the Purchaser and the Corporation, a resignation, in writing from any and all offices held with the Corporation and from the Board of Directors of the Corporation.
7. Seller, by execution of this Agreement and upon the closing of the transaction contemplated hereby and, at the time of closing, acceptance of the consideration to be paid for Seller's transfer of the Common Stock of the Corporation to Purchaser, and with the intention of binding the heirs, legal representatives and assigns of both MALCOLM M. BABB and BRENDA BABB, expressly releases and discharges Purchaser and Purchaser's heirs, legal representatives and assigns and the Corporation and its legal representatives, assigns, successors, subsidiaries, affiliates, officers, employees, contractors, suppliers and any and all

contractual partners, affiliates or customers, of and from any and all claims, demands, actions, judgments and executions that Seller ever had, or now has, or may have, known or unknown, or that anyone claiming through or under Seller may have, or claim to have against Purchaser or Purchaser's heirs, legal representatives or assigns, or the Corporation or its legal representatives, assigns, successors, subsidiaries, affiliates, officers, employers, contractors, suppliers, or any contractual partner or affiliate or customer of the Corporation, created by, or arising out of Seller's participation in, or ownership of the Common Stock of the Corporation or ownership of any successor or subsidiary of the Corporation or the business operations of the Corporation or its subsidiaries or successors, or any actions of the officers or directors of the Corporation relating to the business or operation of the Corporation. Seller further covenants, for Seller and Seller's heirs, legal representatives and assigns, to not, now and for evermore to make any claim or demand, or commence, cause or permit to be prosecuted, any action at law or suit in equity against Purchaser or Purchaser's heirs, legal representatives or assigns, or the Corporation or its legal representatives, assigns, successors, subsidiaries, affiliates, officers, employees, contractors, suppliers or any contractual partner or affiliate or customer of the Corporation on account of any claims, losses or other damages of any kind relating to the business operations of the Corporation or its subsidiaries or successors, or any actions of the officers or directors, of the Corporation relating to the business operation of the Corporation.

8. Upon execution of this Agreement and the closing of the transaction contemplated hereby, including the transfer of the Common Stock of the Corporation by Seller to Purchaser and the tender of the resignation of Seller from the positions of officer and director of the Corporation, Purchaser, for himself, his heirs, legal representatives and assigns and for any other persons, or entities claiming through or under him, and the Corporation and its legal representatives, assigns successors or subsidiaries or any person or entity claiming through or under it, shall release Seller and Seller's heirs, legal representations and assigns of and from any and all claims, demands, actions, judgements and executions that Purchasers or the Corporation ever had, or now has, or may have, known or unknown, created by or arising out of Seller's participation in, ownership of or management of the Corporation or the business of the Corporation, and further releases Seller from any and all further duties and obligations, either financial or managerial, to the Corporation.
9. Purchaser, Seller and the Corporation agree that this Agreement and any other and further documentation necessary to fully effect the turns and provisions hereof shall be placed among the records of the Corporation and thereby expressly become a part of those records.
10. The parties hereto agree that the terms provisions, covenants, warranties and obligations, contained in this Agreement shall survive the closing of the stock purchase and transfer contemplated hereby and shall, in all respects, be enforceable against the parties, their heirs, legal representatives, assigns and successors subsequent to the time of the said closing of the transaction.

11. In the event of a breach of any of the terms, provisions, covenants, undertakings or obligations contained in this Agreement which shall result in a claim, demand or legal action, the parties hereto agree that the party who shall successfully assert such a claim, demand or legal action to cure or remedy the breach shall be paid, by the party against whom the claim, demand or legal action is asserted, all of the successful party's costs, including reasonable attorney's fees, incurred as a result of the claim, demand or legal action.
12. This agreement constitutes the entire agreement of the parties hereto concerning the subject matter hereof. No promise or undertaking has been made by any party hereto and no other or further understanding exists with respect to the Common Stock to be transferred or the income, business or operations of the Corporation, except as expressly set forth herein.
13. This Agreement shall inure to the benefit of the parties hereto; shall not be assignable to any other person or entity by any of the parties; and shall not be modified, except in writing and accepted and executed by all of the parties hereto.
14. This Agreement may be executed in two or more counterparts, each of which, upon full signature and execution, shall constitute an original Agreement.
15. This Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement in Myrtle Beach, South Carolina on the date first above written.

WITNESS

CAREY E. GRAHAM
CABLE PLUS OF CAROLINA, INC.

WITNESS

by: _____
CAREY E. GRAHAM
PRESIDENT

WITNESS

MALCOM M. BABB

WITNESS

BRENDA BABB

H. FRANKLIN BURROUGHS, P.A.

ATTORNEY AT LAW

Post Office Box 1792

Conway, South Carolina 29528

Conway Office
204 Elm Street, Suite 100
Conway, South Carolina 29526
Telephone: (843) 248-5055
Fax: (843) 248-5644
*E-mail: Frankli367@aol.com

Myrtle Beach Office
1359 21st Avenue North, Suite 104
Myrtle Beach, South Carolina 29577
Telephone: (843) 448-7211
Fax: (843) 448-7170
*E-mail: Frankli495@aol.com

* NOT FOR CONFIDENTIAL COMMUNICATION

* NOT FOR CONFIDENTIAL COMMUNICATION

September 8, 1998

FAX TRANSMITTAL/
HARD COPY TO FOLLOW

Daniel G. Hall, Esquire
1293 D Professional Drive
Myrtle Beach, South Carolina 29577

Re: Contract for Sale of Shares of Cable Plus of
Carolina, Inc. from Malcolm M. Babb and Brenda Babb
to Carey E. Graham; Our File # 800-156

Dear Dan:

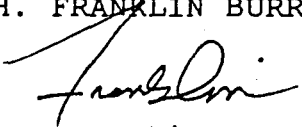
Please let this letter act as notice that your client,
Carey Graham, is in default under the terms of the above
referenced agreement. In the event this default has not been
cured within ten (10) days from the date of this letter, Mr.
and Mrs. Babb will pursue their available legal and equitable
remedies.

If you have any questions, please do not hesitate to
contact me. Thank you for your cooperation.

With kindest personal regards, I remain

Very truly yours,

H. FRANKLIN BURROUGHS, P.A.


H. Franklin Burroughs

HFB/agn

cc: ✓Mr. and Mrs. Malcolm M. Babb

075

Web Site:

<http://www.sccoast.net/burroughs>

H. FRANKLIN BURROUGHS, P.A.

ATTORNEY AT LAW

Post Office Box 1792

Conway, South Carolina 29528

Conway Office:

Elm Street, Suite 100

Conway, South Carolina 29526

Telephone: (843) 248-5055

Fax: (843) 248-5644

*E-mail: Frankli367@aol.com

* NOT FOR CONFIDENTIAL COMMUNICATION

Myrtle Beach Office

1359 21st Avenue North, Suite 104

Myrtle Beach, South Carolina 29577

Telephone: (843) 448-7211

Fax: (843) 448-7170

*E-mail: Frankli495@aol.com

* NOT FOR CONFIDENTIAL COMMUNICATION

August 25, 1998

**FAX TRANSMITTAL/
HARD COPY TO FOLLOW**

Daniel G. Hall, Esquire
1293 D Professional Drive
Myrtle Beach, South Carolina 29577

Re: Stock Purchase Agreement; Contract for Sale of
Shares of Cable Plus of Carolina, Inc. from Malcolm
M. Babb and Brenda Babb to Carey E. Graham; Our
File # 800-156

Dear Dan:

I met with Mr. Babb this morning regarding the above referenced matter. I communicated to him the matters and things we discussed by telephone yesterday, August 24, 1998. The Babbs intend to abide by the terms of the above referenced contract. Further, they are agreeable to executing the Stock Purchase Agreement, as amended by my letter dated August 21, 1998. They are not prepared to relinquish any additional rights or ownership interests, as these rights and ownership issues were not addressed in the written offer and acceptance.

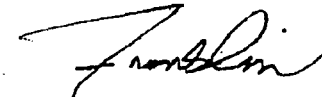
Mr. and Mrs. Babb are ready, willing and able to perform under the terms of the contract of sale of shares of Cable Plus of Carolina, Inc. to Carey E. Graham. Failure of Mr. Graham to perform under the contract will result in the Babbs' seeking their available legal and equitable remedies.

If you have any questions, please do not hesitate to contact me. Thank you for your cooperation.

With kindest personal regards, I remain

Very truly yours,

H. FRANKLIN BURROUGHS, P.A.



H. Franklin Burroughs

HFB/agn

cc: Mr. and Mrs. Malcolm M. Babb

Web Site:

<http://www.sccoast.net/burroughs>

076

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS NONJURY
	)	
COUNTY OF HORRY	)	(00-CP-26-5411)
	)	
BRENDA R. BABB	)	
	)	
	)	
VERSUS	)	TRANSCRIPT OF RECORD
	)	
	)	
CAREY E. GRAHAM, et al	)	June 18, 2009
	)	Conway, S. C.
	)	
	)	

B E F O R E:

HONORABLE J. MICHAEL BAXLEY, Judge.

A P P E A R A N C E S:

BRENDA R. BABB
PRO SE

J. JACKSON THOMAS, ESQ.
ATTORNEY FOR DEFENDANTS

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON JUNE 18, 2009.)

2 THE COURT: All right. The next matter that we have on
3 our docket, we have two things that are set for -- actually
4 everything was set at the same time this morning. We have ---

5 (COURT CONFERS WITH HIS LAW CLERK.)

6 THE COURT: All right. We have three cases set this
7 morning that are next on the docket, which are companion
8 cases, and that they all involve the same party. They are
9 Brenda Babb versus Carey Graham and others, Time Warner Cable
10 versus Renaissance Enterprises, and Brenda Babb versus Time
11 Warner Cable. These are cases (00-5411), (04-6521), and (08-
12 9770).

13 Counsel, if y'all want to come forward in these matters
14 please do, and we will talk about how we want to structure
15 these matters.

16 Ms. Babb, please come forward, if you will.

17 All right. What my intention was, was to take these
18 cases in the order of their age. The oldest case is a 2000
19 case, which is Brenda Babb versus Carey Graham. There is a
20 motion for summary judgment in that matter. It would be my
21 intention to start there, then move to the other cases, unless
22 that somehow offends counsel's schedule and is not convenient
23 to the larger group.

24 Any objection to that?

25 MR. THOMAS: No sir.

1 **THE COURT:** All right. Then hearing none, let's move
2 forward then in the matter of Brenda Babb versus Carey Graham,
3 and this is a motion for summary judgment filed November 13th,
4 2008.

5 And let's make sure we have -- our record will reflect
6 everyone who is appearing here today in this matter.

7 Mr. Thomas, we will let you start by introducing
8 yourself, please.

9 **MR. THOMAS:** If it please the Court, I am Jack Thomas,
10 and I represent the Defendants, and it's our motion for
11 summary judgment.

12 **THE COURT:** Very good. And then Ms. Babb.

13 **MS. BABB:** Good morning. I am Brenda Babb and I am
14 appearing pro se in this matter.

15 **THE COURT:** All right. Welcome to the courtroom, Ms.
16 Babb.

17 **MS. BABB:** Thank you, sir.

18 **THE COURT:** And Mr. Thomas, you are the moving party.
19 I'll be glad to hear from you.

20 **MR. THOMAS:** If it please the Court, Your Honor, if I
21 may approach the bench. I would like to hand the Court a copy
22 of the documents from which my motion will be based. Now
23 these are all actually in the record, but I wasn't sure
24 whether the record would be here. These are the documents
25 that I will make reference to in my argument..

1 **THE COURT:** Very good. And let's let our record
2 reflect that Ms. Dixie Eubank is our Court Reporter today in
3 the event we need -- someone needs a transcript of this
4 proceeding.

5 And seated with me on the bench is Ms. Katie Hinson who
6 is working as an intern from the University of South Carolina
7 School of Law. We also have Carlee Wilcox, my law clerk, here
8 in the courtroom if anyone needs to contact my office.

9 Raymond Nobles is our security officer, and Bobby Ropp
10 is our bailiff today.

11 Go ahead, Mr. Thomas.

12 **MR. THOMAS:** If it please the Court, the first document
13 I would like to call the Court's attention to is a pleading
14 filed November 29th of the year 2000. It was the initial
15 pleading filed in the lawsuit, and it states a claim against
16 Carey Graham and Cable Plus of Carolina, Inc.. It is
17 Shareholder's Derivative Claim. It alleges two Causes of
18 Action against Carey Graham and Cable -- and on behalf of
19 Cable Plus. The first is a breach of fiduciary duty claim,
20 the second is a misappropriation of corporate opportunity.
21 Again, this case was filed November 29th of 2000.

22 I next call the Court's attention to an Amended
23 Complaint filed June 23rd, 2004. Again, this is styled as a
24 Shareholder's Derivative action. It makes as a party for the
25 first time an additional Defendant, SouthBridge Cable

1 Television, L.L.C., and asserts a claim against SouthBridge --
2 on behalf of SouthBridge against Mr. Graham.

3 Also, Your Honor, in the Complaint -- in the pleading
4 filed in 2004, it asserts additional, again for the first
5 time, a personal claim by Ms. Babb against Mr. Graham,
6 alleging that Mr. Graham breached a contract to purchase an
7 interest in an entity called Cable Plus of Carolina, Inc..

8 Now, the basis of our motion for summary judgment is
9 simply this. Ms. Babb alleges in her Complaint filed in 2000
10 that Mr. Graham somehow did something wrong in failing to make
11 available the opportunity to invest in an entity called
12 Crystal CableVision, L.L.C.. So clearly as of 2000 Ms. Babb
13 was aware of the facts that constituted the basis for the
14 claim, yet when she filed her claim in 2000 she made no claim
15 against Defendant -- or on behalf of Defendant, SouthBridge
16 CableVision, and she did not do that until she filed her
17 pleading in 2004.

18 And her pleading filed in 2004, if we may -- if I may
19 call the Court's attention to both the First and Second Causes
20 of Action, actually does not ask for any remedy except a
21 remedy on behalf of SouthBridge Cable Television, L.L.C.,
22 which, again, was not made a party until 2004, so we say, if
23 she knew of the facts that constituted the basis of the claim
24 as early as 2000, then obviously the filing of a claim four
25 years later is beyond the three-year statute of limitations,

1 and that, very simply, as simply as I can put it, is the basis
2 of our claim for summary judgment based on the statute of
3 limitation as to the First and Second Causes of Action.

4 Now, the Third Cause of Action, which, again, she
5 asserts for the first time in an individual capacity in 2004,
6 in the pleading filed 2004, is a claim that Mr. Graham owes
7 her personally money because he breached a contract to buy her
8 interest in an entity called Cable Plus of Carolina, Inc., and
9 the basis for our motion in that regard, Your Honor, is
10 attached -- is a letter which is attached to our motion, a
11 letter dated September the 8th, 1998, and it's a letter signed
12 by Franklin Burroughs, a now deceased member of the Bar, and
13 Mr. Burroughs is threatening to sue on behalf of Mr. and Mrs.
14 Babb, my client, for breach of this contract he says they had
15 to buy their interest in Cable Plus.

16 The letter clearly demonstrates that as early as 1998
17 Ms. Babb knew she had a claim, in fact, she hired a lawyer to
18 write a letter saying he was going to sue them, yet he makes
19 no claim, filed no action Mr. -- my client on that behalf
20 until the filing of the pleading in 2004.

21 **THE COURT:** So this was not included in the 2000 suit,
22 in your opinion, that -- this cause of action?

23 **MR. THOMAS:** That is correct, Your Honor. It
24 definitely was not, in our opinion ---

25 **THE COURT:** Okay.

1 **MR. THOMAS:** ---And that's the basis of our motion.

2 **THE COURT:** All right. Now, counsel, help me to
3 understand, why is it that this 2000 case is still pending, in
4 other words, has not reached a resolution, and we are here
5 today in 2009 on a summary judgment?

6 **MR. THOMAS:** The principal reason, Your Honor, is that
7 immediately prior to the filing of the Second Amended
8 Complaint, which was filed in 2000, Ms. Babb originally was
9 represented by the VanOsdell Law Firm. In May of that same
10 year the VanOsdell Law Firm moved to be relieved as counsel
11 because they apparently had had a disagreement with Ms. Babb
12 about how the case was to proceed.

13 Ms. Babb appealed the Order relieving the VanOsdell Law
14 Firm to the -- first to the Court of Appeals and then
15 petitioned for Cert to the Supreme Court, and that delayed it
16 for a number of years, and so now it's back here.

17 **THE COURT:** Has there been any discovery in this case?

18 **MR. THOMAS:** Yes sir.

19 **THE COURT:** There has. All right. Very good. Thank
20 you. I may come back to you for a reply.

21 **MR. THOMAS:** Thank you.

22 **THE COURT:** Ms. Babb, be glad to hear from you, Ma'am.

23 **MS. BABB:** Thank you, sir. If I may approach.

24 **(MS. BABB APPROACHES THE BENCH.)**

25 **MS. BABB:** Be a very short Memorandum ---

1 **THE COURT:** Thank you.

2 **MS. BABB:** ---Which sets our specifically my argument
3 in reply to Mr. Thomas.

4 As he did say, I was originally represented by the
5 VanOsdell Law Firm, Cindy Graham Howe, our present Master, was
6 the attorney that worked on this case.

7 The originally Complaint in this action was filed on
8 November 29, 2000, alleging a Shareholder Derivative Claim on
9 behalf of Cable Plus of Carolina, Inc.. On June -- this is
10 the step that Mr. Thomas has left out. On June 5, 2003 my
11 counsel filed a Motion to Amend an Amended Complaint
12 substituting Southbridge Cable Television, L.L.C. as the
13 corporation in the first two causes of action, and added a
14 cause of action for Breach of Contract.

15 A year later, on June 23, 2004 counsel filed a Second
16 Amended Complaint correcting scrivener's errors that were in
17 the previous amendment. The causes of action in the Second --
18 the First and the Second Amended Complaints remained the same,
19 and the parties remained the same. The Amended Complaint that
20 was filed on June 5, 2003 falls within the three years after
21 the filing of the original Complaint, consequently, the
22 statute of limitations is not a bar to this amendment.

23 Even if the Second Amendment that was filed on June 23,
24 2004 was outside of the three-year statute the causes of
25 action relate back to the original Complaint that was filed on

1 November 29, 2000. That's according to Rule 15(C) of the
2 South Carolina Rules of Civil Procedure.

3 The case of Thomas versus Grayson specifically addressed
4 what would constitute a party being able to avoid the statute.
5 by the application of Rule 15(C). This was a 1995 case and
6 the law is still good, and I am going to quote, "The test to
7 be used in determining whether or not an amendment should be
8 allowed to relate back to Rule 15(C) to the date of the
9 original pleading to avoid the statute of limitations is found
10 in the language of the Rule. Specifically, whether the claim
11 or defense asserted in the amended pleading arose out of the
12 conduct, transaction or occurrence set forth in the original
13 pleading. In this case it's absolutely the situation.

14 Federal practice also sets out factors that are used to
15 determine whether an amendment relates back to the original
16 pleading. One, "Whether the defending party against the new
17 claim had notice of it": Certainly Defendant Graham had
18 notice of it when the Motion to Amend and the Amended
19 Complaint attached to that motion was filed on June 6, 2003,
20 which was within the statute. "Whether the party seeking to
21 add the new claim would rely on the same evidence in support
22 of the original claim to prove the new claim": Absolutely.
23 That is also true in this case. It's Mr. Graham's actions
24 with the corporation's -- all the same evidence would be used
25 in proving all of the allegations. And "Whether there was any

1 unfair surprise to the defending party would result if the
2 amendment were to relate back": There is no surprise. Mr.
3 Graham had notice with the filing of the Amended Complaint
4 along with the motion. Your Honor, the Motion to Amend with
5 the attached Complaint was filed within the statute of
6 limitations and I should not be prejudiced because that motion
7 wasn't heard until after the statute had run.

8 In this case I believe that all of the standards have
9 been met for this case to relate back to the original
10 pleading. Defendant Graham had notice of the allegations of
11 fraud in the original Complaint, and of course the same -- as
12 I said, the same evidence would be used to prove all the
13 allegations.

14 As to the Cause of Breach of Contract which was added on
15 the Amended Complaint in 2003 it sounds in fraud. Defendant
16 Graham offered to purchase my interest in Cable Plus of
17 Carolina, Inc. for Two Hundred Fifty Thousand Dollars, and
18 this timeline is important, Your Honor. An Offer to Purchase
19 was made in writing on July 15, 1998. An Acceptance of the
20 Offer was made in writing on July 28, 1998, and a Contract for
21 Purchase was drafted. On September 8, 1998, as attached to
22 Mr. Thomas's documents, we filed a default notice against Mr.
23 Graham for not closing on the contract.

24 Your Honor, it's not the date that Defendant Graham
25 failed to close on the contract that controls in this

1 situation, it's the date that the fraud was discovered,
2 because it all ties in together.

3 On December 21st, 1999 a shareholders' meeting was held
4 in the law offices of VanOsdell, Lester and Howe. Attorney
5 VanOsdell was the moderator at that shareholders' meeting. In
6 that meeting Mr. Graham made the statement that he might have
7 other interests in cable television companies. It was at that
8 point that I realized and discovered that there was fraud, and
9 that's the foundation of the original Complaint that was filed
10 in 2000. This was in 1999. The Complaint was filed
11 approximately a year later in 2000.

12 Through discovery in this case we found that Mr. Graham
13 had indeed had an interest in a cable television company
14 called -- cable television provider called Crystal Cable Telev
15 -- Crystal CableVision, L.L.C., which was formed on March 21,
16 1997. Now this corporation L.L.C. was founded, and Mr. Graham
17 was a part of while he was President of Cable Plus of
18 Carolina, Inc. and SouthBridge Cable Television, L.L.C.. All
19 of these entities that I was a part of he was the President of
20 Cable Plus and the managing member of SouthBridge, yet during
21 that time he also formed another company, or was part of
22 another company called Crystal Cable.

23 It was -- we found that Mr. Graham actually had a
24 twenty-five percent membership in Crystal Cable, so there is
25 actual proof of his actions by the documents themselves.

1 **THE COURT:** All right. Well, Ms. Babb, now you are
2 giving me some facts. Let's do this. I'm going to stop you
3 there. I understand your analysis and your argument. Let me
4 hear from Mr. Thomas in reply. I may have follow-up questions
5 for you, but I believe that argument is sufficient.

6 Thank you, Ma'am.

7 **MS. BABB:** Thank you, sir.

8 **THE COURT:** And in reply, counsel.

9 **MR. THOMAS:** Yes, Your Honor. If it please the Court,
10 Ms. Babb mentions correctly that there was a motion filed to
11 be permitted to amend the Complaint sometime in 2003. There
12 was also a motion filed to amend the Complaint in 2001, but
13 the fact of the matter is, the motion was never heard, was
14 never agreed to, was never ruled upon until 2000 -- until the
15 filing of the Amendment Complaint in July of 2004, and that
16 Complaint in 2004, for the very first time, brought a claim on
17 behalf of a new entity, which brought a new entity into the
18 suit, SouthBridge Cable Television, L.L.C.. It also, Your
19 Honor, asserted for the first time a claim by Mrs. Babb in
20 addition to the derivative claim she is bringing, but a claim
21 personally against Mr. Graham for failing to -- actually for
22 breaching the contract.

23 **THE COURT:** That's the Third Cause of Action you are
24 talking about?

25 **MR. THOMAS:** Third Cause of Action, yes sir. Until

1 that time she asserted no claim on behalf of SouthBridge
2 Cable, L.L.C., she asserted no personal claim against Mr.
3 Graham for breach of the contract to purchase the interest in
4 SouthBridge -- I'm sorry, I keep getting these names mixed up.
5 They are very similar. But ---

6 THE COURT: All right. Well, let me focus with you on
7 the first two causes of action.

8 MR. THOMAS: All right.

9 THE COURT: She says that in discovery this came to
10 light about SouthBridge and the dual ownership that -- perhaps
11 conflicting ownership. What do you say to that, that it was
12 discov -- it was a discovery issue?

13 MR. THOMAS: Well, we have -- first of all, we have a
14 different view of what the discovery reveals, but the second -
15 - the answer to the question, for purpose of this motion is,
16 she knew and alleged that she had a complaint because of these
17 very same facts when she filed her pleading in 2000. She
18 alleged in 2000, on behalf of one entity, that she had a claim
19 against Carey Graham because Carey Graham had not involved her
20 in Crystal CableVision, L.L.C..

21 What she did four years later was say, well, the facts
22 that -- the fact that he didn't involve me as a member of
23 Crystal CableVision, L.L.C. is -- I'm not going to make that
24 claim on behalf of the first party that I originally did; I'm
25 going to make that claim instead on behalf of another entity,

1 a brand new entity, Crys -- SouthBridge Cable Television,
2 L.L.C., so the facts that she's -- that form the basis of the
3 Complaint, the action, are exactly the same. She was not
4 permitted to be a member of Crystal CableVision, L.L.C.. She
5 knew she wasn't permitted to be a member of Crystal
6 CableVision, L.L.C. in 2000 when she filed her first
7 Complaint. So ---

8 **THE COURT:** All right.

9 **MR. THOMAS:** And then secondly, Your Honor, if I
10 might -- she has characterized now her suit against Mr. Graham
11 for failing to purchase the interest in -- in Cable Plus of
12 Carolina, Inc. as an action based in fraud, and she didn't
13 discover it until later on in the discovery.

14 Well, we call the Court's attention to the latest
15 Amended Complaint, filed June 23rd, 2004. The Third Cause of
16 Action very clearly says -- it states a cause of action for
17 breach of contract. There is no allegation of fraud contained
18 in it.

19 **THE COURT:** All right. Very good.

20 **MR. THOMAS:** Thank you, Your Honor.

21 **THE COURT:** All right. Ladies and gentlemen, let me
22 stand down a moment and review these documents. I'll come
23 back and either do one of three things, either have further
24 questions for you, tell you that I must take it under
25 advisement, or go ahead and rule.

1 All right. Very good. Let's be at ease for just a few
2 moments.

3 (THE FOLLOWING TAKES PLACE AFTER A BREAK.)

4 THE COURT: All right. Let me go back and revisit one
5 issue with you, and just narrow this -- the focus on that
6 single issue which is, tell me again, Ms. Babb, when it is
7 that you learned that SouthBridge Cable Television was a
8 partially-owned entity by Mr. Graham, and how did you learn
9 that?

10 MS. BABB: It's Crystal Cable Television, is the entity
11 that was partially owned by Mr. Graham. It's Crystal Cable.

12 THE COURT: Okay.

13 MS. BABB: I know it's very confusing.

14 THE COURT: That's all right. I'm listening.

15 MS. BABB: All right. Cable Plus of Carolina, Inc. and
16 SouthBridge -- I'm just going to say Cable Plus and
17 SouthBridge. In the outline that is in my Memorandum it gives
18 you the dates that those entities were formed, and that's the
19 reason I did this, because I knew it was going to be
20 confusing.

21 '89, Cable Plus was formed. SouthBridge was formed in
22 '95, Crystal in '97, and then comes the Offer to Purchase, the
23 Acceptance, the default notice. The fraud was discovered in -
24 - on December 21, 1999, suspected fraud, and of course you've
25 got to have a reason to file a lawsuit, and you have to know -

1 - have grounds to file. At that point, when he said that, in
2 1999, in front of our attorney, we were aware that he had
3 other interests in cable companies. A year later the lawsuit
4 was filed. It was during discovery of this lawsuit that was
5 filed in 2000 that we actually got documents that had Mr.
6 Graham's signature on it. We have gotten financial documents
7 that show how much Crystal Cable actually made.

8 **THE COURT:** All right. That answers my -- I'm going to
9 stop you there ---

10 **MS. BABB:** Yes sir.

11 **THE COURT:** ---Because that tells me what I need to
12 know.

13 And let me go back to Mr. Thomas, if he has a reply, on
14 the -- now that we are talking about the facts.

15 **MR. THOMAS:** No, Your Honor, I agree with the dates
16 that she was giving you about when she learned of the facts
17 that constituted the basis of her claim.

18 **THE COURT:** Okay. Very good.

19 Just a moment, please.

20 And then one last time. Tell me why SouthBridge was not
21 initially included, Ms. Babb, when you filed your suit.
22 SouthBridge formed in 1995. You became aware of fraud in
23 December of 1999, you filed your suit in 2000, and tell me why
24 you didn't initially name SouthBridge.

25 **MS. BABB:** All right. Quite frankly, it was -- and I

1 hate to say this, but you've asked me a direct question, I'll
2 give you a direct answer.

3 **THE COURT:** All right.

4 **MS. BABB:** My attorney left it out. It's as simple as
5 that. And it is -- the way that these corporations were set
6 up to provide television signal down at SouthBay Lakes is
7 probably the most convoluted thing I have ever been involved
8 in. One corporation provided signal for certain condominiums.
9 As the condominiums were built and came on line these
10 corporations were formed to handle the cable television
11 service for that particular group. Okay. That's the reason
12 you have the different dates.

13 Crystal Cable was formed to provide signal for
14 SouthBridge Villas, which was a condominium project that was
15 built across the street from where we were doing business.
16 That's the reason that -- SouthBridge was providing cable for
17 SouthBridge Condominiums and SouthBay East, Cable Plus was
18 providing signal for SouthBay. Crystal was providing signal
19 for SouthBridge Villas. SouthBridge, L.L.C., it had been
20 discussed with this -- I'm getting into the facts of the case,
21 which I probably shouldn't, but I have to explain.
22 SouthBridge, L.L.C. would be the entity that would have
23 provided the cable service to SouthBridge Villas.

24 When the Complaint was drafted, because it was so
25 confusing, SouthBridge was left out, and when the amendment

1 was made it was made to correct the party, which Rule 15(C)
2 permits you to do, to substitute a party, so that's the
3 reason. It was simply an error when the contract -- excuse me
4 -- when the Complaint was drafted.

5 **THE COURT:** All right. Very good. That's sufficient.
6 Thank you.

7 All right, the Court is prepared to rule. I -- Ms.
8 Babb, I'm going to give you the benefit of a doubt. It is a
9 convoluted factual scenario, obviously having had some
10 previous involvement in it, and in listening again this
11 morning. I'm going to deny the motion as to causes of action
12 One and Two, but the Third Cause of Action, your position is
13 that it sounds in fraud, but actually it's not in fraud, it's
14 in a breach of contract, and clearly there is a letter from
15 1998 that would have indicated that long before you had
16 knowledge of the breach of contract, thus I'm going to grant
17 the Third Cause of Action statute of limitations, and dismiss
18 that Third Cause, but causes One and Two, the Court will leave
19 extant, and will deny the motion.

20 It would be my intention to do that on a Form 4. If the
21 parties believe you need something other than a Form 4 I'll be
22 glad to hear from you on that.

23 What do you say to that, Mr. Thomas?

24 **MR. THOMAS:** We don't need anything, Your Honor.

25 **THE COURT:** Ms. Babb.

1 **MS. BABB:** No sir, I don't need anything other than
2 that.

3 **THE COURT:** Very good, then we will enter a Form 4.

4 Now, one last thing, let's discuss this, although I will
5 not be the administrative judge within -- after July the 1st.
6 What about trial time? Are we ready for trial on this case?
7 Is it discovery -- is the discovery complete to the point that
8 it's ready to go forward?

9 What do you say, Mr. Thomas?

10 **MR. THOMAS:** I believe it is, Your Honor, on behalf of
11 the Defense.

12 **THE COURT:** All right. What do you say, Ms. Babb?

13 **MS. BABB:** Yes sir, I believe it would be.

14 **THE COURT:** Let me look back and see -- is a jury trial
15 demanded here? I believe that it is.

16 **MR. THOMAS:** No, Your Honor, it's not. It's a non-
17 jury.

18 **THE COURT:** It's not. It's a non-jury trial.

19 Ms. Babb, what do you say to that?

20 **MS. BABB:** I'm looking at -- yes, that's what my --
21 excuse me, Your Honor. I would prefer to have a jury trial,
22 but I see that it was not asked for, not prayed for in the
23 Complaint.

24 **THE COURT:** All right. Well, it will -- it will have
25 to be tried non-jury, simply because Rule 38 would not allow

1 it at this late juncture to be transferred without the consent
2 of both parties, and maybe not even then, but the Court is
3 going to go ahead and have our non-jury coordinator set this
4 matter for trial probably sometime within the next ninety
5 days, but it depends on the judges. Some of the local judges
6 have recused, but we will work to try to get it set.

7 All right.

8 **MR. THOMAS:** Thank you, Your Honor.

9 **MS. BABB:** Thank you, Your Honor.

10 **THE COURT:** Very good. Have a good day.

11 That concludes our case number 2000.

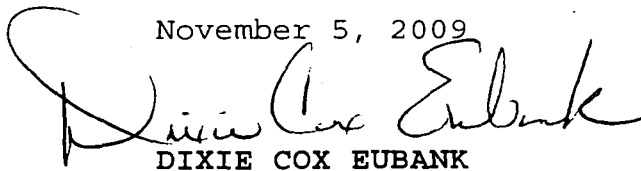
12 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **MOTION HEARING** of the captioned case, relative to appeal, in the **COURT OF COMMON PLEAS NON-JURY FOR HORRY COUNTY, SOUTH CAROLINA**, on the 18th day of June, 2009.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

November 5, 2009



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

The undersigned hereby certifies that this Record on Appeal complies with Rule 210(g) contains all material proposed to be included by any of the parties and not any other material.



Brenda R. Babb

Calabash, North Carolina 28467
(843)249-3700
Facsimile (843)249-3700
Appellant Appearing Pro se

April 29, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Michael Baxley
Horry County

Case No. 00-CP-26-05411

Brenda R. Babb.....Appellant,

v.

Carey E. Graham, Southbridge Cable Television, LLC,
and Cable Plus of Carolina, Inc, Defendants

Of Whom Carey E. Graham is.....Respondent.

APPELLANT'S FINAL BRIEF

Brenda R. Babb
Post Office Box 4800
Calabash, North Carolina 28467
(843)249-3700
(843)249-3700 Facsimile
Appellant Appearing Pro se

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Arguments	
I. BECAUSE APPELLANT'S CAUSE OF ACTION FOR BREACH OF CONTRACT RELATED BACK TO THE DATE OF THE ORIGINAL COMPLAINT PURSUANT TO RULE 15(C), SCRCP, IT WAS ERROR FOR JUDGE BAXLEY TO GRANT SUMMARY JUDGMENT ON THAT CAUSE OF ACTION.....	5
Conclusion.....	9

TABLE OF AUTHORITIES

CASES

<i>Thomas v. Grayson</i> , 456 S.E.2d 377, 318 S.C. 82 (1995).....	6
<i>Whitfield Const. Co. v. Bank of Tokyo Trust Co.</i> , 338 S.C. 207, 223, 525 S.E.2d 888, 897 (S.C.App. 1999).....	7

Other Authorities

James F. Flanagan, <i>South Carolina Civil Procedure</i> 127 (2 ed. 1996).....	7
<i>Moore's Federal Practice</i> § 15.19[2] (Daniel R. Coquillete et al eds., 3d 1999).....	7
Rule 15(c), South Carolina Rules of Civil Procedure.....	6
Rule 56(c), South Carolina Rules of Civil Procedure.....	9

STATEMENT OF ISSUES ON APPEAL

- I. DID JUDGE BAXLEY ERR IN GRANTING SUMMARY JUDGMENT ON PLAINTIFF'S BREACH OF CONTRACT CAUSE OF ACTION?

STATEMENT OF THE CASE

This appeal arises from the entry of an Order of the Honorable J. Michael Baxley filed June 14, 2009 granting summary judgment on Appellant's Breach of Contract cause of action (R.p.).

In 1989 Cable Plus of Carolina, Inc. ("Cable Plus"), was formed by Carey Graham ("Graham"), Malcolm Babb, the husband of Brenda R. Babb ("Babb"), and others. Eventually, Graham and Malcolm Babb each came to hold an equal ownership of the shares in Cable Plus. On June 21, 1996, Malcolm Babb assigned his 333 1/3 shares of common stock in Cable Plus of Carolina, Inc., to his wife, Babb.

Cable Plus acquired a contract with Larry Prosser, the developer of South Bay Lakes condominiums, to provide cable television signal to the South Bay Lakes condominium units.

In 1995, Malcolm Babb and Graham formed Southbridge ("Southbridge Cable") Cable Television, LLC. Each held a 50% ownership in the LLC. On June 24, 1996, Malcolm Babb assigned his 50% membership in Southbridge Cable to his wife, Babb. Southbridge Cable acquired a contract with Larry Prosser, the developer of Southbridge and South Bay East condominiums, to provide cable television signal to those condominium units. This is the same developer who built the South Bay Lakes condominiums and executed the contract for cable television signal to the

units. The South Bay Lakes, Southbridge and South Bay East condominium projects are contiguous with each other on Glenns Bay Road in Surfside Beach, South Carolina.

The Babbs were aware that an additional condominium project, now known as Southbridge Villas, was to be built by Mr. Prosser, the same developer who built South Bay Lakes, Southbridge and South Bay East. Southbridge Villas was eventually constructed and is located directly across Glenns Bay Road from South Bay Lakes, Southbridge and South Bay East.

Through discussions with Mr. Prosser, Malcolm Babb and Babb believed that Southbridge Cable would acquire the contract to provide cable television signal to the new Southbridge Villas condominiums. Unbeknownst to Babb, Graham negotiated outside of Southbridge Cable and Cable Plus to provide cable signal to Southbridge Villas and participated in the formation of Crystal Cablevision, LLC ("Crystal").

Crystal filed for organization with the South Carolina Secretary State on March 21, 1997. Graham became a member of Crystal while President of Cable Plus and Managing Member of Southbridge Cable, keeping his ownership in Crystal secret from Babb. Crystal did acquire the contract to provide cable television signal to the Southbridge Villas condominiums and continued to do so until purchased by Time Warner on or about late 2002.

On July 15, 1998, Graham, through his attorney, Daniel G. Hall, presented to the Babb's attorney, Robert M. Erwin, of

Nelson, Mullins, Riley & Scarborough, a written offer to purchase the Babbs' interest in Cable Plus for the sum of \$250,000.00 (R.p. 67). The offer to purchase was made specifically for the Cable Plus shares and no other entity. The offer remained effective for a period of fifteen (15) days from the date of the letter as set out on page two, paragraph four (4) of the written offer to purchase (R.p. 68). The offer was timely accepted in writing by letter dated July 28, 1998 addressed to Graham's attorney (R.p. 69). On advise of counsel the acceptance of offer was signed by both Malcolm M. Babb and Babb pursuant to the language set out in the offer. The written offer of acceptance was hand delivered to Attorney Hall's office on July 28, 1998 at 10:03 a.m. and signed for by Mr. Hall's secretary (R.p. 69). A Stock Purchase Agreement for Cable Plus was prepared for signature by Mr. Hall with a purposed closing date on or about August 24, 2008 (R.p. 70).¹

Graham refused to close the sale after the Stock Purchase Agreement was prepared alleging the offer to purchase was made for the shares in both Cable Plus and Southbridge Cable, not solely Cable Plus. Babb's attorney served a Letter of Default on Mr. Hall dated September 8, 1998 (R.p. 75).

On December 21, 1999, a Cable Plus shareholders meeting

¹ Attorney Erwin moved to Nelson, Mullins' Greenville, South Carolina law office during this time period and suggested that a local attorney be hired to handle the closing of the transaction. H. Franklin Burroughs of Conway, South Carolina was retained to review the Stock Purchase Agreement and facilitate the closing (R.p.).

attended by Babb and Graham was held at the law offices of Van Osdell, Lester and Howe. During the course of the meeting, moderated by Attorney Van Osdell, Defendant Graham admitted that he "might" have interests in other cable television companies.

The original Complaint in this action was filed on November 29, 2000, approximately one year from the date of Graham's admission (R.p. 9). The Complaint alleged two causes of action, Breach of Fiduciary Duty and Misappropriation of Corporate Opportunity/Accounting.² Graham filed an Answer dated January 19, 2001 alleging laches and the statute of limitations as defenses (R.p. 36). On June 6, 2003 Babb filed a Motion to Amend and with attached Amended Complaint substituting Southbridge Cable as the corporation in the first two causes of action and adding a cause of action for Breach of Contract (R.p. 20).

Because of appeals in the case the Motion to Amend was not heard. On June 23, 2004 Babb filed a Second Amended Complaint correcting minor scrivener's errors in the amended complaint (R.p. 29). The causes of action and parties remained the same.

Graham did not file an answer to the Amended Complaint but filed an Answer to Second Amended Complaint on July 1, 2004 (R.p. 43). The defense of the statute of limitations was not included in his answer. Graham filed a Motion to Amend and Amended Answer to Second Amended Complaint on September 30, 2008 to include the defense of the statute of limitations (R.p. 48).

² Through discovery it was determined that Graham held a 25% membership in Crystal.

On November 13, 2008 Graham filed a Motion for Summary Judgment as to the all causes of action in the complaint (R.p. 51). A hearing was held on June 18, 2009 before Judge Baxley (R.p. 77) wherein Babb presented her Memorandum in Opposition to Motion for Summary Judgment (R.p. 63). Judge Baxley granted Summary Judgment on the Breach of Contract cause of Action by Order filed June 19, 2009 (R.p. 1). Babb received written notice of the Order on July 14, 2009 and thereafter filed a Motion to Reconsider on July 21, 2009 (R.p. 56). Judge Baxley denied Babb's Motion to Reconsider by Order filed August 6, 2009 (R.p. 1A). Appellant received written notice of the Order on August 20, 2009. This appeal of the dismissal of the Breach of Contract cause of action was filed on September 2, 2009.

ARGUMENT

- I. BECAUSE APPELLANT'S CAUSE OF ACTION FOR BREACH OF CONTRACT RELATED BACK TO THE DATE OF THE ORIGINAL COMPLAINT PURSUANT TO RULE 15(C), SCRCP, IT WAS ERROR FOR JUDGE BAXLEY TO GRANT SUMMARY JUDGMENT ON THAT CAUSE OF ACTION.

Appellant discovered that Graham had other cable television system interests in direct competition with Cable Plus at a December 21, 1999, Cable Plus shareholders meeting. The original Complaint in this action was filed November 29, 2000, less than a year following the discovery of Graham's other cable television interests. Graham was named as defendant alleging Breach of Fiduciary Duty and Misappropriation of Corporate Opportunity/Accounting. A statute of limitations defense does not apply to the filing of the original complaint.

On June 6, 2003 Babb filed a Motion to Amend and Amended Complaint substituting Southbridge Cable Television, LLC, as the corporation in the first two causes of action and adding a cause of action for Breach of Contract. The amendment falls within three years of filing the original complaint. The Second Amended Complaint filed June 23, 2004 corrected scrivener's errors in the June 6, 2003 Amended Complaint. Even though the Second Amended Complaint was filed outside the three year statute, the added cause of action for Breach of Contract set out in the Amended Complaint relates back to the filing of the original Complaint under Rule 15(c), SCRPC. "Rule allowing amendment to pleading to relate back to date of original pleading is based on concept that once litigation involving particular conduct or given transaction or occurrence has been instituted, parties are not entitled to protection of statute of limitations against later assertion by amendment of defenses or claims that arise out of same conduct, transaction, or occurrence as set forth in original pleading," *Thomas v. Grayson*, 456 S.E.2d 377, 318 S.C. 82 (1995). Our Supreme Court specifically addressed the question of when Rule 15(c) enables a party to avoid the statute of limitations in *Grayson*. "The test to be used in determining whether or not an amendment should be allowed to relate back under Rule 15(c) to the date of the original pleading to avoid the statute of limitations, is found in the language of the Rule; specifically, whether the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in

the original pleading. The central requirement here is that the party defending against the new claim had sufficient notice of it, i.e., 'the new claim must be logically related to the matters originally pleaded so that the defendant is not prejudiced by the new claim asserted after the statute of limitations has expired.'" *Whitfield Const. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 223, 525 S.E.2d 888, 897 (S.C.App. 1999) (quoting James F. Flanagan, *South Carolina Civil Procedure* 127 (2 ed. 1996) (emphasis in original)).

In federal practice the factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the defending party against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back.

Id. (citing James Wm. Moore, *Moore's Federal Practice* § 15.19[2] (Daniel R. Coquillete et al eds., 3d 1999)).

In the case at hand a time line of events establishes that the Breach of Contract cause of action relates back to the filing of the original complaint. In 1997 Graham became a member of Crystal Cable while president of Cable Plus. The purpose of forming Crystal Cable was to provide cable television signal to the Southbridge Villa condominium project thereby going into competition with the business of Cable Plus and Southbridge Cable. This was the first acquisition in Graham's fraudulent scheme to own the television cable systems in Prosser's

condominium projects.

On July 15, 1998 Graham offered to purchase Babb's stock in Cable Plus for \$250,000.00. Cable Plus provided the cable television signal to Southbay Lakes condominiums. Babb accepted Graham's offer but Graham refused to close alleging that he was purchasing Babb's interest in both Cable Plus and Southbridge Cable. Southbridge Cable provided the cable television signal for Southbridge and Southbay East condominiums. Had the offer to purchase been drafted and accepted for both Cable Plus and Southbridge Cable, Graham would have held 50 percent of the cable television rights at Southbay Lakes and 100 percent of the cable television rights at Southbridge and Southbay East. This is in addition to the 25 percent Graham held in Southbridge Villas through Crystal.

Graham refused to close the transaction and a default letter was served August 21, 1998. The purchase of Babb's interest in Cable Plus was another step in Graham's scheme to remove Babb from the cable television business and acquire the interests for himself. The Breach of Contract cause of action arose out of Graham's machinations while acquiring a 25 percent membership in Crystal and the subsequent cable television rights at the Southbridge Villas condominiums.

While fraud was not alleged in the complaint, Graham's actions do fall within the definition of the word, "concealment of that which should have been disclosed." Graham's participation in the forming of Crystal and becoming a 25 percent

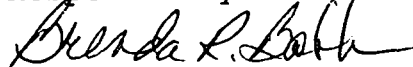
member in this LLC, was not disclosed to Babb. Had Babb been aware of Graham's actions she would not have accepted Graham's offer to purchase her interest in Cable Plus and would not have willing to accept the release set out in Paragraph 1 of the offer to purchase. The Breach of Contract cause of action in the amended pleadings arises out of Graham's conduct as set forth in the original complaint and therefore relates back to the date of the original pleading.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. Because Graham's conduct in breaching the contract relates back to the original pleading, Judge Baxley erred in granting summary judgment on the Breach of Contract cause of action.

CONCLUSION

Based on the foregoing arguments, Babb requests an Order from the Court of Appeals reversing Judge Baxley's Order granting summary judgment on the Breach of Contract cause of action and remanding the case to the lower court for further action.

Respectfully submitted,



Brenda R. Babb
Post Office Box 442
Calabash, North Carolina 28467
(843) 249-3700
Facsimile (843) 249-3700
Appellant Appearing Pro se

June 17, 2010

I certify that this Final Brief complies with Rule 211b.

A handwritten signature in cursive script, reading "Brenda R. Babb".

Brenda R. Babb

Calabash, North Carolina 28467
(843)249-3700

Facsimile (843)249-3700

Appellant Appearing Pro se

June 17, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable J. Michael Baxley, Circuit Court Judge

Case No. 00-CP-26-5411

Brenda R. Babb

Appellant

v.

Carey E. Graham, Southbridge Cable Television, LLC, and
Cable Plus of Carolina, Inc., Defendants

Of whom Carey E. Graham is the

Respondent

BRIEF OF RESPONDENT

J. Jackson Thomas
THOMPSON & HENRY, P.A.
1314 Professional Dr.
Post Office Box 1290
Myrtle Beach, SC 29578
(843) 692-2628

Attorneys for Respondent

May 17, 2010

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL	1
STATEMENT OF THE CASE	1
ARGUMENT	3
I. APPELLANT’S NEWLY ASSERTED CLAIM DOES NOT RELATE BACK UNDER THE CLEAR LANGUAGE OF RULE 15(c), SCRCP	4
II. THE APPELLANT’S NEWLY ASSERTED CLAIM IS MADE IN A DIFFERENT CAPACITY (i.e. INDIVIDUALLY RATHER THAN DERIVATIVELY) THAN THE CLAIM IN HER ORIGINAL COMPLAINT	5
CONCLUSION	6

TABLE OF AUTHORITIES

Cases

<u>Cline v. J.E. Faulkner, Inc.</u> , 379 S.C. 367, 597 S.E.2d 27 (Ct.App. 2004)	6
<u>Hite v. Thomas & Howard Co.</u> , 305 S.C. 358, 409 S.E.2d 340 (1991)	6
<u>Huntley v. Young</u> , 319 S.C. 559, 462 S.E.2d 860 (1995)	6

STATEMENT OF ISSUE ON APPEAL

- I. Did the lower court properly hold that Appellant's breach of contract cause of action was barred by the statute of limitations?

STATEMENT OF THE CASE

This action was commenced by the filing of a Summons and Complaint on November 29, 2000. The Complaint stated that the action was brought by the Plaintiff Brenda R. Babb ("Ms. Babb") "... in her role as a shareholder on behalf of Defendant Cable Plus of Carolina, Inc.; this is a shareholder derivative action." (R. p. 11). The Complaint contained two causes of action asserting breaches of fiduciary duty and misappropriation of a Cable Plus of Carolina, Inc. ("Cable Plus") corporate opportunity by Defendant Graham ("Mr. Graham"). Ms. Babb was represented by counsel when the action was filed. Mr. Graham's Answer, filed January 29, 2001, asserted a qualified general denial and the defenses of statute of limitations and laches. The Answer also sought dismissal of Ms. Babb's Complaint pursuant to Rule 12(b)(6), SCRCP.

Mr. Graham's counsel was served on June 23, 2004 with Ms. Babb's Second Amended Complaint, filed by consent.¹ Ms. Babb's Second Amended Complaint added a new defendant, Southbridge Cable Television, LLC ("Southbridge"). It states it was brought by Ms. Babb "... in her role as a shareholder on behalf of Defendant Southbridge Cable Television, LLC and Cable Plus of Carolina, Inc.; this is a shareholder derivative action." (R.

¹

Ms. Babb had filed a motion to amend her Complaint and a proposed Amended Complaint on June 5, 2003. (R. p. 21). The motion was never heard. Plaintiff incorrectly asserts that the motion to amend was not heard due to "appeals in the case." (Brief of Appellant, p. 4) Ms. Babb's first appeal in this case was from an Order, dated July 28, 2004, relieving her then counsel from further representation of her in the case. (R. p. 5).

p. 30). The Second Amended Complaint sought no relief on behalf of Cable Plus. It sought shareholder derivative damages only on behalf of the newly added Southbridge Cable. Additionally, for the first time, the Second Amended Complaint added a third cause of action, brought in Ms. Babb's individual capacity, alleging Mr. Graham breached a contract to sell her his stock in Cable Plus. The Defendants filed their Answer to the Second Amended Complaint on July 1, 2004.

On July 28, 2004, Ms. Babb's counsel obtained, over Ms. Babb's objection, an Order from the Honorable Jackson V. Gregory relieving counsel from representation of Ms. Babb. Ms. Babb unsuccessfully appealed the Order relieving her counsel. She now pursues this action *pro se*.

By Order dated November 12, 2008, and filed November 13, 2008, the Honorable J. Michael Baxley, Chief Administrative Judge of the Fifteenth Judicial Circuit, approved the filing of an Amended Answer to Plaintiff's Second Amended Complaint. Defendants' Amended Answer to Plaintiff's Second Amended Complaint included the defense that the breach of contract claim against Mr. Graham by Ms. Babb in her individual capacity and her other claims were barred by the statute of limitations and asserted a setoff, alleging that the Respondent Graham is a holder of a judgment against the Plaintiff.

By Notice of Motion dated November 12, 2008, and filed November 13, 2008, Defendants moved for summary judgment on all of Ms. Babb's claims based on the statute of limitations. By Order dated June 18, 2009, and filed June 19, 2009, Judge Baxley granted Mr. Graham's motion for summary judgment on the breach of contract action brought by Ms.

Babb individually against Respondent Graham, on the grounds that it was barred by the applicable statute of limitations.

Ms. Babb sought reconsideration of Judge Baxley's Order granting summary judgment. By Order dated August 4, 2009, filed August 6, 2009, Judge Baxley denied the motion for reconsideration. Ms. Babb thereafter timely appealed Judge Baxley's Order granting summary judgment, by Notice of Appeal filed September 2, 2009.

ARGUMENT

On September 8, 1998, a letter was sent from H. Franklin Burroughs (an attorney representing Malcolm M. Babb and Brenda Babb) to Daniel G. Hall (an attorney representing Respondent Graham). (R. p. 75). A copy of the letter was sent to Mr. and Mrs. Babb. The letter clearly and unequivocally establishes that Ms. Babb was aware of the claim and threatening litigation against Mr. Graham for breach of the contract on the grounds alleged in her third cause of action as early as September 8, 1998, which is more than five (5) years before she finally asserted the claim.² Accordingly, the bar of the statute of limitations on the contract claim would arise no later than September 8, 2001.

For the reasons set forth below, Ms. Babb's contention that her breach of contract claim against Mr. Graham, asserted for the first time in her Second Amended Complaint filed June 23, 2004, is saved from the bar of the applicable statute of limitations under the relation back provisions of Rule 15(c), SCRCP, is without merit.

²

Ms. Babb's motion to amend her Complaint was first filed June 6, 2003, which is four years and nine months after the Burroughs letter.

I. APPELLANT'S NEWLY ASSERTED CLAIM DOES NOT RELATE BACK UNDER THE CLEAR LANGUAGE OF RULE 15(c), SCRCP.

Rule 15(c), SCRCP, provides that an amendment of the pleadings relates back to the date of the original pleading

. . . whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings
. . . .

In the case at bar, Ms. Babb's original Complaint makes only shareholder derivative claims ". . . on behalf of the Defendant Cable Plus of Carolina, Inc." against Mr. Graham. (R. p. 11). The Complaint alleges Mr. Graham breached a fiduciary duty owed to Cable Plus and misappropriation regarding the provision of cable television services, allegedly a corporate opportunity of Cable Plus.

Ms. Babb's Second Amended Complaint served June 23, 2004, asserts (more than 3 ½ years later than the initial Complaint), for the first time, Mr. Graham breached a contract to purchase Ms. Babb's stock in Cable Plus for \$250,000. The claim was the subject of Attorney Burroughs' September 8, 1998 letter written on behalf of Ms. Babb and her husband more than 5 years before the Second Amended Complaint. (R. p. 75).

The contract alleged by Ms. Babb in her individual capacity is an entirely separate and distinct matter, apart from any liability which Mr. Graham would conceivably have had to Cable Plus for the breach of fiduciary duty resulting from the usurpation of a corporate opportunity owing to Cable Plus as alleged by Ms. Babb in her original Complaint. Accordingly, Ms. Babb's breach of contract cause of action does not ". . . arise out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original

pleadings. . . .” within the purview of Rule 15(c), SCRCP and the lower court properly held that the breach of contract claim was barred by the 3 year statute of limitation.

II. THE APPELLANT’S NEWLY ASSERTED CLAIM IS MADE IN A DIFFERENT CAPACITY (i.e. INDIVIDUALLY RATHER THAN DERIVATIVELY) THAN THE CLAIM IN HER ORIGINAL COMPLAINT.

Ms. Babb’s Second Amended Complaint, in addition to adding a breach of contract claim in her individual capacity against Mr. Graham, also added a new Defendant, Southbridge Cable. While leaving Cable Plus as a nominal Defendant, the Second Amended Complaint, upon close examination, reveals that Ms. Babb abandons her derivative claims on behalf of Cable Plus as plead exclusively in her original pleading. In the Second Amended Complaint, Ms. Babb pleads that she is bringing the action derivatively on behalf Southbridge Cable and not on behalf of Cable Plus. (See Appellant’s Second Amended Complaint, paragraphs 9, 12-15 (R. p. 30)). Moreover, the *ad damnum* clause of the Second Amended Complaint seeks no relief on behalf of Cable Plus but seeks relief solely on behalf of Southbridge Cable. In other words, Ms. Babb’s Second Amended Complaint seeks shareholder derivative relief only on behalf of an entity not a party to her original claim.

Whether Ms. Babb’s two derivative claims relate to duties owed to Cable Plus or to Southbridge Cable Television, LLC makes no difference for purposes of this appeal. It simply serves to further emphasize that the breach of contract claim asserted against Mr. Graham does not meet the prerequisite requirements of Rule 15 for relation back because it does not arise “. . . out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings. . . .”

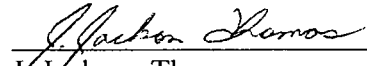
Our courts have repeatedly held that a shareholder may maintain an individual action only if his loss is separate and distinct from that of the corporation. A shareholder suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. Hite v. Thomas & Howard Co., 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991) (citations omitted), overruled on other grounds by Huntley v. Young, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995). Ms. Babb's third cause of action, alleging Mr. Graham has breached the contract with her individually, is clearly a matter separate and distinct from the derivative action. Brenda Babb, individually, is clearly a different Plaintiff from Brenda Babb in her role as a shareholder on behalf of either Southbridge Cable or Cable Plus in the derivative actions.

Rule 15, SCRCP, applies only to existing parties, and not when a new party is added to a complaint. Cline v. J.E. Faulkner, Inc. 379 S.C. 367, 597 S.E.2d 27 (Ct.App. 2004). The Second Amended Complaint adds Southbridge Cable as a party whose corporate rights were sought to be enforced. It dropped any claims to enforcement of the corporate rights of Cable Plus. It also added her individual claim against Mr. Graham. Under these circumstances, there is no relation back.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court affirm the lower court's decision in granting summary judgment to Respondent on Appellant's breach of contract cause of action and that Appellant's appeal be dismissed.

Respectfully Submitted,



J. Jackson Thomas
THOMPSON & HENRY, P.A.
P.O. Box 1290
Myrtle Beach, SC 29578
Phone: (843) 692-2628
Facsimile: (843) 692-0928

Attorneys for Respondent

May 17, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Michael Baxley
Horry County

Case No. 00-CP-26-05411

Brenda R. Babb.....Appellant,

v.

Carey E. Graham, Southbridge Cable Television, LLC,
and Cable Plus of Carolina, Inc,...Defendants

Of Whom Carey E. Graham is.....Respondent.

APPELLANT'S FINAL REPLY BRIEF

Brenda R. Babb

Calabash, North Carolina 28467

(843)249-3700

(843)249-3700 *Facsimile*

Appellant Appearing Pro se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

J. Michael Baxley
Horry County

Case No. 00-CP-26-05411

Brenda R. Babb.....Appellant,

v.

Carey E. Graham, Southbridge Cable Television, LLC,
and Cable Plus of Carolina, Inc,...Defendants

Of Whom Carey E. Graham is.....Respondent.

APPELLANT'S FINAL REPLY BRIEF

Brenda R. Babb
Post Office Box 4800
Calabash, North Carolina 28467
(843)249-3700
(843)249-3700 *Facsimile*
Appellant Appearing Pro se

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Arguments	
I. BECAUSE APPELLANT'S CAUSE OF ACTION FOR BREACH OF CONTRACT RELATED BACK TO THE DATE OF THE ORIGINAL COMPLAINT PURSUANT TO RULE 15(C), SCRCp, IT WAS ERROR FOR JUDGE BAXLEY TO GRANT SUMMARY JUDGMENT ON THAT CAUSE OF ACTION.....	1
Conclusion.....	4

TABLE OF AUTHORITIES

CASES

<i>Hughes v. Water World Slide, Inc.</i> , 442 S.E.2d 584, 314 S.C. 211 (S.C. (1994)).....	1
<i>Jackson V. Doe</i> , 537 S.E.2nd 567, 342 S.C. 552 (S.C. App. 2000).....	3

Other Authorities

Rule 15(c), South Carolina Rules of Civil Procedure.....	2,3,4
Rule 3(b), South Carolina Rules of Civil Procedure.....	2
Rules 8(f) South Carolina Rules of Civil Procedure.....	2
Fed. Rules Civ. Pro. 15(c).....	2

STATEMENT OF ISSUES ON APPEAL

- I. DID JUDGE BAXLEY ERR IN GRANTING SUMMARY JUDGMENT ON PLAINTIFF'S BREACH OF CONTRACT CAUSE OF ACTION?

STATEMENT OF THE CASE

Brenda R. Babb ("Babb") incorporates as if stated verbatim therein the statement of the case as set out in her Brief filed December 21, 2009 with the following exception: Respondent Carey Graham ("Graham") is correct in his Brief that Babb erroneously stated the Motion to Amend to file an amended complaint filed June 6, 2003 was not heard due to "appeals in the case."

(Respondent's Brief Footnote 1) In fact, the motion to amend was granted by the Honorable John M. Milling by order filed June 17, 2004 (R.p. 2).

ARGUMENT

- I. BABB'S CAUSE OF ACTION FOR BREACH OF CONTRACT RELATED BACK TO THE DATE OF THE ORIGINAL COMPLAINT PURSUANT TO RULE 15(C), SCRPC, IT WAS ERROR FOR JUDGE BAXLEY TO GRANT SUMMARY JUDGMENT

I. On June 6, 2003 Babb filed a Motion to Amend and Amended Complaint substituting Southbridge Cable Television, LLC, ("Southbridge") for Cable Plus of Carolina, Inc. ("Cable Plus") as the corporate defendant in the first two causes of action and adding a cause of action for Breach of Contract (R.p. 33). The Motion to Amend with attached Complaint was filed June 6, 2003, within three years of the filing of the original complaint on November 29, 2000. The Order granting the Motion to Amend was filed June 17, 2004.

Our Supreme Court stated the following regarding the

substitution of corporate defendants in *Hughes v. Water World Water Slide, Inc.*, 442 S.E.2d 584, 314 S.C. 211 (S.C. 1994), "Amendment to original summons and complaint correcting name of corporate defendant related back to filing of original complaint, which used corporation's trade name; pleadings were served upon corporation's president, and described incident which occurred while president of corporation was present. Rules Civ. Proc., Rules 3(b)(8)(f), 15(c); Fed. Rules Civ. Pro. 15(c) 15 note, 28 U.S.C.A"

The amendment to the complaint was necessary because the complaint was drafted naming the incorrect corporate defendant. Graham was both President of Cable Plus and Managing Member of Southbridge at the time the offenses occurred. Because of the complexities of the cable television operation at South Bay Lakes, Southbridge and South Bay East condominium projects, Cable Plus was inadvertently named as a defendant. Southbridge was the entity that would have provided cable television signal to Southbridge Villas condominiums but for the fact that Graham negotiated on behalf of himself as a 25% shareholder in Crystal Cable Television, LLC, to secure the cable television rights for Southbridge Villas. The allegations in the complaint as to Breach of Fiduciary Duty remained the same. The amendment merely substituted the correct corporate entity that was damaged by Graham's actions.

The original complaint was filed well within the three year statute of limitations. Graham received notice of the lawsuit,

as evidenced by his filed answer, and was not prejudiced in asserting his defense to the allegations in the amended complaint because the allegations remained the same. Graham knew, or should have known, but for the error in naming the proper corporate defendant the action would have been brought against him. Rule 15(c), SCRCF is applicable in this instance because Southbridge was substituted for Cable Plus, not added, as the correct corporate defendant.

II. Babb and Graham have been intertwined in the cable television business since 1989. The allegation of Breach of Contract is between the same parties involving the identical corporate entities in which Babb and Graham have been participates since at least 1989. Babb is the identical Plaintiff in both the Breach of Contract and Breach of Fiduciary Duty causes of action just as Graham is the identical Defendant.

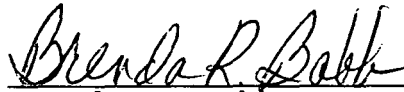
"Whenever the claim or defense arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleadings." *Jackson V. Doe*, 537 S.E.2d 567, 342 S.C. 552 (S.C. App. 2000). The operative word in this instance is "conduct." All of Graham's actions occurred while he was President of Cable Plus and Managing Member of Southbridge. The purchase of Babb's interest in Cable Plus was another step in Graham's plan to remove Babb from the cable television business and acquire the interests for himself. The Breach of Contract cause of action arose out of Graham's actions while acquiring the

cable television rights for the Southbridge Villas condominiums. Again, Rule 15(c), SCRCP, is applicable in this instance because the Breach of Contract cause of action relates back to the conduct alleged in Babb's original complaint.

CONCLUSION

Based on the foregoing arguments, Babb requests an Order from the Court of Appeals reversing Judge Baxley's Order granting summary judgment on the Breach of Contract cause of action and remanding the case to the lower court for further action.

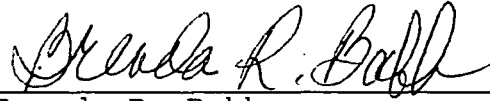
Respectfully submitted,



Brenda R. Babb
Post Office Box 4800
Calabash, North Carolina 28467
(843)249-3700
Facsimile (843)249-3700
Appellant Appearing Pro se

June 17, 2010

I certify that this Final Reply Brief complies with Rule 211b.

A handwritten signature in cursive script, reading "Brenda R. Babb", is written over a horizontal line.

Brenda R. Babb
Post Office Box 442
Calabash, North Carolina 28467
(843)249-3700
Facsimile (843)249-3700
Appellant Appearing Pro se

June 17, 2010