THE STATE OF SOUTH CAROLINA
In The Supreme Court

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie Reynolds, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Parkview Apartments, a South Carolina Limited Partnership, Appellants,

v.

Parkview Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180666

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership, Appellants,

v.

Palmetto Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180087

Laurance H. Davis, Jr., Rhoda G. Rentz, Mortimer M. Weinberg, Jr., Hodge Land Company, Incorporated, and Anna Trotter, individually and in their capacities as the Limited Partners of Roosevelt Gardens, a South Carolina Limited Partnership, Appellants,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, Apartment Investments and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180086

Carolina Management Corporation of Beaufort, James B. Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Pinewood Park Apartments, a South Carolina Limited Partnership, Appellants,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180088

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O. Mercy, individually and in their capacities as the Limited Partners of Orleans Gardens, a South Carolina Limited Partnership, Appellants,

v.

Orleans Gardens, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true

identity is unknown, Respondents.

Appellate Case No. 2010-176826

Appeal From Beaufort County
Doyet A. Early III, Circuit Court Judge

Appellate Case No. 2010-180666
Appellate Case No. 2010-180087
Appellate Case No. 2010-180086
Appellate Case No. 2010-180088
Appellate Case No. 2010-176826

PETITION FOR REHEARING

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ARGUMENTS FOR REHEARING

Pursuant to Rule 221, SCACR, Appellants respectfully petition the Court for rehearing on the Opinion issued on August 6, 2014, affirming the circuit court's order dismissing Appellants' claims for perceived violations of the court's prior Orders. Respectfully, Appellants assert that the Opinion overlooked or misapprehended several particular points of law including, *inter alia*, (1) finding that the merits of the underlying discovery orders, including the Privilege Order and the Discovery Order, were not properly before this Court, (2) upholding the circuit court's findings that Appellants put the statute of limitations at issue simply by filing their complaints, and (3) upholding the circuit court judge's failure to recuse himself. Furthermore, the opinion misstates and/or ignores numerous critical facts which were included in the Record on Appeal, to the point that the Opinion is in certain instances self-contradictory. The most glaring example of this, as hereinafter discussed, is the majority opinion's assertion that Appellants did not appeal the underlying orders, including the Discovery and Privilege Orders.

In addition, while not specifically controlling, it is important that the Court's Opinion encapsulates all five of the reasons for which this Court will consider a review for a writ of certiorari. While this matter does not have an opinion from the Court of Appeals, because it was removed, *sua sponte*, into the jurisdiction of this Court, the criteria for certiorari also should be relevant with respect to petitions for rehearing. In this regard, the present appeal presents (1) a novel question of law, i.e., whether South Carolina should adopt the at-issue waiver

test delineated in *Hearn v. Rhay*, 68 F.R.D. 574 (Ed. Wash. 1975); (2) a dissent by Justice Pleicones finding that the *Hearn* at-issue waiver test substantially diminishes the attorney-client privilege; (3) a conflict with prior Supreme Court decisions dealing with imposition of the harshest sanction of dismissing a case for perceived non-compliance with discovery orders or rules; (4) substantial constitutional issues; and (5) a conflict with a decision of the United States Supreme Court on the standards for judicial recusal.

I. APPELLANTS PROPERLY APPEALED THE UNDERLYING ORDERS, INCLUDING THE PRIVILEGE ORDER AND DISCOVERY ORDER

The majority opinion, with all due respect, erroneously asserts that Appellants only appealed the lower court's Order of Dismissal, and did not appeal "the underlying discovery orders, including the Privilege Order and the Discovery Order," so that the majority did not review or consider the merits of these orders. It further asserts that Appellants "only raise general issues" with respect to the Privilege Order and Discovery Order, and were required to make "specific objections to each item of discovery deemed discoverable by the circuit judge;" the majority then found that the lower court's "specific discovery findings are unreviewable on appeal." Again, with all due respect, this depiction of Appellants' submissions is not accurate, nor is it in keeping with prior decisions of the appellate courts of this State. *Cf.*, Toal, Vafai & Muckenfuss, *Appellate Practice in South Carolina* 75 (2d ed. 2002) "... where an issue is not specifically set out in the statement of issues, the appellate court may nevertheless considered the issue if it is reasonably clear from appellant's arguments" citing *Eubank v. Eubank*, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001). Had the

majority considered the merits of these orders, it would have mandated a contrary result, as it is evident that such orders were affected by errors of law.

Contrary to the finding of the majority opinion, a thorough review of the materials before the Court clearly demonstrates that the "underlying discovery orders, including the Privilege Order and the Discovery Order," were properly appealed, thoroughly briefed, and were properly before the Court for consideration. First, a separate notice of appeal was filed in each of the five (5) cases comprising this appeal. In each of the notices, Appellants specifically delineated ten (10) specific orders which were being appealed; these included not only the Order of Dismissal to which the majority felt it was limited, but all underlying discovery orders, including the Privilege Order and Discovery Order referenced in the majority opinion. The filing of the notices was entirely in compliance with SCAR 203, including the fact that each notice included a copy of each of the orders being appealed. *See* SCAR 203 (B)(ii). The result was that the notice of appeal in each case included over 60 pages comprising the said orders.

Secondly, a separate brief was submitted in each of these five (5) cases. Each such brief set forth a statement of the issues on appeal, and specifically referenced the order dismissing the cases "as well as prior orders upon which it is based"; specifically, the issues stated included:

> Did Judge Early err in dismissing Appellants' claims and requiring them to pay costs and attorney's fees to Respondents because Appellants did not disclose privilege communications with their attorneys, thereby requiring reversal and vacation of his order of April 6, 2010, *as well as prior orders upon which it is based*? In this regard, (a) did Judge Early err in holding that Appellants, merely by

> filing their complaints, put at issue the statute of limitations and waived their attorney-client privilege concerning that issue? and (b) did Judge Early err in holding that language in other complaints filed by other litigants in other counties put at issue the statute of limitations in this case and waived their attorney-client privilege concerning that issue? (Emphasis added)
>
> Did Judge Early err in imposing the sanctions of dismissal of Appellants' claims and requiring them to pay costs and attorney's fees to Respondents for alleged deficiencies in their discovery responses, thereby requiring reversal and vacation of his order of April 6, 2010, *as well as prior orders upon which it is based*? (Emphasis added)

Brief of Appellants, p.1. The specific points on appeal are set forth in the statement of the issues on appeal in accordance with Rule 208(b)(1)(B). These specific issues coupled with the specific arguments and citations of authority thoroughly briefed by Appellants properly preserved the issues concerning the underlying discovery orders, including the Discovery Order and Privilege Order for appeal.

Thirdly, in finding that Appellants failed to properly appeal the underlying discovery orders, including the Privilege Order and Discovery Orders, the Court's majority Opinion overlooked the numerous errors which Appellants addressed in the various orders throughout all of their briefs. These included, *inter alia*:

a. "The judge rejected these arguments at the urging of Respondents, and ruled that, not only were Appellants not entitled to this information, but that every document listed on the 71-page Privilege Log of Respondents was privileged and not discoverable (R. pp.42-43); he made this ruling without ever seeing a single document, notwithstanding that Appellants had specifically asked him to conduct an in-camera review of those documents. Furthermore, he received no information concerning the privileged nature of these documents other than from Respondents' counsel, by way of argument or statements in their memoranda. Therefore, there was no proper evidence to support his legal findings in this regard." Brief of Appellants at

b. "Likewise, he clearly did not inquire 'into all the facts and circumstances of the communications,' as required by *Wilson, supra*, and *Tucker v. Honda of SC Mfg, Inc.*, 354 S.C. 574, 582 S.E.2d 405 (2003)." Brief of Appellants at 15.

c. "Appellants repeatedly pointed out to the judge that there was absolutely no support for such a position under the law of the State." Brief of Appellants at 16.

d. "Nevertheless, the judge again adopted the argument of Respondents' counsel and held that, merely by filing their complaint, Appellants had put the statute of limitations at issue and impliedly waived any privilege or protection concerning any documents which might be relevant to that issue." Brief of Appellants at 16.

e. "The Discovery Order states that the finding of implied waiver was derived exclusively from Respondents' memorandum and their argument concerning the statute of limitations. This reliance upon arguments of counsel is contrary to the laws of this State." Brief of Appellants at 16.

f. "This order states that the judge 'considered at length' the arguments and memoranda of Respondents' counsel, that he 'disagrees' with Appellants' argument showing the factual and legal errors in the Privilege Order, and concludes, '*Once privilege was waived as to the documents (by merely filing of the lawsuits and/or by reasons of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases.*' (R., p. 137, emphasis added.) There is no law in this State to support such a finding; the judge abused his discretion and the orders should be vacated." Brief of Appellants at 16 – 17.

g. "The Dismissal Order does not quote language from the Orleans and Roosevelt complaints to which it refers . . . A fair reading of these two complaints reveals that the statute of limitations is not mentioned at all, and that the allegations only serve to prove the basis for Appellants' claims for damages resulting from the delay occasioned by the Respondents' misuse of the appraisal and mediation process. It does not meet the test for implied waiver under South Carolina law." Brief of Appellants at 17.

h. "The dismissal of Appellants' claims and imposition of monetary

sanctions based on the implied waiver arguments demonstrates a clear abuse of discretion." Brief of Appellant at 18.

i. "The judge's reliance upon arguments of counsel, as set forth in their oral arguments, memoranda and proposed orders, in order to establish a factual basis for his decision, shows that his orders of July 28, 2009 and April 6, 2010 conflict with *Higgins v. MUSC*, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997); they were not supported by proper evidence, and were clearly controlled by errors of law. Accordingly, they should be vacated." Brief of Appellants at 18.

j. "Again, based on nothing but the arguments of Respondents' counsel, the judge modified his Order of June 2, 2009 to accommodate the request of Respondents' counsel and deny the relief sought by Appellants. By Order of July 28, 2009, he altered Judge Clary's rulings, providing Respondents with the protections they sought while requiring Appellants to produce communications with their counsel which Judge Clary had protected as privileged." Brief of Appellants at 20.

k. "Furthermore, the order applied to all limited partners in all five cases, even though the Parkview Appellants were clearly in a different position than those in the other cases, having filed their case as early as 2003." Brief of Appellants at 20.

l. "The finding of contempt and the imposition of sanctions also result from an abuse of discretion on the part of the judge and should accordingly be vacated, as these are unsupported by the evidence and controlled by errors of law." Brief of Appellants at 23.

m. "The factual findings in the Dismissal Order and the Discovery Order were taken from the memoranda supplied to the judge by counsel for Respondents. As previously noted, it is improper for a judge to use the unsworn statements of counsel, whether in argument or in a memorandum, to establish factual findings, Cf., *Higgins, supra*. The factual findings of both orders simply parrot the arguments of Respondents' counsel in the language of their memoranda." Brief of Appellants at 23.

n. "The Discovery Order mirrors the memorandum and references seventeen (17) answers to interrogatories and forty three (43) responses to production requests which the judge found to be 'incomplete and inadequate.'" Brief of Appellants at 23.

o. "It is also apparent that the judge, in order to exercise his discretion as to the discovery issues, failed to weigh the factors required in such undertakings." Brief of Appellants at 28.

p. "The order does not address any weight given to the nature of the discovery requests, the discovery posture of the case, existence of any willfulness by Appellants, or the degree of prejudice to Respondents. This omission, in and of itself, is fatal to the judge's findings." Brief of Appellants at 28.

Fourth, with respect to the Court's contention that Appellants only raised general objections, Appellants respectfully direct the Court to the following portion of their Brief before this Court (pp. 23-28):

> "In order to understand the deficiencies in the Dismissal Order, it is necessary to examine the underlying Discovery Order upon which it is based. The Discovery Order followed a motion to compel filed by Respondents, which was heard on December 9, 2008. The motion was accompanied by a memorandum containing Respondents' arguments, which was filed the day before the hearing. The Discovery Order mirrors the memorandum and references seventeen (17) answers to interrogatories and forty three (43) responses to production requests which the judge found to be "incomplete and inadequate." This finding is not supported by the evidence. An examination of Appellants' discovery responses clearly shows that they met or exceeded the requirements of the South Carolina Rules of Civil Procedure, and certainly exceeded the discovery responses provided by counsel for Respondents. This Court is respectfully requested to examine these responses in determining whether the judge abused his discretion concerning their adequacy. Appellants' discovery responses are addressed in the affidavit of Thomas A. Pendarvis, R., pp. 3882-3905. Due to the voluminous nature of the responses, it is impossible to discuss each of them; however, the Court is directed to the following examples:
>
> 1. On July 14, 2005, Appellants responded to Respondents' initial discovery requests in this case. The responses were based upon the information and documents in the possession of Appellants or their counsel at that time, and included, *inter alia*: (a) valuation for the Parkview apartments; (b) eleven pages listing persons having knowledge or information concerning the facts of the case and a summary of their testimony; (c) seven pages listing generic categories of witnesses, as the specific individuals were then unknown; (d) twenty four pages

specifically identifying documents in Appellants' possession, and enclosing copies of any documents not in possession of Respondents; and (e) information relating to the expert witness who had been retained. *The information produced was in addition to more than 35,000 pages of documents already produced in the case.* (R., pp. 1489-1550.) Appellants also provided Respondents with a privilege log for documents being withheld under a claim of privilege between 2000 and 2003. (R., pp. 1551-1556.) Counsel for Respondents made no complaint regarding these responses.

2. Appellants supplemented their discovery responses on November 6, 2007 by adding witnesses and documents relating to insurance valuations for the subject properties. (R., pp. 3885, 3993-3998.) Supplemental responses were provided on numerous occasions prior to the issuance of the Dismissal Order as information became known to Appellants. These included, *inter alia*, supplements identifying witnesses and documents relating to (a) assessed values of the subject properties (R., pp. 3886-3887, 4004-4013, 4278-4284); (b) a title history for each of the subject properties (R., pp. 3887, 4274-4276); and (c) appraised values, HUD rental comparability studies and subsequent sales information for the subject property. (R., pp. 3888-3889, 4381-4388.) These supplements do not include the discovery responses by Appellants to Respondents' second set of discovery requests dated August 28, 2008.

3. In August, 2008, more than three years after the filing of this case, less than one year before the trial date in May, 2009, and without having taken a single deposition, counsel for Respondents served a second set of discovery requests. (R., pp. 3892, 4667-4687.) These requests were incredibly vague, burdensome, and overly broad, and far exceeded the abuses described in *Oncology and Hematology Associates of SC vs. SC DHEC*, 387 S.C. 380, 692 S.E.2d 920 (2010). For example, interrogatory #13 sought voluminous information regarding accountants, financial planners and advisers, tax advisers or preparers, et al. with regard to each of the partnerships, properties, notes, sales transactions, purchasers, subsequent sales, Mr. Hediger, subsequent purchasers and/or the Respondents. (R., p. 4684.) Interrogatory #17 required Appellants to "describe in detail all actions taken ... to study, assess, analyze, estimate or project the impact of the changes in the tax laws during the 1980s on the value of, or market for, the Properties or any other low-income housing or HUD-regulated properties." (R., pp. 4685-4686.) The interrogatories

had no time frames, so that they covered the entire life span of each of the Appellants. The Discovery Order sanctioned these and other interrogatories, finding Appellants' answers to be "incomplete and inadequate." (R., p. 122.)

4. Respondents' requests for production were no better, requesting, for example, "all documents concerning any of the properties, the limited partnerships, the notes, the sales transactions, the purchasers, Hediger, subsequent sales transactions, and subsequent purchasers." (R., pp. 4674-4675.) They also requested documents regarding tax information, including estate and gift taxes and investments (R., p. 4675). Incredibly, although the Respondents had managed the respective properties, and the Appellants, as limited partners, had nothing to do with them since 1975, Respondents sought documents concerning the "operating statements, financial statements, balance sheets, rent rolls" and other financial information for these properties, as well as documents concerning the "physical condition" of the properties (R., pp. 4675-4676); as former managers, Respondents already had access to these documents. *Respondents even sought "all documents reflecting criminal activity or suspected criminal activity at the Properties or in the immediate vicinity of the Properties"* (R., p. 4676). The Discovery Order nevertheless sanctioned these requests, finding Appellants' responses to be "incomplete and inadequate."

5. Based on the ages and health of Appellants, some of whom are widows or heirs of original partners, Appellants responded to the best of their ability. Many Appellants did not possess any responsive documents, and Appellants' counsel specifically pointed these facts out to the judge at the hearings on the Respondents' motions. For example, on December 9, 2008, counsel stated:

   a. "I can show you 15 supplemental discovery responses or better that we have done. Every time we get something, we pass it along to them. We send it in. If I've got it, they've got it." (R., p. 1004, l. 18-21.)

   b. "There were 4 primary partners originally in Parkview... Mr. Davis is now... almost 80 years old. One was ... Rentz. He is dead. One was ... Pike. He is dead. The fourth was ... Hodge. He is dead... The only living creature out of that original group is Mr. Davis... We didn't get a lot of materials from the Orleans partnership

and different ones. The reason is we have asked for these documents... but people are either dead or they're too old..." (R., pp. 1007, l. 24 - 1008, l. 9.)

c. "In the case of ... Parkview... widows have succeeded to their partnership interests ... and in the case of Mr. Hodge, his daughter has as part of the estate. So, we have asked them – each of them – to go back and look and see what you can find. Get it to us whatever it is. Go through old trunks. Go through safe deposit boxes. Go to anything you can find that relates to this. They have presented it to us. We have turned it over. We have turned over every document that we have been presented with ... with the exception of documents that are listed on our privilege log. It's just that simple." (R., p. 1008, ll. 11-22.)

Furthermore, at a later hearing on August 24, 2009, Appellants' counsel reiterated these ongoing concerns to the judge:

a. "We are having difficulty getting a lot of the documents from people who can't communicate because of their health issues." (R., p. 1126, ll. 5-7.)

b. "We've had to send these people out searching for materials not in their immediate control... We had our clients looking for these documents." (R., p. 1126, ll. 17-19, 23-24.)

c. "This production is all we could do. It's absolutely ... the best we can do. Every time we've gotten new documents, we have delivered them. Some of the things ... are things that are just not within the control of these people. Life insurance applications they made back in the 60s ... they're having to go back. We've gotten as many of these documents as we can. And we're going to continue to comply as we're able." " (R., p. 1127, ll. 10-11, l. 21- p. 1128, l. 4.)

6. The judge also found that Appellants' responses concerning their damages were deficient; both the Discovery Order and subsequent Dismissal Order specifically rely upon Respondents' Supplemental Memorandum to support this finding. (R., p. 127.) Notwithstanding that the reliance on the memorandum violates *Higgins, supra*, the finding is simply not supported by the evidence. Appellants' initial discovery responses in 2005 set

forth the manner in which their damages were calculated, and included the fair market value for the Parkview complex as a component of this calculation. Appellants had nothing to do with the apartments subsequent to Respondents' entry into the partnership in 1975, and were not privy to many documents which would establish the fair market value. As part of their discovery efforts, however, they were able to obtain a number of values for each of the apartments from which the jury could ascertain the fair market value needed to calculate damages, and provided these to Respondents as noted above. With the exception of Pinewood, Appellants provided an itemization of the values for each apartment complex to Respondents on multiple occasions, including following the mediation in March, 2008 and again as to Parkview in their Third Supplemental Response to the August 28, 2008 discovery. (R., pp. 3508-3529.) The itemizations showed ranges of values for each complex. The Appellants are not required to itemize the amount of their damages to a mathematical certainty. *Holly Woods Ass. vs. Hiller*, 392 SC 172, 708 SE2d 787 (Ct. App. 2011); *Whisenant v. James Island Corp.*, 277 SC 10, 281 SE2d 794 (1981) ("proof with mathematical certainty of the amount of loss or damage is not required.") These responses clearly comply with the rules of procedure and the laws of this State.

7. The judge also found that Appellants' responses relating to their expert witnesses were deficient. The Dismissal Order states, "the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, *as shown in Defendants' Second Supplemental Memorandum at p. 9-14*; Plaintiffs in the other cases have provided even less." (R., p. 126.) (Emphasis added.) Again, reliance on the memorandum violates *Higgins, supra;* furthermore, the finding is simply not supported by the evidence. Following the hearing in January, 2010, Appellants' counsel provided the judge and Respondents with the Third Supplemental Response referenced above. Though unmentioned in the Order, Appellants' counsel also provided a letter which stated that the supplemental responses were limited to Parkview in light of the judge's comments that it was the first case scheduled for trial. The letter also expressed the belief that the supplemental responses were "in compliance with both your prior order and the South Carolina Rules of Civil Procedure," and added this sentence: "*If you agree, we will provide similar updated responses in the other cases.*" The judge did not respond, other than to issue the Dismissal Order once he received Respondents' memorandum. The supplemental responses addressed both the damages and

> expert witness "deficiencies" about which Respondents and the judge had complained. Also, the valuations by the assessors, appraisers, insurance brokers, et. al. referenced above were included for Parkview, as well as a precise dollar valuation by two (2) experts. (R., pp. 3508-3529.) In any event, Respondents had known the identities of Appellants' experts since March 2008, and declined to depose them. Therefore, they were not prejudiced by any alleged deficiencies in Appellants' responses. Cf., *Holly Woods, supra*, ("... even if there was a discovery violation, we find no prejudice because Appellants failed to depose [the expert]").

The judge's interpretation of Respondents' discovery requests exceeds discovery envisioned or permitted under the South Carolina Rules of Civil Procedure, and validates the concern of this Court, as expressed in *Oncology, supra*, that "discovery practice has become a cottage industry and the merits of a claim are being relegated to a secondary status." Appellants' counsel informed the judge that the third supplemental responses were "as detailed and complete as I know how to make it in a written discovery response." (R., pp. 3508-3509.) Appellants believe that their responses were adequate and that their cases should not have been dismissed based on the discovery responses. Respondents discovery requests, as was the case in *Oncology, supra,* are "abusive and beyond the pale." As the Court there noted, "... the trial court must make an effort to impose reasonable discovery limits. The trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure." The judge made no such effort and abused his discretion.

It is also apparent that the judge, in order to exercise his discretion as to the discovery issues, failed to weigh the factors required in such undertakings. *Cf.*, *Samples v. Mitchell*, 329 SC 105, 495 SE2d 213 (Ct. App. 1997), and cases cited therein. The order does not address any weight given to the nature of the discovery requests, the discovery posture of the case, the existence of any wilfulness by Appellants, or the degree of prejudice to Respondents. This omission, in and of itself, is fatal to the judge's findings. As stated in *Samples, supra*:

> A failure to exercise discretion amounts to an abuse of that discretion. When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred... The mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis that discretion was exercised.

> Accordingly, there was a clear abuse of discretion on the part of the judge, as both the Discovery Order and the Dismissal Order were not supported by the evidence and were controlled by errors of law; the orders of March 3, 2009 and April 6, 2010 should be reversed and vacated."

In all candor, it is difficult for Appellants to see how they could have been more specific, given the history of these cases and the limitations on the content of their briefs under the applicable rules. The sections quoted above demonstrate that Appellants in fact specifically appealed the errors in the various orders. The Court's misapprehension of these arguments and the Record on Appeal severely limit Appellants' ability to challenge the specifics of the underlying orders, including the Discovery and Privilege Orders, and therefore severely and improperly limited their arguments on appeal. *See* J. Pleicones, dissenting opinion. Appellants respectfully request that this Court grant this Petition for Rehearing so that the underlying discovery orders not considered by the majority can be properly reviewed and vacated, together with the Order dismissing Appellants' claims and imposing sanctions. Although the majority opinion recognizes the existing law concerning imposition of the sanction of dismissal, it erroneously found that Appellants were guilty of "bad faith, willful disobedience or gross indifference" to justify the sanction. Respectfully, this finding resulted from the majority's failure to properly examine the merits of the underlying discovery orders, including the Privilege and Discovery Orders; had they done so, they would most probably had found, as did Justice Pleicones, that all of the orders were "affected by an error of law" and that the "contempt findings cannot stand."

II. BY AFFIRMING THE TRIAL COURT'S DISMISSAL OF THESE CASES, THIS COURT HAS IMPLICITLY SANCTIONED THE TRIAL COURT'S ADOPTION OF THE *HEARN* AT-ISSUE WAIVER TEST, THEREBY SUBSTANTIALLY ALTERING AND DIMINISHING THE ATTORNEY-CLIENT PRIVILEGE IN SOUTH CAROLINA

A. Prior to the trial court's ruling, the *Hearn* at-issue waiver test had never been adopted by the Appellate Courts of this State, and Appellants reasonably believed that such test (1) was not the law of this State, and in any event, (2) was inapplicable to the facts of these cases. Counsel for the Respondents advanced the proposition in the lower court, both before Judge Early and Judge Clary, that Appellants, merely by filing their complaints, had placed "at issue" the statute of limitations, and had thus impliedly waived their attorney-client privilege as to any documents or communications which Respondents deemed relevant to the statute of limitations issue that *they* inserted in these cases by way of an affirmative defense. In his amended report dated April 14, 2009, Judge Clary specifically rejected this argument, noting that "our South Carolina state courts have not addressed this issue." (R., p.82.) Judge Clary's "findings and conclusions" were adopted by Judge Early "verbatim as an Order of the Court." (R., p.101.) Although Judge Early later modified Judge Clary's report, the modifications did not include Judge Clary's finding that the at-issue waiver argument being advanced by Respondents had never been addressed by the Appellate Courts of this State. R., pp. 103-113. Nevertheless, Judge Early held that Appellants had "impliedly waived their claims of privilege with respect to documents dated . . . more than three years prior to the filing of these lawsuits. (R., p.108.) This ruling was based upon Respondents' at-issue

waiver argument.

Judge Early's adoption of Respondents' at-issue waiver argument marked a deviation from the established law of this State concerning waiver by implication. Prior to Judge Early's ruling that Appellants had placed the statute of limitations at issue merely by filing their complaints, and therefore waived their right to assert the attorney-client privilege as to such issue, the law in South Carolina was completely at odds with his ruling, and Appellants were justified in relying upon the existing law as established by the laws and courts of this State. *Cf.*, Rule 8(c), SCRCP (statute of limitations is an affirmative defense); *WS Gray Cotton Mills v. Spartanburg County Mills*, 139 S.C. 223, 137 S.E. 684 (1927): "If [waiver is] claimed to have been implied, it must appear that the opposite party has been misled to his prejudice into the honest belief that such waiver was intended or consented to." As pointed out repeatedly to the trial court and to this Court, there was no evidence presented by Respondents to support a finding of implied waiver under existing law.

In order to get around the lack of evidence concerning waiver of the attorney-client privilege by Appellants, Respondents asserted - and the trial court adopted - the at-issue waiver theory. The only basis asserted by the trial court for its ruling in this regard was the reference to the content of the memorandum of Respondents' counsel. As noted numerous times in Appellants' briefs before this Court, and as recognized by Justice Pleicones in his dissent to the majority opinion, it was improper for the trial judge to base his decisions solely on arguments of counsel. *See Higgins, supra*; Footnote 24 of the Opinion in this

case. Although Judge Early's initial ruling adopting the at-issue waiver theory came from his modification of Judge Clary's rulings, this was subsequently adopted as the basis for his later rulings requiring production of privileged documents by Appellants (i.e., the "Privilege Order") and for his eventual dismissal of Appellants' claims in each of these cases.

The at-issue waiver doctrine adopted by Judge Early at the urging of Respondents, as noted in the dissent, was based upon the decision in *Hearn v. Rahy*, 68 F.R.D. 574 (Ed. Wash. 1975). Not only had *Hearn* not been adopted by the Appellate Courts of this State, a search of South Carolina case law reveals that it had never even been cited in any case in this State. Furthermore, Judge Early's reliance upon it was misplaced in that its application was not supported by the facts of these cases. As noted by the dissent, the factors in *Hearn* said to justify an exception to the rule of privilege required a showing that Appellants had, as "a result of some affirmative act, such as filing suit... put the protected information at issue by making it relevant to the case." 68 FRD at 581. As pointed out in the dissent, this approach "for finding implied waiver dramatically expands the traditional rule." That being said, it is also true that, in the cases *sub judice*, it is evident that the complaints do not "put the protected information at issue by making it relevant to the case." Therefore, the criteria referenced in *Hearn* did not exist in these cases.

Judge Early and the Respondents belatedly recognized that the factual allegations in the five complaints at issue differed. Three of the complaints (Parkview, Palmetto, and Pinewood) are totally devoid of any language which

could be construed as placing "protected information at issue." Therefore, the Respondents sought to place a strained interpretation on language in the remaining two complaints (Roosevelt and Orleans) in an attempt to satisfy the *Hearn* criteria.

The Dismissal Order, which is based upon the Discovery and Privilege Orders, states, "The factual bases for the Court's rulings on the privilege issues have not changed." (R., p.137.) Accordingly, the Dismissal Order continues to erroneously rely upon Respondents' memorandum in lieu of admissible evidence. This order states that the judge "considered at length" the arguments and memoranda of Respondents' counsel, that he "disagrees" with Appellants' arguments showing the factual and legal errors in the Privilege Order, and concludes, "*Once privilege was waived as to the documents (by mere filing of the suits and/or by reasons of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases.*" (R., p.137, emphasis added.) There is no law in this State to support such a finding, and it is evident that the lower court continuously substituted non-existent law for the prevailing law of this State.

The Dismissal Order does not quote language from the Orleans and Roosevelt complaints which it references; the reference apparently relates to Respondents' assertion, *in their memoranda*, that certain language in the complaints in the two cases impliedly put at issue the statute of limitations. These two complaints refer to the parties' agreement to forgo discovery and the filing of additional lawsuits in order to appraise the properties and mediate all

claims, and allege that Respondents misled Appellants, thereby resulting in a delay of their ability to recover their damages. A fair reading of these two complaints reveals that the statute of limitations is not mentioned at all, and that the allegations only serve to provide the basis for Appellants' claims for damages resulting from the delay occasioned by the Respondents' misuse of the appraisal and mediation process. This did not meet the test for implied waiver under South Carolina law at the time of Judge Early's rulings or prior to the majority opinion in these cases.

Under the law as it has historically existed in South Carolina, the implied waiver must be "reasonably inferrable" from the conduct of the party. *Canal Insurance Company v. Caldwell*, 338 SC 1, 524 SE2d 416 (Ct. App. 1999); it must involve "... circumstances *indicating an intent to waive*." (Emphasis added) *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981). "Waiver will not be implied from doubtful acts." *Zeller v. Cumberland Truck Sales*, 272 S.C. 558, 253 S.E.2d 111 (1979). The language in the two complaints referenced in Judge Early's Dismissal Order does not meet this criteria for waiver; to interpret the allegation concerning delay and resulting claim for damages as injecting the issue of the statute of limitations so as to impliedly waive any attorney-client privilege with respect to such issue is a gross distortion of the language of the pleadings, represents a substantial deviation from the law of this State. Nevertheless, the judge adopted Respondents' arguments and held that such language justified his finding that Appellants had waived their right to claim privilege or protection, *even though the complaints in three of these cases do not*

contain the language referenced and relied upon.

In summary, Appellants reasonably believed that they were acting in accordance with existing law and were properly protecting their attorney-client privilege. Conversely, they reasonably believed that the rulings of Judge Early in this regard were contrary to the laws of this State. They repeatedly sought solutions to this dilemma, requesting various forms of alternative relief from the lower court (*e.g.*, review and revision of the orders issued, submission of disputed documents under seal for an in-camera review, and even a request for a simple contempt order rather than the draconian order of dismissal). All requests from Appellants for relief from the lower court short of dismissal of their claims were rejected. Appellants even employed independent counsel at one point in an attempt to have the Appellate Courts intervene, but this action was also rejected, leaving Appellants with the untenable choice of having to produce privileged documents pursuant to orders which were patently contrary to existing law, or risk dismissal of their cases in order to have the matter addressed by this Court. Contrary to the majority's opinion, Appellants did follow the steps necessary to bring this matter to a proper resolution. Accordingly, punishment of the Appellants by dismissal of their claims and attendant imposition of sanctions is totally unmerited in these cases, and contrary to long-standing precedent.

B. Adoption of the *Hearn* at-issue waiver test by the majority of the Supreme Court in these cases will effectively have a chilling effect upon communications between lawyers and their clients, and will eviscerate the attorney-client privilege as it presently exists in South Carolina. In

vigorously protecting their attorney-client privilege, Appellants were acting not only on their own behalf, but also on behalf of the entire citizenry of this State. The undisputed evidence presented to the lower court, and also to this Court, is that the lower court's adoption of the *Hearn* at-issue waiver theory had a significant chilling effect on communications between Appellants and their counsel during the course of this litigation. (Cf., R, p. 3762.) This is certain to be repeated in the future if the *Hearn* test remains the law, as dictated by the majority opinion in these cases.

If it is allowed to stand, this decision will affect not only the litigants in these cases, but litigants in all future cases. Specifically, future litigants, *merely by filing complaints*, will be deemed to have put at issue the statute of limitations and impliedly waived their attorney-client privilege as to that issue; they may be deemed to have waived their attorney-client privilege because of language in other complaints filed by other parties in other cases. Future defendants will no longer have to raise the statute of limitations as an affirmative defense and Rule 8(c), SCRCP will become a nullity. Additional concerns were recognized by Justice Pleicones in his dissent.

Justice Pleicones, in addressing the problem of waiving the attorney-client privilege merely by filing suit, accurately states: "As used by the *Hearn* court and as applied by the circuit court in this case, this factor expands the circumstances in which a party impliedly waives his attorney-client privilege. Rather than being limited to situations in which the client inserts the privileged communications into the controversy, waiver is expanded to situations in which the client raises any

issue to which the privileged communications are relevant." Justice Pleicones further identifies the magnitude of the problem created: "Adoption of the *Hearn* test virtually eliminates attorney-client privilege in a wide range of cases without taking into account the public policy on which attorney-client privilege is grounded or that the well-settled contours of the attorney-client privilege already balance the competing public interests." The dissent then identifies the numerous criticisms of *Hearn* since it was decided, noting that "Hearn has been rejected by most courts and many commentators."

The dissent in these cases astutely recognizes that the lower court's dismissal of Appellants' claims "depended in part on its determination that Appellants had waived all privileges in these documents merely by filing suit" and that the documents in question "would have been privileged but for the court's application of the *Hearn* at-issue test." Appellants believe, in accordance with the positions asserted by Justice Pleicones, that the *Hearn* at-issue test should not become the law of this State. Accordingly, Appellants strenuously urge this Court to reconsider this aspect of the majority opinion.

Additionally, Appellants assert that the punishment of dismissal of their claims, the harshest and most draconian of sanctions, and attendant imposition of additional sanctions as a result of the adoption and affirmation of the *Hearn* at-issue waiver test is totally unmerited in these cases. Appellants were protecting their rights in accordance with the law of this State as it then existed. As the Court noted, Appellants could only obtain appellate review of the Discovery Order after refusing to comply and then being held in contempt. *See*

Grosshuesch v. Cramer, 377 S.C. 12, 659 S.E.2d 112 (2008). However, the majority opinion then cites the standard for a non-party participating in discovery and admonishes Appellants for not adhering to the non-party standard. Respectfully, Appellants made every effort to comply with the discovery orders short of turning over documents that they believed, and still believe, to be privileged. This was not willful disobedience, bad faith or gross indifference, but instead genuine belief that the documents were privileged and a valid concern that the production of privilege materials could potentially waive all privilege communications with their lawyers. Therefore, the sanctions by the circuit court were unduly harsh as Appellants had no other legal course of action but to refuse to comply with the order, have their complaints dismissed, have an order issued providing for monetary sanctions for non-compliance, and then appeal the circuit court's findings.

III. THE COURT'S ADHERENCE TO SOUTH CAROLINA LAW ON JUDICIAL RECUSAL IS NOT IN KEEPING WITH THE JUDICIAL CODE OF CONDUCT OR THE MOST RECENT UNITED STATES SUPREME COURT DECISIONS

The qualification of judges in this State to preside over matters before them is ostensibly controlled by the Code of Judicial Conduct, which was adopted by this Court under Section V of the South Carolina Appellate Court Rules, together with the pertinent canons and sections. Rule 501, SCACR, Canon 1A, provides in part: "[J]udges ... must comply with the law, including the provisions of this Code. *Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the*

system of government under law." Commentary. (Emphasis added.)

Accordingly, "A judge *shall* respect and comply with the law and *shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."* *Ibid.*, Canon 2.A. (Emphasis added) The Commentary to Canon 2.A. states, "*A judge must avoid all impropriety and appearance of impropriety...* The test for *appearance of impropriety* is whether the conduct would create in reasonable minds a *perception* that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. (Emphasis added)

The Code further provides, "A judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality *might reasonably be questioned*, including *but not limited to* instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer..." *Ibid.*, Canon 3E(1) (Emphasis added) Under this Canon, which imposes an *objective standard* of reasonableness as opposed to a subjective standard of impartiality in fact, a judge is *automatically disqualified* if his impartiality might reasonably be questioned. *Nothing else need be shown.* The opinion recognizes these tenets but also points to Canon 3(E)(1) as providing "direction as to when disqualification may be necessary." The specifics mentioned in Canon 3E(1), however, are simply *examples* of instances when a judge's impartiality is reasonably at issue; they are not meant to be requirements. This position is supported by the Commentary to the Canon: "Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned,

regardless whether any of the specific rules in Section 3E(1) apply." (Emphasis added)

If the issue of recusal was only governed by the plain language of the Code, the only question would be whether or not the judge's impartiality might reasonably be questioned. Many judges in this State follow that principle and *sua sponte* recuse themselves when there is any question as to whether their impartiality could reasonably be questioned. If that principle had been followed in the present case, there can be little doubt that, under the totality of the circumstances addressed in the briefs and in the opinion, recusal of the lower court judge was proper. Unfortunately, however, the appellate courts of this State have imposed an additional component to the recusal issue, one which has rendered it virtually impossible to reverse a trial judge who declines to recuse himself or herself. This additional component was specifically stated and imposed in the majority opinion: "Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal," citing numerous decisions supporting this statement. The majority opinion also quotes Judge Early's reliance on this additional element in his decision not to recuse himself in these cases: "Plaintiffs have no evidence proving bias or prejudice against them or for the Defendants."

There is, however, no support for such an added burden in the Code. In fact, the opposite is true - the Code imposes a substantially lesser burden, dictating recusal when there is even an appearance of impropriety, regardless of whether there exists impropriety in fact. The imposition of the additional "bias or

prejudice" requirement, as used in this State, effectively eviscerates the plain language and intent of the Code. The use of the "no evidence of bias or prejudice" standard by our appellate courts on a near universal basis for affirmation of trial judges' refusals to disqualify or recuse themselves has resulted in the fact that there are virtually no decisions reversing a trial judge's failure to recuse himself or herself. The use of the "bias or prejudice" impediment is even more daunting when considered with the fact that this Court has failed to provide guidelines or criteria which have been established in order to determine precisely *what* evidence of bias or prejudice, or what degree of proof of such evidence, *would* warrant disqualification or recusal. Time after time, including the case *sub judice*, the appellate courts simply state that there is no evidence of bias or prejudice. As noted in Appellants' briefs, the lone exception to this is the decision in *Ellis v. Proctor & Gamble*, 315 S.C. 283, 433 S.E.2d 856 (1993). In Ellis, the Court found that "... *a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record...*" and thus found "bias or prejudice" upon examination of the trial judge's factual findings.

Appellants, in reliance upon this decision, have recited in their briefs numerous examples of the trial judge's findings of fact which were not supported by the record. (*Cf.*, pages 40-45, Parkview Brief) Appellants also provided numerous examples of how they were prejudiced, including significant monetary expenses to the Special Master and prosecution of prior appeals during the course of this litigation. These were all ignored, rejected or not addressed in the majority opinion, again leaving Appellants, the Bar and the Bench in the dark as

to whether there is any set of circumstances which this Court will deem to constitute "bias or prejudice"in order to require recusal. The result is that, notwithstanding the clear language and intent of the Code, litigants in this State are *de facto* precluded from overturning a trial judge's denial of recusal. This is even further compounded by the fact that, in South Carolina, the determination of recusal is made by the very person who is the subject of the recusal request.

Appellants have contended that the status of the law in this State concerning the recusal issue can result in the deprivation of a fair and impartial forum in which to litigate their claims; this may result in a denial of the litigants' constitutional right of due process. "Every litigate has the lawful right to expect utter impartiality and neutrality in a judge who tries his case." 46 Am. Jur. 2d, *Judges*, §146. "The right to disqualify a judge for bias and prejudice is substantive ... and it is included within the right to a fair trial guaranteed by the due process clause of the ... United States Constitution." *Ibid.*

The constitutional guarantee of a fair and impartial judge and forum is recognized in this State. *Mallett v. Mallett,* 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996)("... the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process..") In determining the fairness or impartiality of a judge or tribunal under a due process inquiry, the United States Supreme Court has determined that the objective test of a reasonable perception of bias, referenced above in the Code of Judicial Conduct, as opposed to the subjective "bias in fact test" is the proper procedure to be followed. *Cf. Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252 (2009).

Justice Kennedy's majority opinion in *Caperton*, finding a judge's refusal to disqualify or recuse himself was a denial of constitutional due process, specifically relies upon the language of the Code of Judicial Conduct, including Canon 3E(1). The *Caperton* Court discarded the judge's assertions of lack of personal interest on his part, as well as his assertion that there was no objective evidence of bias. Instead, the Court adopted the "appearance of impropriety" and reasonableness language of the Code consistent with Appellants' position in this case.

The present case amply demonstrates the concern expressed by Justice Kennedy if the focus is on proof of evidence to show bias in fact, rather than a reasonable perception of bias: "This is particularly true where, as here, there is no procedure for judicial fact-finding and the sole trier of fact is the one accused of bias... Objective standards may also require recusal whether or not actual bias exists or can be proved. Due process may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. *The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process.*" Appellants raised this issue, together with the trial court's failure to follow the objective test required by *Caperton*, but it was not addressed by the majority opinion.

Appellants contend that this case is an appropriate vehicle for this Court to address these issues and take appropriate action to correct the resulting inequities. This could be done by simply abrogating the additional "bias or

prejudice" requirement and following the plain language of the Code. Alternatively, at the very least, this Court should provide some guidance as to what will constitute the "bias or prejudice" so that the Bar and Bench will be enlightened and can govern their conduct accordingly. Otherwise, litigants will continue to be faced with the reality that they have no real recourse in the judicial system with respect to issues of recusal. In that event, they are likely to seek redress outside the judicial system. *Cf., Seagars-Andrews v. Judicial Merit Selection Commission, et al.* 691 S.E.2d 453, 387 S.C. 109 (2010).

CONCLUSION

Based upon the foregoing, Appellants respectfully request the Court grant their petition for rehearing. Furthermore, Appellants request that the lower court orders, which were based upon errors of law and without proper evidentiary support, be vacated, and that these cases be remanded for trial.

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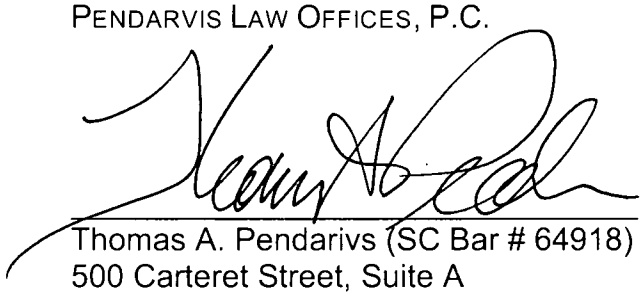
Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



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August 20, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie Reynolds, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Parkview Apartments, a South Carolina Limited Partnership, Appellants,

v.

Parkview Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180666

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership, Appellants,

v.

Palmetto Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180087

Laurance H. Davis, Jr., Rhoda G. Rentz, Mortimer M. Weinberg, Jr., Hodge Land Company, Incorporated, and Anna Trotter, individually and in their capacities as the Limited Partners of Roosevelt Gardens, a South Carolina Limited Partnership, Appellants,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, Apartment Investments and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180086

Carolina Management Corporation of Beaufort, James B. Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Pinewood Park Apartments, a South Carolina Limited Partnership, Appellants,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-180088

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O. Mercy, individually and in their capacities as the Limited Partners of Orleans Gardens, a South Carolina Limited Partnership, Appellants,

v.

Orleans Gardens, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Appellate Case No. 2010-176826

Appeal From Beaufort County
Doyet A. Early III, Circuit Court Judge

PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of Appellants' PETITION FOR REHEARING on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 20th day of August, addressed to:

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August 20, 2014