

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. 2010180086

FILED 10 2011

SOUTH CAROLINA COURT OF APPEALS

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,

v.

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, ... Respondents.

RESPONDENTS', MARVIN INFINGER'S, ANNE ROSEN'S, AND
JESSE BELCHER'S MOTION PURSUANT TO S.C.A.C.R. 264

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

In light of Appellants' newly found belief (**Exhibit 1**) that it is necessary for them to serve Marvin Infinger, Anne Rosen, and Jesse Belcher with all documents related to the within appeal in order to comply with Rule 5, SCRCP (because Mr. Infinger, Mrs. Rosen and Mr. Belcher are allegedly "counsel of record"),¹ Respondents, Mr. Infinger, Mrs. Rosen, and Mr. Belcher file the within Motion pursuant to Rule 264, SCACR. Appellants' belief is "newly found" because, contrary to their contention in their letter,

Accordingly, Mr. Pendarvis and I have provided these attorneys with copies of all communications in the lower court and concerning this appeal, as we have never received a written order relieving them as counsel in this Court or in the lower court. (Exhibit 1)

- Appellants acknowledged in January, 2009 that Mr. Infinger, Mrs. Rosen, and Mr. Belcher were no longer working on the matter (**Exhibit 2**);
- Since that time, Appellants on numerous occasions did not serve pleadings on Mr. Infinger, Mrs. Rosen, or Mr. Belcher, as required by the Rules if, as Appellants contend, they are counsel of record (**Exhibit 3**)²;
- Appellants apparently did not consider Mr. Infinger, Mrs. Rosen, or Mr. Belcher to be counsel of record when they appealed this matter in September, 2009 (**Exhibit 4**);
- Appellants apparently did not consider Mr. Infinger, Mrs. Rosen, or Mr. Belcher to be counsel of record when they petitioned to the South Carolina Supreme Court in September, 2009 for a Writ of Prohibition or in the Alternative Certiorari (**Exhibit 5**);
- The clerk's office records do not reflect that Mr. Infinger, Mrs. Rosen or Mr. Belcher are counsel of record (**Exhibit 6**);

¹ Respondents surmise that this is a thinly veiled attempt to add weight to their argument in the Court below, that Judge Early should have recused himself because Mr. Infinger spent the night at his lake house 30 years ago, and because Judge Early officiated at the wedding of Mrs. Rosen.

² Sporadically, since January, 2009, Appellants have sometimes served one, two, or all three of Mr. Infinger, Mrs. Rosen, and Mr. Belcher (**Exhibit 7**).

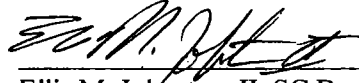
- And, even though Mr. Infinger's, Mrs. Rosen's, and Mr. Belcher's names have appeared on some pleadings, none have ever signed a pleading.

Nonetheless, Respondents, Mr. Infinger, Mrs. Rosen, and Mr. Belcher respectfully move the Court pursuant to Rule 264(b), SCACR, for an Order permitting the withdrawal of and removing Mr. Infinger, Mrs. Rosen, and Mr. Belcher as counsel of record, if so they be. In support of this Motion, Respondents show the Court that, if and to the extent Mr. Infinger, Mrs. Rosen and Mr. Belcher have ever been counsel of record in this matter, Respondents have been notified in writing that Mr. Infinger, Mrs. Rosen and Mr. Belcher seek to withdraw as counsel, and Respondents have authorized their attorneys in this matter, Mr. Johnston and Mr. Vick, to inform the Court that Respondents consent to the requested withdrawal. To be clear, Mr. Johnston and Mr. Vick are, and shall remain, Respondents' counsel of record in this matter.

(Signatures on Next Page)

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Ellis M. Johnston, II, SC Bar # 3065

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

Post Office Box 2048

Greenville, South Carolina 29602

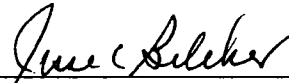
(864) 240-3200 (phone)

(864) 240-3336 (fax)

ejohnston@hsblawfirm.com

tvick@hsblawfirm.com

Attorneys for Respondents



Jesse C. Belcher

Haynsworth Sinkler Boyd, P.A.

Post Office Box 2048

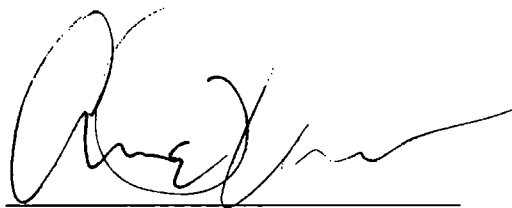
Greenville, South Carolina 29602

864-240-3200 (phone)

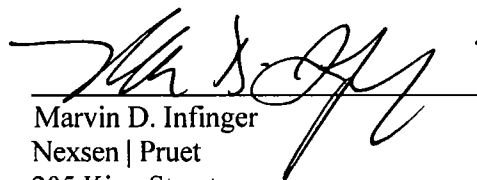
864-240-3336 (fax)

March 3, 2011
Greenville, South Carolina

(Signatures Continue on Next Page)



Anne Ross Rosen
Nexsen | Pruet
205 King Street
Suite 400
Charleston, South Carolina 29401
843-577-9440 (phone)
843-720-1777 (fax)



Marvin D. Infinger
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843-720-1777 (fax)

March 3, 2011
Charleston, South Carolina

100-100000



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

610 RIBAUT ROAD

POST OFFICE BOX 1457 • BEAUFORT, SOUTH CAROLINA 29901-1457

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

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

February 15, 2011

Honorable Tanya Gee
Date Rec'd 2/15/11
Case # 1471, 1010
Initialed _____
IDL _____

Honorable Tanya Gee, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

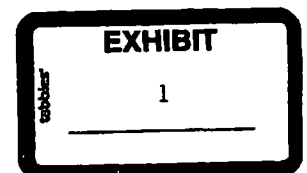
RE: Laurance H. Davis, Jr., et al. vs. Roosevelt Gardens, et. al.
Case No. 2005-CP-38-1131
Case Tracking # 2010180086

Dear Ms. Gee:

I am in receipt of Calvin T. Vick's letter to you dated February 10, 2011, wherein Mr. Vick advises this Court that Marvin Infinger, Anne Ross Rosen and Jesse Belcher are not counsel of record for Respondents in the above-referenced appeal. Mr. Infinger, Ms. Rosen and Mr. Belcher were previously identified as counsel for the Defendants in the lower court. None of these attorneys have filed a motion to be relieved as counsel, nor has any order been issued relieving them.

Rule 11(b), SCRCP, provides that attorneys may be relieved in the lower court "by order of the Court, and not otherwise." Rule 235(a), SCACR, provides that "the attorneys ... of the respective parties of the court below shall be deemed the attorneys ... in the appellate court until withdrawal is approved and notice is given as provided in this Rule." Rule 235(b), SCACR, prohibits an attorney of record from withdrawing from representation of a client in an appeal "without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party."

Rule 5, SCRCP, requires service of documents on all counsel of record. Accordingly, Mr. Pendarvis and I have provided these attorneys with copies of all communications in the lower court and concerning this appeal, as we have never received a written order relieving them as counsel in this Court or in the lower court. In light of the existing law, we must continue to treat these attorneys as counsel of record unless notified to do otherwise by this Court.

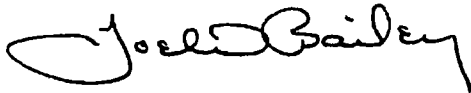


Honorable Tanya Gee, Clerk
February 15, 2011
Page Two

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

A handwritten signature in black ink, appearing to read "Joel D. Bailey". The signature is fluid and cursive, with the first name "Joel" and last name "Bailey" clearly distinguishable.

Joel D. Bailey

JDB/shb

cc: Ellis M. Johnston, II, Esquire
Calvin T. Vick, Jr., Esquire
Jesse C. Belcher, Jr., Esquire
Anne Ross Rosen, Esquire
Marvin D. Infinger, Esquire
Thomas A. Pendarvis, Esquire

BAILEY LAW FIRM, P.A.

Johnston, Ellis

From: baileylawfirm@charter.net
Sent: Friday, January 30, 2009 1:19 PM
To: Vick, Ted
Cc: Johnston, Ellis; Thomas Pendarvis; dearilyc: sccourts.org
Subject: Hearing before Judge Early

Ted:

Thomas has forwarded me a copy of the messages below which have transpired between you and Judge Early's law clerk. I note that I was not copied on your latest emails. Please see that all future correspondence and attachments are directed to both Thomas and myself. I am also requesting that Carra include me in all future correspondence.

I have not copied Jesse, Marvin or Anne on this email, in light of your and Ellis' statements yesterday that they are not working on the case.

Thanks.

Joel
The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, SC 29901-1437
843-525-6090
843-525-6070 (fax)
baileylawfirm@charter.net

-----Original Message-----

From: Vick, Ted
Sent: Thursday, January 29, 2009 1:30 PM
To: Early, Doyet A. Law Clerk (Carra Henderson); Thomas A. Pendarvis

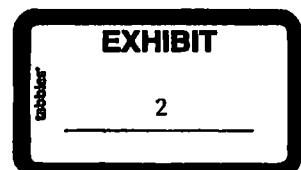
Carra,

We are attaching the consent order for Judge Early's consideration and signature.

As for the motions hearing, I have spoken with Thomas Pendarvis and we would like to do this the afternoon of Feb. 10 in Bamberg. Thomas thinks it may take more than an hour (he is probably right), so we'll revise our estimate to 1 1/2 hours. Then we would probably want a brief and informal discussion with Judge Early after the motions hearing. If possible, we would like to start around 3:00 so that we can complete a deposition in Beaufort that morning. We are all going to be in Beaufort for depositions in these cases for most or all of that week. The motions for hearing are 2 motions to alter/amend by Plaintiffs, 1 motion for protective order by Defendants, and follow up on some previous discovery motions that Judge Early told us to work out the best we can and report back to him.

Thanks.

Ted Vick
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, Eleventh Floor (29601)
P.O. Box 2048 (29602-2048)
Greenville, South Carolina
Telephone 864-240-3324
Facsimile 864-240-3336
tvick@hsblawfirm.com



From: Early, Doyet A. Law Clerk (Carra Henderson)
[dearlylc@sccourts.org]
Sent: Thursday, January 29, 2009 10:56 AM
To: Vick, Ted; Thomas A. Pendarvis
Subject: RE: Davis v. Aimco -- dates for hearing on Plaintiffs'
Rule 59 motions

Ted,

I will be on the look-out for the consent order.
As for the hearing on outstanding motions, does Tuesday, February 10th
in Bamberg work for both sides? I can do a morning or afternoon
hearing, whichever everyone would prefer. Thanks!

J. Carra Henderson
Law Clerk to the Honorable D.A. Early, III
The Circuit Court of the 2nd Judicial Circuit
PO Box 90
Bamberg, SC 29003
Telephone: 803.245.4004
Fax: 803.245.2983
dearlylc@sccourts.org

From: Vick, Ted [tvick@hsblawfirm.com]
Sent: Thursday, January 29, 2009 10:06 AM
To: Early, Doyet A. Law Clerk (Carra Henderson); Thomas A.
Pendarvis
Subject: RE: Davis v. Aimco -- dates for hearing on Plaintiffs'
Rule 59 motions

Carra,

The parties have agreed on a consent order to alter/amend Judge
Early's Dec. 30, 2008 Order that authorized Judge Clary to serve as
Special Master for in camera review of certain documents, so as to add
additional documents to be reviewed by Judge Clary as Special Master.
Thomas and I are actually in that in camera review with Judge Clary
today, and we will sign the consent order today and send it to your
attention via e-mail and mail for Judge Early's consideration.

Also, the parties would like to set a hearing with Judge Early
on additional outstanding motions. Does Judge Early have any time
available the week of Feb. 9? If so, where will he be that week? I
have not discussed the length of the hearing with Plaintiffs' counsel
yet, but I think we would need about 1 hour, and perhaps some "in

chambers" discussion time with Judge Early if that can be done. Thank you.

Ted Vick
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, Eleventh Floor (29601)
P.O. Box 2048 (29602-2048)
Greenville, South Carolina
Telephone 864-240-3324
Facsimile 864-240-3336
tvick@hsblawfirm.com

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

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

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

CERTIFICATE OF MAILING

I, Sandra H. Bailey, of THE BAILEY LAW FIRM, P.A., attorneys for the Plaintiffs herein, do hereby certify that on the 13th day of March, 2009, I mailed a copy of the Plaintiffs' Motion to Alter or Amend Order Da March 3, 2009, the same being addressed to:

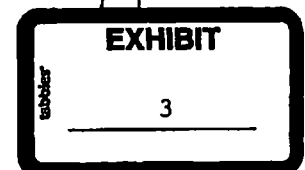
Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
PO Box 2048
Greenville, South Carolina 29602

Calvin T. Vick, Esquire
Haynsworth Sinkler Boyd, P.A.
PO Box 2048
Greenville, South Carolina 29602

THE BAILEY LAW FIRM, P.A.
P.O. Box 1437
Beaufort, South Carolina 29901-1437
843-525-6090

By: Sandra H. Bailey
Sandra H. Bailey

Beaufort, South Carolina
March 13, 2009



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

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

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

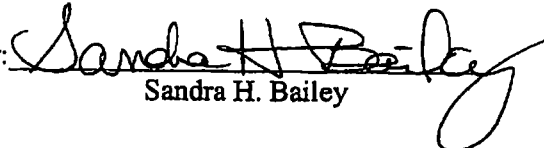
CERTIFICATE OF MAILING

I, Sandra H. Bailey, of THE BAILEY LAW FIRM, P.A., attorneys for the Plaintiffs herein, do hereby certify that on the 23rd day of March, 2009, I mailed a copy of the Plaintiffs' Motion to Alter or Amend Order Dated March 23, 2009, first class mail, postage pre-paid, the same being addressed to:

His M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
PO Box 2048
Greenville, South Carolina 29602

Calvin T. Vick, Esquire
Haynsworth Sinkler Boyd, P.A.
PO Box 2048
Greenville, South Carolina 29602

THE BAILEY LAW FIRM, P.A.
P.O. Box 1437
Beaufort, South Carolina 29901-1437
843-525-6090

By: 
Sandra H. Bailey

Beaufort, South Carolina
March 23, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C/A # 03-CP-07-726
	)	
Laurance H. Davis, Jr., <i>et al</i> , Plaintiffs,	)	
-vs-	)	Beaufort County
Parkview Apartments, a South Carolina	)	
Limited Partnership, <i>et al</i> , Defendants.	)	
	)	

CERTIFICATE OF MAILING

I, Joel D. Bailey, of **THE BAILEY LAW FIRM, P.A.**, co-counsel for the Plaintiffs herein, do hereby certify that on the 25th day of January, 2010, I mailed a copy of the Plaintiffs' Third Supplemental Discovery Responses, *via* first class mail, postage pre-paid, the same being addressed to:

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

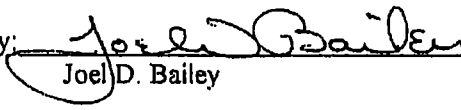
Calvin T. Vick, Esquire
 Haynsworth Sinkler Boyd, P.A.
 PO Box 2048
 Greenville, South Carolina 29602

Honorable Doyet A. Early, III
 Circuit Court Judge
 Post Office Box 90
 Bamberg, South Carolina 29003-0090

Thomas A. Pendarvis
PENDARVIS LAW OFFICES, P.C.
 500 Carteret St Ste A
 Beaufort SC 29902-5066

THE BAILEY LAW FIRM, P.A.
 P.O. Box 1437
 Beaufort, South Carolina 29901-1437
 843-525-6090

Beaufort, South Carolina
 January 25, 2010

By: 
 Joel D. Bailey



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

January 18, 2010

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr. J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville SC 29602

Re: Laurence H. Davis, Jr., et al. v. Parkview Apartments, et al.
Laurence 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.
Laurence H. Davis, Jr., et al. v. Roosevelt Gardens, et al.

Dear Ellis and Ted:

Enclosed please find clocked copies of the CONSENT ORDER GRANTING DEFENDANTS' MOTION FOR CONTINUANCE, which have been filed in the offices of the Clerks of Court for Beaufort, Charleston and Orangeburg counties.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, J.D.

TAP/jac
Enclosures
cc: Joel D. Bailey, J.D. (w/enclosures)

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-07-1989

**CONSENT ORDER GRANTING
DEFENDANTS' MOTION FOR CONTINUANCE**

This matter comes before the Court on the Defendants' motion for continuance of the above-captioned actions from the trial term of January 19, 2010. The Plaintiffs consent to the Defendants' motion for continuance, as indicated by the signature of the Plaintiffs' counsel below.

WHEREFORE, the motion is granted and the above-captioned actions are continued

ATTEST:

Vinny B. Clark

FILED FOR RECORD
VIRGINIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2010 JAN 15 P 12:27

FILED
SOUTH CAROLINA

[Handwritten signature]

from the trial term of January 19, 2010.

IT IS SO ORDERED

This 4th day of Jan, 2010.
Piken, South Carolina

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

WE CONSENT:

Ellis M. Johnston, II
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

Joel D. Bailey
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 A. PENDARVIS, J.D.
ADMITTED IN SC AND GA

THOMAS@PENDARVISLAW.COM

TEL. 843.524.9500
FAX. 843.524.9501

February 10, 2010

Dear Judge Early, Ellis and Ted:

Re: Order of Protection for Thomas A. Pendarvis

Enclosed please find an Order of Protection which has been filed with the Orangeburg County Clerk of Court covering the time period of **July 23, 2010 through and including August 6, 2010**. The following is a list of pending cases in which I am involved:

1. CIVIL ACTION	Laurance H. Davis, <i>et al</i> v Roosevelt Gardens, <i>et al</i>
CASE NO.	2005-CP-38-1131
OPPOSING COUNSEL	Ellis M. Johnston, II, JD Calvin T. Vick, Jr., JD Jesse C. Belcher, Jr., JD

Should you have any questions, please do not hesitate to contact me.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, J.D.

TAP/jac

Enclosure

cc: The Honorable Doyet A. Early, III
Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.

FILED
2/16/10
11471.0010
CIV, EMJ, HGC, SL, MLS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort, Charleston, and Orangeburg Counties

Doyet A. Early, III, Circuit Court Judge

Beaufort County 03-CP-07-726
Beaufort County 05-CP-07-1989
Beaufort County 05-CP-07-1990
Charleston County 05-CP-10-4229
Orangeburg County 05-38-1131

RECEIVED
SEP 10 2009
SC Court of Appeals

Laurance H. Davis, Jr., et al. Appellants,

v.

Parkview Apartments, et al., ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served counsel
for the Respondents, with a copy of the Notice of Appeal by mailing copies of the same by
United States Mail with first class postage prepaid to the following address:

C. Theodore Vick, Jr., Esquire
Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, South Carolina 29602-2048



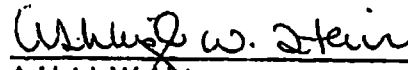
The undersigned hereby certifies she also served the Beaufort, Charleston, and Orangburg
County Clerk of Court with a copy of the Notice of Appeal by mailing a copy of the same by
United States Mail with first class postage prepaid to the following addresses:

The Honorable Jerri Roseneau
Beaufort County Clerk of Court
Post Office Drawer 1128
Beaufort, South Carolina 29901

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, #106
Charleston, South Carolina 29401

The Honorable Lisa W. Mizell
Orangburg County Clerk of Court
Post Office Drawer 9000
Orangburg, South Carolina 29116

September 10, 2009
Columbia, South Carolina


Ashleigh W. Hair

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort, Charleston, and Orangeburg Counties

Doyet A. Early, III, Circuit Court Judge

Beaufort County 03-CP-07-726
Beaufort County 05-CP-07-1989
Beaufort County 05-CP-07-1990
Charleston County 05-CP-10-4229
Orangeburg County 05-CP-38-1131

Laurance H. Davis, Jr., Mary Jane R. Pike,
Eva Marie Reynolds, and Rhonda 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,

and

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,

v.

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,

and

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

v.

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 Respondents,

and

Rhonda 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,

v.

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,

and

Laurance H. Davis, Jr., Rhonda 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,

v.

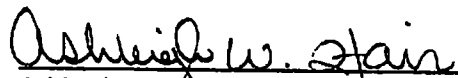
Roosevelt Gardens, a South Carolina
Limited Partnership, Apartment Investment
and Management Company a/k/a AIMCO;
Insignia Financial Group, Inc.; Amreal Corporation
a/k/a/ and f/k/a USS Corporation a/k/a/ and
f/k/a/ U.S. Shelter Corporation; ISTC Corporation;
N. Barton Tuck, Jr.; and John Doe, a generic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

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served counsel for the Respondents, with a copy of the Amended Notice of Appeal by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

C. Theodore Vick, Jr., Esquire
Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, South Carolina 29602-2048

September 24, 2009
Columbia, South Carolina


Ashleigh W. Hair

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort, Charleston, and Orangeburg Counties

Doyet A. Early, III, Circuit Court Judge

Beaufort County 03-CP-07-726
Beaufort County 05-CP-07-1989
Beaufort County 05-CP-07-1990
Charleston County 05-CP-10-4229
Orangeburg County 05-CP-38-1131

Laurance H. Davis, Jr., Mary Jane R. Pike,
Eva Marie Reynolds, and Rhonda 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,

and

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,

v.

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,

and

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

v.

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 Respondents,

and

Rhonda 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,

v.

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,

and

Laurance H. Davis, Jr., Rhonda 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,

v.

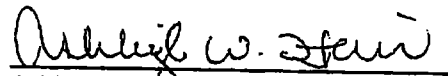
Roosevelt Gardens, a South Carolina
Limited Partnership, Apartment Investment
and Management Company a/k/a AIMCO;
Insignia Financial Group, Inc.; Amreal Corporation
a/k/a/ and f/k/a USS Corporation a/k/a/ and
f/k/a/ U.S. Shelter Corporation; ISTC Corporation;
N. Barton Tuck, Jr.; and John Doe, a generic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

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served counsel for the Respondents, with a copy of the Appellants' Return in Opposition to Respondents' Motion to Dismiss and Appellants' Reply in Support of their Motion to Hold Appeal in Abeyance by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

C. Theodore Vick, Jr., Esquire
Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, South Carolina 29602-2048

September 28, 2009
Columbia, South Carolina


Ashleigh W. Blair

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ORIGINAL JURISDICTION

Ex Parte:

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

In Re:

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

v.

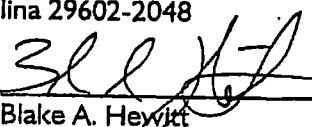
Parkview Apartments,
et al., ... Defendants.

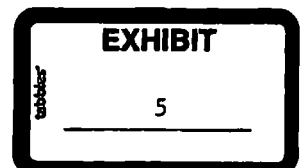
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served counsel for the Defendants, with a copy of the Petition for the Writ of Prohibition or Alternatively for Writ of Certiorari by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

C. Theodore Vick, Jr., Esquire
Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, South Carolina 29602-2048

September 2, 2009
Columbia, South Carolina


Blake A. Hewitt



THE STATE OF SOUTH CAROLINA
In the Supreme Court

ORIGINAL JURISDICTION

Ex Parte:

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

In Re:

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

v.

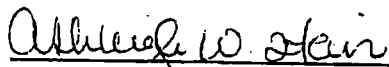
Parkview Apartments,
et al., ... Defendants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served counsel for the Defendants, with a copy of the Reply in Support of Petition for the Writ of Prohibition or Alternatively for Writ of Certiorari by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

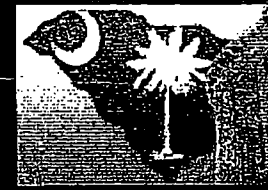
C. Theodore Vick, Jr., Esquire
Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, South Carolina 29602-2048

September 21, 2009
Columbia, South Carolina


Ashleigh W. Blair



Orangeburg County First Circuit Public Index

[Back](#)[New Search](#)[County Home Page](#)

Laurance H jr Davis , plaintiff, et al VS Roosevelt gardens , defendant, et al

Case Number: 2005CP3801131

Case Type: Common Pleas

Status: Served

Disposition:

Original Source Doc:

Judgment Number:

Court Agency: Common Pleas

Case Sub Type: Breach of Cont 140

Assigned Judge: Early, Doyet A. III

Disposition Date

Original Case #:

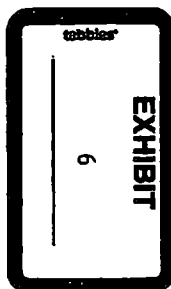
Filed Date: 10/17/2005

File Type: Jury

Disposition Judge:

[Parties](#) | [Judgments](#) | [Actions](#) | [Associated Cases](#) | [Tax Map Information](#)

Name	Address	Race	Sex	Date of Birth	Party Type Description	Status
Aimco,	000000000				Defendant	Active
Anreal corporation,	000000000				Defendant	Active
Apartment investment and,	MANAGEMENT COMPANY 000000000				Defendant	Active
Davis, Laurance H jr	000000000				Plaintiff	Active
Pendarvis, Thomas A.	Pendarvis Law Offices, PC 500 Carteret St. Ste. A Beaufort SC 29902				Plaintiff Attorney	Active
Doe, John	000000000				Defendant	Active
Hodge land co inc,	000000000				Plaintiff	Active
Insignia financial group,	000000000				Defendant	Active
Istc corporation,	000000000				Defendant	Active
Johnston, Ellis M. II	Haynsworth Sinkler Boyd, PA P.O. Box 2048 Greenville SC 29602				Defendant Attorney	Active
Roosevelt gardens,	000000000				Defendant	Active
Pendarvis, Thomas A.	Pendarvis Law Offices, PC 500 Carteret St. Ste. A Beaufort SC 29902				Plaintiff Attorney	Active
Davis, Laurance H jr	000000000				Plaintiff	Active
Rentz, Rhonda G	000000000				Plaintiff	Active



Roosevelt gardens,	000000000	Defendant	Active
Johnston, Ellis M.	Haynsworth Sinkler Boyd, PA P.O. Box 2048 Greenville SC 29602	Defendant Attorney	Active
Trotter, Anna	000000000	Plaintiff	Active
Tuck, N Barton jr	000000000	Defendant	Active
Us shelter corporation,	000000000	Defendant	Active
Uss corporation,	000000000	Defendant	Active
Vick, Calvin Theodore Jr.	Haynsworth Sinkler Boyd, PA P.O. Box 2048 Greenville SC 29602	Defendant Attorney	Active
Weinberg, Mortimer M jr	000000000		

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

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

Laurance H. Davis, Jr.; et al.;

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.

CONSOLIDATED CASES:

2005-CP-07-1990 (Beaufort) (**Pinewood**)
2005-CP-07-1989 (Beaufort) (**Palmetto**)
2005-CP-10-4229 (Charleston) (**Orleans**)
2005-CP-38-1131 (Orangeburg) (**Roosevelt**)

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by e-mail and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

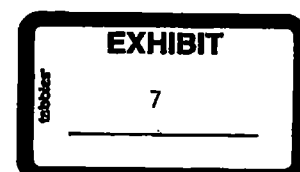
DOCUMENTS SERVED

1. PLAINTIFFS' SUPPLEMENTAL RESPONSES TO DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS DATED AUGUST 23, 2008.

COUNSEL SERVED

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, P.A.
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



Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
January 26, 2009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

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

Laurance H. Davis, Jr.; et al.;

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.

CONSOLIDATED CASES:

2005-CP-07-1990 (Beaufort) (Pinewood)
2005-CP-07-1989 (Beaufort) (Palmetto)
2005-CP-10-4229 (Charleston) (Orleans)
2005-CP-38-1131 (Orangeburg) (Roosevelt)

CERTIFICATE OF SERVICE

I, Pamela D. Higgins, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by e-mail and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

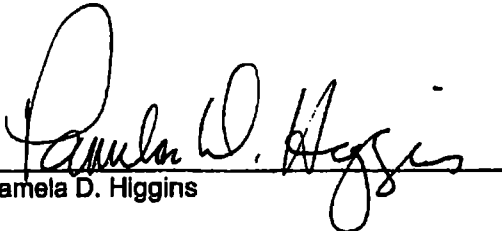
DOCUMENTS SERVED

1. PLAINTIFFS' DISCOVERY REQUESTS (DATED FEBRUARY 3, 2009).

COUNSEL SERVED

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, P.A.
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


Pamela D. Higgins

Beaufort, South Carolina
February 3, 2009

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	)	C.A. No. 2003-CP-07-726
Limited Partnership, et al., Defendants.	)	
Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina	)	C.A. No. 2005-CP-38-1131
Limited Partnership, et al., Defendants.	)	
Rhonda G. Rentz, et al., Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina	)	C.A. No. 2005-CP-10-4229
Limited Partnership, et al., Defendants.	)	
Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1989
Limited Partnership, et al., Defendants.	)	
Carolina Management Corporation of	)	
Beaufort, et al., Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South	)	C.A. No. 2005-CP-07-1990
Carolina Limited Partnership, et al.,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by e-mail and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Documents Served

MOTION INFORMATION COVER SHEET and PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008

Counsel Served

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

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

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina

March 13, 2009

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	)	C.A. No. 2003-CP-07-726
Limited Partnership, et al., Defendants.	)	
Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina	)	C.A. No. 2005-CP-38-1131
Limited Partnership, et al., Defendants.	)	
Rhonda G. Rentz, et al., Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina	)	C.A. No. 2005-CP-10-4229
Limited Partnership, et al., Defendants.	)	
Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1989
Limited Partnership, et al., Defendants.	)	
Carolina Management Corporation of	)	
Beaufort, et al., Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South	)	C.A. No. 2005-CP-07-1990
Carolina Limited Partnership, et al.,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by e-mail and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Documents Served

MOTION INFORMATION COVER SHEET and PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, DATED JUNE 2, 2009

Counsel Served

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

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

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina

June 11, 2009

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
)

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by e-mail and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

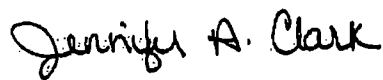
Documents Served

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO ALTER OR AMEND ORDER
ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, DATED JUNE 2, 2009

Counsel Served

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

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



Jennifer A. Clark

Beaufort, South Carolina

July 2, 2009

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	)	C.A. No. 2003-CP-07-726
Limited Partnership, et al., Defendants.	)	

Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina	)	C.A. No. 2005-CP-38-1131
Limited Partnership, et al., Defendants.	)	

Rhonda G. Rentz, et al., Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina	)	C.A. No. 2005-CP-10-4229
Limited Partnership, et al., Defendants.	)	

Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1989
Limited Partnership, et al., Defendants.	)	

Carolina Management Corporation of	)	
Beaufort, et al., Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South	)	C.A. No. 2005-CP-07-1990
Carolina Limited Partnership, et al.,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

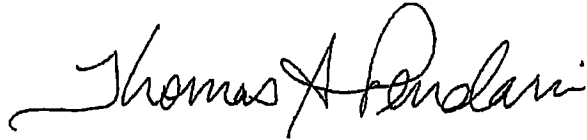
I, Thomas A. Pendarvis, counsel for Plaintiffs in the above-referenced matters, hereby certify that I have served the documents listed below upon all counsel of record by hand-delivery on August 24, 2009:

Documents Served

PLAINTIFFS' SECOND SUPPLEMENTAL RESPONSES TO DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS DATED AUGUST 28, 2008.

Counsel Served

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

A handwritten signature in cursive script that reads "Thomas A. Pendarvis". The signature is written in black ink and is positioned above a horizontal line.

Thomas A. Pendarvis, J.D.

Beaufort, South Carolina

August 24, 2009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-07-1989

Lawrence 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;

Plaintiffs,

vs.

CERTIFICATE OF SERVICE

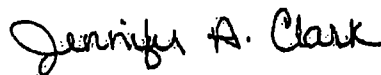
Palmetto Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic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

Defendants.

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: MOTION INFORMATION COVER SHEET and PLAINTIFFS' MOTION FOR RELIEF FROM JULY 28, 2009 ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009



Jennifer A. Clark

Beaufort, South Carolina
January 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2003-CP-07-0726

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.

CERTIFICATE OF SERVICE

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Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
January 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-07-1990

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

Plaintiffs,

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,

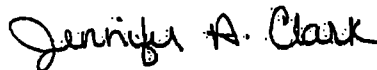
Defendants.

CERTIFICATE OF SERVICE

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have served the documents listed below upon all counsel of record by mailing a copy of
same, postage prepaid and return address clearly indicated on said envelope, to said
counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: MOTION INFORMATION COVER SHEET and PLAINTIFFS' MOTION FOR
RELIEF FROM JULY 28, 2009 ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009



Jennifer A. Clark

Beaufort, South Carolina
January 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2005-CP-38-1131

Laurance H. Davis, Jr., Rhona 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;

Plaintiffs,

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,

Defendants.

CERTIFICATE OF SERVICE

2010-1-14 10:30

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I
have served the documents listed below upon all counsel of record by mailing a copy of
same, postage prepaid and return address clearly indicated on said envelope, to said
counsel at the following address:

ATTEST: 1

COPY

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

J. A. Clark

CLERK OF COURT
COUNTY OF ORANGEBURG, SOUTH CAROLINA

Documents Served: MOTION INFORMATION COVER SHEET and PLAINTIFFS' MOTION FOR
RELIEF FROM JULY 28, 2009 ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
January 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-10-4229

Rhonda 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;

Plaintiffs,

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,

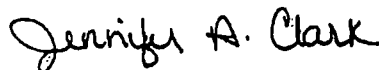
Defendants.

CERTIFICATE OF SERVICE

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Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: MOTION INFORMATION COVER SHEET and PLAINTIFFS' MOTION FOR RELIEF FROM JULY 28, 2009 ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009



Jennifer A. Clark

Beaufort, South Carolina
January 28, 2010



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

February 10, 2010

TO WHOM IT MAY CONCERN:

Re: Order of Protection for Thomas A. Pendarvis

Enclosed please find an Order of Protection which has been filed with the Beaufort County Clerk of Court covering the time period of **July 23, 2010 through and including August 6, 2010.**

This correspondence is being sent to all counsel and pro se litigants involved in the attached referenced cases. Should you have any questions, please do not hesitate to contact me.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, J.D.

TAP/jac
Enclosure

cc: The Honorable Doyet A. Early, III
Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Adolph D. Brown

Handwritten: Simple Entry RA

Date Recd. 2/16/10

Case # 11471-0010

Disposition

CTV, EAJ, HGC, SL, MU

Page 2
February 10, 2010

Drew A. Laughlin, JD
Glenn L. Capell, JD
Thomas E. Clarkson
Thomas & Judith Collentine
Weston Adams Law Firm
Kimberly D. Sutton, JD
Robert V. Mathison, Jr., JD
Denson H. Fraser, Jr., JD
James F. Berl, JD
Charles & Karen Gerba
William B. Harvey, III, JD
James Jack & Ernestine Wilson
John & Clare Jilnicki
Ward F. Borden, JD
Triece Ziblut, JD
Rogers Townsend & Thomas, PC
Seibels Law Firm, PA
Eric & Kelly Metzger
Charles Wiseman, JD
Michael F. Markowski
Ralph E. Tupper, JD
Michael Mogil, JD

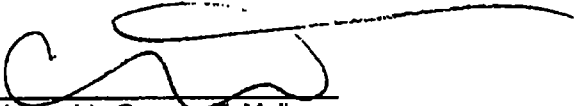
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

ORDER OF PROTECTION FOR THOMAS A. PENDARVIS

This matter comes before me upon motion of Thomas A. Pendarvis seeking protection during the period **July 23, 2010 through and including August 6, 2010**, as such protection may relate to any pending cases in Beaufort County, including but not limited to the actions on the attachment hereto. It appearing that the grant of the requested protection is appropriate, and there being no objection from any counsel of record,

NOW, THEREFORE, IT IS ORDERED that Thomas A. Pendarvis is afforded protection during the period **July 23, 2010 through and including August 6, 2010** for these and all pending cases in Beaufort County, South Carolina; and,

IT IS SO ORDERED.


The Honorable Carmen T. Mullen
Administrative Judge
Fourteenth Judicial Circuit

Beaufort, SC

November 16, 2009

09 NOV 19 PM 4:58
JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
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

February 10, 2010

TO WHOM IT MAY CONCERN:

Re: Order of Protection for Thomas A. Pendarvis

Enclosed please find an ORDER OF PROTECTION which has been filed with the Charleston County Clerk of Court covering the time period of **July 23, 2010 through and including August 6, 2010**. The following is a list of pending cases in which I am involved:

1.	CIVIL ACTION CASE NO. OPPOSING COUNSEL	Berrien W. Smith v. J. Drayton Hastie, Jr., 2000-CP-10-3029 Richard Rosen, J.D. Elizabeth Marlow, J.D.
2.	CIVIL ACTION CASE NO. OPPOSING COUNSEL	Rivers Point Row Property Owners Association, Inc. v John B. Hagerty, J.D., et al 2008-CP-10-6740 John A. Massalon, J.D.
3.	CIVIL ACTION CASE NO. OPPOSING COUNSEL	Rhoda G. Rentz, et al v. Orleans Gardens, et al 2005-CP-10-4229 Ellis M. Johnston, II, JD Calvin T. Vick, Jr., JD Jesse C. Belcher, Jr., JD

Should you have any questions, please do not hesitate to contact me.

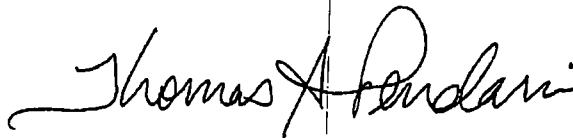
2/16/10
11471.0010
CTV, EHS, HGC, JL, MLS

Page 2
February 10, 2010

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\jac
Enclosure

cc: The Honorable Doyet A. Early, III
Richard Rosen, JD
Elizabeth Marlow, JD
John A. Massalon, JD
Berrien Smith
Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD

FILED

2009 NOV 16 PM 4:35

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PL
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

ORDER OF PROTECTION FOR THOMAS A. PENDARVIS

This matter comes before me upon motion of Thomas A. Pendarvis seeking protection during the period **July 23, 2010 through and including August 6, 2010**, as such protection may relate to any pending cases in Charleston County, including but not limited to the following actions:

1. CIVIL ACTION Berrien W. Smith v. J. Drayton Hastie, Jr.,
CASE NO. 2000-CP-10-3029
OPPOSING COUNSEL Richard Rosen, J.D.
Elizabeth Marlow, J.D.
2. CIVIL ACTION Rivers Point Row Property Owners
Association, Inc. v John B. Hagerty, J.D., et al
CASE NO. 2008-CP-10-6740
OPPOSING COUNSEL John A. Massalon, J.D.
3. CIVIL ACTION Rhoda G. Rentz, et al v. Orleans Gardens, et
al
CASE NO. 2005-CP-10-4229
OPPOSING COUNSEL Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD

It appearing that the grant of the requested protection is appropriate, and there being no objection from any counsel of record,

NOW, THEREFORE, IT IS ORDERED that Thomas A. Pendarvis is afforded protection during the period **July 23, 2010 through and including August 6, 2010** for these and all pending cases in Charleston County, South Carolina; and,

IT IS SO ORDERED.

Charleston *SLH*
Beaufort, SC
November 16, 2009

D.L. Jefferson

The Honorable Debra L. Jefferson
Administrative Judge
Ninth Judicial Circuit

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

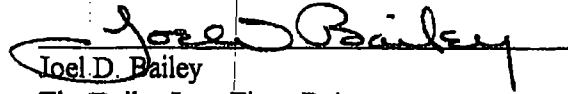
I hereby certify that I have served the Plaintiffs' Motion for Disclosure and Discovery and Motion for Protective Order, by depositing a copy in the United States Mail, postage prepaid, on February 22, 2010, addressed to the following attorneys of record:

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


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

February 22, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
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;

Plaintiffs,

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,

Defendants.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR DISCLOSURE & DISCOVERY

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
March 2, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-07-1990

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

Plaintiffs,

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,

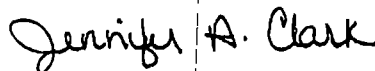
Defendants.

CERTIFICATE OF SERVICE

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same, postage prepaid and return address clearly indicated on said envelope, to said
counsel at the following address:

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Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR
DISCLOSURE & DISCOVERY



Jennifer A. Clark

Beaufort, South Carolina
March 2, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-07-1989

Lawrence 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;

Plaintiffs,

vs.

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,

Defendants.

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Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR DISCLOSURE & DISCOVERY

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
March 2, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2003-CP-07-0726

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. BartonTuck, Jr.; and John Doe, a generic designation for a party or parties whose true identity is unknown,

Defendants.

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Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR DISCLOSURE & DISCOVERY

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
March 2, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
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;

Plaintiffs,

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,

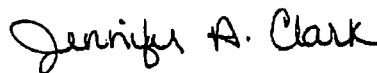
Defendants.

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Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR DISCLOSURE & DISCOVERY



Jennifer A. Clark

Beaufort, South Carolina
March 2, 2010



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

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

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

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

March 8, 2010

Fripp Island Golf & Beach Resort
201 Tarpon Boulevard
Fripp Island, SC 29920

RE: Laurance H. Davis, Jr., et al. vs. Parkview Apartments, et al.

Dear Sir or Madame:

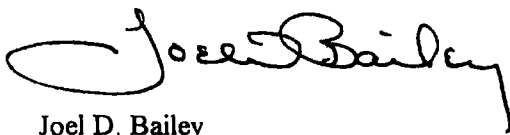
Enclosed herewith please find a subpoena requesting inspection and copying of certain documents. It will not be necessary for you to appear at my office on March 19th, provided the documents are produced to me prior to that time.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.



Joel D. Bailey

JDB/shb
enclosure

cc: Ellis M. Johnston, II, Esquire (w/enclosure)
Marvin D. Infinger, Esquire (w/enclosure)
Calvin T. Vick, Esquire (w/enclosure)
Anne Ross Rosen, Esquire (w/enclosure)
Thomas A. Pendarvis, Esquire (w/enclosure)

Haynsworth Sinkler Boyd, P.A.

Date Recd 3/12/10

C/M # 11471.0010

Docketed

IDL CTV, EMJ, HGC, SL, MJS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C/A # 03-CP-07-726
Laurance H. Davis, Jr., <i>et al</i> , Plaintiffs,	)	
-vs-	)	Beaufort County
Parkview Apartments, a South Carolina	)	
Limited Partnership, <i>et al</i> , Defendants.	)	
_____	)	

CERTIFICATE OF MAILING

I, Joel D. Bailey, of **THE BAILEY LAW FIRM, P.A.**, co-counsel for the Plaintiffs herein, do hereby certify that on the 18th day of March, 2010, I mailed a copy of the Plaintiffs' Fourth Supplemental Discovery Responses, *via* first class mail, postage pre-paid, the same being addressed to:

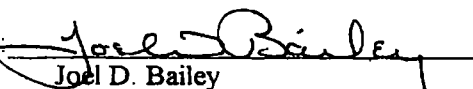
Ellis M. Johnston, II, Esquire
 Haynsworth Sinkler Boyd, P.A.
 PO Box 2048
 Greenville, South Carolina 29602

Calvin T. Vick, Esquire
 Haynsworth Sinkler Boyd, P.A.
 PO Box 2048
 Greenville, South Carolina 29602

Marvin D. Infinger, Esquire
 Haynsworth Sinkler Boyd, P.A.
 134 Meeting Street, 3rd Floor
 Charleston, SC 29401

Anne Ross Rosen, Esquire
 Haynsworth Sinkler Boyd, P.A.
 134 Meeting Street, 3rd Floor
 Charleston, SC 29401

THE BAILEY LAW FIRM, P.A.
 P.O. Box 1437
 Beaufort, South Carolina 29901-1437
 843-525-6090

By: 
 Joel D. Bailey

Beaufort, South Carolina
 March 18, 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' Motions for Recusal and for Vacation of Prior Orders, by depositing a copy of the motions being filed in each of the above-captioned cases, in the United States Mail, postage prepaid, on March 31ST, 2010, addressed to the following:

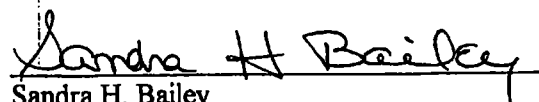
Ellis M. Johnston, II
PO Box 2048
Greenville, SC 29602

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

Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, South Carolina 29003-0090


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

3-31, 2010



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

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

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

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

April 7, 2010

Honorable Julie J. Armstrong
Charleston County Court of Common Pleas
100 Broad Street
Charleston, SC 29401

Re: Rhoda G. Rentz, et al. vs. Orleans Gardens, A South Carolina Limited Partnership, et al.
C/A # 05-CP-10-4229

Dear Ms. Armstrong:

Enclosed please find an affidavit of Laurance H. Davis, Jr. and affidavit of Joel D. Bailey, with attached exhibits, relating to the above-referenced matter. These affidavits are being submitted in support of Plaintiffs' Motion for Recusal and Vacation of Orders. I would appreciate you filing them at your earliest convenience.

Thank you for your assistance in this matter. With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey
JDB/sb
Enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick (w/enclosures)
Marvin D. Infinger (w/enclosures)
Anne Ross Rosen (w/enclosures)
Thomas A. Pendarvis (w/enclosures)
Honorable Doyet A. Early (w/enclosures)

cc: Honorable Garkler Boyd, P.A.

Date Filed: 4/12/10

C/A #: 11471.0010

Docketed: MJS Scanning

CLTV, EMJ, HGC, SL, MJS



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

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

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

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

April 9, 2010

Honorable Julie J. Armstrong
Charleston County Court of Common Pleas
100 Broad Street
Charleston, SC 29401

Re: Rhoda G. Rentz, et al. vs. Orleans Gardens, A South Carolina Limited Partnership, et al.
C/A # 05-CP-10-4229

Dear Ms. Armstrong:

Enclosed please find affidavits of Rhoda G. Rentz and Mary Jane Pike with regard to the above-referenced matter. These affidavits are being submitted in support of Plaintiffs' Motion for Recusal and Vacation of Orders. I would appreciate you filing them at your earliest convenience.

Thank you for your assistance in this matter. With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey
JDB/sb
Enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick (w/enclosures)
Marvin D. Infinger (w/enclosures)
Anne Ross Rosen (w/enclosures)
Thomas A. Pendarvis (w/enclosures)
Honorable Doyet A. Early (w/enclosures)

Handwritten: Ellis M. Johnston, II, Esquire, RA

Date Recd. 4/13/10

C/A # 11471.0010

Discovered: MLS to search

by: CTV, EMJ, AGC, SL, MS



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

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

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

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

April 12, 2010

Honorable Winnifa B. Clark
Orangeburg County Court of Common Pleas
Post Office Box 9000
Orangeburg, SC 29116

Re: Laurance H. Davis, Jr., et al. vs. Roosevelt Gardens, A South Carolina Limited Partnership,
et al.
C/A # 05-CP-38-1131

Dear Ms. Clark:

Enclosed please find an affidavit of Miles Hodge with regard to the above-referenced matter. This affidavit is being submitted in support of Plaintiffs' Motion for Recusal and Vacation of Orders. I would appreciate you filing them at your earliest convenience.

Thank you for your assistance in this matter. With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey
JDB/sb
Enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick (w/enclosures)
Marvin D. Infinger (w/enclosures)
Anne Ross Rosen (w/enclosures)
Thomas A. Pendarvis (w/enclosures)
Honorable Doyet A. Early (w/enclosures)

Haynsworth Sinkler Boyd, P.A.

Date Rec'd 4/15/10

C/M # 11471-0010

Docketed

ID: CTV, EMJ, AGC, SL, MLS



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

510 RIBAUT ROAD

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

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

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

April 16, 2010

Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, South Carolina 29003-0090

Re: Davis, et al. vs. Parkview Apartments Limited Partnership, et al. (C/A # 03-CP-07-726)
Rentz, et al. vs. Orleans Gardens, et al. (C/A # 05-CP-10-4229)
Davis, et al. vs. Palmetto Apartments, et al. (C/A # 05-CP-07-1989)
Carolina Management Corporation, et al. vs. Pinewood Park Apartments, et al.
(C/A # 05-CP-07-1990)

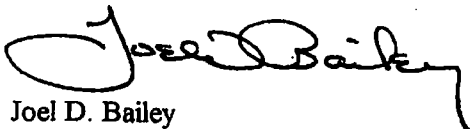
Dear Judge Early:

Enclosed please find copies of affidavits of Whaley Hinnant, Eva Marie Reynolds, and James & Erin Ivey, submitted in support of Plaintiffs' Motions for Recusal and Vacation of Prior Orders. These motions have been filed or sent for filing with the appropriate clerks of court.

By copy of this letter, I am serving opposing counsel of record with these affidavits.

Very truly yours,

THE BAILEY LAW FIRM, P.A.



Joel D. Bailey

JDB/lom
enclosures

cc: Ellis M. Johnston, II (w/enclosures)
Calvin T. Vick (w/enclosures)
Marvin D. Infinger (w/enclosures)
Anne Ross Rosen (w/enclosures)
Thomas A. Pendarvis (w/enclosures)

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

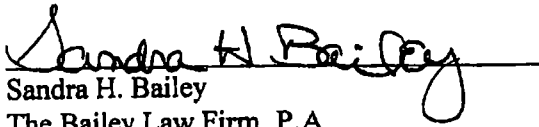
I hereby certify that I have served the Plaintiffs' Motion for Reconsideration, Alteration or Amendment, by depositing a copy in the United States Mail, postage prepaid, on April 22, 2010, addressed to the following attorneys of record:

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-07-0726

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.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: AFFIDAVIT OF THOMAS A. PENDARVIS

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
April 22, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-07-1990

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

Plaintiffs,

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,

Defendants.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: AFFIDAVIT OF THOMAS A. PENDARVIS

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
April 22, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-07-1989

Lawrence 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;

Plaintiffs,

vs.

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,

Defendants.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: AFFIDAVIT OF THOMAS A. PENDARVIS

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
April 22, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
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;

Plaintiffs,

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,

Defendants.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: AFFIDAVIT OF THOMAS A. PENDARVIS

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
April 22, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
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;

Plaintiffs,

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,

Defendants.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
Haynsworth Sinkler Boyd, PA
PO Box 2048
Greenville SC 29602

Documents Served: AFFIDAVIT OF THOMAS A. PENDARVIS

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
April 22, 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 Affidavit of Joel D. Bailey dated May 5, 2010, by depositing a copy of the same being filed in each of the above-captioned cases, in the United States Mail, postage prepaid, on May 5, 2010, addressed to the following:

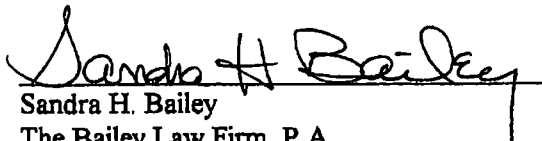
Ellis M. Johnston, II
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Greenville, SC 29602

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

Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, South Carolina 29003-0090


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

May 5, 2010

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. 2010180086

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,

v.

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, ... Respondents.

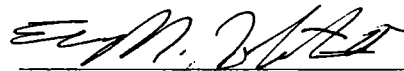
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served
counsel for the Appellants with a copy of *RESPONDENTS', MARVIN INFINGER'S,*
ANNE ROSEN'S, AND JESSE BELCHER'S MOTION PURSUANT TO S.C.A.C.R. 264
by mailing copies of the same by United States Mail with first class postage prepaid to
the following addresses:

ORIGINAL

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



Ellis M. Johnston, II

March 8th, 2011
Greenville, South Carolina

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

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

March 8, 2011

RECEIVED

MAR 8 2011

SC Court of Appeals

VIA U.S. MAIL

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. Roosevelt Gardens, et al.*
Case No. 2010180086

Dear Ms. Gee:

With regard to the above-referenced matters, enclosed please find an original and six (6) copies of the *Respondents'*, *Marvin Infinger's*, *Anne Rosen's*, and *Jesse Belcher's Motion Pursuant To S.C.A.C.R. 264 and Proof of Service* for same with regard to the above-captioned appeal. I would appreciate your filing these at your earliest convenience and returning the additional enclosed copy, file-stamped to me in the self-addressed, stamped envelope.

With king regards, I remain

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Ellis M. Johnston, II

EMJ,II:jmb
Enclosures

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-38-1131

RECEIVED

MAR 18 2011

S.C. Supreme Court

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/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

**APPELLANTS' RETURN TO RESPONDENTS', MARVIN
INFINGER'S, ANNE ROSEN'S AND JESSE BELCHER'S MOTION
PURSUANT TO SCACR 264**

It appears that the Respondents and their counsel wish to limit the roles of Mr. Infinger, Mr. Belcher and Ms. Rosen in this case to the proceedings which have taken place under Judge Early in the lower courts, and that their services are no longer needed now that the litigation has progressed to the appellate level. It also appears that the request of Mr. Infinger, Mr. Belcher and Ms. Rosen to be relieved as Respondents' counsel has been filed in both the lower courts and the appellate court. The Appellants are not opposed to their request to be relieved as counsel of record in either the lower courts or in the appellate court.

Respectfully submitted,

THOMAS A. PENDARVIS (SC Bar # 064918)
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

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

By: 
Joel D. Bailey (SC Bar # 411)
Counsel for Appellants

March 16, 2011
Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
Calvin T. Vick, J.D.
Jesse C. Belcher, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville SC 29602

Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
Nexsen Pruet, LLC
PO Box 486
Charleston SC 29402



THE
BAILEY LAW FIRM

A PROFESSIONAL ASSOCIATION

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March 16, 2011

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

MAR 18 2011

RE: Laurance H. Davis, Jr., et al. vs. Roosevelt Gardens, et. al.
Case No. 2005-CP-38-1131

S.C. Supreme Court

Dear Mr. Shearouse:

With regard to the above-referenced matter, enclosed for filing please find the original and six (6) copies of Appellants' Return to the Respondents' Motion Pursuant to SCACR 264. I understand that the Respondents filed this motion in the Court of Appeals last week; however, pursuant to Chief Justice Toal's order of March 9, 2011, we are filing our return with this Court. I am also enclosing the original proof of service.

I would appreciate you filing these documents in the above-referenced appeal at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick, Jr., Esquire (w/enclosures)
Jesse C. Belcher, Jr., Esquire (w/enclosures)
Anne Ross Rosen, Esquire (w/enclosures)
Marvin D. Infinger, Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)



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January 24, 2011

Ms. Tanya Gee, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Laurance H. Davis, Jr., et al. vs. Roosevelt Gardens, et. al.
Case No. 2005-CP-38-1131
Case Tracking # 2010180086

10 34 25
RECEIVED
JAN 26 2011
SC Court of Appeals

Dear Ms. Gee:

Previously, a motion for a status conference and other relief was filed in a companion case on appeal, *i.e.*, Davis, *et al.* vs. Parkview Apartments, *et al.*, Case Tracking #2010180666. Last week we were informed by Elizabeth Carter of your office that a separate motion requesting such relief would need to be filed in each of the five (5) related appeals.

Accordingly, enclosed please find Appellants' Motion for Status Conference, for Consolidated Record, and to Stay Appeal Pending Hearing, and Memorandum in Support, together with an Affidavit of Joel D. Bailey. Also enclosed is proof of service and my firm's check in the amount of \$25.00 for the filing fee.

I would appreciate you filing these documents in the above-referenced appeal at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: Ellis M. Johnston, II, Esquire (w/enclosures)
Calvin T. Vick, Jr., Esquire (w/enclosures)
Jesse C. Belcher, Jr., Esquire (w/enclosures)
Anne Ross Rosen, Esquire (w/enclosures)
Marvin D. Infinger, Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)

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

RECEIVED

JAN 28 2011

SC Court of Appeals

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/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

**APPELLANTS' MOTION FOR STATUS CONFERENCE, FOR
CONSOLIDATED RECORD, AND TO STAY APPEAL
PENDING HEARING, AND MEMORANDUM IN SUPPORT**

MOTION

The above-named Appellants in the above-captioned matter, together with
the Appellants in four (4) companion appeals, to-wit, *Laurance H. Davis, Jr., et al.*
v. Parkview Apartments, a South Carolina Limited Partnership, et al., Case No.
2003-CP-07-726; *Carolina Management, et al. v. Pinewood Park Apartments, et al.*,
Case No. 2005-CP-07-1990; *Laurance H. Davis, Jr., et al. v. Palmetto Apartments,*

et al., Case No. 2005-CP-07-1989; and *Rhoda G. Rentz, et al. v. Orleans Gardens, et al.*, Case No. 05-CP-10-4229, hereby move, pursuant to Rule 224, SCACR, for an Order of this Court granting the following relief:

1. A Status Conference concerning the briefing schedule for the briefs in these five (5) appeals, as well as the feasibility for having such appeals heard on an expedited basis by this Court or, alternatively, directly by the South Carolina Supreme Court.
2. An Order permitting a single Record On Appeal for all five (5) of these appeals.
3. An Order staying the briefing schedule for all appeals until this Court rules upon this Motion.

MEMORANDUM IN SUPPORT

The Appellants in each case involved in these separate appeals are limited partners in limited partnerships wherein the above-named Respondents remain to this day general partners, with corresponding fiduciary duties to the Appellants as limited partners. For the most part, the Appellants are elderly, with some in their eighties (80's). Many have health issues. Some are widows. Virtually all have limited financial means. Resolution of the issues in these appeals within the earliest possible time frame and in the most economical manner, while nevertheless preserving their legal rights as citizen litigants, is essential to any concept of justice in light of their situation.

All five (5) of these lawsuits were assigned to the Honorable Doyet A. Early, III, by Order of South Carolina Supreme Court Chief Justice Toal, dated March 7, 2006. Three (3) of the cases were filed in the Beaufort County Court of Common Pleas, one (1) was filed in the Charleston County Court of Common Pleas,

and one (1) was filed in the Orangeburg County Court of Common Pleas. The order of Chief Justice Toal assigning the cases to Judge Early did not consolidate the cases for any purpose. The cases were initially treated separately by Judge Early, but he subsequently began to render decisions which dealt with all five (5) cases simultaneously. Ultimately, Judge Early issued a single Order dismissing all five (5) cases, despite the individual issues associated with each case. Additionally, Judge Early denied motions in each case by Appellants for recusal and for a protective order which would have given Appellants an opportunity to comply with his earlier rulings without waiving their legal positions, including their position concerning privileged communications with their attorneys, and to avoid the sanction of dismissal imposed by Judge Early. Notwithstanding the Appellants' disagreement with the factual bases asserted by Judge Early in his dismissal order, as well as in his denial of the motions for recusal and a protective order, the bases for the rulings also include, *inter alia*, departures from existing law in South Carolina, a reinterpretation of the law of this state concerning confidential communications between attorneys and their clients, and federal and state constitutional issues.

Appellants in the respective cases earlier sought appellate intervention, both in this Court and in the Supreme Court, but their positions were determined to be interlocutory in nature and were delayed until a final determination was made in the lower court.

Appellants have timely filed motions in the lower courts for reconsideration of Judge Early's orders, and have received written notice of the entry of orders by Judge Early denying all such motions, with the exception of orders in the cases filed

in Orangeburg County. In an abundance of caution, Appellants have filed appeals in all five (5) cases, notwithstanding the lack of written notice of the entry of all of the orders from the respective Clerks of Court. Inasmuch as these motions and resulting orders are inextricably intertwined with the other issues in each of the appeals, the Appellants believe they should all be included in the present requests for appellate relief as set forth in this motion, and ask for relief in the form of having the briefing process in each case held in abeyance until this Court can address and rule upon this motion.

Additionally, Appellants believe that, due to the multiplicity and complexity of these appeals, a status conference would be in the best interests of all concerned. Appellants specifically request that the status conference address, *inter alia*, (1) the feasibility for having these appeals heard on an expedited basis by this Court or, alternatively, directly by the South Carolina Supreme Court; (2) the briefing schedule for submission of the appellate briefs in each of these five (5) appeals; (3) permitting a single Record On Appeal for all five (5) of these appeals; and (4) any other issues which may expedite the appellate process and serve the interests of justice.

Respectfully submitted,

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843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

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baileylawfirm@charter.net

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

January 24, 2011
Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
Calvin T. Vick, J.D.
Jesse C. Belcher, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville SC 29602

Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
Nexsen Pruetz, LLC
PO Box 486
Charleston SC 29402

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/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

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 related cases. Like myself, Mr. Pendarvis is a sole practitioner.

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.

5. 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.

6. Although the Order assigning the cases to Judge Early did not consolidate the cases, and although the cases were initially handled separately by Judge Early with respect

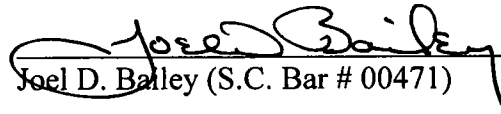
to motions made therein, he ultimately began to treat the cases in a consolidated manner and issued a single order dismissing all five (5) of the cases. Motions for reconsideration pursuant to SCRCP 59 were made in each case, and an order denying the motions has been signed by Judge Early. A separate order was signed by Judge Early on December 11, 2010 with regard to other Rule 59 motions. Counsel for the Appellants have not yet received written notices of the entry of the orders in each case; nevertheless, in an abundance of caution, appeals have been filed in all five (5) cases. Due to the nature of the disposition of the cases, counsel for the Appellants believe that a status conference should be held at the appellate level in order to provide for an orderly and equitable briefing schedule. Counsel for the Appellants also believe that a single record on appeal is in order.

7. Many of the Appellants are elderly; some are over eighty years of age. Most of the Appellants have on-going health problems; at least four (4) of the original limited partners have died and some of the Appellants are their widows and estates. Virtually all of the Appellants are retired, live on fixed incomes and have limited financial means.

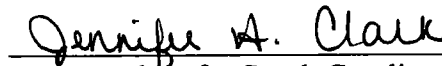
8. Counsel for the Appellants are informed and believe that based on the above circumstances, an altered briefing schedule is needed in order to prevent substantial economic hardship to Appellants and their counsel. Additionally, counsel for the Appellants believe that all appeals should be held in abeyance pending adoption of the briefing schedule by this Court. Furthermore, they are informed and believe that an expedited and economical resolution of the issues in these appeals, while preserving their legal rights as citizen litigants, is essential to any concept of justice in light of their situation.

9. Counsel for the Appellants have requested certain relief in the motion filed contemporaneously with this affidavit which is believed to be necessary in light of the unique circumstances involved in these appeals, and this affidavit is submitted in support of such motion, in accordance with Rule 224(c)(3), SCACR.

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
24 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 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. entz, 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.

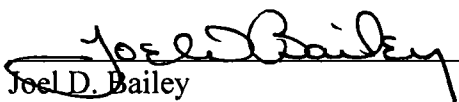
Roosevelt Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic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

PROOF OF SERVICE

I, Joel D. Bailey, of The Bailey Law Firm, P.A., certify that I have served one (1)
copy of Appellants' Motion for Status Conference, for Consolidated Record, and to Stay
Appeal Pending Hearing, and Memorandum in Support, together with the Affidavit of Joel
D. Bailey dated January 24, 2011 on counsel for Respondents, by depositing a copy of the
same in the United States Mail, postage prepaid, on the 24th day of January, 2011, 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.
Anne Ross Rosen, J.D.
NEXSEN PRUETT LLC
PO Box 486
Charleston, SC 29402



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

Counsel for Appellants

January 24, 2011
Beaufort, 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. 2010180086

RECEIVED

FEB 04 2011

SC Court of Appeals

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,

v.

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, ... Respondents.

RESPONDENTS' RETURN TO APPELLANTS'
MOTION FOR STATUS CONFERENCE, FOR
CONSOLIDATED RECORD, AND TO STAY APPEAL

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 Return to Appellants' motion subject to, and without waiving or abandoning, Respondents' pending Motions to Dismiss (discussed below). Appellants' recent motion in the above-captioned appeal is substantially similar to the Motion for Status Conference, for Consolidated Record, and to Stay Appeal filed by the appellants in a related appeal, *Laurance H. Davis, Jr., et al. v. Parkview Apartments, et al.*, Case No. 2010180666, on or about December 24, 2010. Accordingly, Respondents' response to the instant motion in this appeal is substantially similar to the Return to the Motion filed by Respondents in *Laurance H. Davis, Jr., et al. v. Parkview Apartments, et al.*, Case No. 2010180666, on December 30, 2010.

In an attempt to minimize the confusion that may arise with respect to the five (5) related appeals currently before this Court, and the motions pending in each of the five appeals, Respondents offer the following summary:

- On 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."¹
- The five (5) cases assigned to Judge Early included *Laurance H. Davis, Jr., et al. v. Parkview Apartments, et al.*, Civil Action No. 2003-CP-07-726 ("Parkview Case"); *Laurance H. Davis, Jr., et al. v. Palmetto Apartments, et al.*, Civil Action No. 2005-CP-07-1989 ("Palmetto Case"); *Carolina Management Corporation, et al. v. Pinewood Park Apartments,*

¹ See Respondents' Motion to Dismiss, which is pending in this appeal, at Exhibit A thereto.

et al., Civil Action No. 2005-CP-07-1990 (“Pinewood Case”); *Laurance H. Davis, Jr., et al. v. Roosevelt Gardens, et al.*, Civil Action No. 2005-CP-38-1131 (“Roosevelt Case”); and *Rhoda G. Rentz, et al. v. Orleans Gardens, et al.*, Civil Action No. 2005-CP-10-4229 (“Orleans Case”) (these five cases are collectively referred to hereinafter as the “Five Lawsuits”). Each of the Five Lawsuits 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 Five Lawsuits, 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 same nine (9) orders entered by Judge Early in the Five Lawsuits, as well as the Supreme Court’s March 7, 2006 Order assigning the Five Lawsuits to Judge Early, are the subject of each of the five (5) pending, related appeals. Those five related appeals are: *Laurance H. Davis, Jr., et al. v. Parkview Apartments, et al.*, Court of Appeals Case No. 2010180666 (“Parkview Appeal”); *Laurance H. Davis, Jr., et al. v. Palmetto Apartments, et al.*, Court of Appeals Case No. 2010180087 (“Palmetto Appeal”); *Carolina Management Corporation, et al. v. Pinewood Park Apartments, et al.*, Court of Appeals Case No. 2010180088 (“Pinewood Appeal”); *Laurance H. Davis, Jr., et al. v. Roosevelt Gardens, et al.*, Court

of Appeals Case No. 2010180086 ("Roosevelt Appeal"); and *Rhoda G. Rentz, et al. v. Orleans Gardens, et al.*, Court of Appeals Case No. 2010176826 ("Orleans Appeal") (these five appeals are collectively referred to hereinafter as the "Five Appeals").

- The two (2) key orders, which are among the orders appealed in each of the Five Appeals, are: (1) a single written Order, which applies on its face to all Five Lawsuits (i.e., in the caption and in the body of the Order), signed by Judge Early on April 6, 2010, and entered as of April 9, 2010 by each clerk, granting Defendants' two motions for sanctions, finding plaintiffs in contempt of court, and **dismissing the Five Lawsuits** as sanctions for plaintiffs' contempt ("Sanctions Order"); and (2) a single written Order, which applies on its face to all Five Lawsuits, signed by Judge Early on September 16, 2010, and entered on September 20, 2010, **denying plaintiffs' single Motion for Reconsideration, dated April 22, 2010, which sought to alter or amend the Sanctions Order** ("Order Denying Motion for Reconsideration").² The other seven (7) orders of Judge Early, which are appealed in each of the Five Appeals, are interlocutory orders that preceded entry of the Sanctions Order.³

² See Notice of Appeal filed in each of the Five Appeals (copies of the single Sanctions Order and the single Order Denying Motion for Reconsideration are attached to each of the five Notices of Appeal as Exhibits 8 and 9, respectively); the Notices of Appeal are attached to the respective Memoranda in Support of Respondents' Motions to Dismiss in the Parkview, Palmetto, Pinewood and Roosevelt Appeals as Exhibit F (Orleans Notice of Appeal is attached to each of the above-referenced Memoranda as Exhibit E).

³ See Notice of Appeal in each of the Five Appeals at Exhibits 1 through 7 thereto. With one exception, each of those seven orders is a single written order, which applies on its face to all Five Lawsuits. The exception is the interlocutory order attached to each

- Counsel for Appellants in all Five Appeals, who represented the plaintiffs in all Five Lawsuits since at least 2005, have acknowledged that: (1) they received written notice of the entry of the single Sanctions Order no later than April 15, 2010; ⁴ and (2) they received written notice of the entry of the single Order Denying Motion for Reconsideration no later than October 1, 2010. ⁵
- The appellants in the Orleans Appeal served their Notice of Appeal on October 28, 2010, within 30 days of their receipt of written notice of the entry of the Order Denying Motion for Reconsideration. **However, the appellants in the Parkview, Palmetto, Pinewood and Roosevelt Appeals did not serve their respective Notices of Appeal until December 3, 2010, more than 60 days after they received written notice of the entry of the Order Denying Motion for Reconsideration.**
In light of these facts, Respondents in the Parkview, Palmetto, Pinewood and Roosevelt Appeals filed Motions to Dismiss those appeals, pursuant to Rule 203, SCACR, on January 18, 2011. The Motions to Dismiss those four appeals remain pending before this Court.
- In response to the Motion for Status Conference, for Consolidated Record, and to Stay Appeal filed by the appellants in the Parkview Appeal on or

Notice of Appeal as Exhibit 6, which on its face applies to the Parkview Case, though it has been appealed in all Five Appeals.

⁴ See Plaintiffs' single Motion for Reconsideration with respect to the Sanctions Order, dated April 22, 2010, attached to each of the Memoranda in Support of Respondents' Motions to Dismiss as Exhibit C thereto.

⁵ See Notice of Appeal in the Orleans Appeal (at p. 2, ¶ 9), attached to each of the Memoranda in Support of Respondents' Motions to Dismiss as Exhibit E thereto.

about December 24, 2010, Respondents filed their Return on December 30, 2010, stating, *inter alia*, that they do not object to the appellants' request for a status conference concerning the five related appeals, **but the Court need not, and should not, grant such a status conference until after the Court has ruled on Respondents' Motions to Dismiss four of the appeals.** If the Court dismisses four of the appeals, many of the issues Appellants wish to discuss in the status conference (consolidation, one Record on Appeal, etc.) will be rendered moot.

With respect to Appellants' current motion, Respondents do not object to Appellants' request for a status conference concerning the Five Appeals, **but respectfully submit that the status conference need not, and should not, occur until the Court has ruled on Respondents' pending Motions to Dismiss four of the appeals.** If Respondents' Motions to Dismiss are granted, most of the issues Appellants wish to discuss in a status conference will become moot.

Although Respondents do not object to Appellants' request for a status conference following the Court's ruling on Respondents' Motions to Dismiss, they in no way consent to any other relief requested or alluded to in Appellants' motion, except for Appellants' request that there be a single Record on Appeal for the Five Appeals if four of the appeals are not dismissed.

Responding further, Respondents are not aware of any legitimate basis for having these appeals heard directly by the South Carolina Supreme Court.

Respondents are wary of Appellants' vague requests for a briefing schedule and for having the appeals heard on an expedited basis. Appellants have filed Notices of

Appeal with regard to thirteen (13) separate orders. Respondents anticipate that the Record on Appeal will be extraordinarily voluminous, as it will cover numerous motions, hearings and orders over the course of years of litigation. At this time, it is difficult for Respondents to predict the amount of time that will be necessary in order for Respondents to adequately respond to Appellants' brief. For these reasons, Respondents believe the briefing of the parties should proceed in accordance with the South Carolina Appellate Court Rules, subject to reasonable requests for extensions as permitted under the Rules.

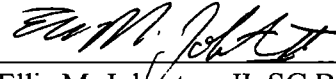
The time period for filing Appellants' initial briefs in the Parkview, Palmetto, Pinewood and Roosevelt Appeals is stayed due to Respondents' pending Motions to Dismiss those appeals, pursuant to Rule 240(b), SCACR. Due to the similarity of the facts and issues presented in each of the five appeals, Respondents would consent to a stay of the time period for filing Appellants' initial brief in the Orleans Appeal until the Court has ruled on the Motions to Dismiss the other four appeals.

Respondents do not agree with Appellants' characterizations of certain orders, rulings and events in their motion and supporting affidavit, but they will refrain from arguing those matters until the appropriate time in the appellate process.

For the reasons set forth above, **Respondents respectfully request that the Court hold Appellants' motion in abeyance until the Court has ruled on the Respondents' pending Motions to Dismiss.** Respondents do not object to a stay of the time period for filing Appellants' initial brief in the Orleans Appeal (Case No. 2010176826) until the Court has ruled on the pending Motions to Dismiss.

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 3rd day of February, 2011.
Greenville, South Carolina

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. 2010180086

RECEIVED

FEB 04 2011

SC Court of Appeals

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,

v.

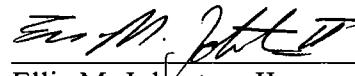
Roosevelt Gardens, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... 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' RETURN TO APPELLANTS'*
MOTION FOR STATUS CONFERENCE, FOR CONSOLIDATED RECORD, AND TO
STAY APPEAL 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



Ellis M. Johnston, II

February 3, 2011
Greenville, South Carolina

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COLUMBIA

FLORENCE

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Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
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ELLIS M. JOHNSTON, II
DIRECT DIAL NUMBER 864-240-3217
EMAIL ejohnston@hsblawfirm.com

February 3, 2011

VIA U.S. MAIL

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

RECEIVED

FEB 04 2011

SC Court of Appeals

Re: *Laurance H. Davis, Jr., et al. v. Roosevelt Gardens, et al.*
Case No. 2010180086

Dear Ms. Gee:

With regard to the above-referenced matters, enclosed please find an original and six (6) copies of the *Respondents' Return to Appellants' Motion for Status Conference, for Consolidated Record, and to Stay Appeal and Proof of Service* for same with regard to the above-captioned appeal. I would appreciate your filing these at your earliest convenience and returning the additional enclosed copy, file-stamped to me in the self-addressed, stamped envelope.

With king regards, I remain

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.



Ellis M. Johnston, II

EMJ,II:jmb
Enclosures

cc: Joel D. Bailey, Esquire
Thomas A. Pendarvis, Esquire

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. 2010180086

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,

v.

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, ... 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, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) 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. Parkview Apartments, et al.*, Case No. 2010180666; *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

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ejohnston@hsblawfirm.com

Attorneys for Respondents

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

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SEC (20.10 4.10)

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,

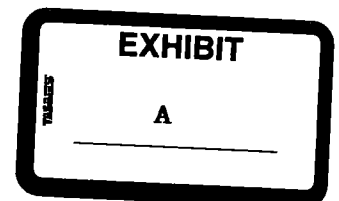
vs.

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.

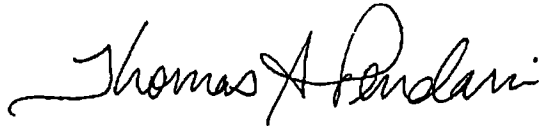
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING 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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THE BAILEY LAW FIRM, P.A.
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baileylawfirm@charter.net

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Counsel for Appellants

October 28, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
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P.O. Box 2048
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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

Gonzalez South Carolina

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 Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2003-CP-07-726
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-38-1131
	)	

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs.	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-10-4229
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-07-1989
	)	

Carolina Management Corporation of Beaufort, <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	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.
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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.~~ *DAF*

IT IS SO ORDERED

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

DAF
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.

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.
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.

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), 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.
Burke South Carolina

Doyet A. Early, III
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:

Attorney for Plaintiff(s)
Joel D. Bailey
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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.
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 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

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:



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.

Bonhays, South Carolina

M. A. Early

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 O. 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), 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

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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

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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

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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), SCRPC.

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 presentation 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." [d. (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

DRE # 22

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 Kappi 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 (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

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 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

DAG #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), SCRPC. 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), 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.

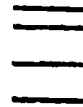
This 10th day of April, 2010.
John, South Carolina

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

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & O.S.
100 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-3113
RETURN SERVICE REQUESTED



www3.charlestoncounty.org



16



RECEIVED OCT 01 2010

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
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

EXHIBIT

9

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

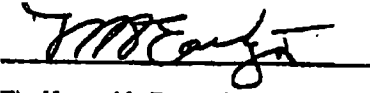
Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRPC. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted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

[Handwritten signature]

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/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.

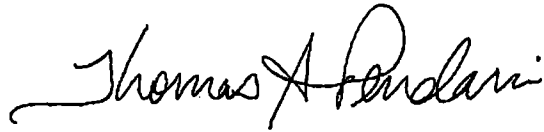
PROOF OF SERVICE

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 Orangeburg County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180086

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,

v.

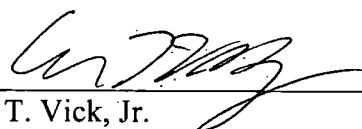
Roosevelt Gardens, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic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

January 18, 2011

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

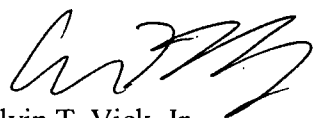
Re: *Laurance H. Davis, Jr., et al. V. Roosevelt Gardens, et al.*
Case No. 2010180086

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

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 Orangeburg County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180086

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,

v.

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, ... 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. Parkview Apartments, et al.*, Civil Action No. 2003-CP-07-726, 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



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Attorneys for Respondents

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

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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

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-38-1131

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.)

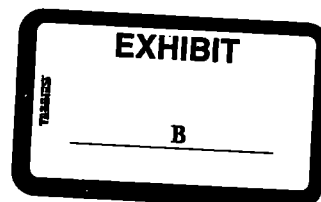
Beaufort County

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

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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

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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

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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

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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

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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(c), 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.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), SCRPC.

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), SCRCF, 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), SCRCF.

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 Karppi 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. 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), 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

TAE 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 SCRCP 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 date 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 SCRCF 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 SCRCP 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 SCRCP 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.

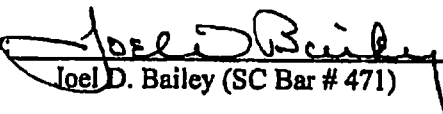
I certify that I did not consult with opposing counsel concerning this motion, because, based upon prior communications and consultations with opposing counsel, the undersigned believes that such additional consultation would serve no useful purpose.

Respectfully submitted,

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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

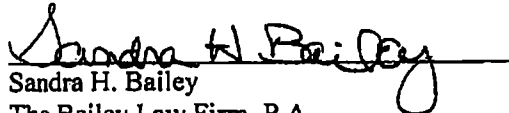
I hereby certify that I have served the Plaintiffs' Motion for Reconsideration, Alteration or Amendment, by depositing a copy in the United States Mail, postage prepaid, on April 22, 2010, addressed to the following attorneys of record:

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

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

Calvin T. Vick
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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

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-38-112

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

FILED
2010 SEP 20 AM 10:19
JULIE J. STRONG
CLERK OF COURT

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.

[Handwritten signature]

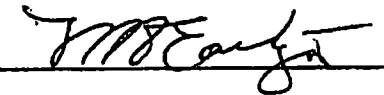
EXHIBIT

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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
Beamery, 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.

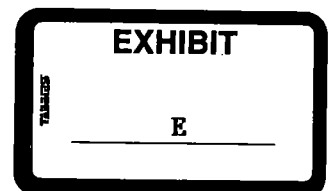
Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation 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.

Page 1 of 3



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

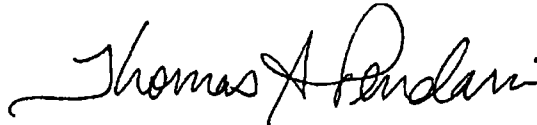
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING 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 OR 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
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PENDARVIS LAW OFFICES, P.C.



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Counsel for Appellants

October 28, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
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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

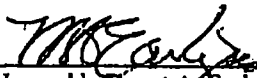
This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds 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
Greenville South Carolina

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 Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2003-CP-07-726
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-38-1131
	)	

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs.	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-10-4229
	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-07-1989
	)	

Carolina Management Corporation of Beaufort, <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	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.~~ Def

IT IS SO ORDERED

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

MA Early
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.

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.

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

2009 JAN -4 PM 12:45
CLERK OF COURT
BEAUFORT COUNTY, S.C.
ELIZABETH H. SMITH

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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EXHIBIT
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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

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

Case No.: 2003-CP-07-726

Davis, et al.

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), 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} ~~Beaufort~~, 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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[Signature]

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

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
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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
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Pinewood Park Apartments, a South Carolina
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)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

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
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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.

Bankery, South Carolina

M. Early

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

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v.

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Orangeburg County

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

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

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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

DAB #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

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

DAB #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

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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, 2010.³

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

³ 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);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.

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pt 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 (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), SCRCR. 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 presentation 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), 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 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

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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

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 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), SCRPC. 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), SCRPC, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRPC. 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), SCRPC. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRPC (Plaintiffs previously made an oral motion

DAE #27 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.

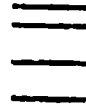
This 10th day of April, 2010.
John, South Carolina

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 29401-3100
RETURN SERVICE REQUESTED



www3.charlestoncounty.org



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RECEIVED OCT 01 2010

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
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

EXHIBIT

9

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, 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]
H

FILED
2010 SEP 20 AM 10:19
BY JULIE J. HAYES, CLERK
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/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.

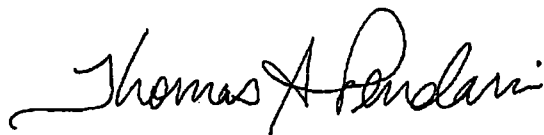
PROOF OF SERVICE

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 horizontal line drawn underneath it.

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 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,

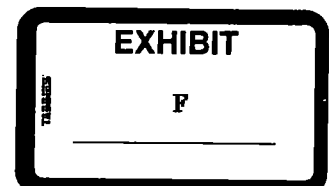
vs.

Roosevelt Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/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.

NOTICE OF APPEAL

Appellants Laurance H. Davis, Jr., Rhoda G. Rentz, Mortimer M. Weinberg, Jr.,
Hodge Land Co., Inc. and Anna Trotter 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 December 1, 2010, a copy of which is attached as Exhibit 9.

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

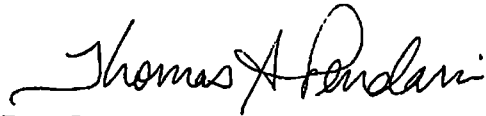
10. ORDER appointing the Honorable Doyet A. Early, III to hear and decide all matters pertaining to these cases, dated March 7, 2006, issued by Chief

Justice Jean Hoefer Toal, a copy of which is attached as Exhibit 10.

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
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(843) 525-6090 tele
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Counsel for Appellants

December 3, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

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Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
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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.

)
)
) 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

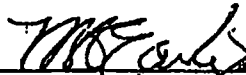
This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds 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.

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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
Greenville, South Carolina

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 Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs.	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, <i>et al.</i> , Plaintiffs.	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina Limited Partnership, <i>et al.</i> , Defendants.	)	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.
Bontous, 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'
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. DAE

IT IS SO ORDERED

This 3rd day of March, 2009.
San Diego, 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 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), SCRPC. 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.
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.

)
)
) 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.

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

2009 JUN -4 PM 12:45
ELIZABETH M. SMITH
CLERK OF COURT
BEAUFORT COUNTY, S.C.

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.
Ernest, South Carolina

Doyet A. Early, III
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. 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 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), 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, 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
Post Office Box 1437
Beaufort, SC 29901-1437

Thomas A. Pendarvis
Pendarvis Law Offices
500 Carteret St., Ste. A
Beaufort, SC 29902

Attorney for Defendant(s)
Ellis M. Johnston, II
Haynesworth, Sinkler, Boyd
Post Office Box 2048
Greenville, SC 29602-2048

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



[Handwritten Signature]

SCRCP 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), 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

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:



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.

Banker, South Carolina

Doyet A. Early, III

Doyet A. Early, III, Circuit Court Judge

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

DAB #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 #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, 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.

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.

DAG #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

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 #310 10
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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

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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.

DAE # 13 13

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

DAE #19 14

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

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.

DAE #16

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

DAE #17

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), 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,

DAE #21

therefore, Rule 37(b)(2), SCRPC, 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), SCRPC.

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

DAE # 22

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 (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

DAG #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 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), SCRCF, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCF. 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), SCRCF. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCF (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), 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.
Chiken, South Carolina

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



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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 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:

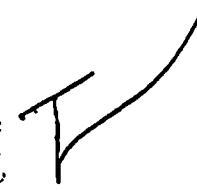
Please find enclosed for filing my order in the above case. Please file and serve all interested parties.

Sincerely,

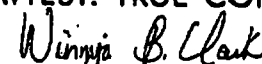

D. A. Early, III

DAE:khc
Enclosure

cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire

RECEIVED
CLERK OF COURT
ORANGEBURG COUNTY, SC




ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

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-38-1131

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.

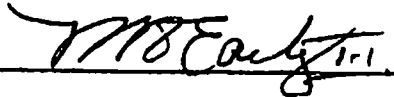
JAE
##1

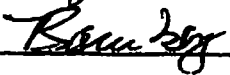
ATTEST: TRUE COPY
Winnia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

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
Beauvoir, South Carolina

The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,		Plaintiffs,
Parkview Apartments, et al.,	v.	Defendants.
	Beaufort County 2003-CP-07-0723	
Lawrence H. Davis, Jr., et al.,		Plaintiffs,
Palmetto Apartments, et al.,	v.	Defendants.
	Beaufort County 2005-CP-07-1989	
Carolina Management Corporation of Beaufort, et. al,		Plaintiffs,
Pinewood Park Apartments,	v.	Defendants.
	Beaufort County 2005-CP-07-1990	
Rhoda G. Rentz, et al.,		Plaintiffs,
Orleans Gardens, et. al.,	v.	Defendants.
	Charleston County 2005-CP-10-4229	
Lawrence H. Davis, Jr., et al.,		Plaintiffs,
Roosevelt Gardens,	v.	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 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. entz, 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.

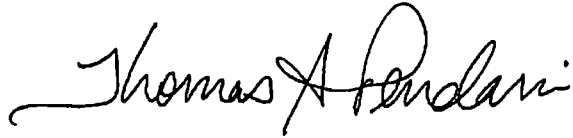
PROOF OF SERVICE

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 the first name "Thomas" and last name "Pendarvis" clearly legible.

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 ORANGEBURG COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-38-1131

RECEIVED

JAN 28 2011

SOUTH CAROLINA COURT OF APPEALS

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/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

**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

¹

See *Carolina Management Corp. of Beaufort, et al. vs. Pinewood Park Apartments, et al.*
Case # 2010180088; *Davis et al. vs. Parkview Apartments, et al.*, Case # 21010180666; 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.

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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?

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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

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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

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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

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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..."

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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, SCRCF, 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

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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), SCRPC. 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.

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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.

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.

CONCLUSION

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.

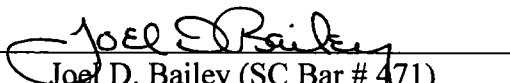
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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/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

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.

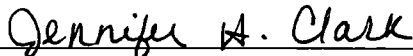
7. By Order of Chief Justice Jean H. Toal of the South Carolina Supreme Court dated March 7, 2006, the Honorable Doyet A. Early III, resident Circuit Court Judge for the Second Judicial Circuit, was assigned to all of these cases. The order assigning the cases to Judge Early did not consolidate the cases 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 SCRPC 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 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 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.

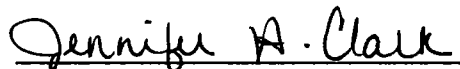
8. At no point in time has anyone provided me with written notice of the entry of the Order, dated September 16, 2010, by the Clerk of Court for Orangeburg County.



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.
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



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

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)

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 Roseaneau
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*



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

085P-20 P11 3: 52
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, 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 Plaintiffs 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
Ben 2018, 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) 245-2883
dearlyj@sccourts.org

September 16, 2010

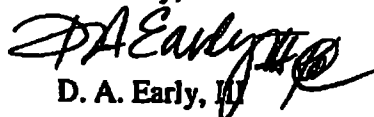
The Honorable Jeri Ann Roseneau
Post Office Box 1128
Beaufort, South Carolina 29901-1128

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



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
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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.

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

10 OCT 25 PM 3:27
CLERK OF COURT
BEAUFORT COUNTY, S.C.

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 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'

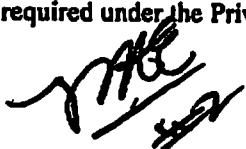
MAE
211

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), SCRCP, "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), SCRCP, 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.

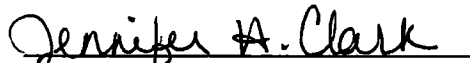
Roosevelt Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic 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

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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
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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, 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.


#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
Bamberg, South Carolina