

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

ON CERTIORARI FROM THE COURT OF APPEALS

Opinion No. 5061 (S.C. Ct. App. filed December 12, 2012)
401 S.C. 431, 737 S.E.2d 631 (Ct. App. 2012)

William and Mary Frances Walde
as assignees of Johnson Construction
Company of Aiken, Inc.,

Petitioners.

v.

Association Insurance Company,

Respondent.

RECEIVED
NOV 14 2014
S.C. Supreme Court

CONSENT MOTION TO DISMISS

Petitioners William and Mary Frances Walde, with the consent of Respondent Association Insurance Company, hereby provide notice that the parties have reached a settlement pursuant to the attached settlement agreement, and request that the Court enter an order dismissing the above-captioned appeal pursuant to Rule 260(b), SCACR. The parties further agree to waive the provisions of Rules 222 and 242(j), SCACR, such that no costs shall be taxed against either party upon dismissal of this appeal.

This 14th day of November, 2014

WE SO CONSENT AND AGREE:



Benjamin E. Nicholson V
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC 29201
(803) 799-9800

Attorneys for Petitioners

WE SO CONSENT AND AGREE:



R. Michael Ethridge
Michael B. McCall
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307

Attorneys for Respondent

FULL AND FINAL SETTLEMENT AGREEMENT AND RELEASE

This FULL AND FINAL SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is made and entered into as of the 13th day of November, 2014, by and among the following Parties: ASSOCIATION INSURANCE COMPANY (hereinafter "Insurer"); and WILLIAM WALDE and MARY FRANCES WALDE (hereinafter "Waldes"). The Waldes enter into this Agreement individually and as assignees of Johnson Construction Company of Aiken, Inc., Michael Johnson, and Annette Johnson (hereinafter "Johnson").

RECITALS

WHEREAS, the Waldes engaged Johnson to obtain approval for and construct a stable and paddock on their property located in Aiken County, South Carolina (hereinafter the "Project"). The Waldes subsequently pursued claims in arbitration against Johnson arising out of the Project (hereinafter the "Underlying Arbitration"); and

WHEREAS, Insurer issued consecutive Commercial General Liability insurance policies to Johnson for the time period relevant to the claims asserted in the Underlying Arbitration, including policy number GLP 0003940 02 for the policy period July 11, 2007 to July 11, 2008, policy number GLP 0003940 03 for the policy period July 11, 2008 to July 11, 2009, and policy number GLP 0003940.04 for the policy period July 11, 2009 to July 11, 2010 (hereinafter the "Policy"); and

WHEREAS, Insurer denied coverage for the claims asserted against Johnson in the Underlying Arbitration. Johnson thereafter hired its own legal counsel to defend the Underlying Arbitration, and incurred attorney's fees and costs in defending the Arbitration, and costs and expenses in performing remedial work on the Project; and

WHEREAS, the Waldes settled the Underlying Arbitration with Johnson. In exchange for Johnson delivering a promissory note to the Waldes secured by a confession of judgment,

mortgage and security agreement, Johnson assigned to the Waldes all rights, interests, and claims that Johnson may have against Insurer related to the Policy and coverage thereunder (hereinafter the “Underlying Settlement”); and

WHEREAS, the Waldes, as assignees of Johnson, filed a lawsuit against Insurer in the Court of Common Pleas for Aiken County, South Carolina, Case No. 2009-CP-02-02420 (the “Lawsuit”), claiming damages as a result of Insurer’s refusal to defend or indemnify Johnson under the Policy. The Lawsuit is currently pending on appeal before the Supreme Court of South Carolina; and

WHEREAS, the Parties herein seek to fully and finally resolve all claims that the Waldes have asserted against Insurer in the Lawsuit and any additional claims that the Waldes, individually or as assignees of Johnson, have or may have against Insurer or Johnson arising from or related to the Project, the Underlying Arbitration, the Underlying Settlement, and the Lawsuit; and

WHEREAS, the Parties herein seek to effectuate said resolution by way of the Waldes’ full and final release of Insurer, the discharge, release and satisfaction of any obligations owed to them by Johnson arising from the promissory note, confession of judgment, mortgage and security agreement executed as part of the Underlying Settlement, and the dismissal of the Lawsuit and appeal with prejudice, with each Party to bear its own costs and expenses.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the adequacy and sufficiency of which are hereby acknowledged, the Waldes agree as follows:

1. Recitals.

The Recitals set forth above are incorporated herein by reference and are made a part of this Agreement.

2. Release by the Waldes.

In consideration of the sum of Sixty Five Thousand and No/100 (\$65,000.00) Dollars payable to the Waldes in care of their attorneys McNair Law Firm, P.A., the receipt of which is hereby acknowledged, the Waldes, individually and as assignees of Johnson, on behalf of themselves and all persons and entities who might claim through them, and with full authority to execute this Agreement, do hereby fully release, acquit, and forever discharge Insurer, together with its officers, shareholders, members, agents, attorneys, employees, heirs, representatives, associates, members of governing boards, successors, assigns, affiliate companies, predecessors, executors, subsidiaries, and all other persons, firms, and corporations charged or chargeable with responsibility or liability, from any and all claims, demands, contracts, agreements, promises, accountings, actions, suits, causes of action, damages, costs, expenses, and controversies whatsoever, whether individual, class, derivative, legal, equitable, or otherwise, fixed or contingent, joint or several, known or unknown, actual or potential, foreseen or unforeseen, suspected or unsuspected, past, or present, of any nature whatsoever, that may have existed, may now exist, or may hereafter exist (whether through operation of law, assignment or subrogation), arising from any and all agreements, acts, omissions or occurrences up to the date of execution of this Agreement related to or otherwise concerning the Policy, Insurer's obligations under the Policy, the Underlying Arbitration, and all claims that have been or could have been asserted in the Lawsuit. This Agreement ends any claims the Waldes, individually or as assignees of Johnson, may ever have against Insurer regarding these matters.

3. Discharge of Obligations.

The Waldes understand and agree that this Agreement discharges any obligations owed to them by Johnson arising from the promissory note, confession of judgment, mortgage and security agreement entered into in the Underlying Settlement, and that upon execution of this

Agreement, the promissory note, confession of judgment, mortgage and security agreement are null and void, and have no legal force or binding effect whatsoever. The Waldes further agree to execute and deliver such documents and undertake such further actions as may reasonably be required to effectuate the full and final discharge of any obligations owed to them by Johnson arising from these instruments.

4. Full and Final Release.

The Waldes understand and agree that this Agreement is intended by the Parties to release and forever conclude all claims for injuries, damages, or losses to the Waldes and their property, whether known, unknown, foreseen, unforeseen, patent or latent, especially including but not limited to all claims which have been presented against Insurer and Johnson, and all claims which could have been presented against Insurer and Johnson. The Waldes further understand and acknowledge the significance and consequences of such specific intention to release all claims and hereby assume full responsibility for any damages or losses that they have incurred or are subject to, or that they may incur or become subject to in the future as a result of, or in connection with the aforementioned actions or inactions of Insurer and Johnson and the controversy giving rise to this Agreement.

5. Covenant Not to Sue.

The Waldes covenant not to sue, institute, cause to be instituted, permit to be instituted on his or her behalf, or assist in instituting or prosecuting any proceeding, or otherwise assert any claim against the respective Parties covered by this Agreement for the matters surrounding the Lawsuit or which could have been brought in the Lawsuit.

6. No Admissions.

The Waldes understand and agree that this Agreement, any consideration given or accepted in connection with it, and the covenants made in it are all made, given, and accepted in

settlement and compromise of disputed claims and to avoid further litigation, and are not an admission of liability by any person or entity and shall not be construed as an admission by any of the Parties hereto of any kind or nature.

7. Involvement of Counsel and Advisors, Voluntary Execution.

The Waldes represent and acknowledge that they have been afforded full opportunity to discuss all aspects of this Agreement with legal counsel, accountants, tax advisors and/or financial advisors of their own choosing, and that they execute this Agreement without reliance upon any statement or representation of any other Party, or any other Party's legal counsel or other representatives. The Waldes further represent and warrant that they has reviewed this Agreement, fully understand all its provisions, and voluntarily and knowingly sign this Agreement.

8. No Other Promises or Inducements, Independent Investigation.

The Waldes represent and warrant that there have been no inducements, representations, promises or agreements in connection with this Agreement except as expressly set forth in writing in this Agreement, and that this Agreement contains the entire agreement between the Parties. The Waldes further declare and represent that they have undertaken such independent investigation as they have deemed appropriate and are entering into this Agreement in reliance upon that investigation and upon their own judgment.

9. Consideration Acknowledged.

The Waldes acknowledge and agree that the covenants contained in this Agreement provide good and sufficient consideration for every promise, duty, release, obligation and right contained in this Agreement.

10. Binding Effect.

The Waldes understand and agree that this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, executors, administrators, trustees, directors, officers, shareholders, members, successors, assigns, parent or subsidiary companies, attorneys, insurers, principals, legal representatives, subrogees, assigns, and any related entity or person.

11. Governing Law.

The Waldes declare and represent that this Agreement was negotiated, made and entered into in the State of South Carolina, and that this Agreement shall be construed and interpreted in accordance with laws of the State of South Carolina for the purposes of enforcing this Agreement and adjudicating and resolving any matters or disputes arising from this Agreement.

12. Further Assurances.

The Waldes agree that, upon the request of Insurer or its counsel, they will promptly execute and deliver such further documents and undertake such further actions as may reasonably be required to carry out or otherwise fulfill the promises and covenants contained in this Agreement.

13. Costs and Expenses.

The Waldes understand and agree that each Party shall bear the fees, costs and expenses it has incurred or is subject to, or that it may incur or become subject to in the future as a result of, or in connection with the controversy giving rise to this Agreement.

14. Integration and Merger.

The Waldes understand and agree that this Agreement embodies, merges and integrates all prior and current agreements and understandings of the Parties regarding the settlement of the claims asserted, or that could have been asserted with respect to controversy giving rise to this

Agreement, and this Agreement may not be clarified, modified, changed or amended, except in writing, signed by each of the Parties hereto or their respective successors in interest.

15. Severability.

The Waldes understand and agree that each provision of this Agreement is intended to be severable and that if any provision in this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling will not affect the validity of the remainder of this Agreement.

16. Execution in Counterparts.

The Waldes understand and agree that this Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same agreement and be enforceable as such.

17. Use of Headings and Captions in Agreement.

The Waldes understand and agree that the headings and captions inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

18. Singular/Plural Interpretation.

The Waldes understand and agree that references to any Party or Parties herein shall be interpreted as singular and/or plural as the context of the reference dictates.

19. Signatory Authority.

The Waldes agree and represent that the Parties are correctly named herein and that each has the full power, authority and legal right to execute this Agreement and have obtained all necessary approvals and consents to execute, deliver and perform all actions required under this Agreement.

20. Dismissal.

The Waldes agree to execute or have executed on their behalf contemporaneous with the execution of this Agreement a Stipulation of Dismissal and any other documents necessary to effectuate a complete dismissal with prejudice of the Lawsuit and appeal, with each Party to bear its own costs and expenses. The Waldes further understand and agree that this Agreement and the dismissal of the Lawsuit and appeal with prejudice concludes any and all claims that the Waldes have brought or could have brought against Insurer in the Lawsuit or otherwise related to or arising from the events described in the Lawsuit and the facts and circumstances of the controversy giving rise to this Agreement.

21. Entire Agreement.

The Waldes covenant and agree that this Agreement contains the entire agreement between the Parties hereto, that all agreements and understandings between the Parties are embodied and expressed herein, and that acceptance of the consideration set forth herein is in full accord and satisfaction of each of the claims and contentions that are disputed or that could have been disputed between them with respect to controversy giving rise to this Agreement.

[SIGNATURE PAGES FOLLOW]

YOU ARE MAKING A FINAL SETTLEMENT
READ BEFORE SIGNING

I, WILLIAM WALDE, HAVE READ THE FOREGOING FULL AND FINAL RELEASE, AND ACCEPT THESE TERMS AND AGREE TO ABIDE BY THEM.

IN WITNESS WHEREOF, I have hereunto set our hands and seal this 13th day
of November, 2014.



William Walde

*Signing as Attorney-In-Fact
for William Walde for
his Agreement only.*

YOU ARE MAKING A FINAL SETTLEMENT
READ BEFORE SIGNING

I, MARY FRANCES WALDE, HAVE READ THE FOREGOING FULL AND FINAL RELEASE, AND ACCEPT THESE TERMS AND AGREE TO ABIDE BY THEM.

IN WITNESS WHEREOF, I have hereunto set our hands and seal this 13th day
of November, 2014.



Mary Frances Walde

*Signing as Attorney-in-Fact
for Mary Frances Walde for
this Agreement Only*

YOU ARE MAKING A FINAL SETTLEMENT
READ BEFORE SIGNING

I, CRAIG R. EDWARDS, ON BEHALF OF ASSOCIATION INSURANCE COMPANY, HAVE READ THE FOREGOING FULL AND FINAL RELEASE, AND ACCEPT THESE TERMS AND AGREE TO ABIDE BY THEM.

IN WITNESS WHEREOF, I have hereunto set our hands and seal this 14th day of November, 2014.

Association Insurance Company

By: Craig R. Edwards
SVP, General Counsel &
Secy

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson

APPELLATE CASE NO.: 2013-000614

RECEIVED

NOV 14 2014

S.C. Supreme Court

William and Mary Frances Walde
as assignees of Johnson Construction Company of Aiken, Inc., Petitioners.

v.

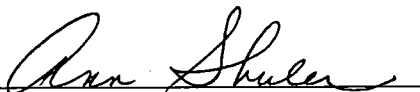
Association Insurance Company.....Respondent.

PROOF OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, hereby certify that I have this day served a copy of the Motion to Dismiss on counsel for Respondent by depositing a copy of same in the United States Mail, sufficient postage pre-paid as follows:

R. Michael Ethridge, Esquire
Jennifer Blanchard McCoy, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401

This 14th day of November, 2014.


Ann Shuler

MCNAIR
ATTORNEYS

November 14, 2014

Benjamin E. Nicholson, V

nnicholson@mcnair.net
T 803.799.9800
F 803.753.3278

Via Courier

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

ATTN: LINDA ALLEN

Re: William and Mary Frances Walde, as assignees of Johnson Construction
Company of Aiken, Inc., Respondents v. Association Insurance
Company, Appellant
Appellate Case No. 2013-000614

RECEIVED
NOV 14 2014
S.C. Supreme Court

Dear Mr. Shearouse:

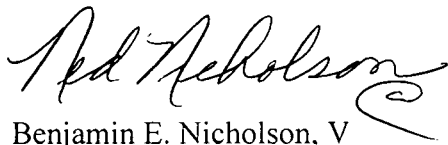
Enclosed for filing, please find the original and seven copies of the Petitioners' Motion to Dismiss, along with our check in the amount of \$25.00. Please file the motion in your office and return the file stamped extra copy to me via our courier.

By copy of this letter, I am serving a copy of the motion on counsel for the Respondent.

Thank you for your attention to this matter.

Very truly yours,

McNAIR LAW FIRM, P.A.


Benjamin E. Nicholson, V

BEN,V:as
Enclosures

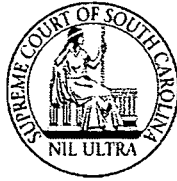
cc: R. Michael Ethridge, Esquire

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Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

COLUMBIA 1187284v1



The Supreme Court of South Carolina

McNair Law Firm

11/14/2014

RECEIPT #74163

Case No: 2013-000614
Case Short Title: William Walde v. Association Ins. Co.
Event:
Fee Type: Motion Fee
Amount: \$25.00
Payment Type: Check
Reference No: 252663
Check/Money Order Date: 11/13/2014
Comments: