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THE SOUTH CAROLINA COURT OF APPEALS

OCT 09 2014

Appellate Case No. 2012-213351

SC Court of Appeals

The Honorable Roger M. Young, Sr.
Charleston County

Trial Court Case No. 2010-CP-10-09672

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 William Scanlon, Delia Scanlon, Steven Goldberg, Brent McClaine, and Lynn Harris are the Secondary Appellants, and

Of whom Jonn 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.; and 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 Appellants.

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.

REPLY TO APPELLANTS STEPHEN GOLDBERG, WILLIAM SCANLON, DELIA SCANLON, AND BRENT McClaine'S RESPONSE TO NON-PARTY EAST BRIDGE LOFTS PROPERTY OWNERS ASSOCIATION, INC.'S MOTION TO INTERVENE

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

ARGUMENT

Secondary Appellants Goldberg, Scanlons and McClaine contend that the Motion to Intervene filed by East Bridge Lofts Property Owners Association, Inc. (the POA) should be denied. First, they argue that a non-party to an appeal cannot intervene in a matter before the Court of Appeals; and secondly, that the POA has no interest in this matter. On their face, these assertions are incorrect for the reasons set forth below:

I. Assertion: A non-party may not move to intervene in the court of appeals and if they could, the POA is not the proper party.

Secondary Appellants' counsel argue that there is no rule providing for intervention before this court. Secondary Appellants ignore the plenary power of the Court of Appeals. The Court of Appeals is a constitutional court. "Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible". Ex parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct.App. 1983) (citing State ex rel. Gentry v. Becker, 351 Mo. 769, 174 S.W.2d 181 (1943)). Here, the Court of Appeals has the inherent power to permit the intervention of the POA, both as a party and as the only party that can represent its interest.

Secondary Appellants state that the POA did not intervene in the trial court, citing Ex Parte Condon, 354 S.C. 634, 583 S.E.2d 430 (2003). Condon stands for the proposition that a non-party who failed to intervene in the trial court pursuant to Rule 24 SCRPC could not appeal the trial court's award of attorney fees and expenses. In that case, the Attorney General participated in the hearing to award fees and objected, but unfortunately did not move to intervene; then he appealed the court's Order. The Supreme Court held that the

Attorney General was not a party; that a non-party cannot file and appeal; and the Attorney General was not exempt from acting in accordance with the Rules of Procedure. Condon provides no comfort to Secondary Appellants' lawyers. In Condon, the Attorney General had ample time to intervene and simply failed to do so. By contrast, the four named Respondents in this appeal, in a representative capacity for the POA, filed an Amended Motion to Strike and Amend (Secondary Appellants' Designation of Matter, p. 3: "May 14, 2012 Zohlen Plaintiffs Amended Motion to Strike and Amend"). The East Bridge Lofts Property Owners Association, Inc. (POA) the plaintiff from the beginning in Case No. 2010-CP-10-10204 and was recognized by Secondary Appellants by their designating the complaint in that case when they filed their Designation of Matter (Secondary Appellants' Designation of Matter, p. 3: "December 13, 2010 Complaint"). Secondary Appellants' motion to certify the class (Secondary Appellants' Designation of Matter, p. 3: "May 23, 2012 Jeffords Plaintiffs' Motion to Certify Class") was heard in Case No. 2010-CP-10-9672, and was found to be moot by Judge Young. Judge Young also granted the motion to dismiss Case No. 2010-9672 in his Order of October 10, 2012, finding that the POA was the sole party with the exclusive rights to prosecute an action to recover for damages relating to the properties in East Bridge. (Secondary Appellants' Designation of Matter, p. 3: "October 10, 2012 Circuit Court Order). It was from that Order that Secondary Appellants filed their appeal. The POA moved on to successfully prosecuted its case, 2010-CP-10-10204 that produced the attorney fees being disputed herein.

When Secondary Appellants filed their appeal they named only the four movants, John Zolen, Mary Zolen, Leslie Anne O'Neal and Trivette C. Hatcher as Respondents.

These four named Respondents are members of the POA and their interests became part of the POA's judgment. Secondary Appellants' Motion to Enforce the Settlement Agreement was filed in the Court of Appeals on August 21, 2014, long after the judgment in which any individual claims were merged into the POA judgment. (Attached is Form 4 Judgment as Exhibit A).

In reality, the Zolens, O'Neal and Hatcher never had a direct interest in the money being sought by appellants' counsel. The POA's Motion to Intervene could be characterized as a motion to substitute the real party in interest for the four named respondents.

II. Assertion: The POA has no interest in this matter.

It was obvious to Secondary Appellants that the POA was an interested party. Secondary Appellants based their claim in the Settlement Agreement on the net monetary fees to be recovered in the POA case. (Settlement Agreement attached as Exhibit A to Secondary Appellants' Motion and Memorandum to Enforce Settlement Agreement filed with the Court of Appeals on August 21, 2014). The Settlement Agreement was signed so that Case No. 10204 could be scheduled for trial. In paragraph 1 of the Settlement Agreement, counsel for the Secondary Appellants bargained for 8.5-10% of net monetary fees recovered in the POA case (the amount of which could not have been known at that time) based on the past work and work product it agreed to turn over to the POA. In that same paragraph, counsel for Secondary Appellants represented and warranted that their prior work in the Jeffords case (2010-10-9672) meets or exceeds the value of the percentages of 8.5-10% of the fees collected by counsel for the POA.

After leveraging the Settlement Agreement, Secondary Appellants then withdrew

their appeal and stepped aside. Their counsel turned over no work product to the POA, and POA counsel tried Case No. 2010-10204 to verdict and obtained a verdict of \$55,000,000.00 in the name of the POA.

Counsel for Secondary Appellants are now seeking 10% of all fees collected and to be collected from this judgment, which fees could be upwards of \$2,200,000.00 if all of the judgment is collected. The POA contends that the Secondary Appellants' lawyers did nothing to further the prosecution of Case No. 10204, and if anything, they inhibited the POA from prosecuting its case to verdict. The POA contends that the Secondary Appellants' lawyers have little or no claims to fees since they breached the Settlement Agreement.

This matter is akin to the settlement or collection of a verdict in a case where there is a contingent fee basis. Once the lawyers representing the client have deducted their fees and expenses from the verdict collected (or settlement), the remaining money would belong to the client, subject only to any third party claims such as in the case of a Medicare lien in a personal injury claim. In this case, attorney fees and expenses not paid to POA counsel, Justin Lucey and Edward Buckley, belong to the POA, subject only to any valid claim of Secondary Appellants' attorneys based on their representation and warranty of having earned such fees for work done in connection with the Jeffords case. Lucey and Buckley have disclaimed any interest in the fees now sought by Secondary Appellants' lawyers, leaving for the POA any excess funds over and above the amount that Secondary Appellants' lawyers can justify under the Settlement Agreement. Lawyers are required to hold the money in trust until those claims are resolved. Once resolved, any balance remaining belongs to the client. This is precisely what should occur in this case.

When the POA asked counsel for Secondary Appellants to provide evidence to support any claim they might have under the Settlement Agreement, they refused. Accordingly, the POA has filed a declaratory judgment action in the Circuit Court so the court can hear evidence of what lawyers for Secondary Appellants can support. The named respondents, Zohlens, O'Neal and Hatcher have filed a Return to the POA's Motion to Intervene, expressly consent(ing) to the motion to intervene and adopt(ing) its position in opposition to the Goldberg's motion to enforce the Settlement Agreement. (Return of Respondent filed September 24, 2014).

The trial court did not have any case pending when Goldberg filed the Motion to Enforce the Settlement Agreement in the Court of Appeals. In reality, at the time Goldberg's Motion was filed, there was no case pending before this court as pertains to Secondary Appellants. The POA has demonstrated in its Return that Goldberg did not have standing to file the enforcement motion, so Secondary Appellants have attempted to substitute the Scanlons and McClaine in his stead. That attempt is likewise ineffectual since the Scanlons and McClaine also assigned their interest in the Jeffords case to the POA. Appellants have not demonstrated how Scanlons and McClaine have any interest in the funds in issue. These Secondary Appellants have already assigned all of their rights and received all the indirect benefit from the judgment awarded to the POA. Their claims are totally subsumed within that judgment. They have an irreconcilable conflict in attempting to enforce a settlement which would reduce the amount of money available to rehabilitate their properties and those of the other POA members.

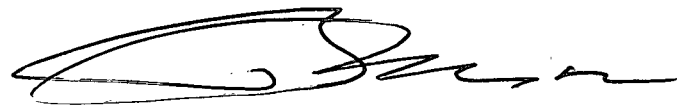
Secondary Appellants contend that the POA did not seek to intervene under Rule

24(a), SCRCF. That is true but inapposite to their procedural argument. Here, the application to intervene was filed at the first possible moment after the Secondary Appellant's motion to enforce the settlement, thus it was timely. The interest of the POA is self evident. There is no party who can protect the interest of the POA except the POA, and its interest is not adequately represented by any other party. All of the requirements of Rule 24(a), SCRCF have been fulfilled. "Rule 24(a) requires practical impairment of the ability to protect an interest and not the practical impairment of the ability to assert an interest." TPI Corp. v. Merchandise Mart of S.C., 61 F.R.D. 684 (D.S.C. 1974).

CONCLUSION

The POA's motion to intervene should be granted and the caption should be changed to reflect its interest as the sole respondent. The court of appeals has the inherent power to entertain the motion to intervene. The POA is the only party who can protect its interest in the funds in dispute.

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



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Date: October 6, 2014

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-10204

East Bridge Lofts Property Owners Association, Inc.

East Bridge Lofts, LLC, Creekstone Management, LLC
 d/b/a Creekstone Management, Creekstone SC I, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Edward D. Buckley, Jr.	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- 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
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
East Bridge Lofts Property Owners Association, Inc.	Creekstone Management, LLC (n/k/a Creekstone Management, LP pursuant to Exhibit 356, a copy attached) d/b/a Creekstone Management	\$22,000,000 Actual Damages \$33,000,000 Punitive Damages
East Bridge Lofts Property Owners Association, Inc.	Creekstone SC I, LLC	\$22,000,000 Actual Damages \$33,000,000 Punitive Damages
East Bridge Lofts Property Owners Association, Inc.	East Bridge Lofts, LLC	\$22,000,000 Actual Damages \$33,000,000 Punitive Damages

If applicable, describe the property, including tax map information and address, referenced in the order:

EXHIBIT

A

FILED
 2014 JUN 10 PM 1:18
 JULE J. ARMSITRONG
 CLERK OF COURT

LAW OFFICES OF FLEET FREEMAN, LLC

FLEET FREEMAN
ffreeman@fflawfirm.com

BETH SANTILLI
beth@fflawfirm.com

October 6, 2014

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

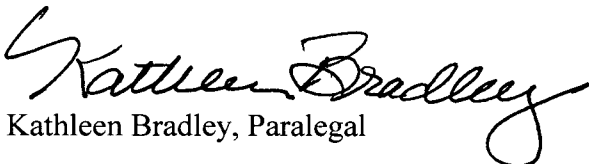
Re: Jeffords, et al. v. East Bridge Town Lofts, LLC, et al.
Appellate Case No. 2012-213351

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of a Reply to Appellants Stephen Goldberg, William Scanlon, Delia Scanlon, and Brent McClaine's Response to Non-Party East Bridge Lofts Property Owners Association, Inc.'s Motion to Intervene. Also enclosed is the original and one copy of a Certificate of Service for same. Please file these documents and return one clocked copy of each to this office in the envelope provided.

Thank you for your assistance in this matter.

Sincerely,


Kathleen Bradley, Paralegal

KB/p

Enclosures

cc: Peter D. Protopapas, Esquire
Justin O. Lucey, Esquire
Joshua Fletcher Evans, Esquire
Edward D. Buckley, Jr., Esquire
Russell G. Hines, Esquire

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SC Court of Appeals

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THE SOUTH CAROLINA COURT OF APPEALS

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SC Court of Appeals

Appellate Case No. 2012-213351

The Honorable Roger M. Young, Sr.
Charleston County

Trial Court Case No. 2010-CP-10-09672

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 Jonn 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.; and 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 Appellants.

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v.

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

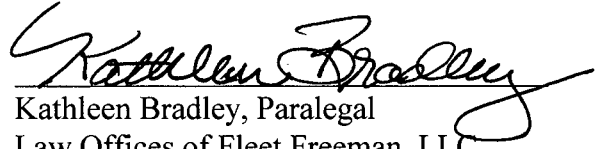
CERTIFICATE OF SERVICE

Kathleen Bradley, of the Law Offices of Fleet Freeman, LLC, certifies that the Reply to Appellants Stephen Goldberg, William Scanlon, Delia Scanlon, and Brent McClaine's Response to Non-Party East Bridge Lofts Property Owners Association, Inc.'s Motion to Intervene was served on the following by delivering same via United States Mail, first class postage prepaid, on October 6, 2014:

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October 6, 2014



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SC Court of Appeals

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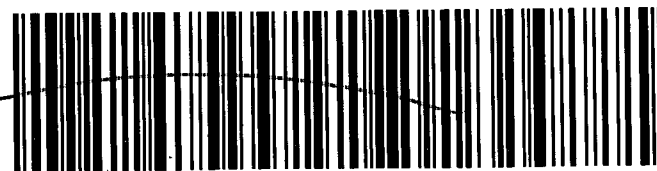
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SHIP TO: The Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211-1629

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