

STATE OF SOUTH CAROLINA

) THE COURT OF COMMON PLEAS

LAURANCE H. DAVIS, JR., ET
AL.,

PLAINTIFFS
VS.

BEAUFORT COUNTY
2003-CP-07-726

PARKVIEW APARTMENTS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

LAURANCE H. DAVIS, JR., ET AL.,

PLAINTIFFS
VS.

ORANGEBURG COUNTY
2005-CP-38-1131

ROOSEVELT GARDENS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

RHONDA G. RENTZ, ET AL.,

PLAINTIFFS
VS.

CHARLESTON COUNTY
2005-CP-10-4229

ORLEANS GARDENS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

LAURANCE H. DAVIS, JR., ET
AL.,

PLAINTIFFS
VS.

BEAUFORT COUNTY
2005-CP-07-1989

PALMETTO APARTMENTS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

EXHIBIT

1

CAROLINA MANAGEMENT.
CORPORATION OF BEAUFORT, ET
AL.,

PLAINTIFFS
VS.

PINEWOOD PARK APARTMENTS, A
SOUTH CAROLINA LIMITED
PARTNERSHIP, ET AL.,

DEFENDANTS

BEAUFORT COUNTY
2005-CP-07-1990

JULY 6, 2009
BARNWELL, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

JOEL D. BAILEY, ESQ.
THOMAS A. PENDARVIS, ESQ.
ATTORNEYS FOR THE PLAINTIFF

ELLIS M. JOHNSTON, II, ESQ.
CALVIN T. VICK, JR., ESQ.
ATTORNEYS FOR THE DEFENDANT

LISA H. DAVENPORT
OFFICIAL COURT REPORTER

1 NOW, DECEMBER 9, 1999 ATTORNEY MR. WINEBERG WRITES TO
2 GENERAL PARTNER BARTON TUCK AND HE EXPRESSES HIS
3 DISPLEASURE WITH WHAT IS HAPPENING OR RATHER NOT HAPPENING
4 WITH RESPECT TO COLLECTION ON A NOTE AND HE WRITES IN THE
5 LAST PARAGRAPH TO GENERAL PARTNER, "IF I DON'T HEAR FROM
6 YOU I AM GOING TO SUE SOMEBODY AND IT WOULD PROBABLY
7 INCLUDE YOU IN THE POT." THAT'S THE FIRST THREAT OF
8 LITIGATION AGAINST THE GENERAL PARTNERS. THE SECOND
9 THREAT OF LITIGATION AGAINST THE GENERAL PARTNERS COMES
10 FROM MR. WINEBERG AGAIN TO THE CORPORATE GENERAL PARTNER
11 AIMCO. PAT FOYE IS WITH AIMCO, AND, AGAIN, HE DISCUSSES
12 HOW HE IS OWED A TON OF MONEY AND HE'S NOT SATISFIED AT
13 ALL WITH WHAT THE GENERAL PARTNERS HAVE DONE OR FAILED TO
14 DO AND HE SAYS IN THE LAST TWO PARAGRAPHS ON THE FIRST
15 PAGE OF THIS FEBRUARY 22, 2000 LETTER, "IT IS OUR
16 INTENTION" -- AND HE IS REFERRING TO HIMSELF AND DANIEL
17 TROTTER WHO HE SAYS HE IS ALSO REPRESENTING HERE -- "IT IS
18 OUR INTENTION TO COLLECT OUR SHARE OF THIS NOTE AND WE
19 WOULD LIKE TO HEAR FROM YOU AS TO YOUR POSITION IN THE
20 MATTER BEFORE SUIT IS FILED. I WOULD APPRECIATE ANY
21 INFORMATION THAT YOU CAN GIVE ME IN ORDER THAT LITIGATION
22 WILL NOT BE NECESSARY."

23 NOW, THERE HAS BEEN SUBMITTED TO YOU AN IN-CAMERA
24 MEMO OF THE DEFENDANTS THAT CONTAINS EIGHT DOCUMENTS,
25 EIGHT CONFIDENTIAL PRIVILEGED DOCUMENTS THAT ARE ON OUR

1 PRIVILEGE LOG AND THAT WE BELIEVE THAT IS NECESSARY FOR
2 YOU TO REVIEW. A COUPLE OF THESE DOCUMENTS IDENTIFIED IN
3 THAT IN-CAMERA MEMO -- A COUPLE OF THESE DOCUMENTS ARE
4 BETWEEN -- EXCHANGES BETWEEN AIMCO AND THE BRYAN CAVE
5 ATTORNEYS WHO REPRESENTED AIMCO AND THE LIMITED
6 PARTNERSHIPS AND OR BETWEEN AND AMONG THE ATTORNEYS OF
7 BRYAN CAVE THEMSELVES AND AS TO THE QUESTION OF HOW THE
8 GENERAL PARTNERS PERCEIVE THIS THREAT OF LITIGATION, THOSE
9 DOCUMENTS ANSWER THAT QUESTION BEYOND ANY DOUBT, AND I
10 WOULD BE HAPPY TO APPROACH AND DISCUSS WITH YOU IN CAMERA
11 IF YOU WOULD LIKE THE SPECIFIC DOCUMENTS, BUT IT'S SET OUT
12 THERE IN THAT IN-CAMERA MEMO WITH THE DOCUMENTS ATTACHED.

13 SO, DECEMBER 9, 1999, LIMITED PARTNER FOR THE FIRST
14 TIME THREATENS LITIGATION AGAINST THE GENERAL PARTNERS.
15 THE SECOND THREAT IS FEBRUARY 22, 2000. FROM THAT POINT
16 -- EXCUSE ME -- AND IT'S IMPORTANT TO UNDERSTAND THOSE
17 THREATS OF LITIGATION IN CONTEXT IN THAT IN OCTOBER OF
18 1999 LIMITED PARTNER DAVIS COPYING -- ACCORDING TO HIS
19 LETTER COPYING ALL OF THE LIMITED PARTNERS IN SEVEN
20 LIMITED PARTNERSHIPS HE WRITES TO GENERAL PARTNER BARTON
21 TUCK AND SAYS, YOU KNOW, USES THE WORD THAT -- HE SAYS
22 THAT THE GENERAL PARTNERS -- THAT ALL OF THE LIMITED
23 PARTNERS AGREE THAT THE GENERAL PARTNERS HAVE BEEN, QUOTE,
24 NEGLIGENT AND THE LIMITED PARTNERS HAVE DECIDED THAT THEY
25 WOULD PREFER TO BE PAID ON THESE NOTES, BUT FAILING THAT

1 PREPARATION AND GIRDING OF THE LOINS AS SOON AS THEY GOT
2 MR. WINEBERG'S LETTER THAT WE GOT TO BE READY FOR THE
3 LITIGATION FROM THIS GUY DOWN IN SUMTER, SOUTH CAROLINA,
4 AND I'D BE WILLING TO BET YOU THAT THAT'S PROBABLY NOT THE
5 CASE -- THAT THEY'RE NOT LOOKING AT MR. WINEBERG'S LETTER
6 AS BEING TOO SERIOUS.

7 MR. JOHNSTON: WE --

8 MR. BAILEY: BUT EVEN IF HE --

9 MR. JOHNSTON: LET ME INTERRUPT YOU. WE DID AN
10 IN-CAMERA BRIEF ON THAT.

11 MR. BAILEY: CAN I FINISH?

12 MR. JOHNSTON: I'M SORRY. YOU BORROWED MY GLASSES. I
13 COULDN'T WRITE IT DOWN.

14 MR. BAILEY: AS I TOLD MY WIFE THE OTHER DAY, I
15 APOLOGIZE; I DIDN'T MEAN TO KEEP TALKING WHILE YOU WERE
16 INTERRUPTING ME.

17 THE COURT: Y'ALL BEHAVE.

18 MR. BAILEY: IN ANY EVENT, WITH REGARD TO LOOKING AT
19 MR. WINEBERG'S LETTER, AS THOMAS POINTS OUT HE IS ONE
20 LIMITED PARTNER AND ONE LIMITED PARTNERSHIP AND THAT
21 SHOULD NOT AFFECT THE ENTIRE PROCESS.

22 NOW, ONE OTHER THING THAT I WANT TO POINT OUT IS THAT
23 THERE IS SOME -- SEEMS TO BE SOME ISSUE ABOUT THIS
24 LIS PENDENS AND I THINK THAT'S COME OUT. THE LIS PENDENS
25 WAS FILED, QUITE FRANKLY, IN CONJUNCTION WITH CONSULTATION

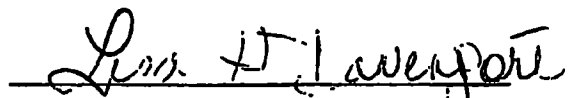
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, LISA H. DAVENPORT, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR AIKEN
COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF JULY, 2009.

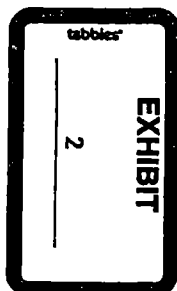
I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 17, 2009


LISA H. DAVENPORT, COURT REPORTER

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Parkview 1951-1952	09/30/2003	Bailey	Adams	Fax Letter	Work Product
Parkview 1991	10/31/2003	Davis	Bailey	Fax Letter	Attorney-Client
Parkview 2015-2016	02/22/2004	Bailey	Rentz	Fax Letter and Memorandum	Attorney-Client
Parkview 2073	04/25/2004	Adams	Bailey	Fax Letter	Work Product
Parkview 2083	undated	Bailey		Internal Memorandum	Work Product
Parkview 2088	05/26/2004	Rentz	Bailey	Fax Letter	Attorney-Client
Parkview 2101	06/08/2004	Bailey		Internal Memorandum	Work Product
Parkview 2114-2115	06/28/2004	Bailey	Clients	Letter	Attorney-Client
Parkview 2143	08/02/2004	Bailey	Clients	Letter	Attorney-Client
Parkview 2165-2168	08/24/2004	Pike	Bailey	Fax Letter	Attorney-Client
Parkview 2177-2182	09/16/2004	Davis	Bailey	Memorandum	Attorney-Client
Bailey 3059	02/16/2000	Bailey	Davis	Letter	Attorney-Client
Bailey 3060	02/17/2000	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 3067-3069	02/21/2000	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 3070-3072	02/24/2000	Davis	Bailey	Memorandum	Attorney-Client



PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 3073	02/25/2000	Rentz	Davis/ Bailey	Fax Letter	Attorney-Client Work Product
Bailey 3077-3078	03/20/2000	Davis	Bailey	Memorandum	Attorney-Client
Bailey 3082	03/23/2000	Davis	Bailey	Letter	Attorney-Client
Bailey 3105	04/20/2000	Bailey	Davis	Letter	Attorney-Client
Bailey 3148	06/05/2000	Bailey	Aughtman	Letter	Work Product
Bailey 3151	06/14/2000	Aughtman	Bailey	Fax Letter	
Bailey 3152	06/05/2000	Bailey	Aughtman	Letter	Work Product (copy of above)
Bailey 3153	06/16/2000	Bailey	Advantage Title	Letter	Work Product
Bailey 3154	06/16/2000	Bailey	Advantage Title	Letter	Work Product
Bailey 3155 - 3156	06/20/2000	Bailey	Davis	Letter	Attorney-Client
Bailey 3180	07/24/2000	Bailey	Advantage Title	Letter	Work Product
Bailey 3209-3212	08/24/2000	Bailey	Advantage Title	Letter	Work Product

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 3215	08/31/2000	Bailey	Advantage Title	Letter	Work Product
Bailey 3216	09/01/2000	Bailey	Adams	Letter	Work Product
Bailey 3217	09/07/2000	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 3316	10/06/2000	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 3317	10/09/2000	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 3320	10/10/2000	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 3321	10/10/2000	Davis	Adams	Letter	Work Product
Bailey 3325	10/10/2000	Davis	Bailey	Fax Letter	Work Product
Bailey 3326-3327	10/12/2000	Davis	Harley Ruff	Letter Requesting Legal Services	Attorney-Client Work Product
Bailey 3328	10/16/2000	Bailey	Clients	Letter	Attorney-Client
Bailey 3333	10/20/2000	Davis	Reynolds	Fax Letter	Attorney-Client
Bailey 3334-3335	undated	Bailey		Handwritten Note	Work Product
Bailey 3512	11/02/2000	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 3526-3528	11/29/2000	Davis	Bailey	Memorandum	Attorney-Client
Bailey 3695	01/17/2001	Bailey	Davis	Letter	Attorney-Client

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 3715-3519	02/09/2001	Bailey	Davis	Letter	Attorney-Client
Bailey 3721-3726	02/16/2001	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 3731-3732	02/17/2001	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 3735	02/14/2001	Bailey	Davis	Letter	Attorney-Client
Bailey 3737	03/18/2001	Davis	Bailey	Handwritten Note	Attorney-Client
Bailey 3738	03/01/2001	Adams	Davis	Fax Letter	Work Product
Bailey 3754-3755	06/05/2001	Bailey	Clients	Letter	Attorney-Client
Bailey 3756-3757	06/05/2001	Robinson	Davis	Letter Responding to Requests for Tax Advice Based on Possible Settlement Legal Action	Work Product
Bailey 3758-3759	06/05/2001	Bailey	Clients	Letter	Attorney-Client
Bailey 3768	06/27/2001	Bailey	Clients	Letter	Attorney-Client
Bailey 3799	04/15/2002	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 4019-4020	09/19/2002	Bailey	Clients	Letter	Attorney-Client
Bailey 4043-4044	12/04/2002	Rowell	Bailey	Letter	Work Product
Bailey 4046-4047	01/06/2003	Bailey	Rowell	Letter and E-mail	Work Product

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4063	03/26/2003	Rowell	Bailey	Letter	Work Product
Bailey 4054	04/11/2003	Bailey	Rowell	Letter	Work Product
Bailey 4055	04/22/2003	Bailey	Clients	Letter	Attorney-Client
Bailey 4107	05/20/2003	Pike	Bailey	Fax Letter	Attorney-Client
Bailey 4125 -4128	08/27/2003	Bailey	C. Bailey	Letter	Work Product
Bailey 4144-4145	09/30/2003	Bailey	Adams	Fax Letter	Work Product
Bailey 4185	10/31/2003	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 4193-4206	10/29/2003	Bailey		Internal Memorandum	Work Product
Bailey 4211-4212	12/29/2003	Bailey		Internal Memorandum	Work Product
Bailey 4218-4219	04/03/2000	Weinberg	Davis	Letter	Attorney-Client; Work Product; Common Interest Privilege
Bailey 4232-4234	12/29/2003	Bailey		Typewritten Note	Work Product
Bailey 4280-4281	12/29/2003	Bailey		Typewritten Note	Work Product
Bailey 4374	12/20/2003	Bailey		Typewritten Note	Work Product
Bailey 4380-4381	12/29/2003	Bailey		Typewritten Note	Work Product

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4467-4468	02/15/1999	Davis	Clients	Memorandum	Common Interest Privilege
Bailey 4471	04/02/2000	Griffin	Davis	Handwritten Note	Common Interest Privilege
Bailey 4473	04/02/2000	Griffin	Davis	Handwritten Note	Common Interest Privilege
Bailey 4540-4543	09/05/2000	Davis	Bailey	Letter	Attorney-Client
Bailey 4547	10/11/2000	Bailey	Clients	Letter	Attorney-Client
Bailey 4548	10/25/2000	Warren Griffin	Davis	Handwritten Note	Common Interest Privilege
Bailey 4560	03/13/2001	Rentz	Bailey	Fax Letter	Attorney-Client
Bailey 4565	03/08/2001	Miles Hodge	Bailey	Fax Letter	Attorney-Client
Bailey 4572-4575	04/24/2001	Bailey	Hodge	Letter	Attorney-Client
Bailey 4576-4577	08/02/2001	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 4580-4582	08/02/2001	Bailey	Davis, Rentz, Hodge	Fax Letter	Attorney-Client
Bailey 4584-4583	08/07/2001	Rentz	Bailey	Fax Letter	Attorney-Client

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4591-4592	06/29/2004	Bailey	Rentz / Hodge	Letter	Attorney-Client
Bailey 4593	08/03/2004	Bailey	Rentz / Hodge	Letter	Attorney-Client
Bailey 4763	03/16/2000	Davis	Mercy	Memorandum	Common Interest Privilege
Bailey 4783	06/14/2000	Bailey	Advantage Title	Fax Letter	Work Product
Bailey 4785-4787	06/14/2000	Advantage Title	Bailey	Hand Written Report	Work Product
Bailey 4804	07/24/2000	Bailey	Advantage Title	Fax Letter	Work Product
Bailey 4808-4809	08/17/2000	Bailey	Advantage Title	Fax Letter	Work Product
Bailey 4810	08/29/2000	Bailey	Mercy	Letter	Attorney-Client
Bailey 4811	09/05/2000	Davis	Mercy	Letter	Common Interest Privilege
Bailey 4027	10/10/2000	Bailey	Adams	Letter	Work Product
Bailey 4831	10/16/2000	Bailey	Clients	Letter	Attorney-Client

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4837	11/02/2000	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 4842	03/30/2001	Bailey	Mercy	Fax Letter	Attorney-Client
Bailey 4843	04/06/2001	Bailey	Mercy	Fax Letter	Attorney-Client
Bailey 4846	06/18/2001	Davis	Mercy	Fax Letter	Common Interest Privilege
Bailey 4847-4851	06/26/2001	Bailey	Davis, Mercy	Fax Letter and Memorandum	Attorney-Client
Bailey 4854	03/15/2002	Rentz	Bailey	Fax Letter	Attorney-Client
Bailey 4859-4868	09/19/2002	Bailey	Haggard	Letter	Attorney-Client; Work Product
Bailey 4874-4875	06/28/2004	Bailey	Clients	Letter	Attorney-Client
Bailey 4876	07/08/2004	Bailey	Haggard	E-mail	Attorney-Client; Work Product
Bailey 4877	07/23/2004	Haggard	Bailey	Letter	Attorney-Client; Work Product
Bailey 4878	08/02/2004	Bailey	Clients	Letter	Attorney-Client
Bailey 4885-4886	undated	Bailey		Internal Memorandum Concerning Property Value	Work Product

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4968	10/30/1998	Wildman	Davis	Letter	Attorney-Client; Work Product; Common Interest Privilege
Bailey 4980	02/09/1999	Davis	Wildman	Letter	Attorney-Client; Work Product; Common Interest Privilege
Bailey 4993	undated	Davis	Bailey	Internal Memorandum	Attorney-Client; Work Product
Bailey 4996	03/16/2000	Davis	James Ivey / Erin Ivey	Internal Memorandum Concerning Lawsuit Investigation	Common Interest Privilege
Bailey 4998	09/05/2000	Davis	Wildman	Letter Concerning Plans for Lawsuit Activities	Common Interest Privilege
Bailey 4999	09/05/2000	Davis	Bailey	Letter	Attorney-Client
Bailey 5002-5004	09/12/2000	Bailey	Wildman	Facsimile with Attachments	Attorney-Client; Work Product
Bailey 5008-5012	09/12/2000	Wildman	Bailey	Facsimile with Attachments	Attorney-Client; Work Product
Bailey 5016	09/14/2000	Wildman	Bailey	Letter	Attorney-Client; Work Product

PLAINTIFFS' PRIVILEGE LOG

(Dated July 28, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 5024	10/10/2000	Bailey	Adams	Letter	Work Product
Bailey 5025	10/16/2000	Bailey	Clients	Letter	Attorney-Client
Bailey 5028	11/02/2000	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 5056	11/14/2000	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 5062	03/16/2001	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5064	03/26/2001	Bailey	Wildman	Fax Letter	Attorney-Client; Work Product
Bailey 5065-5069	02/09/2001	Bailey	Davis	Letter	Attorney-Client
Bailey 5071	11/28/2001	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5073	01/31/2002	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5074	11/28/2001	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5080-5081	03/15/2002	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5088-5089	03/29/2002	Bailey	Davis	Fax Letter	Attorney-Client

Bates No.	Date	From	To	Description	Privilege
Bailey 5092	04/08/2002	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5094-5097	02/25/2003	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5098	04/21/2003	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5102	04/29/2003	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5107-5108	06/29/2004	Bailey	Clients	Letter	Attorney-Client
Bailey 5109-5110	07/07/2004	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5113	08/02/2004	Bailey	Clients	Letter	Attorney-Client
Bailey 5114	09/07/2004	Davis	Bailey	Fax Letter	Attorney-Client

PLAINTIFFS' PRIVILEGE LOG

(Dated July 28, 2008)

INDEX

	IDENTIFICATION
Adams	Gregory B. Adams, Expert
Aughtman	Cathy Aughtman, Title Abstractor
Bailey	Joel D. Bailey, J.D., counsel for Plaintiffs
C. Bailey	Chandler Bailey, J.D., consulting counsel
Davis	Laurence H. Davis, Jr., Plaintiff
Griffin	Warren S. Griffin, limited partner in Lincoln, and client of Joel D. Bailey, J.D.
Haggard	Robert Haggard, J.D., counsel for Mercer
Hodge	W. Miles Hodge, Client's predecessor
Ivey, Erin	Erin Ivey, Plaintiff
Ivey, James	James Ivey, Plaintiff Earnie Ivey, Plaintiff
Mercy	Arthur D. Mercy, Plaintiff Jane Mercy, Plaintiff
Pike	Mary Jane R. Pike, Plaintiff James Pike, Plaintiff
Rentz	Rhonda G. Rentz, Plaintiff Timothy Rentz, Plaintiff
Reynolds	Eva Marie Reynolds, Plaintiff

PLAINTIFFS' PRIVILEGE LOG

(Dated July 28, 2008)

INDEX

	IDENTIFICATION
Robinson	William C. Robinson, CPA, expert tax advisor
Rowell	A. Hoyt Rowell, III, J.D., consulting attorney
Weinberg	Mortimer M. Weinberg, Jr., J.D., Plaintiff
Wildman	Donald B. Wildman, J.D., counsel for Ivey



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

THE ELLIOTT HOUSE • THIRD FLOOR • 1001 BAY STREET
POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29901-1437

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 843-525-6090
FAX: 843-525-6070

July 21, 2005

Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048
Greenville, South Carolina 29602-2048

Re: Parkview Apartments Limited Partners vs. AIMCO, *et al.*

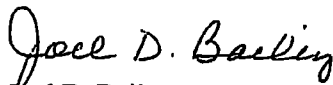
Dear Ellis:

Enclosed please find Plaintiffs' Privilege Log which has been prepared in the above-captioned matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.


Joel D. Bailey

Dictated, not read and
Signed in my absence

JDB/vw

Enclosures

cc: John P. Linton, Esquire (w/out enclosures)

Haynsworth Sinkler Boyd, P.A.
Date Rec'd 7/27/05
C/M # 11471-0010
Docketed _____
FBI _____

EXHIBIT

3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

C/A # 03-CP-07-726

Laurance H. Davis, Jr.; Mary
Jane R. Pike; Eva Marie Reynolds;
and Rhoda G. Rentz, individually
and in their capacities as the
Limited Partners of Parkview
Apartments, a South Carolina
Limited Partnership;

Plaintiffs,

vs.

Parkview Apartments, a South
Carolina Limited Partnership;
Apartment Investment and
Management Company a/k/a
AIMCO; Insignia Financial Group,
Inc.; AmReal Corporation a/k/a
and f/k/a USS Corporation a/k/a
and f/k/a U.S. Shelter Corporation;
ISTC Corporation; N. Barton
Tuck, Jr.; and John Doe, a generic
designation for a party or parties
whose true identity is unknown;

Defendants.

PLAINTIFFS' PRIVILEGE LOG

The following documents are being withheld as subject to the attorney-client privilege or
work product doctrine:

DOCUMENT TYPE	DESCRIPTION		PRIVILEGE
Letter	Letter dated 2-16-00 from Joel D. Bailey to Laurance H. Davis, Jr., regarding representation/fees	1 Page	Attorney/Client Privilege

Fax Cover Sheet	Fax cover sheet dated 2-17-00 from Laurance Davis to Joel D. Bailey regarding Partnership percentage and K-1	2 Pages	Work Product
Fax Cover Sheet	Fax cover sheet dated 2-21-00 from Laurance Davis to Bailey Law Firm regarding retention of counsel- (includes 3 pages - 2 page letter to Fellow Limited Partners from Laurance Davis dated 2-22-00)	3 Pages	Attorney/Client and Work Product
Memorandum	Memorandum dated 2-24-00 from Laurance Davis to Joel D. Bailey w/ 2 page letter sent to all limited partners - letter is addressed to Eva Marie Reynolds regarding retention of counsel -	3 Pages	Attorney/Client and Work Product
Letter	Letter dated 2-25-00 from Eva Marie Reynolds to Laurance H. Davis regarding legal fee retainer	1 Page	Work Product
Memorandum	Memorandum dated March 20, 2000 from Laurance Davis to Joel D. Bailey regarding retention of counsel	2 Pages	Attorney/Client and Work Product
Letter	Letter dated March 23, 2000 from Laurance Davis to Joel D. Bailey regarding retainer	1 Page	Attorney/Client
Letter	Letter dated April 20, 2000 from Joel D. Bailey to Laurance Davis regarding HUD contact and fee agreement	1 Page	Attorney/Client and Work Product
Letter	Letter dated June 5, 2000 from Joel D. Bailey to Cathy Aughtman regarding records search	1 Page	Attorney Work Product
Fax Cover Sheet	Fax cover sheet from Cathy Aughtman to Joel D. Bailey w/ copy of Bailey letter of June 5, 2000 regarding records search	2 Pages	Attorney Work Product

Letter	Letter dated June 16, 2000 from Joel D. Bailey to Advantage Title Abstracting regarding record search	1 Page	Attorney Work Product
Letter	Letter dated June 16, 2000 from Joel D. Bailey to Advantage Title Abstracting (same letter w/ new fax number) regarding records search	1 Page	Attorney Work Product
Letter	Letter dated June 20, 2000 from Joel D. Bailey to Laurance Davis regarding case status	2 Pages	Attorney/Client Privilege and Work Product
Letter	Letter dated July 24, 2000 from Joel D. Bailey to Advantage Title Abstracting Company regarding records search	1 Page	Attorney Work Product
Letter	Letter dated August 30, 2000 from Joel D. Bailey to Advantage Title Abstracting Company regarding records search	1 Page	Attorney Work Product
Fax Cover Sheet	Fax cover sheet dated September 7, 2000 from Laurance Davis to Joel Bailey regarding communications with co-plaintiff (1 page) - attorney/client privilege and work product	1 Page	Attorney/Client Privilege and Work Product
Fax Cover Sheet	Fax cover sheet dated October 6, 2000 from Joel Bailey to Laurance Davis regarding communications with George Buchanan	1 Page	Attorney/Client Privilege and Work Product
Fax	Fax transmission dated October 9, 2000 from Laurance Davis to Bailey Law Firm regarding October 24, 2000 meeting	1 Page	Attorney/Client and Work Product
Fax	Fax transmission dated October 10, 2000 from Laurance Davis to Bailey Law Firm regarding other partnerships	1 Page	Attorney/Client and Work Product

Fax Cover Sheet	Fax cover sheet dated October 16, 2000 from Laurance Davis to Bailey Law Firm with letter of October 12, 2000 to Harley D. Ruff, Esquire regarding formation of LLC	3 Pages	Attorney/Client and Work Product
Letter	Letter dated October 16, 2000 from Joel Bailey to Parkview Limited Partners regarding meeting of October 24, 2000	1 Page	Attorney/Client and Work Product
Fax Cover Sheet	Fax cover sheet dated October 20, 2000 from Joel Bailey to Eva Marie Reynolds regarding upcoming meeting	1 Page	Attorney/Client and Work Product
Note	Handwritten note of October 23 rd of Joel Bailey regarding document inspection	1 Page	Work Product
Fax Cover Sheet	Fax cover sheet dated November 2, 2000 from Joel Bailey to Laurance Davis regarding status of case and meeting	1 Page	Attorney/Client Privilege and Work Product
Memorandum	Memorandum dated November 29, 2000 from Laurance Davis to Joel Bailey regarding status of case and apartment acquisition	3 Pages	Attorney/Client Privilege and Work Product
Letter	Letter dated January 17, 2001 from Joel D. Bailey to Laurance Davis regarding Greg Adams	1 Page	Attorney/Client and Work Product
Letter	Letter dated February 9, 2001 from Joel D. Bailey to Laurance Davis regarding status report	5 Pages	Attorney/Client and Work Product
Letter	Letter dated February 16, 2001 from Joel D. Bailey to Laurance Davis regarding status report with fax cover sheet	6 Pages	Attorney Client and Work Product
Fax	Fax transmission dated February 17, 2001 from Laurance Davis to Joel Bailey regarding fee agreements and correction of date in letter dated February 9, 2001	2 Pages	Attorney/Client and Work Product

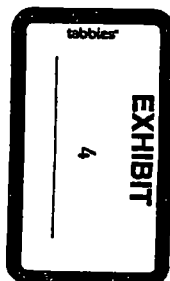
Letter	Letter dated February 14, 2001 from Joel Bailey to Laurance Davis regarding Greg Adams	1 Page	Attorney/Client and Work Product
Memorandum	Memorandum dated March 18, 2001 from Laurance Davis to Joel Bailey enclosing fee agreement	1 Page	Attorney/Client Privilege
Letter	Letter dated June 5, 2001 from Joel D. Bailey to Limited Partners regarding status update	2 Pages	Attorney/Client and Work Product
Letter	Letter dated June 5, 2001 from William C. Robinson to Laurance H. Davis, Jr., regarding tax consequences with copy of Joel Bailey letter of June 5, 2001	4 Pages	Work Product
Letter	Letter dated June 27, 2001 from Joel D. Bailey to Limited Partners re legal fees	1 Page	Attorney/Client Privilege
Fax Cover Sheet	Fax cover sheet dated March 15, 2002 from Tim Rentz to Joel Bailey attaching check dated March 8, 2002 from ISTC Corporation	1 Page	Attorney/Client and Work Product
Fax Cover Sheet	Fax cover sheet dated April 15, 2002 from Laurance H. Davis to Joel Bailey enclosing ISTC letter of March 8, 2002	2 Pages	Attorney/Client and Work Product
Letter	Letter dated September 19, 2002 from Joel D. Bailey to Parkview Limited Partners regarding status update	2 Pages	Attorney/Client and Work Product
Letter	Letter dated December 4, 2002 from A. Hoyt Rowell, Esquire to Joel D. Bailey regarding retention of firm	1 Page	Work Product

Letter	Letter dated January 6, 2003 from Joel D. Bailey to A. Hoyt Rowell regarding retention of firm	1 Page	Work Product
E-mail	Email dated January 13, 2003 from A. Hoyt Rowell to Joel Bailey regarding retention of firm	1 Page	Work Product
Letter	Letter dated March 26, 2003 from A. Hoyt Rowell to Joel Bailey regarding retention of firm	1 Page	Work Product
Letter	Letter dated April 11, 2003 from Joel Bailey to A. Hoyt Rowell regarding retention of firm	1 Page	Work Product
Letter	Letter dated April 22, 2003 from Joel D. Bailey to Parkview Limited Partners regarding filing and service of summons and complaint	1 Page	Attorney/Client and Work Product
E-mail	Email dated May 5, 2003 from Russell Patterson to Joel Bailey regarding Carolina IX, LLC	1 Page	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG

(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
1	Parkview 1951-1952	09/30/2003	Bailey	Adams	Fax letter concerning affidavit for use in hearing on motion for change of venue	Work Product
2	Parkview 1991	10/31/2003	Davis	Bailey	Fax letter concerning litigation expenses	Attorney-Client
3	Parkview 2015-2016	02/22/2004	Bailey	Rentz	Fax letter and memorandum concerning search for plats, site plans	Attorney-Client
4	Parkview 2073	04/25/2004	Adams	Bailey	Fax letter concerning payment for services rendered	Work Product
5	Parkview 2083	undated	Bailey		Internal memorandum listing names and addresses of clients	Work Product
6	Parkview 2088	05/26/2004	Rentz	Bailey	Fax letter concerning Bailey letter to Tom Wills regarding mediation	Attorney-Client
7	Parkview 2101	06/08/2004	Bailey		Internal memorandum concerning among other things the agreement between counsel for all parties to delay all litigation activities pending completion of appraisals on the properties and then mediation.	Work Product



PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
8	Parkview 2114-2115	06/28/2004	Bailey	Davis, Rentz, Miller, Pike, Reynolds	Letter concerning status of pending <i>Parkview</i> lawsuit, and among other things, agreement at meeting with representatives and counsel for AIMCO to delay all litigation activities regarding <i>Parkview</i> and all related properties pending completion of appraisals on the properties and then mediation.	Attorney-Client
9	Parkview 2143	08/02/2004	Bailey	Clients	Letter concerning AIMCO's unilateral cancellation of mediation	Attorney-Client
10	Parkview 2185-2188	08/24/2004	Pike	Bailey	Fax letter listing real estate sales data and comments on appraisal	Attorney-Client
11	Parkview 2177-2182	09/16/2004	Davis	Bailey	Memorandum concerning suggestions for appraisals prepared by Atlantic Appraisals	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG

(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
12	Bailey 3059	02/16/2000	Bailey	Davis	Letter concerning meeting with clients, expenses and attorney's fees associated with investigating / evaluating general partners' response to limited partners' inquiries re: general partners' efforts against purchasing entities to collect on the notes	Attorney-Client
13	Bailey 3060	02/17/2000	Davis	Bailey	Fax letter concerning K-1 issued by ISTC ? AIMCO on the subject partnerships	Attorney-Client
14	Bailey 3067-3069	02/21/2000	Davis	Bailey	Fax letter asking for comments on draft letter to other limited partners concerning financial arrangements for engaging counsel to make inquiries with General Partners about status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
15	Bailey 3070-3072	02/24/2000	Davis	Bailey	Memorandum enclosing copy of letter to other limited partners concerning financial arrangements for engaging counsel to make inquiries with General Partners about status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
16	Bailey 3073	02/25/2000	Reynolds	Davis/ Bailey	Fax copy of cover letter enclosing funds for escrow	Attorney-Client Work Product
17	Bailey 3077-3078	03/20/2000	Davis	Bailey	Memorandum regarding participation by other limited partners and request for clarification of nature of fee agreement to engage counsel to make inquiries with General Partners about status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
18	Bailey 3082	03/23/2000	Davis	Bailey	Letter enclosing funds for escrow, concerning participation by other limited partners to engage counsel to make inquiries with General Partners about status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties, and noting his possession of very few records	Attorney-Client
19	Bailey 3105	04/20/2000	Bailey	Davis	Letter reporting on investigation activities with General Partners about status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties and enclosing copy of fee agreement	Attorney-Client
20	Bailey 3148	06/05/2000	Bailey	Aughtman	Letter requesting title search services	Work Product
21	Bailey 3151	06/14/2000	Aughtman	Bailey	Fax letter declining to do title search based on prior commitments	
22	Bailey 3152	06/05/2000	Bailey	Aughtman	Letter requesting title search services (duplicate of Bailey 3151)	Work Product (copy of above)

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
23	Bailey 3153	06/16/2000	Bailey	Advantage Title	Letter requesting title search services	Work Product
24	Bailey 3154	06/16/2000	Bailey	Advantage Title	Letter requesting title search services (duplicate of Bailey 3153 w/ handwritten note)	Work Product
25	Bailey 3155 - 3156	06/20/2000	Bailey	Davis	Letter reporting on investigation activities with General Partners about status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
26	Bailey 3180	07/24/2000	Bailey	Advantage Title	Letter requesting additional title search services	Work Product
27	Bailey 3209-3212	08/24/2000	Bailey	Adams	Letter engaging expert services concerning legal issues concerning title to property is affected by transition from general partnership to limited partnership, and enclosing documents	Work Product
28	Bailey 3215	08/31/2000	Bailey	Advantage Title	Letter concerning additional title search services	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
29	Bailey 3216	09/01/2000	Bailey	Adams	Letter enclosing documents received from Buchanan	Work Product
30	Bailey 3217	09/07/2000	Davis	Bailey	Fax letter with contact information for Reynolds	Attorney-Client
31	Bailey 3316	10/06/2000	Bailey	Davis	Fax letter transmitting copy of letter received from Buchanan	Attorney-Client
32	Bailey 3317	10/09/2000	Davis	Bailey	Fax letter concerning upcoming partnership meeting about status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
33	Bailey 3320	10/10/2000	Davis	Bailey	Fax letter concerning other limited partnerships not involved in these consolidated cases	Attorney-Client
34	Bailey 3321	10/10/2000	Bailey	Adams	Letter delivering copies of correspondence to / from Buchanan	Work Product
35	Bailey 3325	10/10/2000	Davis	Bailey	Fax letter requesting call	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
36	Bailey 3326-3327	10/12/2000	Davis	Ruff	Letter requesting legal services to form new partnership to serve as a substitute general partner in the event existing General Partners were no longer involved	Attorney-Client Work Product
37	Bailey 3328	10/16/2000	Bailey	Clients	Letter advising of upcoming partnership meeting	Attorney-Client
38	Bailey 3333	10/20/2000	Bailey	Reynolds	Fax cover letter enclosing maps to location for partnership meeting	Attorney-Client
39	Bailey 3334-3335	undated	Bailey		Handwritten note with driving directions to location for partnership meeting	Work Product
40	Bailey 3512	11/02/2000	Bailey	Davis	Fax letter with mortgage balances on notes for the subject limited partnerships	Attorney-Client
41	Bailey 3526-3528	11/29/2000	Davis	Bailey	Memorandum concerning possibility of limited partners acquiring the subject apartments or new partnership interest to satisfy notes	Attorney-Client
42	Bailey 3695	01/17/2001	Bailey	Davis	Letter enclosing invoice from expert	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
43	Bailey 3715-3719	02/09/2001	Bailey	Davis	Letter reporting on investigation activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
44	Bailey 3721-3726	02/16/2001	Bailey	Davis	Fax letter addressing method of reporting to all clients on investigation activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties, and a report on those investigation activities	Attorney-Client
45	Bailey 3731-3732	02/17/2001	Davis	Bailey	Fax letter commenting on Feb. 9, 2001 letter, and requesting additional information	Attorney-Client
46	Bailey 3735	02/14/2001	Bailey	Davis	Letter reporting on conversation with expert	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
47	Bailey 3737	03/18/2001	Davis	Bailey	Handwritten note enclosing signed documents and reporting on capital raised to fund investigation activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
48	Bailey 3738	03/01/2001	Adams	Davis	Fax letter regarding payment of invoice	Work Product
49	Bailey 3754-3755	06/05/2001	Bailey	Limited Partners c/o Davis	Letter reporting on investigation activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
50	Bailey 3756-3757	06/05/2001	Robinson	Davis	Letter responding to request for tax advice based on possible settlement of any legal action against purchasing entities to collect on the notes and/or recover properties	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
51	Bailey 3758-3759	06/05/2001	Bailey	Limited Partners c/o Davis	Letter concerning reporting on investigation activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
52	Bailey 3768	06/27/2001	Bailey	Limited Partners	Letter enclosing addendum to fee agreement	Attorney-Client
53	Bailey 3799	04/15/2002	Davis	Bailey	Fax letter concerning position taken by Buchanan concerning collateral for the subject notes	Attorney-Client
54	Bailey 4019-4020	09/19/2002	Bailey	Davis, Rentz, Miller, Pike, Reynolds	Letter concerning alternative legal strategies in light of time remaining for General Partners to pursue claims	Attorney-Client
55	Bailey 4043-4044	12/04/2002	Rowell	Bailey	Letter following up on discussion about potential involvement as co-counsel	Work Product
56	Bailey 4046-4047	01/06/2003	Bailey	Rowell	Letter and e-mail following up on discussion about potential involvement as co-counsel	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
57	Bailey 4053	03/26/2003	Rowell	Bailey	Letter following up on discussion about potential involvement as co-counsel	Work Product
58	Bailey 4054	04/11/2003	Bailey	Rowell	Letter following up on discussion about potential involvement as co-counsel	Work Product
59	Bailey 4055	04/22/2003	Bailey	Davis, Hodge, Miller, Pike, Rentz	Letter enclosing copies of pleadings	Attorney-Client
60	Bailey 4107	05/20/2003	Pike	Bailey	Fax letter enclosing documents	Attorney-Client
61	Bailey 4125 -4128	08/27/2003	Bailey	C. Bailey	Letter following up on discussion about potential involvement as co-counsel	Work Product
62	Bailey 4144- 4145	09/30/2003	Bailey	Adams	Fax letter concerning change of venue motion	Work Product
63	Bailey 4185	10/31/2003	Davis	Rentz, Miles Hodge, Ivey, Bailey	Fax letter concerning financing litigation	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
64	Bailey 4193-4208	10/29/2003	Bailey		Internal memorandum organizing file, client contact information, and attorney impressions of chronological outline for Roosevelt I partnership	Work Product
65	Bailey 4211-4212	12/29/2003	Bailey		Internal Memorandum containing attorney impressions of chronological outline for Roosevelt I partnership	Work Product
66	Bailey 4218-4219	04/03/2000 and 05/12/2000	Weinberg	Davis	Letter enclosing payments and file materials for delivery to Bailey	Attorney-Client; Work Product; Common Interest Privilege
67	Bailey 4232-4234	12/29/2003	Bailey		Internal memorandum organizing file, client contact information, and attorney impressions of chronological outline for Roosevelt I partnership	Work Product
68	Bailey 4280-4281	12/29/2003	Bailey		Internal Memorandum containing attorney impressions of chronological outline for Roosevelt I partnership	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
69	Bailey 4374	12/20/2003	Bailey		Internal memorandum organizing file, client contact information, and attorney impressions of chronological outline for Roosevelt I partnership	Work Product
70	Bailey 4380-4381	12/29/2003	Bailey		Internal Memorandum containing attorney impressions of chronological outline for Lincoln partnership	Work Product; not responsive to requests
71	Bailey 4467-4468	02/15/1999	Davis	Griffin, Hodge, Coastal Contractors	Memorandum concerning Lincoln Apartments	Common Interest Privilege; not responsive to requests
72	Bailey 4471	04/02/2000	Griffin	Davis	Handwritten note concerning Lincoln Apartments	Common Interest Privilege; not responsive to requests

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
73	Bailey 4473	04/02/2000	Griffin	Davis	Handwritten note concerning Lincoln Apartments (copy of Bailey 4471)	Common Interest Privilege; not responsive to requests
74	Bailey 4540-4543	09/05/2000	Davis	Bailey	Letter concerning Lincoln Apartments	Attorney-Client; not responsive to requests
75	Bailey 4547	10/11/2000	Bailey	All Limited Partners	Letter advising of upcoming partnership meeting	Attorney-Client
76	Bailey 4548	10/25/2000	Warren Griffin	Davis	Handwritten note concerning Lincoln Apartments	Common Interest Privilege; not responsive to requests
77	Bailey 4560	03/13/2001	Rentz	Bailey	Fax letter concerning offer on Pinewood	Attorney-Client
78	Bailey 4565	03/08/2001	Miles Hodge	Bailey	Fax letter concerning Lincoln Apartments	Attorney-Client; not responsive to requests

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
79	Bailey 4572-4575	04/24/2001	Bailey	Hodge	Letter concerning Lincoln Apartments and Roosevelt and amounts due on the notes	Attorney-Client
80	Bailey 4576-4577	08/02/2001	Davis	Bailey	Fax letter concerning Lincoln Apartments	Attorney-Client; not responsive to requests
81	Bailey 4580-4582	08/02/2001	Bailey	Davis, Rentz, Hodge	Fax letter regarding Lincoln Apartments	Attorney-Client; not responsive to requests
82	Bailey 4591-4592	06/29/2004	Bailey	Rentz / Hodge	Letter regarding Lincoln Apartments	Attorney-Client; not responsive to requests
83	Bailey 4593	08/03/2004	Bailey	Rentz / Hodge	Letter regarding Lincoln Apartments	Attorney-Client; not responsive to requests
84	Bailey 4763	03/16/2000	Davis	Mercy	Memorandum discussing the investigation activities concerning status of negotiations with and/or pursuit of claims	Common Interest Privilege
85	Bailey 4783	06/14/2000	Bailey	Advantage Title	Fax letter regarding title search services	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
86	Bailey 4785-4787	06/14/2000	Advantage Title	Bailey	Hand written report concerning title search	Work Product
87	Bailey 4804	07/24/2000	Bailey	Advantage Title	Fax letter regarding title search services	Work Product
88	Bailey 4808-4809	08/17/2000	Bailey	Advantage Title	Fax letter regarding title search services	Work Product
89	Bailey 4810	08/29/2000	Bailey	Mercy	Letter memorializing engagement to investigate issues concerning Orleans Gardens	Attorney-Client
90	Bailey 4811	09/05/2000	Davis	Mercy, Bailey	Letter concerning sharing expenses related to the investigation activities	Attorney-Client; Common Interest Privilege
91	Bailey 4027	10/10/2000	Bailey	Adams	Letter providing copy of correspondence from Buchanan	Work Product
92	Bailey 4831	10/16/2000	Bailey	All Limited Partners	Letter concerning upcoming partnership meeting and proxies	Attorney-Client
93	Bailey 4837	11/02/2000	Bailey	Davis	Fax letter with mortgage balances on notes for the subject limited partnerships (duplicate of Bailey 3512)	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
94	Bailey 4842	03/30/2001	Bailey	Mercy	Fax letter providing copy of status report on activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
95	Bailey 4843	04/06/2001	Bailey	Mercy	Fax letter concerning written fee agreement	Attorney-Client
96	Bailey 4846	06/18/2001	Davis	Mercy, Bailey	Fax letter concerning terms of engagement of counsel with handwritten comments addressed to counsel	Common Interest Privilege; Attorney-Client
97	Bailey 4847- 4851	06/26/2001	Bailey	Davis, Mercy	Fax letter and unexecuted addendum to fee agreement	Attorney-Client
98	Bailey 4854	03/15/2002	Rentz	Bailey	Fax letter with copy of check and letter from AIMCO	Attorney-Client
99	Bailey 4859- 4868	09/19/2002	Bailey	Haggard	Letters concerning Estate of Arthur Mercy	Attorney-Client; Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
100	Bailey 4874-4875	06/28/2004	Bailey	Haggard, Hodge, Miller, Pike, Rentz	Letter providing status report on activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
101	Bailey 4876	07/08/2004	Bailey	Haggard	E-mail concerning Estate of Arthur Mercy	Attorney-Client; Work Product
102	Bailey 4877	07/23/2004	Haggard	Bailey	Letter concerning Estate of Arthur Mercy	Attorney-Client; Work Product
103	Bailey 4878	08/02/2004	Bailey	Haggard, Hodge, Miller, Pike, Rentz	Letter concerning AIMCO's unilateral cancellation of mediation	Attorney-Client
104	Bailey 4885-4886	undated	Bailey		Internal memorandum concerning overview of Palmetto Apartments, including sales price, amount of note, maturity date, and various property values	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
105	Bailey 4968	10/30/1998	Wildman	Davis	Letter enclosing copy of correspondence and requesting information concerning Palmetto Apartments.	Attorney-Client; Work Product; Common Interest Privilege
106	Bailey 4980	02/09/1999	Davis	Wildman	Letter concerning efforts to approach general partners to pursue collection of notes or gain possession of properties	Attorney-Client; Work Product; Common Interest Privilege
107	Bailey 4993	undated	Davis	Bailey	Internal memorandum concerning tax assessments for Palmetto	Attorney-Client; Work Product
108	Bailey 4996	03/16/2000	Davis	James Ivey / Erin Ivey	Letter concerning investigation of claims against purchasing entities to collect on the notes and other alternatives	Common Interest Privilege
109	Bailey 4998	09/05/2000	Davis	Wildman, Bailey	Letter concerning efforts to approach general partners to pursue collection of notes or gain possession of properties	Attorney-Client; Common Interest Privilege
110	Bailey 4999	09/05/2000	Davis	Bailey	Letter concerning Palmetto Apartments	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG

(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
111	Bailey 5002-5004	09/12/2000	Bailey	Wildman	Facsimile with attachments concerning proxy for Palmetto	Attorney-Client; Work Product
112	Bailey 5008-5012	09/12/2000	Wildman	Bailey	Facsimile with attachments concerning proxy for Palmetto	Attorney-Client; Work Product
113	Bailey 5016	09/14/2000	Wildman	Bailey	Letter with enclosures concerning proxy for Palmetto	Attorney-Client; Work Product
114	Bailey 5024	10/10/2000	Bailey	Adams	Letter providing copies of correspondence to/from Buchanan	Work Product
115	Bailey 5025	10/16/2000	Bailey	Clients	Letter concerning upcoming partnership meeting and proxies	Attorney-Client
116	Bailey 5028	11/02/2000	Bailey	Davis	with mortgage balances on notes for the subject limited partnerships (duplicate of Bailey 3512)	Attorney-Client
117	Bailey 5056	11/14/2000	Davis	Bailey	Fax letter concerning financial statements for Palmetto	Attorney-Client
118	Bailey 5062	03/16/2001	Wildman	Bailey	Fax letter attaching copy of letter from general partner	Attorney-Client; Work Product
119	Bailey 5064	03/26/2001	Bailey	Wildman	Fax cover letter	Attorney-Client; Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated December 31, 2008)

#	Bates No.	Date	From	To	Description	Privilege
120	Bailey 5065-5069	02/09/2001	Bailey	Davis	Letter reporting on investigation activities concerning status of negotiations with and/or pursuit of claims against purchasing entities to collect on the notes and/or recover properties	Attorney-Client
121	Bailey 5071	11/28/2001	Wildman	Bailey	Letter asking for status report	Attorney-Client; Work Product
122	Bailey 5073	01/31/2002	Wildman	Bailey	Letter asking for status report	Attorney-Client; Work Product
123	Bailey 5074	11/28/2001	Wildman	Bailey	Letter asking for status report (Duplicate of Bailey 5071)	Attorney-Client; Work Product
124	Bailey 5080-5081	03/15/2002	Wildman	Bailey, Ivey	Fax letter enclosing copies of K-1's and disbursement checks	Attorney-Client; Work Product
125	Bailey 5088-5089	03/29/2002	Bailey	Davis	Fax letter concerning disbursement checks	Attorney-Client
126	Bailey 5092	04/08/2002	Wildman	Bailey	Fax letter concerning correspondence from Buchanan and disbursement checks	Attorney-Client; Work Product
127	Bailey 5094-5097	02/25/2003	Wildman	Bailey	Fax letter requesting status report	Attorney-Client; Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated January 2, 2009)

#	Bates No.	Date	From	To	Description	Privilege
128	Bailey 5098	04/21/2003	Wildman	Bailey, Ivey	Fax letter concerning status report and third-party contact with Mrs. Ivey	Attorney-Client; Work Product
129	Bailey 5102	04/29/2003	Wildman	Bailey, Davis, and Ivey	Letter enclosing executed fee agreement and addendum	Attorney-Client; Work Product
130	Bailey 5107-5108	06/29/2004	Bailey	Clients	Letter reporting on status of claims	Attorney-Client
131	Bailey 5109-5110	07/07/2004	Wildman	Bailey	Fax letter concerning mediation	Attorney-Client; Work Product
132	Bailey 5113	08/02/2004	Bailey	Davis, Ivey, McCarthy, Wildman	Letter concerning AIMCO's unilateral cancellation of mediation	Attorney-Client
133	Bailey 5114	09/07/2004	Davis	Bailey	Fax letter concerning meeting with attorney	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated January 2, 2009)

INDEX

	IDENTIFICATION
All Limited Partners	Document does not differentiate and identify the name of each Plaintiff
Adams	Gregory B. Adams, L.L.M., J.S.D., Expert
Aughtman	Cathy Aughtman, Title Abstractor
Bailey	Joel D. Bailey, J.D., counsel for Plaintiffs
C. Bailey	Chandler Bailey, J.D., consulting counsel
Davis	Laurence H. Davis, Jr., Plaintiff
Griffin	Warren S. Griffin, limited partner in Lincoln, and client of Joel D. Bailey, J.D.
Haggard	Robert Haggard, J.D., counsel for Plaintiff Mercy
Hodge	W. Miles Hodge, President of Hodge Land Co., Inc, a Limited Partner
Ivey, Erin	Erin Ivey, Plaintiff
Ivey, James	James Ivey, Plaintiff
McCarthy	Marvin McCarthy, Plaintiff
Mercy	Arthur D. Mercy, Plaintiff – Jane Mercy, Plaintiff

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated January 2, 2009)

	IDENTIFICATION
Miller	Jane Miller, Attorney-In-Fact for Plaintiff Mary Jane Pike
Pike	Mary Jane Pike, Plaintiff and James Pike, Attorney-In-Fact for Plaintiff Mary Jane Pike
Rentz	Rhoda G. Rentz, Plaintiff – Timothy Rentz, Attorney-In-Fact for Plaintiff Rhoda G. Rentz
Reynolds	Eva Marie Reynolds, Plaintiff
Robinson	William C. Robinson, CPA
Rowell	A. Hoyt Rowell, III, J.D., consulting attorney
Ruff	Harley D. Ruff, J.D., attorney
Weinberg	Mortimer M. Weinberg, Jr., J.D., Plaintiff
Wildman	Donald B. Wildman, J.D., counsel for Ivey

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

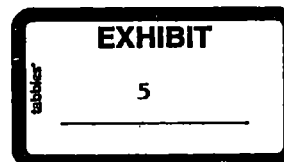
Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

**STIPULATION AND AGREEMENT BY AND AMONG
COUNSEL FOR PLAINTIFFS AND DEFENDANTS**



The Plaintiffs and Defendants in the above-captioned actions, through their respective counsel, have agreed and hereby stipulate that they will not now or hereafter pursue claims or arguments that the opposing party or parties have waived attorney-client privilege or work product protection for documents identified on their respective privilege logs based on when such documents were first identified on the parties' privilege logs in these actions. To the extent Plaintiffs and/or Defendants have previously pursued claims or arguments that the opposing



party or parties have waived attorney-client privilege or work product protection for documents identified on their respective privilege logs based on when such documents were first identified on the parties' privilege logs, such claims and arguments are hereby forever abandoned.

The Plaintiffs and Defendants acknowledge and agree that, by entering into this agreement and stipulation, each is forgoing a claim or argument that they believe is available to them in the above-captioned actions, and it would be patently unfair and unjust for the Plaintiffs or Defendants to pursue such claims or arguments with respect to any of the opposing party's documents when the opposing party has refrained from doing so in reliance on this mutual agreement and stipulation.

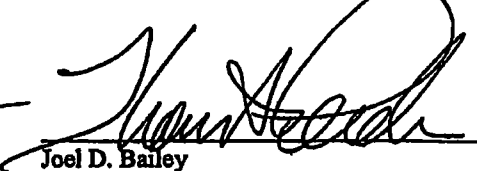
Further, this agreement and stipulation shall only apply to the claim or argument of waiver of privilege/work product protection based on when such documents were first identified on the parties' privilege logs in these actions, and shall not prevent Plaintiffs or Defendants from claiming or arguing waiver of privilege or work product protection on entirely different grounds.

WE SO AGREE AND STIPULATE:


Ellis M. Johnston, II, SC Bar # 3065
Calvin T. Vick, Jr., SC Bar #68187
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3217

Attorneys for Defendants

11/29/09


Joel D. Bailey
BAILEY LAW FIRM
Post Office Box 1437
Beaufort, South Carolina 29901-1437
(843) 525-6090

Thomas A. Pendarvis, SC Bar # 064918
PENDARVIS LAW OFFICE, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5006
(843) 524-9500

Attorneys for Plaintiffs



**PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066**

THOMAS@PENDARVISLAW.COM

**THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA**

**TEL. 843.524.9500
FAX. 843.524.9501**

February 22, 2006

VIA FACSIMILE AND US MAIL

Mott Talley
Circuit Court Administrator
SOUTH CAROLINA COURT ADMINISTRATION
1015 Sumter St., Suite 200
Columbia SC 29201

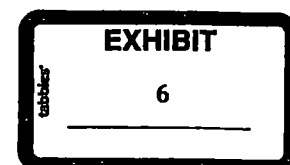
Re: Lawrence H. Davis, Jr., et al. v. Parkview Apartments, et al.
Lawrence H. Davis, Jr., et al. v. Palmetto Apartments, et al.
Carolina Management Corp. of Beaufort, et al. v. Pinewood Park Apts., et al.
Rhoda G. Rentz, et al. v. Orleans Gardens, et al.
Lawrence H. Davis, Jr., et al. v. Roosevelt Gardens, et al.

Dear Mr. Taley:

This is a follow-up to a telephone conversation we had earlier today, and also following up on a conversation I had with Deshields Smith on Tuesday, November 15, 2005, with regard to the steps and procedures necessary to consolidate for discovery and motion practice purposes five separate cases pending in three different counties spread between three judicial circuits. As we discussed, these five cases involve commercial disputes regarding the management of five apartment complexes with many entities in common on both sides of the disputes. During the conversations with you and earlier with Ms. Smith we also discussed the steps and procedures necessary with regard to assigning all of those cases to one judge.

I understood that Court Administration needed an identification of the five cases, the counties in which those cases are pending, and a formal request for consolidation and for assignment to a single judge. Ms. Smith also advised that the request should also state that counsel or all parties are in agreement with the proposal.

The subject cases are identified as follows:



Case Style	County	Judicial Circuit #
<i>Lawrence H. Davis, Jr., et al. v. Parkview Apartments, et al.</i> , 2003-CP-07-723	Beaufort	14 th
<i>Lawrence H. Davis, Jr., et al. v. Palmetto Apartments, et al.</i> , 2005-CP-07-1989	Beaufort	14 th
<i>Carolina Management Corporation of Beaufort, et al. v. Pinewood Park Apartments</i> , 2005-CP-07-1990	Beaufort	14 th
<i>Rhoda G. Rentz, et al. v. Orleans Gardens, et al.</i> , 2005-CP-10-4229	Charleston	9 th
<i>Lawrence H. Davis, Jr., et al. v. Roosevelt Gardens</i> , 2005-CP-38-1131	Orangeburg	1 st

Counsel for all parties involved have been negotiating and discussing the steps and procedures necessary during these past few months. Counsel have agreed to the consolidation and we have discussed which judges would be best suited for these cases. Counsel for all parties propose that one of the following three judges be assigned to these complex cases. In no particular order, the three judges are the Honorable Doyet A. Early, III, the Honorable John E. Kinard, Jr., and the Honorable John M. Milling. Counsel could not agree between these three judges which would be best suited and would respectfully request that Court Administration choose between one of these three judges for assignment to this case.

Because a hearing has been scheduled for early March in the *Roosevelt Gardens* case in Orangeburg, counsel for the parties plan on sending to letter to the Chief Administrative Judge for the first judicial circuit to advise of the instant request, and to ask that the hearing be postponed until such time as Court Administration has provided counsel with further direction on how to proceed.

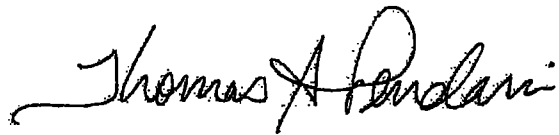
Counsel for all parties reviewed this correspondence prior to transmittal to Court Administration, and will receive a contemporaneous copy of the same. Please let me know if you need any additional information and thank you in advance for your attention to this matter.

Page 3
February 22, 2006

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with the first name "Thomas" and last name "Pendarvis" clearly legible.

Thomas A. Pendarvis, J.D.

TAP\pdh

cc: Joel D. Bailey, J.D.
Ellis M. Johnston, II, J.D.

The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,

Parkview Apartments, et al.,

v.

Beaufort County
2003-CP-07-0723

Plaintiffs,

Defendants.

Lawrence H. Davis, Jr., et al.,

Palmetto Apartments, et al.,

v.

Beaufort County
2005-CP-07-1989

Plaintiffs,

Defendants.

Carolina Management Corporation of Beaufort, et. al,

Pinewood Park Apartments,

v.

Beaufort County
2005-CP-07-1990

Plaintiffs,

Defendants.

Rhoda G. Rentz, et al.,

Orleans Gardens, et. al.,

v.

Charleston County
2005-CP-10-4229

Plaintiffs,

Defendants.

Lawrence H. Davis, Jr., et al.,

Roosevelt Gardens,

v.

Orangeburg County
2005-CP-38-1131

Plaintiffs,

Defendants.

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4, I find that assigning a single circuit judge to dispose of all matters arising out of the apartment management litigation currently pending and to be filed in the state court system will

EXHIBIT

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promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the Honorable Doyet A. Early, III is assigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. Judge Early may schedule necessary hearings at any time.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

FILED FOR RECORD
WINIFEA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2010 JUN 21 P 3:09

2010 JUN 11 PM 3:21
JERRI ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

ATTEST: TRUE COPY

AFFIDAVIT OF ELLIS M. JOHNSTON, II

Personally appeared before me, Ellis M. Johnston, II, who, *Winifea B. Clark*
CLERK OF COURT
ORANGEBURG COUNTY, SC

deposes and states as follows:

1. My name is Ellis M. Johnston, II. I am over the age of 18 years and am competent to testify to the matters contained herein based upon personal knowledge. I submit this Affidavit in opposition to Plaintiffs' Motion for Reconsideration of the Court's April 6, 2010 Order in the above-captioned cases. I have continually represented the Defendants in the above-

Certified - A True Copy

Jerri Ann Roseneau
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC

EXHIBIT

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captioned actions since the time these lawsuits were filed. I have represented Pinewood Park Apartments, a South Carolina Limited Partnership, since October, 2002 (before the above-captioned Pinewood case was filed).

2. I have personal knowledge of the following e-mails, letters and other documents, true and correct copies of which are attached hereto as exhibits as indicated below. As indicated in each of the documents, I sent or received such documents to or from Joel Bailey on or about the date indicated on each respective document.

(a) letter, dated June 4, 2003, from the undersigned to Joel Bailey, attached hereto as Exhibit A;

(b) letter, dated June 27, 2003, from Joel Bailey to the undersigned, attached hereto as Exhibit B;

(c) letter, dated July 7, 2003, from the undersigned to Joel Bailey, attached hereto as Exhibit C;

(d) letter, dated August 27, 2003, from Joel Bailey to the undersigned, attached hereto as Exhibit D;

(e) letter, dated September 2, 2003, from the undersigned to Joel Bailey, attached hereto as Exhibit E;

(f) letter, dated September 7, 2003, from Joel Bailey to the undersigned, attached hereto as Exhibit F;

(g) letter, dated September 8, 2003, from the undersigned to Joel Bailey, attached hereto as Exhibit G;

(h) letter, dated September 17, 2003, from the undersigned to Joel Bailey, attached hereto as Exhibit H;

(i) letter, dated December 9, 2003, from the undersigned to Joel Bailey, attached hereto as Exhibit I;

(j) letter, dated December 22, 2003, from Joel Bailey to the undersigned, attached hereto as Exhibit J;

(k) letter, dated December 22, 2003, from the undersigned to Joel Bailey, attached hereto as Exhibit K;

(l) letter, dated July 9, 2004, from the undersigned to Joel Bailey, attached hereto as Exhibit L;

(m) letter, dated July 30, 2004, from the undersigned to Joel Bailey, attached hereto as Exhibit M;

(n) letter, dated March 16, 2007, from the undersigned to Thomas Pendarvis and Joel Bailey, attached hereto as Exhibit N;

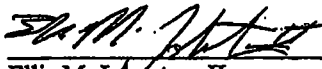
(o) letter, dated March 21, 2007, from Joel Bailey to the undersigned, attached hereto as Exhibit O;

(p) e-mail, dated July 19, 2007, from the undersigned to Joel Bailey, Thomas Pendarvis, Ted Vick, and Eric Hilty; attached hereto as Exhibit P; and

(q) HUD Settlement Statement, attached hereto as Exhibit Q, a copy of which I provided to Joel Bailey via the July 19, 2007 e-mail attached hereto as Exhibit P (a copy was also provided to Plaintiffs' counsel on January 26, 2009, with the Bates stamp shown on the exhibit hereto).

3. The documents attached hereto as Exhibits A through Q are offered in rebuttal to the misrepresentations contained in Plaintiffs' Motion for Reconsideration of the April 6, 2010 Sanctions Order, and the affidavits filed by their attorneys in support of the Motion, concerning

my representation of the Pinewood limited partnership against the then-owner of the property and Plaintiffs' counsel's knowledge regarding the same.


Ellis M. Johnston, II

Subscribed and sworn to me
This 13 day of June, 2010


Notary Public of South Carolina
My Commission expires on 3/12/2019

#748587

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
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Beaufort County
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Roosevelt Gardens, a South Carolina Limited
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Orleans Gardens, a South Carolina Limited
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Charleston County
C.A. No. 2005-CP-10-4229

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Beaufort County
C.A. No. 2005-CP-07-

Carolina Management Corporation of Beaufort,
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v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

2010 JUN 11 PM 3:22
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I HEREBY CERTIFY that true and correct copies of the attached AFFIDAVIT OF
ELLIS M. JOHNSTON, II was served upon counsel of record via Federal Express this 7th day
of June, 2010, addressed as follows:

Joel D. Bailey
The Bailey Law Firm
510 Ribaut Road
Beaufort, SC 29902

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902-5066



Hugh G. Craddock
Paralegal to Calvin T. Vick, Jr.

June 7, 2010
Greenville, South Carolina

100
A
100

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinker & Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

ELLIS M. JOHNSTON, II
DIRECT DIAL NUMBER (864)240-3217
EMAIL ejohnston@hsblawfirm.com

75 BEATTIE PLACE, 11TH FLOOR (29501-2119)
POST OFFICE BOX 2048 (29502-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3800
www.hsblawfirm.com

VIA U.S. MAIL, FACSIMILE and E-MAIL

June 4, 2003

Joel Bailey
Bailey Law Firm
705 Prince Street
Post Office Box 1437
Beaufort, South Carolina 29901-1437

Re: Pinewood Park Apartments, a limited partnership

Dear Joel:

I represent AmReal Corporation ("AmReal") and N. Barton Tuck, Jr., the general partners in Pinewood Park Apartments, a limited partnership (the "Partnership"). This letter is being addressed to your attention as you have informed AmReal that you represent all of the limited partners in the Partnership. For the past several years, Amreal has made proposals to the limited partners including the sale of the Partnership's note, the renegotiation of the note's terms, foreclosure on the Partnership's collateral, and the replacement of the existing general partners. Each proposal has been either rejected or ignored by the limited partners, with no alternative courses of action suggested.

Over the past 6 months, subject to the terms of the partnership agreement and any approvals it may require, the general partners have endeavored (1) to find a substitute general partner and (2) to negotiate a return of the physical property. The general partners have been unsuccessful in finding a substitute general partner. We are informed, however, that the current owner of the property is willing to substitute as collateral under the note, a mortgage on the property, in lieu of the presently existing collateral (i.e. the purchaser's limited partnership interest). If this is done, the partnership could then foreclose or take a deed in lieu of foreclosure, and again become owner of the property.

As the general partners have expressed in the past, and continue to believe today, they do not believe it is in the best interest of the Partnership to own and continue to operate the property. The general partners understand that the limited partners are of a contrary view. Accordingly, the general partners propose:

(1) that the limited partners immediately find a substitute general partner to whom the current general partners will relinquish their interest in the Partnership, and that the new general

EXHIBIT
A

partner consummate the collateral substitution (or such other action as it may find appropriate);
or,

(2) that the limited partners accept the resignation of the general partners at which time, it is my understanding of South Carolina Law, the limited partnership would then become a general partnership, with the limited partners becoming general partners. These new general partners could then consummate the collateral substitution and foreclose, or take a deed in lieu of foreclosure, and become the owners of the physical property, or take such other action as they deem appropriate.

If the limited partners remain unwilling to authorize either of these courses of action, or to suggest any other reasonable course of action, then the general partners will have no choice but to move to have the partnership terminated and that they be removed from the partnership by the courts.

Please inform me no later than June 11, 2003 of the limited partners' intentions regarding the partnership.

With kind regards, I remain,

Very truly yours,



Ellis M. Johnston, II

EMJ/kmf





THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

THE ELLIOTT HOUSE • THIRD FLOOR • 401 BAY STREET
POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29501-1437

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

PHONE: 843/525-6090
FAX: 843/525-6070

June 27, 2003

Ellis M. Johnston, II, Esquire
Raynsworth-Sinkler Boyd, P.A.
P.O. Box 2048
Greenville, South Carolina 29602-2048

Re: Pinewood Apartments Limited Partners vs. AAMCO, et al.

Dear Ellis:

Please be advised that I have now received a majority consensus from the limited partners of the Pinewood Apartments Limited Partnership, and am in a position to provide an initial response to your recent proposal to have the apartment complex in Allendale returned to the LP. The limited partners are interested in pursuing this goal, with certain caveats. In essence, the limited partners have been kept in the dark by the general partners concerning this matter for years and, before making this decision, additional information is required.

In this regard, please provide me with the following information at this time in order to assist the limited partners in making an informed decision regarding your proposal:

1. Identify specifically the persons or entities who currently own the subject real estate, and advise of any ties or affiliations, past or present, with any of our general partners;
2. List all liens, mortgages or other encumbrances which relate to the subject real estate, including the identities of the lienholders and the amount(s) of such lien(s);
3. Provide any documentation in the possession or control of the general partners which reflects the financial condition of the entity which purchased the property from our LP and, specifically, its ability and/or willingness to pay the current outstanding debt to the LP;
4. Provide documentation regarding the history and status of the HUD reserve account(s) relating to the subject property;
5. Provide the latest financial data for the subject property, showing cash flow, receipts, disbursements, appraisals of the property, and estimates of any immediate repairs or renovations needed;

EXHIBIT

B

William Johnston, II, Esquire

June 23, 2003

Re: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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Satisfy the current status of the subject property vis-a-vis HOD, i.e., is it still in the HOD program? If not, what happened to the HOD funds allocated for the property? If so, what is HOD's position regarding the reconveyance of the subject property?

It may be that additional information will be required before a final decision can be made regarding your proposal, but this information is certainly essential to enable the limited partners to intelligently discuss the proposal.

As you are aware, I am in the process of preparing a lawsuit on behalf of the limited partners against the general partners. Return of the subject property may or may not alleviate the effects of that litigation, but it could certainly be a step in the right direction as, at the very least, it may serve to substantially mitigate our existing damages. Therefore, your prompt attention and cooperation in getting this information to us will be greatly appreciated.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.



Joel D. Bailey

JDB/lem

cc: Limited Partners

BAILEY LAW FIRM, P.A.



GREENVILLE CHARLESTON COLUMBIA FLORENCE
**Haynsworth
Sinkler Boyd, PA.**

ATTORNEYS AND COUNSELORS AT LAW

ELLIS M. JOHNSTON, II
DIRECT DIAL NUMBER (864)240-3217
EMAIL ejohnston@hsblawfirm.com

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POST OFFICE BOX 2048 (29601-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
www.hsblawfirm.com

July 7, 2003

Joel Bailey, Esq.
Bailey Law Firm
Post Office Box 1437
Beaufort, South Carolina 29901

Re: Pinewood Park Apartments
Our Client No. 11471-0007

Dear Joel:

Enclosed please find the following:

- (1) Year end operating statements for the period ending December 25, 2002;
- (2) Year to date operating statement for the period ending May 31, 2003; and
- (3) a Phase One Environmental Site Assessment.

I would like to get this property transferred to the limited partners, this month.

Please advise of their desires.

With kind regards, I remain,

Very truly yours,

Ellis M. Johnston, II

Ellis M. Johnston, II

EMJ/kmf
Enclosures

EXHIBIT

C

D



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

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POST OFFICE BOX 1437 • BEAUFORT, SOUTH CAROLINA 29901-1437

EMAIL ADDRESS:
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PHONE: 843/525-6098
FAX: 843/325-6070

August 27, 2003

Ellis M. Johnston, II, Esquire
Haysworth Sinkler Boyd, P.A.
P.O. Box 2048
Greenville, South Carolina 29602-2048

Re: Pinewood Apartments Limited Partners vs. ABMCO, et al.

Dear Ellis:

This will confirm receipt of your letter of August 20th in the above referenced matter. You correctly note that you wrote to me on June 6th concerning this limited partnership. While you also correctly state that this was over two months ago, I do not share the implication that there has been some sort of delay on our part. You will recall that I responded to your letter on June 27th, requesting specific information needed for the limited partners to evaluate your offer to have the real estate reconveyed to the Limited Partnership. You responded on July 2d, but your response did not specifically address some of the information we had requested. In that regard, please consider:

1. I asked for information regarding any ties or affiliations between the current owners and our general partners. You have provided no information responsive to that request.
2. I asked for the latest financial data on the subject property relative to cash flow, receipts, disbursements, appraisals and estimates of repairs or renovations needed. Your response was that the owner's attorney would check with the property manager and provide what information is available. I have now received some financial information for December 2002 and May 2003. Is this all you have which is responsive to this request?
3. I asked for information concerning HUD's position concerning the reconveyance. Your response was that you do not know. Obviously, this is a major concern, since the highest and best use of this property may well be as subsidized housing.
4. I asked for information concerning the HUD reserve funds. Your response was that these funds "have been released to the partnership, and have been used to take care of operating expenses." You do not say which partnership received these funds, but I assume it was not ours, since our general partners have not advised us of any monies recovered. This revelation raises additional questions which must be answered in order for us to make a decision on the reconveyance offer, including but not limited to the following:

EXHIBIT

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- The financial documents which you have recently provided indicate that the present owners have an account receivable due from their principals of \$7,919,816. Eighty thousand \$100,000 bonds. Did these principals borrow money from the operating account? What the reserve money used to fund those "loans"? Have these loans been repaid? Were the monies used to pay off the prior promissory notes?

1. The leased partners are willing to take the Pinewood Apartments property back, subject to the following conditions:

- RAINFYI AND FIRM PA.

Hilts, M. Johnston, II, Esquire

November 2003

Page 10

- e. Return of the real estate and operating funds does not relieve or release the general partners from any existing liability to the limited partners but may be considered in mitigation of the total damages which may be due.
- f. The general partners must waive and relinquish any claim or entitlement to the recovered real estate and operating funds, or to participate in any future disbursements to members of our Limited Partnership.
- g. Upon completion of the transfer of the real estate and operating funds, the general partners will submit their resignation as general partners and transfer their interests in the Limited Partnership to such persons or entity as may be designated by the limited partners.
- h. HUD must approve of this transfer and agree that the property may be continued as subsidized housing if the limited partners desire such continued use of the property.

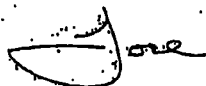
2. Alternatively, the limited partners will accept a liquidated settlement of all claims and claims to (a) the full amount due under the outstanding note as of three (3) years from the due date thereof in 2002, or (b) the fair market value of the real estate based upon its appraised highest and best use as of November 2002, together with (c) the highest sum which was in the HUD reserve and operating accounts between 1999 and 2002, and (d) payment of their litigation costs and attorneys fees in this matter. The attorney's fee would be based upon 1/3 of the total value of the recovery to the limited partners as stated herein.

Please discuss this with your clients and advise me of your position at your earliest convenience.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.



Joel D. Bailey
JDB/lom

cc: Limited Partners

BAILEY LAW FIRM, P.A.



GREENVILLE CHARLESTON COLUMBIA FLORENCE

Haynesworth
Smither-Boyd, PA

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VIA PHONE, MAIL, FACSIMILE and E-MAIL

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September 2, 2003

Joel Bailey
Bailey Law Firm
705 Prince Street
Post Office Box 1437
Beaufort, South Carolina 29901-1437
Fax No. (843)525-6070
E-Mail: baileylawfirm@charter.net

Re: Pinewood Park Apartments, a limited partnership

Dear Joel:

Receipt of your letter of August 27, 2003 is acknowledged. I will attempt to respond to your additional inquires, to the best of my ability. The numbers below correspond to those in your letter.

1. We are aware of no "tie or affiliation" between the current owners and the general partners, though I am not precisely sure what you mean by "tie or affiliation".
2. You have the latest financial information that we have available. As you are aware, the general partners are not the general partners of the present owners of the project.
3. I am unaware of what HUD's position might be. That may well depend on who the new general partner is, as well as other considerations. As attorney for the general partners of Pinewood Apartments limited partnership, I am afraid I just cannot answer the question for you.
4. You have all of the information that we have.

With regard to your first demand, I will respond to the lettered paragraphs as follows:

- (a) The general partners cannot guarantee what, if any, tax consequences may occur from a reconveyance of the property.
- (b) You have all of the financial information that we have, either provided to you by my earlier correspondence or produced to you.

EXHIBIT

E

(c) The general partners are not responsible for restitution of operating capital necessary for the apartments' continued operation.

(d) Agreed.

(e) If the limited partners feel that they have other claims against the general partners, then perhaps you should state what they are. However, the return of the real estate, as well as the 5% general partners' interest to the limited partners, is without condition.

(f) See (e) above.

(g) Agreed.

(h) The general partners cannot guarantee this.

Alternative 2 is rejected.

Joel, the general partners have done virtually everything that they could to satisfy the limited partners in this matter. They sought and obtained an offer to purchase the property, which apparently was rejected. They have obtained an offer to return the property to the partnership. Under the documents executed in 1984, these are essentially the only remedies available to the partnership.

Please give me a call upon receipt of this letter in order that we might finalize a transfer of the property, or decide what other avenue the limited partners might wish to pursue.

With kind regards, I remain,

Very truly yours,



Ellis M. Johnston, II

EMJ/kmf

P.S. You mentioned the implication in my letter of August 20 that you had been remiss in responding to my letter of June 4, because we had not fully responded to your letter of June 27, 2003. My response of July 2 and July 7, 2003, provided all information that we had available to us at this time. It was 8 weeks later that you claimed that that was insufficient.



Rep 07 03 09:28a

P. C



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A PROFESSIONAL ASSOCIATION

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PHONE: 843-525-6090
FAX: 843-525-6070

September 7, 2003
VIA FACSIMILE and U.S. MAIL

Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048
Greenville, South Carolina 29602-2048

Re: Pinewood Apartments Limited Partners vs. AIMCO, *et al.*

Dear Ellis:

This will confirm receipt of your email in the above-referenced matter. The short answer is that the Limited Partners do want this property back. Unfortunately, due to the scarcity of information which has been provided to us by the General Partners, we are not in a position to agree to take the property back by the September 8th deadline you have imposed.

Our tax advisor has indicated that we will need considerable financial data relating to the operation of this partnership in order to determine the extent of any tax consequences associated with the return of the property. We have requested a portion of this data, but it has not been provided by the General Partners. We feel this is the type of data which should have been secured by the General Partners as part of their due diligence in seeking to have the property reconveyed to our Limited Partnership.

If the present owners are willing to cooperate fully concerning our request for financial information, and to extend their current deadline, we will be glad to explore further the possibility of the return of the property. Otherwise, we will continue to look to the General Partners for compensation for the damages sustained by the Limited Partners.

In this regard, I have not heard from you concerning any of the details which you proposed at our last meeting in Beaufort. If you still wish to seek a combined settlement along the lines discussed in our last meeting, please advise me. I will be out of the office all week, but will be back on Monday, September 15th. With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey
JDB/lom

cc: Limited Partners
John P. Linton, Esquire

EXHIBIT

F



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COLUMBIA

FLORENCE

**Haynesworth
Simmons & Boyd, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

VIA AIRMAIL and U.S. MAIL

September 8, 2003

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Joel Bailey
Bailey Law Firm
705 Prince Street
Post Office Box 1437
Beaufort, South Carolina 29901-1437
Fax No. (843)525-6070

Re: Pinewood Park Apartments, a limited partnership

Dear Joel:

Receipt of your letter of September 7, 2003 is acknowledged. I am not certain that I will be able to obtain an additional extension of the Tolling Agreement, but will endeavor to do so.

What specific information does your tax advisor need? We have provided year end operating statements, and operating statements through May, 2003. This was done in June or July, if memory serves me correctly.

Please be advised that I did not impose a September 8 deadline. That is when the Tolling Agreement expires.

The tone of your letter implies that the limited partners are more interested in a lawsuit, than a return of the property.

With kind regards, I remain,

Very truly yours,

Ellis M. Johnston, II
Ellis M. Johnston, II

EMJ/kmf

EXHIBIT

G

H

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FLORENCE

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September 17, 2003

Joel Bailey
Bailey Law Firm
705 Prince Street
Post Office Box 1437
Beaufort, South Carolina 29901-1437

Re: Pinewood Park Apartments, a limited partnership

Dear Joel:

This letter will confirm our telephone conversation of September 17, 2003 with regard to the above. As I discussed, I have been able to obtain a short extension from the current owners. Under the current proposal, there would be a substitution of collateral (mortgage on the property in substitution of the present interest in the purchasers' limited partnership). If this is accomplished, then the limited partners may take a deed in lieu of foreclosure and have the property returned to them.

As I also mentioned to you, the attorney for the present owners mentioned that they might have some interest in purchasing the property to avoid adverse tax consequences. I do not know how adverse those consequences would be to the present owners. It would seem that they would only have two years of accrued but unpaid interest payable, and even with accelerated depreciation, I don't think the tax consequences would be that severe. But, again, neither you nor I are tax attorneys.

In any event, I have e-mailed the owners' attorney and asked what amount they might be willing to pay.

With kind regards, I remain,

Very truly yours,



Ellis M. Johnston, II

EMJ/kmf

EXHIBIT

H



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WWW.HSBLAWFIRM.COM

December 9, 2003.

Joel Bailey, Esq.
Bailey Law Firm
705 Prince Street
Post Office Box 1437
Beaufort, South Carolina 29901-1437

Re: Pinewood Park Apartments, a limited partnership

Dear Joel:

I have finally heard back from the current owner's attorney with respect to possible purchase of the project. Their offer was \$300,000.00. Please let me know on or before December 15, 2003 as to what your clients wish to do. The options are to accept the \$300,000.00, or to take the property back.

With kind regards, I remain,

Very truly yours,

Ellis

Ellis M. Johnston, II

EMJ/kmf

cc: Johnny Linton
Haynsworth Sinkler Boyd, P.A.
Post Office Box 340
Charleston, South Carolina 29402

Patricia Banks Morrison
Haynsworth Sinkler Boyd, P.A.
Post Office Box 340
Charleston, South Carolina 29402

EXHIBIT

I

J



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FAX: 843/525-8070

December 22, 2003
VIA FACSIMILE and U.S. MAIL

Ellis M. Johnston, II, Esquire
Harrisworth Shinkler Boyd, P.A.
P.O. Box 2048
Greenville, South Carolina 29602-2048

Re: Pinewood Apartments Limited Partners vs. AIMCO, et al.

Dear Ellis:

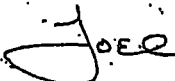
This will confirm receipt of your letter of December 19th in the above-referenced matter. I have forwarded the same to my clients and have received responses from all but Judge Rawl. Their decision is that, as indicated to you in September, the Limited Partners do want this property back, but not based upon the scarcity of information which has been provided to us by the General Partners. For example, we have still not received the financial data relating to the operation of this partnership which we requested from the General Partners in order to determine the extent of any tax consequences associated with the return of the property.

Furthermore, return of the property without return of the monies in the HUD reserve and the operating accounts is not satisfactory. If we can come to a resolution regarding the return of these funds, to which our Limited Partnership would have been entitled had the General Partners pursued the litigation promised, return of the underlying real estate may be a viable settlement option. Otherwise, it probably is not.

With respect to the offer of \$300,000.00, we have likewise not been provided with any reliable documentation to support such an offer. As you know, AIMCO's own appraisal of this property was over three (3) times that amount. I feel that my clients would be willing to discount the fair market value slightly in order to avoid future litigation costs, but a 2/3 reduction is not acceptable. Accordingly, we must reject the \$300,000.00 offer. If your clients are interested in a counter-proposal, I will be happy to discuss this with my clients.

Very truly yours,

THE BAILEY LAW FIRM, P.A.


Joel D. Bailey
JDB/lom

cc: Limited Partners
John P. Linton, Esquire

EXHIBIT

J

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ATTORNEYS AND COUNSELORS AT LAW

December 22, 2003

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VIA U.S. MAIL and FACSIMILE

December 19, 2003

Joel Bailey, Esq.
Bailey Law Firm
705 Prince Street
Post Office Box 1437
Beaufort, South Carolina 29901-1437
Fax No. (843)525-6070

Re: Pinewood Apartments, Limited Partners

Dear Joel:

Receipt of your letter of December 22, 2003 is acknowledged. I am still not certain whether the limited partners want the property back. Your letter is not very specific.

As explained to you in prior correspondence, return of the property to the limited partners is not in return for a general release by them of the general partners, or anything else. I assume the general partners, because they are giving up their interest in the partnership properties, would be entitled to a credit for the value of their interest, should any litigation ensue.

Further, you have all of the information that we have. We are not the owners in possession of these properties. We have provided to the limited partners all of the information that we have available to us.

Unless I hear differently from you, we will pursue the return of the property to the limited partners.

With kind regards, I remain,

Very truly yours,

Ellis M. Johnston, II

Ellis M. Johnston, II

EMJ/kmf

EXHIBIT

K



GREENVILLE

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COLUMBIA

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Sinkler Boyd, PA.

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VIA FEDERAL EXPRESS

July 9, 2004

Joel Bailey, Esq.
Bailey Law Firm
705 Prince Street
Beaufort, South Carolina 29901-1437

Re: Pinewood Apartments, Limited Partners

Dear Joel:

Enclosed please find a Loan Modification, Substitution of Collateral, Mortgage, and Security Agreement in connection with Pinewood Park Apartments. In negotiations with the purchaser, Pinewood Housing Limited Partnership, it has agreed to this Loan Modification, Substitution of Collateral, Mortgage, and Security Agreement.

As you have indicated that you represent the limited partners in Pinewood Park Apartments, I would appreciate your review and any comments you may have with respect to the enclosed document.

I have spoken with Alex Park of Ernst & Young, and it is his belief that execution of this agreement would constitute a material modification of the original note, and may therefore be a "taxable event" to the partnership. He informed me, that the same result would occur, if we sued the purchasing limited partnership, were successful in the lawsuit, and received its interest in Pinewood Park Apartments.

We would like to conclude this matter before the end of July. Please provide your comments at your earliest convenience.

With kind regards, I remain,

Very truly yours,

Ellis M. Johnston, II
Ellis M. Johnston, II

EMJ/kmf
Enclosures

AMREAL 013489





M

GREENVILLE CHARLESTON COLUMBIA FLORENCE

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VIA U.S. MAIL and FACSIMILE

July 30, 2004

Joel Bailey
Bailey Law Firm
705 Prince Street
Post Office Box 1437
Beaufort, South Carolina 29901-1437
Fax No. (843)525-6070

Re: Parkview Apartments, et al vs. AIMCO, et al
Our Client/Matter No. 11471-0010

Dear Joel:

Receipt of your fax letter of July 29, 2004 is acknowledged. I would like to clarify several things. First, as I expressed to you earlier and in our conversation of July 29, 2004, my clients are willing to proceed with mediation. However, they are not willing to do so based on the information which has been developed to date, to include Chris Denato's appraisals. As I expressed, those appraisals, as well as values placed on other properties which were to be subject to the mediation, do not have sufficient historical data upon which a reasonable person might make a determination as to their value at the appropriate dates. For that reason, and that reason only, we were unwilling to proceed on the dates chosen. We did discuss trying to mediate in mid October, and, if sufficient information can be developed, would like to proceed at that time.

I will attempt to respond to your discovery requests on or before August 20, 2004.

I am developing a proposed scheduling order, and will e-mail it to you as soon as it has been completed.

With respect to your request that I accept service of the lawsuits except the one for Pinewood, I will ask my client if I have permission to do so, and will advise.

It probably makes sense to consolidate, for the purposes of discovery only, the other potential lawsuits. However, each of those lawsuits will have various other defenses, and venue issues. I think we will need to work through those, before consolidation.

My view of Chris Denato's bill, is that we should pay it. Though I have problems with his appraisals, this is probably a result of his lack of historical information. Though that historical information may be to the detriment of my client, or yours, our inability to furnish it to him is not his fault. It may well be that, after we have the historical information, and both sides have had

EXHIBIT

AMREAL 013495

an opportunity to discuss it with him, that he can still act as an independent appraiser for both sides.

Finally, with respect to Pinewood, as I have discussed on a number of occasions before with you, the property is available for the partnership to take back. Thus far, despite my requests that your clients tell us what they want to do, you have not indicated whether your clients are willing to take it back, or not, accept the loan modification agreement, sell the note, or what. Accordingly, the general partner will exercise its best judgment as to how to proceed.

With kind regards, I remain,

Very truly yours,



Ellis M. Johnston, II

EMJ/kmf

cc: Johnny Linton
Haynsworth Sinkler Boyd, P.A.
Post Office Box 340
Charleston, South Carolina 29402

Patricia Banks Morrison
Haynsworth Sinkler Boyd, P.A.
Post Office Box 340
Charleston, South Carolina 29402

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ATTORNEYS AND COUNSELORS AT LAW

VIA FEDERAL EXPRESS and E-MAIL

March 16, 2007

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Joel Bailey
The Bailey Law Firm
510 Ribaut Road
Post Office Box 1437
Beaufort, South Carolina 29901-1437
E-Mail: Baileylawfirm@charter.net

Re: Pinewood

Dear Thomas and Joel:

I enclose three items which I would appreciate you forwarding to your clients.

(1) The current owners of Pinewood have a contract with an unaffiliated third party for the sale of the property for the gross amount of \$500,000, subject to Pinewood Park Apartments Limited Partnership's ("Partnership") approval. I enclose a copy.

(2) I enclose an e-mail from Roger C. Hartman laying out the proposed disposition of the proceeds of that sale. As you will see, the sale price is \$500,000, with estimated escrow, closing costs, and seller's legal fees being \$45,000 leaving net proceeds of \$455,000. The net to the Partnership (labeled "AIMCO loan payoff") would be \$425,000.

(3) An appraisal of Pinewood with detailed attachments reflecting the financial condition of the property. The appraised value is \$525,000.

Although the general partner of the Partnership has the authority under the terms of the limited partnership agreement to sell or exchange all or any part of the real property owned by the partnership and to sue on and/or compromise the Partnership's claim on the 1984 Note, my client desires for the limited partners of the Partnership to advise it whether they (a) approve the proposed sale to an unaffiliated third-party under the conditions outlined above allowing the Partnership to recover \$425,000 of its non-recourse note, or (b) foreclose on its secured interest to take back ownership of the property.

EXHIBIT

Option A: Under this option, it would be the new buyer's responsibility to obtain HUD approval of the transfer of ownership interest. Although the Partnership would incur some transaction costs going forward, those costs would be minimal. Because the general partner believes that this option maximizes the Partnership's sole remaining asset (the Note), the general partner recommends that the Partnership approve the sale.

Option B: As we have discussed on numerous occasions over the past years, the Partnership may exercise its ability to take the property back. The limited partners should be aware, however, that should the property be transferred back to the limited partnership, there would be transactional costs incurred by the partnership associated with taking the property back. There would be further transactional costs associated with obtaining 2530 HUD approval for the Partnership to own the property once again. Additionally, the individual limited partners that have 25% interests (Jackson, Hinnant, and Rawl) would individually need to receive HUD 2530 approval. Once the Partnership owned the property again, in order to liquidate the asset, the Partnership would incur additional transaction costs associated with a sale.

I will need a response from the limited partners indicating which option they prefer no later than March 29, 2007.

With kind regards, I remain,

Very truly yours,



Ellis M. Johnston, II

EMJ/kmh
Enclosures





BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

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March 21, 2007

VIA TELECOPIER AND FIRST CLASS MAIL

Ellis M. Johnston, II, J.D.
HAYWORTH SINKLER BOYE, P.A.
P.O. Box 2048
Greenville SC 29602

Re: Pinewood Apartments in Allendale

Dear Ellis:

Thank you for your correspondence dated March 16, 2007, with its enclosures, proposing that my clients either approve the Partnership's proposed sale of Pinewood Park Apartments or let the Partnership proceed with foreclosure on its secured interest to take back ownership of the property. Thomas Pandaris and I met today concerning your proposal, and we wanted to get back with you as quickly as possible, given the March 29 deadline you set for our response.

As has been the case with previous sales proposals, the proposed transaction and accompanying materials raise quite a number of material questions, the answers to which are critical and necessary before my clients can respond to your proposal. We are in the process of disseminating your materials to the Limited Partners, but we are certain that we will not be able to meet with our clients and have an informed decision responding to your proposal by your deadline of March 29, 2007. The deadline simply does not give us sufficient time to evaluate and respond, as you know, this is a very complex, multifaceted proposal concerning a real estate limited partnership with over 30 years of history, all of which is further compounded by issues involved with the pending litigation.

We believe the Limited Partners need additional information in order to properly evaluate and respond to the proposal. For example, more information is needed about the valuation and appraisal that was included with your March 16, 2007 correspondence; the ATMCO loan, promissory note, etc.; the current ownership of the property; and current financial information regarding the Pinewood Apartments. Also, we believe the most efficient means by which this information can be obtained would be to take "limited depositions" of the appraisers, representatives of the current owners of the property, and the on-site manager. By "limited depositions" we mean very abbreviated depositions limited to issues directly related to the proposed transactions, with leave for any party to resume the deposition in the event the sale was not consummated and the lawsuit was not resolved. In addition, and assuming we reach agreement on taking these depositions, we would also need copies of some of the documents and materials related to these issues. With such limitations in place and provided all of the deponents can be made available at one location, we believe that all of these depositions can be taken in one day.

EXHIBIT

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Date Rec'd: 3/21/07
C/M # 11471-0007
Docketed: _____
ID: _____

Ellis M. Johnston, P.C.

March 21, 2007

Page Two

Please let us know as soon as possible if you and your clients are amenable to our proposal, and if so we will provide you with a short list of the documents and materials needed for these depositions. Also, if you agree with this offer, please let us know if you can arrange for all the witnesses to be present at one location on a single date. We would have no objection, for example, to doing the depositions at any of your firm's offices. Again, assuming we are able to reach agreement on this limited discovery proposal and these depositions proceed as proposed, we believe the limited Partners would be able to respond to the transaction proposed in your March 16, 2007 correspondence within seven to 10 days of the depositions.

Looking forward to your response and with kind regards, I remain

Sincerely,

THE BAILEY LAW FIRM, P.A.


Joel D. Bailey
JDB/alm

cc: Thomas A. Pendarvis, J.D. (via e-mail)
Calvin T. Wick, J.D. (via e-mail)

BAILEY LAW FIRM, P.A.

P

Johnston, Ellis

From: Thomas A. Pendarvis
Sent: Thursday, July 19, 2007 08:12 PM
To: Johnston, Ellis
Subject: RE: FW: Pinewood Closing.

Thank you very much.

Thomas A. Pendarvis
PENDARVIS LAW OFFICES, P.C.
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 tel.
843.524.9501 fax.
Thomas@PendarvisLaw.com

-----Original Message-----
From: Johnston, Ellis
Sent: Thursday, July 19, 2007 3:16 PM
To: Thomas A. Pendarvis

forgot to send to you. sorry.

-----Original Message-----
From: Johnston, Ellis
Sent: Thursday, July 19, 2007 1:49 PM
To: Joel D. Bailey, J.D.; Vick, Ted; 'Hilty, Eric (Denver)'
Subject: FW: Pinewood Closing.

Joel, attached is the HUD closing statement for Pinewood. We are looking at the expenses to the partnership in connection with this transaction and will let you know what they are.

-----Original Message-----
From: Roger C. Hartman [mailto:rhartman@haalaw.com]
Sent: Friday, July 06, 2007 3:07 PM
To: Hilty, Eric (Denver); Johnston, Ellis
Cc: Thomas Mann
Subject: Pinewood Closing.

Dear Eric and Ellis,

The sale of Pinewood Apartments closed on Thursday July 5, 2007. Attached hereto is a copy of the HUD-1 settlement statement.

You will note that the HUD-1 specifies that \$425,000 was to be sent to Aimco. That Settlement Statement also provided that the sum of \$3,891.00 was to be paid to Seller. This latter sum was inadvertently combined with the \$425,000 and sent to AIMCO's bank. Please confirm that AIMCO acknowledges that they are only entitled to \$425,000 pursuant to the Note Satisfaction Agreement. Please also advise me if you wish to return the excess to the escrow agent, or forward it to my Clients Trust Account.

Your earliest reply will be appreciated.

Roger

ROGER C. HARTMAN
HARTMAN AND ASSOCIATES
12401 Wilshire Blvd. Suite 200
Los Angeles, CA 90025
Voice: (310) 207-9100
Facsimile (310) 207-5101
Mobile (310) 710-1200

EXHIBIT

P

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters. mmcorp

Attachment(s): Roger C. Hartman.vcf; Pinewood HUD-1 Executed.pdf



Q



A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF TRANSACTION 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV.	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the parties marked "TO" or "FROM" were paid outside the closing; they are shown here for informational purposes only.		4. FILE NUMBER 5. MORTGAGE INSURANCE CASE NUMBER	
D. NAME AND ADDRESS OF BORROWER: GRANO INVESTMENTS LIMITED PARTNERSHIP 1322 GADSDEN STREET COLUMBIA, SC 29201		E. NAME AND ADDRESS OF SELLER: PARKSIDE VILLAGE LIMITED and PARTNERSHIP 12401 WILSHIRE BLVD STE 200 LOS ANGELES, CA 90025	
G. PROPERTY LOCATION: PINWOOD APARTMENTS ALLENDALE, SC ALLENDALE County, South Carolina JOHN B. MOFFERSON APRIL 18, 1972 Plat Book at page		H. SETTLEMENT AGENT: MANN & MOORE, LLC PLACE OF SETTLEMENT 1527 RICHLAND STREET COLUMBIA, SC 29201	
		I. SETTLEMENT DATE: July 2, 2007	

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION																																																																																																																																																																	
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EXHIBIT

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L. SETTLEMENT CHARGES				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price					
<i>(Detail of Commission (line 700) as follows:</i>					
700. Commission Held at Settlement					
701. ITEMS REQUIRED IN CONNECTION WITH LOAN					
701.1. Loan Origination Fee	0.75%	to	AMERIS BANK	1,000.00	
701.2. Loan Processing Fee		to	AMERIS BANK	2,200.00	
701.3. Loan Report		to	AMERIS BANK	180.00	
701.4. Processing Fee		to	AMERIS BANK		
701.5. Flood Cert Fee		to			
701.6. Extraordinary Fee		to			
701.7. Underwriting Fee		to			
701.8. Doc Fee		to			
701.9. Service Fee		to			
701.10. Service Fee Premium		to			
702. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
702.1. Hazard Insurance Premium for	07/02/07 to 06/01/07	@ \$	/day (80 days %)		
702.2. Mortgage Insurance Premium for	months to				
702.3. Hazard Insurance Premium for	1.0 years to				
702.4.					
702.5.					
703. RESERVES DEPOSITED WITH LENDER					
703.1. Hazard Insurance	months @ \$	per month			
703.2. Mortgage Insurance	months @ \$	per month			
703.3. City/Town Taxes	months @ \$	per month			
703.4. County Taxes	months @ \$	per month			
703.5. Assessments	months @ \$	per month			
703.6.	months @ \$	per month			
703.7.	months @ \$	per month			
704. AGGREGATE ESCROW					
705. TITLE CHARGES					
705.1. Settlement or Closing Fee	to	MANN & MCGEE		1,500.00	
705.2. Abstract or Title Search	to	TITLE ABSTRACTORS OF COLUMBIA		350.00	
705.3. RESIDUAL NOTE FINANCING	to	AMCO PROPERTIES, LP		95.00	425,000.00
705.4. Title Insurance-Binder	to	MANN & MCGEE, LLC			60,000.00
705.5. ATTORNEY'S FEES	to	HARTMAN & ASSOCIATES		45.00	45.00
705.6. EXPRESS MAIL/FAX FEE	to	MANN & MCGEE, LLC		40.00	
705.7. E-MAIL /COPY FEE	to	MANN & MCGEE, LLC			
<i>(Includes above item numbers:</i>					
705.8. Title Insurance	to	INVESTORS TITLE INSURANCE COMPANY		1,150.00	
<i>(Includes above item numbers:</i>					
705.9. Lender's Coverage	\$	550,000.00	1,150.00		
705.10. Owner's Coverage	\$	550,000.00			
705.11.					
705.12.					
706. GOVERNMENT RECORDING AND TRANSFER CHARGES					
706.1. Recording Fee: Deed \$	10.00; Mortgage \$	35.00;	Released \$	35.00	
706.2. City/County Tax/Stamp: Deed			Mortgage	1,550.00	
706.3. State Tax/Stamp: Revenue Stamps		1,550.00; Mortgage		20.00	
706.4. MISSING DEEDS	to	ALLEDALE COUNTY TREASURER.			
706.5. SATISFACTION					
707. ADDITIONAL SETTLEMENT CHARGES					
707.1. Survey	to				
707.2. Pest Inspection	to				
707.3. LEAD PAINT CONTRACTS	to	GRAND INVESTMENTS, LLP		50,280.81	19,420.00
707.4. PURCHASE OF CONTRACT RIGHTS	to	TED O. MCGEE, JR.			4,774.00
707.5. SECURITY DEPOSITS	to	GRAND INVESTMENTS		50,533.81	601,109.00
708. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 802, Section K)					

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

MANN & MCGEE, LLC
Settlement Agent

Certified to be a true copy.

[5189 GRAND INVEST / 5189 GRAND INVEST / 17]

AMREAL_017854

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: ~~GRAND INVESTMENTS LIMITED PARTNERSHIP~~
Seller: ~~PARKSIDE VILLAGE LIMITED and PARTNERSHIP~~
Lender: AMERIS BANK
Settlement Agent: MANN & MCGEE, LLC
(803) 262-2376
Place of Settlement: 1527 RICHLAND STREET
COLUMBIA, SC 29201
Settlement Date: July 2, 2007
Property Location: PINWOOD APARTMENTS
ALLENDALE, SC
ALLENDALE County, South Carolina
JOHN B. MCPHERSON
APRIL 15, 1972
Pial Book al page

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

GRAND INVESTMENTS LIMITED PARTNERSHIP

BY: Richard B. Mayo
President

ATTEST:

Secretary/Treasurer

PARKSIDE VILLAGE LIMITED

PARTNERSHIP

By Robert C. Hartman, Attorney for Seller

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

MANN & MCGEE, LLC
Settlement Agent

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

AMRBAL_017855

IN THE COURT OF COMMON PLEAS

Beaufort County
C/A # 03-CP-07-726

Orangeburg County
C/A # 05-CP-38-1131

Charleston County
C/A # 05-CP-10-4229

Beaufort County
C/A # 05-CP-07-1989

Beaufort County .
C/A # 05-CP-07-1990

TO: ELLIS M. JOHNSTON, II, CALVIN T. VICK, MARVIN INFINGER AND ANNE ROSS ROSEN, AND THE DEFENDANTS ABOVE-NAMED

- (i) These included communications between the Defendants and attorneys they ostensibly hired to represent the respective limited partnerships, which included the Plaintiffs, in the collection of the notes due to the partnerships or, alternatively, retrieval of the partnership properties.
- (ii) These documents and information were clearly relevant to Plaintiffs' claims, as they were needed to determine whether the attorneys hired by the general partners were really engaged to represent the partnerships' interests or were actually sham retentions designed to mislead the limited partners into believing that their interests were being protected.
- (iii) Furthermore, they were relevant and necessary to determine whether the attorneys hired by the general partners to represent the limited partnerships had breached any fiduciary duties to the limited partnerships by not pursuing legal remedies to recover the partnership assets. This aspect of the present litigation becomes even more troubling when Judge Early's close extra-judicial relationships with Defendants' counsel is viewed in light of the fact that a lawsuit to recover assets due to the Pinewood limited partnership was initiated - and then abandoned - by the very attorney and law firm which successfully persuaded Judge Early to keep the attorney retention information secret and non-discoverable by the Plaintiffs.
- (iv) Defendants' counsel argued that these communications were privileged and not subject to disclosure to Plaintiffs, even though Plaintiffs owned 95% or more of the limited partnerships the attorneys were ostensibly hired to represent and, as such owners and partnership members, were clearly within the "privilege" claimed. Furthermore, Defendants earlier had included Plaintiffs in communications with these attorneys - with the exception of the Haynsworth firm's representation of the Pinewood limited partnership, which representation has never been revealed by Defendants or their counsel to date. Having so included Plaintiffs, the Defendants waived any privilege which might have existed that excluded Plaintiffs. Their arguments were adopted by Judge Early as part of his rulings, even though he had not ever seen the underlying documents.

Respectfully submitted,

THE BAILEY LAW FIRM, P.A.
PO Box 1437, 510 Ribaut Road
Beaufort SC 29901-1437
843.525.6090 Tel.
843.525.6070 Fax.
baileylawfirm@charter.net

Thomas A. Pendarvis, J.D. (SC Bar # 064918)
PENDARVIS LAW OFFICES, P.C.
500 Carteret St Ste A
Beaufort SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Attorneys for the Plaintiffs

By: 
Joel D. Bailey (SC Bar # 471)

Beaufort, South Carolina
April __, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al*, Plaintiffs,)

-vs-)

Parkview Apartments, a South Carolina)

Limited Partnership, *et al*, Defendants.)

Beaufort County

C/A # 03-CP-07-726

Laurance H. Davis, Jr., *et al*, Plaintiffs,)

-vs-)

Roosevelt Gardens, a South Carolina)

Limited Partnership, *et al*, Defendants.)

Orangeburg County

CA # 2005-CP-38-1131

Rhoda G. Rentz, *et al*, Plaintiffs,)

-vs-)

Orleans Gardens, a South Carolina)

Limited Partnership, *et al*, Defendants.)

Charleston County

CA # 2005-CP-10-4229

Laurance H. Davis, Jr., *et al*, Plaintiffs,)

-vs-)

Palmetto Apartments, a South Carolina)

Limited Partnership, *et al*, Defendants.)

Beaufort County

C/A #2005-CP-07-1989

Carolina Management Corporation of)
Beaufort, *et al*, Plaintiffs,)

-vs-)

Pinewood Park Apartments, a South)

Carolina Limited Partnership, *et al*,)

Defendants.)

Beaufort County

C/A # 2005-CP-07-1990

CERTIFICATE OF MAILING

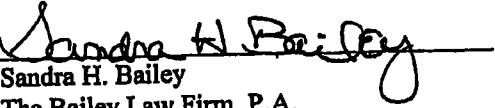
I hereby certify that I have served the Plaintiffs' Motion for Reconsideration, Alteration or Amendment, by depositing a copy in the United States Mail, postage prepaid, on April 22, 2010, addressed to the following attorneys of record:

Ellis M. Johnston, II
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger
134 Meeting Street, 3rd Floor
Charleston, SC 29401

Calvin T. Vick
PO Box 2048
Greenville, SC 29602

Anne Ross Rosen
134 Meeting Street, 3rd Floor
Charleston, SC 29401


Sandra H. Bailey
The Bailey Law Firm, P.A.
PO Box 1437, 510 Ribaut Road
Beaufort, South Carolina 29901-1437

April 21, 2010

()

)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2003-CP-07-726

Laurance H. Davis, Jr.; Mary Jane R. Pike; Eva Marie Reynolds; and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Parkview Apartments, a South Carolina Limited Partnership;

Plaintiffs,

vs.

Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic designation for a party or parties whose true identity is unknown,

Defendants.

**AFFIDAVIT OF
THOMAS A. PENDARVIS**

Personally appeared before me Thomas A. Pendarvis, who, being first duly sworn, states:

1. I am a resident and citizen of the County of Beaufort in the State of South Carolina.
2. I am an attorney and have been continuously licensed to practice law in the State of South Carolina since 1992. I am the sole shareholder of PENDARVIS LAW OFFICES, P.C., located at 500 Carteret St, Ste. A in Beaufort, South Carolina, and prior to April 2004 was a partner in the law firm of LEWIS, BABCOCK & HAWKINS, L.L.P. in Columbia, South Carolina.

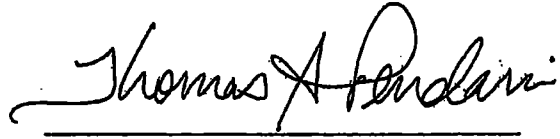
EXHIBIT

10

motion to alter or amend an Order issued on one of the discovery motions, Judge Early ruled that the Plaintiffs were not entitled to any of this information finding that it was protected by the attorney-client privilege.

102. This particular ruling is troubling given that Plaintiffs now know that Ellis M. Johnston, II, J.D., with HAYNSWORTH SINKLER BOYD, P.A., present counsel for the Defendants in this matter, also represented one of the Plaintiff limited partnerships, specifically, Pinewood Park Apartments Limited Partnership, in a lawsuit that was filed on September 8, 2003. Mr. Johnston and HAYNSWORTH SINKLER BOYD, P.A. apparently never served the COMPLAINT in that action, which resulted in an ORDER issued on July 23, 2004, dismissing the case "for lack of service and/or lack of prosecution pursuant to S.C.R.C.P. 4(g) and 5(d)." Defendants in this litigation never disclosed this conduct by Mr. Johnston and HAYNSWORTH SINKLER BOYD to the Plaintiffs or Plaintiffs' counsel in this action. In fact, on several occasions Mr. Johnston has communicated with counsel for Plaintiffs expressing an interest in either having the Plaintiffs approve the sale of Pinewood's assets at a value lower than the Defendants had it appraised, or settling the Pinewood case. Mr. Johnston never disclosed that he had previously represented Pinewood Park Apartments, Limited Partnership or had filed the COMPLAINT. A copy of the COMPLAINT, correspondence from the Court, and the ORDER dismissing the lawsuit is attached as Composite Exhibit No. 93.
103. Judge Early's rulings on discovery matters in these cases has been particularly burdensome financially on Plaintiffs as Plaintiffs have been obligated to pursue

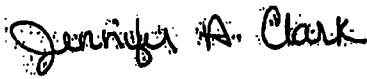
Further the affiant sayeth not.



Thomas A. Pendarvis

SWORN to before me this

22nd day of April, 2010



(L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires July 8, 2015

1 STATE OF SOUTH CAROLINA
2 COUNTY OF BEAUFORT
3 Laurance H. Davis, Jr.; et
4 al.,
5 Plaintiffs,
6
7 vs.
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21
22
23
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25

COURT OF COMMON PLEAS
14TH JUDICIAL CIRCUIT
Case No 2003-CP-07-726

CONSOLIDATED CASES
CASE NO. 2005-CP-07-1990
CASE NO. 2005-CP-07-1989
CASE NO. 2005-CP-10-4229
CASE NO. 2005-CP-38-1131

Parkview Apartments, a South Carolina Limited
Partnership; Apartment Investment and Management
Company a/k/a AIMCO; Insignia Financial Group,
Inc.; AmReal Corporation a/k/a and f/k/a USS
Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTD Corporation; N. Barton Tuck, Jr.;
and John Doe, a generic designation for a party or
parties whose true identity is unknown,
Defendants.

30(B)(6)
DEPOSITION OF: JOSEPH WILLIAM SPRANSY, II

DATE: November 14, 2007

TIME: 9:52 a.m.

LOCATION: Law Offices of
Haynsworth, Sinkler, Boyd
75 Beattie Place, Suite 1100
Greenville, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Susan M. Valsecchi, RPR
Certified Realtime Reporter

Computer-Aided Transcription By:
A. WILLIAM ROBERTS, JR., & ASSOCIATES

Charleston, SC	Columbia, SC
(843) 722-8414	(803) 731-5224
Myrtle Beach, SC	
(843) 839-3376	
Greenville, SC	Charlotte, NC
(864) 234-7030	(704) 573-3919

A. William Roberts, Jr. & Associates (800) 743-DEPO

EXHIBIT

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EXHIBIT

11

1 MR. BAILEY: Okay. I just want to get
2 a point of clarification, Ellis. The notebook that
3 you gave to Thomas before the deposition started is
4 in response to the subpoena; is that correct?

5 MR. JOHNSTON: Let me look at it.
6 There have been so many document requests and
7 everything else, I'm still trying to figure out
8 who's on first.

9 In response to your question, I'm not
10 certain at what -- start out -- years ago we
11 produced a massive number of documents, many of
12 which I think would be responsive to this subpoena.

13 In September and then again on November
14 the 12th -- September 6th, I think it was -- and
15 November the 12th -- we also produced documents
16 that may be responsive to some of the areas.

17 This morning I gave you the book that
18 contained essentially two topics. One was
19 correspondence between you and I, both ways. And
20 the other was correspondence and e-mails.

21 When I say correspondence,
22 correspondence and e-mails between Mr. Roger
23 Hartman, who was the attorney for the owners of the
24 Parkview Apartments, that relate to efforts to
25 either have the apartments returned to Parkview.

1 Apartments, a South Carolina Limited Partnership,
2 or to get them to offer some amount for the demand
3 note. It also contains a number of tolling
4 agreement extensions.

5 There is, as a matter of public record,
6 a lawsuit that was filed against them, I'm trying
7 to say in November of -- it was sometime in 2003.

8 MR. BAILEY: Against them, meaning --

9 MR. JOHNSTON: The then owners. That
10 is what resulted in a tolling agreement. That
11 lawsuit was dismissed for lack of prosecution, as
12 we were trying to work through things. I then
13 filed another one. I don't know whether it's been
14 dismissed for lack of prosecution yet or not, but
15 we ultimately worked out an agreement that was
16 presented to the limited partners and AIMCO as the
17 general partner thought -- well, I will just leave
18 it right there.

19 There was an agreement worked out that
20 was presented to the limiteds. And I understand
21 that you and I have a difference of opinion as to
22 whether -- we never got a clear answer from them as
23 to what they wanted to do is, you know...

24 MR. BAILEY: When you say a lawsuit was
25 brought against the owners that were represented by

1 Mr. Hartman, a lawsuit by whom?

2 MR. JOHNSTON: By -- I'm pretty sure it
3 was Parkview Apartments Limited Partnership.

4 MR. BAILEY: Parkview.

5 MR. JOHNSTON: I mean Pinewood. This
6 says Parkview. Pinewood, yes. This being the
7 subpoena you just handed to us that --

8 MR. BAILEY: Okay. I'm a little
9 confused. So are you saying that Pinewood Limited
10 Partnership sued Mr. Hartman's clients?

11 MR. JOHNSTON: Yes.

12 MR. BAILEY: Is that something you guys
13 did -- I mean Haynsworth, Sinkler, Boyd -- or was
14 that something that was in California or what?

15 MR. JOHNSTON: No, we did it.

16 MR. BAILEY: Okay. Was that related to
17 the collection of the note or the return of the
18 properties?

19 MR. JOHNSTON: Yeah.

20 I mean, it's part of the public record
21 up here at the courthouse. I'll be happy to
22 furnish you copies of the Complaint.

23 MR. BAILEY: Was it filed in federal or
24 state court?

25 MR. JOHNSTON: State.

THE SUPREME COURT OF SOUTH CAROLINA

Laurance H. Davis, Jr., Rhoda G. Rentz,
Mortimer M. Weinberg, Jr., Hodge Land
Co., Inc., and Anna Trotter, Individually
and in their capacities as the Limited
Partners of Roosevelt Gardens, a South
Carolina Limited Partnership,

vs.

Roosevelt Gardens, a South Carolina
Limited Partnership, Apartment
Investment and Management Company
a/k/a AIMCO; Insignia Financial Group,
Inc.; AmReal Corporation a/k/a and f/k/a
USS Corporation a/k/a and f/k/a U.S.
Shelter Corporation; ISTC Corporation;
N. Barton Tuck, Jr.; and John Doe, a
generic designation for a party or parties
whose true identity is unknown,

) Transfer from Court of Appeals
) Case No. 2010180086
)

) Appellants,
)

RECEIVED

AUG - 5 2011

S.C. Supreme Court

) Respondents.
)

Carolina Management Corporation of
Beaufort, James B. Jackson, Whaley R.
Hinnant, Jr., Mary Gasser Rawl, and
Rhoda Rentz, Individually and in their
capacities as the Limited Partners of
Pinewood Park Apartments, a South
Carolina Limited Partnership,

vs.

Pinewood Park Apartments, a South
Carolina Limited Partnership; Apartment
Investment and Management Company
a/k/a AIMCO; Insignia Financial Group,
Inc.; AmReal Corporation a/k/a and f/k/a
USS Corporation a/k/a and f/k/a U.S.
Shelter Corporation; ISTC Corporation;
N. Barton Tuck, Jr.; and John Doe, a
generic designation for a party or parties
whose true identity is unknown,

) Transfer from Court of Appeals
) Case No. 2010180088
)

) Appellants,
)

) Respondents.
)

Laurance H. Davis, Jr.; Mary Jane R. Pike; Eva Marie Reynolds; and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Parkview Apartments, a South Carolina Limited Partnership,	)	Transfer from Court of Appeals Case No. 2010180666
	)	
	)	
vs.	)	Appellants,
	)	
Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic designation for a party or parties whose true identity is unknown,	)	Respondents.

Laurance H. Davis, Jr.; Marvin D. McCarthy; James W. Ivey; and Erin E. Ivey, Individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership,	)	Transfer from Court of Appeals Case No. 2010180087
	)	
	)	
vs.	)	Appellants,
	)	
Palmetto Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic designation for a party or parties whose true identity is unknown;	)	Respondents.

Rhoda G. Rentz, Mary Jane Pike, Eva	)	Transfer from Court of Appeals
Marie Reynolds, and Joanne O. Mercy,	)	Case No. 2010176826
Individually and in their capacities as the	)	
Limited Partners of Orleans Gardens, a	)	
South Carolina Limited Partnership,	)	
	)	Appellants,
vs.	)	
	)	
Orleans Gardens, a South Carolina	)	
Limited Partnership; Apartment	)	
Investment and Management Company	)	
a/k/a AIMCO; Insignia Financial Group,	)	
Inc.; AmReal Corporation a/k/a and f/k/a	)	
USS Corporation a/k/a and f/k/a U.S.	)	
Shelter Corporation; ISTC Corporation;	)	
N. Barton Tuck, Jr.; and John Doe, a	)	
generic designation for a party or parties	)	
whose true identity is unknown,	)	Respondents.

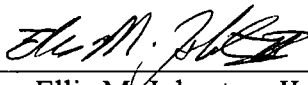
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served counsel for the Appellants with a copy of *Respondents' Reply in Support of Their Motion and Memorandum to Seal Confidential and Privileged Document, Which Was Filed Under Seal in The Lower Court* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5066

Joel D. Bailey
The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, South Carolina 29901-1437

HAYNSWORTH SINKLER BOYD, P.A.

By: 
Ellis M. Johnston, II

August 4, 2011
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180666

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JAN 21 2011

SC Court of Appeals

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie
Reynolds and Rhoda G. Rentz, individually and in their
capacities as the Limited Partners of Parkview Apartments,
a South Carolina Limited Partnership, ... Appellants,

v.

Parkview Apartments, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... Respondents.

RESPONDENTS' MOTION TO DISMISS

Ellis M. Johnston, II
Calvin T. Vick, Jr.
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, SC 29602
Telephone: (864) 240-3200
Facsimile: (864) 240-3336

Respondents in the above-captioned appeal, through their undersigned attorneys, hereby move that the instant appeal be dismissed due to Appellants' failure to comply with Rule 203(b)(1), SCACR.¹

Rule 203(b)(1), SCACR, provides, in part, "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." The subject order, which is captioned "Order Granting Defendants' Two Motions for Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt," was signed by the Honorable Doyet A. Early, III on April 6, 2010, and entered on April 9, 2010 (see Appellants' Notice of Appeal, Exhibit 8 thereto). On its face, the single April 6, 2010 Order clearly applied to the instant case and four related cases, which had also been assigned to Judge Early and are now on appeal. Appellants served a single Motion for Reconsideration with respect to the subject order on April 22, 2010, stating that they received written notice of the entry of the subject order on April 13, 2010 (via e-mail) and on April 15, 2010 (via mail).

Rule 203(b)(1), SCACR, provides, "When a timely motion for judgment n.o.v. (Rule 50, SCRCPP), motion to alter or amend the judgment (Rules 52 and 59, SCRCPP), or a motion for a new trial (Rule 59, SCRCPP) has been made, the time for appeal for all parties shall be stayed and shall run from the receipt of written notice of entry of the order granting or denying such motion." In a single order signed on September 16, 2010,

¹ Respondents in three (3) other related appeals are moving to dismiss those appeals on the same grounds. Those related appeals are captioned as follows: *Davis, et al. v. Roosevelt Gardens, et al.*, Case No. 2010180086; *Carolina Management, et al. v. Pinewood Park Apartments, et al.*, Case No. 2010180088; and *Davis, et al. v. Palmetto Apartments, et al.*, Case No. 2010180087.

and entered on September 20, 2010, Judge Early denied Appellants' Motion for Reconsideration (see Appellants' Notice of Appeal, Exhibit 9 thereto). The September 16, 2010 Order clearly applied, on its face (i.e., in both the caption and body of the Order), to the instant case and the four related cases. Appellants received written notice of the entry of that order **on October 1, 2010**, as acknowledged by counsel for the Appellants in the Notice of Appeal filed in *Rentz, et al. v. Orleans Gardens, et al.*, Case No. 2010176826 (see **Exhibit A** hereto, at p.2, ¶ 9).²

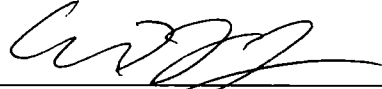
Appellants did not serve their Notice of Appeal in this case until December 3, 2010, more than sixty (60) days after they received written notice of the entry of the Order denying their Motion for Reconsideration.

In light of the above, and as discussed more fully in Respondents' accompanying Memorandum, the appeal in the instant case should be dismissed as a result of Appellants' failure to comply with Rule 203(b)(1), SCACR.

² Respondents' counsel received written notice of the entry of the Order denying Appellants' Motion for Reconsideration on September 30, 2010.

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, PA



Ellis M. Johnston, II, SC Bar # 3065

Calvin T. Vick, Jr., SC Bar #68187

Post Office Box 2048

Greenville, South Carolina 29602

(864) 240-3200 (phone)

(864) 240-3336 (fax)

tvick@hsblawfirm.com

ejohnston@hsblawfirm.com

Attorneys for Respondents

This 18th day of January, 2011.
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

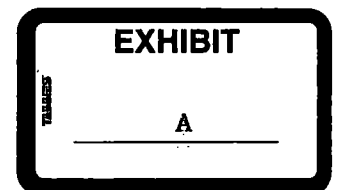
vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

NOTICE OF APPEAL

Appellants Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O.
Mercy appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a
copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17,
2008, a copy of which is attached as Exhibit 2.
3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008.



dated March 3, 2009, a copy of which is attached as Exhibit 3.

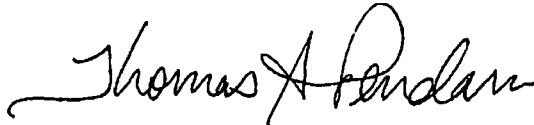
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.

All Orders were issued by the Honorable Doyet A. Early, III.

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
PO Box 1437
Beaufort, SC 29901-1437
(843) 525-6090 tele
(843) 525-6070 fax
baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
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843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

Counsel for Appellants

October 28, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

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P.O. Box 2048
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134 Meeting Street, 3rd Floor
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
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) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER

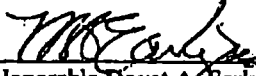
This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

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IT IS SO ORDERED


The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008
 South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs.)

v.)

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs.)

v.)

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs.)

v.)

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs.)

v.)

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs.)

v.)

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL #2

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"). In each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.

Banks, South Carolina

Doyet A. Early, III.
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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)

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"); and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCP. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is GRANTED. *held in abeyance pending*
~~Defendants shall submit evidence~~

resolution of all discovery disputes -
Done.

~~of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within~~
~~twenty (20) days of the date of this Order.~~ DAF

IT IS SO ORDERED

This 3rd day of March, 2009.
Camden, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
Beaufort County
C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
Orangeburg County
C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
Charleston County
C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
Beaufort County
C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
Beaufort County
C.A. No. 2005-CP-07-1990
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**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) The title and date of each such complaint, claim or lawsuit;*
- (b) Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: *Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.*

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Barker, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of June, 2009.
[Signature]
South Carolina

[Signature]
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
Case No.: 2003-CP-07-726

Davis, et al.

2009 JUN 19 AM 11:54 Arkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ 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: _____)

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRPC, is hereby DENIED.

Dated at ^{Aiken} ~~Bamberg~~, South Carolina, Date June 16, 2009 Judge W.B. Early Jr.

This judgment was entered on the 16th Day of June, 20 09, and a copy mailed this 22 Day of June, 20 09, to attorneys of record or to parties as follows:

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Calvin T. Vick, Jr.
Haynesworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602-2048



SCR Form 4 (Rev. 2/96)

Deborah K. Smith
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.* Plaintiffs.
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Laurance H. Davis, Jr., *et al.* Plaintiffs,
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Rhonda G. Rentz, *et al.* Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
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) C.A. No. 2005-CP-10-4229
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Laurance H. Davis, Jr., *et al.* Plaintiffs.
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.* Defendants.

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Carolina Management Corporation of Beaufort,
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Pinewood Park Apartments, a South Carolina
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ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

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17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

Handwritten signature/initials

96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

*NOTE
RA*

(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

WRC
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Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

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12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Bamber, South Carolina

Doyet A. Early, III

Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DME #1



dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRCP. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAE #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

DAE #8

Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- **Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴**
- **Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum**

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

DAE #9

9

at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

DAE #310 10

documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (some documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

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Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRPC. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon. In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *Id.* (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." *Id.* (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." *Id.* The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 3). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

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were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." *Id.* (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions: Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCP, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCP, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCP.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Cl. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karpel v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Cl. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

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lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

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could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

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from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCP. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

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award. See id. ("A fine may also be 'remedial and civil' if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine..." (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

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for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRCP, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRCP, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

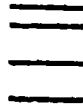
This 10th day of April, 2010.
[Signature], South Carolina

[Signature]
Doyet A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & O.S.
100 BROAD STREET, SUITE 100
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR RECONSIDERATION

THIS JUDGMENT WAS ENTERED ON THE 20TH DAY OF SEPTEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 28TH DAY OF SEPTEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
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PENDARVIS, THOMAS A
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BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-1

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRCP. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

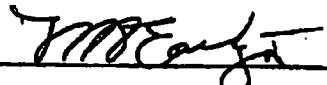
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2009 SEP 20 AM 10:19
JULIE J. BRYSON
CLERK OF COURT

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Blacksburg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

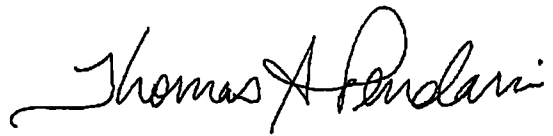
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of NOTICE OF APPEAL on counsel for Respondents, by depositing
a copy of the same in the United States Mail, postage prepaid, on the 28th day of October,
2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial "T" and "P".

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

October 28, 2010

Beaufort, SC 29902

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180666

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie
Reynolds and Rhoda G. Rentz, individually and in their
capacities as the Limited Partners of Parkview Apartments,
a South Carolina Limited Partnership, ... Appellants,

v.

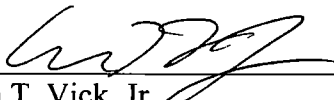
Parkview Apartments, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served
counsel for the Appellants with a copy of *Respondents' Motion to Dismiss* and
Memorandum in Support of Respondents' Motion to Dismiss by mailing copies of the
same by United States Mail with first class postage prepaid to the following addresses:

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5066

Joel D. Bailey
The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, South Carolina 29901-1437



Calvin T. Vick, Jr.

January 18, 2011
Greenville, SC

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
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CALVIN T. VICK, JR.
DIRECT DIAL NUMBER 864-240-3324
EMAIL lvick@hsblawfirm.com

January 18, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Laurance H. Davis, Jr. et al. v. Parkview Apartments, et al.*
Case No. 2010180666

Dear Ms. Gee:

Enclosed for filing please find an original and six (6) copies of *Respondent's Motion to Dismiss, Memorandum in Support of Respondent's Motion to Dismiss and Proof of Service* for same with regard to the above-referenced matter. I would appreciate you filing these at your earliest convenience and returning the additional enclosed copy, file-stamped to me in the self-addressed, stamped envelope.

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Calvin T. Vick, Jr.

CTVjr/amp

Enclosures

cc: Joel D. Bailey, Esq.
Bailey Law Firm
Post Office Box 1437
Beaufort, South Carolina 29901-1437

RECEIVED

JAN 21 2011

RECEIVED
JAN 21 2011
SC Court of Appeals

Haynsworth
Sinkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

January 18, 2011

The Honorable Tanya Gee, Clerk

South Carolina Court of Appeals

Page 2

Thomas A. Pendarvis, Esq.
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5006

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180666

RECEIVED

JAN 21 2011

SC Court of Appeals

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie
Reynolds and Rhoda G. Rentz, individually and in their
capacities as the Limited Partners of Parkview Apartments,
a South Carolina Limited Partnership, ... Appellants,

v.

Parkview Apartments, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... Respondents.

MEMORANDUM IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS

Ellis M. Johnston, II
Calvin T. Vick, Jr.
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, SC 29602
Telephone: (864) 240-3200
Facsimile: (864) 240-3336

Respondents submit this memorandum in support of their Motion to Dismiss the instant appeal due to Appellants' failure to comply with Rule 203(b)(1), SCACR.

I. STATEMENT OF RELEVANT FACTS

A. Assignment of the Instant Case and Four Related Cases to Circuit

Court Judge Doyet A. Early, III

By Order dated March 7, 2006, the Supreme Court of South Carolina assigned the Honorable Doyet A. Early, III "to hear and decide all pre-trial motions and other matters pertaining to these cases [five related cases], including the trial and post-trial motions." See Exhibit A. The five (5) cases assigned to Judge Early included the case giving rise to the instant appeal, as well as cases captioned *Davis, et al. v. Palmetto Apartments, et al.*, Civil Action No. 2005-CP-07-1989; *Carolina Management Corporation, et al. v. Pinewood Park Apartments, et al.*, Civil Action No. 2005-CP-07-1990; *Davis, et al. v. Roosevelt Gardens, et al.*, Civil Action No. 2005-CP-38-1131, and *Rentz, et al. v. Orleans Gardens, et al.*, Civil Action No. 2005-CP-10-4229. Each of the five cases involved claims by limited partners that the general partners of the defendant limited partnerships had breached their fiduciary duties in connection with the 1984 sale of five properties located within the State. All of the sales, with the exception of Pinewood (which involved a similar form of sale), were part of the same deal. The defendant general partners are identical in each of the cases, and most of the limited partners appear as plaintiffs in multiple cases (e.g., Laurance H. Davis, Jr. is a plaintiff in three of the five cases).

The undersigned attorneys have represented all of the Defendants/Respondents in

these five cases in both the trial court and the current appeals. Attorneys Joel Bailey and Thomas Pendarvis have represented all of the Plaintiffs/Appellants in these five cases in both the trial court and the current appeals.

B. Receipt of Written Notice of Entry of Order and Appellants' Untimely Notice of Appeal

The final order triggering this appeal, which is captioned "Order Granting Defendants' Two Motions for Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt," was signed by Judge Early on April 6, 2010, and entered on April 9, 2010 ("Sanctions Order"). See Exhibit B (also attached to Appellants' Notice of Appeal as Exhibit 8). The single Sanctions Order applied to all five (5) cases on its face (i.e., in the caption and in the body of the Order).

Appellants in all five cases served a single Motion for Reconsideration with respect to the Sanctions Order on April 22, 2010, stating that they received written notice of the entry of the Sanctions Order on April 13, 2010 (via e-mail) and on April 15, 2010 (via mail). See Exhibit C. Like the Sanctions Order, the single Motion for Reconsideration applied to all five (5) cases on its face.

In an order signed on September 16, 2010, and entered on September 20, 2010, Judge Early denied Appellants' Motion for Reconsideration. See Exhibit D (also attached to Appellants' Notice of Appeal as Exhibit 9). Like the Sanctions Order and the Motion for Reconsideration, the single Order denying Appellants' Motion for Reconsideration applied to all five (5) cases on its face.

Appellants received written notice of the entry of the Order denying their Motion

for Reconsideration **on October 1, 2010**, as acknowledged by counsel for the Appellants in the Notice of Appeal filed in *Rentz, et al. v. Orleans Gardens, et al.*, Case No. 2010176826. See Exhibit E at p.2, ¶ 9.

Appellants did not serve their Notice of Appeal in this case until December 3, 2010, more than sixty (60) days after they received written notice of the entry of the Order denying their Motion for Reconsideration. See Exhibit F.

II. APPLICABLE LAW AND ARGUMENT

Rule 203(b)(1), SCACR, states that the notice of appeal “shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Where, as here, the Appellants timely filed a motion for reconsideration of the subject order pursuant to Rule 59, SCRCP, “the time for appeal shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.” Rule 203(b)(1), SCACR. It is beyond dispute that the single Sanctions Order and the single Order denying Appellants’ subsequent single Motion for Reconsideration applied to all five (5) cases assigned to Judge Early, including the instant case. See Exhibits B and D. It is also beyond dispute that:

(1) Appellants received written notice of the entry of the Sanctions Order no later than April 15, 2010 (see Exhibit C at p. 2: “The undersigned subsequently received a signed copy of the Order and notice of the entry of this Order by the Beaufort County Clerk of Court *via* U.S. mail from Ellis M. Johnston, II on April 15, 2010.”);

(2) Appellants received written notice of the entry of the Order denying their Motion for Reconsideration on October 1, 2010 (see Exhibit E at p. 2, ¶ 9: “ORDER denying Plaintiffs’ motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010...”); and

(3) Appellants did not serve their Notice of Appeal in this case until December 3, 2010 (see Exhibit F).

Appellants clearly failed to comply with Rule 203(b)(1), SCACR.

As a result of Appellants' failure to timely serve their Notice of Appeal as required by Rule 203(b)(1), SCACR, this Court lacks subject matter jurisdiction over this appeal and the appeal must be dismissed. See USAA Property and Casualty Insurance Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008). The South Carolina Supreme Court recently held:

"Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and **failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal.**" *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct. App. 1999). "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Id. at 651, 795 (emphasis added).

The types and quality of the written notice of entry of the Sanctions Order and the Order denying Appellants' Motion for Reconsideration, which Appellants received, are more than adequate under South Carolina law. Appellants acknowledge that they received written notice from Respondents' counsel, via e-mail (April 13, 2010) and mail (April 15, 2010), that the Beaufort County Clerk of Court had entered the Sanctions Order. Appellants' counsel also acknowledge that they received written notice of the entry of the Order denying their Motion for Reconsideration on October 1, 2010, apparently via a copy of the file-stamped Order from the Charleston County Clerk of

Court (Respondents received a copy of the file-stamped Order from the Charleston County Clerk of Court on September 30, 2010). The notice received by Appellants included copies of the signed and filed orders, which applied on their face to each of the five (5) cases assigned to Judge Early, including this case.

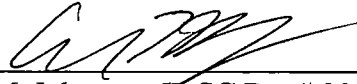
The notice received by Appellants is superior to the type and quality of notice that the defendant received in Rosen, Rosen & Hagood v. Hiller, 307 S.C. 331, 415 S.E.2d 117 (Ct. App. 1992), in which this Court held the defendant was deemed to have received written notice of the entry of an order via a letter from opposing counsel, which only implied that the order had been filed and enclosed an unsigned, undated copy of the order. Id. at 118-19, 334-35 (discussing Rule 77(d), SCRPC, which provides that the clerk shall serve a notice of entry of an order by first class mail upon every party affected thereby, **but** such mailing “shall not be necessary to parties who have already received notice” Id. at 118, 334).

III. CONCLUSION

In light of the above, Respondents respectfully submit that the instant appeal should be dismissed as a result of Appellants’ failure to serve their Notice of Appeal within 30 days of receipt of written notice of the entry of the Order denying their Motion for Reconsideration (or within 30 days of receipt of written notice of the entry of the Sanctions Order).

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, PA



Ellis M. Johnston, II, SC Bar # 3065

Calvin T. Vick, Jr., SC Bar #68187

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Greenville, South Carolina 29602

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(864) 240-3336 (fax)

tvick@hsblawfirm.com

ejohnston@hsblawfirm.com

Attorneys for Respondents

This 18th day of January, 2011
Greenville, South Carolina

A

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The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Parkview Apartments, et al.,

Defendants.

Beaufort County
2003-CP-07-0723

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Palmetto Apartments, et al.,

Defendants.

Beaufort County
2005-CP-07-1989

Carolina Management Corporation of Beaufort, et. al,

v.

Plaintiffs,

Pinewood Park Apartments,

Defendants.

Beaufort County
2005-CP-07-1990

Rhoda G. Rentz, et al.,

v.

Plaintiffs,

Orleans Gardens, et. al.,

Defendants.

Charleston County
2005-CP-10-4229

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

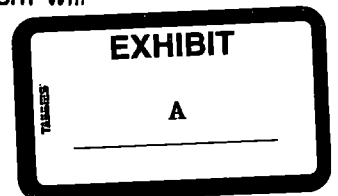
Roosevelt Gardens,

Defendants.

Orangeburg County
2005-CP-38-1131

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4, I find that assigning a single circuit judge to dispose of all matters arising out of the apartment management litigation currently pending and to be filed in the state court system will



promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the Honorable Doyet A. Early, III is assigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. Judge Early may schedule necessary hearings at any time.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2010 APR -9 PH 3: 32
Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.)
Parkview Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.)
Roosevelt Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,)
v.)
Orleans Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.)
Palmetto Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,)
et al., Plaintiffs,)
v.)
Pinewood Park Apartments, a South Carolina)
Limited Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2005-CP-07-1990

**ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING
PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-
CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT**

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DAE #1

EXHIBIT

B

dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRPC. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. **Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)**

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAE #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

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discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

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Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴
- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

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at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

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Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCF. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon, In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." Id. (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." Id. (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." Id. The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

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were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." *Id.* (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. **Rule 37 Sanctions; Grounds for Dismissal**

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRPC, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCP, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCP.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Ct. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppe v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Ct. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

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lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Ct. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

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could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

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from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCP. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte: Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

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award. See id. ("A fine may also be 'remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine...'") (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

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for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRCP, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRCP, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

This 6th day of April, 2010.
Chen, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., et al., Plaintiffs)
v.) Beaufort County
Parkview Apartments, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 03-CP-07-726

Laurance H. Davis, Jr., et al., Plaintiffs)
v.) Orangeburg County
Roosevelt Gardens, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 05-CP-38-1131

Rhoda G. Rentz, et al., Plaintiffs)
v.) Charleston County
Orleans Gardens, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 05-CP-10-4229

Laurance H. Davis, Jr., et al., Plaintiffs)
v.) Beaufort County
Palmetto Apartments, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 05-CP-07-1989

Carolina Management Corporation of Beaufort,)
et al., Plaintiffs)
v.) Beaufort County
Pinewood Park Apartments, a South Carolina)
Limited Partnership, et al., Defendants.) C/A # 05-CP-07-1990

**NOTICE OF MOTION AND MOTION FOR RECONSIDERATION,
ALTERATION OR AMENDMENT**

**TO: ELLIS M. JOHNSTON, II, CALVIN T. VICK, MARVIN INFINGER AND ANNE
ROSS ROSEN, AND THE DEFENDANTS ABOVE-NAMED**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for the Plaintiffs in the above-captioned matters, will and hereby does move, pursuant to S.C.R.C.P. 59, for an Order of this Court granting relief as hereinafter set forth from the Order Granting Defendants' Two Motions For Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt, said Order being dated the 6th day of April, 2010 and filed in the Office of the Clerk of Court for Beaufort County on April 9, 2010. The undersigned first received a signed copy and notice of the entry of this Order by the Beaufort County Clerk of Court *via* e-mail from Ellis M. Johnston, II dated April 13, 2010. The undersigned subsequently received a signed copy of the Order and notice of the entry of this Order by the Beaufort County Clerk of Court *via* U.S. mail from Ellis M. Johnston, II on April 15, 2010.

This motion is subject to and not in waiver of the Plaintiffs' pending Motion for Recusal and Vacation of Orders and Motion for Protective Order; Plaintiffs specifically reserve all positions or objections stated in any prior motions or submissions concerning the qualification of Judge Doyet A. Early III to issue rulings or preside over proceedings in these cases, and that his participation in this litigation is prohibited by the Canons of Judicial Ethics and the existing laws and constitutions of this state and of the United States of America.

The grounds for this motion are hereinafter set forth in this document, as well as in any affidavits submitted in support hereof, including but not limited to any affidavit filed with this motion; in that regard, an affidavit of Thomas Pendarvis, Esquire, co-counsel for the Plaintiffs, is being submitted under separate cover due to the volume of its contents and attachments. The contents of that affidavit are hereby incorporated by reference herein as additional grounds for this motion, and it is deemed to be an affidavit submitted herewith in support of this motion as fully and

completely as if the affidavit physically accompanied this motion. The Plaintiffs further assert that the grounds for this motion are also contained in any transcripts of proceedings held in this or any related matter; any depositions or other discovery conducted in this litigation; any rulings and orders issued in this litigation; any memoranda of law submitted in this litigation; and/or any related motions, correspondence, e-mails, or other relevant documents which have been submitted, produced or identified in this litigation.

For the reasons hereinafter set forth, the Plaintiffs seek relief from the said Order in the following particulars:

A. The Plaintiffs seek reconsideration and vacation of the said Order in its entirety, on the basis that (a) it is primarily based upon Plaintiffs' failure to comply with a prior Order of Judge Early which modified and/or eliminated the rulings of the Special Master appointed in this litigation, and that such prior Order exceeded the jurisdiction of the trial judge under S.C.R.C.P. 53; (b) it is tainted in its entirety due to the bias and prejudice of the issuing judge, as demonstrated herein and in the Plaintiffs' pending Motion for Recusal and Vacation of Orders; (c) it is based upon erroneous, misleading and inaccurate findings of fact outside the evidence; (d) it is based upon errors and misapplications of existing law; (e) it is the product of at least one *ex parte* communication between Judge Early and Defendants' counsel, Calvin T. Vick, which is specifically prohibited under the law of this state.

B. The Plaintiffs alternatively seek reconsideration, alteration and/or amendment of the factual findings set forth in the said Order on the ground that they are not accurate, are incomplete, are outside the evidence presented and/or present a biased and unfair representation of the acts or conduct referenced therein, including, *inter alia*, the following particulars:

1. The finding on page 5 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that "Plaintiffs' responses to numerous document requests and interrogatories were 'incomplete and inadequate.'"

(a) This finding ignores the thousands of pages of documents which Plaintiffs have produced in this litigation, as well as the actual detail and content of Plaintiffs' written responses to the Defendants' interrogatories.

(b) This finding ignores the fact that Plaintiffs have been responding to Defendants' discovery requests since 2005, and have continually supplemented their responses since that time as additional information became known or additional documents became available to them.

(c) This finding ignores the fact that Judge Early's General Discovery Order of March 3, 2009 was actually written by counsel for the Defendants and that Judge Early merely adopted verbatim the language they proposed, with the exception of their proposed language relating to an award of attorneys' fees. This is very relevant in light of the Plaintiffs' pending Motion for Recusal and Vacation of Prior Orders.

(d) This finding ignores the fact that Plaintiffs' counsel made the same objections to the discovery responses of counsel for Defendants, only to have such objections rejected by Judge Early.

2. The finding on page 5 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that Plaintiffs responded to the positions of the Defendants' counsel by "summarily dismissing" them.

3. The finding on page 6 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that "the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term" solely "due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials)."

(a) This finding ignores the fact that the May 18, 2009 trial date had been set over a year earlier; that, at that time, Plaintiffs' counsel sought a trial date in 2008 but Judge Early adopted the request of Defendants' counsel that the Parkview case would not be set for trial until late spring of 2009; that Judge Early gave counsel a choice of trial dates in April or May of 2009, and counsel for Plaintiffs asked for the earlier date in April but Judge Early adopted the request of Defendants' counsel for the May date.

(b) This finding ignores the fact that, prior to the setting of the May 2009 trial date, counsel for the Defendants had done almost no discovery in these cases, and had objected to virtually all of Plaintiffs' discovery requests. It also ignores the fact that, when presented with the objections of Defendants' counsel, Judge Early denied the request of Plaintiffs' counsel to compel discovery responses, so that Plaintiffs' counsel was forced to obtain discovery through other more costly means, such as depositions.

(c) This finding ignores the fact that the Defendants' discovery requests now at issue were not even submitted until less than 9 months before the May 2009 trial date, and that the requests sought documents and information which was deemed by Plaintiffs to be privileged and not subject to discovery, and which Plaintiffs' counsel had an ethical and legal duty to oppose.

(d) This finding ignores the fact that the discovery dispute did not arise over the Plaintiffs' "failure to respond to discovery," as stated in the Order; rather, it arose over the

contentions of Defendants' counsel concerning the adequacy or sufficiency of the responses which had, in fact, been made.

(e) This finding ignores the fact that Judge Early did not issue any finding as to the sufficiency of Plaintiffs' responses, which had been served in November of 2008 and supplemented in January of 2009, until March of 2009, just 2 months prior to the Parkview case trial date.

(f) This finding ignores the fact that the Plaintiffs' motion asking Judge Early to reconsider his Order of March 3, 2009, was both timely and within the South Carolina Rules of Civil Procedure, or that Judge Early did not rule on the motion for reconsideration until after the Parkview trial date had passed.

(g) This statement ignores the fact that the continuance was granted at the request of counsel for the Defendants, and over the objection of counsel for the Plaintiffs.

4. The finding on page 7 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states, "...Plaintiffs' complete failure to comply with the General Discovery Order."

(a) Statements such as this are prime examples of why a presiding judge should not follow Judge Early's policy of signing orders prepared by counsel without closely scrutinizing them for errors. Counsel are advocates for their clients; a judge should be impartial and fair to all parties, or at least should appear to be fair and impartial. Signing orders with argumentative and clearly erroneous language prepared by counsel for a party is not in keeping with a judge's duty or oath of office.

(b) Even under Defendants' arguments, the Plaintiffs' alleged noncompliance with the Order can hardly be said to be a "complete failure to comply."

5. The finding on page 7 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that Plaintiffs' counsel indicated that "Plaintiffs would comply with the General Discovery Order, at least in a piecemeal fashion, ..."

(a) Plaintiffs' counsel has never used the term "piecemeal" in any representations to the Court or opposing counsel in these cases, and use of that term by counsel for Defendants again illustrates the point made above: a presiding judge should not adopt a policy of signing orders prepared by counsel for one of the parties without closely scrutinizing them for errors or argumentative language.

(b) This finding totally misrepresents and misstates the representations of Plaintiffs' counsel in the conference call referenced in the Order. What counsel for the Plaintiffs actually said was that the discovery had previously been focused on the Parkview case, as it was the only case designated for trial, but that the General Discovery Order had been made applicable to all Plaintiffs in all cases. Plaintiffs' counsel pointed out to Judge Early that this change in the discovery process required significantly more effort and, correspondingly, more time, as the individual Plaintiffs were located in multiple locations and that both of Plaintiffs' counsel were sole practitioners with limited resources. Plaintiffs' counsel offered to focus on the Parkview case initially, and asked for leeway in getting the information for the other cases, since the information being sought covered several decades and was not readily available to the Plaintiffs. To characterize this as an indication that Plaintiffs would comply in a "piecemeal fashion" is an inaccurate and unfair distortion.

6. The finding on page 7 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that "the Court was required to hold a hearing ... on August 24, 2009" because Plaintiffs had "failed to provide any supplemental responses by the end of July."

(a) This statement is unfair and misleading because it does not provide the reason for the Plaintiffs not having supplemented their discovery responses in July. Plaintiffs' counsel Thomas Pendarvis was the attorney responsible for preparation of the supplemental discovery responses, and he was in trial in a document intensive case which lasted several days and required his primary attention during this time.

(b) Mr. Pendarvis's involvement in the other trial was communicated to the counsel for the Defendants, along with his assurances that he would get the supplemental responses completed as soon as the other trial was completed. His involvement in the other trial was actually known to Judge Early, as he was the presiding judge in the other trial.

(c) To imply that Plaintiffs' counsel had engaged in some deliberate dilatory tactics which necessitated action by the Court, which the referenced "finding" certainly does, while in possession of actual knowledge of facts to the contrary, is yet another example of unfairness and partiality on the part of Judge Early in these cases.

7. The finding on pages 7 and 8 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that, "As a result of Plaintiffs' continuing failure to comply with the Court's discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term ..."

(a) This statement is unfair and misleading because it states that there was a January date set for the trial of "these cases" when, in fact, only the Parkview case was slated for trial at that time. Again, this is another example of Judge Early choosing to adopt the language of an order written by Defendants' counsel, notwithstanding that it is clearly erroneous and factually incorrect.

(b) This statement is also unfair and misleading because it ignores the fact that the January 19, 2010 trial date was set by Judge Early after he granted the request of Defendants' counsel to continue the Parkview case past the May 2008 date, and that he refused the requests of Plaintiffs' counsel to set an earlier trial date in the fall of 2009. Furthermore, Judge Early chose to delay in issuing a ruling on the pending discovery motion of Defendants' counsel, even though he had heard it in August of 2009.

(c) The statement is also unfair and misleading because it ignores the fact that the Plaintiffs had employed other counsel to seek interlocutory appellate relief from Judge Early's rulings requiring them to provide confidential information to counsel for the Defendants. The cases were not remanded from the appellate courts until December of 2009.

(d) To hold, in light of all the relevant evidence to the contrary, that the trial delay is due solely to the conduct of Plaintiffs' counsel when, in fact, it was Plaintiffs' counsel who sought on multiple occasions to have the case tried previously, is wrong.

8. The finding on page 8 of the Order (as well as any additional references or "findings" in the Order relating to the same) relating to the Plaintiffs' Third Supplemental Responses to the Defendants' discovery requests.

(a) This finding states that only the "Plaintiffs in the Parkview case" supplemented their discovery responses, and that "none of the other Plaintiffs provided any supplemental response." This creates the impression that non-Parkview Plaintiffs were willfully refusing to provide supplemental responses, and was evidently drafted by Defendants' counsel - and once again adopted and signed by Judge Early - in order to try to cast the Plaintiffs in the worst light possible. The finding ignores the fact that Plaintiffs' counsel informed Judge Early and Defendants' counsel when the supplemental responses were submitted that the non-Parkview Plaintiffs would provide similar supplemental responses if Judge Early found the Parkview submissions to be in compliance with his General Discovery Order.

(b) Once again, the incompleteness of this finding renders it unfair and misleading because it ignores the fact that the Plaintiffs' Third Supplemental Responses were provided to Judge Early, with a letter from Plaintiffs' counsel which stated, "The response is specific to the Parkview case only at this time since, as you correctly noted at the hearing, that is the first case which was scheduled for trial...I have looked at the other discovery requests addressed in the Defendants' written submission, and believe that, as to those, we are in compliance with both your prior order and the South Carolina Rules of Civil Procedure. If you agree, we will provide similar updated responses in the other cases."

(c) The finding also fails to state that the said letter of Plaintiffs' counsel also addressed the issue of valuation expert witness disclosure, stating, "The enclosed amended response relating to the valuation experts is as detailed and complete as I know how to make it in a written discovery response. Of course, as is always the case, the witnesses may elaborate in greater detail at their depositions, should the Defendants decide to depose them...I am hopeful that you will

find these to be sufficient." This omission is both enlightening and significant, given Judge Early's later conclusions in the Order relating to this aspect of the Plaintiffs' discovery responses.

9. The finding on page 8 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that Plaintiffs "have failed to provide any legitimate excuse for their non-compliance," and that their "noncompliance is well documented" in the memoranda filed by Defendants' counsel.

(a) This finding ignores the fact that Plaintiffs' counsel informed Judge Early and Defendants' counsel on several occasions of the fact that Plaintiffs' counsel felt that their initial responses and three supplemental responses were, in fact, in compliance with the General Discovery Order, and sought specific direction from the court as to any areas of deficiency; the response of Judge Early was simply to adopt by reference the arguments of Defendants' counsel as set forth in their memoranda.

(b) This finding also ignores the information concerning Mr. Pendarvis's simultaneous involvement with the trial of another complicated case, as stated above.

(c) This finding also ignores the fact that Judge Early permitted Defendants' counsel to revise the existing discovery protocol by requiring discovery responses in all five (5) cases, even though the prior protocol was to focus primarily on the Parkview case since it was the first scheduled case for trial, and the problems this presented to Plaintiffs' counsel were specifically presented to both Judge Early and Defendants' counsel; Judge Early's response was to continue his policy of adopting Defendants' arguments.

(d) This finding also ignores the fact that Judge Early and Defendants' counsel were advised by Plaintiffs' counsel of the hardships which Judge Early's adoption of the

arguments advanced by Defendants' counsel, resulting in his imposition of a double standard with respect to the discovery aspects of this litigation, created for Plaintiffs and their ability to comply with the Order to the extent envisioned by Judge Early, particularly given the fact that their requests covered a period of several decades; some of said requests going back as far as the 1960s. Furthermore, Judge Early and Defendants' counsel were informed that many of the Plaintiffs were in ill health and elderly, while others were heirs or agents of the original limited partners, and had limited personal knowledge of the information sought or access to the documents being requested.

(e) The reference in the Order to memoranda filed by Defendants' counsel is too general, vague and broad for Plaintiffs' counsel to specifically respond thereto. In any event, Plaintiffs believe that such general reference to and reliance on argumentative memoranda filed by an advocate in the case by Judge Early in an Order is not proper, particularly given the fact that it is being used to justify imposition of the harshest sanction available, *i.e.*, total dismissal with prejudice of the Plaintiffs' claims, coupled with a sanction of costs and fees.

10. The finding on page 9 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to the opinions held by expert witnesses identified by the Plaintiffs.

(a) The Order states that "Plaintiffs have still not disclosed the relevant opinions held by their testifying experts or the bases for said opinions ...", that "the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order" (again simply referencing one of Defendants' Memoranda) and that "Plaintiffs in the other cases have provided even less."

(b) This finding is erroneous and ignores the fact that the Plaintiffs have specifically identified persons who they believe qualify as experts concerning the values of the respective properties in these cases, have set forth their opinions to the extent known by Plaintiffs' counsel and provided the bases for their opinions to the best of their ability. Plaintiffs' counsel have provided this information to the Defendants' counsel on several occasions, both formally and informally. Defendants' counsel was provided with a summary of Plaintiffs' valuation theory at a meeting prior to the March 2008 mediation in the Parkview, Palmetto, Orleans and Roosevelt cases. Plaintiffs' counsel provided a detailed and specific analysis as to the range of values attributable to each of the subject properties/ Furthermore, Plaintiff showed video interviews they had done with the expert witnesses retained to testify as to values in the Parkview, Palmetto and Roosevelt cases. No experts have been retained in the Pinewood or Orleans cases, as those cases were not scheduled for trial. Subsequent to the mediation, Plaintiffs' counsel again provided similar detailed information to Defendants' counsel. All of this is omitted and ignored in the Order granting Defendants' motions for sanctions.

(c) The finding also ignores the fact that some of the witnesses identified by Plaintiffs as experts were not actually hired or retained by Plaintiffs. Defendants counsel is well aware of these people and their opinions and the bases for such opinions, as they have been given all documents in the possession of Plaintiffs' counsel, and they have subpoenaed the records of many of these persons and, in some instances, have taken their depositions. These include county assessors, accountants, an insurance agent, licensed appraisers who have actually performed appraisals on the subject properties, a former manager of the properties and subsequent purchasers of the properties. Defendants have had full access to these individuals and their documents for over

two years. All of this is omitted and ignored in the Order granting Defendants' motions for sanctions.

(d) As to retained experts, Plaintiffs have hired two real estate professionals to testify about the fair market value of the two Beaufort properties, since the Parkview case was designated as the first case to be tried, and the experts happened to be familiar with the Palmetto property as well. Plaintiffs have also retained a licensed appraiser as a valuation expert concerning the Roosevelt property. Plaintiffs have provided Defendants' counsel with all the information they have concerning these experts; this information has been provided as it was received over more than a two year period. Furthermore, all information in the possession or control of Plaintiffs or their counsel relating to the Parkview case experts was also provided to Judge Early in Plaintiffs' recent Third Supplemental Responses; Judge Early was specifically advised that a similar submission would be forthcoming in the other cases if he deemed the Parkview submission to comply with his prior Order. Plaintiffs' counsel personally spent hours meeting with retained counsel in an effort to gather information to submit in the supplemental discovery responses. This submission was summarily dismissed in the subject Order, with another oblique reference to Defendants Second Supplemental Memorandum. All of this is omitted and ignored in the Order granting Defendants' motions for sanctions.

(e) If Defendants' counsel really wished to obtain further information, they could certainly do so by deposing the experts listed. Plaintiffs have provided Defendants' counsel with all documents in their possession or control concerning their expert witnesses. To ignore these facts in the subject Order is to paint a grossly inaccurate and distorted picture of the efforts of Plaintiffs and their counsel to comply with the General Discovery Order.

(f) While it is not surprising that the objectionable language being addressed would be omitted from a proposed order submitted by advocates for a party, it is distressing to see a trial judge, who is supposed to be fair and impartial, simply sign off on such language with the knowledge that it paints an incomplete and distorted version of the true facts. This is particularly true when the judge is using these distorted versions of the events in this case to "justify" dismissal of the Plaintiffs' claims.

(g) The reference in the Order to memoranda filed by Defendants' counsel is too general, vague and broad for Plaintiffs' counsel to respond thereto. In any event, Plaintiffs believe that such general reference to and reliance on argumentative memoranda filed by an advocate in the case by Judge Early is not proper, particularly given the fact that he is using it to justify imposition of the harshest sanction available to him, *i.e.*, total dismissal of the Plaintiffs' claims.

11. The finding on page 9 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to Defendants' Interrogatories 9, 10 and 12.

(a) The Order states that "Plaintiffs have still not provided full and complete ... information concerning the first communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they 'do not recall'...)."

(b) This finding ignores the fact that the Defendants, their counsel and Judge Early have all been apprised of the fact that Mr. Bailey was initially contacted by Plaintiff

Laurance Davis, Jr. in early 2000 concerning legal representation for himself and other limited partners. This fact is confirmed by the first entry on the initial Privilege Log of the Plaintiffs, and has been known to them since July of 2005. They have also been informed through affidavits previously submitted in this litigation that Mr. Bailey was initially consulted to investigate the status of the existing debts, as well as the status of any attempt by the general partners to collect the debt or recover partnership assets.

(c) This finding also ignores the fact that Judge Early and Defendants' counsel have been apprised on multiple occasions that many of the Plaintiffs are in ill health and elderly, and that they have limited or no memory of the initial communications requested by Defendants. Judge Early and Defendants' counsel have also been apprised of the fact that other Plaintiffs are heirs or agents of the original limited partners and were not directly involved in all communications with other limited partners. They have also been apprised of the fact that some of the early communications between counsel and limited partners were done indirectly through Mr. Davis, who was acting on their behalf, and that they have provided as much information in response to the Defendants' interrogatory as they have, with the exception of information and documents they assert are privileged. Although Judge Early has adopted the Defendants' argument that the Plaintiffs have waived their privilege as to these documents and communications, that remains an issue for the appellate courts to decide. Plaintiffs have requested that Judge Early employ multiple alternatives to dismissal so that the appellate courts can determine this issue at this time, but Judge Early has chosen to adopt the Defendants' arguments and rejected each such request by Plaintiffs.

(d) The reference in the Order to memoranda filed by Defendants' counsel is too general, vague and broad for Plaintiffs' counsel to respond thereto. In any event, Plaintiffs

believe that such general reference to and reliance on argumentative memoranda filed by an advocate in the case by Judge Early is not proper, particularly given the fact that he is using it to justify imposition of the harshest sanction available to him, *i.e.*, total dismissal of the Plaintiffs' claims.

12. The finding on page 10 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that Plaintiffs have not provided "an itemized statement of all damages claimed to have been sustained by Plaintiffs."

(a) This finding ignores the fact that Plaintiffs have, on multiple occasions, provided Defendants and their counsel with all documentation relating to their damages which Plaintiffs have in their possession or control.

(b) This finding also ignores the fact that Plaintiffs' are not required under the law in South Carolina to prove their damages to a mathematical certainty, and that Plaintiffs' damages in these cases are known by all parties to consist of a range of values for the respective underlying properties, rather than a sum certain which can be set forth on an itemization. These ranges of values have been itemized to the best of the ability of Plaintiffs' counsel and have been provided to Defendants' counsel on multiple occasions for more than two years.

13. The finding on page 10 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that "Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense ..."

(a) This finding is patently erroneous and contrary to the evidence in the record.

(b) Plaintiffs' Second Supplemental Responses to Defendants' Discovery Requests clearly designate the documents in the possession of Plaintiffs' counsel by both bates stamp number and source, *i.e.*, the specific Plaintiff from whom the documents were received.

14. The finding on page 10 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to Plaintiffs' responses to Interrogatory Nos. 8, 18 and 20.

(a) This finding is also erroneous and contrary to the evidence in the record.

(b) Plaintiffs' Second Supplemental Responses to Defendants' Discovery Requests clearly designate the documents in the possession of Plaintiffs' counsel by both bates stamp number and source, *i.e.*, the specific Plaintiff from whom the documents were received.

15. The finding on page 11 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that the Privilege Log produced by the Plaintiffs on July 30, 2008 "identified ninety (90) documents, dated (*i.e.*, created) between 1998 and 2004, which had not been previously identified in this litigation."

(a) This finding is very misleading and unfair. As noted in Footnote 6 of the Order, Plaintiffs had earlier produced a Privilege Log in July, 2005 listing 44 documents. These documents were also included in the July 2008 Privilege Log, which was a continuum document, as were the subsequent revised Privilege Logs identified in Footnote 7 of the Order.

(b) This finding again illustrates the problems encountered when a judge relies upon an advocate to prepare orders and signs the orders, either without really knowing if the statements in the orders are accurate or without making any independent effort to confirm the accuracy of the contents of the orders.

16. The finding on page 12 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that Judge Early's Order of December 30, 2008 appointed "Gary Clary for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court."

(a) This finding gives the erroneous impression that Judge Clary's appointment was for advisory purposes only, when the appointment actually involved the delegation by Judge Early of an important issue to Judge Clary, *i.e.*, the resolution of the issue concerning which documents were, in fact, privileged and not subject to production. The Order of December 30, 2008 appointing Judge Clary as Special Master specifically states that, as to the documents in Plaintiffs' Privilege Log, Judge Clary was to "make his *ruling* as to whether each such document is subject to discovery and production should be compelled ..." (Emphasis author's)

(b) The obvious attempt in this finding of the Order is to limit the authority of Judge Clary, given the prohibitions of S.C.R.C.P. 53. The finding, however, is clearly inconsistent with Judge Clary's understanding of his role, as shown in the unambiguous language of his amended report of April 14, 2009; the very first sentence of his amended report specifically states that he was appointed Special Master "to *resolve* specified discovery disputes related to the ... actions." (Emphasis author's)

(c) It is also clear from his amended findings and conclusions that Judge Clary felt that he was, in fact, resolving these issues through the *rulings* stating his findings and conclusions. With respect to his rulings concerning the documents on Plaintiffs' Privilege Log, for example, Judge Clary specifically states, "*I find and conclude* the following documents are subject to the attorney-client and/or work product privilege properly claimed by Plaintiffs ... *and shall not be produced.*" Judge Clary goes on to list in excess of eighty (80) documents on Plaintiffs' Privilege Log which were deemed to be privileged and protected from disclosure to the Defendants.

17. The finding on page 13 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to the issuance of the Privilege Discovery Order dated July 28, 2009, amending Judge Early's prior Order of June 2, 2009, which had adopted the findings and conclusions of Judge Clary.

(a) This finding is incomplete and therefore not representative of the true facts surrounding the issuance of the Privilege Discovery Order.

(b) The finding ignores the fact that, prior to the signing of the Privilege Discovery Order, which again was prepared by counsel for the Defendants, Plaintiffs' counsel informed Judge Early of the fact that their further research into the matter demonstrated that SCRCF 53 prohibits alteration of the rulings of a special master or referee by a trial judge, and that jurisdiction for such alteration lies exclusively with the appellate courts. Plaintiffs' counsel requested that Judge Early decline to sign any order which altered the rulings of Judge Clary, as he had no legal authority or jurisdiction to do so.

(c) The finding also ignores the fact that, when Plaintiffs' counsel learned that Judge Early had signed the said order, but had not yet entered the same, they again informed him

of the restrictions of SCRCp 53 and the lack of jurisdiction by a trial court to alter or amend the rulings of a special master or referee. Plaintiffs' counsel again stated their position that Judge Early had no legal authority or jurisdiction to alter the rulings of Judge Clary, and requested that the order be withdrawn and not entered.

(d) This finding also ignores the fact that the Privilege Discovery Order granted only nominal relief to the Plaintiffs while requiring them, contrary to the rulings of Judge Clary, to produce virtually every communication between them and their counsel relating to this litigation. It further ignores the fact that the order granted the Defendants' protection from producing nearly all of the documents they had been ordered to produce by Judge Clary.

(e) Inclusion of these facts is necessary in order for the appellate courts to understand the full arguments of Plaintiffs counsel and the impact of the decision of Judge Early to side with Defendants' counsel on the issue of dismissal of Plaintiffs' claims.

18. The finding on page 16 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to the January 14, 2010 hearing and events transpiring subsequent thereto.

(a) This finding is incomplete, as it omits certain facts which transpired in chambers following the hearing. At the meeting in chambers, counsel for Plaintiffs pointed out to Judge Early that the Defendants' Motion for Sanctions was based upon the July 28, 2009 Order, which reversed the rulings of Judge Clary, and that such Order contained significant errors. Judge Early asked Defendants' counsel about the errors and they acknowledged that the statements in the Order concerning language in Plaintiffs' Complaints - which was a stated basis for the ruling that Plaintiffs had waived their attorney-client privilege - was not correct, as such language did not even

exist in all the Complaints, as stated in the Order. It was at this point that Judge Early gave Plaintiffs' counsel the opportunity to respond to the proposed sanctions order being prepared by counsel for the Defendants.

(b) This finding also ignores and omits the fact that the letter to Judge Early from Plaintiffs counsel again pointed out that the proposed sanctions Order submitted by Defendants' counsel relied *entirely* upon the prior Order which they had prepared and which Judge Early had signed on July 28, 2009, which significantly modified the rulings of Special Master Clary,, and which was admittedly erroneous as stated above. Plaintiffs' counsel again informed Judge Early that Plaintiffs did not wish to be in non-compliance with his Order but it had created an impossible dilemma, whereby Plaintiffs were forced to choose to either comply with the Order and lose their constitutional rights relating to legal representation and confidential communications, or protect their constitutional rights and disobey the Order. The alternative orders proposed by Plaintiffs' counsel were submitted for the expressed and stated purpose "to restore these cases to the litigation track which we were on until last year."

(c) The finding also ignores the fact that the letter of Plaintiffs' counsel specifically called to Judge Early's attention the double standard created by his Order of July 28, 2009, whereby he gave almost universal protection to the documents which Defendants asserted were privileged, while requiring virtual total disclosure of the communications between Plaintiffs and their counsel.

(d) The finding also ignores and fails to mention the attempts of Plaintiffs to find a way to comply with the Court's July 28, 2009 Order without forfeiting their legal rights to

confidential communications with their counsel, including the filing of a Motion for Protective Order.

C. Plaintiffs further seek reconsideration, deletion or alteration of the following legal conclusions and findings, on the ground that they are not supported by the true and relevant facts, are contrary to and unsupported by the existing law in this state, and/or are outside the scope of, unsupported by and/or contrary to the evidence presented:

1. The statement or conclusion on pages 16 and 17 of the Order which states: "At this time, Plaintiffs have given the Court no reason to believe that they intend to comply with either the General Discovery Order or the Privilege Discovery Order," and "Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order."

(a) This statement or conclusion is patently untrue. Plaintiffs have supplemented their discovery responses numerous times in this litigation in an attempt to comply with Judge Early's discovery rulings, including the General Discovery Order. Plaintiffs' counsel sent a letter to Judge Early with respect to the Plaintiffs' Third Supplemental Responses, seeking his review of the Parkview responses and a pledge to make similar supplemental responses in the other cases if the judge felt the Parkview responses were adequate. Judge Early did not respond to Plaintiffs' counsel with any suggestions or criticisms of their supplemental responses; rather, he chose to ignore the letter and instead, in an apparent *ex parte* communication with Defendants' counsel Vick, counseled him on how to prepare the Order to which this motion is directed.

(b) With respect to the Privilege Discovery Order, Plaintiffs' counsel has informed Judge Early on multiple occasions that the Order placed Plaintiffs in the impossible position of having to forfeit their legal and constitutional rights in order to comply with the Order.

They also stated their belief to Judge Early on multiple occasions that the circuit court had no jurisdiction to issue the Privilege Discovery Order in light of the prohibition against the same set forth in SCRCP 53. They repeatedly asked Judge Early to either rescind the Order, or to issue a simple contempt citation so that the issue would be ripe for appellate review. They also repeatedly informed Judge Early that they felt the appellate review was a critical step at this stage in the litigation, because it would either reject Judge Early's ruling, in which event the communications at issue would remain confidential and the Plaintiffs' legal and constitutional rights would remain intact, or it would affirm Judge Early's ruling, in which event the documents would be produced.

(c) Furthermore, this statement or conclusion totally ignores the fact that Plaintiffs have filed a motion for a protective order wherein they specifically state that the motion is intended to find some method by which Plaintiffs could comply with the Privilege Discovery Order while not forfeiting their legal and constitutional rights. The motion sought relief specifically provided by the South Carolina Rules of Civil Procedure. Judge Early heard arguments on the motion on March 29, 2010, when he finally placed on the record at least some of his extrajudicial affiliations and relationships with named counsel for the Defendants, but has chosen to ignore the motion since that time and has not yet issued any decision regarding Plaintiffs' request.

2. The statement or conclusion on page 17 of the Order which states: "The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful."

(a) The record in this litigation clearly demonstrates Plaintiffs' numerous attempts to comply with the General Discovery Order, only to have Judge Early uniformly adopt arguments of the Defendants' counsel concerning the same. In doing so, Judge Early has chosen

arguments of Defendants' counsel over the factual evidence presented. It is evident that, with many of the Plaintiffs' discovery responses, Defendants' counsel simply do not like the answers or responses given, and seek to force Plaintiffs to give responses more to their liking. This is not a proper exercise or function of the discovery process or this Court; nevertheless, Defendants' counsel has somehow persuaded Judge Early to adopt it.

(b) The record in this litigation also clearly demonstrates the Plaintiffs' efforts to comply with the Privilege Discovery Order without forfeiting their legal and constitutional rights. (See, e.g., 2.c.(1)(b) and (c) above)

3. The statement or conclusion on page 17 of the Order which states that "...Plaintiffs' failure to comply with either or both of the discovery orders has caused, or would continue to cause, extreme prejudice to Defendants," together with the statements or conclusions which follow, purporting to delineate the "extreme prejudice to Defendants."

(a) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims." Plaintiffs have provided an enormous amount of information and documentation to Defendants. Defendants have alternative and additional discovery tools available to them under the laws and rules of civil procedure in this State. Plaintiffs were forced to resort to these tools once Judge Early elected to impose a double standard for discovery by the parties. The Defendants have used these tools as well; they simply chose to stop when it appeared they could gain a receptive ear from the trial judge and could use that toward their stated goal of a dismissal of the

Plaintiffs claims without having to defend them on the merits. Defendants are not entitled to invade the attorney-client privilege in order to prove their defenses in this or any other case.

(b) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. See response to sub-paragraph (a) above.

(c) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the investigation or pursuit of claims against any of the Defendants." See response to sub-paragraph (a) above.

(d) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Defendants' are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases." See response to sub-paragraph (a) above.

4. The statement or conclusion on page 18 of the Order which states that "...Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases," together with the statements or conclusions which follow, purporting to delineate the claimed obstruction.

(a) The statement or conclusion that the Parkview trial "had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. As herein noted, the January 2010 date was selected after Judge Early granted the request of Defendants' counsel to continue the Parkview case past the May 2009 trial date. Furthermore, the statement or conclusion ignores the fact that the cases were before the appellate courts during the fall of 2009 and were not remanded until December of that year.

(b) The statement or conclusion that "Plaintiffs' failure to comply with the General Discovery Order ... was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. Judge Early continued the trial past the May 2009 term at the request - not on the motion - of Defendants' counsel, and over the objection of Plaintiffs' counsel. This conclusion omits the fact that Defendants' counsel did not even seek the discovery complained of until less than 9 months prior to the May 2009 trial date, and then framed the discovery request so that Plaintiffs' counsel had no choice but to oppose it.

(c) The statement or conclusion that Plaintiffs' conduct has resulted in the cases being "held hostage" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. The cases have been forced off the litigation tract solely by Judge Early's decision to adopt the arguments of Defendants' counsel in lieu of the evidence, to issue rulings which are outside of and contrary to such evidence, and to issue rulings which are contrary to and not supported by the existing law of this State.

5. The statements or conclusions on page 18 of the Order which state that "all Plaintiffs in these actions are in contempt of court."

(a) The statement or conclusion that "the record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. As shown herein, Plaintiffs have made numerous attempts to comply with both orders.

(b) The statement or conclusion that "the record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(c) The statement or conclusion that "Plaintiffs' could produce the documents as required by the Privilege Discovery Order, but they choose not to do so" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. The untenable dilemma forced upon the Plaintiffs by Judge Early and Defendants' counsel is documented herein. The "choice" they have been given is no real choice at all.

(d) The statement or conclusion that Plaintiffs have not provided "complete and intelligible responses to the interrogatories" of the Defendants and that "they have remained deliberately evasive and ambiguous in their responses" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. A review of the Plaintiffs' discovery responses clearly shows the fallacy of this conclusion.

(e) The statement or conclusion that "the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. Again, this conclusion is simply not supported by the record.

6. The statement or conclusion on page 19 of the Order which states that "...there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a *prima facie* case for contempt," together with the statements or conclusions which follow, purporting to delineate the claimed obstruction.

(a) The statement or conclusion on page 20 of the Order that "Plaintiffs' have provided no defense, nor have they shown an inability to comply with either of the discovery orders" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(b) The statement or conclusion on page 20 of the Order that there is "clear evidence" that Plaintiffs' have not complied with the General Discovery Order is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(c) The statement or conclusion on page 20 of the Order that Plaintiffs "freely admit that they have not complied with the terms of the Privilege Discovery Order" ignores the reasons repeatedly provided by the Plaintiffs for such noncompliance, as well as the options available and presented to Judge Early to resolve this matter short of dismissal of Plaintiffs' claims, thereby creating an inaccurate, incomplete and unfair portrayal of Plaintiffs' conduct.

(d) The statement or conclusion on page 20 of the Order that Plaintiffs' have filed "untimely motions for reconsideration" is inaccurate and unfairly portrays Plaintiffs' conduct in this matter. All motions for reconsideration filed by Plaintiffs have been timely. See No.

7 below. Judge Early and Defendants' counsel re-designated recent Rule 60 motions filed by Plaintiffs as motions for reconsideration, then held them to be untimely as such; this is a far cry from the conclusion stated.

(e) The statement or conclusion on page 20 of the Order that "privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints)" is contrary to the facts and evidence in this litigation, as well as to the existing law in this State.

(f) The statement or conclusion on page 20 of the Order that "there is no question that the 96 documents are relevant to the subject matter of these actions" is inaccurate, as Judge Early has never seen the documents, and would not know if such documents are, in fact, relevant; Plaintiffs do not believe all of the documents are relevant, so the statement that "there is not question" is not true or accurate.

7. The statement or conclusion on page 20 of the Order that Plaintiffs' have filed "untimely motions for reconsideration;" is inaccurate and unfairly portrays Plaintiffs' conduct in this matter.

(a) All motions for reconsideration filed by Plaintiffs' counsel in this matter have been timely.

(b) Judge Early signed the Order dismissing Plaintiffs' cases, which was prepared by Defendants' counsel, and which elected to treat as Rule 59 motions the Rule 60 motions which were filed by Plaintiffs' counsel in an attempt to get the cases back on a trial tract. The fact that Judge Early signed Defendants' counsel's Order re-styling Plaintiffs' motions does not mean that Plaintiffs untimely filed a motion for reconsideration.

8. The statement or conclusion on page 21 of the Order that "Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order."

(a) This finding or conclusion ignores the Plaintiffs' efforts to comply with the Orders, notwithstanding the imposition by Judge Early of a double standard with respect to both orders, whereby he held the Plaintiffs to a different and significantly higher standard than that he imposed upon the Defendants.

(b) This finding is incomplete and unfair to the Plaintiffs in that it omits and ignores their position that they are, in fact, in compliance with the General Discovery Order and that they have made several attempts to seek ways to comply with the Privilege Discovery Order while preserving their legal and constitutional rights, only to have such attempts summarily dismissed by Judge Early.

(c) This finding is erroneous in that the contempt citation imposed is criminal, not civil, in nature, as part of the basis for its issuance is clearly to punish Plaintiffs and to vindicate the authority of Judge Early.

9. The statement or conclusion on page 21 of the Order that "It is clear that Plaintiffs have failed to comply with either of these orders..."

10. The statement or conclusion on page 21 of the Order that "Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order."

11. The statement or conclusion on page 22 of the Order that "... the only sanction that can achieve justice is the dismissal of the lawsuits," together with the statements or conclusions which follow, purporting to justify this conclusion.

(a) Dismissal of the Plaintiffs' lawsuits is the harshest sanction permitted by SCRCP 37 and ignores the fact that no prior sanctions have been imposed in this litigation, as well as the fact that alternative sanctions are clearly available in these cases.

(b) The attempt to justify imposition of the dismissal sanction under the theory that the documents included in the Privilege Discovery Order "are likely relevant to Defendants' statute of limitation defense" ignores the evidence in these cases that, *inter alia*,:

- (i) The discovery of privileged documents and information is not permitted under SCRCP 26;
- (ii) The method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege merely by filing their complaints, contrary to the existing law of this State;
- (iii) The alternative method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege by including language in their complaints which affirmatively raised the statute of limitations when, in fact, the language in question makes no such assertion nor can any such assertion be reasonably implied concerning such language;
- (iv) The alternative method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege by including language in their complaints which affirmatively raised the statute of limitations when, in fact, the language in question does not exist in all of the complaints;
- (v) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling

issue is at odds with his prior denial of the Defendants' motion for summary judgment based upon the statute of limitations;

- (vi) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is at odds with the evidence that the Parkview case was filed less than 3 years from the time the Plaintiffs were informed that the Defendants would not pursue legal action on behalf of the limited partnership, which is the earliest possible dated for commencement of the statutory period in that case;
- (vii) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is at odds with the evidence that the general partners had until 2002 to pursue claims on behalf of all limited partnerships, and that the Palmetto, Orleans, Roosevelt and Pinewood cases were filed in 2005, following a tolling or *status quo* agreement between the parties with respect to the filing of the Palmetto, Orleans, Roosevelt and Pinewood cases;
- (viii) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is in keeping with his imposition of a double standard relating to discovery in this litigation;
- (ix) Judge Early's obsession with the statute of limitations defense in this litigation is misplaced and unfair to the Plaintiffs as evidenced by his prohibition, at the request of Defendants' counsel, of the deposition of AIMCO Vice-President Miles Cortez, notwithstanding the fact that Mr. Cortez was present at the meeting wherein a tolling or *status quo* agreement was reached with regard to the filing of the lawsuits in Palmetto, Roosevelt, Orleans and Pinewood, and was thus a material witness concerning Plaintiffs' ability to refute the statute of limitations defense;
- (x) Judge Early's obsession with the statute of limitations defense in this litigation is misplaced and unfair to the Plaintiffs as evidenced by his disregard of the testimony of Mr. Patrick Foye, a former AIMCO Vice-President, who was also present

at the meeting wherein a tolling or *status quo* agreement was reached with regard to the filing of the lawsuits in Palmetto, Roosevelt, Orleans and Pinewood, and who confirmed under oath the Plaintiffs' assertions concerning the general agreement reached at that meeting.

12. The statement or conclusion on page 22 of the Order that "Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants."

(a) This statement ignores the fact that the Plaintiffs responded to the interrogatory in question to the best of their ability.

(b) This statement reflects Judge Early's biased adoption of the Defendants' displeasure with the interrogatory response given, and his willingness to assist Defendants' counsel in attempting to coerce and intimidate Plaintiffs into amending their answer to one which is more to the liking of Defendants' counsel.

(c) This statement ignores the fact that many of the Plaintiffs are elderly, some are in ill health and on medications and would likely have difficulty recalling the exact times and dates of meetings or occurrences which occurred approximately 10 years ago.

13. The statement or conclusion on page 23 of the Order that "The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal."

(a) This statement ignores the fact that several other sanctions are available under SCRCP 37 and that Plaintiffs have requested on several occasions that Judge Early utilize a lesser sanction in order to provide a mechanism for immediate appellate review of his decisions concerning the production of privileged documents.

(b) This statement incorrectly states that any lesser sanctions would lead to the exact same result as a dismissal sanction. The dismissal sanction terminates Plaintiffs' claims with prejudice. A lesser sanction would preserve Plaintiffs' claims pending appellate review of the propriety of Judge Early's orders requiring disclosure of the privileged documents. If the appellate court deems the rulings to have been correct, the end result with a dismissal sanction is the loss of their claims by the Plaintiffs. Under a lesser sanction, the cases would be remanded and allowed to proceed with the Plaintiffs' production of the disputed documents.

14. The statement or conclusion on page 23 of the Order that "lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information."

(a) This type of finding or conclusion again shows the prejudice which can result to opposing parties when a judge simply signs an order prepared by an advocate for the other side. In this instance, Judge Early has chosen to adopt a position advocated by counsel for the Defendants which is impossible for Plaintiffs to contest, as it rests upon pure speculation rather than evidence.

(b) Defendants contend that they are prejudiced and damaged by conduct of the Plaintiffs, but fail to delineate the prejudice and damage which they have allegedly sustained, nor do they specify how the conduct they complain of has resulted in their alleged damage. There is no reasonable way for Plaintiffs to even begin to refute evidence which has not been produced or facts which are not proven - or even specified. Incredibly, the Defendants' contention has been

adopted by Judge Early as a basis and justification for imposing the harshest sanction available in these cases.

15. The statement or conclusion on page 23 of the Order that the Defendants have been "clearly" prejudiced by Plaintiffs' "refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions.."

(a) This statement or conclusion is at odds with the overwhelming body of evidence in the record on this issue, which Judge Early has chosen to ignore.

(b) First, Judge Early has chosen to ignore the evidence that Defendants have known since 1984 that Plaintiffs would be damaged in the amount of any notes which Defendants failed to collect from the defaulting debtors. They have known the exact amount of that damage since 1984, as they were involved in the preparation of the transactional documents and have had these documents in their possession since 1984.

(c) Second, Judge Early has chosen to ignore the evidence that an alternative minimal value for Plaintiffs' damages is the fair market value of the respective apartment complexes, as these should have been recovered by the Defendants in the event the notes were not collected.

(i) The importance of establishing a fair market value for the respective properties as a basis for determining damages and remedies available to the partnerships was discussed and agreed upon in a meeting between the Defendants and Plaintiffs on October 24, 2000 and has been known to Defendants since at least that time. Plaintiffs' counsel produced a transcript of the October 24th meeting as part of their discovery responses in these cases. Judge Early has chosen, however to ignore this evidence.

- (ii) The evidence in the record actually shows that Defendant AIMCO was participating in an evaluation of the properties by a marketing firm to determine their fair market value in 1999, in order to justify their refusal to take the properties back from the defaulting debtors. Plaintiffs had to discover this evidence from a former officer of the defaulting debtor, Boston Financial, even though it was known to Defendants. The Defendants were clearly aware of the importance of this damages valuation methodology at that time, and have since deposed a representative of the marketing firm. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (iii) The evidence in the record in this litigation is that the Defendants have actually been involved in the management of the respective apartment complexes following their sales in 1984 and were required to prepare monthly operating statements and other data for annual audits and valuations to be submitted to HUD. The evidence also shows that documents reflecting these figures and data have been in the possession of the Defendants for decades and that the few copies in Plaintiffs' possession were produced to Defendants as part of Plaintiffs' discovery responses dated July 14, 2005. Plaintiffs' Answers to Interrogatories on that date were very specific and detailed and required in excess of 50 pages responding to 14 interrogatories. Additionally, Plaintiffs produced nearly 2000 pages of documents at that time. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (iv) This alternative minimal value of Plaintiffs' damages was also specifically identified in a meeting between Plaintiffs' counsel and representatives of Defendants, including current Defendants' attorney Ellis Johnston, which occurred on August 11, 2003, and which resulted in the mutual employment of an appraiser to determine the fair market values of the respective properties. This knowledge was confirmed by the deposition testimony of witnesses, including former AIMCO Vice President Patrick Foye, as well as in correspondence between counsel for the parties. Importantly, this evidence was also known to another AIMCO officer, Miles Cortez, who was also present at the August 11, 2003 meeting, but Judge Early protected Mr. Cortez from having to

testify in this litigation, at the request of Defendants' counsel. Judge Early has chosen to adopt arguments of Defendants' counsel rather than the evidence in his rulings and orders.

- (v) The evidence in the record in this litigation is that multiple formal appraisals have been performed with respect to each of these properties which show the appraisers' opinions as to the fair market values of the properties at certain times relevant to this litigation. Many of these appraisals were known to and in the possession of Defendants prior to the initiation of this litigation; any additional appraisals discovered by Plaintiffs during the course of this litigation have been promptly produced to Defendants. The Defendants have chosen not to depose any of the appraisers in order to get detailed information relating to the values set forth in the appraisals. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (vi) The evidence in the record in this litigation also shows that values were attached to each of the properties by the respective assessors for the counties in which they were located. These assessors were specifically identified in Plaintiffs' discovery responses as being persons Plaintiffs intended to rely upon in the establishment of value of the properties. These disclosures were actually made prior to the mediation in March, 2008, and prior to the latest discovery requests of the Defendants in August, 2008. They were again presented to the Defendants as part of the mediation, and again presented to them as part of a formal supplemental discovery response. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (vii) Not only have Defendants been supplied with the information concerning the assessed values for the properties, they have actually deposed the Beaufort County Assessor and ascertained detailed information from him relating to his opinions and methodology for valuation of the properties located in Beaufort County. Although they have had the opportunity to depose the assessors in Charleston and Orangeburg Counties, they have chosen not to do so. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (viii) The evidence in the record in this litigation also shows that values were attached to each of the properties by the

respective owners and managers of the properties and/or their insurance carriers. These individuals were specifically identified in Plaintiffs' discovery responses as being persons Plaintiffs intended to rely upon in the establishment of value of the properties. These disclosures were actually made prior to the mediation in March, 2008, and prior to the latest discovery requests of the Defendants in August, 2008. They were again presented to the Defendants as part of the mediation, and again presented to them as part of a formal supplemental discovery response. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

- (ix) Not only have Defendants been supplied with the information concerning the values placed upon the properties by the owners and insurers, they have actually deposed at least one of the owners, as well as a representative of the insurer, and ascertained detailed information from them relating to their opinions and methodology for valuation of the various properties. This included the actual sales prices when the properties changed hands, retrofit costs and other financial information. Although they have had the opportunity to depose the other owners, they have chosen not to do so. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (x) Additionally, the evidence in these cases demonstrates that the Plaintiffs have informed Defendants of the fact that they intend to rely upon values established by real estate professionals, and have identified persons retained to date who have opinions concerning the values of the properties. The opinions and bases for the opinions of these persons has previously been disclosed to Defendants by Plaintiffs' counsel, both formally and informally, since the spring of 2008. Plaintiffs have recently provided a third supplemental response to Defendants' August, 2008 discovery requests, providing even greater details relating to the opinions and bases for the opinions of the real estate experts located in Beaufort County. At that time, Plaintiffs' counsel informed Judge Early and Defendants' counsel that additional amendments would be made concerning the other properties. Judge Early summarily dismissed these supplemental responses in his order concerning sanctions and totally ignored the evidence in this regard.

(d) Third, the Plaintiffs' discovery responses relating to the opinions of their experts concerning the values of the respective properties not only state such values, but detail several bases for the opinions, and specifically reference "the materials produced during the discovery" among the bases for the opinions. Judge Early has chosen to ignore the evidence that Plaintiffs' discovery responses relating to expert witness testimony dealing with damages complies with both the General Discovery Order and the South Carolina Rules of Civil Procedure.

16. The statement or conclusion on page 23 of the Order that "a lesser sanction aimed at this (responses concerning experts) such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases..." This finding is at odds with the evidence in this litigation, as detailed above, and also with the law in South Carolina that an owner of property is qualified to state his opinion concerning the value of the same. The Plaintiffs in these cases actually owned the properties in question and could testify concerning their valuation of the properties.

17. The statement or conclusion on page 23 of the Order that "Plaintiffs have not proven a lack of prejudice on the Defendants' part.":

(a) Contrary to this statement or conclusion, Plaintiffs have produced ample evidence that the Defendants already have in their possession the information sought in their written discovery requests, access to such information from other sources, and the ability to acquire such information through other discovery methods, such as depositions. Judge Early has chosen to totally ignore this evidence or the available alternative in his rulings and orders.

(b) The fact that the Defendants already have the requested information, have access to the requested information from other sources, and have alternative methods under the South Carolina Rules of Civil Procedure to acquire such information constitutes proof of a lack of prejudice to them.

18. The statement or conclusion on page 23 of the Order that "the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs," together with the statement or conclusion that "the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure."

(a) Contrary to this finding, the evidence in the record clearly demonstrates that the sanction of dismissal is unreasonable under the circumstances of this litigation, and that lesser, more reasonable, sanctions are clearly available to the Court.

(b) Also contrary to this finding, the sanction of dismissal clearly goes beyond the necessities of the cases in order to foreclose a decision on the merits. The Plaintiffs have demonstrated repeatedly that they have a viable claim against the Defendants for substantial damages. The Defendants have not demonstrated any viable defense on the merits to these claims. Instead, they have relied upon the relationship of their counsel with Judge Early to secure favorable rulings based upon procedural issues, which rulings appear to be contrary to both the evidence presented and the existing law of this State.

(c) The sanction imposed does not protect the rights of discovery, it undermines them.

19. The statement or conclusion on page 24 of the Order that "Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claim of privilege earlier than they did."

(a) This finding is patently incorrect and completely ignores the evidence in the litigation that the items listed on the Plaintiffs' 2008 Privilege Log included the forty-four (44) documents listed by the Plaintiffs on their privilege log in July, 2005, and that the original forty four (44) documents clearly show activity between Plaintiffs and their counsel in 2000.

(b) To find that the Defendants could not have challenged Plaintiffs' privilege claims earlier than they did is simply to ignore the existing facts and evidence in these cases.

20. The statement or conclusion on page 25 of the Order that "the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants."

(a) This finding is astonishingly contrary to the evidence in the record and the existing law in the State of South Carolina, which Judge Early has consciously chosen to ignore.

(b) To hold that the "prejudice" to the Defendants found by Judge Early, some of which is patently imagined, is equivalent to the prejudice to the Plaintiffs in having their claims dismissed with prejudice, particularly given the fact that they have incurred substantial costs in the prosecution of their claims to date, is absurd.

(c) On numerous occasions, Plaintiffs' counsel has asked Judge Early to impose a lesser sanction in order that his rulings would be ripe for review by an appellate court, only to have these requests completely ignored.

21. The statement or conclusion on pages 25 and 26 of the Order that "Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so."

(a) Again, this conclusion ignores the facts and evidence in the record, and goes beyond the facts and evidence established. The record is clear, for example, that the Plaintiffs did not "agree to the entire process" whereby Judge Early amended the rulings of Judge Clary. In fact, Plaintiffs' counsel specifically called to Judge Early's attention the prohibitions of SCRCP 53 prior to the time he signed Defendants' order amending Judge Clary's rulings. Additionally, Plaintiffs' counsel reiterated these prohibitions to Judge Early after he had apparently signed Defendants' order, but before the order had been entered. This does not constitute an agreement to the entire process as found by Judge Early.

(b) Furthermore, there is absolutely no evidence in the record that Plaintiffs never intended to produce the documents which they claimed to be privileged if the Court ordered them to do so. In fact, Judge Clary's order found that some of the documents claimed by Plaintiffs to be privileged were, in fact, not privileged and ordered production of these documents. Plaintiffs were prepared to produce non-privileged documents in compliance with Judge Clary's order, which rejected the Defendants' contention that Plaintiffs had waived their privileges. Once Judge Early elected to adopt the Defendants' positions relating to waiver of privilege by the Plaintiffs

and to overrule Judge Clary, Plaintiffs were placed in the untenable dilemma previously discussed herein.

22. The statement or conclusion on page 26 of the Order that "Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive."

(a) The evidence and record in this litigation clearly shows this statement or conclusion to be erroneous.

(b) The Plaintiffs' discovery responses comply with the requirements of the South Carolina Rules of Civil Procedure and the evidence in the record shows that Plaintiffs' have repeatedly attempted to comply with Judge Early's General Discovery Order even though it imposed upon them a double standard with significantly more stringent requirements than he imposed on the Defendants.

(c) The record and evidence in this litigation clearly show that Plaintiffs' discovery responses are much more detailed, clear and responsive than the discovery responses of the Defendants.

23. The statement or conclusion on page 26 of the Order that "Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, ... and each of their Motions for Sanctions."

(a) It is evident from an objective review of the record and evidence in these cases that the entire sanctions and discovery issues were engineered by counsel for the Defendants as a ruse to divert the focus from the Plaintiffs' viable claims against them.

- (i) The discovery requests at issue were not even generated until the end of August of 2008. At that time, it had become evident that Plaintiffs had put together sufficient proof to prevail in a trial on the merits and that the Defendants had no valid or viable defense on the merits to the Plaintiffs' claims.
- (ii) Plaintiffs' mediation presentation in March of 2008 made this clear to the in-house counsel for the Defendant AIMCO, who then threatened to terminate the services of then counsel of record. Depositions taken had increasingly revealed the extent of the Defendants' breach of their fiduciary duties to the Plaintiffs in each of these cases, and of their failure to inform the Plaintiffs of their conflicts of interest in their roles as general partners. The Defendants and their counsel then began their tactic of trying to establish a procedural mechanism to avoid a trial on the merits.

(b) They began to emphasize the issue of the statute of limitations, as this was a vehicle which, if successful, would avoid having their conduct exposed to a jury. They were confronted, however, with the fact that their motion for summary judgment on the statute of limitations issue had been earlier denied. They were also confronted with the fact that the Parkview case had been filed in 2003, well within any claimed statute of limitations period, and was scheduled to be tried in May of 2009. In a desperate attempt to resurrect the statute of limitations issue and avoid the trial date set for less than 9 months away, they embarked upon a discovery fishing expedition seeking documents between the Plaintiffs and their counsel preceding the filing of the Parkview case.

(c) In order to have any chance of success, counsel for Defendants had to frame their discovery requests in such a manner that Plaintiffs' counsel could not ethically comply with the requests. Therefore, they sought production of documents and information which was clearly confidential and protected under the laws of this state. This meant that Plaintiffs' counsel

was required under the existing law and rules to object to the production of such information and documentation. This gave the Defendants a procedural mechanism which favored them: the presentment of their requests to compel compliance by Plaintiffs to a judge who had significant personal and extra-judicial ties to Defendants' counsel.

(d) In an effort to increase their chances of success, Defendants' counsel assigned two additional members of their law firm as counsel of record in this litigation. These two additional attorneys had their own substantial extra-judicial ties to Judge Early. From this time forward, Judge Early ruled almost exclusively in favor of Defendants' counsel with respect to any discovery dispute which they managed to generate and present to him.

(e) For example, Judge Early ruled that objections filed by Defendants' counsel to Plaintiffs' discovery requests were valid and that their sparse responses were sufficient under the South Carolina Rules of Civil Procedure. Conversely, when Plaintiffs' counsel copied these objections verbatim and asserted them with respect to the Defendants' discovery requests, Judge Early ruled that the objections were improper; he has found the detailed and voluminous discovery requests provided by Plaintiffs' counsel to be "evasive, ambiguous, incomplete and/or non-responsive." This discovery double standard adopted by Judge Early is dealt with in greater detail in the affidavits and prior submissions of Plaintiffs counsel in this litigation.

(f) In addition, Judge Early summarily held that all documents on Defendants' Privilege Log, which had been amended from its original listing of only a few documents to include literally hundreds of documents as Plaintiffs' claims became more provable through depositions of witnesses and other discovery, were privileged and protected from disclosure.

- (i) These included communications between the Defendants and attorneys they ostensibly hired to represent the respective limited partnerships, which included the Plaintiffs, in the collection of the notes due to the partnerships or, alternatively, retrieval of the partnership properties.
- (ii) These documents and information were clearly relevant to Plaintiffs' claims, as they were needed to determine whether the attorneys hired by the general partners were really engaged to represent the partnerships' interests or were actually sham retentions designed to mislead the limited partners into believing that their interests were being protected.
- (iii) Furthermore, they were relevant and necessary to determine whether the attorneys hired by the general partners to represent the limited partnerships had breached any fiduciary duties to the limited partnerships by not pursuing legal remedies to recover the partnership assets. This aspect of the present litigation becomes even more troubling when Judge Early's close extra-judicial relationships with Defendants' counsel is viewed in light of the fact that a lawsuit to recover assets due to the Pinewood limited partnership was initiated - and then abandoned - by the very attorney and law firm which successfully persuaded Judge Early to keep the attorney retention information secret and non-discoverable by the Plaintiffs.
- (iv) Defendants' counsel argued that these communications were privileged and not subject to disclosure to Plaintiffs, even though Plaintiffs owned 95% or more of the limited partnerships the attorneys were ostensibly hired to represent and, as such owners and partnership members, were clearly within the "privilege" claimed. Furthermore, Defendants earlier had included Plaintiffs in communications with these attorneys - with the exception of the Haynsworth firm's representation of the Pinewood limited partnership, which representation has never been revealed by Defendants or their counsel to date. Having so included Plaintiffs, the Defendants waived any privilege which might have existed that excluded Plaintiffs. Their arguments were adopted by Judge Early as part of his rulings, even though he had not ever seen the underlying documents.

(g) Conversely, at the urging of Defendants' counsel, Judge Early summarily held that all documents on Plaintiffs' Privilege Log, which had been amended at the insistence of Defendants' counsel to include communications between Plaintiffs and their counsel in this litigation, were not privileged or protected from disclosure. Again, Judge Early made this ruling without ever seeing any of the underlying documents. It was at this stage of the litigation that Plaintiffs' counsel suggested that a special master or referee be appointed to review the documents in both privilege logs and determine which were, in fact, privileged and protected from disclosure.

(h) Additionally, when Plaintiffs sought information relating to other claims or lawsuits brought against Defendants, Judge Early adopted the arguments of Defendants' counsel that the request should be limited to only some of the Defendants, that the scope of the inquiry should be narrowed and that the time frame encompassed by the discovery request should be narrowed as well. Conversely, Judge Early required Plaintiffs to respond to Defendants' request for any information relating to other lawsuits to which Plaintiffs had been a party, with no similar limitations as to scope or time.

(i) When one of Plaintiffs' experts on damages submitted an affidavit detailing financial information from Defendants which he needed in order to formulate his opinions, Judge Early adopted the argument of Defendants' counsel that such information should not be produced. Instead, Judge Early ruled, as requested by counsel for Defendants, that the expert would have to rely on information which only the Defendant AIMCO had submitted in an annual report to the Securities and Exchange Commission. This ruling was particularly prejudicial to Plaintiffs because the annual report to the SEC was not given under oath, as would have been required of the response to the Plaintiffs' interrogatories, and also because AIMCO was cited by the SEC for filing

reports which were false and inaccurate. Ironically, Judge Early adopted the arguments of counsel for the Defendants that the detailed discovery responses of Plaintiffs concerning other persons prepared to testify as to Plaintiffs' damages were insufficient. This is doubly ironic when viewed in light of the fact that Defendants' counsel have never even listed any expert in their discovery responses in this litigation.

(j) The rulings of Judge Early have adopted positions advocated by Defendants' counsel even when they are not in keeping with the existing law of this state.

- (i) Discovery is limited in South Carolina by SCRPC 26 to non-privileged materials and information, so the Defendants had to find a way to classify the communications between the Plaintiffs and their counsel as non-privileged. They elected to advance the theory that Plaintiffs had waived their privileges with respect to documents which might be relevant to the statute of limitations issue.
- (ii) The primary obstacle which the Defendants faced in this endeavor was the fact that there was no credible evidence to support their position that Plaintiffs had waived their privilege as to communications with their counsel in this litigation. They then advanced the theory, which is totally devoid of any supporting legal authority in this state, that, merely by filing their complaints, Plaintiffs had impliedly asserted that they were filed within the applicable statute of limitations; having made this implied assertion, the argument went, the Plaintiffs impliedly waived their right to assert any privilege as to the issue of the statute of limitations. This bizarre theory was specifically presented to - and rejected by - Judge Clary in his role as special master or referee. Once it was presented again to a more receptive judge, Judge Early, he not only adopted it, he overruled Judge Clary in order to do so. This action was taken by Judge Early in spite of his knowledge of SCRPC 53's language reserving review of a special master's rulings to the appellate courts of this state.
- (iii) In an attempt to cover themselves from this glaring deficiency, the Defendants further argued that the language of

the complaints filed in these cases affirmatively asserted the statute of limitations as an issue, and that the Plaintiffs had thereby waived their right to assert attorney-client privilege against the statute of limitations argument. There are two obvious problems with this argument. First, the language cited by the Defendants never mentions the statute of limitations, and only references in general terms conduct by the Defendants which delayed the Plaintiffs in their investigation and/or prosecution of claims against the Defendants as a fiduciary violation allegation and as an item of damages. Even under the most strained interpretation imaginable, this language cannot be said to constitute, as a matter of law, an affirmative assertion of the statute of limitations as an issue. Yet that is what Judge Early has held, again at the request of counsel for the Defendants. Again, in doing so, he had to overrule Judge Clary, who had rejected this argument when it was presented to him by the Defendants' counsel. Secondly, the language cited does not even appear in all of the complaints in these cases, yet is used by Judge Early as a basis to dismiss all of the cases. His rulings in this regard are totally devoid of any supporting legal authority in this state and are, in fact, contrary to the existing legal authority that the statute of limitations is an affirmative defense, which must be pled and proven by a defendant; if the defendant fails to do so, the defense is waived.

- (iv) In a further attempt to cover themselves from this obvious deviation from existing law and the evidence presented, Defendants' counsel sought to have Judge Early adopt yet another alternative basis for the dismissal of Plaintiffs' claims - no matter how detailed or precise the Plaintiffs were in framing their responses to the other discovery requests, the Defendants' counsel always maintained the responses were not adequate. Given his proclivity to adopt virtually any argument advanced by Defendants' counsel, it is not surprising that Judge Early adopted their position in this regard as well. In doing so, he ignored or disregarded all the evidence in the record concerning Plaintiffs' numerous attempts to comply with the double standard discovery orders issued by Judge Early at the request of Defendants' counsel.
- (v) Judge Early has adopted the arguments of Defendants' counsel, and signed the attendant orders which they have

prepared, including the Order *sub judice*, without making any ruling or apparently giving any consideration to Plaintiffs' pending motion for a protective order. In this motion, Plaintiffs made various proposals under which they could seek to comply with the discovery orders while preserving their legal and constitutional rights pending appellate review of the propriety of the orders.

24. The statements or conclusions on pages 26 and 27 of the Order that "the Plaintiffs will have no opportunity to purge themselves of the award" of expenses and attorneys' fees being made in favor of the Defendants, and that "the Court will accept evidence" supporting Defendants' claims for attorney fees and costs in the form of "an affidavit in support of their requests."

(a) Given the complexity and nature of this issue, Plaintiffs believe that an affidavit alone is an improper method of proof of the Defendants' claim.

(b) Plaintiffs also submit that they will be deprived of the right to cross-examine the affiant, thereby also depriving them of their right to effective assistance of counsel, due process and equal protection of the laws as provided and guaranteed by the laws and constitutions of the United States of America and the State of South Carolina.

(c) The inability of Plaintiffs to purge themselves from the attorneys fees/expenses award renders the sanction a criminal, not a civil sanction, and deprives Plaintiffs of their legal and constitutional rights concerning the same.

I certify that I did not consult with opposing counsel concerning this motion, because, based upon prior communications and consultations with opposing counsel, the undersigned believes that such additional consultation would serve no useful purpose.

Respectfully submitted,

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Attorneys for the Plaintiffs

By: 
Joel D. Bailey (SC Bar # 471)

Beaufort, South Carolina
April __, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al*, Plaintiffs,)
-vs-)
Parkview Apartments, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Beaufort County
C/A # 03-CP-07-726

Laurance H. Davis, Jr., *et al*, Plaintiffs,)
-vs-)
Roosevelt Gardens, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Orangeburg County
CA # 2005-CP-38-1131

Rhoda G. Rentz, *et al*, Plaintiffs,)
-vs-)
Orleans Gardens, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Charleston County
CA # 2005-CP-10-4229

Laurance H. Davis, Jr., *et al*, Plaintiffs,)
-vs-)
Palmetto Apartments, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Beaufort County
C/A #2005-CP-07-1989

Carolina Management Corporation of)
Beaufort, *et al*, Plaintiffs,)
-vs-)
Pinewood Park Apartments, a South)
Carolina Limited Partnership, *et al*,)
Defendants.)

Beaufort County
C/A # 2005-CP-07-1990

CERTIFICATE OF MAILING

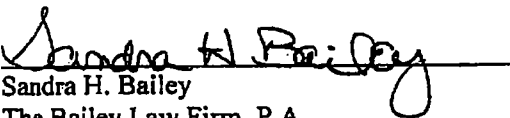
I hereby certify that I have served the Plaintiffs' Motion for Reconsideration, Alteration or Amendment, by depositing a copy in the United States Mail, postage prepaid, on April 22, 2010, addressed to the following attorneys of record:

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Marvin D. Infinger
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April 21, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-133

Charleston County
C.A. No. 2005-CP-10-4229

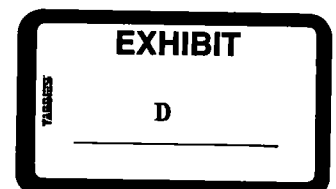
Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRCP. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

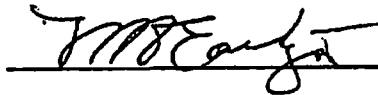
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The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Bamberg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

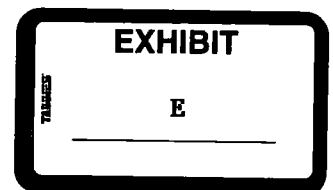
vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

NOTICE OF APPEAL

Appellants Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O.
Mercy appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a
copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17,
2008, a copy of which is attached as Exhibit 2.
3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008.



dated March 3, 2009, a copy of which is attached as Exhibit 3.

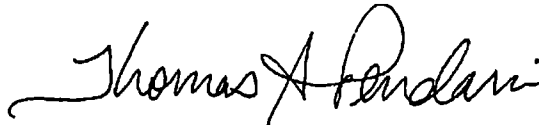
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.

All Orders were issued by the Honorable Doyet A. Early, III.

Respectfully submitted,

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Counsel for Appellants

October 28, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER

This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

Greenville: 651588 v.1

WAC
h1



IT IS SO ORDERED


The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008


South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

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Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

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Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs.

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

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Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

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Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs.

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

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Beaufort County

C.A. No. 2005-CP-07-1990

**ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL #2**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"). In each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.
Bontus, South Carolina

Doyet A. Early, III.
Doyet A. Early, III. Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
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) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2005-CP-07-1990
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ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"); and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCP. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is GRANTED. ~~Defendants shall submit evidence~~

*held in abeyance pending
resolution of all discovery disputes -
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of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within
twenty (20) days of the date of this Order. DAF

IT IS SO ORDERED

This 3rd day of March, 2009.
Bamberg, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
Beaufort County
C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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)
Orangeburg County
C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
Charleston County
C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
Beaufort County
C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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)
Beaufort County
C.A. No. 2005-CP-07-1990
)

ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Bordley, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-10-4229

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRPC. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of June, 2009.
[Signature] South Carolina

[Signature]
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
Case No.: 2003-CP-07-726

Davis, et al.

Versus JUN 19 AM 11: Parkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ 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: _____)

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRPC, is hereby DENIED.

Dated at Aiken, South Carolina, Date June 16, 2009 Judge WJB Early Jr.

This judgment was entered on the 16th Day of June, 20 09, and a copy mailed this 22 Day of June, 20 09, to attorneys of record or to parties as follows:

Attorney for Plaintiff(s)
Joel D. Bailey
Bailey Law Firm
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Beaufort, SC 29901-1437

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Pendarvis Law Offices
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Beaufort, SC 29902

Attorney for Defendant(s)
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Haynesworth, Sinkler, Boyd
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Greenville, SC 29602-2048

Calvin T. Vick, Jr.
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602-2048



[Signature]

SCRP Form 4 (Rev. 2/96)

Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.* Plaintiffs,
v.
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)
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) C.A. No. 2005-CP-07-1990
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ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCF, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

Handwritten signature/initials

96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

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(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

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83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

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Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

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12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Bamberg, South Carolina

M. A. Early, III

Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DTE #1



dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRPC. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #9

U.S. District Court for the District of Columbia

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAG #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27, 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

DAE #8

Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- **Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴**
- **Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum**

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

DAE #9

9

at pp. 3-8 and Supplemental Memorandum at pp. 11-12);³

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

³ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

*DAE # 510
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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

DAE #11 11

Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

DAE #12 12

Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCF. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRCP. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs' Petition on

DAE#15

November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (In addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon. In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

DAE #18

omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *Id.* (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." *Id.* (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." *Id.* The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

DAE #19

Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

DAE #20 20

were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." *Id.* (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions: Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCF, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCP, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCP.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Cl. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Cl. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

DAE #23

lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

DAE #24

could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under those circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

DAE #25 25

from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCP. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

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award. See id. ("A fine may also be 'remedial and civil' if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine..." (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

DAE #27

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRPC, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRPC, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

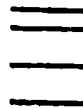
This 10th day of April, 2010.
John, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & C.S.
100 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-3200
RETURN SERVICE REQUESTED



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RECEIVED OCT 01 2010

PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5086

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR RECONSIDERATION**

THIS JUDGMENT WAS ENTERED ON THE 20TH DAY OF SEPTEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 28TH DAY OF SEPTEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE.
YOU MAY VIEW AND DOWNLOAD THIS DOCUMENT AT WWW3.CHARLESTONCOUNTY.ORG

PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-144

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRCP. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

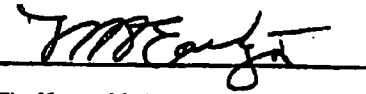
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FILED
2009 SEP 20 AM 10:19
JULIE L. REYES-DRONG
CLERK OF COURT

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Blount, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

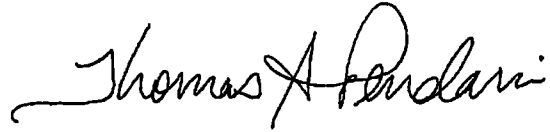
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of NOTICE OF APPEAL on counsel for Respondents, by depositing
a copy of the same in the United States Mail, postage prepaid, on the 28th day of October,
2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a long horizontal line extending from the start of the name.

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

October 28, 2010

Beaufort, SC 29902

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2003-CP-07-726

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie Reynolds and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Parkview Apartments, a South Carolina Limited Partnership. Appellants,

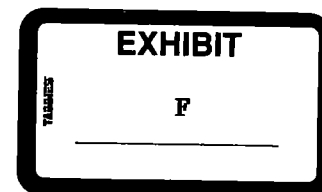
vs.

Parkview Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic designation for a party or parties whose true identity is unknown Respondents.

NOTICE OF APPEAL

Appellants Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie Reynolds and Rhoda G. Rentz appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17, 2008, a copy of which is attached as Exhibit 2.



3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008, dated March 3, 2009, a copy of which is attached as Exhibit 3.
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on November 29, 2010, a copy of which is attached as Exhibit 9.

The above Orders were issued by the Honorable Doyet A. Early, III.

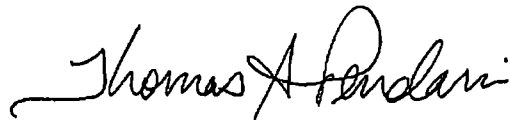
10. ORDER appointing the Honorable Doyet A. Early, III to hear and decide all matters pertaining to these cases, dated March 7, 2006, Issued by Chief

Justice Jean Hoefer Toal, a copy of which is attached as Exhibit 10.

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
PO Box 1437
Beaufort, SC 29901-1437
(843) 525-6090 tele
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baileylawfirm@charter.net

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843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

Counsel for Appellants

December 3, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
Calvin T. Vick, J.D.
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P.O. Box 2048
Greenville SC 29602

Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
134 Meeting Street, 3rd Floor
Charleston SC 29401

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

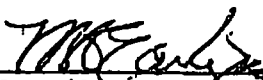
This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

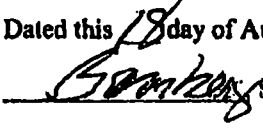
Greenville: 651588 v.1

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IT IS SO ORDERED


The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008
 South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.)
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)Beaufort County
C.A. No. 2003-CP-07-726Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.)
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)Orangeburg County
C.A. No. 2005-CP-38-1131Rhonda G. Rentz, *et al.*, Plaintiffs.

v.

Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.)
)
)
)Charleston County
C.A. No. 2005-CP-10-4229Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.)
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)Beaufort County
C.A. No. 2005-CP-07-1989Carolina Management Corporation of Beaufort,
et al., Plaintiffs.

v.

Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.)
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)Beaufort County
C.A. No. 2005-CP-07-1990**ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"). In each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.
Borker, South Carolina

Doyel A. Early, III.
Doyel A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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) Orangeburg County
) C.A. No. 2005-CP-38-1131
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Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
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) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"); and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCP. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is GRANTED. *held in abeyance pending*
~~Defendants shall submit evidence~~

Resolution of all discovery disputes -
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Done.

of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within
twenty ~~(20)~~ days of the date of this Order. DEF

IT IS SO ORDERED

This 3rd day of March, 2009.
Sam Bays, South Carolina

MA Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

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Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: *Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.*

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 5th day of March, 2009.
Burke, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
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)
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) Orangeburg County
) C.A. No. 2005-CP-
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2005-CP-07-1989
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Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2005-CP-07-1990
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ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRPC. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of June, 2009.

[Signature]
South Carolina

[Signature]
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
Case No.: 2003-CP-07-726

Davis, et al.

V. ~~2009~~ JUN 19 AM 11:54 Parkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. nonsuit)
☐ Rule 43(k), SCRCP (Settled); ☐ Other - _____)
- ☐ ACTION STRICKEN (CHECK REASON: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration, Subject to right to request to confirm, vacate or modify arbitration award; ☐ Other: _____)

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRCP, is hereby DENIED.

Dated at Aiken, South Carolina, Date June 16, 2009 Judge W.B. Early Jr.

This judgment was entered on the 16th Day of June, 2009, and a copy mailed this 22 Day of June, 2009, to attorneys of record or to parties as follows:

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[Signature]

SCR Form 4 (Rev. 2/96)

Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited	)	C.A. No. 2003-CP-07-726
Partnership, <i>et al.</i> Defendants.	)	
Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-38-1131
Partnership, <i>et al.</i> Defendants.	)	
Rhonda G. Rentz, <i>et al.</i> Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-10-4229
Partnership, <i>et al.</i> Defendants.	)	
Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited	)	C.A. No. 2005-CP-07-1989
Partnership, <i>et al.</i> Defendants.	)	
Carolina Management Corporation of Beaufort,	)	
<i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1990
Limited Partnership, <i>et al.</i> Defendants.	)	

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCF, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

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17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

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96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

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(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

Handwritten signature and date "7/10/06".

83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

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Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

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12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Beakley, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

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dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRPC. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAE #5 s

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

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discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

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Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- **Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴**
- **Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum**

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and bases for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

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at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

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Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁵ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁵ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon. In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *Id.* (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." *Id.* (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." *Id.* The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

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were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." Id. (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions: Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCF, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCP, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCP.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Ct. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppl v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Ct. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

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lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hesley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

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could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

DAE #25

from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCP. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

DAE #26 26

award. See id. ("A fine may also be 'remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine...' (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

DAE #27

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRPC, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRPC, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

This 10th day of April, 2010.
Chen, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

RECEIVED NOV 29 2010

STATE OF SOUTH CAROLINA
SEP 20 PM 3:52

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.

Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.

Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.

Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.

Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.

Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-1131

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRPC. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

[Handwritten signature]
#1



The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III

Sept 16, 2010
Bernberg, South Carolina



State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 80
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

September 16, 2010

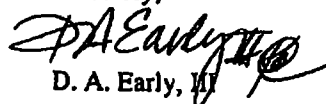
The Honorable Jeri Ann Roseneau
Post Office Box 1128
Beaufort, South Carolina 29901-1128

Re: Laurance H. Davis, Jr. et al v. Parkview Apartments, 03-CP-07-726
Laurance H. Davis, Jr. et al v. Palmetto Apartments, 05-CP-07-1989
Carolina Management Corp of Beaufort, et al v. Pinewood Park Apartments, 05-CP-07-1990

Dear Ms. Roseneau:

Please find enclosed for filing my orders in the above cases. Please file and serve all interested parties.

Sincerely,


D. A. Early, III

DAE:khc
Enclosures

cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire

The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Parkview Apartments, et al.,

Defendants.

Beaufort County
2003-CP-07-0723

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Palmetto Apartments, et al.,

Defendants.

Beaufort County
2005-CP-07-1989

Carolina Management Corporation of Beaufort, et. al,

v.

Plaintiffs,

Pinewood Park Apartments,

Defendants.

Beaufort County
2005-CP-07-1990

Rhoda G. Rentz, et al.,

v.

Plaintiffs,

Orleans Gardens, et. al.,

Defendants.

Charleston County
2005-CP-10-4229

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Roosevelt Gardens,

Defendants.

Orangeburg County
2005-CP-38-1131

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4, I find that assigning a single circuit judge to dispose of all matters arising out of the apartment management litigation currently pending and to be filed in the state court system will



promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the Honorable Doyet A. Early, III is assigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. Judge Early may schedule necessary hearings at any time.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2003-CP-07-726

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie
Reynolds and Rhoda G. Rentz, individually and in their
capacities as the Limited Partners of Parkview Apartments,
a South Carolina Limited Partnership. Appellants,

vs.

Parkview Apartments, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

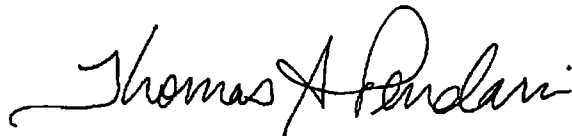
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of NOTICE OF APPEAL on counsel for Respondents, by depositing
a copy of the same in the United States Mail, postage prepaid, on the 3rd day of December,
2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial 'T' and 'P'.

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

December 3, 2010

Beaufort, SC 29902

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2003-CP-07-726

RECEIVED

JAN 28 2011

SC Court of Appeals

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie
Reynolds and Rhoda G. Rentz, individually and in their
capacities as the Limited Partners of Parkview Apartments,
a South Carolina Limited Partnership. Appellants,

vs.

Parkview Apartments, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

**APPELLANTS' RETURN TO RESPONDENTS'
MOTION TO DISMISS**

Respondents have moved to dismiss the above-captioned appeal, as well as three (3)
other separate but related appeals,¹ alleging that Appellants have failed to comply with Rule
203(b)(1) SCACR. In essence, Respondents contend that the Appellants received written
notice of entry by the Charleston County Clerk of Court of an order which is involved in

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*See Davis, et al. vs. Roosevelt Gardens Apartments, et al. Case # 2010180086; Carolina
Management, et al. vs. Pinewood Park Apartments, et al., Case # 21010180088; and Davis,
et al. vs. Palmetto Apartments, et al., Case # 2010180087.*

these appeals, and that such notice triggered the time in which Appellants had to file notices of appeal in the other cases, which involved other parties and were pending in separate counties. Appellants believe that the position taken by the Respondents in this regard is without merit, and lacks both factual and legal support. This Return and the Memorandum of Law contained herein is submitted in support of Appellants' position. Accordingly, for the reasons hereinafter provided, Respondents' motion should be denied.

FACTUAL BACKGROUND

The above-captioned appeal, together with the three (3) related appeals referenced above, and an additional related but separate appeal,² arises out of civil cases filed in the Circuit Courts of three (3) counties in this State, *i.e.*, Beaufort County, Charleston County and Orangeburg County. The Appellants in these cases are limited partners in five (5) separate limited partnerships; they have asserted legal claims in five (5) separate actions against their general partners, who are the Respondents in these appeals. Each of the limited partnerships owned separate apartment complexes located in each of the counties referenced above, as well as in Allendale County.³ Some of the limited partners held interests in more than one of the limited partnerships, and some held an interest in only one of the limited partnerships, but *none* of the limited partners held interests in *all* of the partnerships. Accordingly, the Appellants in each of the cases under appeal are different. Likewise, the

² See *Rentz, et al. vs. Orleans Gardens, et al.*, Case Tracking # 2010176826.

³

Carolina Management, et al., vs. Pinewood Park Apartments, et al., Case Tracking # 2010180088, involves an apartment complex located in Allendale County, although the case was filed in Beaufort County.

properties involved in each of the appeals are different. While all appeals involve claims against the general partners for breach of their fiduciary duties, among other causes of action, each case has specific facts and circumstances which are applicable only to it and not to the other cases.

Approximately one (1) year after all five (5) cases had been filed and were pending in Beaufort, Charleston and Orangeburg Counties, South Carolina Supreme Court Chief Justice Jean H. Toal issued an order dated March 7, 2006 which assigned Circuit Court Judge Doyet A. Early, III "to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions." The cases were not consolidated by Justice Toal's order, nor were they ever consolidated by an order issued by Judge Early. They were simply assigned to "a single circuit judge" in order to "promote the effective and expeditious disposition of this litigation" and to "conserve the resources of the parties, their counsel, and the judiciary."⁴

Following assignment of the cases to Judge Early, he presided over various hearings relating to motions filed by counsel for the respective parties and issued several orders reflecting his rulings. As a general rule, the orders were then sent by Judge Early to the Clerks of Court for filing in the counties in which the actions were pending, and for service upon "all interested parties."⁵ In some cases, but not always, the respective Clerks of Court

4

See Order of Chief Justice Toal dated March 7, 2006, attached as Exhibit A to Respondents' Memorandum in Support of Motion to Dismiss.

5

See, e.g., correspondence from Judge Early to each of the Clerks of Court dated October 7, 2010 and October 22, 2010, attached hereto as Exhibit 1.

then provided counsel with written notice of the entry of the orders, once they were filed in the respective counties.⁶

With respect to the orders relevant to the Respondents' Motion to Dismiss, Judge Early issued a series of orders, prepared by counsel for the Respondents, which (a) required the Appellants to produce and/or disclose communications with their counsel deemed by them to be privileged and/or protected, and (b) found deficiencies in Appellants' responses to Respondents' discovery requests. The effect of these orders was to place the Appellants in the untenable position of either complying with the orders, which would require forfeiture of their right to privileged communications with their counsel, or to resist compliance with the orders, which would place them in the position of being in contempt of court. Appellants sought intermediate relief in the appellate courts, but the Respondents asserted that the issues were premature. The appellate courts determined that the relief sought was interlocutory and therefore not ripe for appellate review.⁷ Judge Early then issued a twenty-eight (28) page order dated April 6, 2010, again prepared by counsel for the Respondents, which found Appellants in contempt for their failure to comply with his prior orders and dismissed all five (5) pending cases as a sanction for such contempt.⁸

⁶

See , *e.g.*, notices of entries attached hereto as Exhibit 2.

⁷

See, *e.g.*, the letter of December 2, 2009, from the Clerk of the South Carolina Court of Appeals to Respondents' counsel, which granted Respondents' motion to dismiss the appeals, a copy of which is attached hereto as Exhibit 3. It should be noted that *this letter was sent to the clerks of court in all three counties - Beaufort, Charleston and Orangeburg.*

⁸ See Exhibit B to Respondents' Memorandum in Support of Motion to Dismiss.

Appellants timely filed a Rule 59 motion, seeking relief from the Order of April 6, 2010. On September 16, 2010, Judge Early issued an Order which denied the relief requested by Appellants in their Rule 59 motion.⁹ That same date, Judge Early sent the order to the Clerks of Court for Orangeburg, Charleston and Beaufort Counties for filing and transmittal to “all interested parties.”¹⁰

On October 1, 2010, counsel for Appellants received written notice from the Charleston County Clerk of Court of the entry of the order denying their Rule 59 motion in *Rentz, et al. vs. Orleans Gardens, et al.*¹¹ On October 28, 2010, a Notice of Appeal in *Rentz, et al. vs. Orleans Gardens, et al.* was timely filed with the Clerk of this Court and with the Clerk of the Charleston County Court of Common Pleas, in accordance with Rules 202 and 203, SCACR.

On November 29, 2010, counsel for Appellants received written notice from the Beaufort County Clerk of Court of the entry of the order denying their Rule 59 motion in *Davis, et al. vs. Palmetto Apartments, et al.*, *Davis, et al. vs. Parkview Apartments, et al.* and *Carolina Management Corporation, et al. vs. Pinewood Park, et al.*¹² This was the first

⁹ See Exhibit D to Respondents’ Memorandum in Support of Motion to Dismiss.

¹⁰

See Judge Early’s letters of September 16, 2010 to the Clerks of Court attached hereto as Exhibit 4.

¹¹

See notice of entry of judgment/order from the Charleston County Clerk of Court attached hereto as Exhibit 5.

¹²

See Exhibit 9 of the Notices of Appeal previously filed with this Court in the *Palmetto*, *Parkview* and *Pinewood* cases.

notice - written or otherwise - to Appellants' counsel that the Order had, in fact, been entered in Beaufort County. On December 3, 2010, Notices of Appeal were timely filed with the Clerk of this Court and with the Clerk of the Beaufort County Court of Common Pleas, in accordance with Rules 202 and 203, SCACR.

Also on November 29, 2010, a staff member of counsel for Appellants received a telephone call from Cathy Wilson from the office of the Orangeburg County Clerk of Court in response to an inquiry from Appellants' counsel as to whether or not Judge Early's order had ever been received or filed in Orangeburg County. The staff member was informed by Ms. Wilson that the Orangeburg County Clerk of Court had not received the order. To date, counsel for Appellants have never received written notice from the Orangeburg County Clerk of Court, or from any other source, that the order denying Appellants' Rule 59 motion in *Davis, et al. vs. Roosevelt Gardens, et al.* has been entered in Orangeburg County.¹³ Notwithstanding the lack of receipt of written notice of the entry of the order in the Roosevelt case, in an abundance of caution, a Notice of Appeal was filed with the Clerk of this Court and with the Clerk of Orangeburg County Court of Common Pleas on December 3, 2010.

ISSUE INVOLVED

Does receipt of written notice of the entry by the Clerk of Court in one county of a single order issued with multiple captions reflecting cases pending in three (3) separate counties trigger the time for filing a notice of appeal with respect to the cases pending in the other counties?

¹³

See Affidavits of Jennifer Clark (the original of which is being submitted in the Roosevelt case) and Thomas A. Pendarvis which are submitted in support of this return.

LEGAL ARGUMENTS AND CITATION OF AUTHORITIES

Appellants believe that the Respondents' Motion to Dismiss should be denied for the following reasons:

1. The motion does not comply with the South Carolina Appellate Court Rules concerning motions filed with this Court. Respondents' motion to dismiss is based upon a highly technical and strained interpretation of Rule 203(b)(1), SCACR. Ironically, if this approach is used to examine the motion itself, it appears that the motion does not meet the requirements of Rule 240, SCACR. Subsection (a) of Rule 240 specifically "governs all motions ... filed in the appellate court, including but not limited to: ... motions to ... dismiss..." Subsection (c)(3) of the rule states as follows:

Each motion... *shall* include the following:

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties *shall file affidavits* and other documents in support of their positions. (Emphasis added.)

Neither the Record on Appeal nor the Appendix has been filed in any of the appeals addressed by the Respondents' motion. Accordingly, the language of Rule 240(c)(3) clearly requires the filing of "affidavits and other documents" in support of Respondents' motion. While Respondents' motion and memorandum contain "other documents," they do not contain any "affidavits." The rule is written in the conjunctive sense, *i.e.*, *both* "affidavits *and* other documents" are required to be filed when the Record on Appeal or the Appendix has not been filed. Having failed to provide an affidavit, the Respondents have failed to comply with the clear language of the rule.

Furthermore, the requirements of the rule are clearly mandatory, not discretionary; use of the word “shall” was obviously deliberate, and should be given its ordinary mandatory meaning. This is evident from a review of the rule in its entirety, as the authors of the rule used the term “may” in other portions of the rule in order to denote situations wherein conduct is deemed to be discretionary as opposed to mandatory.¹⁴

Accordingly, the motion to dismiss should be denied on the basis that it fails to meet the mandatory requirements of Rule 240 SCACR.

2. Notwithstanding the technical deficiencies of the Respondents’ motion, the Appellants believe that the motion should also be denied on the merits, as it seeks to advance a position which is contrary to the spirit and language of the South Carolina Appellate Court Rules and applicable law, the intent and construction of the governmental system in this State and the traditional concepts of justice, fairness and equity inherent in our judicial system. The premise of the Respondents’ Motion to Dismiss is that receipt by the Appellants’ counsel of the notice of entry of the order of Judge Early dated September 16, 2010 by the Charleston County Clerk of Court triggered the time by which all cases referenced in the order had to be appealed. This premise is not supported by the law of this State.

While receipt of written notice of the entry of Judge Early’s order by the Charleston County Clerk of Court would trigger the time for perfecting any appeal with respect to any cases filed in Charleston County which were covered by the order, it should not trigger the

¹⁴

See, e.g., Subsection (d): “... court *may* relieve a party ...”; Subsection (e): “... *may* be deemed a consent...”; Subsection (g): “... *may* be deemed an abandonment...”; and Subsection (j): “... an individual judge or justice *may* grant or deny...”

time for perfecting the appeals in cases pending in other counties. It should initially be noted that the Respondents' contention is at odds with the manner in which the five (5) cases were historically treated by the circuit court judge. As previously stated herein, it was Judge Early's practice to send his orders to *each* of the three (3) clerks of court where the cases were pending, with instructions for the filing or entry of the orders in those counties; he did not just send them to the clerk of court in Charleston. He apparently recognized, as Respondents' counsel evidently does not, that the jurisdiction and authority of the Charleston County Clerk of Court only extended to the boundaries of Charleston County.

With respect to the subject orders, Judge Early's law clerk notified all counsel *via* e-mail on April 6, 2010 that the judge had signed the Respondents' proposed order dismissing Appellants' cases, and specifically stated that it "will be mailed *to the respective clerks of court* today." (Emphasis added)¹⁵ When Judge Early subsequently denied the Appellants' Rule 59 motion concerning the April 6th order, he again transmitted his order of denial to *each of the three (3) clerks of court* for filing and service on "all interested parties."¹⁶ Judge Early obviously recognized that, even though he had signed a single order, it nevertheless had to be filed in *each* case and in *each* of the counties in which the actions to which the order applied were pending. As will be hereinafter discussed, this was necessary for the orders to be final orders or judgments as to each pending case under South

¹⁵

See E-mail from Britton All, Law Clerk to Judge Early, dated April 6, 2010, and attached hereto as Exhibit 6.

¹⁶

See letters from Judge Early to Beaufort, Charleston and Orangeburg County Clerks of Court attached hereto as Exhibit 4.

Carolina law. Appellants could not appeal from the orders otherwise, as they would lack finality. Each case, in other words, was separate and distinct and required separate filings of documents relative to it.

Furthermore, just because Judge Early sent orders to the respective clerks of court at the same time does not mean that they were received or entered on the same date by each of the clerks. Likewise, the entry of an order by a clerk did not always result in immediate written notification of that fact to counsel; as shown above, there were times when a clerk of court did not even acknowledge having received an order, much less having filed it or provided any notice to counsel. To assert, as Respondents seem to claim in their motion, that filing in Charleston County equates to filing in Beaufort and Orangeburg counties, is an illogical and unsupported stretch which this Court should summarily reject.

Appellants acknowledge receiving written notice of the entry of the subject order by the Charleston County Clerk of Court on October 1, 2010; however, that written notice clearly only confirmed the entry of the order in Charleston County and only applied to the one case which had been filed there.¹⁷ The only case referenced in the order which was pending in Charleston County was the *Rentz, et al. vs Orleans Gardens, et al.* case, and the written notice *on its face* was confined to that case only. Appellants timely served and filed a Notice of Appeal in the *Orleans Gardens* case, and waited for confirmation of the entry by the other clerks of court of the orders in the other cases, as entry of the orders was necessary to make the orders final and thus appealable, and receipt of written notice of such entry

¹⁷

See Exhibit 9 to Appellants' Notice of Appeal, contained in Exhibit "F" to the Memorandum in Support of Respondents' Motion to Dismiss.

would trigger the time in which to initiate the appellate process for those cases under Rule 203(b)(1), SCACR. Counsel for Appellants subsequently received written notice of the entry of the orders from the Beaufort County Clerk of Court in the *Palmetto*, *Parkview*, and *Pinewood* cases, whereupon a Notice of Appeal in each of those cases was served and filed in the appropriate lower and appellate courts. Having filed appeals in the other cases, and confronted with differing time limits for the appellate processes in each of the cases, as well as the preference for a single Record on Appeal to save costs, counsel for Appellants elected to also proceed with the appeal in the *Roosevelt Gardens* case which was pending in Orangeburg County, notwithstanding the fact that they had not yet received written notice of the entry of the orders in that county. Appellants contend that their actions concerning these appeals are in keeping with the language and spirit of the applicable rules, as well as with the case law and system of government in this State.

From the inception of this litigation, each of the five (5) subject cases has been treated as separate and distinct from each other; this is in accordance with the prevailing laws and rules in this state. Each of the cases has different parties, and were filed separately in three (3) different venues with three (3) different clerks of court. Appellants paid a separate filing fee to commence each action, as well as separate filing fees for any motions filed in the cases. Each case was given a separate and distinct civil action number by the clerk of the court in which it was filed, as required by Rule 79(b)(1), SCRCP. The docket number

assigned to each case is specific to the county in which the action was filed and is pending.¹⁸ Each clerk of court was required to assign each case a separate place in the clerk's Calendar or File Book, and to receive and maintain all papers and materials relating to each case together in the file bearing the case number. See Rule 79(b)(1), SCRCF.

Under Respondents' theory, receipt of notice of the filing of the order by the Charleston County Clerk of Court would obligate the Appellants to commence their appeals with respect to actions commenced in counties other than Charleston, even though the Charleston County Clerk of Court has no jurisdiction or authority with respect to cases filed in other counties, and even though Appellants had not received written notice of the entry of the order in the other counties. Neither the applicable rules of court nor the cases cited by the Respondents support their position; none specifically deal with a single order containing multiple captions relating to actions pending between different parties in multiple counties. As shown hereinafter, the law of this state, not to mention common sense, dictate rejection of Respondents' bizarre contention.

Rule 203(b)(1), SCACR, provides in relevant part as follows:

Appeals from the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion... to alter or amend the judgment ... has been made, the time for appeal... shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion..."

18

See Rule 79(b)(1), SCRCF, and reference therein to "the numbering system approved by the Supreme Court by order dated March 11, 1974, as now or hereafter amended..." Under this system, cases filed in Beaufort County bear an "07" designation, cases filed in Charleston County bear a "10" designation and cases filed in Orangeburg County bear a "38" designation.

Appellants contend that this rule contemplates appeals taken only *from the court in which the action is pending*. This is evident from other portions of Rule 203 and other appellate court rules. For example, subsections (d)(1)(A) and (d)(1)(B) of Rule 203 provide that the notice of appeal “shall be filed with the clerk of the lower court,” as well as with the Clerk of the Court of Appeals. The term “lower court” is specifically defined under Rule 202(b)(1), SCACR, as being “*the circuit court ... from which the appeal is taken.*” (Emphasis added) Subsection (e) of the rule requires that the notice of appeal contain, *inter alia*, the name of the court, judge and *county from which the appeal is taken*, as well as the docket number of the case in the lower court. Entry of the order, as contemplated by Rule 203, can only be made in the court *from which the appeal is taken* in order to trigger the time for the Notice of Appeal. The appeals in the *Palmetto*, *Parkview* and *Pinewood Park* cases were taken from Beaufort County; therefore, it is the notice of the entry in Beaufort County - not Charleston County - which triggers the time to serve and file the Notice of Appeal.

When the Notices of Appeal were filed in the instant appeals, they were filed in each case with the clerk of the court in which they were pending and from which the appeal was taken. Notwithstanding this, counsel for Respondents now advance the proposition that all of the cases should be treated as one unit, and that written notice of the entry of the orders in the Charleston case should control the appellate time limits for all of the cases.

It should initially be remembered that an appeal can only be taken from a final order, and until an order is properly reduced to writing and entered, *i.e.*, filed by the clerk of court in the county and court in which the action is pending, it is not a final order which can be appealed. “Until written *and entered*, a court has discretion to modify or amend a ruling.”

Serowski v. Serowski, 381 SC 306, 672 SE2d 589 (SC App. 2009) (emphasis added). See also *Corbin v. Kohler Co.*, 351 SC 613, 571 SE2d 92 (Ct. App. 2002): “South Carolina law is clear that no order is final until it is written and entered.” It is elemental in this State that an order is not final, therefore, until it has been reduced to writing and properly entered; as shown herein, it can only be properly entered in the county where the action is pending.

Additionally, our courts have traditionally held that, in order to be “final,” an order must accomplish “the disposition of all issues in the action.” *Link v. School District of Pickens County*, 302 SC 1, 393 SE2d 176 (1990), cited in *Appellate Practice in South Carolina*, Toal, *et al.* A final order “must finally dispose of the whole subject matter..., leaving nothing to be done but to enforce by execution what has been determined.” *Good v. Hartford Accident and Indemnity Company*, 201 SC 32, 21 SE2d 209 (1942). In the present cases, when Judge Early issued his order of September 16, 2010, there were pending before him two (2) separate and additional motions which had been filed on behalf of the Appellants in all five (5) cases: a motion for recusal and vacation of prior orders, and a motion for protective order. The granting of either of these motions would have materially affected the order of September 16, 2010. Had the motion for recusal and vacation of prior orders been granted, it would have negated and rendered moot the order of September 16, 2010. Had the motion for protective order been granted, it would have provided Appellants with an alternative avenue whereby privileged documents could have been produced under seal in order to comply with the lower court orders, thereby negating the finding of contempt and dismissal of the cases contained in the order of September 16th. Accordingly, the order of September 16th was not final until Judge Early disposed of these additional two (2)

motions.¹⁹

Respondents rely upon this Court's decision in *Rosen, Rosen & Hagood v. Hiller*, 307 SC 331, 415 SE2d 117 (Ct. App. 1992) to support their position. This reliance is misplaced. Unlike the present situation, *Rosen* involved a single case from a single jurisdiction. The appellant in that case was notified of the entry of an order by opposing counsel, rather than by the clerk of the lower court. This Court held that this was sufficient notice under Rule 77, SCRCP, which the appellant in that case had invoked to support the appeal. That ruling appears to be correct insofar as it recognizes that written notice of the entry of the order may come from more than one (1) source, and that the source may be someone other than the clerk of court. The express language of Rule 77 states as much. This ruling, however, is inapplicable in the present cases, as we are concerned with Rule 203, SCACR, not a rule of civil procedure pertinent to the lower court proceedings. There is no evidence in these appeals of any such substitute source providing notice of the written entry of the orders in any of the cases.

As stated above, the *Rosen* case was premised upon an interpretation of the South Carolina Rules of Civil Procedure, rather than an interpretation of the South Carolina

¹⁹

On October 7, 2010, Judge Early issued an order denying Appellants' Motion for Recusal and Vacation of Orders. On October 22, 2010, he issued an order denying Appellants' Motion for Protective Order. In each instance, he issued a single order with multiple captions for all five (5) cases and forwarded copies of the orders to all three (3) clerks of court. Appellants timely filed Rule 59 motions with respect to each of these orders, and Judge Early issued a form order denying both Rule 59 motions on December 11, 2010. An Amended Notice of Appeal which covers the orders denying Appellants' Rule 59 motions for recusal and vacation of prior orders and for protective order, as well as the prior orders set forth in the original Notices of Appeal, is being filed under separate cover in each of the five (5) cases.

Appellate Court Rules. Specifically, the issue in *Rosen* was whether or not the appellant was entitled to relief under Rule 77(d), SCRCP. That rule requires the clerk of court to serve a notice of the entry of any order or judgment upon every party affected by the order or judgment. It specifically exempts the clerk from this requirement with respect to any party who has already received the notice, as was the case in *Rosen*. The court in *Rosen* rejected the appellant's contention that he had not received proper notice because he had not received a copy of the signed, dated and filed order from the clerk of court.

The *Rosen* decision was addressed by the South Carolina Supreme Court in 2006. In *Upchurch v. Upchurch*, 367 SC 16, 624 SE2d 643 (2006), Chief Justice Toal, in deciding the issue of the timeliness of the appeal before the Court, rejected the applicability of *Rosen*, instead finding that the case was "more comparable" to this court's decision in *Bowman v. Richland Memorial Hospital*, 335 SC 88, 515 SE2d 259 (Ct. App. 1999). Chief Justice Toal's opinion dealt specifically with the Supreme Court's interpretation of Rule 203(b), SCACR, and the language relating to the "entry" of an order. Chief Justice Toal's opinion reiterates the argument of Appellants in this case set forth above: "An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case." It is elemental that a person cannot be given notice of the entry of an order until the order has, in fact, been entered. Accordingly, in *Upchurch*, where the appellant wife did not receive notice of an order until more than two (2) months after it had been filed with the clerk of court, Chief Justice Toal appropriately stated, "To hold Wife responsible for notice of an event that had not yet occurred runs afoul of the notions of fairness and equity articulated in *Bowman*."

Chief Justice Toal's opinion rejected the contention made by the respondent in that case that a letter from the trial judge's assistant enclosing the order for filing by the clerk of court was sufficient notice to trigger the appellate process under Rule 203(b) SCACR. In this regard, Chief Justice Toal stated:

By its plain language, Rule 203(b) requires notice of entry of the order. Entry of the order occurs when the clerk of court files the order. Delivery of the order to the clerk is not analogous to the entry of the order. Accordingly, we hold that the time to file a notice of appeal pursuant to Rule 203(b), SCACR, begins to run when written notice that the order has been entered into the record by the clerk of court has been received.

Although *Upchurch* only involved one order, one jurisdiction and one clerk of court, Chief Justice Toal's reliance upon and reference to "principles of fairness and equity" are analogous to Appellants' position with respect to the instant motion. As shown above, an appeal in a case must evolve from the court in which the case was filed and is pending. When the Appellants received written notice of the entry of the *Orleans Gardens* order by the Charleston County Clerk of Court, they had not received written notice of the entry of the order in the other cases pending outside Charleston County. It is inconsistent with the principles of fairness and equity recognized and adopted by the Court in *Upchurch* to hold the Appellants in these cases "responsible for notice of an event that had not yet occurred." It is undisputed that Appellants in the *Orleans Gardens* case filed their Notice of Appeal within thirty (30) days of receipt of written notice of the entry by the Charleston County Clerk of Court of the September 16, 2010 Order in that case. It is also undisputed that Appellants in the *Palmetto*, *Parkview* and *Pinewood* cases filed their Notices of Appeal within thirty (30) days of receipt of written notice of the entry of the Order in those cases by

the Beaufort County Clerk of Court, and that Appellants in the *Roosevelt* case have yet to receive written notice of the entry of the Order by the Orangeburg County Clerk of Court. To hold, as Respondents contend, that Appellants in these cases, many of whom have absolutely no involvement in the *Orleans* case, are governed by the actions of the Charleston County Clerk of Court is not only a tortured interpretation of Rule 203(b)(1), SCACR, it is a clear violation of the principles of fairness and equity which have been recognized and adopted by our Supreme Court.

Relevant to this issue is the fact that Respondents' motion gives heavy emphasis to their contention that the orders upon which their motion is based is actually a single order with a multiple caption. The initial order of April 6, 2010, which dismissed the five (5) cases previously assigned to Judge Early by Chief Justice Toal, was prepared by counsel for the Respondents. They chose the single order, multiple caption format in preparing the order. When Appellants' counsel submitted their Rule 59 motion, they simply utilized the same format as the order from which relief was being sought. The order of September 16, 2010, which denied the Rule 59 motion, again used the single order, multiple caption format earlier chosen by counsel for the Respondents in preparing the initial order. Respondents' counsel now seek to gain an undue advantage from the format of the order in question. Appellants believe that this is improper, and that they should not be penalized by a format chosen by their opponents. To the contrary, Appellants contend that they have pursued their appeals in each of the cases presently before this Court in precisely the manner prescribed and contemplated by the applicable rules and case law. To hold otherwise would not be in keeping with the fairness and equity principles referenced above.

Finally, it should be noted that the position advocated by the Respondents in their motion is contrary to the intent and construction of the governmental system in South Carolina. Counties in South Carolina are autonomous; each is a separate body politic.²⁰ Each county has its own courthouse and clerk of court; in fact, under South Carolina law, the courthouses are required to maintain a geographical separation from each other.²¹ Certain fees charged by each county clerk of court may be established by the respective county governing bodies, and differ from county to county.²² Although the circuit courts in each county are part of a unified state system, counties may be treated differently within such system.²³ The clerks of court for each county are required by law to be separate, and are elected by the voters in their respective counties.²⁴ Each clerk of court is required to issue all notices ordered in their respective court of common pleas, to attest "in his own name under the seal of the court all writs and processes issued" in the court of common pleas for his county, and to "sign officially all judgments and state the time when each is signed and

²⁰See, e.g., §4-1-10, South Carolina Code of Laws.

²¹

See, e.g., §4-1-30, South Carolina Code of Laws, making it unlawful to locate county courthouses within eight (8) miles of the county line.

²²See, e.g., §4-1-150, South Carolina Code of Laws.

²³

See, e.g., §14-5-20, South Carolina Code of Laws, requiring separate seals for each county court of common pleas. Also by way of example, some counties are subject to mandatory mediation requirements for cases filed in the county court of common pleas or family court, while other counties are exempt from such requirements.

²⁴See, e.g., §14-17-10, South Carolina Code of Laws.

entered.”²⁵ Each clerk of court is required to “make a full, fair and correct entry and record of the proceedings of the courts and other matters pertaining to his office...,” to “file ... original papers in causes instituted ...,” and to “preserve... all papers ... pertaining to or connected with his office.”²⁶

Furthermore, each clerk of court is required to file “original papers of record in each cause wherein judgment may be signed or ... decree may be entered,” and is required to endorse the papers “with the character, date of filing and number on file, ... keeping all relating to the same matters together under the same number...”²⁷ Each clerk of court is required to use their own “Court of Common Pleas Journal,” in which they shall keep, *inter alia*, “final judgments,” and “copies of all orders passed, motions granted and other matters specially ordered by the court to be entered.”²⁸ Each clerk of court is responsible for the books and papers in his or her office.²⁹ “The clerks ... of the several counties shall provide separate indexes for the different sets of records provided for them.”³⁰ The Respondents’ contention that the notice of entry of an order by the clerk of court in a single county triggers the time for initiating appellate relief in cases filed by other parties which are pending in other counties is anethma to this system of autonomy.

CONCLUSION

²⁵See, e.g., §14-17-260, South Carolina Code of Laws.

²⁶See, e.g., §14-17-510, South Carolina Code of Laws.

²⁷See, e.g., §14-17-530, South Carolina Code of Laws.

²⁸See, e.g., §14-17-540(1)(g) and (h), South Carolina Code of Laws.

²⁹See, e.g., §14-17-580, South Carolina Code of Laws.

³⁰§30-9-20, South Carolina Code of Laws; see also, Rules 78 and 79, SCRCF.

Where multiple cases involving different parties are pending in multiple counties, and the cases have not been consolidated, receipt of the entry of an order in one of the cases by the Clerk of Court in one of the counties should not trigger the time for filing a notice of appeal by the other parties in the cases pending in the other counties. The Respondents' position to the contrary violates the spirit and language of the South Carolina Appellate Court Rules and applicable law, the intent and construction of the governmental system in this State and the traditional concepts of justice, fairness and equity inherent in our judicial system. Accordingly, Respondents' motion to dismiss the appeals of the Appellants should be denied.

Respectfully submitted,

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500 Carteret St., Suite A
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843.524.9500 tel
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and

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(843) 525-6090 tel
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baileylawfirm@charter.net

By: 
Joel D. Bailey (SC Bar # 471)
Counsel for Appellants

January 28, 2011
Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., Esquire
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Jesse C. Belcher, Esquire
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P.O. Box 2048
Greenville SC 29602

Marvin D. Infinger, Esquire
Anne Ross Rosen, Esquire
Nexsen Pruet, LLC
PO Box 486
Charleston SC 29402

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-07-1989

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey
and Erin E. Ivey, individually and in their capacities as the
Limited Partners of Palmetto Apartments, a South Carolina
Limited Partnership. Appellants,

vs.

Palmetto Apartments, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

AFFIDAVIT OF JOEL D. BAILEY

Personally appeared before me **JOEL D. BAILEY** who, being first duly sworn,
states:

1. I am a resident and citizen of the City and County of Beaufort in the State of
South Carolina.

2. I am an attorney and have been continuously licensed to practice law in the State of South Carolina since 1973. I am the sole shareholder of The Bailey Law Firm, P.A., located at 510 Ribaut Road in Beaufort, South Carolina.

3. I, together with Thomas A. Pendarvis, Esquire, represent the Appellants in the above-captioned case, as well as the Appellants in four separate but related cases, to-wit, *Davis, et al. vs. Roosevelt Gardens Apartments, et al.* Case Tracking # 2010180086; *Carolina Management, et al. vs. Pinewood Park Apartments, et al.*, Case Tracking # 21010180088; *Rentz, et al. vs Orleans Gardens Apartments, et al.*, Case Tracking # 2010176826 and *Davis, et al. vs. Parkview Apartments, et al.*, Case Tracking # 2010180666.

4. The above-captioned case was filed in 2005; the other cases were filed in 2003 and 2005. No trial has ever taken place in any of these cases. The Appellants in each case are limited partners in limited partnerships wherein the above-named Respondents are general partners. Some of the Appellants hold interests in more than one of the limited partnerships, and some hold an interest in only one of the limited partnerships, but *none* of them hold interests in *all* of the limited partnerships.

5. This Affidavit is submitted in support of Appellants' Return to Respondents' Motion to Dismiss the appeal in this case, as well as in the *Roosevelt, Pinewood* and *Parkview* cases referenced above, and for such other purposes as may be proper. I prepared the said Return, and the factual statements contained therein, as well as the statements contained in this Affidavit, are based upon my personal knowledge and/or observations; I affirm that they are true and accurate to the best of my knowledge and belief. Furthermore, I am personally familiar with the documents referenced in the said Return and in this

Affidavit, and have kept or maintained originals or copies of the same in the regular course of my business as counsel of record for the Appellants in these cases.

6. Respondents contend in their Motion to Dismiss that the Appellants receipt of written notice of entry by the Charleston County Clerk of Court of an order in the *Rentz, et al. vs Orleans Gardens, et al.* case triggered the time in which Appellants had to file notices of appeal in the other cases, which involved other parties and were pending in separate counties. As counsel for the Appellants, I am of the belief that such a contention is at odds with the language and intent of Rule 203(b)(1), SCACR, as well as other laws, statutes and rules referenced in Appellants' Return to Respondents' Motion to Dismiss. Furthermore, as stated in the Return, such an interpretation of the appellate court rules would result in fundamental inequity and unfairness to the Appellants, who have been denied a hearing on the merits for nearly six (6) years - eight (8) years for the Appellants in the *Parkview* case - since filing their Complaints in the lower court.

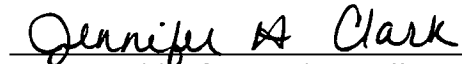
7. By Order of Chief Justice Jean H. Toal of the South Carolina Supreme Court dated March 7, 2006, the Honorable Doyet A. Early III, resident Circuit Court Judge for the Second Judicial Circuit, was assigned to all of these cases. The order assigning the cases to Judge Early did not consolidate the cases for any purpose. Judge Early has issued an order dismissing all five (5) cases. The basis of his order involves controversial and disputed rulings related to discovery in these cases, and Appellants believe that Judge Early has significantly departed from the existing statutory and case law of this State in the issuance of this order. Additionally, there are serious issues concerning confidential communications between Appellants and their counsel, as well as issues arising under both the Federal and State Constitutions.

8. Judge Early ultimately issued a single order containing abbreviated versions of all five (5) case captions, in which he dismissed all five (5) of the cases. The order was prepared and presented to Judge Early by counsel for the Respondents. Motions for reconsideration pursuant to SCRCP 59 were made in each case, and an order denying the motions was signed by Judge Early. I received copies of letters from Judge Early to the clerks of court for Beaufort, Charleston and Orangeburg Counties, wherein he instructed them to file the order denying the Rule 59 motions and to serve all interested parties. A separate order was signed by Judge Early on December 11, 2010 with regard to other Rule 59 motions which were designed to avoid the harsh sanctions imposed by Judge Early. These included a motion for recusal and vacation of his prior orders, as well as a motion for protection whereby Appellants would have been permitted to comply with Judge Early's directive that they produce documents covered by their attorney-client privilege. Counsel for the Appellants have not yet received written notices of the entry of these orders in all of the cases; nevertheless, in an abundance of caution, and in the interest of minimizing costs, amended Notices of Appeals which include these orders are being filed in all five (5) cases.

I have read the foregoing paragraphs and affirm that the information contained therein is true and accurate and is based upon my personal knowledge, observations and experience, except such information as may be stated to be based upon information and belief and, as to that information, I believe that it is true and accurate.


Joel D. Bailey (S.C. Bar # 00471)

Sworn to before me this
27 day of January, 2011


Notary Public for South Carolina

My Commission Expires: 7-8-2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2003-CP-07-726

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie
Reynolds and Rhoda G. Rentz, individually and in their
capacities as the Limited Partners of Parkview Apartments,
a South Carolina Limited Partnership. Appellants,

vs.

Parkview Apartments, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

AFFIDAVIT OF THOMAS A. PENDARVIS

Personally appeared before me Thomas A. Pendarvis who, being first duly
sworn, states:

1. I am a resident of Beaufort, South Carolina.
2. I am an attorney licensed to practice law in the State of South Carolina and am
co-counsel representing the Appellants in the above-captioned case.
3. On November 22, 2010, I sent a letter to the Beaufort County Clerk of Court
requesting a clocked copy of an Order, dated September 16, 2010, issued by the

Honorable Doyet A. Early, III, a copy of which is attached hereto and incorporated herein by reference as **Exhibit 1**.

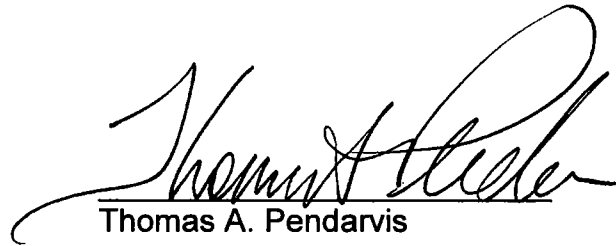
4. On November 22, 2010, I sent a letter to the Orangeburg County Clerk of Court requesting a clocked copy of an Order, dated September 16, 2010, issued by the Honorable Doyet A. Early, III, a copy of which is attached hereto and incorporated herein by reference as **Exhibit 2**.

5. On November 29, 2010, my office received correspondence from the Beaufort County Clerk of Court enclosing a clocked copy of the Order, dated September 16, 2010, a copy of which is attached hereto and incorporated herein by reference as **Exhibit 3**.

6. On November 30, 2010, my office received correspondence from the Beaufort County Clerk of Court enclosing a complete clocked copy of the Order, dated September 16, 2010, a copy of which is attached hereto and incorporated herein by reference as **Exhibit 4**.

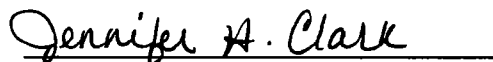
7. To date, our office has not received a reply from the Orangeburg County Clerk of Court to my November 22, 2010 correspondence.

8. At no point in time has anyone provided me with written notice of the entry of the Order, dated September 16, 2010, by the Clerk of Court for Orangeburg County.


Thomas A. Pendarvis

Sworn to before me this

25 day of January, 2011


Notary Public fo South Carolina

My Commission Expires: 7-8-2015



PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066

THOMAS A. PENDARVIS, J.D.
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THOMAS@PENDARVISLAW.COM

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FAX. 843.524.9501
WWW.PENDARVISLAW.COM

November 22, 2010

Ms. Jerri Ann Roseneau
Beaufort County Clerk of Court
PO Drawer 1128
Beaufort SC 29901

Re: Davis v. Parkview Apartments - C.A. No. 2003-CP-07-726
Davis v. Palmetto Apartments - C.A. No. 2005-CP-07-1989
Carolina Management v. Pinewood Apartments - C.A. No. 2005-CP-07-1990

Dear Ms. Roseneau:

This is a request for a clocked copy of an ORDER dated September 16, 2010 issued by the Honorable Doyet A. Early, III in the foregoing cases.

By a copy of Judge Early's correspondence to your office, also dated September 16, 2010, we understand that this ORDER was mailed to your office for filing. Counsel for Plaintiffs in these three cases have not received written notice that this Order has been entered. If this ORDER has been entered, please send to my office a clocked copy in the self-addressed stamped envelope we have enclosed for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/lat



Page 2

November 22, 2010

Enclosure

cc: Joel D. Bailey, J.D. (via e-mail w/o enclosure)
Marvin D. Infinger, J.D. (via U.S. Mail w/o enclosure)
Anne Ross Rosen, J.D. (via U.S. Mail w/o enclosure)
Ellis M. Johnston, II, J.D. (via U.S. Mail w/o enclosure)
Calvin T. Vick, Jr., J.D. (via U.S. Mail w/o enclosure)
Jesse C. Belcher, Jr., J.D. (via U.S. Mail w/o enclosure)
Honorable Doyet A. Early, III (via U.S. Mail w/o enclosure)



PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066

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THOMAS@PENDARVISLAW.COM

TEL. 843.524.9500
FAX. 843.524.9501
WWW.PENDARVISLAW.COM

November 22, 2010

Ms. Lisa W. Mizell
Clerk of Court, Orangeburg County
PO Drawer 9000
Orangeburg, SC 29116

Re: Laurence H. Davis, Jr., et al. v. Roosevelt Gardens, et al.
Case No. 2005-CP-38-1131

Dear Ms. Mizell:

This is a request for a clocked copy of an ORDER dated September 16, 2010 issued by the Honorable Doyet A. Early, III in the foregoing case.

By a copy of Judge Early's correspondence to your office, also dated September 16, 2010, we understand that this ORDER was mailed to your office for filing. Counsel for Plaintiffs in this case have not received written notice that this Order has been entered. If this ORDER has been entered, please send to my office a clocked copy in the self-addressed stamped envelope we have enclosed for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/lat
Enclosure



Page 2

November 8, 2010

cc: Joel D. Bailey, J.D. (via e-mail w/o enclosure)
Marvin D. Infinger, J.D. (via U.S. Mail w/o enclosure)
Anne Ross Rosen, J.D. (via U.S. Mail w/o enclosure)
Ellis M. Johnston, II, J.D. (via U.S. Mail w/o enclosure)
Calvin T. Vick, Jr., J.D. (via U.S. Mail w/o enclosure)
Jesse C. Belcher, Jr., J.D. (via U.S. Mail w/o enclosure)
Honorable Doyet A. Early, III (via U.S. Mail w/o enclosure)

Office of the Clerk of Court

Beaufort County

Post Office Drawer 1128
Beaufort, South Carolina 29901-1128
(843)255-5050 Fax: (843)255-9412

Jerri Ann Roseneau
Clerk of Court

RECEIVED NOV 29 2010

DATE: November 24, 2010

FROM: Kristy Taylor, Clerk of Court Staff (843-255-5061)

REGARDING DOCUMENT: 3 Orders Signed by Judge Early, 2003-CP-07-0726

MOTION/ORDER

(Filing Fee) _____ @ 25.00 ea _____
CANCEL LIS PENDENS _____ @ 1.00 ea _____
CERTIFIED COPIES _____ @ 3.00 ea _____
COPIES _____ 15 _____ @ 0.50 ea _____ 7.50 _____
EXEMPLIFIED COPIES _____ @ 1.00 ea _____
ENVELOPES _____ @ 0.50 ea _____
POSTAGE _____ @ _____ ea _____
PAST DUE CHARGES _____
MISCELLANEOUS CHARGES _____
TOTAL AMOUNT DUE \$ _____ 7.50 _____

PLEASE MAIL REMITTANCE TO:

CLERK OF COURT
PO DRAWER 1128
BEAUFORT, SC 29901

PAYMENT DUE UPON RECEIPT

PLEASE NOTE: If you need a copy returned to you provide the copy and a self addressed and stamped envelope. We do not have the time or personnel to provide this service for each law firm.

THANK YOU!

*you only had
.50 in your
copy card
account, so
I decided to
send ~~and~~ a
receipt along
with the
orders.*

*Thanks -
Kristy*

EXHIBIT

3

STATE OF SOUTH CAROLINA ^{SEP 20 11 3:52}

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-1131

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRPC. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.



The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III

Sept 16, 2010
Beaufort, South Carolina



State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 80
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

September 16, 2010

The Honorable Jeri Ann Roseneau
Post Office Box 1128
Beaufort, South Carolina 29901-1128

Re: Laurance H. Davis, Jr. et al v. Parkview Apartments, 03-CP-07-726
Laurance H. Davis, Jr. et al v. Pulmetto Apartments, 05-CP-07-1989
Carolina Management Corp of Beaufort, et al v. Pinewood Park Apartments, 05-CP-07-1990

Dear Ms. Roseneau:

Please find enclosed for filing my orders in the above cases. Please file and serve all interested parties.

Sincerely,

DA Early
D. A. Early, III

DAE:khc
Enclosures

cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire



RECEIVED NOV 30 2010

10 NOV 23 PM 1:20
BEAUFORT COUNTY CLERK OF COURT

PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
THOMAS@PENDARVISLAW.COM

TEL. 843.524.9500
FAX. 843.524.9501
WWW.PENDARVISLAW.COM

November 22, 2010

Ms. Jerri Ann Roseneau
Beaufort County Clerk of Court
PO Drawer 1128
Beaufort SC 29901

Re: Davis v. Parkview Apartments - C.A. No. 2003-CP-07-726
Davis v. Palmetto Apartments - C.A. No. 2005-CP-07-1989
Carolina Management v. Pinewood Apartments - C.A. No. 2005-CP-07-1990

Dear Ms. Roseneau:

This is a request for a clocked copy of an ORDER dated September 16, 2010 issued by the Honorable Doyet A. Early, III in the foregoing cases.

By a copy of Judge Early's correspondence to your office, also dated September 16, 2010, we understand that this ORDER was mailed to your office for filing. Counsel for Plaintiffs in these three cases have not received written notice that this Order has been entered. If this ORDER has been entered, please send to my office a clocked copy in the self-addressed stamped envelope we have enclosed for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis



TAP/lat

AS I was going through what we had scanned, I think the copy I sent earlier may have been missing a couple of pages. So I'm resending just in case - Thanks - v... t.

Page 2
November 22, 2010

Enclosure

cc: Joel D. Bailey, J.D. (via e-mail w/o enclosure)
Marvin D. Infinger, J.D. (via U.S. Mail w/o enclosure)
Anne Ross Rosen, J.D. (via U.S. Mail w/o enclosure)
Ellis M. Johnston, II, J.D. (via U.S. Mail w/o enclosure)
Calvin T. Vick, Jr., J.D. (via U.S. Mail w/o enclosure)
Jesse C. Belcher, Jr., J.D. (via U.S. Mail w/o enclosure)
Honorable Doyet A. Early, III (via U.S. Mail w/o enclosure)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

10 OCT 25 PM 3:27
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER DENYING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

This matter is before the Court on Plaintiffs' Motions for Protective Order (collectively, "Motion"), which were filed in each of the above-captioned actions on or about February 22, 2010. The Court has considered the written Motion itself, Defendants' Memorandum in Opposition to the Motion, other motions, memoranda and affidavits subsequently filed by the parties, which pertain to issues presented in the instant Motion, the oral argument of the parties'

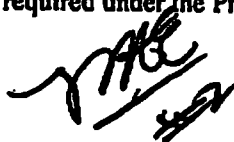
MAE
JH

counsel at the March 29, 2010 hearing in these cases, which concerned, *inter alia*, Plaintiffs' Motion, and other matters submitted to the Court for its consideration.

Plaintiffs' Motion concerns their proposed production of the documents that the Court compelled Plaintiffs to produce in its July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs state that the Motion is made pursuant to Rule 26(c), SCRPC, "in an attempt by Plaintiffs to comply with the Order of July 28, 2009." (Motion, p. 2) However, Plaintiffs do not propose to produce the subject documents as required by the Privilege Discovery Order. Instead, Plaintiffs propose that they provide the documents to the Court under seal, that the Court read, review and examine the documents *in camera* "before any dissemination to opposing counsel and that the mental impressions, conclusions, opinions or legal theories of Plaintiffs' counsel concerning this litigation be redacted." (Motion, p. 2; emphasis added) The Court finds that the Motion should be denied for the following reasons.

First, in light of Plaintiffs' proposed requirement that attorney mental impressions, conclusions, opinions or legal theories be redacted before any dissemination of the documents to Defendants' counsel, Plaintiffs are asking that the Court modify or amend the earlier Privilege Discovery Order, which required the Plaintiffs to produce the documents without exception.¹ A motion to alter or amend the Privilege Discovery Order in this manner must be filed in accordance with Rule 59(e), SCRPC, not Rule 26(c). Plaintiffs' instant Motion was not filed within 10 days of their receipt of written notice of the entry of the Privilege Discovery Order, as required by Rule 59(e). Plaintiffs' Motion, which seeks the type of relief governed by Rule 59(e), is not timely.

¹ Considering Plaintiffs have not provided a single document to the Court, under seal or otherwise, it appears that their willingness to do so is conditioned upon the Court first accepting their proposed redaction requirement. Thus, if the Court were to undertake the review proposed by Plaintiffs and determine that, consistent with its original order, the documents are to be produced without redaction, providing the documents to the Court under seal would in no way achieve the production required under the Privilege Discovery Order, but would be fruitless.

 2

Second, Plaintiffs' Motion, which clearly seeks to modify or amend the Privilege Discovery Order, raises arguments or issues that were not presented to the Court prior to entry of the Privilege Discovery Order, i.e., that the Court should inspect the subject documents *in camera* and the attorneys' mental impressions, conclusions, opinions or legal theories concerning this litigation should be redacted from the documents before being produced. Plaintiffs "cannot use a motion ... to alter or amend a judgment to present an issue that could have been raised prior to judgment but was not." Brailsford v. Brailsford, 380 S.C. 443, 669 S.E.2d 342, 345 (Ct. App. 2008). See also Pacific Insurance Co. v. American Nat'l Fire Insurance Co., 148 F.3d 396, 403 (4th Cir. 1998) (Rule 59 is not intended to allow a party to complete presenting his case after the court has ruled against him, or to re-litigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of the judgment). Though styled as a motion for protective order under Rule 26(c), the Court cannot ignore the purpose and effect of the relief sought, which is to alter the terms of the Privilege Discovery Order.

Third, and perhaps most importantly, the Court has ruled that Plaintiffs waived all privileges that would otherwise attach to the subject documents, including claims of work product. The Court has considered Plaintiffs' various arguments that the Privilege Discovery Order should be amended to find that the Plaintiffs did not waive such protections, and it has reaffirmed its previous rulings based on its belief that those rulings are correct. If the Court were to redact attorney mental impressions, conclusions, opinions or legal theories concerning this litigation, as proposed by Plaintiffs, it would clearly undercut the Court's rulings in the Privilege Discovery Order and the grounds upon which such rulings were made. Each of Plaintiffs' documents compelled in the Privilege Discovery Order were created more than three years before filing of the Palmetto, Orleans, Roosevelt and Pinewood cases (many more than three

 3

years before the Parkview case was filed).² To the extent such documents contain Plaintiffs' attorneys' litigation and trial strategies in this litigation more than three years before the suits were filed, as Plaintiffs' Motion indicates, it is difficult to imagine a document that is more relevant to the statute of limitations issue and Plaintiffs' claims for damages due to Defendants' alleged interference with Plaintiffs' investigation and pursuit of these lawsuits (see Complaints in Roosevelt and Orleans cases). Such information within the documents certainly does not detract from the Court's finding that the Plaintiffs, through their actions (e.g. the allegations in the Roosevelt and Orleans Complaints), waived any otherwise applicable privilege. Plaintiffs have not demonstrated that their proposed review process would be likely to accomplish anything other than reinforcement of the grounds for compelling production.

In light of the above, Plaintiffs' Motion is DENIED.

IT IS SO ORDERED.


Doyet A. Early, III, Circuit Court Judge

Dated: Oct 22, 2010

² The Court issued its rulings in the Privilege Discovery Order based on the information contained in the parties' respective Privilege Logs, which sufficiently identified and described the subject documents for the purposes of the Court's rulings. Not incidentally, the information in the parties' respective privilege logs also provided the factual bases relied upon by the parties in their argument concerning the various privilege disputes presented in the parties' respective Rule 59 motions, each of which sought to alter or amend the Court's June 2, 2009 Order and resulted in the Court's July 28, 2009 Privilege Discovery Order.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-38-1131

Laurance H. Davis, Jr., Rhoda G. Rentz, Mortimer M. Weinberg, Jr.,
Hodge Land Co., Inc. and Anna Trotter, individually and in their
capacities as the Limited Partners of Roosevelt Gardens, a South
Carolina Limited Partnership. Appellants,

vs.

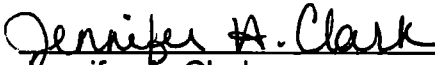
Roosevelt Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

AFFIDAVIT OF JENNIFER A. CLARK

Personally appeared before me Jennifer A. Clark who, being first duly sworn, states:

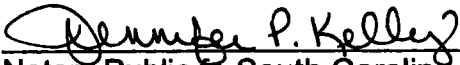
1. I am a resident of Beaufort, South Carolina.
2. I am a paralegal with the Pendarvis Law Offices, P.C.
3. On November 22, 2010, Pendarvis Law Offices sent a letter to the Orangeburg County Clerk of Court requesting a clocked copy of an Order, dated September 16, 2010, issued by the Honorable Doyet A. Early, III, a copy of which is attached hereto and incorporated herein by reference as **Exhibit 1**.

4. On November 29, 2010, Cathy Wilson from the Orangeburg County Clerk called our office stating that they had received our letter dated November 22, 2010 but that they did not have any such order and had no idea what our office was talking about. I faxed her a copy of Judge Early's cover letter to the clerk together with the two page Order, a copy of which is attached hereto and incorporated herein by reference as **Exhibit 2**. She stated that she was going to see what she could find out and get back to me. To date, our office has not heard back from the Orangeburg County Clerk regarding the Order dated September 16, 2010. We have never received written notice of entry of the Order in Orangeburg County.


Jennifer A. Clark

Sworn to before me this

27th day of January, 2011


Notary Public to South Carolina

My Commission Expires: 02-01-2020



PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
THOMAS@PENDARVISLAW.COM

TEL. 843.524.9500
FAX. 843.524.9501
WWW.PENDARVISLAW.COM

November 22, 2010

Ms. Lisa W. Mizell
Clerk of Court, Orangeburg County
PO Drawer 9000
Orangeburg, SC 29116

Re: Laurence H. Davis, Jr., et al. v. Roosevelt Gardens, et al.
Case No. 2005-CP-38-1131

Dear Ms. Mizell:

This is a request for a clocked copy of an ORDER dated September 16, 2010 issued by the Honorable Doyet A. Early, III in the foregoing case.

By a copy of Judge Early's correspondence to your office, also dated September 16, 2010, we understand that this ORDER was mailed to your office for filing. Counsel for Plaintiffs in this case have not received written notice that this Order has been entered. If this ORDER has been entered, please send to my office a clocked copy in the self-addressed stamped envelope we have enclosed for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office. With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/lat
Enclosure



Page 2

November 8, 2010

cc: Joel D. Bailey, J.D. (via e-mail w/o enclosure)
Marvin D. Infinger, J.D. (via U.S. Mail w/o enclosure)
Anne Ross Rosen, J.D. (via U.S. Mail w/o enclosure)
Ellis M. Johnston, II, J.D. (via U.S. Mail w/o enclosure)
Calvin T. Vick, Jr., J.D. (via U.S. Mail w/o enclosure)
Jesse C. Belcher, Jr., J.D. (via U.S. Mail w/o enclosure)
Honorable Doyet A. Early, III (via U.S. Mail w/o enclosure)



State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

RECEIVED SEP 20 2010

September 16, 2010

The Honorable Winnifa Brown-Clark
Post Office Box 9000
Orangeburg, South Carolina 29115

Re: Laurance H. Davis, Jr. et al v. Roosevelt Gardens, 05-CP-38-1131

Dear Ms. Clark:

Please find enclosed for filing my order in the above case. Please file and serve all interested parties.

Sincerely,


D. A. Early, III

DAE:khc
Enclosure

cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire ✓

EXHIBIT

2

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

**Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.**

**Beaufort County
C.A. No. 2003-CP-07-726**

**Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.**

**Orangeburg County
C.A. No. 2005-CP-38-1131**

**Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.**

**Charleston County
C.A. No. 2005-CP-10-4229**

**Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.**

**Beaufort County
C.A. No. 2005-CP-07-1989**

**Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.**

**Beaufort County
C.A. No. 2005-CP-07-1990**

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRPC. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiffs Rule 59/60 motions seeking reconsideration of these orders.


#1

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Barling, South Carolina