

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SEP 24 2014

SC Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-9672

Hayden Jeffords, individually, and on behalf of All Others Similarly Situated, Titus Gudel, Harold S. McEwan, D. Everett Walker, Paul Kane, Jeanne Debosh, Margarita Staudt, Leslie Anne O'Neal, Trivette C. Hatcher, William Scanlon, Delia Scanlon, Christy C. Parish, Joseph LaDue, Deborah LaDue, Pamela Snyder, Steven Goldberg, Brent McClaine, Brian Rasmussen, McKenzie Hutaff, Brian Kavanagh, Lynn Harris, and Kenneth A. Brown, Plaintiffs,

Of Whom Titus Gudel, Harold S. McEwan, William Scanlon, Delia Scanlon, Steven Goldberg, Brent McClaine, McKenzie Hutaff, Lynn Harris, and Kenneth A. Brown are the Secondary Appellants,

and

Of Whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the Respondents.

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; East Coast Carpentry a/k/a ECC Contracting, LLC; Fuller Drywall & Paint, Ltd.; Delta Mechanical, Inc. a/k/a Carolina Delta Mechanical; Wasson Electric Heating & Air; Bay Club Homes, LLC; Terracon Consultants, Inc.; Salvador Rubalcaba d/b/a Rubalcaba Construction, Defendants,

Of Whom 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; and Kevin Ball are the Primary Appellants,

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; 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.

**RESPONDENTS' RETURN
TO MOTION TO ENFORCE SETTLEMENT AGREEMENT**

YOUNG CLEMENT RIVERS, LLP
Edward D. Buckley, Jr.
Russell G. Hines
P.O. Box 993
Charleston, SC 29402
(843) 577-4000

-and-

JUSTIN O'TOOLE LUCEY, P.A.
Justin O'Toole Lucey
Joshua F. Evans
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*Attorneys for Respondents John Zohlen,
Mary Zohlen, Leslie Anne O'Neal, and
Trivette C. Hatcher*

On August 21, 2014, Peter D. Protopapas, Esquire, of the law firm of Rikard & Protopapas LLC, filed in this Court a “Notice of Appearance of Peter D. Protopapas For Appellant Steven Goldberg,” wherein he “enter[ed] his appearance as additional counsel on behalf of the Appellant, Steven Goldberg, along with Keith McCarty, Esq., Michael S. Seekings, Esq., and John C. Hayes, IV, Esq.” On the same date, Mr. Protopapas also filed the following entitled motion: “Appellant Steven Goldberg’s Motion and Memorandum in Support of Motion Pursuant to SCACR Rules 240 and 261 to Enforce Settlement Agreement Against Appellants [sic] Zohlens, O’Neill [sic], Hatcher, Justin Lucey and Young Clement Rivers” (hereinafter, the “Motion to Enforce Settlement Agreement”).¹

In response to the Motion to Enforce Settlement Agreement, on September 12, 2014, Fleet Freeman, Esquire, of the Law Offices of Fleet Freeman, LLC, noticed his appearance on behalf of East Bridge Lofts Property Owners Association, Inc. a/k/a East Bridge Lofts Property Owners Association, Inc. (hereinafter, the “East Bridge POA”). On the same date, Mr. Freeman also filed a Motion to Intervene (accompanied by a memorandum in support) on behalf of the East Bridge POA along with the East Bridge POA’s provisional return in opposition to the Motion to Enforce Settlement Agreement.

As correctly noted in the East Bridge POA’s memorandum in support of its Motion to Intervene, “[t]he interest of the named Respondents, John Zohlen, Mary Zohlen, Leslie Ann O’Neal, and Trivette C. Hatcher, is subsumed within the judgment for the [East Bridge] POA in Case No. 10-CP-10-10204, [which has already been] tried

¹ Thereafter, by letter to the Court dated, September 17, 2014, Mr. Protopapas “note[d] that Appellants William Scanlon, Delia Scanlon, and Brent McClaine join in and echo Appellant Goldberg’s Motion to Enforce Settlement Agreement.”

in the Common Pleas Court of Charleston County.” (East Bridge POA’s Memo in Support of Motion to Intervene at p. 3.) As members of the East Bridge POA, the Respondents’ (i.e., the Zohlens, O’Neal, and Hatcher’s) interests in opposing the Motion to Enforce Settlement Agreement are adequately represented by the East Bridge POA (by and through its counsel, Mr. Freeman), so long as the East Bridge POA is allowed to intervene and respond in opposition to the Motion to Enforce Settlement Agreement, as it has requested. Accordingly, **the Respondents hereby expressly consent to the East Bridge POA’s Motion to Intervene and adopt its position in opposition to the Motion to Enforce Settlement Agreement.** Moreover, provided that the East Bridge POA is allowed to intervene in this matter, the Respondents intend to move this Court to be dismissed as parties to this matter.²

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² As also correctly noted in the East Bridge POA’s memorandum in support of its Motion to Intervene, “[d]espite Goldberg’s caption on his Motion to Enforce Settlement, attorneys Lucey and Buckley [(of Young Clement Rivers, LLP)] are not appellants, or respondents, in this appeal.” While Respondents’ counsel are not themselves parties to this case—and, therefore, were not properly included in the Motion to Enforce Settlement Agreement—they would reiterate that they do not assert any interest or entitlement to the fee at issue (i.e., the ten (10%) percent fee referenced in the Motion to Enforce Settlement Agreement), which funds are being held in escrow by Mr. Lucey’s law firm. Moreover, as escrow holder, Mr. Lucey’s firm takes no position on the competing claims reflected in the Motion to Enforce Settlement Agreement and the opposition thereto filed by the East Bridge POA.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

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Russell G. Hines

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*Attorneys for Respondents John Zohlen,
Mary Zohlen, Leslie Anne O'Neal, and
Trivette C. Hatcher*

Charleston, South Carolina

Dated: 9/22/14

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Of Whom Titus Gudel, Harold S. McEwan, William Scanlon, Delia Scanlon, Steven Goldberg, Brent McClaine, McKenzie Hutaff, Lynn Harris, and Kenneth A. Brown are the Secondary Appellants,

and

Of Whom John Zohlen, Mary Zohlen, Leslie Anne O'Neal, and Trivette C. Hatcher are the Respondents.

v.

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Of Whom 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; and Kevin Ball are the Primary Appellants,

v.

East Bridge Lofts, LLC; Central 3, LLC; Creekstone Eastbridge, LLC; and Creekstone SC I, LLC; Alexandra Road Investors, LLC; Creekstone Management, LLC; 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.

PROOF OF SERVICE

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*Attorneys for Respondents John Zohlen,
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I, Russell G. Hines, of Young Clement Rivers, LLP, do hereby certify that a copy of the **RESPONDENTS' RETURN TO MOTION TO ENFORCE SETTLEMENT AGREEMENT** was sent to counsel for Goldberg, the Scanlons, and McClaine, counsel for the Intervenor, and also to co-counsel for Respondents, via United States mail, postage pre-paid on September 22, 2014 addressed as follows:

Justin Lucey, Esquire
Joshua F. Evans, Esquire
415 Mill Street
Mount Pleasant, SC 29465
Co-counsel for Respondents

I. Keith McCarty, Esquire
McCarty Law Firm
P.O. Box 30055
Charleston, SC 29417

-and-

Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
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-and-

John C. Hayes, IV, Esquire
Mary-Margaret Fitzhenry, Esquire
Hayes Law Firm, LLC
180 Meeting Street Suite 330
Charleston, SC 29401

-and-

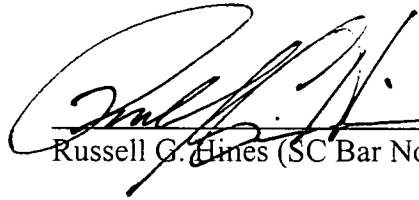
Peter D. Protopapas, Esquire
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, SC 29201

Attorneys for Goldberg, the Scanlons, and McClaine

Fleet Freeman, Esquire
Susan Elizabeth Santilli, Esquire
Law Office of Fleet Freeman, LLC
941 Houston Northcutt Boulevard, Suite 204
Mt. Pleasant, SC 29464
Attorneys for Intervenor

Respectfully submitted,

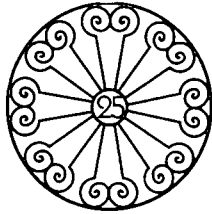
YOUNG CLEMENT RIVERS, LLP



Russell G. Hines (SC Bar No. 72100)

Charleston, South Carolina

Dated: 9/22/14



YCR LAW
Young Clement Rivers, LLP

Russell G. Hines
Associate

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E-mail: rhines@ycrlaw.com

September 22, 2014

VIA U.S. MAIL

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

Re: Hayden Jeffords et al. vs. East Bridge Town Lofts et al.
Circuit Case No.: 2010-CP-10-9672
Appellate Case No.: 2012-213351
YCR File No.: 14096-20090424

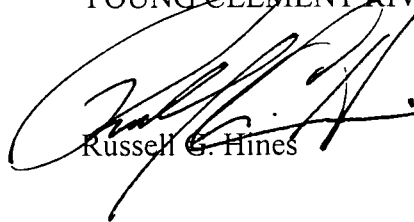
Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find the original and seven (7) copies of **Respondents' Return to Motion to Enforce Settlement Agreement** along with the original and two (2) copies of the **Proof of Service** for the same. Kindly return a stamped copy of the return and proof of service to our office in the envelope provided. Of course, please let me know if you have any questions or concerns.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

RGH/

cc: (all below via U.S. Mail)

Justin O'Toole Lucey, Esquire, Justin O'Toole Lucey, P.A.
Joshua F. Evans, Esquire, Justin O'Toole Lucey, P.A.
I. Keith McCarty, Esquire, McCarty Law Firm, LLC
Michael S. Seekings, Esquire, Leath Bouch & Seekings, LLP
John C. Hayes, IV, Esquire, Hayes Law Firm, LLC
Mary-Margaret S. Fitzhenry, Esquire, Hayes Law Firm, LLC
Peter D. Protopapas, Rikard & Protopapas, LLC
Fleet Freeman, Esquire, Law Offices of Fleet Freeman, LLC
Susan Elizabeth Santilli, Esquire, Law Offices of Fleet Freeman, LLC

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