

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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September 11, 2014

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
PO Box 1128
Beaufort, SC 29901-1128

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401-2210

The Honorable Winnifa Brown-Clark
Clerk of Court, Orangeburg County
P. O. Box 9000
Orangeburg, SC 29115-9000

REMITTITUR

Re: Laurance Davis v. Parkview Apartments
Lower Court Case No. 2003-CP-07-00726
Appellate Case No. 2010-180666

Laurance Davis v. Palmetto Apartments
Lower Court Case No. 2005-CP-07-01989
Appellate Case No. 2010-180087

Laurance Davis v. Roosevelt Gardens
Lower Court Case No. 2005-CP-38-01131
Appellate Case No. 2010-180086

Carolina Management v. Pinewood Park Apartments
Lower Court Case No. 2005-CP-07-01990
Appellate Case No. 2010-180088

Rhoda Rentz v. Orleans Gardens
Lower Court Case No. 2005-CP-10-04229
Appellate Case No. 2010-176826

Dear Clerks of Court:

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

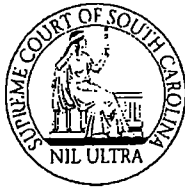
Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

CLERK

cc:

Thomas A. Pendarvis, Esquire
Ellis M. Johnston, II, Esquire
Joel D. Bailey, Esquire
Calvin Theodore Vick, Jr., Esquire
The Honorable Doyet A. Early, III



The Supreme Court of South Carolina

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September 11, 2014

Thomas A. Pendarvis, Esquire
500 Carteret St. Ste. A
Beaufort SC 29902-5066

Joel D. Bailey, Esquire
PO Box 1437
Beaufort SC 29901

Re: Laurance Davis v. Parkview Apartments
Lower Court Case No. 2003-CP-07-00726
Appellate Case No. 2010-180666

Laurance Davis v. Palmetto Apartments
Lower Court Case No. 2005-CP-07-01989
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Lower Court Case No. 2005-CP-38-01131
Appellate Case No. 2010-180086

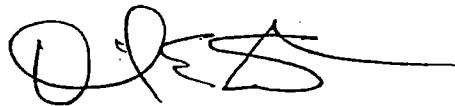
Carolina Management v. Pinewood Park Apartments
Lower Court Case No. 2005-CP-07-01990
Appellate Case No. 2010-180088

Rhoda Rentz v. Orleans Gardens
Lower Court Case No. 2005-CP-10-04229
Appellate Case No. 2010-176826

Dear Counsel:

Enclosed is the order denying the Petition for Rehearing in the above entitled matters, along with the remittitur. Further, the heading of the opinion has been amended to reflect that the appeals involve not only Beaufort County cases, but also cases from Charleston and Orangeburg Counties. I have enclosed the page that reflects this amendment.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. R. S.", followed by a long horizontal line extending to the right.

CLERK

cc:

Ellis M. Johnston, II, Esquire
Calvin Theodore Vick, Jr., Esquire

The Supreme Court of South Carolina

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, 27 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

The Supreme Court of South Carolina

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,

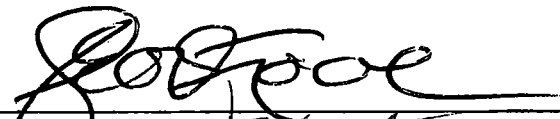
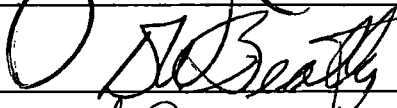
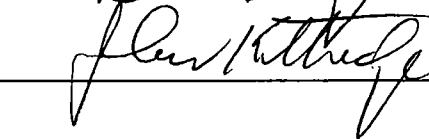
v.

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

ORDER

The Petition for Rehearing filed in the above entitled matters is denied.

	C.J.
	J.
	J.

I would grant the Petition for Rehearing.

A handwritten signature in dark ink, appearing to read "K. Hearn", is written over a horizontal line.

J.

Justice Kaye G. Hearn, not participating

Columbia, South Carolina

September 11, 2014

cc:

Thomas A. Pendarvis, Esquire

Ellis M. Johnston, II, Esquire

Joel D. Bailey, Esquire

Calvin Theodore Vick, Jr., Esquire

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

Appeals from Beaufort, Charleston and Orangeburg
Counties

Doyet A. Early III, Circuit Court Judge

Opinion No. 27429

Heard November 13, 2012 – Filed August 6, 2014

AFFIRMED

Thomas A. Pendarvis, of Pendarvis Law Offices, P.C., of
Beaufort, and Joel D. Bailey, of The Bailey Law Firm,
P.A., of Beaufort, for Appellants.

Ellis M. Johnston II, of Haynsworth Sinkler Boyd, P.A.,
of Greenville, and Calvin Theodore Vick, Jr., of Harper
Lambert & Brown, P.A., of Greenville, for Respondents.

PENDARVIS LAW OFFICES, PC



August 20, 2014

RECEIVED

AUG 21 2014

S.C. SUPREME COURT

VIA UPS OVERNIGHT MAIL

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Davis v. Parkview Apartments, Appellate Case No. 2010-180666
Davis v. Palmetto Apartments, Appellate Case No. 2010-180087
Davis v. Roosevelt Gardens, Appellate Case No. 2010-180086
Carolina Management v. Pinewood, Appellate Case No. 2010-180088
Rentz v. Orleans Gardens, Appellate Case No. 2010-176826

Dear Mr. Shearouse:

In connection with the above matter, enclosed for filing please find an original and seven (7) copies of Appellants' PETITION FOR REHEARING together with a PROOF OF SERVICE.

Kindly return a date-stamped copy of the above documents using the enclosed pre-paid, self-addressed envelope. Thank you for your attention to this matter.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/lat

Enclosures

cc w/encls: Joel D. Bailey, J.D.
Ellis M. Johnston, II, J.D.
Calvin T. Vick, J.D.

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,

RECEIVED

AUG 21 2014

S.C. SUPREME COURT

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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Attorneys for Appellants

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

14.

- 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), SCRPC (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 inferable" 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 litigant 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).

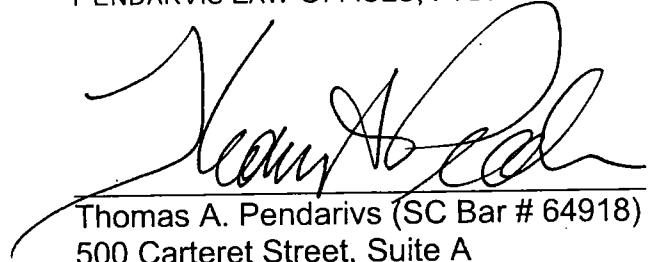
CONCLUSION

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.

A handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', is written over a horizontal line.

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Attorneys for Appellants

Beaufort, South Carolina

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:

Ellis M. Johnston, II, J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

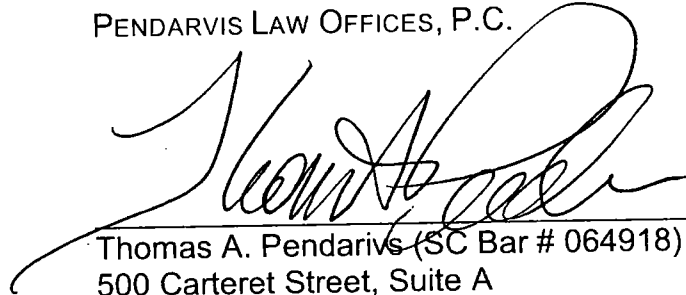
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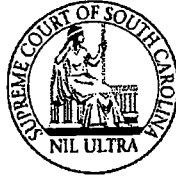
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Attorneys for Appellants

Beaufort, South Carolina

August 20, 2014



The Supreme Court of South Carolina

Kimberly E. Harbison

08/21/2014

RECEIPT #73294

Case No: 2010-180666
Case Short Title: Laurance Davis v. Parkview Apartments
Event:
Fee Type: Motion Fee
Amount: \$25.00
Payment Type: Check
Reference No: 1827
Check/Money Order Date: 08/21/2014
Comments:

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

Appeals from Beaufort, Charleston and Orangeburg
Counties

Doyet A. Early III, Circuit Court Judge

Opinion No. 27429

Heard November 13, 2012 – Filed August 6, 2014

AFFIRMED

Thomas A. Pendarvis, of Pendarvis Law Offices, P.C., of
Beaufort, and Joel D. Bailey, of The Bailey Law Firm,
P.A., of Beaufort, for Appellants.

Ellis M. Johnston II, of Haynsworth Sinkler Boyd, P.A.,
of Greenville, and Calvin Theodore Vick, Jr., of Harper
Lambert & Brown, P.A., of Greenville, for Respondents.

CHIEF JUSTICE TOAL: Appellants appeal the circuit court's decision dismissing these related cases and awarding sanctions against Appellants. We affirm.

FACTS/PROCEDURAL BACKGROUND

Appellants are limited partners in five separate limited partnerships and have asserted legal claims in five separate actions against their general partners, Respondents.¹ Each of the limited partnerships owned separate apartment complexes in one of the three counties—Beaufort, Orangeburg, and Charleston. On appeal, each of the cases involves a different grouping of limited partners,² different properties, and different facts.

In essence, the limited partnerships were formed in the 1960s to construct and operate the properties at issue, affordable housing projects for low-income citizens in the three counties. Respondents became general partners around 1975, and from that point forward, Appellants took no part in the management or business affairs of the complexes. In 1984, Respondents notified Appellants that they had contracted to sell the properties to Boston Financial Group (BFG). The terms of the sale called for a small amount to be paid upfront but the majority would be paid in 1999 in a "balloon" payment with accruing interest. However, BFG defaulted on the payment, and sold the properties without intervention from the partnerships. All of the claims stem from Respondents' roles in selling the properties and their actions in the aftermath of BFG's default.

On April 22, 2003, certain Appellants filed the complaint in *Davis v. Parkview Apartments* (the *Parkview* case). On July 7, 2003, Respondents filed various motions, including a motion to dismiss certain claims against certain Respondents and a motion to strike or make more specific allegations contained in

¹ All Appellants and Respondents are successors in interest to either the original limited partners (except for Laurance Davis) or original general partners.

² In other words, some of the limited partners held interests in more than one of the limited partnerships, and some held an interest in only one of the limited partnerships, but none of the limited partners held interests in all of the partnerships.

Appellants' complaint. The circuit court denied the motions. Appellants filed an amended complaint on March 23, 2004, alleging causes of action at law for damages, including, *inter alia*, breach of fiduciary duty and causes of action for equitable relief. On April 9, 2004, Respondents filed an Answer, setting forth a general denial and affirmative defenses, including, *inter alia*, the statute of limitations. On April 13, 2004, Respondents filed a motion to dismiss and other related motions. By order dated February 11, 2005, the court dismissed one cause of action, styled "bad faith," but denied the motion to dismiss as to the remaining causes of action.

On October 13, 2005, certain Appellants filed complaints in *Davis v. Palmetto Apartments* (the *Palmetto* case) and *Carolina Management Corporation of Beaufort v. Pinewood Park Apartments* (the *Pinewood Park* case), and on October 17, 2005, certain Appellants then filed complaints in *Rentz v. Orleans Gardens* (the *Orleans Gardens* case) and *Laurance Davis v. Roosevelt Gardens* (the *Roosevelt Gardens* case). In each of these cases, the groups of Appellants alleged causes of action at law for damages, including, *inter alia*, a claim for breach of fiduciary duty, and causes of action for equitable relief. Respondents answered on January 17, 2006, setting forth a general denial and affirmative defenses, including the statute of limitations.

By administrative order dated March 7, 2006, all five of the cases were assigned to Circuit Judge Doyet A. Early III "to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions." The purpose of assigning the cases to a single circuit court judge was to "promote the effective and expeditious disposition of this litigation by uniform rulings and [to] conserve the resources of the parties, their counsel, and the judiciary." However, these cases have never been consolidated.

The Record in this case is voluminous, and illustrates the complex and, at times, contentious nature of these proceedings. The circuit judge presided over numerous motion hearings and issued numerous orders over the course of this litigation. However, this appeal concerns a final order, dated April 9, 2010, and entitled "Order Granting Defendants' Two Motions for Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt" (the Dismissal Order), in which the circuit judge dismissed all of the cases and awarded fees and costs to Respondents as sanctions for Appellants' continued refusal to comply with his previous discovery rulings. In addition, Appellants appeal the judge's failure to disqualify himself at

the outset of this litigation and late refusal to recuse himself.

From the outset, the statute of limitations emerged as an important issue in this case. On January 17, 2006, Respondents moved for summary judgment in the *Palmetto*, *Orleans Gardens*, and *Roosevelt Gardens* cases based on the affirmative defense that Appellants' legal claims in these cases were barred by the statute of limitations.³ In support of the motion for summary judgment, Respondents served Appellants with Requests for Admission in order to ascertain the point at which Appellants became aware of the alleged injuries that they claimed. On February 13, 2007, the court denied the motion, granting Respondents leave to raise the statute of limitations defense again after the commencement of discovery in the

³ Respondents contend that all of the legal claims alleged in the complaints center on Respondents' business judgment in 1999 when they concluded the properties at issue had no value above the HUD mortgages (with the exception of the *Pinewood Park* case), and that repossessing the apartments was not in the best interests of the limited partnerships. However, Respondents also contend that Appellants allege injury to the limited partnerships as far back as the early 1980s in each case, including, *inter alia*, Respondents' alleged: failure to entertain other offers to purchase the properties in the 1980s, misrepresentations of the purchaser's financial solvency, sale of the properties to an entity created by BFG, instead of BFG, failure to forward appropriate documentation of the sale, failure to properly secure the notes, and undervaluation of the properties in order to acquire various limited partnership interests. Appellants asserted that Respondents were estopped from asserting their statute of limitations argument because all parties agreed to postpone discovery in the *Parkview* case and the filing of additional related cases in an attempt to resolve all of the cases through mediation, including those that had not yet been filed. On the other hand, Respondents contend they agreed to postpone discovery in the *Parkview* case only, but did not agree to stay the statute of limitations applicable in any other cases Appellants had not yet brought. Ultimately, the mediation fell through. Appellants contend that mediation was cancelled because the jointly retained independent appraiser failed to complete the appraisals in time. Regardless of the reason for the failure of the mediation to go forward, Respondents point out in their brief that the mediation and surrounding negotiations fell through as of July 26, 2004, but Appellants did not file the remaining cases until October 2005. Therefore, Respondents contend, whether or not they were estopped from asserting the statute of limitations during that period, Appellants' claims are still time-barred.

cases.

Respondents again moved for summary judgment with respect to the statute of limitations issue in the *Palmetto*, *Orleans Gardens*, and *Roosevelt Gardens* cases. The judge held a hearing on the motion on November 19, 2007. On June 17, 2008, the circuit court denied Respondents' motion because "a genuine issue exists as to material facts involving the statute of limitations."⁴

On August 28, 2008, Respondents served Appellants with supplemental discovery requests. After granting Appellants additional time to file their responses, on November 6, 2008, Respondents filed a motion to compel Appellants to respond to their discovery requests. Appellants served their initial discovery responses on November 14, 2008, but Respondents chose to proceed with their motion to compel, claiming Appellants failed to answer their discovery requests completely. Respondents specifically sought to compel Appellants to provide full and complete responses to Respondents' interrogatories and the production of all documents in Appellants' possession responsive to Respondents' requests for production. The court held a hearing on the motions on December 9, 2008.

On January 29, 2009, Appellants served their Supplemental Responses to the Discovery Requests, expressly providing that the responses were made only by Appellants in the *Parkview* action, and that Appellants in the other actions would supplement their responses "at a later date." Moreover, the *Parkview* Appellants only additionally produced the financial statements of Appellant Laurance Davis. Much of the remainder of the responses was identical to the previous responses.

By order dated March 3, 2009, entitled "Order Granting Defendants' Motion to Compel, dated November 6, 2008" (the Discovery Order), the circuit court granted Respondents' motion to compel, specifically finding that all of the Appellants were required to "provide full and complete responses" and "produce all documents in their possession, custody or control, which [were] responsive to" the discovery requests. The court took issue with Appellants' blanket method of objecting to the requests, "mak[ing] it impossible for [Respondents] to know if responsive information and/or documents [were] being withheld, and, if so, based

⁴ During a later hearing, the circuit judge stated: "[T]here's some significant issues in this case from day one when I first got in it dealing with the statute of limitations problem. And I found that it was an issue of fact. And I still struggle with that somewhat"

on which specific grounds." In addition, the court specifically ordered Appellants to provide more information in their answers to interrogatories concerning Appellants' proposed expert witnesses and contents of their testimony. The court also required Appellants to provide sufficient identifying information in their privilege log, so that Respondents could recognize which documents Appellants were withholding on the basis of the attorney-client privilege and assess the applicability of the privilege to those documents. Finally, the court mandated the disclosure of pertinent discovery responses in all five cases (not just the *Parkview* case), and by all of the Appellants, stating "[e]ach and every [Appellant] is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories," and "each and every [Appellant] is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production."⁵ The Discovery Order required Appellants' compliance within thirty days.⁶ To date, Appellants have not complied with the Discovery Order.

Simultaneous to the discovery response dispute, the parties also disagreed regarding what materials were protected from disclosure by the attorney-client privilege. Approximately one month after the court denied Respondents' summary judgment motion, counsel for Respondents indicated to the court that Appellants failed to produce a complete privilege log. The court allowed Appellants thirty days to produce a complete privilege log. On July 28, 2008, Appellants produced a new privilege log (the 7/28/08 privilege log) containing 90 documents, created between 1998 and 2004, for the first time in the litigation. In their 7/28/08 privilege log, Appellants only included a description of the date, author, and recipient of each document, and the classification of each document, *i.e.* fax, letter, or memorandum. At the December 9, 2008, hearing, Respondents also argued for the production of certain documents contained in Appellants' privilege log. Likewise, Appellants took issue with Respondents' claims of privilege.

⁵ By order dated June 16, 2009, the circuit court denied Appellants' Rule 59(e) motion with respect to this ruling.

⁶ On the same date the court issued the Discovery Order, it also issued an order, entitled "Order Granting in Part and Denying in Part Plaintiffs' Motion to Compel, Dated July 29, 2005." In that order, the circuit court found that certain of Appellants' discovery requests were overly broad and unduly burdensome and restricted those requests.

Therefore, on December 30, 2008, the court, with the consent of all of the parties, ordered Gary Clary to serve as special master for the purpose of conducting an *in camera* review of the so-called "privileged" documents at issue and to "make his ruling as to whether each such document is subject to discovery and production should be compelled."⁷ The order required the special master to provide the circuit judge with a report setting forth his findings and conclusions. On December 31, 2008, Appellants provided a more descriptive privilege log (the 12/31/08 privilege log), which forms the basis of the current dispute over privilege.

Upon the special master's issuance of his reports on April 14 and 22, 2009, the circuit judge issued an order on June 2, 2009, adopting the special master's findings *in toto*, yet still permitting the parties to object to the findings and conclusions contained therein by the filing of a Rule 59(e) motion to alter or amend the judgment. Both Appellants and Respondents filed timely Rule 59(e) motions on June 11, 2009, and June 15, 2009, respectively. On July 6, 2009, the circuit judge held a hearing on the motions.

By order dated July 28, 2009, entitled "Order Amending Court's Order Dated June 2, 2009" (the Privilege Order), the circuit judge denied the Rule 59(e) motions in part, granted the motions in part, and amended his order adopting the findings and conclusion of the special master. Specifically, the court ordered Appellants to disclose 96 documents identified in their privilege log. The court found 32 of the allegedly privileged documents were not privileged because they had been disclosed to third parties, and the privilege had been waived with respect to the remaining 64 documents because, by filing suit, Appellants had placed the statute of limitations at issue in this case. To date, Appellants have still not complied with the court's order.⁸

Due to Appellants' continued noncompliance with the court's discovery orders, Respondents filed a motion for sanctions on July 24, 2009, for failure to comply with the Discovery Order and on August 10, 2009, for failure to comply with the Privilege Order. The circuit court held a hearing on Respondents' motions on August 24, 2009. At the hearing, Appellants represented to the court that they

⁷ The circuit judge subsequently amended the order twice to increase the number of documents for the special master to review.

⁸ Respondents were also ordered to produce certain documents previously deemed to be privileged, which they produced on August 3, 2009.

were filing supplemental discovery responses that same day, and that their responses would be in compliance with the courts orders.⁹ The court admonished Appellants that their non-compliance, coupled with the looming January 2010 trial date in the *Parkview* case,¹⁰ could elicit the court's dismissal of the case: "It's [the *Parkview* case] going to be tried in January, whenever it's set for. If they don't get the discovery I'm going to throw the case out." In addition, the court noted that the materials were relevant to the statute of limitations issue and Appellants had not produced a legitimate reason for not complying with the Discovery Order.¹¹ At the hearing, counsel for Appellants stated their clients were weighing their options as to whether to appeal the court's rulings. Despite stating that he was strongly leaning towards dismissing the cases, the circuit court decided to hold Respondents' motion in abeyance pending Appellants' decision to appeal, which provided Appellants with even more time to comply with the court's orders.¹²

⁹ [The Court:] As an officer of the court you're telling me it's in full compliance with my order dealing with that area of discovery?

[Appellants' Counsel:] Correct, your Honor, to the extent this stuff is information known to my clients. We've got it and it's being delivered.

¹⁰ The circuit court had already continued the trial date in the *Parkview* case from its May 2009 trial date due to the ongoing discovery dispute.

¹¹ In fact, counsel for Appellants at one point went so far as to admit Appellants did not want to disclose the discovery because it went to the statute of limitations issue:

[The Court:] Mr. Bailey, you don't like it [the Privilege Order] because it's opened up wide open the issue of the statute of limitations.

[Appellants' Counsel:] That's certainly one reason, Judge.

¹² The circuit court never placed this decision in writing.

Upon receipt of Appellants' supplemental responses, Respondents filed another supplemental motion for sanctions on August 27, 2009, claiming that Appellants had still not complied with the Discovery Order. Due to Appellants' attempts to appeal the Privilege Order,¹³ the court did not hold a hearing on Respondents' supplemental motion to compel until January 14, 2010, at this point slightly over a week prior to the *Parkview* trial date. Appellants had still not provided Respondents with the discovery information concerning their experts' testimony. However, Appellants stated they were planning to provide the expert information on the day before trial. The court was not satisfied with this response: "This case has been going on for seven years, a long time. And don't hand me this about getting an expert on Friday. This is not an expert-to-be-given-on-Friday case." The court then addressed Appellants' continued noncompliance. One excuse Appellants gave for their failure to disclose the expert information is that they only had preliminary reports from the experts. Again, the court was not satisfied with this answer: "How can you not have a final opinion? . . . [I]f you wanted to know what my expert's opinion was in a particular case, I would have to tell you. You would expect me to tell you. I expect you to tell them. I've ordered you to tell them, and you refuse to do so."

On January 25, 2010, *after* the trial date in the *Parkview* case, Appellants served Respondents with their Third Supplemental Responses, which again only addressed the *Parkview* case. Respondents again took issue with the adequacy of Appellants responses, especially as to the responses dealing with the substance of the expert testimony.

On February 22, 2010, Appellants filed a motion for protective order. Under the protective order, Appellants sought to submit the requested discovery under seal, conditioned upon the court allowing them to redact portions Appellants argued were privileged.

¹³ On September 10, 2009, Appellants filed a Notice of Appeal in the court of appeals. On December 2, 2009, the court of appeals dismissed Appellants' appeal as premature and issued remittitur on December 17, 2009. On November 19, 2009, this Court denied Appellants' petition for writ of prohibition and certiorari after they appealed the court's discovery rulings. In addition, on October 6, 2009, Appellants applied for entry into the Business Courts, which was also denied on November 3, 2009.

Around that time, Appellants began to question their lawyers concerning the judge's impartiality based on disclosures he made throughout the case concerning his social relationships with counsel of record for Respondents and their family members. To substantiate these claims, Appellants sought additional discovery concerning financial information from the judge and records from a resort on Fripp Island, where the judge officiated in the wedding of Ann Ross Rosen, counsel of record for Respondents from 2007–09, to refute claims made by the judge concerning his relationship with Rosen.

At a hearing (granted to discuss Appellants' discovery requests and protective order) on March 29, 2010, the judge disclosed on the record his relationships with Respondents' counsel. Appellants again attempted to argue the reasons the judge should vacate his prior discovery orders and presented reasons the court should not sanction Appellants for failing to comply with these orders. Furthermore, counsel orally moved for the judge to recuse himself, which he denied. The judge memorialized his verbal denial of the recusal motion and reasons in an ensuing order dated October 7, 2010 (the Recusal Order), wherein the judge again outlined his relationships with Respondents' counsel, and decided not to recuse himself, noting that despite the fact that Appellants were "disappointed with some of the rulings of the [c]ourt . . . such disappointment cannot form the basis for recusal."

Because Appellants still refused to comply with his orders, the court issued the Dismissal Order on April 9, 2010, finding Appellants were in contempt of court. As sanctions for Appellants' continued "willful" noncompliance with his discovery rulings, the court dismissed all five cases with prejudice and found Respondents were entitled to reasonable attorney's fees and costs incurred in connection with pursuing Appellants' compliance with the court's orders (to be determined at a later date). The court granted Appellants the opportunity to purge the contempt by complying with the Discovery Order and the Privilege Order within 25 days of the date of the Dismissal Order.

On September 16, 2010, the circuit court denied Appellants' Rule 59(e) motion to alter or amend the Dismissal Order. On October 25, 2010, the court denied Appellant's motion for protective order, holding that it was in effect an untimely Rule 59(e) motion disguised as a Rule 26(c) motion because it merely sought to amend the Privilege Order. On November 8, 2010, Appellants filed a Rule 59(e) motion seeking to amend the court's order, claiming they were denied due process because the court signed the proposed order submitted by

Respondents, which the court denied.

Appellants served their Notice of Appeal on January 28, 2011, in the court of appeals. By order dated March 9, 2011, this Court certified these cases for review pursuant to Rule 204(b), SCACR.

ISSUES

- I. Whether the circuit judge erred in dismissing Appellants' claims and requiring them to pay costs and attorney's fees to Respondents as sanctions for Appellants' noncompliance with the court's discovery rulings?
- II. Whether the circuit judge erred in refusing to recuse himself?

ANALYSIS

I. Sanctions

Appellants contend the circuit court erred in making the various discovery rulings in this case.¹⁴ As a matter of procedure, we note that Appellants have only appealed the order awarding sanctions to Respondents, the Dismissal Order. As such, the merits of the underlying discovery orders, including the Privilege Order and the Discovery Order, are not before us for consideration.

Throughout the course of the litigation, the circuit court issued numerous discovery rulings. The Record makes clear that Appellants considered an appeal of one or more of those orders, at one time even seeking review of the Privilege Order in the court of appeals, which was held to be interlocutory. However, to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding. *See, e.g., Ex parte*

¹⁴ In addition to arguments concerning the Privilege Order, Appellants take issue with circuit court orders relating to privilege and dated December 17, 2008; March 3, 2009; June 2, 2009; June 16, 2009; July 28, 2009; April 6, 2010; September 16, 2010; October 22, 2010; and December 11, 2010. Moreover, Appellants base their other discovery arguments on the Discovery Order, and other related discovery orders issued by the circuit court and dated December 17, 2008; March 3, 2009; March 3, 2009 (granting in part, denying in part); and April 6, 2010.

Whetstone, 289 S.C. 580, 347 S.E.2d 881-82 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.") (internal citations omitted). Appellants did not follow that route here. Rather, they continued along in the litigation, attempting to divert the implementation of the court's rulings by providing incomplete responses and causing delay through other tactics while they decided whether or not to surrender to the possibility of being held in contempt of court. However, during this time, Appellants continued to accept the circuit court's formulation of discovery. Right or wrong, these decisions form the law of the case, and Appellants are bound by them now. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). Only after Respondents filed a motion for sanctions, and Appellants were found to be in contempt of court as part of those sanctions, did they appeal. While this was a final order for purposes of appellate review, as it ordered dismissal of the case, the merits of the underlying discovery orders are not before this Court on appeal. Thus, despite Appellants' vehement objections to the Privilege Order and Discovery Order, the only reviewable question before this Court is whether the sanctions were properly awarded.¹⁵

"The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court." *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). Therefore, an appellate court will not interfere with "a trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters" unless the court abuses its discretion. *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997) (citation omitted). "An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law." *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)

¹⁵ While the parties certainly mention the Privilege Order and Discovery Order and the various intermediate orders on which they are based in their brief, Appellants only raise general issues with those orders. Without specific objections to each item of discovery deemed discoverable by the circuit judge, the specific discovery findings are unreviewable on appeal.

(citation omitted). The appealing party bears the burden of demonstrating that the lower court abused its discretion. *Id.* (citation omitted).

Appellants argue the circuit court abused its discretion in awarding unduly harsh sanctions in this case. Specifically, Appellants contend the court abused its discretion by dismissing these cases under the facts, particularly because (1) less "draconian" punishments were available to the court; (2) Appellants agreed to receive a less harsh sanction and "took extraordinary steps to avoid dismissal"; (3) the judge consistently espoused Respondents' arguments as evidence constituting a factual basis to support his decisions; and (4) the judge deviated from South Carolina law to effect dismissal.

Rule 37(b)(2)(C), SCRCP, provides:

If a party . . . fails to obey an order to provide or permit discovery, . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

. . .

An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

However, "when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999) (citing *Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996)). Thus, "[w]here the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Id.* at 198–199, 511 S.E.2d at 718–19 (citing *Baughman v. AT & T Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)); *see also Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) (stating when deciding the severity of sanctions "for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice") (citations omitted).

We disagree with Appellants' claim that the sanctions imposed here were unduly harsh. With respect to the discovery orders regarding privileged documents, the circuit court made every effort to ensure that no privileged documents were compelled, and Appellants refused to comply merely because these rulings had adverse implications on their cases. We also note that the circuit judge provided Appellants ample opportunity to amend their discovery responses both before and after he issued the Discovery Order, and Appellants willfully and repeatedly failed to comply with the circuit court's orders in any meaningful way. Thus, in our view, Appellants' failure to comply with the various orders of the court was willful and deliberate and caused unnecessary delay of this case and prejudice to Respondents. Accordingly, we hold the circuit court did not err in issuing the Dismissal Order as a sanction for Appellants' noncompliance with the court's orders.¹⁶

II. Disqualification and Recusal

Appellants argue that the circuit judge was not legally qualified to accept or retain his assignment to preside over these cases at the time the cases were assigned to him. Specifically, Appellants contend that the judge violated his duty to fully disclose the full nature of his and his family's long-term relationships with Respondents' counsel, Ellis Johnston, and members of his family. Moreover, Appellants argue that the circuit judge violated his continuing duty to fully disclose additional relationships between him and members of his family with Johnston and members of his family, which developed following his acceptance of the assignment of this case, and the full nature of his relationships with attorneys Anne Ross Rosen and Marvin Infinger after they became counsel of record for Respondents. Thus, Appellants contend, this Court should vacate the order assigning the circuit judge to preside over these cases, and reassign them to a fair and impartial judge. Appellants contend that because a judge must disqualify himself and recusal motions are rare and unlikely to be overturned on appeal, an atmosphere exists "whereby, as in the present appeal, judges recognize the probable outcome of a recusal request and take advantage of that reality, to the undeserving prejudice of litigants with legitimate grounds for recusal." We disagree and find that the circuit judge was not disqualified from hearing this case and had no duty to recuse himself.

¹⁶ We note that Appellants have the opportunity to purge the contempt by complying with the court's discovery rulings.

Pursuant to Canon 3(E)(1) of the Judicial Code of Conduct, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" Canon 3(E)(1), Rule 501, SCACR. The judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge "knows" that he or a member of his family (spouse, parent, or child) has more than a *de minimus* economic interest in the litigation and the litigation will "substantially affect[]" that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a *de minimus* interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. Canon 3(E)(1)(a)–(d).

"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." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004) (citation omitted); *Simpson v. Simpson*, 377 S.C. 519, 522, 660 S.E.2d 274, 276 (Ct. App. 2008); *see also Ellis v. Procter & Gamble Distrib. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856, 857 (1993) ("In cases involving a violation of Canon 3, this Court will affirm a trial judge's failure to disqualify himself only if there is no evidence of judicial prejudice.") (citations omitted). Appellate courts "accord great weight to the trial judge's assurance of his own impartiality." *Id.* It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality. *Lyvers v. Lyvers*, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct. App. 1984) (citation omitted).

At the hearing on Appellants' recusal motion on March 29, 2010, and in the ensuing Recusal Order, the circuit judge revealed the following information concerning his relationships with Respondents' counsel of record:

- (1) Johnston's wife's ex-husband was a fraternity brother of the judge 40 years ago;
- (2) Infinger spent the night at the judge's lake house 30 years ago after both attended the wedding of another Haynsworth shareholder who

is not affiliated with this case;

- (3) the judge's son and Johnston's son were fraternity brothers in college 14 years ago, went to Europe together 13 years ago, and have stayed in contact since then;
- (4) the judge and his son accepted an invitation to go fishing with Johnston's brother;
- (5) the judge officiated at Rosen's wedding in 2007, and the Rosen family provided him with accommodations at Fripp Island for the wedding;¹⁷
- (6) Rosen's father, a surgeon, performed a medical procedure on the judge;
- (7) Rosen's parents once lived in Bamberg, South Carolina, but the judge did not see them socially; and
- (8) the judge has been a member of a social club that holds an annual white tie dance for approximately ten years, and in 2009, Johnston was invited to join the club.¹⁸

The court found that the mere fact that Appellants were "disappointed with some of the rulings of the [c]ourt . . . such disappointment cannot form the basis for recusal." Moreover, the court stated:

Plaintiffs have no evidence proving bias or prejudice against them or for the Defendants. Instead, they argue that the [c]ourt ruled against them on several motions without basis in law or fact, and reason that

¹⁷ As stated, *supra*, Appellants subpoenaed the Fripp Island resort where the wedding was held to determine the length of the judge's stay.

¹⁸ The judge disclosed his relationship with Rosen and that he had been on the fishing trip with Johnston's brother when the case was assigned to him. He disclosed his son's relationship with Johnston's son via conference call on February 13, 2008.

the [c]ourt's relationship with [d]efense counsel is the sole cause of these rulings. Their Motion for Recusal is made without basis or justification, with the sole purpose of polluting the record and intimidating me into recusal. I refuse to comply. I have addressed this issue repeatedly, openly, and unabashedly, and though Plaintiffs continue to harass and prod me to recuse myself, the law does not justify said action, and thus I refuse to do so.

This litigation is now over five years old. Many, many hours have been devoted by the judiciary and court personnel in getting this case ready to try and both sides [] have incurred substantial attorney's fees. To start a new [sic], absent any bias or prejudice, would be a colossal waste of time, effort[,], and expense.

If I thought for one moment my prior involvement with any of the lawyers had an influence on any of my decisions, I would step aside. I practiced law for thirty years, attended school in South Carolina, have been active in social, civic, family and bar organizations, clubs and events all of my adult life and thankfully have formed many types of relationships with many people, a lot who are lawyers who practice in my court on an everyday basis. I am cognizant of these relationships, but if I recused myself when that happened, I could not hold court.

Accordingly, the court denied Appellants' motion for recusal.¹⁹

None of the disqualification situations outlined by Canon 3(E) were present here. Rather, Appellants' allegations concern mere social relationships between the circuit judge or his family members and Respondents' counsel of record or their family members. Some of these relationships, such as Rosen's father's physician-patient relationship with the judge, are tenuous. Thus, we find that, under the

¹⁹ At the March 29, 2010, hearing, the judge revealed that he has known Appellants' attorney, Joel Bailey, for 36 years and they have "shared a lot of social time together over the years." Furthermore, the judge stated on the record he "maintained what I considered to be a very cordial social relationship" with Appellants' counsel, Thomas Pendarvis. Both of the judge's sons worked with Pendarvis at another law firm while they were in school, and both maintained friendships with him.

Rules, the circuit judge was not required to disclose any of these relationships with counsel, nor recuse himself. *See* Commentary, Canon 3(E) ("A judge *should* disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification." (emphasis added)).

If anything, the judge's decision to disclose these relationships during the course of the litigation demonstrates his sensitivity to assuaging any concerns about his impartiality. *See Simpson*, 377 S.C. at 525, 660 S.E.2d at 277 (finding the judge's "remarks about her concern for not disclosing the information at the beginning of the hearing do not show any bias or prejudice but instead show her sensitivity to any apprehension each side might have in her ability to make a fair and impartial ruling in the case"); *Doe v. Howe*, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005) ("Because Doe made no showing of actual prejudice, we find no abuse of discretion in the trial judge's refusal to disqualify himself. If anything, the trial judge demonstrated sensitivity toward any concerns Doe might have had regarding his impartiality by voluntarily making full disclosure of his and his law clerk's contacts with Howe and Howe's counsel."). Furthermore, if friendship or social interactions became the standard for disqualification, then as the judge stated in the Recusal Order, members of the judiciary would rarely be able to hold court in this state.²⁰ Obviously, there could be circumstances where an extremely close friendship could rise to the level of disqualification, as the Canons do not limit disqualification to the scenarios listed under Canon 3(E)(1). However, under the facts of this case, the relationships and interactions that occurred in this lawsuit did not require the judge's recusal.

Importantly, Appellants have also failed to prove that they suffered any prejudice as a result of the judge's refusal to recuse himself in this case. Other than adverse rulings, Appellants have not presented any evidence of prejudice or bias against them. *See Mortg. Elec. Sys., Inc. v. White*, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (Ct. App. 2009) ("The fact [that] a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge

²⁰ As the judge stated at the hearing on the matter, "[F]rom day one, because I had 30 years of practice practically every lawyer that come[s] before me . . . I have socialized with, I have been friends with . . . and I have never ever allowed any personal friendships, past acquaintances, children's relationships with other people's children to influence anything that I've done."

committed errors in his rulings.") (citation omitted). Mere conjecture cannot support a recusal motion. *See* 46 Am. Jur. 2d *Judges* § 208 (1994) ("Allegations of facts that are merely frivolous or fanciful will not support a motion to disqualify on the ground of prejudice, nor will conclusory statements, conjecture, or innuendo be sufficient to support a motion for disqualification."). If anything, the trial judge bent over backwards to provide Appellants an opportunity to be heard, from denying Respondents' motion for summary judgment early in the case, to providing Appellants numerous opportunities to cure their noncompliance and allowing for numerous hearings on discovery matters.

In addition, the Record supports all of the court's orders in this case, including the Discovery Order and the Privilege Order. *See Burgess v. Stern*, 311 S.C. 326, 331, 428 S.E.2d 880, 884 (1993) (finding "an objective view of the record and circumstances surrounding the convoluted proceedings in [that] case lead[] to the conclusion that [the judge's order], and the ensuing orders [were] supported by the evidence" and concluding that no prejudice arose from the alleged impartial acts); *Ellis*, 315 S.C. at 285, 433 S.E.2d at 857 (finding a judge's impartiality might reasonably be questioned "when his factual findings are not supported by the record" and holding that the judge's factual findings in that case were not supported by the record). Thus, Appellants have not proven they suffered any prejudice from the judge's alleged bias against them.

Finally, the timeliness of the motion is questionable. *See Duplan Corp. v. Milliken*, 400 F. Supp. 497, 510 (D.S.C. 1975) ("Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts."). The Appellants were well-aware that the judge planned to issue the Dismissal Order when they raised their concerns regarding the judge's impartiality and moved for recusal on the eve of the Dismissal Order, nearly two years after the judge disclosed the bulk of these relationships. Therefore, the recusal motion appears to be nothing more than a last-ditch effort to delay the Court's filing of that order. Thus, we also find Appellants' motion for recusal untimely.

Based on the foregoing, we hold that the judge was not required to recuse himself under the circumstances. Furthermore, the frivolous nature and questionable timing of this motion only serve to lend further support to the sanctions imposed in the Dismissal Order.²¹

²¹ Appellants further argue the circuit court erred in failing to ensure that

CONCLUSION

In conclusion, we make clear that we do not hold Appellants' able, competent, and experienced counsel at fault for Appellants' discovery abuses. Appellants' counsel diligently and professionally pursued these claims on behalf of their clients. Unfortunately, Appellants have brought about the dismissal of their claims by their continued refusal to comply with the court's orders, and they have only themselves to blame for this harsh result.

Therefore, for the foregoing reasons, we affirm the circuit court's dismissal of this case and remand this case to the circuit court for further proceedings.

AFFIRMED.

BEATTY, KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in part and dissenting in part in a separate opinion.

Appellants received a fair and impartial forum in which to litigate their claims, thereby depriving them of their right to due process of law under the United States and South Carolina constitutions. Because this issue is tied to whether or not the court erred in refusing to recuse himself and we find that he did not, we need not reach this issue. *See Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 307, 676 S.E.2d 700, 706 (2009) (appellate court need not discuss remaining issues when determination of prior issue is dispositive).

JUSTICE PLEICONES: I concur in part and dissent in part. I concur in the majority's affirmance of the recusal ruling but dissent from its affirmance of the contempt/sanctions issue. In my view, this appeal requires we review the merits of the Privilege Order as well as the Dismissal Order. As explained below, I find the Privilege Order is affected by an error of law and would reverse the Dismissal Order's contempt findings related to that order. Further, I would hold the findings of fact cited in the Dismissal Order in support of the conclusion that appellants were in contempt of the Discovery Order are woefully inadequate and would therefore reverse that contempt holding. Finally, I would reverse the Dismissal Order's sanctions as the contempt findings cannot stand.

I begin with the majority's erroneous limitation of the scope of appellant's appeal. The Dismissal Order begins:

This matter comes before the Court on [Respondents'] two Motions for Sanction . . . For the reasons set forth below, the Court grants [Respondents'] motions. The Court finds and hereby declares that [Appellants] are in contempt of court as a result of their willful failure to comply with the Court's order dated July 28, 2009 [the Privilege Order] and dismiss each of the above captioned actions with prejudice as sanctions for such contempt . . . The Court further finds and declares that [Appellants] are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009 [the Discovery Order].

It is well-settled that a *party*²² can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt. On appeal from the contempt order, the contemnor may argue that the contempt finding must be reversed because the underlying discovery order was itself improper. *E.g. Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008).

²² I note the majority cites the non-party discovery appeal rule from *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986).

The majority acknowledges that appellants have done exactly what is required of them but concludes that our review is somehow limited. I quote from the majority's opinion:

Throughout the course of the litigation, the circuit court issued numerous discovery rulings . . . [T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding . . . Only after Respondents filed a motion for sanctions and Appellants were found to be in contempt of court as part of those sanctions, did they appeal. While this was a final order for purposes of appellate review, as it ordered dismissal of the case [sic], the merits of the underlying discovery orders are not before this Court on appeal.

The majority is simply wrong to hold that appellants are now foreclosed from arguing that the discovery orders upon which the Dismissal Order's contempt findings and sanctions rest were erroneous. Further, I disagree with the majority's representation that appellants have only raised a general challenge to the Privilege and Discovery Orders. *See* fn. 15, *supra*. Each of the five appellants' briefs argue the merits of the Privilege Order and the Discovery Order. In each brief, the argument regarding the flaws in the Privilege Order begins on page 12, and of those in the Discovery Order begins on page 27. Appellants' ability to challenge the specifics of the Discovery Order is limited by the circuit court's inadequate factual findings.

I fundamentally disagree with the majority's decision to limit its review of these consolidated appeals.

A. Privilege Order

Appellants contend, and I agree, that the circuit court erred in finding them in contempt for violating the Privilege Order. The Privilege Order was largely predicated on the circuit court's determination that appellants had waived their attorney-client privilege, applying the test for waiver derived from *Hearn v. Rhay*, 68 F.R.D. 574 (E.D. Wash. 1975). The circuit court found the statute of limitations "was a major issue in this case" and held that by

putting the statute in issue, appellants "implicitly waived their claims of privilege with respect to documents dated (i.e. created) more than three years prior to the filing of this lawsuit."

Appellants contend the circuit court erred in adopting the *Hearn* "at-issue" waiver theory in the Privilege Order and that this error requires that we reverse the contempt findings that are based on *Hearn* as well as the sanctions in the Dismissal Order. I agree.

In my view, the circuit court erred in adopting the *Hearn* at-issue waiver test because this test substantially diminishes the attorney-client privilege without regard to the important public interests that privilege is designed to advance.

South Carolina has long recognized the attorney-client privilege. *See, e.g., Clary*

v. Blackwell, 160 S.C. 142, 149, 158 S.E. 223, 226 (1931). The privilege is grounded

upon a wise public policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence shall not be abused by permitting disclosure of such communications.

South Carolina Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2 615, 619-

20 (1973); *see also State v. James*, 34 S.C. 49, 57, 12 S.E. 657, 660 (1891) ("[T]he rule of evidence which holds as inviolable professional communications between attorney and client is one of the most important, and in all forms must be maintained in all its integrity."). The attorney-client privilege is not absolute, rather, its traditional contours balance competing public interests. For example, courts have traditionally held it does not extend to communications in furtherance of criminal, tortious, or fraudulent

conduct. *Ross v. Medical University of South Carolina*, 317 S.C. 377, 384, 453 S.E.2d 880, 884-85 (1994).

While the client may waive the privilege, *Drayton v. Industrial Life & Health Ins.*, 205 S.C. 98, 108, 31 S.E.2d 148, 152 (1944), the rule in South Carolina has been that such a "waiver must be distinct and unequivocal[.]" and we have held that a claim of implied waiver should be treated with caution. *State v. Thompson*, 329 S.C. 72, 76-77, 495 S.E.2d 437, 439 (1998).

Notwithstanding that caution must be exercised in finding waiver, it is widely recognized that a client impliedly waives the privilege when he relies on confidential *communications* with his attorney to make out a claim or defense. *See Savino v. Luciano*, 92 So.2d 817, 819 (Fla. 1957) ("[W]hen a party has filed a claim, based upon a matter ordinarily privileged, the proof of which will necessarily require that the privileged matter be offered in evidence, we think that he has waived his right to insist . . . that the matter is privileged."); *Pennsylvania v. Harris*, 32 A.3d 243 (Pa. 2011) ("In-issue waiver occurs when the privilege-holder asserts a claim or defense, and attempts to prove that claim or defense by reference to the otherwise privileged material."); *see also, e.g., Sedco Int'l S.A. v. Cory*, 683 F.2d 1201, 1206 (8th Cir. 1982) (courts find waiver by implication when a client testifies about the attorney-client communication, places the attorney-client relationship at issue, or cites the attorney's advice as part of a claim or defense). *Hearn* alters this traditional implied waiver standard.

Hearn summarized the factors common to the exceptions to the rule of privilege as

- (1) assertion of the privilege was a result of some affirmative act, such as filing suit, by the asserting party;
- (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; and
- (3) application of the privilege would have denied the opposing party access to information vital to his defense.

68 F.R.D. at 581. This statement of the factors for finding implied waiver dramatically expands the traditional rule. Because the existence of privilege for attorney-client communications has significance only when the

information sought to be protected is relevant to a case, and when the opposing party believes access to the information is vital to his defense, factors two and three operate merely to limit waiver of the privilege to the most sensitive of the client's communications.

The first factor of the *Hearn* test requires that assertion of the privilege be the result of an affirmative act on the part of the person asserting the privilege, such as by filing suit. 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. As explained below, *Hearn* has been rejected by most courts and many commentators.

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. See, e.g., *In re County of Erie*, 546 F.3d 222, 227-29 (2d Cir. 2008) discussing *Hearn* and its critics, rejecting the *Hearn* test, and holding that when good faith is asserted as a defense, waiver is implied only when the client relies on privileged advice to establish good faith); Kevin Bennardo, *At Issue Waiver of the Attorney-Client Privilege in Illinois: An Exception in Need of a Standard*, 30 N. Ill. U. L. Rev. 553, 561 (2010) ("By focusing on relevancy and fairness, the Hearn test seeks to remedy the 'problem' caused by the truth-suppressing effect of the attorney-client privilege. The anticipatory waiver test, on the other hand, seeks to address the problem created by one party selectively relying on a privileged communication while attempting to shield other privileged communications--thereby 'garbling' the truth. It is only in this 'truth-garbling' scenario, rather than the truth-suppressing scenario (a scenario inherent in all privileges), that waiver of the privilege should be found." (internal footnote omitted)); Note, *Developments in the Law: Privileged Communications*, 98 Harv. L. Rev. 1450, 1641-42 (1985) (*Hearn* concept of unfairness refers to incompleteness of evidence rather than

traditional concept in privilege context of unfairness as abuse of a privilege; logic of *Hearn* leads to "outrageous" results).²³

²³ For additional criticism of *Hearn* and its progeny, see *Remington Arms Co. v. Liberty Mut. Ins. Co.*, 142 F.R.D. 408, 413 (D. Del. 1992) ("The core problem,

according to this line of reasoning [criticizing *Hearn*], is that expansive language

for determining implied waiver leads to a type of ad hoc determination that ignores the system-wide role of the attorney-client privilege and undermines any confidence that parties can place in that privilege. These authorities contend that extremely liberal waiver rules increase litigation costs and judicial time spent on discovery disputes, favor the wealthiest litigants, undermine the values served by the privilege rules, and vary according to the identity of the litigants and their purported need for privileged information." (internal citations omitted)); *Trustees of Elec. Workers Local No. 26 Pension Trust Fund v. Trust Fund Advisors, Inc.*, 266 F.R.D. 1 (D.D.C. 2010); *United States v. Ohio Edison Co.*, No. C2-99-1181, 2002 WL 1585597 (S.D. Ohio July 11, 2002); *Mortgage Guar. & Title Co. v.*

Cunha, 745 A.2d 156 (R.I. 2000); *Public Service Co. of New Mexico v. Lyons*, 10

P.3d 166 (N.M. Ct. App. 2000); *Wisconsin v. Hydrite Chem. Co.*, 582 N.W.2d 411 (Wis. Ct. App. 1998); *Wardleigh v. Second Jud. Dist. Ct.*, 891 P.2d 1180 (Nev.

1995); *Aranson v. Schroeder*, 671 A.2d 1023 (N.H. 1995); *Rhone-Poulenc Rorer Inc. v. Home Indem. Co.*, 32 F.3d 851, 864 (3d Cir. 1994); *Hewlett-Packard Co. v.*

Bausch & Lomb, Inc., 115 F.R.D. 308 (N.D. Cal. 1987); and *Smith v. Kavanaugh, Pierson & Talley*, 513 So.2d 1138 (La. 1987).

Moreover, particularly in the context of a statute of limitations defense, adoption of the *Hearn* test produces the result that

[i]n virtually every case in which the statute of limitations . . . is pleaded as a defense and the client relies on the discovery rule to overcome the limitation period, the opposing party would be able to inquire of the client's counsel: Did your client tell you anything in confidence about what he or she knew that differs from or contradicts what he or she stated in responses to discovery?

Darius v. City of Boston, 741 N.E.2d 52, 57 (Mass. 2001). I agree with the *Darius* court that "[t]o permit that kind of inquiry would pry open the attorney-client relationship and strike at the very core of the privilege." *Id.* at 56-57.

Because in my view the *Hearn* at-issue waiver rule sweeps far too broadly, eviscerating the attorney-client privilege without regard to the weighty public interest it serves, the circuit court erred in adopting it in the Privilege Order. The circuit court ordered appellants to produce documents that would have been privileged but for the court's application of the *Hearn* at-issue test. It found that appellants had waived attorney-client and "any otherwise applicable privilege" in documents created more than three years before the lawsuit was filed that contained appellants' litigation and trial strategies "through their actions (e.g. the allegations in the . . . Complaints)." The circuit court's determination in the Dismissal Order that appellants were contumacious in refusing to produce these documents and that the sanctions of dismissal and attorneys' fees were appropriate depended in part on its determination that appellants had waived all privileges in these documents merely by filing suit. Because the circuit court's ruling was based on an error of law, i.e. *Hearn*, I would reverse and remand for the circuit court to consider whether appellants' other violations of the Privilege Order warrant a finding of contempt. This remand necessarily requires reconsideration of the scope of any sanctions.

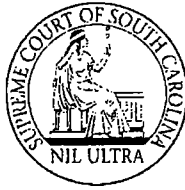
B. Discovery Order

Appellants also contend they should not have been found in contempt and sanctioned for violations of the Discovery Order. I agree with appellants that the flaws in the Dismissal Order finding appellants in violation of the Discovery Order require we reverse the Dismissal Order on this ground as well.

I agree with appellants that the trial judge's specifications of deficiencies in their compliance with the Discovery Order are simply too vague, and rely too heavily on mere references to memoranda prepared by respondents' counsel,²⁴ to support the finding of contempt. Moreover, the decision to dismiss the cases and impose other sanctions for noncompliance with discovery "should be imposed only in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights." *McNair v. Fairfield Cty.*, 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct. App. 2008) (internal citations omitted). Here, the circuit court's findings that appellants' conduct rose to this level are inexorably tied to its findings regarding disobedience of the wrongfully decided Privilege Order.

I would reverse the Dismissal Order and remand, but affirm the recusal ruling as I find no evidence of judicial prejudice in this record. *State v. Howard*, 384 S.C. 212, 682 S.E.2d 42 (Ct. App. 2009). It is patent that these cases have been pending far too long, and that appellants share in the responsibility for the delay. I am optimistic that the parties and trial judge will work diligently to bring these cases to speedy and appropriate resolutions upon remand.

²⁴ Each of the five findings of contempt in the Dismissal Order is supported only by citation to a memorandum prepared by respondents. See *Higgins v. Med. Univ. of South Carolina*, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (cautioning against reliance on factual statements in memoranda submitted by counsel).



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 19, 2012

Mr. Thomas A. Pendarvis
500 Carteret St. Ste. A
Beaufort SC 29902-5066

Mr. Ellis M. Johnston, II
PO Box 2048
Greenville SC 29602

Mr. Joel D. Bailey
PO Box 1437
Beaufort SC 29901

Mr. Calvin Theodore Vick, Jr.
PO Box 908
Greenville SC 29602

Re: Laurance Davis v. Parkview Apart
Appellate Case No. 2010-180666

Laurance Davis v. Palmetto Apartments
Appellate Case No. 2010-180087

Laurance Davis v. Roosevelt Gardens
Appellate Case No. 2010-180086

Carolina Management v. Pinewood Park
Appellate Case No. 2010-180088

Rhoda Rentz v. Orleans Gardens
Appellate Case No. 2010-176826

Dear Counsel:

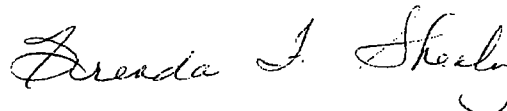
These cases are scheduled for oral argument at 10:30 a.m. on Tuesday, November 13, 2012. The following oral argument times have been allocated:

Appellant	20 minutes

Respondents	20 minutes

Appellant in Reply	10 minutes

Very truly yours,



CHIEF DEPUTY CLERK



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

610 RIBAUT ROAD

POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29901-1437

EMAIL ADDRESS:

BAILEYLAWFIRM@CHARTER.NET

PHONE: 843-525-6099

FAX: 843-525-6070

September 27, 2012

VIA FAX ONLY

RECEIVED

SEP 28 2012

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

S.C. Supreme Court

RE: Davis, et al. vs. Parkview Apartments, et al.
Davis, et al. vs. Roosevelt Gardens, et al.
Davis, et al. vs. Palmetto Apartments, et al.
Rentz, et al. vs. Orleans Gardens, et al.
Carolina Management, et al. vs. Pinewood Park, et al.

Case No. 2010180666
Case No. 2010180086
Case No. 2010180087
Case No. 2010176826
Case No. 2010180088

Dear Mr. Shearouse:

With regard to the above-referenced matters, please be advised that I have plans to be out of the state during the October dates referenced in your of letter of September 20th. Both Thomas Pendarvis and I are available for the November dates.

Thank you for your assistance with this matter.

With kindest regards, I am

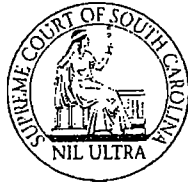
Very truly yours.

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb

cc: Ellis M. Johnston, II, Esquire (via fax)
Calvin T. Vick, Jr., Esquire (via fax)
Thomas A. Pendarvis, Esquire (via email)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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29211

1231 GERVAIS STREET
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www.sccourts.org

September 20, 2012

Mr. Thomas A. Pendarvis
500 Carteret St. Ste. A
Beaufort SC 29902-5066

Mr. Ellis M. Johnston, II
PO Box 2048
Greenville SC 29602

Mr. Joel D. Bailey
PO Box 1437
Beaufort SC 29901

Mr. Calvin Theodore Vick, Jr.
PO Box 908
Greenville SC 29602

Re: Laurance Davis v. Parkview Apartments
Appellate Case No. 2010-180666

Laurence Davis v. Palmetto Apartments
Appellate Case No. 2010-180087

Laurance Davis v. Roosevelt Gardens
Appellate Case No. 2010-180086

Carolina Management v. Pinewood
Appellate Case No. 2010-180088

Rhoda Rentz v. Orleans Gardens
Appellate Case No. 2010-176826

Dear Counsel:

These cases will likely be considered during the November 2012 term of Court. The Court will hold arguments on October 30, October 31, November 13, November 14 and November 15. If you have a scheduling conflict with any of these dates, please advise the Court of the specific nature of that conflict by September 27, 2012.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. H. S.", written in a cursive style.

CLERK



HARPER, LAMBERT & BROWN

ATTORNEYS AT LAW

Calvin T. Vick, Jr.
tvick@hlblegal.com

August 31, 2012

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RECEIVED

SEP 06 2012

S.C. SUPREME COURT

Re: Laurance H. Davis, Jr., et al. v. Roosevelt Gardens, et al.
Case No. 2010180086

Carolina Management Corporation of Beaufort, et al. v. Pinewood Park
Apartments, et al.
Case No. 2010180088

Laurance H. Davis, Jr., et al. v. Parkview Apartments, et al.
Case No. 2010180666

Laurance H. Davis, Jr., et al. v. Palmetto Apartments, et al.
Case No. 2010180087

Rhonda G. Rentz, et al. v. Orleans Gardens, et al.
Case No. 201076826

Dear Mr. Shearouse:

I, along with Ellis M. Johnston, II of Haynsworth Sinkler Boyd, P.A., represent the Respondents in each of the above-referenced appeals. This is to advise you that I recently changed law firms and am no longer associated with Haynsworth Sinkler Boyd, P.A. Please adjust your records in the above-referenced matters to reflect the following:

Calvin T. Vick, Jr.
Harper, Lambert & Brown, P.A.
420 E. Park Ave., Suite 220 (29601)
PO Box 908
Greenville, SC 29602
PH: 864-235-5535
FAX: 864-235-6866
E-mail: tvick@hlblegal.com

Mr. Johnston's contact information has not changed.

The Honorable Daniel E. Shearouse
August 31, 2012
Page 2

By copy of this letter I am notifying counsel of record of my new address. Should you have any questions regarding this matter, please do not hesitate to contact me. Thank you.

Sincerely,

HARPER, LAMBERT & BROWN, P.A.

A handwritten signature in black ink, appearing to read 'CTV', is written over the typed name.

Calvin T. Vick, Jr.

CTV:bb

cc: Thomas A. Pendarvis, Esq.
Joel D. Bailey, Esq.
Ellis M. Johnston, II, Esq.
Mr. Hugh Craddock



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29901-1437

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 843-525-6090
FAX: 843-525-6070

January 20, 2012

RECEIVED

JAN 24 2012

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

S.C. Supreme Court

RE: Davis, et al. vs. Parkview Apartments, et. al.	Case No. 2010180666
Davis, et al. vs. Roosevelt Gardens, et al.	Case No. 2010180086
Davis, et al. vs. Palmetto Apartments, et al.	Case No. 2010180087
Rentz, et al. vs. Orleans Gardens, et al.	Case No. 2010176826
Carolina Mgmt, et al. vs. Pinewood Park, et al.	Case No. 2010180088

Dear Mr. Shearouse:

Pursuant to this Court's order of January 18, 2012, enclosed please find seven (7) copies of the Appendix to the Record on Appeal, as well as six (6) compact discs. Each disc contains one copy of the Appendix to the Record on Appeal. By copy of this letter, I am serving counsel for the Respondents with a compact disc which contains a copy of the Appendix.

I am enclosing herewith a proof of service, as well as the Certificate of Counsel that the record complies with Rule 210 (g).

I would appreciate you filing these documents in the above-referenced appeals at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick, Jr., Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)

The Supreme Court of South Carolina

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,

vs.

Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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

RECEIVED

JAN 23 2012

S.C. Supreme Court

Respondents.

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,

vs.

Palmetto Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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.

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,

vs.

Pinewood Park Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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.

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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

RECEIVED

JAN 23 2012

S.C. Supreme Court

Respondents.

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

Appellants,

vs.

Roosevelt Gardens, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

PROOF OF SERVICE

I, Joel D. Bailey, of The Bailey Law Firm, P.A., certify that I have served a compact disc containing one (1) copy of the Appendix to the Record on Appeal on counsel for Respondents, by depositing the same in the United States Mail, postage prepaid, on the 20th day of January, 2012, the same being addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602


Joel D. Bailey (SC Bar # 471)
The Bailey Law Firm, P.A.
PO Box 1437, 510 Ribaut Road
Beaufort, South Carolina 29901-1437
Attorney for Appellants

January 20, 2012

The Supreme Court of South Carolina

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,

vs.

Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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

RECEIVED

JAN 23 2012

S.C. Supreme Court

Respondents.

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,

vs.

Palmetto Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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.

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,

vs.

Pinewood Park Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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.

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka 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

RECEIVED

JAN 23 2012

S.C. Supreme Court

Respondents.

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

Appellants,

vs.

Roosevelt Gardens, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210 (g) of the South Carolina Appellate Court Rules, the undersigned, as counsel for Appellants, hereby certifies that, to the best of my knowledge and belief, the Appendix to the Record on Appeal contains all remaining material proposed to be included by any of the parties and not any other material.


Joel D. Bailey (SC Bar #471)

PO Box 1437
Beaufort, SC 29901-1437
843-525-6090

Beaufort, South Carolina
January 20, 2012

The Supreme Court of South Carolina

Laurance H. Davis, Jr., Rhoda
G. Rentz, Mortimer W.
Weinberg, Jr., Hodge Land Co.,
Inc., 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 Investment and
Management Company a/k/a
AIMCO; Insignia Financial
Group, Inc.; Amreal
Corporation and 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.

Carolina Management
Corporation of Beaufort, James
B. Jackson, Whaley R. Hinnant,
Jr., Mary Gasser Rawl and
Rhoda 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, Inc.;
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.

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, Inc.; 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.

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, Inc.; Amreal
Corporation and 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.

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, Inc.; Amreal
Corporation and 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.

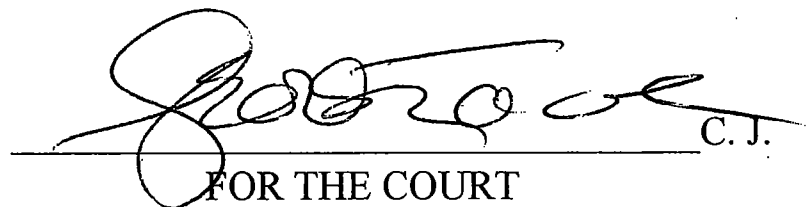
ORDER

The parties to this action have filed a joint motion seeking
permission for appellants to supplement the record on appeal by way of an

appendix and a stay or extension of the time limits for the service and filing of respondents' final brief as well as the sealed appendix to the record on appeal that respondents are to file pursuant to this Court's October 5, 2011, order. Appellants ask that they be given until January 20, 2012, to serve and file the appendix.

The motion is granted. No later than January 20, 2012, appellants shall serve and file an appendix to the record on appeal containing the materials included in respondents' designation of matter to be included in the record on appeal, but inadvertently omitted from the record on appeal. The time for respondents to serve and file their final brief and the sealed appendix to the record on appeal referenced in this Court's October 5, 2011, order shall be stayed pending service and filing by appellants of the appendix permitted by this order.

IT IS SO ORDERED.


C. J.
FOR THE COURT

Columbia, South Carolina

January 18, 2012

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire
Ellis M. Johnston, Jr., Esquire
Calvin T. Vick, Esquire

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29801-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

CALVIN T. VICK, JR.
DIRECT DIAL NUMBER (864) 240-3324
EMAIL tvick@hsblawfirm.com

January 3, 2012

The Honorable Daniel E. Shearouse
Clerk of Court, Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

RE: *Rentz v. Orleans Gardens, Aimco, et al.*
Case No.: 2010176826

Dear Mr. Shearouse:

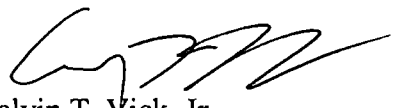
Enclosed for filing in connection with the above matter, please find the original and seven (7) copies of the *Joint Motion of Appellants and Respondents to Supplement Record on Appeal via Appendix to Record on Appeal and for Stay of Time Limits for Filing and Service of Respondents' Final Brief and Proof of Service* of same. Also enclosed is our firm's check in the amount of \$25.00 to cover the filing fee. After the documents have been filed, I would appreciate your returning filed-stamped copies to me in the enclosed self-addressed stamped envelope.

As Ted Vick discussed with Linda Wednesday, the enclosed Joint Motion has Ted Vick's (attorney for Respondents) original signature only. Joel Bailey, attorney for Appellants, will be forwarding a Joint Motion with his original signature. Please do not hesitate to contact me if you have any questions.

With kind regards, I remain,

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Calvin T. Vick, Jr.

RECEIVED

JAN 05 2012

S.C. SUPREME COURT

CTVjr/amp

Enclosures

cc: Ellis M. Johnston, II, Esquire (via e-mail)
Thomas A. Pendarvis, Esquire (w/enclosures)
Joel D. Bailey, Esquire (w/enclosures)

THE SUPREME COURT OF SOUTH CAROLINA

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

vs.)

Roosevelt Gardens, a South Carolina)
Limited Partnership, Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

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

vs.)

Pinewood Park Apartments, a South)
Carolina Limited Partnership; Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

RECEIVED
JAN 05 2012
S.C. 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,	)	Transfer from Court of Appeals Case No. 2010180666
	)	
vs.	)	Appellants,
	)	
Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

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,	)	Transfer from Court of Appeals Case No. 2010180087
	)	
vs.	)	Appellants,
	)	
Palmetto Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

Rhoda G. Rentz, Mary Jane Pike, Eva	)	Transfer from Court of Appeals
Marie Reynolds, and Joanne O. Mercy,	)	Case No. 2010176826
Individually and in their capacities as the	)	
Limited Partners of Orleans Gardens, a	)	
South Carolina Limited Partnership,	)	
	)	Appellants,
vs.	)	
	)	
Orleans Gardens, a South Carolina	)	
Limited Partnership; Apartment	)	
Investment and Management Company	)	
a/k/a AIMCO; Insignia Financial Group,	)	
Inc.; 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.

**JOINT MOTION OF APPELLANTS AND RESPONDENTS
TO SUPPLEMENT RECORD ON APPEAL VIA APPENDIX TO
RECORD ON APPEAL AND FOR STAY OF TIME LIMITS FOR FILING
AND SERVICE OF RESPONDENTS' FINAL BRIEF**

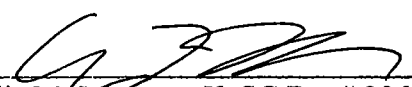
Appellants and Respondents, through their respective undersigned counsel, hereby move the Court for an Order granting Appellants permission to supplement the Record on Appeal filed in this case via a separate Appendix to the Record, pursuant to Rule 212(b), SCACR, and granting Respondents a stay of the time limits (or in the alternative, an extension of the time limits) for the filing and service of Respondents' Final Brief. Due to prior commitments of Appellants' counsel, the parties request that Appellants be given until January 20, 2012, to serve the Appendix to the Record. The parties further request that the stay of the time limits for Respondents' Final Brief apply also to the Sealed Appendix to the Record, which Respondents are to file under seal

pursuant to the Court's Order dated October 5, 2011. In support of this Joint Motion, the parties show the Court as follows:

Appellants served the Record on Appeal upon Respondents via U.S. Mail on December 16, 2011. Respondents' counsel received the Record on Appeal on December 20, 2011. In preparing their Final Brief, Respondents' counsel discovered that some of the materials included in their Designation of Matter to be Included in the Record on Appeal had been inadvertently omitted (in whole or in part) from the Record on Appeal. Respondents' counsel informed Appellants' counsel that they would be unable to complete Respondents' Final Brief until the inadvertently omitted materials were included in the Record on Appeal and assigned Record page numbers. In the meantime, Appellants had filed the Record on Appeal with the Clerk of the South Carolina Supreme Court on December 22, 2011. On December 27 and 28, 2011, counsel for the parties consulted with one another concerning the inadvertently omitted materials and agreed that, with the Court's permission, they would supplement the Record on Appeal to include the inadvertently omitted materials via an Appendix to the Record, and seek a stay of the time limits for the filing and service of Respondents' Final Brief.

Wherefore, Appellants and Respondents jointly request that the Court permit Appellants to supplement the Record on Appeal by filing and serving an Appendix to the Record on Appeal on or before January 20, 2012; stay the time limits for the filing and service of Respondents' Final Brief until the Appendix to the Record is served by Appellants; and stay the time limits for the filing of the Sealed Appendix to the Record on Appeal by Respondents such that the Sealed Appendix to the Record will be filed at the same time as Respondents' Final Brief.

Respectfully submitted,


Ellis M. Johnston, II, SC Bar # 3065
Calvin T. Vick, Jr., SC Bar #68187
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

ATTORNEYS FOR RESPONDENTS

Date: 1/2/12
Greenville, South Carolina

Joel D. Bailey, SC Bar #00471
The Bailey Law Firm
510 Ribaut Road
P.O. Box 1437
Beaufort, SC 29901-1437
(843) 525-6090

Thomas A. Pendarvis, SC Bar #064918
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902
(843) 524-9500

ATTORNEYS FOR APPELLANTS

Date: _____
Beaufort, South Carolina

THE SUPREME COURT OF SOUTH CAROLINA

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

vs.)

Roosevelt Gardens, a South Carolina)
Limited Partnership, Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

RECEIVED

JAN - 5 2012

S.C. Supreme Court

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

vs.)

Pinewood Park Apartments, a South)
Carolina Limited Partnership; Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

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,	)	Transfer from Court of Appeals Case No. 2010180666
	)	
vs.	)	Appellants,
	)	
Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

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,	)	Transfer from Court of Appeals Case No. 2010180087
	)	
vs.	)	Appellants,
	)	
Palmetto Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

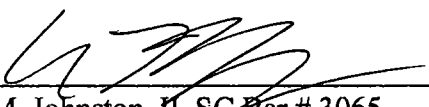
Rhoda G. Rentz, Mary Jane Pike, Eva	)	Transfer from Court of Appeals
Marie Reynolds, and Joanne O. Mercy,	)	Case No. 2010176826
Individually and in their capacities as the	)	
Limited Partners of Orleans Gardens, a	)	
South Carolina Limited Partnership,	)	
	)	Appellants,
vs.	)	
	)	
Orleans Gardens, a South Carolina	)	
Limited Partnership; Apartment	)	
Investment and Management Company	)	
a/k/a AIMCO; Insignia Financial Group,	)	
Inc.; 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.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served counsel for the Appellants with a copy of *Joint Motion of Appellants and Respondents to Supplement Record on Appeal via Appendix to Record on Appeal and for Stay of Time Limits for Filing and Service of Respondents' Final Brief* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5066

Joel D. Bailey
The Bailey Law Firm, P.A.
P.O. Box 1437
Beaufort, South Carolina 29901-1437



Ellis M. Johnston, II, SC Bar # 3065
Calvin T. Vick, Jr., SC Bar #68187
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

ATTORNEYS FOR RESPONDENTS

This 3rd day of January, 2012
Greenville, South Carolina



THE
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A PROFESSIONAL ASSOCIATION

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EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 845-525-6090
FAX: 845-525-6070

December 22, 2011
VIA HAND DELIVERY

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Rhoda G. Rentz, et al. vs. Orleans Gardens, et. al.
Case No. 2005-CP-10-4229

Dear Mr. Shearouse:

With regard to the above-referenced matter, please find fifteen (15) copies of Appellants' Brief, together with a certification pursuant to SCACR 211 and proof of service.

I would appreciate you filing these documents in the above-referenced appeal at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick, Jr., Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)

RECEIVED

DEC 22 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED

DEC 22 2011

S.C. SUPREME COURT

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,

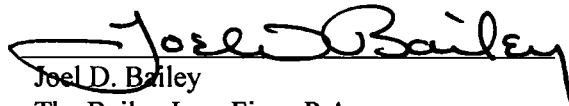
vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

PROOF OF SERVICE

I, Joel D. Bailey, of The Bailey Law Firm, P.A., certify that I have served one (1) copy of Appellants' Brief on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 22nd day of December, 2011, the same being addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602


Joel D. Bailey

The Bailey Law Firm, P.A.
PO Box 1437, 510 Ribaut Road
Beaufort, South Carolina 29901-1437
Attorney for Appellants

December 22, 2011

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED

DEC 22 2011

S.C. SUPREME COURT

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

CERTIFICATE OF COUNSEL

The undersigned, as counsel for Appellants, hereby certifies that, to the best of my knowledge and belief, the Appellants' Brief complies with Rule 211 of the South Carolina Appellate Court Rules.


Joel D. Bailey (SC Bar #471)
PO Box 1437
Beaufort, SC 29901-1437
843-525-6090

Beaufort, South Carolina
December 22, 2011



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FAX: 843-525-6070

October 11, 2011

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

OCT 13 2011

S.C. Supreme Court

RE: Rhoda G. Rentz, et al. vs. Orleans Gardens, et. al.
Case No. 2005-CP-10-4229

Dear Mr. Shearouse:

Pursuant to the Court's order of October 5, 2011, enclosed for filing please find the Appellants' Amended Initial Brief. I am also enclosing the original proof of service.

I would appreciate you filing these documents in the above-referenced appeal at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick, Jr., Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED

OCT 13 2011

S.C. Supreme Court

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

PROOF OF SERVICE

I, Joel D. Bailey, of The Bailey Law Firm, P.A., certify that I have served one (1) copy of Appellants' Amended Initial Brief on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 11th day of October, 2011, the same being addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
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Greenville, SC 29602

THOMAS A. PENDARVIS (SC Bar # 064918)
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baileylawfirm@charter.net

Attorneys for Appellants

By: 
Joel D. Bailey

October 11, 2011

The Supreme Court of South Carolina

Laurance H. Davis, Jr., Rhoda
G. Rentz, Mortimer W.
Weinberg, Jr., Hodge Land Co.,
Inc., 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 Investment and
Management Company a/k/a
AIMCO; Insignia Financial
Group, Inc.; Amreal
Corporation and 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.

Carolina Management
Corporation of Beaufort, James
B. Jackson, Whaley R. Hinnant,
Jr., Mary Gasser Rawl and
Rhoda 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, Inc.;
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.

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, Inc.; 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.

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, Inc.; Amreal
Corporation and 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.

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, Inc.; Amreal
Corporation and 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.

ORDER

Respondents in the above-captioned appeals move to dismiss the
appeals based on appellants' failure to comply with the requirements of Rules

208(b)(4), 208(b)(8), 209(b), 210(c), and 267(c), SCACR. In the alternative, respondents move to strike appellants' initial briefs and designations of matter to be included in the record on appeal based on appellants' failure to comply with the rules, strike the citations and designated materials within appellants' initial briefs and designations that are in violation of Rules 208(b)(4), 209(b), and 210(c), and require appellants to serve and file amended initial briefs and designations. Appellants have filed returns in opposition to the motions. The motions to dismiss and to strike are denied; however, appellants shall, within ten days of the date of this order, serve and file amended briefs that identify the page numbers of the documents they cite therein.

Respondents also seek permission to file a consolidated initial brief and designation of matter to be included in the record on appeal, to exceed the page limit set forth in Rule 208(b)(5), SCACR, by thirty pages, and to provide a document entitled "In Camera Supplement to Memorandum in Support of Defendants' Motion to Alter or Amend Order," along with eight attached exhibits, in a separate, sealed appendix to the record on appeal.

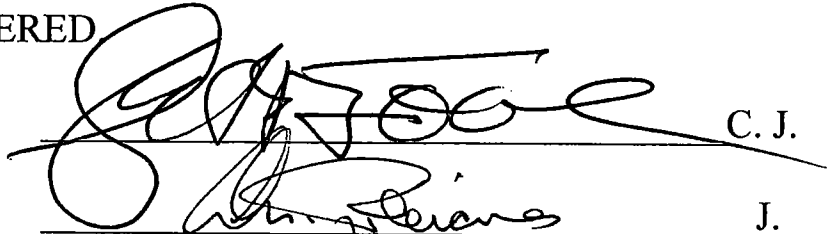
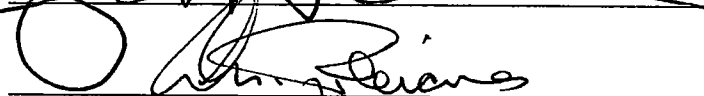
Appellants oppose the requests. The requests are granted.¹

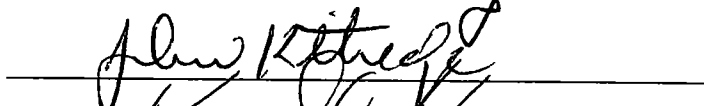
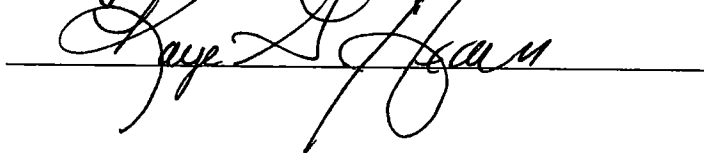
Finally, as to respondents' motion to stay the time limits and for a

¹ Appellants may file a consolidated initial reply brief if they so choose.

thirty day extension of time, which appellants also oppose, respondents are hereby directed to serve and file their initial brief and designation of matter to be included in the record on appeal within thirty days of service of appellants' amended briefs.

IT IS SO ORDERED


C. J.

J.

Donald W. Beatty J.

John R. [unclear] J.

Kaye L. [unclear] J.

Columbia, South Carolina

October 5, 2011

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire
Ellis M. Johnston, Jr., Esquire
Calvin T. Vick, Esquire



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

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PHONE: 843-525-6090
FAX: 843-525-6070

June 21, 2011

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

JUN 24 2011

RE: Rhoda G. Rentz, et al. vs. Orleans Gardens, et. al.
Case No. 2005-CP-10-4229

S.C. Supreme Court

Dear Mr. Shearouse:

With regard to the above-referenced matter, enclosed for filing please find Appellants' Initial Brief, Designation of Matter to be Included in the Record on Appeal and proof of service.

I would appreciate you filing these documents in the above-referenced appeal at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick, Jr., Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED

JUN 24 2011

S.C. Supreme Court

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

PROOF OF SERVICE

I, Joel D. Bailey, of The Bailey Law Firm, P.A., certify that I have served one (1) copy of Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 21st day of June, 2011, the same being addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Joel D. Bailey
PO Box 1437
Beaufort, SC 29901-1437
843-525-6090; 843- 525-6070 fax
baileylawfirm@charter.net

Attorney for Appellants

By:


Joel D. Bailey

June 21, 2011

Hopkins, Debbie

From: baileylawfirm@charter.net
Sent: Monday, May 23, 2011 1:06 PM
To: Hopkins, Debbie
Cc: Ted Vick; Ellis Johnston; Thomas Pendarvis
Subject: RE: Missing Transcript

Debbie:

The transcript from the retired court reporter, Ms. Bennett, arrived in today's mail. As I understand the Court's last order, the time for filing Appellants' initial briefs begins to run today, making the briefs due on June 22nd. Please advise if this is incorrect.

Thank you for your assistance.

Joel D. Bailey

The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, SC 29901-1437
843-525-6090
843-525-6070 (fax)
baileylawfirm@charter.net

RECEIVED

MAY 23 2011

S.C. Supreme Court

On Mon, May 23, 2011 at 9:26 AM, Hopkins, Debbie wrote:

Thank you, Mr. Bailey.

From: baileylawfirm@charter.net [mailto:baileylawfirm@charter.net]
Sent: Friday, May 20, 2011 6:11 PM
To: Hopkins, Debbie
Subject: Missing Transcript

Debbie:

FYI, I did not receive the transcript from Ms. Bennett in today's mail. I checked after both morning and afternoon postings. Will update you on Monday.

Joel D. Bailey
The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, SC 29901-1437
843-525-6090
843-525-6070 (fax)
baileylawfirm@charter.net

Hopkins, Debbie

From: baileylawfirm@charter.net
Sent: Thursday, May 19, 2011 11:02 AM
To: Hopkins, Debbie
Subject: Transcripts Update

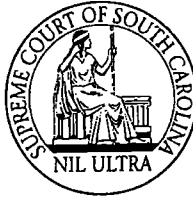
Debbie:

I am now in receipt of one of the transcripts from court reporter Elizabeth Harris. I spoke with the other court reporter, Harriett Bennett, this morning and she informed me that she has now located the other transcript, and is sending it to me today. I hope to have it by tomorrow, and will advise you when I am in actual possession of it.

Thanks for your assistance.

Joel D. Bailey
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843-525-6090
843-525-6070 (fax)
baileylawfirm@charter.net

843-694-3480



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 19, 2011

Joel D. Bailey, Esquire
The Bailey Law Firm, PA
P.O. Box 1437
Beaufort, SC 29901

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret St. Ste. A
Beaufort, SC 29902

Ellis M. Johnston, Jr., Esquire
Calvin T. Vick, Esquire
Haynsworth Sinkler Boyd, P.A.
P O Box 2048
Greenville, SC 29602

Re: Laurance Davis v. Roosevelt Gardens
Carolina Management v. Pinewood Park
Laurance Davis v. Parkview Apartments
Laurance Davis v. Palmetto Apartments
Rhoda Rentz v. Orleans Gardens

Dear Counsel:

Enclosed is the order issued in the above entitled matters.

Laurance Davis v. Roosevelt Gardens
Carolina Management v. Pinewood Park
Laurance Davis v. Parkview Apartments
Laurance Davis v. Palmetto Apartments
Rhoda Rentz v. Orleans Gardens
Page Two
May 19, 2011

Very truly yours,



CLERK

DES/dmh

Enclosure

The Supreme Court of South Carolina

Laurance H. Davis, Jr., Rhoda
G. Rentz, Mortimer W.
Weinberg, Jr., Hodge Land Co.,
Inc., 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 Investment and
Management Company a/k/a
AIMCO; Insignia Financial
Group, Inc.; Amreal
Corporation and 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.

Carolina Management
Corporation of Beaufort, James
B. Jackson, Whaley R. Hinnant,
Jr., Mary Gasser Rawl and
Rhoda 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, Inc.;
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.

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, Inc.; 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.

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, Inc.; Amreal
Corporation and 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.

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, Inc.; Amreal
Corporation and 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.

ORDER

The joint motion seeking extensions is denied. Since appellants
are still awaiting the delivery of a transcript from a court reporter, the time to

serve and file the appellant's brief has not begun to run. Rule 208(a)(1), SCACR (time to serve and file appellant's initial brief begins on receipt of transcript). Counsel for appellant shall advise this Court when this transcript is received.

IT IS SO ORDERED.


C. J.
FOR THE COURT

Columbia, South Carolina

May 19, 2011

PENDARVIS LAW OFFICES, P.C.

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
Thomas@PendarvisLaw.com
Board Certified by the American Board
of Professional Liability Attorneys in
Legal Malpractice



500 CARTERET STREET, SUITE A
BEAUFORT, SC 29902-5066
www.PendarvisLaw.com
TEL 843.524.9500
FAX 843.524.9501

May 16, 2011

Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia SC 29211

RECEIVED

MAY 19 2011

S.C. Supreme Court

Re: Rentz, et al v Orleans Gardens, et al
Davis, et al v Roosevelt Gardens, et al
Carolina Management, et al v Pinewood Park Apartments, et al
Davis, et al v Palmetto Apartments, et al
Davis, et al v Parkview Apartments, et al

Dear Mr. Shearouse:

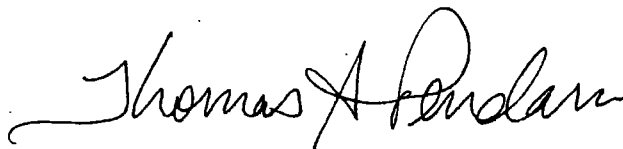
As stated in correspondence from Atty. Ellis Johnston of this date, enclosed please find a copy of the JOINT MOTION OF APPELLANTS AND RESPONDENTS, which includes my original signature page.

Should you need anything further, please do not hesitate to call or contact my office.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

TAP/jac
Enclosure

cc Joel D. Bailey, J.D. (w/enclosure)
Ellis M. Johnston, II, J.D. (w/enclosure)
Calvin T. Vick, JD (via e-mail w/enclosure)

THE SUPREME COURT OF SOUTH CAROLINA

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

vs.)

Roosevelt Gardens, a South Carolina)
Limited Partnership, Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

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

vs.)

Pinewood Park Apartments, a South)
Carolina Limited Partnership; Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

RECEIVED

MAY 19 2011

S.C. 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.	)	Transfer from Court of Appeals Case No. 2010180666
	)	
	)	
vs.	)	Appellants,
	)	
Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

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,	)	Transfer from Court of Appeals Case No. 2010180087
	)	
	)	
vs.	)	Appellants,
	)	
Palmetto Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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.

Rhoda G. Rentz, Mary Jane Pike, Eva	)	Transfer from Court of Appeals
Marie Reynolds, and Joanne O. Mercy,	)	Case No. 2010176826
Individually and in their capacities as the	)	
Limited Partners of Orleans Gardens, a	)	
South Carolina Limited Partnership,	)	
	)	Appellants,
vs.	)	
	)	
Orleans Gardens, a South Carolina	)	
Limited Partnership; Apartment	)	
Investment and Management Company	)	
a/k/a AIMCO; Insignia Financial Group,	)	
Inc.; 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.

JOINT MOTION OF APPELLANTS AND RESPONDENTS

Pursuant to Rule 240, South Carolina Appellant Court Rules (SCACR), Appellants and Respondents in the five (5) above-captioned appeals respectfully move the Court for an additional 30 days time for each to file their initial briefs and designation of matter to be included in the record on appeal and an additional ten (10) days for Appellants to file reply briefs, as well as an additional 30 days to file the record on appeal. The basis for this motion is set forth below.

By Order dated May 5, 2011 (Exhibit 1), this Court denied certain motions then pending which had stayed the filing of initial briefs and designation of matter to be included in the record on appeal. Thus, Appellants' initial briefs and designation of matter to be included in the record on appeal would be due on June 6, 2011. Respondents' initial briefs and designation of matter to be included in the record on appeal would then be due on July 6, 2011 (or 30 days after filing of Appellants' briefs).

The record in this case will be unusually voluminous and, out of necessity, this Court has ordered that it be filed electronically (Exhibit 1). The Notices of Appeal take exception to thirteen (13) separate Orders, each of which must be addressed in Appellants' and Respondents' papers.

Mr. Thomas Pendarvis, one of two attorneys for Appellants, presently has trials scheduled for the week of May 23, 2011, the first two weeks in June of 2011, and the week of July 11, 2011. Thus, compliance with the current schedule requiring Appellants to file their papers on June 6, 2011, would impose an exceptional hardship on Appellants.

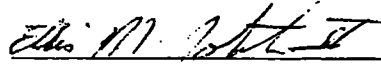
Mr. Calvin T. Vick, Jr., one of two attorneys for Respondents, is expecting the birth of his third child on May 28, 2011, and has a week-long U.S. District Court jury trial beginning July 5, 2011. He anticipates that preparation for this trial and completing the discovery necessary for it would severely limit his ability to assist in the preparation of Respondents' papers and would impose an exceptional hardship on them.

Counsel for the Appellants and Respondents have conferred and agree that, under the circumstances discussed above, it will not be practically possible for either of them to adequately brief the issues presented in these appeals, and properly designate the documents to be included in the record, in the standard 30-day period allowed to each of them under the Rules. Due to these exceptional circumstances, both Appellants and Respondents jointly request that each be granted an additional thirty (30) days to prepare their respective papers (*i.e.*, 30-day extension for Appellants' initial briefs and 30-day extension for Respondents' initial briefs) and that Appellants be granted an additional ten (10) days to file reply briefs and an additional thirty (30) days to file the record on appeal.

(Signature Pages Follow)

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, PA

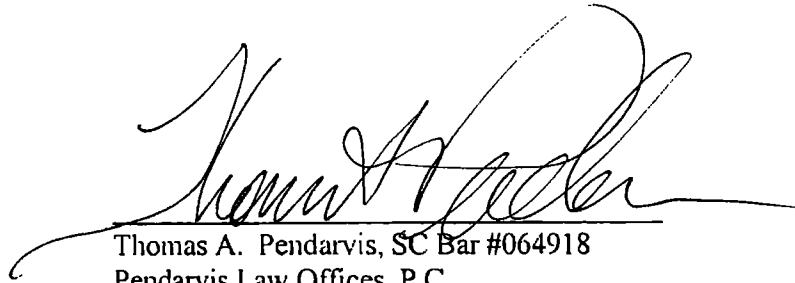


Ellis M. Johnston, II, SC Bar # 3065
Calvin T. Vick, Jr., SC Bar #68187
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

This th~~16~~ day of May, 2011
Greenville, South Carolina

ATTORNEYS FOR RESPONDENTS

This 16 day of May, 2011
Beaufort, South Carolina

A handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', is written over a horizontal line.

Thomas A. Pendarvis, SC Bar #064918
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902
(843) 524-9500

Joel D. Bailey, SC Bar #00471
The Bailey Law Firm
510 Ribaut Road
P.O. Box 1437
Beaufort, SC 29901-1437
(843) 525-6090

ATTORNEYS FOR APPELLANTS

The Supreme Court of South Carolina

Laurance H. Davis, Jr., Rhoda
G. Rentz, Mortimer W.
Weinberg, Jr., Hodge Land Co.,
Inc., 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 Investment and
Management Company a/k/a
AIMCO; Insignia Financial
Group, Inc.; Amreal
Corporation and 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.

Carolina Management
Corporation of Beaufort, James
B. Jackson, Whaley R. Hinnant,
Jr., Mary Gasser Rawl and
Rhoda Rentz, Individually and
in their capacities as the

Appellants,

EXHIBIT 1

Limited Partners of Pinewood
Park Apartments, a South
Carolina Limited Partnership,

v.

Pinewood Park Apartments, a
South Carolina Limited
Partnership; Apartment
Investment and Management
Company a/k/a AIMCO;
Insignia Financial Group, Inc.;
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.

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, Inc.; 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.

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, Inc.; Amreal Corporation and 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.

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, Inc.; Amreal
Corporation and 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.

ORDER

Respondents move to dismiss all of the above-captioned appeals
with the exception of the Rentz appeal. The motion is denied.

Marvin Infinger, Anne Rosen, and Jesse Belcher move to be
relieved as counsel for respondents to the extent they may be perceived as

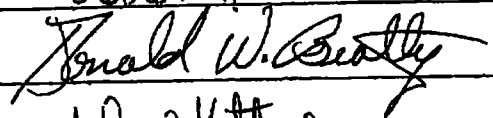
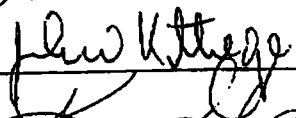
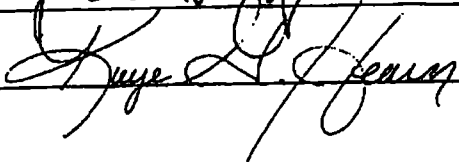
continuing to be counsel of record in the appeals. That motion is granted.

Prior to these appeals being transferred to this Court, appellants filed a Motion for Status Conference, for Consolidated Record, and to Stay Appeal Pending Hearing. That motion is still pending. The request for a status conference is denied; however, we grant the request to file a consolidated record. Moreover, since respondents have indicated the record will be "extraordinarily voluminous," the consolidated record shall be submitted in electronic format, as will be discussed further below.

One of the issues appellants sought to address in a status conference is the feasibility of expediting these appeals. We decline to expedite the appeals; however, no extensions of the time limits set forth in Rules 208 through 211, SCACR, will be granted absent extraordinary circumstances. The record on appeal shall be in electronic format on CDs or DVDs. Appellants shall serve one copy of the consolidated record on appeal in electronic format on respondents and file six electronic copies and seven hard copies with this Court. The appeals shall be consolidated for purposes of oral argument.

IT IS SO ORDERED.

 C.J.


_____. J.

_____. J.

_____. J.

_____. J.

Columbia, South Carolina

May 5, 2011

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire
Ellis M. Johnston, Jr., Esquire
Calvin T. Vick, Esquire
Marvin D. Infinger, Esquire
Anne Ross Rosen, Esquire

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

ELLIS M. JOHNSTON, II
DIRECT DIAL NUMBER (864) 240-3217
EMAIL ejohnston@hsblawfirm.com

May 16, 2011

VIA FEDERAL EXPRESS

The Honorable Daniel E. Shearouse
Clerk of Court, Supreme Court of South Carolina
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

MAY 17 2011

S.C. SUPREME COURT

Re: Davis, et al. v. Roosevelt Gardens, Aimco, et al.;
Carolina Management Corporation of Beaufort, et al. v. Pinewood Park Apartments, Aimco, et al.;
Davis v. Parkview Apartments, Aimco, et al.;
Davis v. Palmetto Apartments, Aimco, et al.;
Rentz v. Orleans Gardens, Aimco, et al.

Dear Mr. Shearouse:

Enclosed for filing please find the *Joint Motion of Appellants and Respondents* pursuant to Rule 240 of the South Carolina Appellant Court Rules and *Proof of Service* by mail of same. Also enclosed is our firm's check in the amount of \$25.00 to cover the filing fee. I also enclose seven (7) copies of the Motion and Proof of Service. After the documents have been filed, I would appreciate your returning filed-stamped copies to me in the enclosed self-addressed stamped envelope.

Mr. Thomas Pendarvis, attorney for Appellants, will be forwarding his original signature page along with a copy of the Motion for your files.

We would jointly ask that consideration of the Motion be done on an expedited basis as the time limitations are upon us.

With kind regards, I remain,

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Ellis M. Johnston, II

EMJ,II:jmb
Enclosures

cc: Calvin T. Vick, Esquire (via e-mail)
Thomas A. Pendarvis, Esquire (via U.S. Mail)
Joel D. Bailey, Esquire (via U.S. Mail)

THE SUPREME COURT OF SOUTH CAROLINA

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

vs.

Roosevelt Gardens, a South Carolina
Limited Partnership, Apartment
Investment and Management Company
a/k/a AIMCO; Insignia Financial Group,
Inc.; 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,

) Transfer from Court of Appeals
) Case No. 2010180086
)
)

) Appellants,
)
)

RECEIVED

MAY 17 2011

S.C. SUPREME COURT

) Respondents.
)
)

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

vs.

Pinewood Park Apartments, a South
Carolina Limited Partnership; Apartment
Investment and Management Company
a/k/a AIMCO; Insignia Financial Group,
Inc.; 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,

) Transfer from Court of Appeals
) Case No. 2010180088
)
)

) Appellants,
)
)

) Respondents.
)
)

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,)

vs.)

Parkview Apartments, a South Carolina)
Limited Partnership; Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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,)

Transfer from Court of Appeals
Case No. 2010180666

Appellants,

Respondents.

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,)

vs.)

Palmetto Apartments, a South Carolina)
Limited Partnership, Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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;)

Transfer from Court of Appeals
Case No. 2010180087

Appellants,

Respondents.

The record in this case will be unusually voluminous and, out of necessity, this Court has ordered that it be filed electronically (Exhibit 1). The Notices of Appeal take exception to thirteen (13) separate Orders, each of which must be addressed in Appellants' and Respondents' papers.

Mr. Thomas Pendarvis, one of two attorneys for Appellants, presently has trials scheduled for the week of May 23, 2011, the first two weeks in June of 2011, and the week of July 11, 2011. Thus, compliance with the current schedule requiring Appellants to file their papers on June 6, 2011, would impose an exceptional hardship on Appellants.

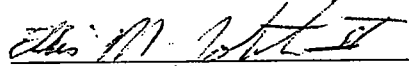
Mr. Calvin T. Vick, Jr., one of two attorneys for Respondents, is expecting the birth of his third child on May 28, 2011, and has a week-long U.S. District Court jury trial beginning July 5, 2011. He anticipates that preparation for this trial and completing the discovery necessary for it would severely limit his ability to assist in the preparation of Respondents' papers and would impose an exceptional hardship on them.

Counsel for the Appellants and Respondents have conferred and agree that, under the circumstances discussed above, it will not be practically possible for either of them to adequately brief the issues presented in these appeals, and properly designate the documents to be included in the record, in the standard 30-day period allowed to each of them under the Rules. Due to these exceptional circumstances, both Appellants and Respondents jointly request that each be granted an additional thirty (30) days to prepare their respective papers (*i.e.*, 30-day extension for Appellants' initial briefs and 30-day extension for Respondents' initial briefs) and that Appellants be granted an additional ten (10) days to file reply briefs and an additional thirty (30) days to file the record on appeal.

(Signature Pages Follow)

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, PA



Ellis M. Johnston, II, SC Bar # 3065

Calvin T. Vick, Jr., SC Bar #68187

Post Office Box 2048

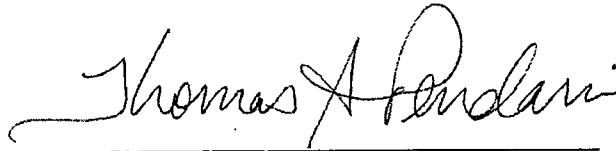
Greenville, South Carolina 29602

(864) 240-3200

ATTORNEYS FOR RESPONDENTS

This ⁴⁶~~16~~ day of May, 2011
Greenville, South Carolina

This 16 day of May, 2011
Beaufort, South Carolina



Thomas A. Pendarvis, SC Bar #064918
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902
(843) 524-9500

Joel D. Bailey, SC Bar #00471
The Bailey Law Firm
510 Ribaut Road
P.O. Box 1437
Beaufort, SC 29901-1437
(843) 525-6090

ATTORNEYS FOR APPELLANTS

The Supreme Court of South Carolina

Laurance H. Davis, Jr., Rhoda
G. Rentz, Mortimer W.
Weinberg, Jr., Hodge Land Co.,
Inc., 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 Investment and
Management Company a/k/a
AIMCO; Insignia Financial
Group, Inc.; Amreal
Corporation and 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.

Carolina Management
Corporation of Beaufort, James
B. Jackson, Whaley R. Hinnant,
Jr., Mary Gasser Rawl and
Rhoda Rentz, Individually and
in their capacities as the

Appellants,

EXHIBIT 1

Limited Partners of Pinewood
Park Apartments, a South
Carolina Limited Partnership,

v.

Pinewood Park Apartments, a
South Carolina Limited
Partnership; Apartment
Investment and Management
Company a/k/a AIMCO;
Insignia Financial Group, Inc.;
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.

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, Inc.; 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.

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, Inc.; Amreal
Corporation and 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.

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, Inc.; Amreal
Corporation and 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.

ORDER

Respondents move to dismiss all of the above-captioned appeals
with the exception of the Rentz appeal. The motion is denied.

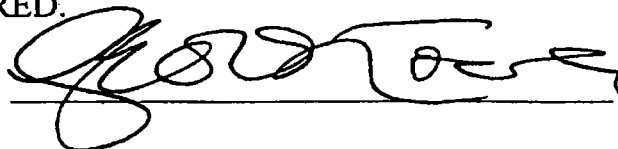
Marvin Infinger, Anne Rosen, and Jesse Belcher move to be
relieved as counsel for respondents to the extent they may be perceived as

continuing to be counsel of record in the appeals. That motion is granted.

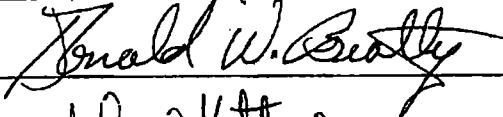
Prior to these appeals being transferred to this Court, appellants filed a Motion for Status Conference, for Consolidated Record, and to Stay Appeal Pending Hearing. That motion is still pending. The request for a status conference is denied; however, we grant the request to file a consolidated record. Moreover, since respondents have indicated the record will be "extraordinarily voluminous," the consolidated record shall be submitted in electronic format, as will be discussed further below.

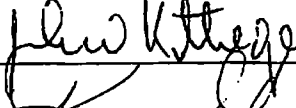
One of the issues appellants sought to address in a status conference is the feasibility of expediting these appeals. We decline to expedite the appeals; however, no extensions of the time limits set forth in Rules 208 through 211, SCACR, will be granted absent extraordinary circumstances. The record on appeal shall be in electronic format on CDs or DVDs. Appellants shall serve one copy of the consolidated record on appeal in electronic format on respondents and file six electronic copies and seven hard copies with this Court. The appeals shall be consolidated for purposes of oral argument.

IT IS SO ORDERED.


C.J.



J.


J.


J.


J.

Columbia, South Carolina

May 5, 2011

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire
Ellis M. Johnston, Jr., Esquire
Calvin T. Vick, Esquire
Marvin D. Infinger, Esquire
Anne Ross Rosen, Esquire

THE SUPREME COURT OF SOUTH CAROLINA

Laurance H. Davis, Jr., Rhoda G. Rentz,) Transfer from Court of Appeals
Mortimer M. Weinberg, Jr., Hodge Land) Case No. 2010180086
Co., Inc., and Anna Trotter, Individually)
and in their capacities as the Limited)
Partners of Roosevelt Gardens, a South)
Carolina Limited Partnership,) Appellants,

vs.)

Roosevelt Gardens, a South Carolina)
Limited Partnership, Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

Carolina Management Corporation of) Transfer from Court of Appeals
Beaufort, James B. Jackson, Whaley R.) Case No. 2010180088
Hinnant, Jr., Mary Gasser Rawl, and)
Rhoda Rentz, Individually and in their)
capacities as the Limited Partners of)
Pinewood Park Apartments, a South)
Carolina Limited Partnership,) Appellants,

vs.)

Pinewood Park Apartments, a South)
Carolina Limited Partnership; Apartment)
Investment and Management Company)
a/k/a AIMCO; Insignia Financial Group,)
Inc.; 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.

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,

vs.

Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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,

) Transfer from Court of Appeals
) Case No. 2010180666

) Appellants,

) Respondents.

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,

vs.

Palmetto Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; 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;

) Transfer from Court of Appeals
) Case No. 2010180087

) Appellants,

) Respondents.

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,

vs.

Orleans Gardens, a South Carolina
Limited Partnership; Apartment
Investment and Management Company
a/k/a AIMCO; Insignia Financial Group,
Inc.; 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,

) Transfer from Court of Appeals
) Case No. 2010176826

) Appellants,

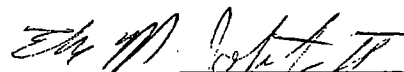
) Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served counsel for the Appellants with a copy of *JOINT MOTION OF APPELLANTS AND RESPONDENTS* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5066

Joel D. Bailey
The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, South Carolina 29901-1437



Ellis M. Johnston, II

May 16, 2011
Greenville, South Carolina



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION
510 RIBAUT ROAD

POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29901-1437

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 843-525-6090
FAX: 843-525-6070

May 17, 2011

VIA EMAIL and US MAIL OVERNIGHT DELIVERY

RECEIVED

MAY 18 2011

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, South Carolina 29211

RE: Davis, et al. vs. Parkview, et al.
Davis, et al. vs. Roosevelt, et al.
Davis, et al. vs. Palmetto, et al.
Rentz, et al. vs. Orleans, et al.
Carolina Management, et al. vs Pinewood Park, et al.

C/A # 03-CP-07-726
C/A # 05-38-1131
C/A # 05-CP-07-1989
C/A # 05-CP-10-4229
C/A # 05-CP-07-1990

Dear Mr. Shearouse:

I am currently involved in five (5) related appeals in the SC Supreme Court wherein I am co-counsel for the Appellants. I was previously asked by Deputy Clerk Debbie Hopkins whether I had received copies of all transcripts, and I informed her that I had. In preparing the initial briefs, however, and after communications today between my paralegal and the paralegal for Respondents' counsel, I just learned that I now need two (2) additional transcripts. Counsel for the Respondents have already ordered these additional transcripts, and I am informed that they have received them from the respective court reporters.

I called Ms. Hopkins today to inform her of this development, and of the fact that I will need the additional transcripts in order to properly prepare this appeal. At her suggestion, I contacted Court Administration and received e-mail addresses for the respective court reporters. I am sending a letter today for overnight delivery to the court reporters, as well an e-mail to them, requesting expedited copies of these transcripts. Copies of these letters are attached hereto.

I apologize for any misunderstanding or inconvenience which this oversight has caused. With kindest regards, I am

Mr. Daniel E. Shearouse

May 17, 2011

Page Two

Very truly yours,

THE BAILEY LAW FIRM, P.A.

A handwritten signature in cursive script, reading "Joel D. Bailey". The signature is written in dark ink and is positioned above the typed name.

Joel D. Bailey

JDB/shb

cc: Ellis M. Johnston, II, Esquire
Calvin T. Vick, Jr., Esquire
Thomas A. Pendarvis, Esquire



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29901-1437

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 843-525-6090
FAX: 843-525-6070

May 17, 2011

VIA EMAIL and U.S. MAIL OVERNIGHT DELIVERY

Ms. Elizabeth B. Harris, Reporter
3008 Barnes Springs Road
Columbia, SC 29204

RE: Davis, et al. vs. Parkview, et al.
Davis, et al. vs. Roosevelt, et al.
Davis, et al. vs. Palmetto, et al.
Rentz, et al. vs. Orleans, et al.
Carolina Management, et al. vs Pinewood Park, et al.

C/A # 03-CP-07-726
C/A # 05-38-1131
C/A # 05-CP-07-1989
C/A # 05-CP-10-4229
C/A # 05-CP-07-1990

Dear Ms. Harris:

The above-referenced matters are currently on appeal in the South Carolina Supreme Court. It has come to my attention that you were the court reporter for a hearing held before Circuit Court Judge Doyet A. Early on January 14, 2010 in these cases. I understand that you previously provided Defendants' counsel, Ellis Johnston and Calvin T. Vick, with this transcript. Accordingly, I will need a copy of the transcript as soon as possible.

The Appellants' briefs are due on June 6th, and I would appreciate you contacting me upon receipt of this letter/email, in order that we can discuss the most efficient way for you to get the transcript to me. The best number to reach me is 843-694-3480.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR. Thank you for your prompt attention to this matter. With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey
JDB/shb

RECEIVED

MAY 18 2011

S.C. SUPREME COURT

cc: Ellis M. Johnston, II, Esquire
Calvin T. Vick, Jr., Esquire
Thomas A. Pendarvis, Esquire
SC Court Administration
Honorable Daniel E. Shearouse



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

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EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 843-525-6090
FAX: 843-525-6070

May 17, 2011

VIA EMAIL and U.S. MAIL OVERNIGHT DELIVERY

Ms. Harriet P. Bennett, Reporter
SC Court Administration
PO Box 86
Ladson, SC 29456

RE: Davis, et al. vs. Parkview, et al.	C/A # 03-CP-07-726
Davis, et al. vs. Roosevelt, et al.	C/A # 05-38-1131
Davis, et al. vs. Palmetto, et al.	C/A # 05-CP-07-1989
Rentz, et al. vs. Orleans, et al.	C/A # 05-CP-10-4229
Carolina Management, et al. vs Pinewood Park, et al.	C/A # 05-CP-07-1990

Dear Ms. Bennett:

The above-referenced matters are currently on appeal in the South Carolina Supreme Court. You previously provided me with a copy of a transcript of a hearing held on November 19, 2007, before Circuit Court Judge Doyet A. Early. It has come to my attention that you were also the court reporter for a earlier hearing in these cases which was held by Judge Early on October 4, 2006. I understand that you previously provided Defendants' counsel, Ellis Johnston and Calvin T. Vick, with this transcript. Accordingly, I will need a copy of the October, 2006 transcript as soon as possible.

The Appellants' briefs are due on June 6th, and I would appreciate you contacting me upon receipt of this letter/email, in order that we can discuss the most efficient way for you to get the transcript to me. The best number to reach me is 843-694-3480.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR. Thank you for your prompt attention to this matter. With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey
JDB/shb

cc: Ellis M. Johnston, II, Esquire
Calvin T. Vick, Jr., Esquire
Thomas A. Pendarvis, Esquire
SC Court Administration
Honorable Daniel E. Shearouse

The Supreme Court of South Carolina

Laurance H. Davis, Jr., Rhoda
G. Rentz, Mortimer W.
Weinberg, Jr., Hodge Land Co.,
Inc., 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 Investment and
Management Company a/k/a
AIMCO; Insignia Financial
Group, Inc.; Amreal
Corporation and 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.

Carolina Management
Corporation of Beaufort, James
B. Jackson, Whaley R. Hinnant,
Jr., Mary Gasser Rawl and
Rhoda Rentz, Individually and
in their capacities as the

Appellants,

Limited Partners of Pinewood
Park Apartments, a South
Carolina Limited Partnership,

v.

Pinewood Park Apartments, a
South Carolina Limited
Partnership; Apartment
Investment and Management
Company a/k/a AIMCO;
Insignia Financial Group, Inc.;
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,
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Respondents.

Laurance H. Davis, Jr., Mary
Jane R. Pike, Eva Marie
Reynolds and Rhoda G. Rentz,
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Partners of Parkview
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Limited Partnership,

Appellants,

v.

Parkview Apartments, a South
Carolina Limited Partnership;
Apartment Investment and
Management Company a/k/a

AIMCO; Insignia Financial Group, Inc.; 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.

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, Inc.; Amreal Corporation and 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.

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, Inc.; Amreal
Corporation and 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.

ORDER

Respondents move to dismiss all of the above-captioned appeals
with the exception of the Rentz appeal. The motion is denied.

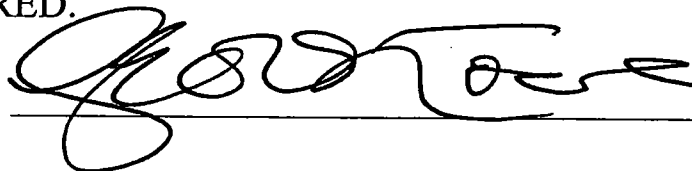
Marvin Infinger, Anne Rosen, and Jesse Belcher move to be
relieved as counsel for respondents to the extent they may be perceived as

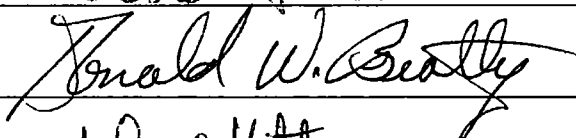
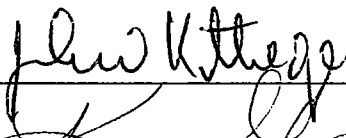
continuing to be counsel of record in the appeals. That motion is granted.

Prior to these appeals being transferred to this Court, appellants filed a Motion for Status Conference, for Consolidated Record, and to Stay Appeal Pending Hearing. That motion is still pending. The request for a status conference is denied; however, we grant the request to file a consolidated record. Moreover, since respondents have indicated the record will be "extraordinarily voluminous," the consolidated record shall be submitted in electronic format, as will be discussed further below.

One of the issues appellants sought to address in a status conference is the feasibility of expediting these appeals. We decline to expedite the appeals; however, no extensions of the time limits set forth in Rules 208 through 211, SCACR, will be granted absent extraordinary circumstances. The record on appeal shall be in electronic format on CDs or DVDs. Appellants shall serve one copy of the consolidated record on appeal in electronic format on respondents and file six electronic copies and seven hard copies with this Court. The appeals shall be consolidated for purposes of oral argument.

IT IS SO ORDERED.

 C. J.


____ J.

____ J.

____ J.

____ J.

Columbia, South Carolina

May 5, 2011

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire
Ellis M. Johnston, Jr., Esquire
Calvin T. Vick, Esquire
Marvin D. Infinger, Esquire
Anne Ross Rosen, Esquire

The Supreme Court of South Carolina

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, Inc; Amreal
Corporation and 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.

The Honorable Doyet A. Early, III
Charleston County
Trial Court Case No. 2005-CP-10-04229

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.



FOR THE COURT C.J.

Columbia, South Carolina

March 9, 2011

cc: Thomas A. Pendarvis, Esquire
Ellis. M. Johnston, Jr., Esquire
Calvin T. Vick, Esquire
Jesse C. Belcher, Esquire
Marvin D. Infinger, Esquire
Anne Ross Rosen, Esquire
The Honorable Tanya Gee



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29901-1437

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 843-525-6090
FAX: 843-525-6070

February 15, 2011

Honorable Tanya Gee, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED

FEB 17 2011

RE: Rhoda G. Rentz, et al. vs. Orleans Gardens, et. al.
Case No. 2005-CP-10-4229
Case Tracking # 2010176826

SC Court of Appeals

Dear Ms. Gee:

I am in receipt of Calvin T. Vick's letter to you dated February 10, 2011, wherein Mr. Vick advises this Court that Marvin Infinger, Anne Ross Rosen and Jesse Belcher are not counsel of record for Respondents in the above-referenced appeal. Mr. Infinger, Ms. Rosen and Mr. Belcher were previously identified as counsel for the Defendants in the lower court. None of these attorneys have filed a motion to be relieved as counsel, nor has any order been issued relieving them.

Rule 11(b), SCRCP, provides that attorneys may be relieved in the lower court "by order of the Court, and not otherwise." Rule 235(a), SCACR, provides that "the attorneys ... of the respective parties of the court below shall be deemed the attorneys ... in the appellate court until withdrawal is approved and notice is given as provided in this Rule." Rule 235(b), SCACR, prohibits an attorney of record from withdrawing from representation of a client in an appeal "without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party."

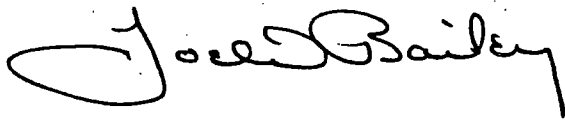
Rule 5, SCRCP, requires service of documents on all counsel of record. Accordingly, Mr. Pendarvis and I have provided these attorneys with copies of all communications in the lower court and concerning this appeal, as we have never received a written order relieving them as counsel in this Court or in the lower court. In light of the existing law, we must continue to treat these attorneys as counsel of record unless notified to do otherwise by this Court.

Honorable Tanya Gee, Clerk
February 15, 2011
Page Two

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

A handwritten signature in black ink, appearing to read "Joel D. Bailey". The signature is fluid and cursive, with a large initial "J" and "B".

Joel D. Bailey

JDB/shb

cc: Ellis M. Johnston, II, Esquire
Calvin T. Vick, Jr., Esquire
Jesse C. Belcher, Jr., Esquire
Anne Ross Rosen, Esquire
Marvin D. Infinger, Esquire
Thomas A. Pendarvis, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A # 05-CP- 10-4229

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;

Plaintiffs,

vs.

Orleans Gardens, a South Carolina
Limited Partnership, Apartment Invest-
ment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.;
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;

Defendants.

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JULIE J. APPEALING
CLERK OF COURT

**COMPLAINT
(JURY TRIAL DEMANDED)**

The Plaintiffs above-named, complaining of the Defendants herein, respectfully
allege:

1. The Plaintiff Rhoda G. Rentz is a resident and citizen of the County of
Beaufort, State of South Carolina, and is a Limited Partner in the Defendant Orleans Gardens
Limited Partnership. Mrs. Rentz owns a twenty (20%) percent interest in the said Limited

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FEB 07 2011

SC Court of Appeals

PENDARVIS LAW OFFICES, P.C.

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
Thomas@PendarvisLaw.com
Board Certified by the American Board
of Professional Liability Attorneys in
Legal Malpractice



500 CARTERET STREET, SUITE A
BEAUFORT, SC 29902-5066
www.PendarvisLaw.com
TEL 843.524.9500
FAX 843.524.9501

February 4, 2011

South Carolina Court of Appeals
Attn: Elizabeth
PO Box 11629
Columbia SC 29211

Re: Rentz, et al v Orleans Gardens, et al
Civil Action No. 2005-CP-10-4229

Davis, et al v Roosevelt Gardens, et al
Civil Action No. 2005-CP-38-1131

Carolina Management, et al v Pinewood Park Apartments, et al
Civil Action No. 2005-CP-07-1990

Davis, et al v Palmetto Apartments, et al
Civil Action No. 2005-CP-07-1989

Davis, et al v Parkview Apartments, et al
Civil Action No. 2003-CP-07-726

Dear Elizabeth:

As requested, enclosed please find a copy of the first page of the Complaint in each of the above matters.

Should you need anything further, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, J.D.

TAP/jac
Enclosures

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FEB 07 2011
SC Court of Appeals

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
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GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
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WEBSITE www.hsblawfirm.com

ELLIS M. JOHNSTON, II
DIRECT DIAL NUMBER 864-240-3217
EMAIL ejohnston@hsblawfirm.com

January 31, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
FEB 03 2011
SC Court of Appeals

Re: *Rhonda G. Rentz, et al. v. Orleans Gardens, et al.*
Case No. 2005-CP-10-4229
Case Tracking No. 2010176826

Dear Ms. Gee:

We are counsel for Respondents in the above-captioned matter. We are in receipt of Appellants' Motion for Extension of Time to File Initial Brief forwarded to the Court on January 28, 2011. We have no objection to the relief requested by Appellants, *e.g.*, that the briefing schedules and initial designation of matter to be included in the Record on Appeal be delayed pending a ruling on Respondents' Motion to Dismiss four related appeals and a status conference if one is deemed necessary, or 30 days later, if one is not deemed necessary. We thought that we had consented to that in our Return to Plaintiffs' Motion for a Status Conference.

With king regards, I remain

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Ellis M. Johnston, II

EMJ,II:jmb

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED
JAN 31 2011
SC Court of Appeals

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

SECOND AMENDED NOTICE OF APPEAL

Appellants Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O.

Mercy appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17, 2008, a copy of which is attached as Exhibit 2.
3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008,

- dated March 3, 2009, a copy of which is attached as Exhibit 3.
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
 5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
 6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
 7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
 8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OR COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
 9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.
 10. ORDER appointing the Honorable Doyet A. Early, III to hear and decide all matters pertaining to these cases, dated March 7, 2006, issued by Chief Justice Jean Hoefer Toal, a copy of which is attached as Exhibit 10.
 11. ORDER denying Plaintiffs' motion for recusal (issued by the Honorable Doyet A. Early, III), dated October 7, 2010, filed on October 8, 2010, and receipt of

written notice of entry of which was received by Counsel for Appellants on October 18, 2010, a copy of which is attached as Exhibit 11.

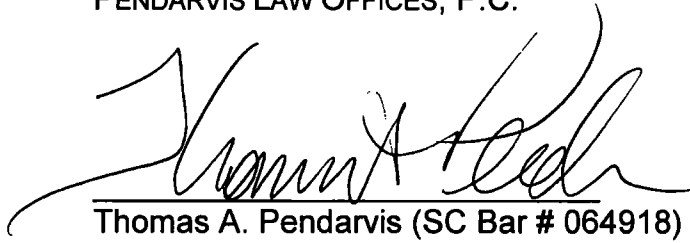
12. ORDER denying Plaintiffs' motion for protective order (issued by the Honorable Doyet A. Early, III), dated October 22, 2010, filed on October 27, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on November 8, 2010, a copy of which is attached as Exhibit 12.
13. ORDER denying Plaintiffs' motion to alter or amend order denying Plaintiffs' motion for protective order and the Order denying Plaintiffs' motion for recusal (issued by the Honorable Doyet A. Early, III), dated December 11, 2010, filed on December 17, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on January 5, 2011, a copy of which is attached as Exhibit 13.

The above Orders, except for Exhibit 10, were issued by the Honorable Doyet A. Early, III.

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
PO Box 1437
Beaufort, SC 29901-1437
(843) 525-6090 tele
(843) 525-6070 fax
baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', is written over a horizontal line.

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

Counsel for Appellants

January 28, 2011

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
Calvin T. Vick, J.D.
Jesse C. Belcher, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville SC 29602

Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
134 Meeting Street, 3rd Floor
Charleston SC 29401

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

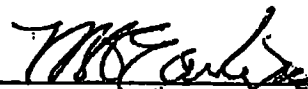
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JAN 31 2011
SOUTH CAROLINA COURT OF APPEALS

ORDER

This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

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IT IS SO ORDERED



The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008

Greenville South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs.
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs.
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs.
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs.
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs.
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"). in each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"). as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.
Bombay, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"); and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCF. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCF, is GRANTED. ~~Defendants shall submit evidence~~

*held in abeyance pending
resolution of all discovery disputes -
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~~of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within~~
~~twenty (20) days of the date of this Order.~~ *DAF*

IT IS SO ORDERED

This 3rd day of March, 2009.
Bamberg, South Carolina

DAF
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: *Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.*

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Burke, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of June, 2009.
Bundy, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

Case No.: 2003-CP-07-726

Davis, et al.

Versus JUN 19 AM 11:54 Parkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON: ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____
- ☐ ACTION STRICKEN (CHECK REASON: ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, Subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRPC, is hereby DENIED.

Dated at Aiken, South Carolina, Date June 16, 2009 Judge W. B. Early Jr.

This judgment was entered on the 16th Day of June, 20 09, and a copy mailed this 22 Day of June, 20 09, to attorneys of record or to parties as follows:

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Greenville, SC 29602-2048

EXHIBIT

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[Signature]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.* Plaintiffs.)

v.)

Parkview Apartments, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.* Plaintiffs.)

v.)

Roosevelt Gardens, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.* Plaintiffs,)

v.)

Orleans Gardens, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.* Plaintiffs.)

v.)

Palmetto Apartments, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,)
et al. Plaintiffs,)

v.)

Pinewood Park Apartments, a South Carolina)
Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009



EXHIBIT

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

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96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

*NOTE
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(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

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Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

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12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This ^{28th} day of July, 2009.

Bamber, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2010 APR -9 PM 3: 32
Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)
Parkview Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)
Roosevelt Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,)

v.)
Orleans Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)
Palmetto Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,)
et al., Plaintiffs,)

v.)
Pinewood Park Apartments, a South Carolina)
Limited Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2005-CP-07-1990

**ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING
PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-
CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT**

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

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dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRPC. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

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amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

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Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

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about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

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date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

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discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

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Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (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 pp. 9-14; Plaintiffs in the other cases have provided even less);⁴
- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon. In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Ct. App. 2009) (internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *Id.* (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." *Id.* (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." *Id.* The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

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were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." Id. (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions; Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCF, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCF, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCF.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

DAE # 22

p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Ct. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Ct. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

DAE #23

lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

DAE #24

could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

DAE #25

from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCP. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

DAE #26 26

award. See id. ("A fine may also be 'remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine...' (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCF, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCF. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCF. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCF (Plaintiffs previously made an oral motion

DAE #27

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRPC, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRPC, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

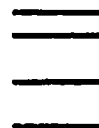
This 12th day of April, 2010.
Chen, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR RECONSIDERATION

THIS JUDGMENT WAS ENTERED ON THE 20TH DAY OF SEPTEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 28TH DAY OF SEPTEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC

EXHIBIT

9

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-145

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRCP. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

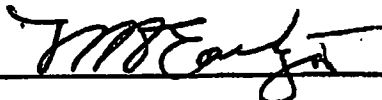
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TH

FILED
2009 SEP 20 AM 10:19
JULIE J. HAYSTRONG
CLERK OF COURT

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Beaufort, South Carolina

The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Parkview Apartments, et al.,

Defendants.

Beaufort County
2003-CP-07-0723

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Palmetto Apartments, et al.,

Defendants.

Beaufort County
2005-CP-07-1989

Carolina Management Corporation of Beaufort, et. al,

v.

Plaintiffs,

Pinewood Park Apartments,

Defendants.

Beaufort County
2005-CP-07-1990

Rhoda G. Rentz, et al.,

v.

Plaintiffs,

Orleans Gardens, et. al.,

Defendants.

Charleston County
2005-CP-10-4229

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Roosevelt Gardens,

Defendants.

Orangeburg County
2005-CP-38-1131

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4, I find that assigning a single circuit judge to dispose of all matters arising out of the apartment management litigation currently pending and to be filed in the state court system will

EXHIBIT

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promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the Honorable Doyet A. Early, III is assigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. Judge Early may schedule necessary hearings at any time.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
109 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-3288

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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER-PLNTFFS' 2ND RECUSAL MOT IS DENIED**

THIS JUDGMENT WAS ENTERED ON THE 8TH DAY OF OCTOBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 15TH DAY OF OCTOBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC

EXHIBIT

11

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-113

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

This matter comes before the Court pursuant to Plaintiffs' Motion for Recusal.

These cases were assigned to me by Chief Justice Toal in March 2006 with the consent of the parties and respective counsel. Since the assignment, the court has actively engaged in all pretrial matters. Most of the pretrial issues have dealt with discovery disputes. The Defendants have, from the beginning, raised the defense of the action being filed outside the statute of limitations. To prove their position, they have sought the production of a volume of documents in the Plaintiff's possession which date back many

DAE#1

years. Plaintiffs have claimed many of the documents were protected either as work product or safeguarded under the attorney-client privilege. Because of the number of documents, the court, with consent of the parties, appointed Gary Clary, retired Circuit Court Judge, to serve as a "special master" to conduct hearings, have in camera reviews of the documents and issue a report on the production of these documents. He did so, and his report was adopted. Both sides asked for reconsideration. Ultimately, after careful review, this court ruled the plaintiffs had to produce a number of documents. They refused to produce them. The court orally, at first, told the Plaintiffs that if they continued to fail to comply with the order, their suits would be dismissed. Before the written order was issued, they appealed. The appeals were denied. Thereafter, a written order was issued requiring production of the documents or dismissal of the case. A motion to reconsider the order dismissing the actions was filed and denied.

The Plaintiffs filed a request of the court to make a full disclosure of any type of relationship he had with the defense lawyers. The court complied with this request.

An oral motion to recuse was made and denied, followed by this written motion to recuse. When the motion to recuse was made, I stepped back and examined everything I had done in these cases, reviewed all of my orders, read all the canons and comments pertaining to recusal, researched the relevant cases decided by our appellate courts and considered the heartache and loss of position suffered by a family court judge who recently refused to recuse herself in a case, and I have concluded that none of my rulings, orders or the management of this litigation has been infected with any bias or prejudice against any party or their attorneys.

The Plaintiffs' concerns over recusal did not arise until the Court ruled adversely to them. The Plaintiffs made no objections when I was assigned these cases by Chief Justice Toal in March of 2006, despite my long term relationships with most of the lawyers. When the Court ruled in favor of the Plaintiffs on the Defendants' Summary Judgment Motion in 2007, based on the statute of limitations, Plaintiffs had no issues with recusal. However, immediately prior to the entry of a April 6, 2010 sanctions order, after almost a year of sanctions and contempt orders entered against them, Plaintiffs began their effort to have me recused. In response to their concerns, I held a hearing on March 29, 2010 and put on the record all of my relationships with counsel of both parties, most of which had previously been disclosed during the course of litigation. At the hearing, Plaintiffs made an oral motion to recuse me. I respectfully denied it, having thoroughly addressed their concerns. This second Motion for Recusal, signed by counsel the same day as the hearing, and the "supporting affidavits" appears to be nothing more than Plaintiffs' latest attempt to avoid producing the discovery critical to the determination of whether their claims survive a statute of limitations challenge.

At the March 29, 2010 hearing, I revealed the following: (I admitted them openly throughout the litigation, again at the hearing, and again here, for despite Plaintiffs' "concerns," I have nothing to hide.)

- (1) Ellis Johnston's wife's ex-husband was a fraternity brother of mine 40 years ago. I consider his wife a friend.
- (2) Thirty years ago, Marvin Infinger, a shareholder in Haynsworth Sinkler Boyd, spent the night at my lake house following the wedding of Steve Darling, also a shareholder in Haynsworth Sinkler Boyd, we both attended the wedding.
- (3) My son and Ellis Johnston's son were fraternity brothers in college 14 years ago and went to Europe together 13 years ago. They have stayed in touch over the years. This was disclosed to counsel on February 13, 2008 by the Court during a conference call.

DAK#3

- (4) During the same conference call, the Court informed counsel that my son, Ross, had been invited to go fishing with Ellis Johnston's son on Ellis Johnston's brother's boat. I was asked to join them. I specifically inquired if anyone had an objection, and there were none. In his affidavit, Joel Bailey writes that he did not object because he was "somewhat uncomfortable with being put in the position of having to act as the potential spoiler of the judge's social agenda." (Joel Bailey's Affidavit submitted with his motion to recuse, p. 3).
- (5) I officiated at the wedding of Anne Ross Rosen, an associate in Haynsworth Sinkler Boyd, in 2007. I made counsel aware of this in April 2008 when her involvement in the case was announced. No objection was made.
- (6) Mrs. Rosen's father, a local surgeon, performed a colonoscopy on me.
- (7) Though Mrs. Rosen's parents once lived in Bamberg, S.C., I did not see them socially then or now.
- (8) I have been a member of the Caroliniana Ball, a social club, for approximately ten years. I am not a member of the Board of Directors. In 2009, Ellis Johnston was asked to become a member of the Caroliniana by its Board of Directors. The Caroliniana is composed of 300 or 400 members and holds an annual white tie dance. This was disclosed at the March 29, 2010, hearing.

The law in South Carolina regarding recusal is clear:

"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. Roche v. Young Bros., Inc., 332 S.C. 75, 504 S.E.2d 311 (1998). In Roche, the Court applied Canon 3(E)(1)(a) of Rule 501, SCACR. Under Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has some bias or prejudice against a party. It is not sufficient for a party seeking disqualification to simply allege bias; the party must show some evidence of bias or prejudice. Mallett v. Mallett, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996). If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal. Ellis v. Proctor & Gamble Disl. Co., 315 S.C. 283, 433 S.E.2d 856 (1993)."

Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114 (2004). See also Koon v. Fares, 279 S.C. 150, 666 S.E.2d 230 (2008).

Clearly, Plaintiffs are disappointed with some of the rulings of the Court. However, such disappointment cannot form the basis for recusal. "The fact that a trial judge ultimately rules against the litigant is not proof of prejudice by the judge, even if it is later

DAE#4

held the judge committed error in his rulings." Mortgage Elec. Sys., Inc. v. White, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (Ct. App. 2009)(quoting Mallett v. Mallett, 323 S.C. 141, 147, 473 S.E.2d 804, 808 (Ct. App. 1996)).

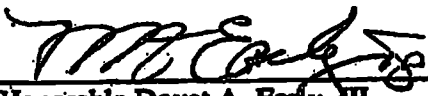
Plaintiffs have no evidence proving bias or prejudice against them or for the Defendants. Instead, they argue that the Court ruled against them on several motions without basis in law or fact, and reason that the Court's relationship with Defense counsel is the sole cause of these rulings. Their Motion for Recusal is made without basis or justification, with the sole purpose of polluting the record and intimidating me into recusal. I refuse to comply. I have addressed this issue repeatedly, openly, and unabashedly, and though Plaintiffs continue to harass and prod me to recuse myself, the law does not justify said action, and thus I refuse to do so.

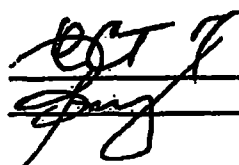
This litigation is now over five years old. Many, many hours have been devoted by the judiciary and court personnel in getting this case ready to try and both sides, have incurred substantial attorney's fees. To start a new, absent any bias or prejudice, would be a colossal waste of time, effort and expense.

If I thought for one moment my prior involvement with any of the lawyers had an influence on any of my decisions, I would step aside. I practiced law for thirty years, attended school in South Carolina, have been active in social, civic, family and bar organizations, clubs and events all of my adult life and thankfully have formed many types of relationships with many people, a lot who are lawyers who practice in my court on an everyday basis. I am cognizant of these relationships, but if I recused myself when that happened, I could not hold court.

The Plaintiffs' second recusal motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III


_____, 2010
_____, South Carolina





State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 80
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2883
dearly@sccourts.org

October 7, 2010

The Honorable Julie J. Armstrong
100 Broad Street Suite 106
Charleston, SC 29401

Re: Rhonda G. Rentz, et al v. Orleans Gardens, et al, 05-CP-10-4229

Dear Ms. Armstrong:

Please find enclosed for filing my order in the above case. Please file and serve all interested parties.

Sincerely,


D. A. Early, III

DAE:khc

Enclosure

cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-2298
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR PROTECTIVE ORDER

THIS JUDGMENT WAS ENTERED ON THE 27TH DAY OF OCTOBER , 2010 AND A COPY MAILED
FIRST-CLASS THIS 4TH DAY OF NOVEMBER , 2010 TO ALL COUNSEL OF RECORD AND/OR
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC

EXHIBIT

12

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4228

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER DENYING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

This matter is before the Court on Plaintiffs' Motions for Protective Order (collectively, "Motion"), which were filed in each of the above-captioned actions on or about February 22, 2010. The Court has considered the written Motion itself, Defendants' Memorandum in Opposition to the Motion, other motions, memoranda and affidavits subsequently filed by the parties, which pertain to issues presented in the instant Motion, the oral argument of the parties'

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JULIE J. ARMSTRONG
CLERK OF COURT

counsel at the March 29, 2010 hearing in these cases, which concerned, *inter alia*, Plaintiffs' Motion, and other matters submitted to the Court for its consideration.

Plaintiffs' Motion concerns their proposed production of the documents that the Court compelled Plaintiffs to produce in its July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs state that the Motion is made pursuant to Rule 26(c), SCRCF, "in an attempt by Plaintiffs to comply with the Order of July 28, 2009." (Motion, p. 2) However, Plaintiffs do not propose to produce the subject documents as required by the Privilege Discovery Order. Instead, Plaintiffs propose that they provide the documents to the Court under seal, that the Court read, review and examine the documents *in camera* "before any dissemination to opposing counsel and that the mental impressions, conclusions, opinions or legal theories of Plaintiffs' counsel concerning this litigation be redacted." (Motion, p. 2; emphasis added) The Court finds that the Motion should be denied for the following reasons.

First, in light of Plaintiffs' proposed requirement that attorney mental impressions, conclusions, opinions or legal theories be redacted before any dissemination of the documents to Defendants' counsel, Plaintiffs are asking that the Court modify or amend the earlier Privilege Discovery Order, which required the Plaintiffs to produce the documents without exception.¹ A motion to alter or amend the Privilege Discovery Order in this manner must be filed in accordance with Rule 59(e), SCRCF, not Rule 26(c). Plaintiffs' instant Motion was not filed within 10 days of their receipt of written notice of the entry of the Privilege Discovery Order, as required by Rule 59(e). Plaintiffs' Motion, which seeks the type of relief governed by Rule 59(e), is not timely.

¹ Considering Plaintiffs have not provided a single document to the Court, under seal or otherwise, it appears that their willingness to do so is conditioned upon the Court first accepting their proposed redaction requirement. Thus, if the Court were to undertake the review proposed by Plaintiffs and determine that, consistent with its original order, the documents are to be produced without redaction, providing the documents to the Court under seal would in no way achieve the production required under the Privilege Discovery Order, but would be fruitless.

Second, Plaintiffs' Motion, which clearly seeks to modify or amend the Privilege Discovery Order, raises arguments or issues that were not presented to the Court prior to entry of the Privilege Discovery Order, i.e., that the Court should inspect the subject documents *in camera* and the attorneys' mental impressions, conclusions, opinions or legal theories concerning this litigation should be redacted from the documents before being produced. Plaintiffs "cannot use a motion ... to alter or amend a judgment to present an issue that could have been raised prior to judgment but was not." Brailsford v. Brailsford, 380 S.C. 443, 669 S.E.2d 342, 345 (Cl. App. 2008). See also Pacific Insurance Co. v. American Nat'l Fire Insurance Co., 148 F.3d 396, 403 (4th Cir. 1998) (Rule 59 is not intended to allow a party to complete presenting his case after the court has ruled against him, or to re-litigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of the judgment). Though styled as a motion for protective order under Rule 26(c), the Court cannot ignore the purpose and effect of the relief sought, which is to alter the terms of the Privilege Discovery Order.

Third, and perhaps most importantly, the Court has ruled that Plaintiffs waived all privileges that would otherwise attach to the subject documents, including claims of work product. The Court has considered Plaintiffs' various arguments that the Privilege Discovery Order should be amended to find that the Plaintiffs did not waive such protections, and it has reaffirmed its previous rulings based on its belief that those rulings are correct. If the Court were to redact attorney mental impressions, conclusions, opinions or legal theories concerning this litigation, as proposed by Plaintiffs, it would clearly undercut the Court's rulings in the Privilege Discovery Order and the grounds upon which such rulings were made. Each of Plaintiffs' documents compelled in the Privilege Discovery Order were created more than three years before filing of the Palmetto, Orleans, Roosevelt and Pinewood cases (many more than three

years before the Parkview case was filed).² To the extent such documents contain Plaintiffs' attorneys' litigation and trial strategies in this litigation more than three years before the suits were filed, as Plaintiffs' Motion indicates, it is difficult to imagine a document that is more relevant to the statute of limitations issue and Plaintiffs' claims for damages due to Defendants' alleged interference with Plaintiffs' investigation and pursuit of these lawsuits (see Complaints in Roosevelt and Orleans cases). Such information within the documents certainly does not detract from the Court's finding that the Plaintiffs, through their actions (e.g. the allegations in the Roosevelt and Orleans Complaints), waived any otherwise applicable privilege. Plaintiffs have not demonstrated that their proposed review process would be likely to accomplish anything other than reinforcement of the grounds for compelling production.

In light of the above, Plaintiffs' Motion is DENIED.

IT IS SO ORDERED.


Doyet A. Early, III, Circuit Court Judge

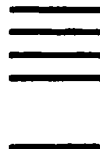
Dated: Oct 22, 2010

² The Court issued its rulings in the Privilege Discovery Order based on the information contained in the parties' respective Privilege Logs, which sufficiently identified and described the subject documents for the purposes of the Court's rulings. Not incidentally, the information in the parties' respective privilege logs also provided the factual bases relied upon by the parties in their argument concerning the various privilege disputes presented in the parties' respective Rule 59 motions, each of which sought to alter or amend the Court's June 2, 2009 Order and resulted in the Court's July 28, 2009 Privilege Discovery Order.

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-3238
RETURN SERVICE REQUESTED



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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER-PLNTFFS MOT TO ALTER OR AMEND ORDER
DENYING PLNTFFS MOT FOR PROTECTIVE ORDER & THE ORDER DENYING

THIS JUDGMENT WAS ENTERED ON THE 17TH DAY OF DECEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 31ST DAY OF DECEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE.
YOU MAY VIEW AND DOWNLOAD THIS DOCUMENT AT WWW3.CHARLESTONCOUNTY.ORG

PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC

EXHIBIT

13

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of the SECOND AMENDED NOTICE OF APPEAL on counsel for
Respondents, by depositing a copy of the same in the United States Mail, postage prepaid,
on the 28th day of January, 2011 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

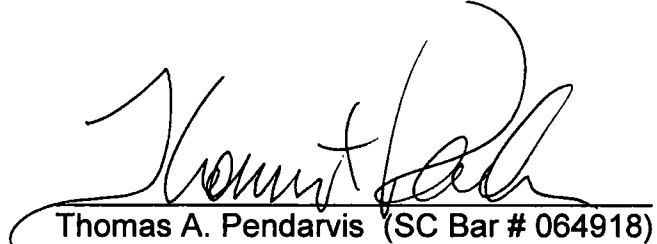
Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
NEXSEN PRUET, PA
PO Box 486
Charleston, SC 29402

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JAN 31 2011

SC Court of Appeals

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
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January 28, 2011

Beaufort, South Carolina

PENDARVIS LAW OFFICES, P.C.

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
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Board Certified by the American Board
of Professional Liability Attorneys in
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January 28, 2011

Tanya Gee, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

Re: Rhoda G. Rentz, et al. v. Orleans Gardens, et al.
Civil Action No. 2005-CP-10-4229

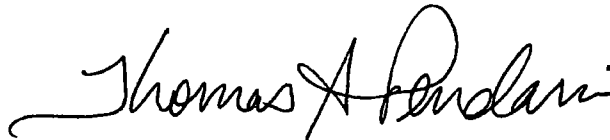
Dear Ms. Gee:

Enclosed for filing please find the original and one copy of Plaintiffs-Appellants' SECOND AMENDED NOTICE OF APPEAL, which include copies of all of the subject Orders attached as exhibits, and a PROOF OF SERVICE in connection with the above referenced matter. Please return a date-stamped copy of the enclosed documents using the pre-paid return envelope also enclosed for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis, J.D.

TAP/jac

Enclosures

cc Charleston County Clerk of Court (w/enclosures)
Joel D. Bailey, J.D. (w/enclosures)
Ellis M. Johnston, II, J.D. (w/enclosures)
Calvin T. Vick, Jr., J.D. (w/enclosures)
Jesse C. Belcher, Jr., J.D. (w/enclosures)
Marvin D. Infinger, J.D. (w/enclosures)
Ann Ross Rosen, J.D. (w/enclosures)

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JAN 31 2011

SC Court of Appeals

FIRST CLASS MAIL



Tanya Gee, Clerk
SC Court of Appeals
PO Box 11629
Columbia SC 29211-1629



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED

JAN 28 2011

SC Court of Appeals

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

**APPELLANTS' MOTION FOR EXTENSION OF TIME TO FILE
INITIAL BRIEF**

The above-named Appellants in the above-captioned matter hereby move for an order
of this Court granting an extension of time for the Appellants to file their initial brief.
Specifically, Appellants move for an order tolling the time limits in this appeal for filing
briefs until this Court rules upon Appellants' pending motion in this case, as well as in four
(4) separate but related cases. That motion requests that this Court hold a status conference,

provide an amended briefing schedule and grant permission for a single Record on Appeal for all five (5) related cases, and that the time for filing initial briefs be stayed pending the status conference and any rulings emanating therefrom. The request for the status conference and single Record on Appeal is not opposed by Respondents, but Respondents have requested that the status conference to consider the other relief not be held until this Court rules on Respondent's pending Motion to Dismiss four (4) of the five (5) pending appeals.

The motion for the status conference and the other relief was initially filed with the Clerk of this Court on December 24, 2010, and requested the relief for all five (5) related cases on appeal. Thereafter, counsel for Appellants were notified by the Clerk of this Court that separate motions would have to be filed in each of the pending cases; this was done on January 24, 2010. To date, counsel have not been informed of any ruling on the same. Likewise, there has been no ruling on the Respondents' Motion to Dismiss.

Alternatively, Appellants move for an order tolling the time limits in this appeal for filing the initial briefs until at least thirty (30) days after this Court rules upon Respondents' Motion to Dismiss.

As a second alternative, Appellants move for an order in this appeal extending the time for filing initial briefs by an additional period of at least sixty (60) days from the briefing schedule imposed under the South Carolina Appellate Court Rules.

Grounds for this Motion

1. This appeal emanates from orders of the lower court which applied to four (4) cases in addition to the present case; the five (5) cases were pending in three (3) separate counties. The trial judge issued a single order with an abbreviated multiple case caption,

and sent the order to the respective clerks of court for filing. The lower clerks entered the orders at different times, and Appellants' counsel received written notice of the entry of the orders in the lower courts at different times, thereby creating a different time for the filing of the appeals in each case.

2. The Respondents filed a Motion to Dismiss, but the motion was not directed at the appeal in this case; it only applied to the four (4) related cases. Therefore, it only stayed the time for filing initial briefs in those cases and not in the present case.

3. All five (5) related cases are referenced in the orders from which the appeals have been taken, and Appellants believe that the stay as to the other cases should also apply to this appeal in order to achieve a more unified, orderly and efficient appellate process.

Memorandum & Citation of Authorities

As noted above, there are four (4) other cases on appeal which are covered by the orders from which the appeal in this case has been taken. The cases were filed in the courts of common pleas in three (3) separate counties. They were assigned to a single circuit court judge by order of the Chief Justice of the Supreme Court of South Carolina. While the order assigning the cases did not consolidate them for any purposes, the lower court judge issued orders which applied to all five (5) cases. These orders were sent by the trial judge to the clerks of court in the three (3) counties in which they were pending, so that they could be entered. The respective clerks of court entered the orders at different times.

Under Rule 203, SCACR, appellants are not required to serve or file a Notice of Appeal until they receive written notice of the entry of the order from which the appeal has been taken. Respondents' pending Motion to Dismiss is based on the premise that the time

for filing the appeals in all five (5) of these cases commenced when Appellants received written notice of the entry of the orders appealed from by a single clerk of court. Appellants dispute this interpretation of the rules, and contend that each case stands separately and the time for commencing the appellate process is dependent upon when notice is received of the entry of the orders by the clerk of court in which the case was filed and is pending.¹

Under Rule 240(b), SCACR, the Respondents' Motion to Dismiss automatically stays the time limits for perfecting the appeal until the motion is decided, but the motion - and the automatic stay - only applies to four (4) of the five (5) cases. This creates a different briefing schedule for the cases on appeal, even though counsel for both sides agree that a single Record on Appeal is preferred, and that a status conference is in order.

The order of Chief Justice Toal which assigned these cases to a single judge cited the desire to "promote the effective and expeditious disposition of this litigation by uniform rulings," as well as the need to "conserve the resources of the parties, their counsel and the judiciary."² Appellants contend that the same goals should be applicable in this Court and that such goals will more effectively be achieved by the granting of this Motion.

This Motion is further supported by the affidavit of the undersigned which is attached hereto and incorporated as a part hereof in accordance with Rule 240(c)(3), SCACR.

1

Appellants incorporate the arguments set forth in their Return to Respondents' Motion to Dismiss in lieu of restating the arguments in this Motion.

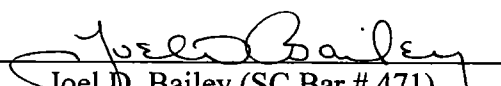
2

The Order of Chief Justice Toal is attached as Exhibit 10 to Appellants' Notice of Appeal in this case. Appellants incorporate that exhibit by reference in lieu of attaching a copy to this motion.

Respectfully submitted,

THOMAS A. PENDARIVS (SC Bar # 064918)
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baileylawfirm@charter.net

By: 
Joel D. Bailey (SC Bar # 471)
Counsel for Appellants

January 28, 2011
Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
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Jesse C. Belcher, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
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Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
Nexsen Pruettt, LLC
PO Box 486
Charleston SC 29402

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

**AFFIDAVIT OF JOEL D. BAILEY
IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION
OF TIME TO FILE INITIAL BRIEF**

Personally appeared before me **JOEL D. BAILEY** who, being first duly sworn,
states:

1. I am a resident and citizen of the City and County of Beaufort in the State of
South Carolina.

2. I am an attorney and have been continuously licensed to practice law in the State of South Carolina since 1973. I am the sole shareholder of The Bailey Law Firm, P.A., located at 510 Ribaut Road in Beaufort, South Carolina.

3. I, together with Thomas A. Pendarvis, Esquire, represent the Appellants in the above-captioned case, as well as the Appellants in four separate but related cases, to-wit, *Davis, et al. vs. Roosevelt Gardens Apartments, et al.* Case Tracking # 2010180086; *Carolina Management, et al. vs. Pinewood Park Apartments, et al.*, Case Tracking # 21010180088; *Davis, et al. vs. Palmetto, et al.*, Case Tracking # 201080087 and *Davis, et al. vs. Parkview Apartments, et al.*, Case Tracking # 2010180666.

4. The above-captioned case was filed in 2005; the other cases were filed in 2003 and 2005. No trial has ever taken place in any of these cases. The Appellants in each case are limited partners in limited partnerships wherein the above-named Respondents are general partners. Some of the Appellants hold interests in more than one of the limited partnerships, and some hold an interest in only one of the limited partnerships, but *none* of them hold interests in *all* of the limited partnerships.

5. This affidavit is submitted in support of Appellants' motion for an extension of time in which to file initial briefs in this appeal. The appeal emanates from orders of the lower court which applied not only to this case, but to four (4) other cases as well. The five (5) cases were pending in three (3) separate counties, and had been assigned to a single circuit court judge by order of the Chief Justice of the South Carolina Supreme Court.

6. With respect to the present situation, the trial judge issued a single order with an abbreviated multiple case caption, and sent the order for filing to the respective clerks of

court in which the cases were pending. The lower clerks entered the orders at different times, and Appellants' counsel received written notice of the entry of the orders in the lower courts at different times, thereby creating a different time for the filing of the appeals in each case.

7. The appeals in all five (5) cases relate to multiple orders issued by the lower court judge, following hearings on numerous motions. Transcripts of the hearings were requested in each case, and Appellants' counsel received the final transcript on January 5, 2011. Under the briefing schedule imposed by the South Carolina Appellate Court Rules, the initial briefs would be due by February 4, 2011.

8. The Respondents have filed a Motion to Dismiss in this Court, but the motion was not directed at the appeal in this case; it only applied to the four (4) related cases. Therefore, under Rule 240(b), SCACR, the motion only stayed the time for filing initial briefs in those cases and not in the present case.

9. All five (5) related cases are referenced in the orders from which the appeals have been taken, and Appellants believe that the stay as to the other cases should also apply to this appeal in order to achieve a more unified, orderly and efficient appellate process.

10. The Appellants previously filed a motion for a status conference and other relief, including a tolling of the time for filing initial briefs until the conference could be held; this motion was filed with the Clerk of this Court on December 24, 2010, and requested the relief for all five (5) related cases on appeal. The request for the status conference and for a single Record on Appeal is not opposed by Respondents, but Respondents have requested that the status conference to consider the other relief not be held until this Court rules on Respondent's pending Motion to Dismiss four (4) of the five (5) pending appeals.

11. Recently, counsel for Appellants were notified by the Clerk of this Court that separate motions for the status conference and related relief would have to be filed in each of the pending cases; this was done on January 24, 2010. To date, counsel have not been informed of any ruling on the same. Likewise, there has been no ruling on the Respondents' Motion to Dismiss. Accordingly, the Appellants in this case are now filing a separate Motion for an extension of time in which to file their initial briefs.

12. Under Rule 240(b), SCACR, the Respondents' Motion to Dismiss automatically stays the time limits for perfecting the appeal until the motion is decided, but the motion - and the automatic stay - only applies to four (4) of the five (5) cases; it does not apply to this case. This creates a different briefing schedule for the cases on appeal, even though counsel for both sides agree that a single Record on Appeal is preferred, and that a status conference is in order.

13. The order of Chief Justice Toal which assigned these cases to a single judge cited the desire to "promote the effective and expeditious disposition of this litigation by uniform rulings," as well as the need to "conserve the resources of the parties, their counsel and the judiciary." My co-counsel and I are both sole practitioners. Most of the Appellants in these cases are elderly - some in their 80's - and many are in poor health. They have limited financial resources. I believe that the same goals enunciated by Chief Justice Toal should be applicable in this Court and that such goals will more effectively be achieved by the granting of the Appellants' motions.

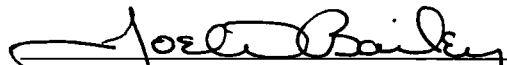
14. I believe that the extension of time being requested is necessary in order to achieve the goals set forth by Chief Justice Toal in this and the other related cases. The motion for the extension of time requests that this Court issue an order tolling the time limits

in this appeal for filing briefs until this Court rules upon Appellants' pending motion for a status conference and other relief in this case, as well as in the four (4) separate but related cases. I believe this is necessary in light of the circumstances of this and the related cases.

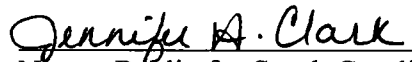
15. Alternatively, I believe that this Court should grant Appellants an order tolling the time limits in this appeal for filing the initial briefs until at least thirty (30) days after this Court rules upon Respondents' Motion to Dismiss. As noted above, this would at least give consistency to the time limits for all the pending appeals in the related cases.

16. As a second alternative, I believe that this Court should at least grant Appellants an order in this case, extending the time for filing initial briefs by an additional period of at least sixty (60) days from the briefing schedule imposed under the South Carolina Appellate Court Rules. This will at least give the Appellants additional time needed to prepare their initial briefs, and will give the Court additional time in which to consider the other motions pending in these appeals.

I have read the foregoing paragraphs and affirm that the information contained therein is true and accurate and is based upon my personal knowledge, observations and experience, except such information as may be stated to be based upon information and belief and, as to that information, I believe that it is true and accurate.


Joel D. Bailey (S.C. Bar # 00471)

Sworn to before me this
28 day of January, 2011


Notary Public for South Carolina

My Commission Expires: 7-8-2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

PROOF OF SERVICE

I, Joel D. Bailey, of The Bailey Law Firm, P.A., certify that I have served one (1) copy of Appellants' Motion for Extension of Time to File Initial Brief on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 28th day of January, 2011, addressed to:

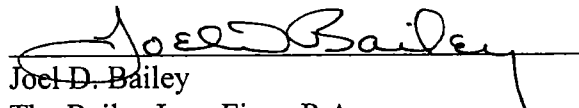
Ellis M. Johnston, II, J.D.
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HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
NEXSEN PRUETT LLC
PO Box 486
Charleston, SC 29402

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JAN 28 2011

SC Court of Appeals

A handwritten signature in black ink, appearing to read "Joel D. Bailey", is written over a horizontal line.

Joel D. Bailey
The Bailey Law Firm, P.A.
PO Box 1437, 510 Ribaut Road
Beaufort, South Carolina 29901-1437

Counsel for Appellants

January 28, 2011
Beaufort, South Carolina



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

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PHONE: 843-525-6090
FAX: 843-525-6070

January 28, 2011

Ms. Tanya Gee, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Rhoda G. Rentz, et al. vs. Orleans Gardens, et. al.
Case No. 2005-CP-10-4229
Case Tracking # 2010176826

Dear Ms. Gee:

With regard to the above-referenced matter, enclosed please find an original and six (6) copies of Appellants' Motion for Extension of Time to File Initial Brief, together with my firm's check in the amount of \$25.00. Also enclosed is an original proof of service.

I would appreciate you filing these documents in the above-referenced appeal at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick, Jr., Esquire (w/enclosures)
Jesse C. Belcher, Jr., Esquire (w/enclosures)
Anne Ross Rosen, Esquire (w/enclosures)
Marvin D. Infinger, Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)

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

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED

NOV 10 2010

SC Court of Appeals

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

AMENDED NOTICE OF APPEAL

Appellants Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O.

Mercy appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17, 2008, a copy of which is attached as Exhibit 2.
3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008,

dated March 3, 2009, a copy of which is attached as Exhibit 3.

4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OR COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.

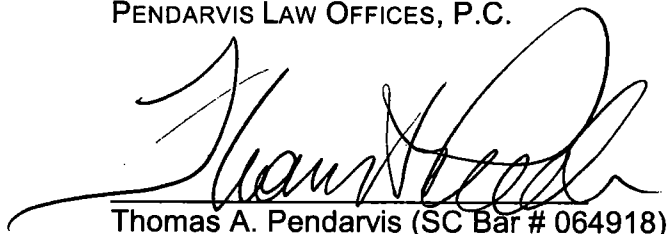
The above Orders were issued by the Honorable Doyet A. Early, III.

10. ORDER appointing the Honorable Doyet A. Early, III to hear and decide all matters pertaining to these cases, dated March 7, 2006, issued by Chief Justice Jean Hoefer Toal, a copy of which is attached as Exhibit 10.

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
PO Box 1437
Beaufort, SC 29901-1437
(843) 525-6090 tele
(843) 525-6070 fax
baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, appearing to read "Thomas A. Pendarvis", is written over a horizontal line.

Thomas A. Pendarvis (SC Bar # 064918)
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Beaufort, SC 29902-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

Counsel for Appellants

November 8, 2006

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

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P.O. Box 2048
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Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
134 Meeting Street, 3rd Floor
Charleston SC 29401

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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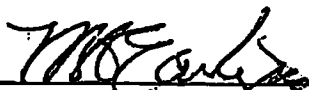
Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

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IT IS SO ORDERED



The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008

Gonzalez South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2003-CP-07-726
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-38-1131
	)	

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs.	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-10-4229
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-07-1989
	)	

Carolina Management Corporation of Beaufort, <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-07-1990
	)	

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"), in each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.

Bombay, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
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ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"), and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCP. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is GRANTED. ~~Defendants shall submit evidence~~

*held in abeyance pending
resolution of all discovery disputes -
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of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within
twenty (20) days of the date of this Order. DAF

IT IS SO ORDERED

This 3rd day of March, 2009.
Bamberg, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

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Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: *Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.*

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRPC. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Burke, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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BEAUFORT COUNTY S.C.
CLERK OF COURT

him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRPC. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of May, 2009.
Bruce, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

Case No.: 2003-CP-07-726

Davis, et al.

V. ~~2009~~ JUN 19 AM 11:54 Parkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (CHECK REASON: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. nonsuit)
☐ Rule 43(k), SCRCP (Settled); ☐ Other - _____

☐ ACTION STRICKEN (CHECK REASON: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration, Subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRCP, is hereby DENIED.

Dated at ^{Aiken} ~~Bamberg~~, South Carolina, Date June 16, 2009 Judge W. B. Early, Jr.

This judgment was entered on the 16th Day of June, 20 09, and a copy mailed this 22 Day of June, 20 09, to attorneys of record or to parties as follows:

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[Signature]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.* Plaintiffs,)

v.)

Parkview Apartments, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.* Plaintiffs,)

v.)

Roosevelt Gardens, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.* Plaintiffs,)

v.)

Orleans Gardens, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.* Plaintiffs,)

v.)

Palmetto Apartments, a South Carolina Limited)
Partnership, *et al.* Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,)
et al. Plaintiffs,)

v.)

Pinewood Park Apartments, a South Carolina)
Limited Partnership, *et al.* Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

EXHIBIT

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

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96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

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(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

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83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

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Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

7/11/11
24/11

12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Beakery, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2010 APR -9 PM 3: 32
Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,)

v.)

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,)

v.)

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

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EXHIBIT

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dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRCP. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAE #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

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Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (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 pp. 9-14; Plaintiffs in the other cases have provided even less);⁴
- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCF. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon, In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." Id. (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." Id. (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." Id. The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." Id. (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions; Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCF, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCF, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCF.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Ct. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Ct. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

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lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hesley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

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could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

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from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRPC. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte: Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

DAE #26 26

award. See id. ("A fine may also be 'remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine...' (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

DAE #27

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRPC, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRPC, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

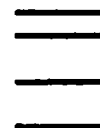
This 16th day of April, 2010.
Chiken, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-3258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org



16



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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR RECONSIDERATION

THIS JUDGMENT WAS ENTERED ON THE 20TH DAY OF SEPTEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 28TH DAY OF SEPTEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE.
YOU MAY VIEW AND DOWNLOAD THIS DOCUMENT AT WWW3.CHARLESTONCOUNTY.ORG

PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC

EXHIBIT

9

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-1124

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRPC. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

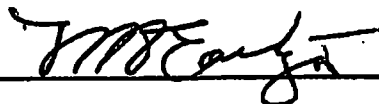
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H

FILED
2010 SEP 20 AM 10:19
JULIE J. HARRIS
CLERK OF COURT

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Blacksburg, South Carolina

The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Parkview Apartments, et al.,

Defendants.

Beaufort County
2003-CP-07-0723

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Palmetto Apartments, et al.,

Defendants.

Beaufort County
2005-CP-07-1989

Carolina Management Corporation of Beaufort, et. al,

v.

Plaintiffs,

Pinewood Park Apartments,

Defendants.

Beaufort County
2005-CP-07-1990

Rhoda G. Rentz, et al.,

v.

Plaintiffs,

Orleans Gardens, et. al.,

Defendants.

Charleston County
2005-CP-10-4229

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Roosevelt Gardens,

Defendants.

Orangeburg County
2005-CP-38-1131

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4, I find that assigning a single circuit judge to dispose of all matters arising out of the apartment management litigation currently pending and to be filed in the state court system will

EXHIBIT

10

promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the Honorable Doyet A. Early, III is assigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. Judge Early may schedule necessary hearings at any time.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

RECEIVED

NOV 10 2010

SC Court of Appeals

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

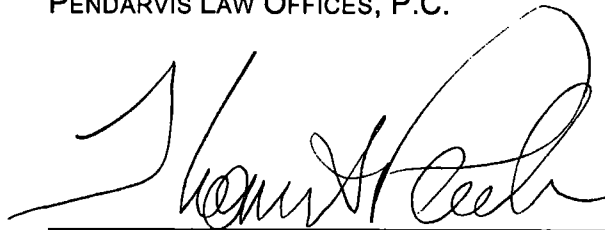
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of the AMENDED NOTICE OF APPEAL on counsel for Respondents,
by depositing a copy of the same in the United States Mail, postage prepaid, on the 8th day
of November, 2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', written over a horizontal line.

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

November 8, 2010

Beaufort, South Carolina



PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
THOMAS@PENDARVISLAW.COM

TEL. 843.524.9500
FAX. 843.524.9501
WWW.PENDARVISLAW.COM

November 8, 2010

Tanya Gee, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

Re: Rhoda G. Rentz, et al. v. Orleans Gardens, et al.
Civil Action No. 2005-CP-10-4229

Dear Ms. Gee:

Enclosed for filing please find the original and one copy of Plaintiffs-Appellants' AMENDED NOTICE OF APPEAL, which include copies of all of the subject Orders attached as exhibits, and a PROOF OF SERVICE in connection with the above referenced matter. Please return a date-stamped copy of the enclosed documents using the pre-paid return envelope also enclosed for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, J.D.

TAP/lat
Enclosures

cc: Charleston County Clerk of Court (w/enclosures)
Joel D. Bailey, J.D. (w/enclosures)
Ellis M. Johnston, II, J.D. (w/enclosures)
Calvin T. Vick, Jr., J.D. (w/enclosures)
Jesse C. Belcher, Jr., J.D. (w/enclosures)
Marvin D. Infinger, J.D. (w/enclosures)
Ann Ross Rosen, J.D. (w/enclosures)

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NOV 10 2010

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

November 10, 2010

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret St. Ste. A
Beaufort, SC 29902

Re: Davis, Laurence v. Parkview
Case Tracking #: 2010176826

Dear Mr. Pendarvis:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Within ten days of the date of this letter, you are requested to provide a copy of an order issued in this matter which features the complete case caption. If such an order is not available, please provide a copy of the original Summons and Complaint.

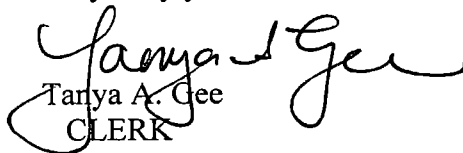
We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,


Tanya A. Gee
CLERK

TAG/ec

cc: Ellis. M. Johnston, Jr., J.D., Esquire
Calvin T. Vick, J.D., Esquire
Jesse C. Belcher, J.D., Esquire
Marvin D. Infinger, J.D., Esquire
Anne Ross Rosen, J.D., Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

November 10, 2010

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret St. Ste. A
Beaufort, SC 29902

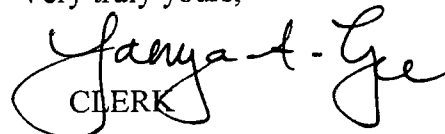
Re: Davis, Laurence v. Parkview
Case Tracking #: 2010176826

Dear Mr. Pendarvis:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,


CLERK

TAG/ec

cc: Ellis. M. Johnston, Jr., J.D., Esquire
Calvin T. Vick, J.D., Esquire
Jesse C. Belcher, J.D., Esquire
Marvin D. Infinger, J.D., Esquire
Anne Ross Rosen, J.D., Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

1008 100

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

NOTICE OF APPEAL

Appellants Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O.

Mercy appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17, 2008, a copy of which is attached as Exhibit 2.
3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008,

dated March 3, 2009, a copy of which is attached as Exhibit 3.

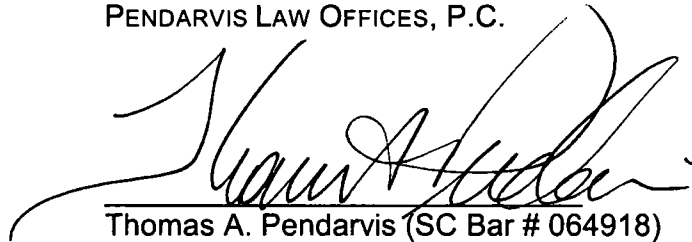
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OR COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.

All Orders were issued by the Honorable Doyet A. Early, III.

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
PO Box 1437
Beaufort, SC 29901-1437
(843) 525-6090 tele
(843) 525-6070 fax
baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

Counsel for Appellants

October 28, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
Calvin T. Vick, J.D.
Jesse C. Belcher, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville SC 29602

Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
134 Meeting Street, 3rd Floor
Charleston SC 29401

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

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NOV 01 2010

SC Court of Appeals

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,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka 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.

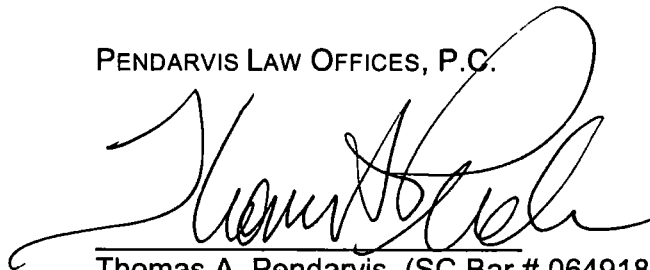
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of NOTICE OF APPEAL on counsel for Respondents, by depositing
a copy of the same in the United States Mail, postage prepaid, on the 28th day of October,
2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', written over a horizontal line.

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

October 28, 2010

Beaufort, SC 29902



PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
THOMAS@PENDARVISLAW.COM

TEL. 843.524.9500
FAX. 843.524.9501
WWW.PENDARVISLAW.COM

October 28, 2010

Tanya Gee, Clerk
SC Court of Appeals
PO Box 11629
Columbia SC 29211

RECEIVED

NOV 01 2010

Re: Rhoda G. Rentz, et al. v. Orleans Gardens, et al.
Civil Action No. 2005-CP-10-4229

SC Court of Appeals

Dear Ms. Gee:

Enclosed for filing please find the original and one copy of Plaintiffs-Appellants' NOTICE OF APPEAL, which include the subject Orders attached as exhibits, and a PROOF OF SERVICE in connection with the above referenced matter. Also enclosed please find check no. 1008 in the amount of \$100.00 representing the filing fee. Please return a date-stamped copy of the enclosed documents using the pre-paid return envelope also enclosed for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, J.D.

TAP/jac
Enclosures

cc: Charleston County Clerk of Court (w/enclosures)
Joel D. Bailey, JD (w/enclosures)
Ellis M. Johnston, II, JD (w/enclosures)
Calvin T. Vick, Jr., JD (w/enclosures)
Jesse C. Belcher, Jr., JD (w/enclosures)
Marvin D. Infinger, JD (w/enclosures)
Ann Ross Rosen, JD (w/enclosures)

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Tanya Gee, Clerk
SC Court of Appeals
PO Box 11629
Columbia SC 29211-1629

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

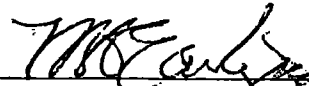
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER

This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

WPC
#1

IT IS SO ORDERED



The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008

Greenville South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2003-CP-07-726
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-38-1131
	)	

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs.	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-10-4229
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-07-1989
	)	

Carolina Management Corporation of Beaufort, <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-07-1990
	)	

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"), in each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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EXHIBIT
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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.
Bombard, South Carolina

Doyet A. Early, III.
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"), and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCP. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is GRANTED. *held in abeyance pending* ~~Defendants shall submit evidence~~

Resolution of all discovery disputes -
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done.

~~of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within~~
~~twenty (20) days of the date of this Order.~~ Def

IT IS SO ORDERED

This 3rd day of March, 2009.
Bamberg, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: *Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.*

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Bamberg, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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2009 JUN -4 PM 12:45
ELIZABETH M. SMITH
CLERK OF COURT
BEAUFORT COUNTY S.C.

him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRPC. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 3 day of June, 2009.

Burke, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

Case No.: 2003-CP-07-726

Davis, et al.

2009 JUN 19 AM 11:54 Parkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, Subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRPC, is hereby DENIED.

Dated at Aiken, South Carolina, Date June 16, 2009 Judge W. B. Early, Jr.

This judgment was entered on the 16th Day of June, 20 09, and a copy mailed this 22 Day of June, 20 09, to attorneys of record or to parties as follows:

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EXHIBIT

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[Signature]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited	)	C.A. No. 2003-CP-07-726
Partnership, <i>et al.</i> Defendants.	)	
Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-38-1131
Partnership, <i>et al.</i> Defendants.	)	
Rhonda G. Rentz, <i>et al.</i> Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-10-4229
Partnership, <i>et al.</i> Defendants.	)	
Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited	)	C.A. No. 2005-CP-07-1989
Partnership, <i>et al.</i> Defendants.	)	
Carolina Management Corporation of Beaufort,	)	
<i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1990
Limited Partnership, <i>et al.</i> , Defendants.	)	

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(c), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

Handwritten signature/initials

96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

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103	Bailey 4878

(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

82	Bailey 4591-4592

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83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

MP
26

49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

WRC
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Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

MAE
#9

93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

MAE
SEP

12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Banker, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2010 APR -9 PM 3: 32
Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,)

v.)

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,)

v.)

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DAE #1

EXHIBIT

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dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRPC. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAE #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCF, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27, 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

DAE #8

Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (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 pp. 9-14; Plaintiffs in the other cases have provided even less);⁴
- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

DAE #11

Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCF.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon, In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Ct. App. 2009) (internal quotation marks and citations

DAE #18

omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." Id. (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." Id. (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." Id. The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." Id. (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions; Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRPC, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCF, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCF.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Ct. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppe v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Ct. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

DAE #23

lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Ct. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

DAE #24

could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

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from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRPC. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

DAE #26 26

award. See id. ("A fine may also be 'remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine...' (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

DAE #27

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRPC, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRPC, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

This 16th day of April, 2010.
Chiken, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

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16



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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR RECONSIDERATION

THIS JUDGMENT WAS ENTERED ON THE 20TH DAY OF SEPTEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 28TH DAY OF SEPTEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE.
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC

EXHIBIT

9

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-145

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRCP. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

JAE
HH

FILED
2009 SEP 20 AM 10:19
JULIE J. HARRIS
CLERK OF COURT

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Beaufort, South Carolina