

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2005-CP-26-0044
Appellate Case No. 2012-212048

RECEIVED

AUG 28 2014

S.C. Supreme Court

Magnolia North Property Owners' Association, Inc.,Respondent,

v.

Heritage Communities, Inc., Heritage Magnolia North, Inc.
and Buildstar Corporation,Petitioners.

Consent Motion to Consolidate Oral Arguments

Pursuant to Rules 214 and 240, SCACR, Petitioners Heritage Communities, Inc., Heritage Magnolia North, Inc., and Buildstar Corporation hereby move this Court for an Order consolidating the oral argument in this appeal (appellate case no. 2012-212048, *i.e.*, "Magnolia North") with a related appeal involving very similar issues in which this Court granted certiorari on the same day (appellate case no. 2012-206066, *i.e.*, "Riverwalk"). Counsel for the opposing parties in both of the appeals to be consolidated has been consulted and consents to this motion. (See attached consent.)

The grounds for this Motion are the significant similarity of the issues upon which this Court has granted certiorari. Both of these appeals involve construction defect lawsuits, and each has led to Court of Appeals opinions. On June 26, 2014, this Court granted Petitioners' Petition for Certiorari in the Magnolia North case on issues I, II, and

III of the petition. That same day, the Court granted certiorari in the Riverwalk case on issues I and III of that petition.

One of the issues upon which this Court granted certiorari is identical in both cases, namely Issue I, which regards the applicability of the “amalgamation of interests” theory to the case. Another of the issues on which this Court granted certiorari is exceedingly similar in both cases, namely Issue III, regarding the Court of Appeals’ affirmance of the directed verdicts against the Petitioners in both appeals.¹ The sole difference between the two grants of certiorari is the grant of certiorari on Issue II in the Magnolia North case regarding whether it was error to affirm the Trial Court’s instructions to the jury that it had a duty to award punitive damages.

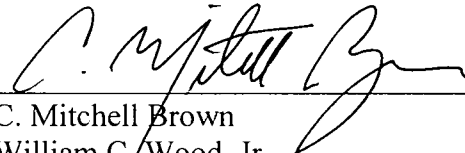
In light of the fact that the issues to be reviewed by this Court in the Riverwalk case are substantially similar to two of the issues this Court will review in the Magnolia North case, there is no need to have separate and largely duplicative oral arguments. Accordingly, Petitioners respectfully request that the above-referenced appeals be consolidated.

[SIGNATURE PAGE ATTACHED]

¹ In the Riverwalk Petition for Certiorari, Issue III asked, “Was it error to affirm the directed verdict against all three Appellants when there was evidence that one or more of them did not proximately cause all the construction deficiencies in question?”

In the Magnolia North Petition for Certiorari, Issue III asked, “Was it error to affirm the directed verdict against all three Appellants on the negligence and breach of the warranty of workmanlike service claims when there was evidence that the Appellants did not proximately cause all the construction deficiencies in question?”

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Corporation.

August 28, 2014

Lisa Whitehurst

From: Mitch Brown
Sent: Monday, August 25, 2014 10:33 PM
To: Lisa Whitehurst
Subject: FW: 2014 8 18--Magnolia North--motion to consolidate oral argument before S C Sup Ct - 4842-3143.docx

From: Pat Henry [<mailto:PHenry@thompsonlaw.com>]
Sent: Wednesday, August 20, 2014 12:42 PM
To: Mitch Brown
Subject: RE: 2014 8 18--Magnolia North--motion to consolidate oral argument before S C Sup Ct - 4842-3143.docx

Yes

From: Mitch Brown [<mailto:mitch.brown@nelsonmullins.com>]
Sent: Tuesday, August 19, 2014 4:31 PM
To: Pat Henry
Subject: 2014 8 18--Magnolia North--motion to consolidate oral argument before S C Sup Ct - 4842-3143.docx

Hi Pat:

Will you consent to the attached? Thanks.

Mitch

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Petitioners, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

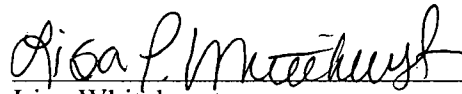
Pleadings:

Consent Motion to Consolidate Oral Arguments

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August 28, 2014