

v.

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

v.

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

**RETURN TO MOTION OF STEVEN GOLDBERG TO ENFORCE
SETTLEMENT AGREEMENT**

RECEIVED
SEP 15 2014
SOUTH CAROLINA COURT OF APPEALS

LAW OFFICES OF FLEET FREEMAN, LLC
Fleet Freeman, SC Bar No. 10435
Susan Elizabeth Santilli, SC Bar No. 100407
941 Houston Northcutt Boulevard, Suite 204
Mt. Pleasant, SC 29464
(843) 216-0009
(843) 216-1914 Facsimile

Attorneys for East Bridge Lofts Property
Owners Association, Inc. a/k/a East Bridge
Town Lofts Property Owners Association, Inc.

STATEMENT OF PROCEEDINGS ON APPEAL

This appeal as it relates to William Scanlon, Delia Scanlon, Steven Goldberg, Brent McClaine, and Lynn Harris (“Secondary Appellants”) was filed on November 16, 2012. The appeal was subsequently withdrawn on October 7, 2013 by I. Keith McCarty, John C. Hayes, IV and Michael S. Seekings (“Secondary Appellants’ counsel”). The defendants in Case No: 2010-CP-10-9672 (“Primary Appellants”) filed a separate appeal from Judge Young’s Order. The Court of Appeals consolidated the case. The Primary Appellants were defendants in the trial court and their appeal is not related to the matter before the Court.

Due to some confusion as to whether the Remittitur was effective as to all appellants, Edward D. Buckley, Jr., Russell Hines, Justin O’Toole Lucey and Joshua F. Evans (“Respondents’ Counsel”) filed a Motion to Dismiss the entire appeal on June 9, 2014. This Court gave notice to all counsel for both the Primary and Secondary Appellants on August 7, 2014 to file a return within ten (10) days. No returns were filed. Respondents’ Motion to Dismiss is still pending. Respondents and the East Bridge Lofts Property Owners Association, Inc. a/k/a East Bridge Town Lofts Property Owners Association, Inc. (“POA”) believe the appeal should have been dismissed in its entirety on or about August 17, 2014, after the lapse of ten (10) days without a return.

On August 21, 2014, Steven Goldberg (“Goldberg”), listed as a Secondary Appellant, through new and additional counsel, Peter Demos Protopapas, filed a motion on behalf of the Secondary Appellants to enforce a Settlement Agreement purportedly entered into on October 13, 2013.

A dispute had arisen from a disagreement between construction counsel for the POA and Secondary Appellants' counsel regarding the enforcement of the purported Settlement Agreement. Construction counsel placed \$731,936.32 in a trust account pending resolution of this dispute.

Respondents' counsel sought and was granted an extension of time to file the return to Goldberg's motion.

ARGUMENT

I. THE MOTION TO ENFORCE SETTLEMENT SHOULD BE DENIED BECAUSE STEVEN GOLDBERG LACKED STANDING TO FILE.

Steven Goldberg had no standing to file the Motion to Enforce Settlement on August 21, 2014, for the following reasons: (1) he did not own a unit in the East Bridge Town Lofts complex in his own name, but rather he was a member of a limited liability company, AUB Properties, LLC, that owned the unit as shown by **Exhibit A**, attached hereto; and (2) Goldberg, through his wife, Amy Goldberg, the other LLC member, had previously assigned all of their right title and interest in any recovery to the POA on December 21, 2011, as shown by **Exhibit B**, attached hereto.

Secondary Appellants' counsel listed Goldberg as a party for the first time in their Second Amended Complaint in Case No: 2010-CP-10-9672 filed January 5, 2012, however, Goldberg and his wife had already assigned their rights to construction counsel and the POA on December 21, 2011. Assuming that assignment to be valid, Steven Goldberg was no longer a plaintiff in the Jeffords case. The assignment pre-dated the Secondary Appellants' appeal. It also pre-dated the POA's and Respondents' trial and

verdict entered June 10, 2014. Goldberg and his wife, Amy, became a part of the Respondents' suit at trial. Goldberg has an irreconcilable conflict of interest given that he was represented by Respondents' construction counsel and was part of the POA group. The Goldbergs and AUB Properties, LLC obtained full benefit from the judgment for the POA. He has no interest in the funds held in trust, is not a Secondary Appellant and should be classified as a Respondent in the appeal. Hayden Jeffords, the lead plaintiff had also assigned her rights to the POA on October 2, 2013, prior to withdrawal of Appellants' appeal filed on October 7, 2013 and prior to the date of the purported Settlement Agreement. Accordingly, Jeffords, like Goldberg, is part of the POA/Respondent group.

II. THE MOTION TO ENFORCE SETTLEMENT SHOULD BE DENIED BECAUSE THE SETTLEMENT AGREEMENT CONTAINS MYRIAD DEFECTS.

A. The Settlement Agreement is unenforceable because it was not signed by any member of either group (Respondents or Secondary Appellants) and does not comply with Rule 43(k), SCRCP.

The next to last sentence of the Settlement Agreement states, "This agreement is final, binding, and irrevocable once signed by one or more members of each group". While lawyers may enter into binding settlement agreements on behalf of their clients, they may not do so if the client's written approval is required. Here, the clients' approval was required since it involved a fee splitting arrangement between lawyers of different law firms. Appellate Court Rule 407, Rules of Prof. Conduct, Rule 1.5(e).

"To be enforceable, settlement agreements must either be entered into the court's record or acknowledged in open court and placed upon the record." Rule 43(k), SCRCP,

Motley v. Williams, 374 S.C. 107, 110, 647 S.E.2d 244, 246 (Ct. App. 2007). Failure to comply with Rule 43(k), SCRCF, renders the settlement unenforceable. At the time Secondary Appellants' counsel filed their Motion to Withdraw Appeal, it appears that neither the trial court nor this Court was ever presented with the Settlement Agreement and did not approve it. The Court of Appeals dismissed Appellants' appeal, making a finding not supported by the record before the Court of Appeals. See Order filed October 28, 2013. For this Court to enforce the Settlement Agreement, it would be necessary to determine whether the Settlement Agreement was submitted to and approved by the Court of Appeals. Rule 261, SCACR.

B. The Settlement Agreement is unenforceable because the fee sought by appellants' counsel is unreasonable and violates Appellate Court Rule 407, Rules of Prof. Conduct, 5.1(a)(1)-(8).

There has not been any finding that the settlement agreement has shown to be in compliance with the eight factors to be considered in determining the reasonableness of the fee as required by Appellate Court Rule 407, Rules of Prof. Conduct, Rule 5.1(a)(1)-(8). Here, there was no fee agreement between Appellants' Counsel and Respondents or the POA. On July 23, 2014, the president of the POA, in an effort to ascertain what services by Secondary Appellants' counsel would justify a fee in excess of \$700,000, wrote to Secondary Appellants' counsel asking them to provide the POA with a copy of their fee agreement, how much they were claiming, the number of hours invested and the expenses incurred. See attached Exhibit C. The only response received was the Goldberg Motion to Enforce Settlement filed in this Court.

C. The Settlement Agreement is unenforceable because it is void as against public policy.

The Settlement Agreement provides for Secondary Appellants' lawyers to receive a fee split in violation of Appellate Court Rule 407, Rules of Prof. Conduct, Rule 1.5(e), in that the clients of Secondary Appellants did not approve the fee split, and the fee split was unreasonable. This contingent fee agreement was made for the sole benefit of the Secondary Appellants' lawyers without any of the proceeds inuring to their clients.

D. The Settlement Agreement is unenforceable because the Secondary Appellants' lawyers cannot show that they performed services entitling them to receive attorney fees from the POA case.

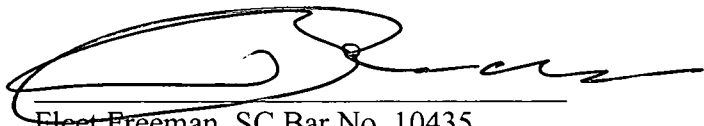
Aside from the above irregularities, to be enforceable, Secondary Appellants' counsel must demonstrate that they performed services entitling them to receive attorney fees exceeding \$731,000. The Settlement Agreement by its own terms provides that Secondary Appellants' lawyers represented and warranted that their prior work exceeded the value of 10% of the fees collected by the POA. Although Goldberg states that counsel for Secondary Appellants performed all of the requirements under the Settlement Agreement, this statement is inaccurate. This court or the trial court should take evidence and determine: (1) whether the terms of the Settlement Agreement were performed by counsel for Secondary Appellants as claimed; (2) whether the proper person filed the Motion to Enforce the Settlement Agreement, and (3) whether the Settlement Agreement is in compliance with the Rules of Professional Conduct. These findings would appear to be a condition precedent to enforcing it.

To address these issues in a proper forum, on September 4, 2014, the POA filed a Complaint for declaratory judgment in the Common Pleas Court of Charleston County and sought assignment to the Business Court. Such filing is attached as **Exhibit D**. The POA in that action is asking the Circuit Court to determine the validity of the purported Settlement Agreement, and if it is found to be valid, whether the Secondary Appellants' counsel performed thereunder. If so, the Circuit Court could then determine how much, if any, the Secondary Appellants' counsel are entitled to recover from the fund held in trust.

CONCLUSION

The Court of Appeals should deny Goldberg's Motion to Enforce Settlement Agreement on procedural grounds and on the lack of evidence to determine whether Secondary Appellants' counsel has fulfilled its responsibilities under that agreement, or alternatively, to remand this matter to the Circuit Court to make all necessary determinations as to enforceability and the ethical propriety of the Settlement Agreement.

LAW OFFICES OF FLEET FREEMAN, LLC
Attorneys for East Bridge Lofts Property Owners
Association, Inc. a/k/a East Bridge Town Lofts
Property Owners Association, Inc.



Fleet Freeman, SC Bar No. 10435
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ffreeman@fflawfirm.com

beth@fflawfirm.com

Dated: September 12, 2014

BKB 568PG569

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF CHARLESTON

WHEREAS, Steven E. Goldberg and Amy C. Goldberg are fee simple owners of the below described property, and

WHEREAS, Steven E. Goldberg and Amy C. Goldberg are members of AUB Properties, LLC, and

WHEREAS, they are now desirous of transferring the below described property to AUB Properties, LLC

KNOW ALL MEN BY THESE PRESENTS THAT WE, STEVEN E. GOLDBERG AND AMY C. GOLDBERG in the State aforesaid, for and, in consideration of One and 00/100 (\$1.00) Dollars and the above recitals to us in hand paid at and before the sealing of these presents by AUB PROPERTIES, LLC in the County aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said AUB PROPERTIES,, LLC, its successors and assigns, the following described property, to wit:

ALL that certain Unit 5, Building 267, East Bridge Lofts Horizontal Property Regime established by master Deed dated February 7, 2005, and recorded February 7, 2005 in the RMC Office for Charleston County in Book W-524, Page 638, and all exhibits thereto, as amended.

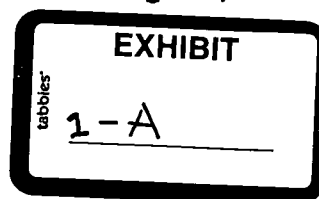
TOGETHER with an undivided percentage interest in the common elements described in said Master Deed and the rights to any limited common elements assigned to said Unit by said Master Deed.

BEING the same property conveyed to Steven E. Goldberg and Amy C. Goldberg by deed of East Bridge Lofts, LLC dated August 11, 2005 and recorded in the RMC Office for Charleston County on August 12, 2005 in Book E-549, Page 762.

The Tax Map Reference Number is 514 13 00 272

The Grantees' address is 2301 Hartsford Bluff Circle, Mt. Pleasant, SC 29466

TOGETHER with all and singular, the Rights, Members,



Hereditaments and Appurtenances to the said Premises belonging, on or anywise incident or appertaining.


TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said AUB PROPERTIES, LLC, its successors and assigns forever.


AND I do hereby bind myself and my heirs and personal representatives, to warrant and forever defend, all and singular, the said premises unto AUB PROPERTIES LLC, its successors and assigns, against me and my heirs and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

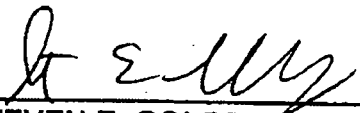
WITNESS our Hands and Seals this 20 day of December, in the year of our Lord two thousand and five.

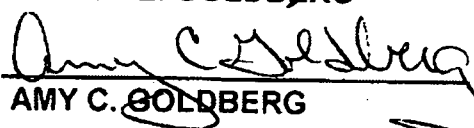
SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:







STEVEN E. GOLDBERG


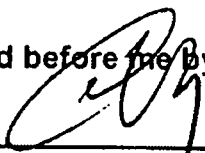
AMY C. GOLDBERG

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

The within instrument was acknowledged before me by its maker.

SWORN to before me this

20 day of December, 2005



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4/16/08

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON AFFIDAVIT

PERSONALLY appeared before me undersigned, being duly sworn, deposes and says:

- 1. I have read the information on this Affidavit and I understand such information.
- 2. The property being transferred by Steven E. Goldberg and Amy C. Goldberg unto AUB PROPERTIES, LLC dated December 20, 2005

3. Check one of the following: THE DEED IS

- (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) EXEMPT from the deed recording fee because this is a transfer of property between individuals who are members of an LLC

4. CHECK ONE OF THE FOLLOWING IF EITHER ITEM 3(a) OR ITEM 3(b) ABOVE HAS BEEN CHECKED.

- (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$. 00
- (b) The fee is computed on the fair market value of the realty which is \$ _____
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____

5. CHECK YES OR NO to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is approximately \$ _____

6. THE DEED RECORDING FEE IS COMPUTED AS FOLLOWS:

- (a) _____ .00 the amount listed in Item 4
- (b) _____ .00 the amount listed is item 5 above
- (c) _____ .00 Subtract line 6(b) from Line 6(a) and place the result

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the _____.

8. Check if property other than Real property is being transferred on this deed:

- A. Mobile Home
- B. Other

9. Deed of Distribution - Attorneys Affidavit: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina, that (s)he has prepared the Deed of Distribution for the Personal Representative in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000.00 or imprisoned not more than one year, or both.

[Signature]
Grantor, Grantee, or Legal Representative Connection with Transaction

SWORN to before me this 20 day of December, 2005

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA My Commission Expires: 3/15/12

RECORDER'S PAGE

NOTE: This page **MUST** remain with the original document



FILED

January 3, 2006
3:17:05 PM

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Charlie Lybrand, Register
Charleston County, SC

Filed By:

Steinberg Law Firm, LLP
61 Broad St.
Post Office Box 9
Charleston SC 29402-0009

| DESCRIPTION | AMOUNT |
|---------------|----------|
| Recording Fee | \$ 10.00 |
| State Fee | <Exempt> |
| County Fee | <Exempt> |
| Postage | |

| | |
|--------------|-----------------|
| TOTAL | \$ 10.00 |
|--------------|-----------------|

\$ Amount (in thousands):

DRAWER:

A - bmm

[Handwritten initials]

RECEIVED FROM RMC

FEB 23 2006

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP *[Signature]*

DATE *2/23/06*

DO NOT STAMP BELOW THIS LINE

East Bridge Town Lofts Property Owners Association

v.

Creekstone East Bridge, et al.

Litigation Authorization Form

Unit Number: 267-5 Alexandra
Name: Amy + Steven
Address: 341 N. Civitas Street
Mt Pleasant SC 29464
City, State, and Zip
Phone Number (Day) same (Evening) 843 849 6223

I hereby assign my claim to the POA, which has hired Ed Buckley and Justin Lucey to sue the developers and builders for the construction deficiencies at East Bridge Town Lofts. I understand that the board has retained Ed Buckley and Justin Lucey on a contingency fee basis with the fee being based upon the total recovery.

I hereby appoint Ed Buckley and Justin Lucey to represent me in any matters relating to the lawsuit against the developers, builders, and other at fault parties.

I hereby waive any conflict that should arise by virtue of Ed Buckley and Justin Lucey representing both the POA and me, and I acknowledge that the POA's claims supersede my individual claim in the event of a conflict.

I understand that any monies received as proceeds of this lawsuit will first be prioritized for structural repairs, followed next be exterior cladding repairs, and finally interior repairs.

I give my consent to be added as a Plaintiff, on behalf of myself and as a representative of other homeowners, if necessary. I

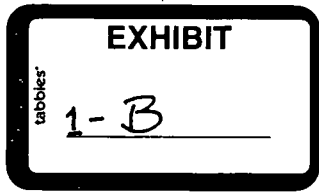
Please sign and date:

Amy Goldberg
Signature

12/21/11
Date

Please mail or fax this form to: Paralegal Brooke Trevino, P.O. Box 806, Mt. Pleasant, SC 29465; (843) 849-8406 (Fax)
Or please e-mail the form and information to: btrevino@lucey-law.com

I If you do not consent to being added as a Plaintiff, please strike through this paragraph.



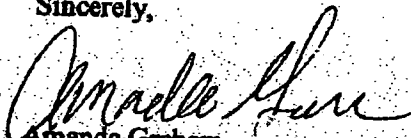
Plaintiff
Assignments 000046

Letter to Leath, Bouch & Seekings

Gentlemen:

I have been advised by Mr. Lucey that your firm has inquired about the payment of attorney fees in the HOA case against the contractors. The Board has instructed Mr. Lucey not to pay any fees to your firm or associates until we have an opportunity to evaluate your claim. Since HOA has no idea how much you are claiming or what you might be entitled to, the Board would like for you to submit to me a copy of your fee agreement with the Jefford's group, the amount claimed, the number of hours worked and a listing of expenses incurred. Please send me this material within five (5) days of receipt of my request.

Sincerely,



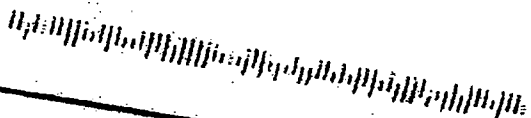
Amanda Graham
Eastbridge Lofts, HOA

Avenel Associates
c/o East Bridge Lofts HOA
3890 Hwy 17 N
Mount Pleasant, SC 29406

Leath, Bouch & Seekings LLP
PO Box 59
Charleston, SC 29402

| | |
|---------|-------|
| EXHIBIT | |
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294021005



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

East Bridge Lofts Property Owners Association,)
Inc. a/k/a/East Bridge Town Lofts Property)
Owners Association, Inc.)

Plaintiff,)

v.)

Leath, Bouch & Seekings, L.L.P., McCarty)
Law Firm, PC, Hayes Law Firm, LLC,)
W. Jefferson Leath, individually, Timothy W.)
Bouch, individually, Michael S. Seekings,)
individually, I. Kevin McCarty individually,)
and John C. Hayes, IV, individually,)

Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No. 2014-CP-10-5449

SUMMONS

FILED
2014 SEP -8 PM 4: 08
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

LAW OFFICES OF FLEET FREEMAN, LLC
Attorneys for Plaintiff



Fleet Freeman, Esquire, SC Bar No. 10435
Beth Santilli, Esquire, S.C. Bar No. 100407
941 Houston Northcutt Blvd., Suite 204
Mount Pleasant, SC 29464
Tele. No. 843-216-0009
Fax No. 843-216-1914
E-mail: ffreeman@fllawfirm.com
beth@fllawfirm.com

Dated: September 5, 2014

EXHIBIT
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1- D

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

East Bridge Lofts Property Owners Association,)
Inc. a/k/a/East Bridge Town Lofts Property)
Owners Association, Inc.)

Plaintiff,)

v.)

Leath, Bouch & Seekings, L.L.P., McCarty)
Law Firm, PC, Hayes Law Firm, LLC,)
W. Jefferson Leath, individually, Timothy W.)
Bouch, individually, Michael S. Seekings,)
individually, I. Kevin McCarty individually,)
and John C. Hayes, IV, individually,)

Defendants.)

COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)
Case No. 2014-CP-10-5449)

COMPLAINT)
Declaratory Judgment)
Business Court)
(Non-Jury))

JULIE J. ARMSTRONG)
CLERK OF COURT)

2014 SEP -8 PM 4:08)

FILED)

NOW COMES PLAINTIFF, East Bridge Town Lofts Property Owners Association, Inc. ("POA"), for its declaratory judgment action pursuant to S.C. Code Ann. §15-53-10 *et seq* and Rule 57, SCRPC, against the above-named defendants, states as follows:

PARTIES

1. The plaintiff POA is a duly organized and existing non-profit corporation under the laws of the State of South Carolina having its principal office in Charleston County, South Carolina.
2. Defendant, Leath, Bouch & Seekings, L.L.P., ("Leath, Bouch & Seekings"), formerly Leath, Bouch & Crawford, L.L.P., is a limited liability partnership organized and existing under the laws of the State of South Carolina and is engaged in the practice of law in Charleston County, South Carolina.
3. Defendant, McCarty Law Firm, PC, ("McCarty Law Firm"), formerly McCarty Law

Firm, LLC, is a professional statutory close corporation organized and existing under the laws of the State of South Carolina and is engaged in the practice of law in Charleston County, South Carolina.

4. Defendant, Hayes Law Firm, LLC (“Hayes Law Firm”), is a limited liability company organized and existing under the laws of the State of South Carolina and is engaged in the practice of law in Charleston County, South Carolina.

5. Defendant, W. Jefferson Leath, Jr., individually, (“Leath”), was at all times pertinent herein an attorney licensed to practice law in South Carolina.

6. Defendant, Timothy W. Bouch, individually, (“Bouch”) was at all times pertinent herein an attorney licensed to practice law in South Carolina.

7. Defendant, Michael S. Seekings, individually, (“Seekings”) was at all times pertinent herein an attorney licensed to practice law in South Carolina.

8. Defendant, I. Kevin McCarty, individually, (“McCarty”) was at all times pertinent herein an attorney licensed to practice law in South Carolina.

9. Defendant, John C. Hayes, IV, individually, (“Hayes”) was at all times pertinent herein an attorney licensed to practice law in South Carolina.

10. This court has jurisdiction over the parties and the claims asserted herein.

FACTS

11. The POA’s claims arose out of defective workmanship and materials used in the conversion of apartment units into condominiums named East Bridge Town Lofts located in Mount Pleasant, South Carolina.

12. In August 2010, the Master Deed to the POA was amended deleting the prohibition

against suing the developers thus clearing the way for a suit against them.

13. After the amendment of the Master Deed, meetings were held by the POA members with counsel, Justin Lucey, regarding the steps to be taken for collection of damages from the developers.

14. Thereafter, Hayden Jeffords (Jeffords), posing as an interested property owner, contacted and interviewed Justin Lucey concerning the POA's plans for recovering damages for the defective construction. Lucey freely divulged to Jeffords the timing and strategy of the filing of the POA lawsuit should the claims not be resolved. Lucey also told Jeffords that the POA had entered into a tolling agreement with the principal putative defendants to provide both sides an opportunity to assess and resolve the POA's claims short of filing a lawsuit. Undisclosed and unbeknown to Lucey, Ms. Jeffords was employed by Hayes as a paralegal who used the information to file an action usurping the duties and responsibilities of the POA.

15. On November 19, 2010, shortly after the Jeffords' interviews, defendants, Hayes, McCarty, Hayes Law Firm and McCarty Law Firm filed an action in the Common Pleas Court of Charleston County against various developers and construction entities including some of those who had previously entered into a tolling agreement with Justin O'Toole Lucey, PA and Young Clement Rivers, LLP in connection with East Bridge Town Lofts claims. Jeffords was the lead plaintiff in that suit.

16. The case filed by Hayes, McCarty, Hayes Law Firm and McCarty Law Firm was captioned *Hayden Jeffords, individually and on behalf of ALL OTHERS SIMILARLY (sic) SITUATED vs. East Bridge Town Lofts, LLC; et al.*, Case No. 2010-CP-10-9672. In the complaint, defendants Hayes, McCarty, Hayes Law Firm and McCarty Law Firm purported to

represent the POA, even though they had never represented the POA. These defendants knew that the POA was already represented by counsel who was actively prosecuting the East Bridge POA claims; yet, they filed this action to insert themselves into the claims as class counsel. This action was in derogation of the tolling agreement and was characterized as a strike suit.

17. Defendants Hayes, McCarty, Hayes Law Firm and McCarty Law Firm filed two subsequent amended complaints on July 25, 2011, and on January 5, 2012, respectively. In the second amended complaint, defendants, Leath, Bouch, Seekings and their firm joined Hayes, McCarty, Hayes Law Firm and McCarty Law Firm. All defendants collectively filed a motion for class certification on May 23, 2012.

18. On December 13, 2010, Justin O'Toole Lucey, PA and Young Clement Rivers, LLP, counsel for Vicki Devereaux and the POA, filed their action, Case No. 2010-CP-10- 10204, *East Bridge Town Lofts Property Owners Association, et al. v. East Bridge Lofts, LLC, et al.* At the time of defendants' motion for class certification, this suit was being actively prosecuted. The representative owners and the POA filed a motion to strike the Jeffords' complaint and to deny Jeffords' motion for class certification.

19. At no time throughout either of the lawsuits, Case Nos.: 2010-CP-10-10204 or 2110-CP-10-9762, did any of the defendants represent or enter into a fee agreement with the POA or its authorized agents.¹ At all times pertinent herein, the POA and its properly designated representatives were represented by Justin O'Toole Lucey, PA and Young Clement Rivers, LLP.

20. After the issues were briefed and argued, the Honorable Roger M. Young, Jr. made

¹ Initially, Hayes and McCarthy represented John Zohlen and Mary Zohlen but withdrew on June 7, 2012. The Zohlens assigned their interest to the POA and became respondents in the appeal.

specific findings and entered an Order dismissing the Jeffords' action in its entirety on both substantive and procedural grounds. Judge Young dismissed the class certification motion as being moot.

21. All defendants appealed Judge Young's Order, however, plaintiff believes that Hayden Jeffords never consented to the appeal. While the appeal was pending, a stay was issued that effectively prevented the POA from getting their case to trial. Defendants then agreed to withdraw the appeal if the POA would pay them (with no benefit to their clients) 8.5-10% of all legal fees generated from the prosecution of the POA case. Defendants represented to the POA and its lawyers and warranted that their prior work met or exceeded the value of 8.5 - 10% of the fees collected. Defendants further agreed to assign all of their work product and experts to the POA. In reliance upon these representations, and in a desperate effort to get its case to trial, counsel for the POA agreed to a purported Settlement Agreement which is attached hereto as Exhibit A.

22. After a trial in which none of the defendants participated, the POA was awarded a judgment in the sum of \$55,000,000.00. After a portion of that judgment had been collected, the defendants sought to recover \$665,000.00. The funds representing these fees have been set aside and are now on deposit in the trust account of POA's trial counsel. Trial counsel has indicated that they are making no claim to such fees as shown in Exhibit B. Accordingly, this money and any additional fees collected belongs to the POA, subject only to the claim of defendants.

23. On July 23, 2014, the POA, through its President, Amanda Graham, sought to ascertain the fees and the time and expenses expended by all defendants so the POA could determine the amount, if any, to which the defendants might be entitled under the purported

Settlement Agreement. A copy of the letter to defendants is attached as Exhibit C. Defendants have refused to provide any information or response in support of their claim, but instead filed a motion on August 21, 2014, asking the Court of Appeals to enforce the purported Settlement Agreement. Defendants contend that they have complied with all of the terms of the purported Settlement Agreement.

24. The POA believes that the defendants' promises and representations in the purported Settlement Agreement have not been fulfilled and that the Settlement Agreement is void and unenforceable for the reasons set forth hereafter.

25. The POA is seeking to intervene in the Court of Appeals so it can file a return to defendants' motion to compel settlement. The POA believes that it will be granted leave to intervene as a matter of right since it is the real party in interest despite not being a named respondent in the appeal from Judge Young's Order (only the named property owners acting for the POA were named as respondents in the appeal).

26. Two totally diverse parties are claiming entitlement to the fund; the property owners and the defendants' law firms and their lawyers.

27. The POA seeks an Order of this Court declaring the rights of the parties as follows:

a. That the purported Settlement Agreement is void in that it was not signed by any of defendants' clients as specifically required by the terms of the Settlement Agreement. Counsel signing on behalf of appellants was not a member's signature.²

b. That the purported Settlement Agreement is void in that it is against the public

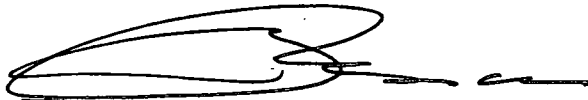
² Although not in issue here, the purported Settlement Agreement was not signed by any member of the respondent's group or the POA.

policy of this State by virtue of multiple violations of Rule 407, *South Carolina Rules of Professional Conduct*, governing the actions of the defendant lawyers who seek to obtain legal fees in violation of Rule 1.5 governing fee splitting; Rule 1.5(a) governing the reasonableness of attorneys' fees and the criteria for determining reasonableness; and Rule 1.5(e) governing how fees are to be divided between lawyers in different law firms.

28. In the event that this Court should determine that the purported Settlement Agreement is not void or wholly unenforceable, then the POA seeks a declaration requiring defendants to produce their original fee agreement with their clients, evidence of the clients' written consent to the fees sought and evidence of each of the criteria required by Rule 1.5(a).

WHEREFORE, the POA asks this Court to construe the purported Settlement Agreement and determine and declare the rights of the parties in connection therewith.

LAW OFFICES OF FLEET FREEMAN, LLC
ATTORNEYS FOR PLAINTIFF



Fleet Freeman, Esquire, SC Bar No. 10435
Susan Elizabeth Santilli, SC Bar No. 100407
941 Houston Northcutt Blvd., Suite 204
Mt. Pleasant, South Carolina 29464
Tele. No. (843) 216-0009
Fax No. (843) 216-1914
ffreeman@fflawfirm.com
beth@fflawfirm.com

Dated: September 5, 2014

Jeffords, et al., v. East Bridge Town Lofts, et al.,

Case No.: 2010-CP-10-09672

Settlement Agreement

By and between McClaine, Scanions, Goldberg, Harris, and their counsel (Leath, Bouch, Seekings, Hayes, and McCarty), on the one hand (hereinafter "Appellants"); and the Zoltens, O'Neil, Hatcher and their counsel (YCR and JOLPA) (hereinafter "Respondents"), on the other hand:

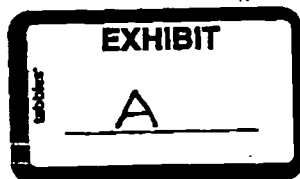
1. Payment of 8.5-10% of net monetary fees recovered in POA case to Appellants' counsel in consideration of Appellants counsel's prior work in the Jeffords case. Appellants' counsel represents and warrants that their prior work meets or exceeds this value. Appellants' counsel shall have no involvement in the POA case.
 - a. 8.5% floor; 10% if Glick continues on in case testifying in behalf of Respondents
 - b. No Cap.
2. Within twenty four hours, Appellants' counsel shall withdraw their appeal and cause all other Secondary Appellants to withdraw their appeal; and take all actions necessary to end their client's participation in the Jeffords case and appeal; and all Appellant rights relating to Jeffords case are hereby assigned to Respondents
3. Irrevocable Assignment of claims to POA personally signed by McClain, Scanion, Goldberg, Harris and any other remaining secondary appellants and unfilled clients (in the form used by the other homeowners, attached)
4. McClain, Scanion, Goldberg, Harris and any other remaining secondary appellants and unfilled clients will provide votes in favor of reaffirming the Master Deed Amendment of the anti suit provisions
5. Appellants shall provide Respondents their full cooperation and support
6. Assignment of all work product and experts by Appellants to Respondents
7. Appellants' counsel shall sign letters prepared by Respondents' counsel supporting the effort to procure remaining owner assignments, re ratify the Master Deed amendment, and a similar shorter letter for confirming Respondents' counsel's complete authority at mediation.

This agreement is final, binding, and irrevocable once signed by one or more members of each group. A copy of this agreement may be enforced as the original.

October 1, 2013

[Handwritten signature]
10-3-13
4:35 pm

[Faint handwritten signature]



JUSTIN O'TOOLE LUCEY, PA

Attorney at Law

415 Mill Street, Mount Pleasant, SC 29464
Phone: 843.849.8400 · Fax: 843.849.8406 · office@lucy-law.com

Reply to:
P.O. Box 806
Mount Pleasant, SC 29465

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Harper L. Todd
Dabny Lynn
James L. Floyd, III

September 3, 2014

Via Electronic Mail

Fleet Freeman, Esquire
Law Office of Fleet Freeman, LLC
941 Houston Northcutt Blvd., Suite 204
Mt. Pleasant, SC 29464

Re: East Bridge Town Lofts Property Owners Association, Inc. v. East Bridge Lofts, LLC, et al.
Case No.: 2010-CP-10-10204

Dear Mr. Freeman,

We are writing you in your capacity as the attorney for East Bridge Property Owners Association with regards to the escrowed legal fees.

As you know, Ed Buckley, and his firm, Young Clement Rivers, and Justin Lucey and the firm of Justin O'Toole Lucey, PA (collectively, the "Construction Attorneys") handled the Property Owners' Association suit against Creekstone, et al. for defective construction. Ten percent of the gross legal fees earned on the defective construction litigation are escrowed in the trust account of Justin O'Toole Lucey, PA, pending resolution of the dispute between the Property Owners Association and the "Jeffords" attorneys, Leath, et al.

This letter is to confirm that the Construction Attorneys do not claim or assert any interest or entitlement to this 10% fee escrow.

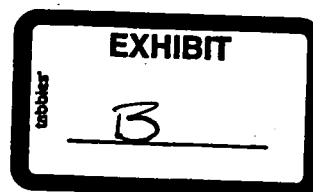
With best regards, I remain,

Very truly yours,

JOL

Justin O. Lucey

JOL/bb



Letter to Leath, Bouch & Seekings

Gentlemen:

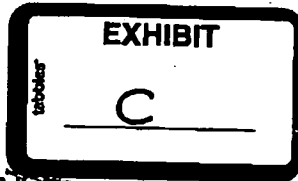
I have been advised by Mr. Lucey that your firm has inquired about the payment of attorney fees in the HOA case against the contractors. The Board has instructed Mr. Lucey not to pay any fees to your firm or associates until we have an opportunity to evaluate your claim. Since HOA has no idea how much you are claiming or what you might be entitled to, the Board would like for you to submit to me a copy of your fee agreement with the Jefford's group, the amount claimed, the number of hours worked and a listing of expenses incurred. Please send me this material within five (5) days of receipt of my request.

Sincerely,

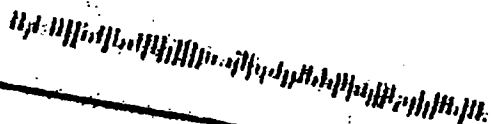
Amelia Graham
Amelia Graham
Eastridge Lofts, HOA

Avrene Associates
c/o East Bridge Lofts HOA
3070 Hwy 17 N
Court Pleasant, SC 29406

Leath, Bouch & Seekings LLP
PO Box 59
Charleston, SC 29402



294021005



JUSTIN O'TOOLE LUCEY, PA

Attorney at Law

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Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Harper L. Todd
Dabny Lynn
James L. Floyd, III

Reply to:
P.O. Box 806
Mount Pleasant, SC 29465

September 3, 2014

Via Electronic Mail

Fleet Freeman, Esquire
Law Office of Fleet Freeman, LLC
941 Houston Northcutt Blvd., Suite 204
Mt. Pleasant, SC 29464

Re: East Bridge Town Lofts Property Owners Association, Inc. v. East Bridge Lofts, LLC, et al.
Case No.: 2010-CP-10-10204

Dear Mr. Freeman,

We are writing you in your capacity as the attorney for East Bridge Property Owners Association with regards to the escrowed legal fees.

As you know, Ed Buckley, and his firm, Young Clement Rivers, and Justin Lucey and the firm of Justin O'Toole Lucey, PA (collectively, the "Construction Attorneys") handled the Property Owners' Association suit against Creekstone, et al. for defective construction. Ten percent of the gross legal fees earned on the defective construction litigation are escrowed in the trust account of Justin O'Toole Lucey, PA, pending resolution of the dispute between the Property Owners Association and the "Jeffords" attorneys, Leath, et al.

This letter is to confirm that the Construction Attorneys do not claim or assert any interest or entitlement to this 10% fee escrow.

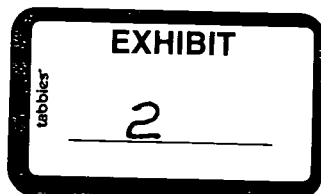
With best regards, I remain,

Very truly yours,

JOL

Justin O. Lucey

JOL/bb



LAW OFFICES OF FLEET FREEMAN, LLC

FLEET FREEMAN
ffreeman@fflawfirm.com

BETH SANTILLI
beth@fflawfirm.com

September 12, 2014

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

RECEIVED

SEP 15 2014

SC Court of Appeals

Re: Jeffords, et al. v. East Bridge Town Lofts, LLC, et al.
Appellate Case No. 2012-213351

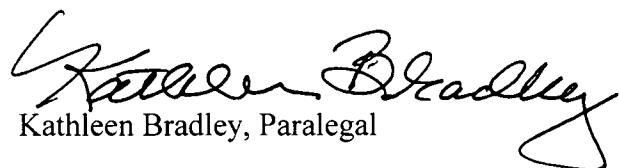
Dear Ms. Kitchings:

Enclosed please find originals and seven copies of a Motion to Intervene, Memorandum In Support of Motion to Intervene, Notice of Appearance and Certificate of Service, along with our check in the amount of \$25.00. Please file these documents and return clocked copies to this office in the envelope provided.

Attached to the Memorandum as Exhibit D is a Return to Steven Goldberg's Motion to Enforce Settlement. If the Court of Appeals grants the Motion to Intervene of East Bridge Lofts Property Owners Association, Inc. a/k/a East Bridge Town Lofts Property Owners Association, Inc., we will promptly supply another original with the proper number of copies for filing.

Thank you for your assistance in this matter.

Sincerely,


Kathleen Bradley, Paralegal

KB/p
Enclosures
cc: Peter D. Protopapas, Esquire
Justin O. Lucey, Esquire
Edward D. Buckley, Jr., Esquire

941 HOUSTON NORTHCUTT BLVD. • SUITE 204 • MOUNT PLEASANT, SOUTH CAROLINA 29464
TELEPHONE: (843)216-0009 FACSIMILE: (843) 216-1914