STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge
Trial Court Case No. 2009-CP-22-1045

APPELLATE CASE NO. 2013-001644

John Steven Goodwin, Louise C. Goodwin, Thomas L. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers, Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway, ...Appellants

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., the City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a Source One Signature Communities.....Respondents

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APPELLANTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in applying Rule 40(j), SCRCP, to the facts and procedures of this case?

II. Whether the trial court erred in applying Title 11, U.S.C.A., §108(c) to the facts and procedures of this case?

III. Whether the trial court violated Appellants' Constitutional Rights to Due Process and Equal Protection in applying the procedural requirements of either Rule 40(j), SCRCP, or of Title 11, U.S.C.A., §108(c), or both, without prior notice to Appellants, thereby imposing materially different procedural standards for reinstatement of Appellants' action than that required of fourteen 14 separate but similarly situated cases on the Court's Docket?

IV. Whether Respondents' waived or are otherwise barred, from asserting the statute of limitations as a defense to Appellants' motion to reinstate/restore and consolidate?

STATEMENT OF CASE

This action arises from a failed real estate subdivision in the City of Georgetown, South Carolina, known as "Harbor Club on Winyah Bay." As more fully alleged in Appellants' Complaint (R., Exh. 8), dubious marketing practices and representations were employed by the developers and their realtor, in soliciting purchase contracts for the subdivision lots. A substantial majority of each lot's appraised value was based upon the projected completion of all infrastructure and amenities in the subdivision. The infrastructure and amenities were to have been completed in approximately August of 2008. Absent the infrastructure, the City of Georgetown allowed closings conditioned upon issuance of a subdivision performance bond, which was issued by Hartford Casualty Insurance Company in the principal penal sum of $7,882,359.00. To this day, no infrastructure or amenities have been built or installed.

The Respondents, Bonnie N. Charlton, Ronald L. Charlton, Bayside Property, Inc., and Third Party Defendant James R. Charlton (collectively referred to herein as the "Charltons") conveyed the subdivision land to the putative developer, South Bay Properties, LLC, for the sum of $20,850,000.00. This contract closed on September 17, 2007, the same date South Bay conveyed 29 lots to various purchasers, resulting in total gross lot sale proceeds of $7,926,550.00. The Charltons took back a promissory note and mortgage in the sum of $14,580,662.82. It thus appears that the Charltons received approximately 79% of the gross lot closing proceeds, which they presumably used to satisfy personal debt of approximately $7,000,000.00. This debt had previously been secured by the subdivision tract.

Appellants contend that, prior to this closing date, the Charltons had been notified by South Bay that its development loan had been withdrawn, and that there were therefore no funds available for constructing the infrastructure or amenities. Appellants further contend that, despite this knowledge, the Charltons were allowed to make the decision, and elected to proceed with the closings of the first 29 lots. Between September 29, 2007, and January 4, 2008, South Bay sold 25 more lots in the subdivision to ultimate lot purchasers, generating additional gross lot sales proceeds of $6,811,050.00. Presumably, the Charltons received approximately 79% of these net closing proceeds, as well. In summary, the Appellants contend and have alleged, that the Charltons and Bayside were joint venturers in the subdivision with the developer(s).

Appellants filed their original complaint on July 9, 2009, in Case No. 2009-CP-22-1045. (R. Exh. 8.) Appellants' efforts to conduct discovery in the case below were stayed when South Bay filed a petition for relief under Chapter 11 of the Bankruptcy Code on June 18, 2010. Thereafter, by form Order dated July 22, 2011, the Circuit Court struck Appellants' action, *sua sponte,* giving the following basis: "Case Stricken Due to Bankruptcy." (R., Exh. 1). A nearly identical form Order was filed in fourteen (14) other similar pending cases, in which South Bay was a party defendant, due to its bankruptcy filing. By Order executed on August 12, 2011, the Honorable Stephani W. Humrickhouse, United States Bankruptcy Judge, dismissed the Bankruptcy Petition of South Bay Properties, LLC.

On August 31, 2012, Respondents Bonnie N. Charlton, Ronald L. Charlton, and Bayside Properties, Inc. filed their Summons and Complaint for Foreclosure of their above referenced Mortgage (the "Charlton/Bayside Foreclosure"), in Case No. 2012-

CP-22-00934. Appellants were named as Parties-Defendant to the foreclosure action, because of their Lis Pendens and Complaint filed on July 9, 2009. Appellants Owens and Goodwins initially filed pro se Answers, in the form of general denials, to the Charlton/Bayside foreclosure action on November 5th and 19th, 2012, respectively. Thereafter, Appellants retained the services of their former trial attorneys, and on January 22, 2013, Appellants' filed a Motion for Leave to Amend their Answers, and a Motion to Reinstate/Restore Complaint and Lis Pendens, and to Consolidate Appellants' original action with the Charlton/Bayside foreclosure action for trial. (R., Exh. 12).

Appellants' Motion for Leave to Amend their Answer was scheduled to be heard by the Master in Equity on February 25, 2013. However, the Master in Equity concluded that a conflict of interest precluded him from hearing the Motion to Amend, and an Order Returning Action to Circuit Court was filed on March 22, 2013. Appellants' Motion to Amend, therefore, has yet to be heard and decided.

Appellants' motion to reinstate/restore their complaint in Case No.: 2009-CP-22-1045, and to consolidate that action with the Charlton Foreclosure, was heard by the court on March 7, 2013. This motion was denied by form order filed on March 11, 2013, and a formal order thereafter filed on March 27, 2013. Appellants served a Rule 59, SCRCP, motion to alter or amend this order on or about April 11, 2013. This motion was heard by the court on June 6, 2013. The court denied this motion by form order filed on June 7, 2013, (R., Exh. 5), and formal order was thereafter filed on June 21, 2013. (R., Exh. 6.)

The orders of March 8, March 27, June 7, and June 21, 2013, are the subjects of the present appeal, notice of which was filed and served by Appellants on July 22, 2013. The causes of action asserted by Appellants in their original complaint (2009-CP-27-1045) are virtually identical to the counterclaims, crossclaims and third party complaint which Appellants seek to add to their proposed amended answers. If Appellants' appeal of the orders denying Appellants' motion to reinstate/restore and consolidate is not successful, Appellants' motion to amend will be moot, as the applicable statute of limitations will bar all such claims.

ARGUMENT

1. The trial court erred in applying Rule 40(j), SCRCP, to the facts and procedures of this case.

The circuit court order striking Appellants' case was issued by the Court, *sua sponte,* The only reason or basis given by the Court for striking this case, was: *"Case Stricken Due to Bankruptcy."* (R., Exh.1.) Fourteen (14) other cases on the Georgetown common pleas jury trial roster were stricken by the Court because of South bay's Bankruptcy, with identical form orders, for the identical reason.

The Court's March 27, 2013 order denying Appellants' motions to restore and to consolidate, was premised substantially upon Rule 40(j), SCRCP. The Court found that: *...the Plaintiff's claims was* [sic] *not tolled by Rule 40(j) because the motion to restore the action was filed more than one (1) year after the action was stricken."* The Court also found that *11 U.S.C.A. §108(c) provided the Plaintiffs an extension of time because of South Bay Property's Bankruptcy. But, the extension of time expired thirty (30) days after notice of the termination or expiration of the Bankruptcy state. The*

Bankruptcy was dismissed on August 12, 2011, seventeen (17) months before the motion to restore was filed."

Apodictally, Appellants' original action was not stricken pursuant to either Rule 40(j), or 11 U.S.C.A. §108(c), and was not "dismissed." The case remained on the circuit court's "General Docket" (Rule 40(a), SCRCP), awaiting restoration to the "Active Roster," as discussed more fully hereinbelow. Appellants' action was filed long before the expiration of the applicable three (3) year statute of limitations. Therefore, there was no "period of time" to be "tolled" by Rule 40(j), or to be extended by 11 U.S.C.A. §108(c).

The trial court found and concluded that Appellants' claims were "*barred by the statute of limitations and restoration of this case should be denied. Since restoration of this case is denied, consolidation of this case with Bonnie N. Charlton, et al. v. South Bay Properties, LLC, et al. (Case No.: 2012-CP-22-00934) is moot.*" For the reasons set forth herein, Appellants respectfully submit that the trial court's order is controlled by errors of law, and that consolidation of Appellants' original action (2009-CP-22-1045) with the Charlton foreclosure action (2012-CP-22-00934) is appropriate for the reasons elucidated by Judge Culbertson at this hearing (R., p. 339, line 18 – p. 342, line 1), among others.

Rule 40(j) provides as follows:

> *"A party may strike its complaint, counterclaim, cross-claim, or third party claim from any docket one time as a matter of right,* ***provided that all parties adverse to that claim****, counterclaim, cross-claim or third party claim* ***agree in writing that it may be stricken, and all further agree*** *that if the claim is restored upon motion made within 1 year of the date stricken,* ***the statute of limitations shall be tolled as to all consenting parties*** *during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain*

and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least ten (10) days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule. (Emphasis added.)

The order striking Appellants' case was issued and filed by the court *sua sponte*, not upon motion of any party. There was no written agreement by all parties to Plaintiff's case that it be stricken, and that the statute of limitations would be tolled if the claim was restored upon motion made within one (1) year of the date stricken. There was also no reference to Rule 40(j), in the order striking Appellants' case, as being the controlling or relevant procedure for restoring the action, following conclusion of South Bay's bankruptcy. It is also revealing that Judge Culbertson, in ruling from the bench at the hearing of Appellants' motion to alter or amend his order denying Plaintiffs' motion to reinstate, announced that his order *was not going to rely on 40(j), SCRCP.* (R., Exhibit ____.)[1]

Rule 40(a) and (b), together with the circuit court's order reinstating the other fourteen (14) similar cases *"to active status,"*[2] provide a clear indication of the actual effect of the order striking Appellants' case. Rule 40(a), in pertinent part, provides for the maintenance by the clerk of court of a "General Docket" and a "Jury Trial Roster". Rule 40(b) provides for the transfer of cases from the "General Docket" to the "Jury Trial Roster." Each and every one of the orders restoring the other fourteen (14) cases, all of which had been "stricken due to bankruptcy", based on South Bay's Bankruptcy, are titled "ORDER TO RESTORE CASE TO ACTIVE STATUS," and contain the following

[1] Due to inadvertence and oversight, Appellants failed to request the transcript of the June 6, 2013 hearing of Appellants' motion to alter or amend the order denying Appellants' motion to reinstate. Appellants have now requested this transcript, and will move before this Honorable Court for leave to supplement the Record hereafter by adding this transcript and appropriate references hereafter.
[2] Exhibit "A" to Appellants' motion to alter or amend judgment, filed April 15, 2013; R., Exhibit 13.

ruling: *"For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster."*

It is evident, therefore, that the orders striking Appellants' and the other fourteen (14) cases, resulted in Appellants' case being transferred from the Jury Trial Roster to the General Docket. The orders placing the other similar cases "b*ack on the trial roster,"* had the effect of transferring those cases back to the Jury Trial Roster. But these orders were not issued pursuant to Rule 40(j), and the procedure for restoring these cases to the Jury Trial Roster was not governed by Rule 40(j).

Appellants' action was filed well within the applicable three (3) year statute of limitations. The statute of limitations could not have expired, therefore, while the case remained on the circuit court's General Docket.

In Robinson v. Cleckley and Co., Inc., 751 Fed Supp. 100, 105, (D.S.C 1990), Judge Hawkins addressed a nearly identical issue in reference to former Rule 40(c)(3), the predecessor to Rule 40(j). The issue in Robinson, arose under 28 U.S.C. §1446(b), which addresses removal of a diversity case to Federal Court. Section 1446(b) prohibits removal of a case on the basis of diversity, more than one (1) year after it was commenced (in state court). (Id. at 103.) The action was removed from the active court calendar pursuant to Rule 40(c)(3), on September 30, 1987. It was restored by court order on January 19, 1989. Settlements with the other co-defendants, resulted in creating diversity jurisdiction for the first time on November 9, 1989. The sole remaining Defendant filed a notice of removal on December 6, 1989. Judge Hawkins framed the issued for the court as follows:

> *The issue raised by the Defendant is essentially whether a case that has been stricken from the calendar pursuant to Rule 40(c)(3) is*

recommenced, for purposes of 28 U.S.C. §1446(b), when it is restored to the calendar or whether the time bar of §1446 continues to run while the case remains off of the docket. (Id. at 105.)

The court held that, *"...the procedure for restoration is not the same as the procedure for commencing a new case. The commencement of a case requires the filing and service of a summons and complaint. S.C.R. Civ.P(3)(a). The restoration of a case under Rule 40(c)(3) does not require service; rather, the case may be restored merely by re-filing the case and paying the new filing fee...Further, for purposes of 28 U.S.C. §1446(b),* ***an action which has been removed from the docket pursuant to S.C.R.civ.p.40(c)(3) is pending while it is off the docket."*** (Emphasis added.)

In the present case, Appellants were not required to re-file and serve their summons and complaint. Similar to the other fourteen (14) Plaintiffs in the related actions, Plaintiffs were required only to move to have their case restored to the active roster. As with the Robinson action, Appellants' action was still pending, on the General Docket, although it had been removed from the Jury Trial Roster.

Finally, as our Supreme Court ruled in Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26: *"...Rule 40(j) does not have a deadline during which a motion to restore must be filed."* It only requires that, if the party seeking to restore the case wishes to have the statute of limitations tolled while the case is removed, they must file their motion to restore the case within one (1) year from the date it is stricken. This can only be accomplished, however, by written agreement with all opposing parties. This procedure was not invoked in the present case, because Rule 40(j) was not involved in any way in the order striking Appellants' action. It was not necessary for the statute of

limitations to be tolled in Appellants' action, while it remained active, but dormant, on the court's General Docket.

2. The trial court erred in applying Title 11, U.S.C.A., §108(c) to the facts and procedures of this case.

Title 11 U.S.C.A. §108(c), of the Federal Bankruptcy Code, provides as follows:

§108. Extension of time.

(c) Except as provided in section 524 of this title, if applicable non-bankruptcy law, an order entered in a non-bankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of –

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362,922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

Appellants' motion to alter or amend the March 27, 2013 order, setting forth the same grounds for reversal of that order as are set forth in this Appeal, was denied by the court as recited hereinabove. The formal order denying Appellants' motion to alter or amend, filed on June 21, 2013, more fully addressed the *"...impact of South Bay Properties, LLC's bankruptcy on the statute of limitations..."* and is also controlled by the same error of law. The Court found that *"South Bay Properties, LLC's bankruptcy* ***did not toll of*** **[sic]** ***the statute of limitations but merely insured the Plaintiffs had at least thirty (30) days after notice of termination of the bankruptcy to commence or continue any claims against South Bay Properties, LLC that had not expired***

before the start of the bankruptcy." (Exhibit 6.) The statute of limitations applicable to Appellants' complaint was "tolled" by the filing of the complaint before the three (3) year statute of limitations expired. It was not necessary that the statute of limitations be "tolled" any further, by either the filing or dismissal of South Bay Properties, LLC's bankruptcy., nor by compliance with 108(c)(2). It was only necessary that Appellants' action be restored to the Jury Trial Docket, (Rule 40(a), SCRCP) once the bankruptcy stay had been lifted or cancelled.

Following the hearing of Appellants' motion to reinstate/restore and consolidate, Judge Culbertson issued instructions to Respondents' attorney for preparation of the formal order, which relied entirely upon 11 U.S.C.A., §108(c) (R., Exhibit 6). Respondents had asserted the applicability of Rule 40(j) at oral argument, and this law was included in the March 27, 2013 formal order nonetheless. At the hearing of Appellants' motion to alter or amend this order, Judge Culbertson ruled from the bench that his ruling did not include Rule 40(j). (Supp. R., p. ____.)[3] This issue remains in the court's orders on appeal, therefore, and is addressed in order to avoid application of the two issue rule. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). (*"Under the two issue rule, where a decision is based on more than one ground, the Appellate Court will affirm unless the Appellant appeals all grounds because the unappealed ground will become the law of the case."*)

In some jurisdictions state law may dictate suspension of a statute of limitations when a bankruptcy or another court proceeding has stayed the initiation of an action. Such suspensions would presumably be included within the terms of §108(c), adding the entire duration of the automatic stay to the applicable time period....However,

[3] Motion to Supplement Record pending.

absent such a provision in applicable non-bankruptcy law, a statute of limitations or other deadline for an action against a debtor ***which would have expired while an automatic stay was applicable*** *is extended by only the second period set forth in §108(c), thirty (30) days after notice of the termination or expiration of the automatic stay barring the action.* 2 Collier on Bankruptcy at 108.04 [1] – 108.04 [2] (16th ed. 2010) (Emphasis added)

In the present case, Appellants' statute of limitations would not have "expired" during South Bay's Bankruptcy because suit had been filed before South Bay filed Bankruptcy. Appellants' action, although stayed by the Bankruptcy, would have continued automatically after the bankruptcy stay was terminated, but for the circuit court orders striking the case from the active (Jury Trial) roster. The order striking the case did not "fix a period for… continuing" Appellants action (108(c)).

In F/S Manufacturing v. Kensmoe, 798 N.W.2d 853 (N.D. 2011), the North Dakota Supreme Court analyzed the effect of 108(c), and the 30 day extension of time it provides when an ongoing case has been stayed by a bankruptcy proceeding.

> *However, absent such a provision in applicable non-bankruptcy law, a statute of limitations or other deadline for an action against a debtor* ***which would have expired while an automatic stay was applicable*** *is extended by only the second period set forth in §108(c), thirty (30) days after notice of determination or expiration of the automatic stay barring the action.* (citing: 2 Collier on Bankruptcy, Id.) (Emphasis added.)
>
> *Technically speaking, the Bankruptcy Code does not provide that a statute of limitations is tolled during the period of bankruptcy.* (citations omitted.) *Further, §108(c)(1) does not independently toll or suspend statutes of limitations which have not expired as of a Bankruptcy Petition date.* (citation omitted.) *The reference in 108(c) to "suspension" of time limits, clearly does not operate in itself to stop the running of a statute of limitations; rather, this language merely incorporates suspensions of deadlines that are expressly provided in other federal or state statutes.* (citations omitted.)

As argued hereinabove, the statute of limitations applicable to Appellants' case was tolled, or effectively complied with, by the filing of Appellants' action within the applicable time period. While the *prosecution of Appellants' action was stayed by the automatic Bankruptcy stay,* Appellants were not in jeopardy of their statute of limitations expiring, because their action was still active, but dormant, on the circuit court's General Docket.

The effect of the circuit court's form order striking Appellants' action due to South Bay's Bankruptcy, was merely to place it on inactive status on the General Docket, to be reinstated or terminated. Appellants, like the other fourteen (14) Plaintiffs in the related cases, were not required to move to restore their case to the Jury Trial Roster within thirty (30) days after receipt of notice of termination of the Bankruptcy stay. The thirty (30) day extension would have only become operative if Appellants had been stayed from *commencing* their action because of South Bay's Bankruptcy, and Appellants' three (3) year statute of limitations had expired while South Bay's Bankruptcy was ongoing. Those are not the facts of this case. Appellants' action was commenced approximately two (2) years before South Bay's Bankruptcy Petition was filed. This was the result in Grotting v. Hudson Shipbuilders, Inc. 85 B.R. 568 (Wd. Dist. WA, U.S.D.C. 1988). In Grotting, the commencement of Plaintiffs' personal injury claim against the Defendant was stayed by Defendant's prior bankruptcy filing. The automatic bankruptcy stay did not toll the applicable three (3) year statute of limitations, and Plaintiff failed to file its action within the thirty (30) day extension provided by 108(c)(2), after receiving notice of the termination of the automatic stay. The Defendant was granted partial summary judgment on this basis.

III. The trial court violated Appellants' Constitutional Rights to Due Process in applying the procedural requirements of either Rule 40(j), SCRCP, or of Title 11, U.S.C.A., §108(c), or both, without prior notice to Appellants, and thereby imposing a materially different procedural standard for reinstatement of Appellants' action, than that required of fourteen (14) separate but similarly situated cases on the Court's Docket.

As previously argued, the trial court reinstated fourteen (14) separate, similarly situated cases, on motions filed, and placed them "*...back on the trial roster.*" In the present case, in response to Appellants' motion to have their case reinstated/restored, the trial court adopted a completely different standard, and applied the requirements of either Rule 40(j), SCRCP, or Title 11, U.S.C.A. §108(c), or both, and found that Appellants' had failed to timely comply with these requirements, and therefore their applicable statute of limitations had expired.

In Moore v. Moore, 376 S.C. 467, 473, 657 S.E.2d 743, 747 (2007), our Supreme Court reviewed the requirements of procedural due process:

> *Procedural "[d]ue process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses."* Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 652 S.E.2d 565, 567 (2007).
>
> *...[D]ue process is flexible and calls for such procedural protections as the particular situation demands."* S.C. Dep't. of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600, 33 L.ed.2d, 484, 494 (1972). *The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur.* S.C. Dep't. of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).
>
> The order striking Appellants' case violated Appellants' procedural due process

rights by failing to provide any notice that the order was or would be subject to the procedural requirements of either Rule 40(j), or §108(c). As a result of this lack of notice, Appellants were also denied an adequate opportunity for a hearing before the court concluded that their applicable statute of limitations had expired, due to their failure to comply with the procedural requirements of these undisclosed standards. Appellants' entitlement to pursue this action constitutes a significant right and interest, for which they are entitled to the protection of procedural due process.

In Town of Iva v. Holley, 74 S.C. 537, 649 S.E.2d 108 (Ct. App. 2007), this court discussed the equal protection requirements of the 14th Amendment, and criteria for qualification as a "class of one" noting that:

> *Under the Equal Protection Clause of the Fourteenth Amendment, a state may not "deny to any person within its jurisdiction the equal protection of the laws." This clause requires that "the states apply each law, within its scope, equally to persons similarly situated, and that any differences of application must be justified by the law's purpose."* (citation omitted.). *It does not dictate that people in different circumstances cannot be treated differently under the law.* (citation omitted.) *Rather, "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."* F.S. Royston Guano Co. v. Com. of Virginia, 253 U.S. 412, 415, 40 S. Ct. 560, 64 L.ed. 989, 1920.

In the present case, the Appellants are similarly situated to all fourteen (14) of the other civil actions which were restored to the active roster by the circuit court, without imposing the procedural requirements of either Rule 40(j), SCRCP, of Title 11, U.S.C., §108(c). One of the fourteen (14) cases, in fact, was an action in which the Charlton Defendants in Appellants' action, were the Plaintiffs in a case similar to that alleged by Appellants in their complaint. That case (2008-CP-22-1490) was restored by the court on November 2, 2012, just two (2) months prior to the date Appellants filed their motion

for reinstatement. These other cases are similarly situated to Appellants', in that they were all stricken because of the bankruptcy of South Bay Properties, LLC, with identical or nearly identical form orders indicating simply "*Stricken due to bankruptcy.*"

Appellants qualify as a "class of one" under the criteria elucidated by the United States Supreme Court in Village of Willowbrook v. Olech, 528 U.S. 562, 120 S. Ct. 1073, 145 L.ed.2d 1060 (2000). Appellants are informed and believe the substantially disparate standard applied to their claims, as compared with the other fourteen (14) cases, constitutes evidence that they were intentionally treated differently from the others, with whom they were similarly situated, and that there is no rational basis for the difference in treatment.

4. Respondents Waived the Right to Assert a Statute of Limitations Defense.

Assuming that the Appellants filed their Motion to Restore after the statute of limitations ran (which is expressly denied), the Respondents waived their right to raise the statute of limitations as a defense. As stated above, the Charltons, The Hartford and South Bay either allowed or participated in the restoring of related cases. In fact, the Charltons, South Bay and The Hartford entered into a consent order restoring the case the Charltons had brought against The Hartford and South Bay. It could have been argued that the statute of limitations had run in most, if not all, of the restored cases.

A party can waive the statute of limitations by words or conduct, including failure to claim the defense, "... or by any action or inaction manifestly inconsistent with an intention to insist on the statute." (emphasis in original) Mende v Conway Hospital, 304

S.C. 313, 404 S.E.2d 33, 314 (Ct. App. 1991). As shown above, the Respondents failed to assert the statute of limitations when they could have done so in the related actions. The restoration of the related cases after the statute of limitations may have run clearly manifests actions inconsistent with their intention now to insist on the application of the statute of limitations in this matter.

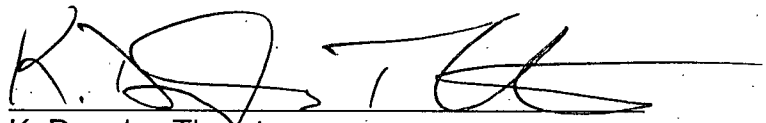
CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the trial court erred in finding that their statute of limitations had expired, due to their failure to comply with the standards required by either Rule 40(j), SCRCP, or Title 11 U.S.C.A., §108(c). Neither law was referred or alluded to in any way by the order striking Appellants' action due to the bankruptcy of South Bay Properties, LLC. Neither Rule 40(j), nor §108(c) apply to or govern the reinstatement of Plaintiff's action under the facts and circumstances recited herein. Respondents waived the right to raise these procedural requirements in opposition to Appellants' motion to reinstate/restore.

To impose such standards upon Appellants, singularly, while failing to impose such standards upon any of the fourteen (14) other Plaintiffs with similarly situated claims, violates Appellants' constitutional rights to procedural due process and equal protection of the law. Appellants request that the order denying their motion to reinstate/restore and consolidate, and the order denying their motion to alter or amend, be reversed, and that the case be remanded to the circuit court with directions to reinstate Appellants' action (2009-CP-22-1045) to the active jury trial docket, to consolidate Appellants' action with the Charltons Foreclosure, and to proceed to litigation of all claims on their merits.

Respectfully submitted:

THORNTON LAW FIRM, LLC



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August 18, 2014

Conway, SC

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge
Trial Court Case No. 2009-CP-22-1045

APPELLATE CASE NO. 2013-001644

John Steven Goodwin, Louise C. Goodwin, Thomas L. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers, Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway, ...Appellants

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., the City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a Source One Signature Communities.....Respondents

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CERTIFICATE OF SERVICE

I, Regina R. Cagle, as an employee of the Thornton Law Firm, LLC, certify that a copy of Appellants' Final Brief, in the above captioned action was served upon all counsel of record on the 19th day of August, 2014, by mailing same to the following addresses:

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August 19, 2014

Conway, SC