VIEW

USE POST CONSUMER RECYCLED PAPER

The Supreme Court of South Carolina

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

v.

Parkview Apartments, et al., Defendants.

Beaufort County
2003-CP-07-0723

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

v.

Palmetto Apartments, et al., Defendants.

Beaufort County
2005-CP-07-1989

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

v.

Pinewood Park Apartments, Defendants.

Beaufort County
2005-CP-07-1990

Rhoda G. Rentz, et al., Plaintiffs,

v.

Orleans Gardens, et. al., Defendants.

Charleston County
2005-CP-10-4229

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

v.

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

A

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.	)	Beaufort County
Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.	)	C.A. No. 2003-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. No. 2005-CP-38-1131
Rhonda G. Rentz, *et al.*, Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.	)	C.A. No. 2005-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. No. 2005-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. No. 2005-CP-07-1990

2010 APR -9 PM 3:32

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

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

DAE #1

EXHIBIT

B

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

FINDINGS OF FACT

1. General Background

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

DAE #2

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

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

DAE #3

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

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

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

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

DAE #4

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

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

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

DAE #5 5

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

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

DAE #6

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

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

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

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.[2]

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

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

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

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

DAE #8

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

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);[4]

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

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

DATE #9 9

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

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);

- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and

- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

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

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

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

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

DAE #310 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.

DAE #11 11

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

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

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

DAE #12

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), SCRCP. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

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

DAE#15

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

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

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

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

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

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

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 (Ct. App. 2009) (internal quotation marks and citations

DAE #18 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), 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

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 (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

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

DAE #25 25

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

3. **Award of Expenses, Including Attorneys' Fees**

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

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 6th day of April, 2010.

Aiken, South Carolina

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 # 03-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 # 05-CP-38-1131
Rhoda G. Rentz, et al., Plaintiffs v. Orleans Gardens, a South Carolina Limited Partnership, et al., Defendants.	Charleston County C/A # 05-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 # 05-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 # 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

EXHIBIT

C

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 bate 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 bate 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 page12 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 page13 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 page16 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to the January 14, 2010 hearing and events transpiring subsequent thereto.

(a) This finding is incomplete, as it omits certain facts which transpired in chambers following the hearing. At the meeting in chambers, counsel for Plaintiffs pointed out to Judge Early that the Defendants' Motion for Sanctions was based upon the July 28, 2009 Order, which reversed the rulings of Judge Clary, and that such Order contained significant errors. Judge Early asked Defendants' counsel about the errors and they acknowledged that the statements in the Order concerning language in Plaintiffs' Complaints - which was a stated basis for the ruling that Plaintiffs had waived their attorney-client privilege - was not correct, as such language did not even

exist in all the Complaints, as stated in the Order. It was at this point that Judge Early gave Plaintiffs' counsel the opportunity to respond to the proposed sanctions order being prepared by counsel for the Defendants.

(b) This finding also ignores and omits the fact that the letter to Judge Early from Plaintiffs counsel again pointed out that the proposed sanctions Order submitted by Defendants' counsel relied *entirely* upon the prior Order which they had prepared and which Judge Early had signed on July 28, 2009, which significantly modified the rulings of Special Master Clary., and which was admittedly erroneous as stated above. Plaintiffs' counsel again informed Judge Early that Plaintiffs did not wish to be in non-compliance with his Order but it had created an impossible dilemma, whereby Plaintiffs were forced to choose to either comply with the Order and lose their constitutional rights relating to legal representation and confidential communications, or protect their constitutional rights and disobey the Order. The alternative orders proposed by Plaintiffs' counsel were submitted for the expressed and stated purpose "to restore these cases to the litigation track which we were on until last year."

(c) The finding also ignores the fact that the letter of Plaintiffs' counsel specifically called to Judge Early's attention the double standard created by his Order of July 28, 2009, whereby he gave almost universal protection to the documents which Defendants asserted were privileged, while requiring virtual total disclosure of the communications between Plaintiffs and their counsel.

(d) The finding also ignores and fails to mention the attempts of Plaintiffs to find a way to comply with the Court's July 28, 2009 Order without forfeiting their legal rights to

confidential communications with their counsel, including the filing of a Motion for Protective Order.

C. Plaintiffs further seek reconsideration, deletion or alteration of the following legal conclusions and findings, on the ground that they are not supported by the true and relevant facts, are contrary to and unsupported by the existing law in this state, and/or are outside the scope of, unsupported by and/or contrary to the evidence presented:

1. The statement or conclusion on pages 16 and 17 of the Order which states: "At this time, Plaintiffs have given the Court no reason to believe that they intend to comply with either the General Discovery Order or the Privilege Discovery Order," and "Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order."

(a) This statement or conclusion is patently untrue. Plaintiffs have supplemented their discovery responses numerous times in this litigation in an attempt to comply with Judge Early's discovery rulings, including the General Discovery Order. Plaintiffs' counsel sent a letter to Judge Early with respect to the Plaintiffs' Third Supplemental Responses, seeking his review of the Parkview responses and a pledge to make similar supplemental responses in the other cases if the judge felt the Parkview responses were adequate. Judge Early did not respond to Plaintiffs' counsel with any suggestions or criticisms of their supplemental responses; rather, he chose to ignore the letter and instead, in an apparent *ex parte* communication with Defendants' counsel Vick, counseled him on how to prepare the Order to which this motion is directed.

(b) With respect to the Privilege Discovery Order, Plaintiffs' counsel has informed Judge Early on multiple occasions that the Order placed Plaintiffs in the impossible position of having to forfeit their legal and constitutional rights in order to comply with the Order.

They also stated their belief to Judge Early on multiple occasions that the circuit court had no jurisdiction to issue the Privilege Discovery Order in light of the prohibition against the same set forth in SCRCP 53. They repeatedly asked Judge Early to either rescind the Order, or to issue a simple contempt citation so that the issue would be ripe for appellate review. They also repeatedly informed Judge Early that they felt the appellate review was a critical step at this stage in the litigation, because it would either reject Judge Early's ruling, in which event the communications at issue would remain confidential and the Plaintiffs' legal and constitutional rights would remain intact, or it would affirm Judge Early's ruling, in which event the documents would be produced.

(c) Furthermore, this statement or conclusion totally ignores the fact that Plaintiffs have filed a motion for a protective order wherein they specifically state that the motion is intended to find some method by which Plaintiffs could comply with the Privilege Discovery Order while not forfeiting their legal and constitutional rights. The motion sought relief specifically provided by the South Carolina Rules of Civil Procedure. Judge Early heard arguments on the motion on March 29, 2010, when he finally placed on the record at least some of his extrajudicial affiliations and relationships with named counsel for the Defendants, but has chosen to ignore the motion since that time and has not yet issued any decision regarding Plaintiffs' request.

2. The statement or conclusion on page 17 of the Order which states: "The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful."

(a) The record in this litigation clearly demonstrates Plaintiffs' numerous attempts to comply with the General Discovery Order, only to have Judge Early uniformly adopt arguments of the Defendants' counsel concerning the same. In doing so, Judge Early has chosen

arguments of Defendants' counsel over the factual evidence presented. It is evident that, with many of the Plaintiffs' discovery responses, Defendants' counsel simply do not like the answers or responses given, and seek to force Plaintiffs to give responses more to their liking. This is not a proper exercise or function of the discovery process or this Court; nevertheless, Defendants' counsel has somehow persuaded Judge Early to adopt it.

(b) The record in this litigation also clearly demonstrates the Plaintiffs' efforts to comply with the Privilege Discovery Order without forfeiting their legal and constitutional rights. (See, e.g., 2.c.(1)(b)and(c) above)

3. The statement or conclusion on page 17 of the Order which states that "...Plaintiffs' failure to comply with either or both of the discovery orders has caused, or would continue to cause, extreme prejudice to Defendants," together with the statements or conclusions which follow, purporting to delineate the "extreme prejudice to Defendants."

(a) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims." Plaintiffs have provided an enormous amount of information and documentation to Defendants. Defendants have alternative and additional discovery tools available to them under the laws and rules of civil procedure in this State. Plaintiffs were forced to resort to these tools once Judge Early elected to impose a double standard for discovery by the parties. The Defendants have used these tools as well; they simply chose to stop when it appeared they could gain a receptive ear from the trial judge and could use that toward their stated goal of a dismissal of the

Plaintiffs claims without having to defend them on the merits. Defendants are not entitled to invade the attorney-client privilege in order to prove their defenses in this or any other case.

(b) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. See response to sub-paragraph (a) above.

(c) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the investigation or pursuit of claims against any of the Defendants." See response to sub-paragraph (a) above.

(d) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Defendants' are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases." See response to sub-paragraph (a) above.

4. The statement or conclusion on page 18 of the Order which states that "...Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases," together with the statements or conclusions which follow, purporting to delineate the claimed obstruction.

(a) The statement or conclusion that the Parkview trial "had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. As herein noted, the January 2010 date was selected after Judge Early granted the request of Defendants' counsel to continue the Parkview case past the May 2009 trial date. Furthermore, the statement or conclusion ignores the fact that the cases were before the appellate courts during the fall of 2009 and were not remanded until December of that year.

(b) The statement or conclusion that "Plaintiffs' failure to comply with the General Discovery Order ... was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. Judge Early continued the trial past the May 2009 term at the request - not on the motion - of Defendants' counsel, and over the objection of Plaintiffs' counsel. This conclusion omits the fact that Defendants' counsel did not even seek the discovery complained of until less than 9 months prior to the May 2009 trial date, and then framed the discovery request so that Plaintiffs' counsel had no choice but to oppose it.

(c) The statement or conclusion that Plaintiffs' conduct has resulted in the cases being "held hostage" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. The cases have been forced off the litigation tract solely by Judge Early's decision to adopt the arguments of Defendants' counsel in lieu of the evidence, to issue rulings which are outside of and contrary to such evidence, and to issue rulings which are contrary to and not supported by the existing law of this State.

5. The statements or conclusions on page 18 of the Order which state that "all Plaintiffs in these actions are in contempt of court."

(a) The statement or conclusion that "the record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. As shown herein, Plaintiffs have made numerous attempts to comply with both orders.

(b) The statement or conclusion that "the record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(c) The statement or conclusion that "Plaintiffs' could produce the documents as required by the Privilege Discovery Order, but they choose not to do so" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. The untenable dilemma forced upon the Plaintiffs by Judge Early and Defendants' counsel is documented herein. The "choice" they have been given is no real choice at all.

(d) The statement or conclusion that Plaintiffs have not provided "complete and intelligible responses to the interrogatories" of the Defendants and that "they have remained deliberately evasive and ambiguous in their responses" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. A review of the Plaintiffs' discovery responses clearly shows the fallacy of this conclusion.

(e) The statement or conclusion that "the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. Again, this conclusion is simply not supported by the record.

6. The statement or conclusion on page 19 of the Order which states that "...there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a *prima facie* case for contempt," together with the statements or conclusions which follow, purporting to delineate the claimed obstruction.

(a) The statement or conclusion on page 20 of the Order that "Plaintiffs' have provided no defense, nor have they shown an inability to comply with either of the discovery orders" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(b) The statement or conclusion on page 20 of the Order that there is "clear evidence" that Plaintiffs' have not complied with the General Discovery Order is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(c) The statement or conclusion on page 20 of the Order that Plaintiffs "freely admit that they have not complied with the terms of the Privilege Discovery Order" ignores the reasons repeatedly provided by the Plaintiffs for such noncompliance, as well as the options available and presented to Judge Early to resolve this matter short of dismissal of Plaintiffs' claims, thereby creating an inaccurate, incomplete and unfair portrayal of Plaintiffs' conduct.

(d) The statement or conclusion on page 20 of the Order that Plaintiffs' have filed "untimely motions for reconsideration" is inaccurate and unfairly portrays Plaintiffs' conduct in this matter. All motions for reconsideration filed by Plaintiffs have been timely. See No.

7 below. Judge Early and Defendants' counsel re-designated recent Rule 60 motions filed by Plaintiffs as motions for reconsideration, then held them to be untimely as such; this is a far cry from the conclusion stated.

(e) The statement or conclusion on page 20 of the Order that "privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints)" is contrary to the facts and evidence in this litigation, as well as to the existing law in this State.

(f) The statement or conclusion on page 20 of the Order that "there is no question that the 96 documents are relevant to the subject matter of these actions" is inaccurate, as Judge Early has never seen the documents, and would not know if such documents are, in fact, relevant; Plaintiffs do not believe all of the documents are relevant, so the statement that "there is not question" is not true or accurate.

7. The statement or conclusion on page 20 of the Order that Plaintiffs' have filed "untimely motions for reconsideration;" is inaccurate and unfairly portrays Plaintiffs' conduct in this matter.

(a) All motions for reconsideration filed by Plaintiffs' counsel in this matter have been timely.

(b) Judge Early signed the Order dismissing Plaintiffs' cases, which was prepared by Defendants' counsel, and which elected to treat as Rule 59 motions the Rule 60 motions which were filed by Plaintiffs' counsel in an attempt to get the cases back on a trial tract. The fact that Judge Early signed Defendants' counsel's Order re-styling Plaintiffs' motions does not mean that Plaintiffs untimely filed a motion for reconsideration.

8. The statement or conclusion on page 21 of the Order that "Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order."

(a) This finding or conclusion ignores the Plaintiffs' efforts to comply with the Orders, notwithstanding the imposition by Judge Early of a double standard with respect to both orders, whereby he held the Plaintiffs to a different and significantly higher standard than that he imposed upon the Defendants.

(b) This finding is incomplete and unfair to the Plaintiffs in that it omits and ignores their position that they are, in fact, in compliance with the General Discovery Order and that they have made several attempts to seek ways to comply with the Privilege Discovery Order while preserving their legal and constitutional rights, only to have such attempts summarily dismissed by Judge Early.

(c) This finding is erroneous in that the contempt citation imposed is criminal, not civil, in nature, as part of the basis for its issuance is clearly to punish Plaintiffs and to vindicate the authority of Judge Early.

9. The statement or conclusion on page 21 of the Order that " It is clear that Plaintiffs have failed to comply with either of these orders..."

10. The statement or conclusion on page 21 of the Order that "Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order."

11. The statement or conclusion on page 22 of the Order that "... the only sanction that can achieve justice is the dismissal of the lawsuits," together with the statements or conclusions which follow, purporting to justify this conclusion.

(a) Dismissal of the Plaintiffs' lawsuits is the harshest sanction permitted by SCRCP 37 and ignores the fact that no prior sanctions have been imposed in this litigation, as well as the fact that alternative sanctions are clearly available in these cases.

(b) The attempt to justify imposition of the dismissal sanction under the theory that the documents included in the Privilege Discovery Order "are likely relevant to Defendants' statute of limitation defense" ignores the evidence in these cases that, *inter alia*,:

(i) The discovery of privileged documents and information is not permitted under SCRCP 26;

(ii) The method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege merely by filing their complaints, contrary to the existing law of this State;

(iii) The alternative method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege by including language in their complaints which affirmatively raised the statute of limitations when, in fact, the language in question makes no such assertion nor can any such assertion be reasonably implied concerning such language;

(iv) The alternative method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege by including language in their complaints which affirmatively raised the statute of limitations when, in fact, the language in question does not exist in all of the complaints;

(v) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling

issue is at odds with his prior denial of the Defendants' motion for summary judgment based upon the statute of limitations;

(vi) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is at odds with the evidence that the Parkview case was filed less than 3 years from the time the Plaintiffs were informed that the Defendants would not pursue legal action on behalf of the limited partnership, which is the earliest possible dated for commencement of the statutory period in that case;

(vii) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is at odds with the evidence that the general partners had until 2002 to pursue claims on behalf of all limited partnerships, and that the Palmetto, Orleans, Roosevelt and Pinewood cases were filed in 2005, following a tolling or *status quo* agreement between the parties with respect to the filing of the Palmetto, Orleans, Roosevelt and Pinewood cases;

(viii) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is in keeping with his imposition of a double standard relating to discovery in this litigation;

(ix) Judge Early's obsession with the statute of limitations defense in this litigation is misplaced and unfair to the Plaintiffs as evidenced by his prohibition, at the request of Defendants' counsel, of the deposition of AIMCO Vice-President Miles Cortez, notwithstanding the fact that Mr. Cortez was present at the meeting wherein a tolling or *status quo* agreement was reached with regard to the filing of the lawsuits in Palmetto, Roosevelt, Orleans and Pinewood, and was thus a material witness concerning Plaintiffs' ability to refute the statute of limitations defense;

(x) Judge Early's obsession with the statute of limitations defense in this litigation is misplaced and unfair to the Plaintiffs as evidenced by his disregard of the testimony of Mr. Patrick Foye, a former AIMCO Vice-President, who was also present

> at the meeting wherein a tolling or *status quo* agreement was reached with regard to the filing of the lawsuits in Palmetto, Roosevelt, Orleans and Pinewood, and who confirmed under oath the Plaintiffs' assertions concerning the general agreement reached at that meeting.

12. The statement or conclusion on page 22 of the Order that "Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants."

(a) This statement ignores the fact that the Plaintiffs responded to the interrogatory in question to the best of their ability.

(b) This statement reflects Judge Early's biased adoption of the Defendants' displeasure with the interrogatory response given, and his willingness to assist Defendants' counsel in attempting to coerce and intimidate Plaintiffs into amending their answer to one which is more to the liking of Defendants' counsel.

(c) This statement ignores the fact that many of the Plaintiffs are elderly, some are in ill health and on medications and would likely have difficulty recalling the exact times and dates of meetings or occurrences which occurred approximately 10 years ago.

13. The statement or conclusion on page 23 of the Order that "The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal."

(a) This statement ignores the fact that several other sanctions are available under SCRCP 37 and that Plaintiffs have requested on several occasions that Judge Early utilize a lesser sanction in order to provide a mechanism for immediate appellate review of his decisions concerning the production of privileged documents.

(b) This statement incorrectly states that any lesser sanctions would lead to the exact same result as a dismissal sanction. The dismissal sanction terminates Plaintiffs' claims with prejudice. A lesser sanction would preserve Plaintiffs' claims pending appellate review of the propriety of Judge Early's orders requiring disclosure of the privileged documents. If the appellate court deems the rulings to have been correct, the end result with a dismissal sanction is the loss of their claims by the Plaintiffs. Under a lesser sanction, the cases would be remanded and allowed to proceed with the Plaintiffs' production of the disputed documents.

14. The statement or conclusion on page 23 of the Order that "lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information."

(a) This type of finding or conclusion again shows the prejudice which can result to opposing parties when a judge simply signs an order prepared by an advocate for the other side. In this instance, Judge Early has chosen to adopt a position advocated by counsel for the Defendants which is impossible for Plaintiffs to contest, as it rests upon pure speculation rather than evidence.

(b) Defendants contend that they are prejudiced and damaged by conduct of the Plaintiffs, but fail to delineate the prejudice and damage which they have allegedly sustained, nor do they specify how the conduct they complain of has resulted in their alleged damage. There is no reasonable way for Plaintiffs to even begin to refute evidence which has not been produced or facts which are not proven - or even specified. Incredibly, the Defendants' contention has been

adopted by Judge Early as a basis and justification for imposing the harshest sanction available in these cases.

15. The statement or conclusion on page 23 of the Order that the Defendants have been "clearly" prejudiced by Plaintiffs' "refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions.."

(a) This statement or conclusion is at odds with the overwhelming body of evidence in the record on this issue, which Judge Early has chosen to ignore.

(b) First, Judge Early has chosen to ignore the evidence that Defendants have known since 1984 that Plaintiffs would be damaged in the amount of any notes which Defendants failed to collect from the defaulting debtors. They have known the exact amount of that damage since 1984, as they were involved in the preparation of the transactional documents and have had these documents in their possession since 1984.

(c) Second, Judge Early has chosen to ignore the evidence that an alternative minimal value for Plaintiffs' damages is the fair market value of the respective apartment complexes, as these should have been recovered by the Defendants in the event the notes were not collected.

(i) The importance of establishing a fair market value for the respective properties as a basis for determining damages and remedies available to the partnerships was discussed and agreed upon in a meeting between the Defendants and Plaintiffs on October 24, 2000 and has been known to Defendants since at least that time. Plaintiffs' counsel produced a transcript of the October 24th meeting as part of their discovery responses in these cases. Judge Early has chosen, however to ignore this evidence.

(ii) The evidence in the record actually shows that Defendant AIMCO was participating in an evaluation of the properties by a marketing firm to determine their fair market value in 1999, in order to justify their refusal to take the properties back from the defaulting debtors. Plaintiffs had to discover this evidence from a former officer of the defaulting debtor, Boston Financial, even though it was known to Defendants. The Defendants were clearly aware of the importance of this damages valuation methodology at that time, and have since deposed a representative of the marketing firm. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

(iii) The evidence in the record in this litigation is that the Defendants have actually been involved in the management of the respective apartment complexes following their sales in 1984 and were required to prepare monthly operating statements and other data for annual audits and valuations to be submitted to HUD. The evidence also shows that documents reflecting these figures and data have been in the possession of the Defendants for decades and that the few copies in Plaintiffs' possession were produced to Defendants as part of Plaintiffs discovery responses dated July 14, 2005. Plaintiffs Answers to Interrogatories on that date were very specific and detailed and required in excess of 50 pages responding to 14 interrogatories. Additionally, Plaintiffs produced nearly 2000 pages of documents at that time. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

(iv) This alternative minimal value of Plaintiffs' damages was also specifically identified in a meeting between Plaintiffs' counsel and representatives of Defendants, including current Defendants' attorney Ellis Johnston, which occurred on August 11, 2003, and which resulted in the mutual employment of an appraiser to determine the fair market values of the respective properties. This knowledge was confirmed by the deposition testimony of witnesses, including former AIMCO Vice President Patrick Foye, as well as in correspondence between counsel for the parties. Importantly, this evidence was also known to another AIMCO officer, Miles Cortez, who was also present at the August 11, 2003 meeting, but Judge Early protected Mr. Cortez from having to

testify in this litigation, at the request of Defendants' counsel. Judge Early has chosen to adopt arguments of Defendants' counsel rather than the evidence in his rulings and orders.

(v) The evidence in the record in this litigation is that multiple formal appraisals have been performed with respect to each of these properties which show the appraisers' opinions as to the fair market values of the properties at certain times relevant to this litigation. Many of these appraisals were known to and in the possession of Defendants prior to the initiation of this litigation; any additional appraisals discovered by Plaintiffs during the course of this litigation have been promptly produced to Defendants. The Defendants have chosen not to depose any of the appraisers in order to get detailed information relating to the values set forth in the appraisals. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

(vi) The evidence in the record in this litigation also shows that values were attached to each of the properties by the respective assessors for the counties in which they were located. These assessors were specifically identified in Plaintiffs' discovery responses as being persons Plaintiffs intended to rely upon in the establishment of value of the properties. These disclosures were actually made prior to the mediation in March, 2008, and prior to the latest discovery requests of the Defendants in August, 2008. They were again presented to the Defendants as part of the mediation, and again presented to them as part of a formal supplemental discovery response. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

(vii) Not only have Defendants been supplied with the information concerning the assessed values for the properties, they have actually deposed the Beaufort County Assessor and ascertained detailed information from him relating to his opinions and methodology for valuation of the properties located in Beaufort County. Although they have had the opportunity to depose the assessors in Charleston and Orangeburg Counties, they have chosen not to do so. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

(viii) The evidence in the record in this litigation also shows that values were attached to each of the properties by the

respective owners and managers of the properties and/or their insurance carriers. These individuals were specifically identified in Plaintiffs' discovery responses as being persons Plaintiffs intended to rely upon in the establishment of value of the properties. These disclosures were actually made prior to the mediation in March, 2008, and prior to the latest discovery requests of the Defendants in August, 2008. They were again presented to the Defendants as part of the mediation, and again presented to them as part of a formal supplemental discovery response. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

(ix) Not only have Defendants been supplied with the information concerning the values placed upon the properties by the owners and insurers, they have actually deposed at least one of the owners, as well as a representative of the insurer, and ascertained detailed information from them relating to their opinions and methodology for valuation of the various properties. This included the actual sales prices when the properties changed hands, retrofit costs and other financial information. Although they have had the opportunity to depose the other owners, they have chosen not to do so. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

(x) Additionally, the evidence in these cases demonstrates that the Plaintiffs have informed Defendants of the fact that they intend to rely upon values established by real estate professionals, and have identified persons retained to date who have opinions concerning the values of the properties. The opinions and bases for the opinions of these persons has previously been disclosed to Defendants by Plaintiffs' counsel, both formally and informally, since the spring of 2008. Plaintiffs have recently provided a third supplemental response to Defendants' August, 2008 discovery requests, providing even greater details relating to the opinions and bases for the opinions of the real estate experts located in Beaufort County. At that time, Plaintiffs' counsel informed Judge Early and Defendants' counsel that additional amendments would be made concerning the other properties. Judge Early summarily dismissed these supplemental responses in his order concerning sanctions and totally ignored the evidence in this regard.

(d) Third, the Plaintiffs' discovery responses relating to the opinions of their experts concerning the values of the respective properties not only state such values, but detail several bases for the opinions, and specifically reference "the materials produced during the discovery" among the bases for the opinions. Judge Early has chosen to ignore the evidence that Plaintiffs' discovery responses relating to expert witness testimony dealing with damages complies with both the General Discovery Order and the South Carolina Rules of Civil Procedure.

16. The statement or conclusion on page 23 of the Order that "a lesser sanction aimed at this (responses concerning experts) such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases..." This finding is at odds with the evidence in this litigation, as detailed above, and also with the law in South Carolina that an owner of property is qualified to state his opinion concerning the value of the same. The Plaintiffs in these cases actually owned the properties in question and could testify concerning their valuation of the properties.

17. The statement or conclusion on page 23 of the Order that "Plaintiffs have not proven a lack of prejudice on the Defendants' part.":

(a) Contrary to this statement or conclusion, Plaintiffs have produced ample evidence that the Defendants already have in their possession the information sought in their written discovery requests, access to such information from other sources, and the ability to acquire such information through other discovery methods, such as depositions. Judge Early has chosen to totally ignore this evidence or the available alternative in his rulings and orders.

(b) The fact that the Defendants already have the requested information, have access to the requested information from other sources, and have alternative methods under the South Carolina Rules of Civil Procedure to acquire such information constitutes proof of a lack of prejudice to them.

18. The statement or conclusion on page 23 of the Order that "the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs," together with the statement or conclusion that "the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure."

(a) Contrary to this finding, the evidence in the record clearly demonstrates that the sanction of dismissal is unreasonable under the circumstances of this litigation, and that lesser, more reasonable, sanctions are clearly available to the Court.

(b) Also contrary to this finding, the sanction of dismissal clearly goes beyond the necessities of the cases in order to foreclose a decision on the merits. The Plaintiffs have demonstrated repeatedly that they have a viable claim against the Defendants for substantial damages. The Defendants have not demonstrated any viable defense on the merits to these claims. Instead, they have relied upon the relationship of their counsel with Judge Early to secure favorable rulings based upon procedural issues, which rulings appear to be contrary to both the evidence presented and the existing law of this State.

(c) The sanction imposed does not protect the rights of discovery, it undermines them.

19. The statement or conclusion on page 24 of the Order that "Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claim of privilege earlier than they did."

(a) This finding is patently incorrect and completely ignores the evidence in the litigation that the items listed on the Plaintiffs' 2008 Privilege Log included the forty-four (44) documents listed by the Plaintiffs on their privilege log in July, 2005, and that the original forty four (44) documents clearly show activity between Plaintiffs and their counsel in 2000.

(b) To find that the Defendants could not have challenged Plaintiffs' privilege claims earlier than they did is simply to ignore the existing facts and evidence in these cases.

20. The statement or conclusion on page 25 of the Order that "the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants."

(a) This finding is astonishingly contrary to the evidence in the record and the existing law in the State of South Carolina, which Judge Early has consciously chosen to ignore.

(b) To hold that the "prejudice" to the Defendants found by Judge Early, some of which is patently imagined, is equivalent to the prejudice to the Plaintiffs in having their claims dismissed with prejudice, particularly given the fact that they have incurred substantial costs in the prosecution of their claims to date, is absurd.

(c) On numerous occasions, Plaintiffs' counsel has asked Judge Early to impose a lesser sanction in order that his rulings would be ripe for review by an appellate court, only to have these requests completely ignored.

21. The statement or conclusion on pages 25 and 26 of the Order that "Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so."

(a) Again, this conclusion ignores the facts and evidence in the record, and goes beyond the facts and evidence established. The record is clear, for example, that the Plaintiffs did not "agree to the entire process" whereby Judge Early amended the rulings of Judge Clary. In fact, Plaintiffs' counsel specifically called to Judge Early's attention the prohibitions of SCRCP 53 prior to the time he signed Defendants' order amending Judge Clary's rulings. Additionally, Plaintiffs' counsel reiterated these prohibitions to Judge Early after he had apparently signed Defendants' order, but before the order had been entered. This does not constitute an agreement to the entire process as found by Judge Early.

(b) Furthermore, there is absolutely no evidence in the record that Plaintiffs never intended to produce the documents which they claimed to be privileged if the Court ordered them to do so. In fact, Judge Clary's order found that some of the documents claimed by Plaintiffs to be privileged were, in fact, not privileged and ordered production of these documents. Plaintiffs were prepared to produce non-privileged documents in compliance with Judge Clary's order, which rejected the Defendants' contention that Plaintiffs had waived their privileges. Once Judge Early elected to adopt the Defendants' positions relating to waiver of privilege by the Plaintiffs

and to overrule Judge Clary, Plaintiffs were placed in the untenable dilemma previously discussed herein.

22. The statement or conclusion on page 26 of the Order that "Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive."

(a) The evidence and record in this litigation clearly shows this statement or conclusion to be erroneous.

(b) The Plaintiffs' discovery responses comply with the requirements of the South Carolina Rules of Civil Procedure and the evidence in the record shows that Plaintiffs' have repeatedly attempted to comply with Judge Early's General Discovery Order even though it imposed upon them a double standard with significantly more stringent requirements than he imposed on the Defendants.

(c) The record and evidence in this litigation clearly show that Plaintiffs' discovery responses are much more detailed, clear and responsive than the discovery responses of the Defendants.

23. The statement or conclusion on page 26 of the Order that "Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, ... and each of their Motions for Sanctions."

(a) It is evident from an objective review of the record and evidence in these cases that the entire sanctions and discovery issues were engineered by counsel for the Defendants as a ruse to divert the focus from the Plaintiffs' viable claims against them.

(i) The discovery requests at issue were not even generated until the end of August of 2008. At that time, it had become evident that Plaintiffs had put together sufficient proof to prevail in a trial on the merits and that the Defendants had no valid or viable defense on the merits to the Plaintiffs' claims.

(ii) Plaintiffs' mediation presentation in March of 2008 made this clear to the in-house counsel for the Defendant AIMCO, who then threatened to terminate the services of then counsel of record. Depositions taken had increasingly revealed the extent of the Defendants' breach of their fiduciary duties to the Plaintiffs in each of these cases, and of their failure to inform the Plaintiffs of their conflicts of interest in their roles as general partners. The Defendants and their counsel then began their tactic of trying to establish a procedural mechanism to avoid a trial on the merits.

(b) They began to emphasize the issue of the statute of limitations, as this was a vehicle which, if successful, would avoid having their conduct exposed to a jury. They were confronted, however, with the fact that their motion for summary judgment on the statute of limitations issue had been earlier denied. They were also confronted with the fact that the Parkview case had been filed in 2003, well within any claimed statute of limitations period, and was scheduled to be tried in May of 2009. In a desperate attempt to resurrect the statute of limitations issue and avoid the trial date set for less than 9 months away, they embarked upon a discovery fishing expedition seeking documents between the Plaintiffs and their counsel preceding the filing of the Parkview case.

(c) In order to have any chance of success, counsel for Defendants had to frame their discovery requests in such a manner that Plaintiffs' counsel could not ethically comply with the requests. Therefore, they sought production of documents and information which was clearly confidential and protected under the laws of this state. This meant that Plaintiffs' counsel

was required under the existing law and rules to object to the production of such information and documentation. This gave the Defendants a procedural mechanism which favored them: the presentment of their requests to compel compliance by Plaintiffs to a judge who had significant personal and extra-judicial ties to Defendants' counsel.

(d) In an effort to increase their chances of success, Defendants' counsel assigned two additional members of their law firm as counsel of record in this litigation. These two additional attorneys had their own substantial extra-judicial ties to Judge Early. From this time forward, Judge Early ruled almost exclusively in favor of Defendants' counsel with respect to any discovery dispute which they managed to generate and present to him.

(e) For example, Judge Early ruled that objections filed by Defendants' counsel to Plaintiffs' discovery requests were valid and that their sparse responses were sufficient under the South Carolina Rules of Civil Procedure. Conversely, when Plaintiffs' counsel copied these objections verbatim and asserted them with respect to the Defendants' discovery requests, Judge Early ruled that the objections were improper; he has found the detailed and voluminous discovery requests provided by Plaintiffs' counsel to be "evasive, ambiguous, incomplete and/or non-responsive." This discovery double standard adopted by Judge Early is dealt with in greater detail in the affidavits and prior submissions of Plaintiffs counsel in this litigation.

(f) In addition, Judge Early summarily held that all documents on Defendants' Privilege Log, which had been amended from its original listing of only a few documents to include literally hundreds of documents as Plaintiffs' claims became more provable through depositions of witnesses and other discovery, were privileged and protected from disclosure.

(i) These included communications between the Defendants and attorneys they ostensibly hired to represent the respective limited partnerships, which included the Plaintiffs, in the collection of the notes due to the partnerships or, alternatively, retrieval of the partnership properties.

(ii) These documents and information were clearly relevant to Plaintiffs' claims, as they were needed to determine whether the attorneys hired by the general partners were really engaged to represent the partnerships' interests or were actually sham retentions designed to mislead the limited partners into believing that their interests were being protected.

(iii) Furthermore, they were relevant and necessary to determine whether the attorneys hired by the general partners to represent the limited partnerships had breached any fiduciary duties to the limited partnerships by not pursuing legal remedies to recover the partnership assets. This aspect of the present litigation becomes even more troubling when Judge Early's close extra-judicial relationships with Defendants' counsel is viewed in light of the fact that a lawsuit to recover assets due to the Pinewood limited partnership was initiated - and then abandoned - by the very attorney and law firm which successfully persuaded Judge Early to keep the attorney retention information secret and non-discoverable by the Plaintiffs.

(iv) Defendants' counsel argued that these communications were privileged and not subject to disclosure to Plaintiffs, even though Plaintiffs owned 95% or more of the limited partnerships the attorneys were ostensibly hired to represent and, as such owners and partnership members, were clearly within the "privilege" claimed. Furthermore, Defendants earlier had included Plaintiffs in communications with these attorneys - with the exception of the Haynsworth firm's representation of the Pinewood limited partnership, which representation has never been revealed by Defendants or their counsel to date. Having so included Plaintiffs, the Defendants waived any privilege which might have existed that excluded Plaintiffs. Their arguments were adopted by Judge Early as part of his rulings, even though he had not ever seen the underlying documents.

(g) Conversely, at the urging of Defendants' counsel, Judge Early summarily held that all documents on Plaintiffs' Privilege Log, which had been amended at the insistence of Defendants' counsel to include communications between Plaintiffs and their counsel in this litigation, were not privileged or protected from disclosure. Again, Judge Early made this ruling without ever seeing any of the underlying documents. It was at this stage of the litigation that Plaintiffs' counsel suggested that a special master or referee be appointed to review the documents in both privilege logs and determine which were, in fact, privileged and protected from disclosure.

(h) Additionally, when Plaintiffs sought information relating to other claims or lawsuits brought against Defendants, Judge Early adopted the arguments of Defendants' counsel that the request should be limited to only some of the Defendants, that the scope of the inquiry should be narrowed and that the time frame encompassed by the discovery request should be narrowed as well. Conversely, Judge Early required Plaintiffs to respond to Defendants' request for any information relating to other lawsuits to which Plaintiffs had been a party, with no similar limitations as to scope or time.

(i) When one of Plaintiffs' experts on damages submitted an affidavit detailing financial information from Defendants which he needed in order to formulate his opinions, Judge Early adopted the argument of Defendants' counsel that such information should not be produced. Instead, Judge Early ruled, as requested by counsel for Defendants, that the expert would have to rely on information which only the Defendant AIMCO had submitted in an annual report to the Securities and Exchange Commission. This ruling was particularly prejudicial to Plaintiffs because the annual report to the SEC was not given under oath, as would have been required of the response to the Plaintiffs' interrogatories, and also because AIMCO was cited by the SEC for filing

reports which were false and inaccurate. Ironically, Judge Early adopted the arguments of counsel for the Defendants that the detailed discovery responses of Plaintiffs concerning other persons prepared to testify as to Plaintiffs' damages were insufficient. This is doubly ironic when viewed in light of the fact that Defendants' counsel have never even listed any expert in their discovery responses in this litigation.

(j) The rulings of Judge Early have adopted positions advocated by Defendants' counsel even when they are not in keeping with the existing law of this state.

(i) Discovery is limited in South Carolina by 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,

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

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

Attorneys for the Plaintiffs

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

Beaufort, South Carolina
April ____, 2010

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**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,	)	
-vs-	)	**Orangeburg County**
Roosevelt Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	**CA # 2005-CP-38-1131**
Rhoda G. Rentz, *et al*, Plaintiffs,	)	
-vs-	)	**Charleston County**
Orleans Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	**CA # 2005-CP-10-4229**
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**Beaufort County**
Palmetto Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	**C/A #2005-CP-07-1989**
Carolina Management Corporation of Beaufort, *et al*, Plaintiffs,	)	**Beaufort County**
-vs-	)	**C/A # 2005-CP-07-1990**
Pinewood Park Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	

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

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-38-1121

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

FILED
2010 SEP 20 AM 10:19
JULIE E. ARMSTRONG
CLERK OF COURT
BY

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.

EXHIBIT
D

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

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III

Sept 16, 2010
Bamberg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

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

vs.

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

NOTICE OF APPEAL

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

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a copy of which is attached as Exhibit 1.

2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17, 2008, a copy of which is attached as Exhibit 2.

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

EXHIBIT
E

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.

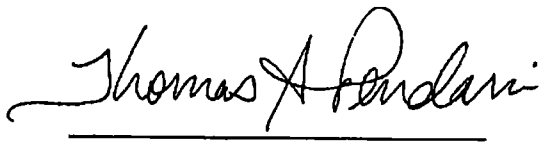
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.

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
Beaufort, SC 29901-1437
(843) 525-6090 tele
(843) 525-6070 fax
baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

Counsel for Appellants

October 28, 2010

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.
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.	))))	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.

EXHIBIT 1

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

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2

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

MAC #1

EXHIBIT 2

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.
Bamberg, South Carolina

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

EXHIBIT 3

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

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

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

attempts have not resulted in a resolution of their disputes.

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED

This 3rd day of March, 2009.

Barnwell, South Carolina

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 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.

EXHIBIT 4

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

Interrogatory No. 12:

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

(a) The title and date of each such complaint, claim or lawsuit;

(b) Outline the contents of the complaint, claim or lawsuit filed in each such action;

(c) The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and

(d) The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.

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

Interrogatory No. 24:

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

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

Request for Production No. 6:

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED

This 5th day of March, 2009.

Bamberg, South Carolina

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-[illegible]
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

ELIZABETH H. SMITH BEAUFORT COUNTY, S.C. CLERK OF COURT

2009 JUN -4 PM 12:45

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

EXHIBIT 5

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 May, 2009.

Greenville, South Carolina

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.

Plaintiff(s)

vs.

2009 JUN 19 AM 11:

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Parkview Apartments LP, et al.

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.

[X] 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; [X] 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 ~~Bamberg,~~ Aiken South Carolina, Date June 16, 2009 Judge W. B. Early, III

This judgment was entered on the 16th Day of June, 2009, and a copy mailed this 22 Day of June, 2009, to attorneys of record or to parties as follows:

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.
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602-2048

EXHIBIT 6

Elizabeth M. Smith
Clerk of Court

SCRP Form 4(Rev. 2/96)

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

EXHIBIT 7

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

MBC #2

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

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

103	Bailey 4878

(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:

82	Bailey 4591-4592

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

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.

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

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

MAE #9

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

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.

Beaufort, South Carolina

Doyet A. Early, III. Circuit Court Judge

STATE OF SOUTH CAROLINA

2010 APR -9 PM 3:32

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

DRE #1

EXHIBIT 8

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

FINDINGS OF FACT

1. General Background

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

DAE #2

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

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

DAE #3

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

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

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

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

DAE #4

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

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

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

DAE #5

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

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

DAE #6

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

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

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

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.[2]

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

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

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

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

DAE #8

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

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);[4]

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

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

DATE #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.

DAG + $10 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.

DAE #11 11

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

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

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

DAE #12 12

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

> "This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), 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.

DATE #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), SCRCP. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

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

DAE#15 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 (Ct. 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), 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

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 (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 Kappi 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

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

DAE #25

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

3. Award of Expenses, Including Attorneys' Fees

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

DAE #26 26

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

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

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

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

DAE #27

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), 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 16th day of April, 2010.

Aiken, South Carolina

Doyet A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2250
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

RECEIVED OCT 01 2010

15

PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

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.

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-38-1

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

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

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.

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

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III

Sept 16, 2010
Bamberg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

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

vs.

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

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.

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

October 28, 2010

Beaufort, SC 29902

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-07-1989

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey, and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership. ..... Appellants,

vs.

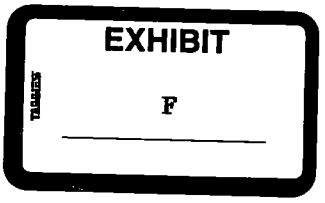
Palmetto Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic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

NOTICE OF APPEAL

Appellants Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey, and Erin E. Ivey 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 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 November 29, 2010, a copy of which is attached as Exhibit 9.

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

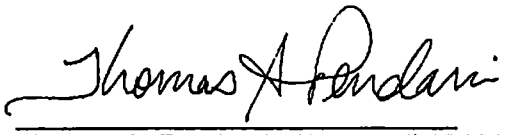
10. ORDER appointing the Honorable Doyet A. Early, III to hear and decide all matters pertaining to these cases, dated March 7, 2006, issued by Chief

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

Respectfully submitted,

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

PENDARVIS LAW OFFICES, P.C.



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

Counsel for Appellants

December 3, 2010

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.
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.	))))	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.

EXHIBIT 1

Greenville: 651588 v.1

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

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2

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

MC #1

EXHIBIT 2

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.
Bamberg, South Carolina

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

EXHIBIT 3

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

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

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

attempts have not resulted in a resolution of their disputes.

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

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

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

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

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

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

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

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

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

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

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

~~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.

Bamberg, South Carolina

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 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.

EXHIBIT 4

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

Interrogatory No. 12:

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

(a) The title and date of each such complaint, claim or lawsuit;

(b) Outline the contents of the complaint, claim or lawsuit filed in each such action;

(c) The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and

(d) The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.

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

Interrogatory No. 24:

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

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

Request for Production No. 6:

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

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

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

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

(a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;

(b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and

(c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

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

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

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

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

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

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

IT IS SO ORDERED

This 5th day of March, 2009.

Greenville, South Carolina

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-[illegible]
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

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

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

EXHIBIT 5

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 May, 2009.

Barnwell, South Carolina

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.

Plaintiff(s)

vs.

Parkview Apartments LP, et al.

Defendant(s)

2009 JUN 19 AM 11:

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

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.

[X] 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; [X] 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 ~~Bamberg~~ Aiken, South Carolina, Date June 16, 2009 Judge W. B. Easterling, Jr.

This judgment was entered on the 16th Day of June, 2009, and a copy mailed this 22 Day of June, 2009, to attorneys of record or to parties as follows:

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.
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602-2048

EXHIBIT 6

Elizabeth C. Smith

Clerk of Court

SCRP Form 4(Rev. 2/96)

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

EXHIBIT 7

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

MBC #2

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

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

103	Bailey 4878

(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:

82	Bailey 4591-4592

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

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.

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

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

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

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

IT IS SO ORDERED

This 28th day of July. 2009.

Bamberg, South Carolina

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. No. 2003-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. No. 2005-CP-38-1131
	)	
Rhonda O. Rentz, *et al.*, Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.	)	C.A. No. 2005-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. No. 2005-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. No. 2005-CP-07-1990
	)	

2010 APR -9 PM 3:32

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

DRE #1

EXHIBIT 8

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

FINDINGS OF FACT

1. **General Background**

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

DAE #2

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

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

DAE #3

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

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

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

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

DAE #4

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

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

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

DAE #5

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

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

DAE #6

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

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

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

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.[2]

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

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

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

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

DAE #8

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

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);[4]

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

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

DATE #9

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

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);

- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and

- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

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

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

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

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

DAG #810 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.

DAE #11 11

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

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

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

DAE #12

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), SCRCP. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

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

DAE #15 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 (Ct. 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), 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

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 (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

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), 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 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 6th day of April, 2010.

Aiken, South Carolina

Doyet A. Early, III, Circuit Court Judge

RECEIVED NOV 2 9 2010

2010 SEP 20 PM 3:52

S.C.

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.

EXHIBIT 9

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

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 80
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

September 16, 2010

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

Re: Laurance H. Davis, Jr. et al v. Parkview Apartments, 03-CP-07-726
Laurance H. Davis, Jr. et al v. Palmetto Apartments, 05-CP-07-1989
Carolina Manugement Corp of Beaufort, et al v. Pinewood Park Apartments, 05-CP-07-1990

Dear Ms. Roseneau:

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

Sincerely,

D. A. Early, III

DAE:khc
Enclosures
cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire

The Supreme Court of South Carolina

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

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

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

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-07-1989

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership. ..... Appellants,

vs.

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

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.

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

December 3, 2010

Beaufort, SC 29902

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

RECEIVED
JAN 28 2011
SC Court of Appeals

Case No. 2005-CP-07-1989

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership. . . . . Appellants,

vs.

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

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 *Davis, et al. vs. Roosevelt Gardens Apartments, et al.* Case # 2010180086; *Carolina Management, et al. vs. Pinewood Park Apartments, et al.*, Case # 21010180088; and *Davis, et al. vs. Parkview Apartments, et al.*, Case # 2010180666.

these appeals, and that such notice triggered the time in which Appellants had to file notices of appeal in the other cases, which involved other parties and were pending in separate counties. Appellants believe that the position taken by the Respondents in this regard is without merit, and lacks both factual and legal support. This Return and the Memorandum of Law contained herein is submitted in support of Appellants' position. Accordingly, for the reasons hereinafter provided, Respondents' motion should be denied.

FACTUAL BACKGROUND

The above-captioned appeal, together with the three (3) related appeals referenced above, and an additional related but separate appeal,[2] arises out of civil cases filed in the Circuit Courts of three (3) counties in this State, *i.e.*, Beaufort County, Charleston County and Orangeburg County. The Appellants in these cases are limited partners in five (5) separate limited partnerships; they have asserted legal claims in five (5) separate actions against their general partners, who are the Respondents in these appeals. Each of the limited partnerships owned separate apartment complexes located in each of the counties referenced above, as well as in Allendale County.[3] Some of the limited partners held interests in more than one of the limited partnerships, and some held an interest in only one of the limited partnerships, but *none* of the limited partners held interests in *all* of the partnerships. Accordingly, the Appellants in each of the cases under appeal are different. Likewise, the

---

[2] See *Rentz, et al. vs. Orleans Gardens, et al.*, Case Tracking # 2010176826.

[3] *Carolina Management, et al., vs. Pinewood Park Apartments, et al.*, Case Tracking # 2010180088, involves an apartment complex located in Allendale County, although the case was filed in Beaufort County.

properties involved in each of the appeals are different. While all appeals involve claims against the general partners for breach of their fiduciary duties, among other causes of action, each case has specific facts and circumstances which are applicable only to it and not to the other cases.

Approximately one (1) year after all five (5) cases had been filed and were pending in Beaufort, Charleston and Orangeburg Counties, South Carolina Supreme Court Chief Justice Jean H. Toal issued an order dated March 7, 2006 which assigned Circuit Court Judge Doyet A. Early, III "to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions." The cases were not consolidated by Justice Toal's order, nor were they ever consolidated by an order issued by Judge Early. They were simply assigned to "a single circuit judge" in order to "promote the effective and expeditious disposition of this litigation" and to "conserve the resources of the parties, their counsel, and the judiciary."[4]

Following assignment of the cases to Judge Early, he presided over various hearings relating to motions filed by counsel for the respective parties and issued several orders reflecting his rulings. As a general rule, the orders were then sent by Judge Early to the Clerks of Court for filing in the counties in which the actions were pending, and for service upon "all interested parties."[5] In some cases, but not always, the respective Clerks of Court

---

4

See Order of Chief Justice Toal dated March 7, 2006, attached as Exhibit A to Respondents' Memorandum in Support of Motion to Dismiss.

5

See, *e.g.*, correspondence from Judge Early to each of the Clerks of Court dated October 7, 2010 and October 22, 2010, attached hereto as Exhibit 1.

then provided counsel with written notice of the entry of the orders, once they were filed in the respective counties.[6]

With respect to the orders relevant to the Respondents' Motion to Dismiss, Judge Early issued a series of orders, prepared by counsel for the Respondents, which (a) required the Appellants to produce and/or disclose communications with their counsel deemed by them to be privileged and/or protected, and (b) found deficiencies in Appellants' responses to Respondents' discovery requests. The effect of these orders was to place the Appellants in the untenable position of either complying with the orders, which would require forfeiture of their right to privileged communications with their counsel, or to resist compliance with the orders, which would place them in the position of being in contempt of court. Appellants sought intermediate relief in the appellate courts, but the Respondents asserted that the issues were premature. The appellate courts determined that the relief sought was interlocutory and therefore not ripe for appellate review.[7] Judge Early then issued a twenty-eight (28) page order dated April 6, 2010, again prepared by counsel for the Respondents, which found Appellants in contempt for their failure to comply with his prior orders and dismissed all five (5) pending cases as a sanction for such contempt.[8]

6

See , *e.g.*, notices of entries attached hereto as Exhibit 2.

7

See, *e.g.*, the letter of December 2, 2009, from the Clerk of the South Carolina Court of Appeals to Respondents' counsel, which granted Respondents' motion to dismiss the appeals, a copy of which is attached hereto as Exhibit 3. It should be noted that *this letter was sent to the clerks of court in all three counties - Beaufort, Charleston and Orangeburg.*

[8] See Exhibit B to Respondents' Memorandum in Support of Motion to Dismiss.

Appellants timely filed a Rule 59 motion, seeking relief from the Order of April 6, 2010. On September 16, 2010, Judge Early issued an Order which denied the relief requested by Appellants in their Rule 59 motion.[9] That same date, Judge Early sent the order to the Clerks of Court for Orangeburg, Charleston and Beaufort Counties for filing and transmittal to "all interested parties."[10]

On October 1, 2010, counsel for Appellants received written notice from the Charleston County Clerk of Court of the entry of the order denying their Rule 59 motion in *Rentz, et al. vs. Orleans Gardens, et al.*[11] On October 28, 2010, a Notice of Appeal in *Rentz, et al. vs. Orleans Gardens, et al.* was timely filed with the Clerk of this Court and with the Clerk of the Charleston County Court of Common Pleas, in accordance with Rules 202 and 203, SCACR.

On November 29, 2010, counsel for Appellants received written notice from the Beaufort County Clerk of Court of the entry of the order denying their Rule 59 motion in *Davis, et al. vs. Palmetto Apartments, et al., Davis, et al. vs. Parkview Apartments, et al.* and *Carolina Management Corporation, et al. vs. Pinewood Park, et al.*[12] This was the first

---

[9] See Exhibit D to Respondents' Memorandum in Support of Motion to Dismiss.

[10] See Judge Early's letters of September 16, 2010 to the Clerks of Court attached hereto as Exhibit 4.

[11] See notice of entry of judgment/order from the Charleston County Clerk of Court attached hereto as Exhibit 5.

[12] See Exhibit 9 of the Notices of Appeal previously filed with this Court in the *Palmetto*, *Parkview* and *Pinewood* cases.

notice - written or otherwise - to Appellants' counsel that the Order had, in fact, been entered in Beaufort County. On December 3, 2010, Notices of Appeal were timely filed with the Clerk of this Court and with the Clerk of the Beaufort County Court of Common Pleas, in accordance with Rules 202 and 203, SCACR.

Also on November 29, 2010, a staff member of counsel for Appellants received a telephone call from Cathy Wilson from the office of the Orangeburg County Clerk of Court in response to an inquiry from Appellants' counsel as to whether or not Judge Early's order had ever been received or filed in Orangeburg County. The staff member was informed by Ms. Wilson that the Orangeburg County Clerk of Court had not received the order. To date, counsel for Appellants have never received written notice from the Orangeburg County Clerk of Court, or from any other source, that the order denying Appellants' Rule 59 motion in *Davis, et al. vs. Roosevelt Gardens, et al.* has been entered in Orangeburg County.[13] Notwithstanding the lack of receipt of written notice of the entry of the order in the Roosevelt case, in an abundance of caution, a Notice of Appeal was filed with the Clerk of this Court and with the Clerk of Orangeburg County Court of Common Pleas on December 3, 2010.

ISSUE INVOLVED

Does receipt of written notice of the entry by the Clerk of Court in one county of a single order issued with multiple captions reflecting cases pending in three (3) separate counties trigger the time for filing a notice of appeal with respect to the cases pending in the other counties?

13

See Affidavits of Jennifer Clark (the original of which is being submitted in the Roosevelt case) and Thomas A. Pendarvis which are submitted in support of this return.

LEGAL ARGUMENTS AND CITATION OF AUTHORITIES

Appellants believe that the Respondents' Motion to Dismiss should be denied for the following reasons:

1. The motion does not comply with the South Carolina Appellate Court Rules concerning motions filed with this Court. Respondents' motion to dismiss is based upon a highly technical and strained interpretation of Rule 203(b)(1), SCACR. Ironically, if this approach is used to examine the motion itself, it appears that the motion does not meet the requirements of Rule 240, SCACR. Subsection (a) of Rule 240 specifically "governs all motions ... filed in the appellate court, including but not limited to: ... motions to ... dismiss..." Subsection (c)(3) of the rule states as follows:

> Each motion... *shall* include the following:
>
> (3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties *shall file affidavits* and other documents in support of their positions. (Emphasis added.)

Neither the Record on Appeal nor the Appendix has been filed in any of the appeals addressed by the Respondents' motion. Accordingly, the language of Rule 240(c)(3) clearly requires the filing of "affidavits and other documents" in support of Respondents' motion. While Respondents' motion and memorandum contain "other documents," they do not contain any "affidavits." The rule is written in the conjunctive sense, *i.e.*, *both* "affidavits *and* other documents" are required to be filed when the Record on Appeal or the Appendix has not been filed. Having failed to provide an affidavit, the Respondents have failed to comply with the clear language of the rule.

Furthermore, the requirements of the rule are clearly mandatory, not discretionary; use of the word "shall" was obviously deliberate, and should be given its ordinary mandatory meaning. This is evident from a review of the rule in its entirety, as the authors of the rule used the term "may" in other portions of the rule in order to denote situations wherein conduct is deemed to be discretionary as opposed to mandatory.[14]

Accordingly, the motion to dismiss should be denied on the basis that it fails to meet the mandatory requirements of Rule 240 SCACR.

2. Notwithstanding the technical deficiencies of the Respondents' motion, the Appellants believe that the motion should also be denied on the merits, as it seeks to advance a position which is contrary to the spirit and language of the South Carolina Appellate Court Rules and applicable law, the intent and construction of the governmental system in this State and the traditional concepts of justice, fairness and equity inherent in our judicial system. The premise of the Respondents' Motion to Dismiss is that receipt by the Appellants' counsel of the notice of entry of the order of Judge Early dated September 16, 2010 by the Charleston County Clerk of Court triggered the time by which all cases referenced in the order had to be appealed. This premise is not supported by the law of this State.

While receipt of written notice of the entry of Judge Early's order by the Charleston County Clerk of Court would trigger the time for perfecting any appeal with respect to any cases filed in Charleston County which were covered by the order, it should not trigger the

---

14

See, *e.g.*, Subsection (d): "... court *may* relieve a party ..."; Subsection (e): "... *may* be deemed a consent..."; Subsection (g): "... *may* be deemed an abandonment..."; and Subsection (j): "... an individual judge or justice *may* grant or deny..."

time for perfecting the appeals in cases pending in other counties. It should initially be noted that the Respondents' contention is at odds with the manner in which the five (5) cases were historically treated by the circuit court judge. As previously stated herein, it was Judge Early's practice to send his orders to *each* of the three (3) clerks of court where the cases were pending, with instructions for the filing or entry of the orders in those counties; he did not just send them to the clerk of court in Charleston. He apparently recognized, as Respondents' counsel evidently does not, that the jurisdiction and authority of the Charleston County Clerk of Court only extended to the boundaries of Charleston County.

With respect to the subject orders, Judge Early's law clerk notified all counsel *via* e-mail on April 6, 2010 that the judge had signed the Respondents' proposed order dismissing Appellants' cases, and specifically stated that it "will be mailed *to the respective clerks of court* today." (Emphasis added)[15] When Judge Early subsequently denied the Appellants' Rule 59 motion concerning the April 6th order, he again transmitted his order of denial to *each of the three (3) clerks of court* for filing and service on "all interested parties."[16] Judge Early obviously recognized that, even though he had signed a single order, it nevertheless had to be filed in *each* case and in *each* of the counties in which the actions to which the order applied were pending. As will be hereinafter discussed, this was necessary for the orders to be final orders or judgments as to each pending case under South

---

15

See E-mail from Britton All, Law Clerk to Judge Early, dated April 6, 2010, and attached hereto as Exhibit 6.

16

See letters from Judge Early to Beaufort, Charleston and Orangeburg County Clerks of Court attached hereto as Exhibit 4.

Carolina law. Appellants could not appeal from the orders otherwise, as they would lack finality. Each case, in other words, was separate and distinct and required separate filings of documents relative to it.

Furthermore, just because Judge Early sent orders to the respective clerks of court at the same time does not mean that they were received or entered on the same date by each of the clerks. Likewise, the entry of an order by a clerk did not always result in immediate written notification of that fact to counsel; as shown above, there were times when a clerk of court did not even acknowledge having received an order, much less having filed it or provided any notice to counsel. To assert, as Respondents seem to claim in their motion, that filing in Charleston County equates to filing in Beaufort and Orangeburg counties, is an illogical and unsupported stretch which this Court should summarily reject.

Appellants acknowledge receiving written notice of the entry of the subject order by the Charleston County Clerk of Court on October 1, 2010; however, that written notice clearly only confirmed the entry of the order in Charleston County and only applied to the one case which had been filed there.[17] The only case referenced in the order which was pending in Charleston County was the *Rentz, et al. vs Orleans Gardens, et al.* case, and the written notice *on its face* was confined to that case only. Appellants timely served and filed a Notice of Appeal in the *Orleans Gardens* case, and waited for confirmation of the entry by the other clerks of court of the orders in the other cases, as entry of the orders was necessary to make the orders final and thus appealable, and receipt of written notice of such entry

---

17

See Exhibit 9 to Appellants' Notice of Appeal, contained in Exhibit "F" to the Memorandum in Support of Respondents' Motion to Dismiss.

would trigger the time in which to initiate the appellate process for those cases under Rule 203(b)(1), SCACR. Counsel for Appellants subsequently received written notice of the entry of the orders from the Beaufort County Clerk of Court in the *Palmetto, Parkview, and Pinewood* cases, whereupon a Notice of Appeal in each of those cases was served and filed in the appropriate lower and appellate courts. Having filed appeals in the other cases, and confronted with differing time limits for the appellate processes in each of the cases, as well as the preference for a single Record on Appeal to save costs, counsel for Appellants elected to also proceed with the appeal in the *Roosevelt Gardens* case which was pending in Orangeburg County, notwithstanding the fact that they had not yet received written notice of the entry of the orders in that county. Appellants contend that their actions concerning these appeals are in keeping with the language and spirit of the applicable rules, as well as with the case law and system of government in this State.

From the inception of this litigation, each of the five (5) subject cases has been treated as separate and distinct from each other; this is in accordance with the prevailing laws and rules in this state. Each of the cases has different parties, and were filed separately in three (3) different venues with three (3) different clerks of court. Appellants paid a separate filing fee to commence each action, as well as separate filing fees for any motions filed in the cases. Each case was given a separate and distinct civil action number by the clerk of the court in which it was filed, as required by Rule 79(b)(1), SCRCP. The docket number

assigned to each case is specific to the county in which the action was filed and is pending.[18] Each clerk of court was required to assign each case a separate place in the clerk's Calendar or File Book, and to receive and maintain all papers and materials relating to each case together in the file bearing the case number. See Rule 79(b)(1), SCRCP.

Under Respondents' theory, receipt of notice of the filing of the order by the Charleston County Clerk of Court would obligate the Appellants to commence their appeals with respect to actions commenced in counties other than Charleston, even though the Charleston County Clerk of Court has no jurisdiction or authority with respect to cases filed in other counties, and even though Appellants had not received written notice of the entry of the order in the other counties. Neither the applicable rules of court nor the cases cited by the Respondents support their position; none specifically deal with a single order containing multiple captions relating to actions pending between different parties in multiple counties. As shown hereinafter, the law of this state, not to mention common sense, dictate rejection of Respondents' bizarre contention.

Rule 203(b)(1), SCACR, provides in relevant part as follows:

> **Appeals from the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion... to alter or amend the judgment ... has been made, the time for appeal... shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion..."

18

See Rule 79(b)(1), SCRCP, and reference therein to "the numbering system approved by the Supreme Court by order dated March 11, 1974, as now or hereafter amended..." Under this system, cases filed in Beaufort County bear an "07" designation, cases filed in Charleston County bear a "10" designation and cases filed in Orangeburg County bear a "38" designation.

Appellants contend that this rule contemplates appeals taken only *from the court in which the action is pending.* This is evident from other portions of Rule 203 and other appellate court rules. For example, subsections (d)(1)(A) and (d)(1)(B) of Rule 203 provide that the notice of appeal "shall be filed with the clerk of the lower court," as well as with the Clerk of the Court of Appeals. The term "lower court" is specifically defined under Rule 202(b)(1), SCACR, as being "*the circuit court ... from which the appeal is taken.*" (Emphasis added) Subsection (e) of the rule requires that the notice of appeal contain, *inter alia*, the name of the court, judge and *county from which the appeal is taken*, as well as the docket number of the case in the lower court. Entry of the order, as contemplated by Rule 203, can only be made in the court *from which the appeal is taken* in order to trigger the time for the Notice of Appeal. The appeals in the *Palmetto, Parkview* and *Pinewood Park* cases were taken from Beaufort County; therefore, it is the notice of the entry in Beaufort County - not Charleston County - which triggers the time to serve and file the Notice of Appeal.

When the Notices of Appeal were filed in the instant appeals, they were filed in each case with the clerk of the court in which they were pending and from which the appeal was taken. Notwithstanding this, counsel for Respondents now advance the proposition that all of the cases should be treated as one unit, and that written notice of the entry of the orders in the Charleston case should control the appellate time limits for all of the cases.

It should initially be remembered that an appeal can only be taken from a final order, and until an order is properly reduced to writing and entered, *i.e.*, filed by the clerk of court in the county and court in which the action is pending, it is not a final order which can be appealed. "Until written *and entered*, a court has discretion to modify or amend a ruling."

Serowski v. Serowski, 381 SC 306, 672 SE2d 589 (SC App. 2009) (emphasis added). See also *Corbin v. Kohler Co.*, 351 SC 613, 571 SE2d 92 (Ct. App. 2002): "South Carolina law is clear that no order is final until it is written and entered." It is elemental in this State that an order is not final, therefore, until it has been reduced to writing and properly entered; as shown herein, it can only be properly entered in the county where the action is pending.

Additionally, our courts have traditionally held that, in order to be "final," an order must accomplish "the disposition of all issues in the action." *Link v. School District of Pickens County*, 302 SC 1, 393 SE2d 176 (1990), cited in *Appellate Practice in South Carolina*, Toal, *et al.* A final order "must finally dispose of the whole subject matter..., leaving nothing to be done but to enforce by execution what has been determined." *Good v. Hartford Accident and Indemnity Company*, 201 SC 32, 21 SE2d 209 (1942). In the present cases, when Judge Early issued his order of September 16, 2010, there were pending before him two (2) separate and additional motions which had been filed on behalf of the Appellants in all five (5) cases: a motion for recusal and vacation of prior orders, and a motion for protective order. The granting of either of these motions would have materially affected the order of September 16, 2010. Had the motion for recusal and vacation of prior orders been granted, it would have negated and rendered moot the order of September 16, 2010. Had the motion for protective order been granted, it would have provided Appellants with an alternative avenue whereby privileged documents could have been produced under seal in order to comply with the lower court orders, thereby negating the finding of contempt and dismissal of the cases contained in the order of September 16th. Accordingly, the order of September 16th was not final until Judge Early disposed of these additional two (2)

motions.[19]

Respondents rely upon this Court's decision in *Rosen, Rosen & Hagood v. Hiller*, 307 SC 331, 415 SE2d 117 (Ct. App. 1992) to support their position. This reliance is misplaced. Unlike the present situation, *Rosen* involved a single case from a single jurisdiction. The appellant in that case was notified of the entry of an order by opposing counsel, rather than by the clerk of the lower court. This Court held that this was sufficient notice under Rule 77, SCRCP, which the appellant in that case had invoked to support the appeal. That ruling appears to be correct insofar as it recognizes that written notice of the entry of the order may come from more than one (1) source, and that the source may be someone other than the clerk of court. The express language of Rule 77 states as much. This ruling, however, is inapplicable in the present cases, as we are concerned with Rule 203, SCACR, not a rule of civil procedure pertinent to the lower court proceedings. There is no evidence in these appeals of any such substitute source providing notice of the written entry of the orders in any of the cases.

As stated above, the *Rosen* case was premised upon an interpretation of the South Carolina Rules of Civil Procedure, rather than an interpretation of the South Carolina

---

19

On October 7, 2010, Judge Early issued an order denying Appellants' Motion for Recusal and Vacation of Orders. On October 22, 2010, he issued an order denying Appellants' Motion for Protective Order. In each instance, he issued a single order with multiple captions for all five (5) cases and forwarded copies of the orders to all three (3) clerks of court. Appellants timely filed Rule 59 motions with respect to each of these orders, and Judge Early issued a form order denying both Rule 59 motions on December 11, 2010. An Amended Notice of Appeal which covers the orders denying Appellants' Rule 59 motions for recusal and vacation of prior orders and for protective order, as well as the prior orders set forth in the original Notices of Appeal, is being filed under separate cover in each of the five (5) cases.

Appellate Court Rules. Specifically, the issue in *Rosen* was whether or not the appellant was entitled to relief under Rule 77(d), SCRCP. That rule requires the clerk of court to serve a notice of the entry of any order or judgment upon every party affected by the order or judgment. It specifically exempts the clerk from this requirement with respect to any party who has already received the notice, as was the case in *Rosen*. The court in *Rosen* rejected the appellant's contention that he had not received proper notice because he had not received a copy of the signed, dated and filed order from the clerk of court.

The *Rosen* decision was addressed by the South Carolina Supreme Court in 2006. In *Upchurch v. Upchurch*, 367 SC 16, 624 SE2d 643 (2006), Chief Justice Toal, in deciding the issue of the timeliness of the appeal before the Court, rejected the applicability of *Rosen*, instead finding that the case was "more comparable" to this court's decision in *Bowman v. Richland Memorial Hospital*, 335 SC 88, 515 SE2d 259 (Ct. App. 1999). Chief Justice Toal's opinion dealt specifically with the Supreme Court's interpretation of Rule 203(b), SCACR, and the language relating to the "entry" of an order. Chief Justice Toal's opinion reiterates the argument of Appellants in this case set forth above: "An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case." It is elemental that a person cannot be given notice of the entry of an order until the order has, in fact, been entered. Accordingly, in *Upchurch*, where the appellant wife did not receive notice of an order until more than two (2) months after it had been filed with the clerk of court, Chief Justice Toal appropriately stated, "To hold Wife responsible for notice of an event that had not yet occurred runs afoul of the notions of fairness and equity articulated in *Bowman*."

Chief Justice Toal's opinion rejected the contention made by the respondent in that case that a letter from the trial judge's assistant enclosing the order for filing by the clerk of court was sufficient notice to trigger the appellate process under Rule 203(b) SCACR. In this regard, Chief Justice Toal stated:

> By its plain language, Rule 203(b) requires notice of entry of the order. Entry of the order occurs when the clerk of court files the order. Delivery of the order to the clerk is not analogous to the entry of the order. Accordingly, we hold that the time to file a notice of appeal pursuant to Rule 203(b), SCACR, begins to run when written notice that the order has been entered into the record by the clerk of court has been received.

Although *Upchurch* only involved one order, one jurisdiction and one clerk of court, Chief Justice Toal's reliance upon and reference to "principles of fairness and equity" are analogous to Appellants' position with respect to the instant motion. As shown above, an appeal in a case must evolve from the court in which the case was filed and is pending. When the Appellants received written notice of the entry of the *Orleans Gardens* order by the Charleston County Clerk of Court, they had not received written notice of the entry of the order in the other cases pending outside Charleston County. It is inconsistent with the principles of fairness and equity recognized and adopted by the Court in *Upchurch* to hold the Appellants in these cases "responsible for notice of an event that had not yet occurred." It is undisputed that Appellants in the *Orleans Gardens* case filed their Notice of Appeal within thirty (30) days of receipt of written notice of the entry by the Charleston County Clerk of Court of the September 16, 2010 Order in that case. It is also undisputed that Appellants in the *Palmetto, Parkview* and *Pinewood* cases filed their Notices of Appeal within thirty (30) days of receipt of written notice of the entry of the Order in those cases by

the Beaufort County Clerk of Court, and that Appellants in the *Roosevelt* case have yet to receive written notice of the entry of the Order by the Orangeburg County Clerk of Court. To hold, as Respondents contend, that Appellants in these cases, many of whom have absolutely no involvement in the *Orleans* case, are governed by the actions of the Charleston County Clerk of Court is not only a tortured interpretation of Rule 203(b)(1), SCACR, it is a clear violation of the principles of fairness and equity which have been recognized and adopted by our Supreme Court.

Relevant to this issue is the fact that Respondents' motion gives heavy emphasis to their contention that the orders upon which their motion is based is actually a single order with a multiple caption. The initial order of April 6, 2010, which dismissed the five (5) cases previously assigned to Judge Early by Chief Justice Toal, was prepared by counsel for the Respondents. They chose the single order, multiple caption format in preparing the order. When Appellants' counsel submitted their Rule 59 motion, they simply utilized the same format as the order from which relief was being sought. The order of September 16, 2010, which denied the Rule 59 motion, again used the single order, multiple caption format earlier chosen by counsel for the Respondents in preparing the initial order. Respondents' counsel now seek to gain an undue advantage from the format of the order in question. Appellants believe that this is improper, and that they should not be penalized by a format chosen by their opponents. To the contrary, Appellants contend that they have pursued their appeals in each of the cases presently before this Court in precisely the manner prescribed and contemplated by the applicable rules and case law. To hold otherwise would not be in keeping with the fairness and equity principles referenced above.

Finally, it should be noted that the position advocated by the Respondents in their motion is contrary to the intent and construction of the governmental system in South Carolina. Counties in South Carolina are autonomous; each is a separate body politic.[20] Each county has its own courthouse and clerk of court; in fact, under South Carolina law, the courthouses are required to maintain a geographical separation from each other.[21] Certain fees charged by each county clerk of court may be established by the respective county governing bodies, and differ from county to county.[22] Although the circuit courts in each county are part of a unified state system, counties may be treated differently within such system.[23] The clerks of court for each county are required by law to be separate, and are elected by the voters in their respective counties.[24] Each clerk of court is required to issue all notices ordered in their respective court of common pleas, to attest "in his own name under the seal of the court all writs and processes issued" in the court of common pleas for his county, and to "sign officially all judgments and state the time when each is signed and

---

[20]See, e.g., §4-1-10, South Carolina Code of Laws.

[21]

See, e.g., §4-1-30, South Carolina Code of Laws, making it unlawful to locate county courthouses within eight (8) miles of the county line.

[22]See, 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.

[24]See, e.g., §14-17-10, South Carolina Code of Laws.

entered."[25] Each clerk of court is required to "make a full, fair and correct entry and record of the proceedings of the courts and other matters pertaining to his office...," to "file ... original papers in causes instituted ...," and to "preserve... all papers ... pertaining to or connected with his office."[26]

Furthermore, each clerk of court is required to file "original papers of record in each cause wherein judgment may be signed or ... decree may be entered," and is required to endorse the papers "with the character, date of filing and number on file, ... keeping all relating to the same matters together under the same number..."[27] Each clerk of court is required to use their own "Court of Common Pleas Journal," in which they shall keep, *inter alia*, "final judgments," and "copies of all orders passed, motions granted and other matters specially ordered by the court to be entered."[28] Each clerk of court is responsible for the books and papers in his or her office.[29] "The clerks ... of the several counties shall provide separate indexes for the different sets of records provided for them."[30] The Respondents' contention that the notice of entry of an order by the clerk of court in a single county triggers the time for initiating appellate relief in cases filed by other parties which are pending in other counties is anethma to this system of autonomy.

CONCLUSION

---

[25]See, e.g., §14-17-260, South Carolina Code of Laws.

[26]See, e.g., §14-17-510, South Carolina Code of Laws.

[27]See, e.g., §14-17-530, South Carolina Code of Laws.

[28]See, e.g., §14-17-540(1)(g) and (h), South Carolina Code of Laws.

[29]See, 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, SCRCP.

Where multiple cases involving different parties are pending in multiple counties, and the cases have not been consolidated, receipt of the entry of an order in one of the cases by the Clerk of Court in one of the counties should not trigger the time for filing a notice of appeal by the other parties in the cases pending in the other counties. The Respondents' position to the contrary violates the spirit and language of the South Carolina Appellate Court Rules and applicable law, the intent and construction of the governmental system in this State and the traditional concepts of justice, fairness and equity inherent in our judicial system. Accordingly, Respondents' motion to dismiss the appeals of the Appellants should be denied.

Respectfully submitted,

THOMAS A. PENDARIVS (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

and

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

January 28, 2011
Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-07-1989

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership. . . . . Appellants,

vs.

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

AFFIDAVIT OF JOEL D. BAILEY

Personally appeared before me **JOEL D. BAILEY** who, being first duly sworn, states:

1. I am a resident and citizen of the City and County of Beaufort in the State of South Carolina.

2. I am an attorney and have been continuously licensed to practice law in the State of South Carolina since 1973. I am the sole shareholder of The Bailey Law Firm, P.A., located at 510 Ribaut Road in Beaufort, South Carolina.

3. I, together with Thomas A. Pendarvis, Esquire, represent the Appellants in the above-captioned case, as well as the Appellants in four separate but related cases, to-wit, *Davis, et al. vs. Roosevelt Gardens Apartments, et al.* Case Tracking # 2010180086; *Carolina Management, et al. vs. Pinewood Park Apartments, et al.*, Case Tracking # 21010180088; *Rentz, et al. vs Orleans Gardens Apartments, et al.*, Case Tracking # 2010176826 and *Davis, et al. vs. Parkview Apartments, et al.*, Case Tracking # 2010180666.

4. The above-captioned case was filed in 2005; the other cases were filed in 2003 and 2005. No trial has ever taken place in any of these cases. The Appellants in each case are limited partners in limited partnerships wherein the above-named Respondents are general partners. Some of the Appellants hold interests in more than one of the limited partnerships, and some hold an interest in only one of the limited partnerships, but *none* of them hold interests in *all* of the limited partnerships.

5. This Affidavit is submitted in support of Appellants' Return to Respondents' Motion to Dismiss the appeal in this case, as well as in the *Roosevelt, Pinewood* and *Parkview* cases referenced above, and for such other purposes as may be proper. I prepared the said Return, and the factual statements contained therein, as well as the statements contained in this Affidavit, are based upon my personal knowledge and/or observations; I affirm that they are true and accurate to the best of my knowledge and belief. Furthermore, I am personally familiar with the documents referenced in the said Return and in this

Affidavit, and have kept or maintained originals or copies of the same in the regular course of my business as counsel of record for the Appellants in these cases.

6. Respondents contend in their Motion to Dismiss that the Appellants receipt of written notice of entry by the Charleston County Clerk of Court of an order in the *Rentz, et al. vs Orleans Gardens, et al.* case triggered the time in which Appellants had to file notices of appeal in the other cases, which involved other parties and were pending in separate counties. As counsel for the Appellants, I am of the belief that such a contention is at odds with the language and intent of Rule 203(b)(1), SCACR, as well as other laws, statutes and rules referenced in Appellants' Return to Respondents' Motion to Dismiss. Furthermore, as stated in the Return, such an interpretation of the appellate court rules would result in fundamental inequity and unfairness to the Appellants, who have been denied a hearing on the merits for nearly six (6) years - eight (8) years for the Appellants in the *Parkview* case - since filing their Complaints in the lower court.

7. By Order of Chief Justice Jean H. Toal of the South Carolina Supreme Court dated March 7, 2006, the Honorable Doyet A. Early III, resident Circuit Court Judge for the Second Judicial Circuit, was assigned to all of these cases. The order assigning the cases to Judge Early did not consolidate the cases for any purpose. Judge Early has issued an order dismissing all five (5) cases. The basis of his order involves controversial and disputed rulings related to discovery in these cases, and Appellants believe that Judge Early has significantly departed from the existing statutory and case law of this State in the issuance of this order. Additionally, there are serious issues concerning confidential communications between Appellants and their counsel, as well as issues arising under both the Federal and State Constitutions.

8. Judge Early ultimately issued a single order containing abbreviated versions of all five (5) case captions, in which he dismissed all five (5) of the cases. The order was prepared and presented to Judge Early by counsel for the Respondents. Motions for reconsideration pursuant to SCRCP 59 were made in each case, and an order denying the motions was signed by Judge Early. I received copies of letters from Judge Early to the clerks of court for Beaufort, Charleston and Orangeburg Counties, wherein he instructed them to file the order denying the Rule 59 motions and to serve all interested parties. A separate order was signed by Judge Early on December 11, 2010 with regard to other Rule 59 motions which were designed to avoid the harsh sanctions imposed by Judge Early. These included a motion for recusal and vacation of his prior orders, as well as a motion for protection whereby Appellants would have been permitted to comply with Judge Early's directive that they produce documents covered by their attorney-client privilege. Counsel for the Appellants have not yet received written notices of the entry of these orders in all of the cases; nevertheless, in an abundance of caution, and in the interest of minimizing costs, amended Notices of Appeals which include these orders are being filed in all five (5) cases.

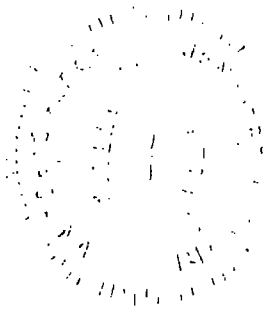
I have read the foregoing paragraphs and affirm that the information contained therein is true and accurate and is based upon my personal knowledge, observations and experience, except such information as may be stated to be based upon information and belief and, as to that information, I believe that it is true and accurate.

Joel D. Bailey (S.C. Bar # 00471)

Sworn to before me this
27 day of January, 2011

Jennifer A. Clark
Notary Public for South Carolina

My Commission Expires: 7-8-2015



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-07-1989

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership. . . . . Appellants,

vs.

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

AFFIDAVIT OF 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

Jennifer A. Clark
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

EXHIBIT
1

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

EXHIBIT
2

cc: Joel D. Bailey, J.D. (via e-mail w/o enclosure)
Marvin D. Infinger, J.D. (via U.S. Mail w/o enclosure)
Anne Ross Rosen, J.D. (via U.S. Mail w/o enclosure)
Ellis M. Johnston, II, J.D. (via U.S. Mail w/o enclosure)
Calvin T. Vick, Jr., J.D. (via U.S. Mail w/o enclosure)
Jesse C. Belcher, Jr., J.D. (via U.S. Mail w/o enclosure)
Honorable Doyet A. Early, III (via U.S. Mail w/o enclosure)

Office of the Clerk of Court

Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901-1128
(843)255-5050 Fax: (843)255-9412

Jerri Ann Roseneau
Clerk of Court

RECEIVED NOV 2 9 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

You only had .50 in your copy card account, so I decided to send ~~out~~ a receipt along with the orders.

Thanks -
Kristy

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!

EXHIBIT 3

STATE OF SOUTH CAROLINA

2010 SEP 20 PM 3:52

S.C.

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.

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

Florence, South Carolina

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 80
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

September 16, 2010

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

Re: Laurance H. Davis, Jr. et al v. Parkview Apartments, 03-CP-07-726
Laurance H. Davis, Jr. et al v. Pulmetto Apartments, 05-CP-07-1989
Carolina Management Corp of Beaufort, et al v. Pinewood Park Apartments, 05-CP-07-1990

Dear Ms. Roseneau:

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

Sincerely,

D. A. Early, III

DAE:khc
Enclosures
cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire

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

RECEIVED NOV 3 0 2010
10 NOV 23 PM 1:20
BEAUFORT COUNTY
CLERK OF COURT

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

EXHIBIT 4

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 - r...t.

Enclosure
cc: Joel D. Bailey, J.D. (via e-mail w/o enclosure)
Marvin D. Infinger, J.D. (via U.S. Mail w/o enclosure)
Anne Ross Rosen, J.D. (via U.S. Mail w/o enclosure)
Ellis M. Johnston, II, J.D. (via U.S. Mail w/o enclosure)
Calvin T. Vick, Jr., J.D. (via U.S. Mail w/o enclosure)
Jesse C. Belcher, Jr., J.D. (via U.S. Mail w/o enclosure)
Honorable Doyet A. Early, III (via U.S. Mail w/o enclosure)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs, v. Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.	)	Beaufort County C.A. No. 2003-CP-07-726
Laurance H. Davis, Jr., *et al.*, Plaintiffs, v. Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.	)	Orangeburg County C.A. No. 2005-CP-38-1131
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

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

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'

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.

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

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

Jennifer A. Clark

Sworn to before me this

27th day of January, 2011

Jennifer P. Kelley

Notary Public for 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

EXHIBIT
1

cc: Joel D. Bailey, J.D. (via e-mail w/o enclosure)
Marvin D. Infinger, J.D. (via U.S. Mail w/o enclosure)
Anne Ross Rosen, J.D. (via U.S. Mail w/o enclosure)
Ellis M. Johnston, II, J.D. (via U.S. Mail w/o enclosure)
Calvin T. Vick, Jr., J.D. (via U.S. Mail w/o enclosure)
Jesse C. Belcher, Jr., J.D. (via U.S. Mail w/o enclosure)
Honorable Doyet A. Early, III (via U.S. Mail w/o enclosure)

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

RECEIVED SEP 2 0 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.

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

EXHIBIT 1

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

October 7, 2010

The Honorable Julie J. Armstrong
100 Broad Street Suite 106
Charleston, SC 29401

Re: Rhonda G. Rentz, et al v. Orleans Gardens, et al, 05-CP-10-4229

Dear Ms. Armstrong:

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 1

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

October 7, 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

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

October 7, 2010

The Honorable Jerri Ann Roseneau
Post Office Box 1128
Beaufort, SC 29901

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 Corporation of Beaufort, et al v. Pinewood Park Apartments, et al, 05-CP-07-1990

Dear Ms. Roseneau:

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

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

October 22, 2010

The Honorable Julie J. Armstrong
100 Broad Street Suite 106
Charleston, SC 29401

Re: Rhonda G. Rentz v. Orleans Gardens, 05-CP-10-4229

Dear Ms. Armstrong:

Please find enclosed for filing an 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

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

October 22, 2010

The Honorable Winnifa Brown-Clark
Post Office Box 9000
Orangeburg, SC 29115

Re: Laurance H. Davis v. Roosevelt Gardens, 05-CP-38-1131

Dear Ms. Brown-Clark:

Please find enclosed for filing an 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

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

October 22, 2010

The Honorable Jerri Ann Roseneau
Post Office Box 1128
Beaufort, SC 29901

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 Corporation of Beaufort, et al v. Pinewood Park Apartments, et al, 05-CP-07-1990

Dear Ms. Roseneau:

Please find enclosed for filing an 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

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

78

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

ORDER - ORDER-PLNTFFS' 2ND RECUSAL MOT IS DENIED

THIS JUDGMENT WAS ENTERED ON THE 8TH DAY OF OCTOBER , 2010 AND A COPY MAILED FIRST-CLASS THIS 15TH DAY OF OCTOBER , 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

EXHIBIT 2

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

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

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

Received
Nov. 6th, 20

24

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

ORDER - ORDER DENYING PLNTFFS' MOTION FOR PROTECTIVE ORDER

THIS JUDGMENT WAS ENTERED ON THE 27TH DAY OF OCTOBER , 2010 AND A COPY MAILED FIRST-CLASS THIS 4TH DAY OF NOVEMBER , 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

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

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

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

63

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

ORDER - ORDER-PLNTFF'S MOT TO ALTER OR AMEND ORDER
DENYING PLNTFF'S MOT FOR PROTECTIVE ORDER & THE ORDER DENYING

THIS JUDGMENT WAS ENTERED ON THE 17TH DAY OF DECEMBER , 2010 AND A COPY MAILED FIRST-CLASS THIS 31ST DAY OF DECEMBER , 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

Received
1-5-11
SW

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

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

The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 2. 2009

Ellis M. Johnston. Esquire
Calvin T. "Ted" Vick. Jr.. Esquire
Haynsworth Sinkler Boyd, P.A.
P O Box 2048
Greenville. SC 29602

Re: Davis, Laurance v Parkview Apartments
Case Tracking Number 2009-138726

Dear Counsel:

The following Order has been endorsed on Respondents' Motion to Dismiss Appeal in the above entitled case on appeal.

"Granted.

s/ Jasper M. Cureton A. J.

December 01. 2009."

Please be advised. pursuant to Rule 221(b) of the South Carolina Appellate Court Rules. the remittitur in this case will be sent to the Clerk of Court for Beaufort. Charleston and Orangeburg Counties after fifteen (15) days, exclusive of the date of filing this Order

Very truly yours.

CLERK

JFB/pd

cc: John S. Nichols. Esquire
Blake A. Hewitt. Esquire
The Honorable Julie J. Armstrong
The Honorable Winnifa Brown-Clark
Jerri Roseneau

EXHIBIT 3

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

September 16, 2010

The Honorable Julie J. Armstrong
100 Broad Street Suite 106
Charleston, South Carolina 29401-2258

Re: Rhonda G. Rentz, et al v. Orleans Gardens, 05-CP-10-4229

Dear Ms. Armstrong:

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 4

Received
9-20-10

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

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

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 90
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

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

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

Received
Fri.
10-1-10
(80)

13

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

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

EXHIBIT 5

BAILEY, JOEL D
PO BOX 1437
BEAUFORT SC 29901-1437

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

Date: Tuesday, April 6, 2010 8:02 AM

From: Early, Doyet A. Law Clerk (Britton All) <dearlylc@sccourts.org>

To: Thomas A. Pendarvis <tpendarvis@pendarvislaw.com>

Cc: Joel D. Bailey <baileylawfirm@charter.net>, Jennifer Clark <JClark@pendarvislaw.com>, Johnston, II, J.D., Ellis M. <ejohnston@hsblawfirm.com>, Vick, Ted <tvick@hsblawfirm.com>, Leslie Toia <LToia@pendarvislaw.com>

Subject: Parkview - Davis v. Aimco

Counsel,

Judge Early has signed 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. They will be mailed to the respective clerks of court today.

Thanks!

Britton All

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

EXHIBIT 6

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

RECEIVED
JAN 28 2011
SC Court of Appeals

Case No. 2005-CP-07-1989

Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership. . . . . Appellants,

vs.

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

PROOF OF SERVICE

I, Joel D. Bailey, of The Bailey Law Firm, P.A., certify that I have served one (1) copy of Appellants' Return to Respondents' Motion to Dismiss with supporting documentation on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 28th 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 (SC Bar # 471)
THE BAILEY LAW FIRM, P.A.
PO Box 1437, 510 Ribaut Road
Beaufort, South Carolina 29901-1437
843-525-6090
843-525-6070 (fax)
baileylawfirm@charter.net

Counsel for Appellants

January 28, 2011
Beaufort, South Carolina

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

January 28, 2011

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

RE: Laurance H. Davis, Jr., et al. vs. Palmetto Apartments, et. al.
Case No. 2005-CP-07-1989
Case Tracking # 2010180087

Dear Ms. Gee:

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 to Dismiss, together with supporting documentation. Also enclosed is 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.

RECEIVED
JAN 28 2011
SC Court of Appeals

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 Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180087

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.

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

I. WRITTEN NOTICE OF ENTRY OF THE SINGLE ORDER DENYING APPELLANTS' RULE 59 MOTION FOR RECONSIDERATION TRIGGERS TIME FOR APPEAL IN ALL CASES SUBJECT TO THE ORDER.[1]

A. Central Facts

There are three documents that are critical to determining whether Appellants timely filed their Notice of Appeal pursuant to Rule 203(b)(1), SCACR: (1) the **single** written April 6, 2010 Order, which applied on its face to all five cases (including the instant case), and dismissed all five cases as sanctions for plaintiffs' contempt of court ("Sanctions Order;" see Exhibit B to Memorandum in Support of Respondents' Motion to Dismiss); (2) the **single** written April 22, 2010 Motion for Reconsideration, which was served and filed **jointly** by all plaintiffs in all five cases (including the plaintiffs/Appellants in this case), applied on its face to all five cases (including the instant case), and sought to alter or amend the Sanctions Order ("Motion for

[1] There are "four related appeals" (collectively, with this appeal, "all five cases") which take issue with the same Order. Appellants' attorneys in the instant appeal also represent the appellants in the four related appeals (including Rentz, et al. v. Orleans Gardens, et al., Court of Appeals Case No. 2010176826; Laurance H. Davis, Jr., et al. v. Parkview Apartments, et al., Court of Appeals Case No. 2010180666; Carolina Management Corporation, et al. v. Pinewood Park Apartments, et al., Court of Appeals Case No. 2010180088; and, Laurance H. Davis, Jr., et al. v. Roosevelt Gardens, et al., Court of Appeals Case No. 2010180086), and they represented all of the plaintiffs in all five cases in the trial court. Thus, they had actual notice that the Order, which applied to all five cases, had become final, *i.e.*, it could not be amended or withdrawn without further order of the Court.

Reconsideration;" see Exhibit C to Memorandum in Support of Respondents' Motion to Dismiss); and (3) the **single** written September 16, 2010 Order, which applied on its face to all five cases (including the instant case), and denied the plaintiffs' **combined** Motion for Reconsideration ("Order Denying Motion for Reconsideration;" see Exhibit D to Memorandum in Support of Respondents' Motion to Dismiss). The Order Denying Motion for Reconsideration was entered by all three clerks of court on September 20, 2010 (see **Exhibit 7** hereto, Craddock Affidavit at Paragraphs 9-10 and Exhibits D-G thereto), and Appellants' attorneys received written notice of entry of the Order from Charleston County on October 1, 2010, more than 60 days before they filed notice of appeal in this case.

The Sanctions Order was issued as a result of Appellants in all five cases failing to comply with the lower court's Orders of March 3, 2009 (the "General Discovery Order;" see Exhibit 3 to Notice of Appeal) and July 28, 2009 (the "Privilege Discovery Order;" see Exhibit 7 to Notice of Appeal) compelling them to provide adequate responses to Respondents' discovery requests and to produce certain documents to Respondents. Each of Appellants' discovery responses in all five cases, to include amendments thereto (except as noted below in footnote 2), were served by all Appellants in all five cases as a joint or consolidated response to Respondents' discovery requests (see cover page, signature page and proofs of service, attached hereto as **Exhibits 1, 2, 3, 4, and 5**). Indeed, even the Appellants' Privilege Log and supplement were served as joint documents by all Appellants in all five cases (see **Exhibits 1 and 6**). It was these

joint responses by Appellants in all five cases that the lower court found to be inadequate, resulting in the Sanctions Order.[2]

The critical issue in this Motion to Dismiss is whether Appellants served their Notice of Appeal within 30 days after "receipt of written notice of entry" of the Order denying their Motion for Reconsideration (of the Sanctions Order). See Rule 203(b)(1), SCACR; see also Rule 59(f), SCRCP.

Appellants' attorneys acknowledge that they received written notice of the entry of the Order Denying Motion for Reconsideration from the Charleston County Clerk of Court no later than October 1, 2010. See Exhibit E to Memorandum in Support of Respondents' Motion to Dismiss (Notice of Appeal in *Rentz, et al. v. Orleans Gardens, et al.*, Case No. 2010176826, at p.2, ¶ 9). Thus, the Appellants' attorneys, and through them the Appellants, had first-hand knowledge of the **single** Sanctions Order, the **single** Motion for Reconsideration, and actual written notice, on October 1, 2010, that the Charleston County Clerk of Court had entered the **single** Order Denying Motion for Reconsideration. Yet, Appellants contend that the **written notice of entry of the single** Order Denying Motion for Reconsideration, which they admittedly received on October 1, 2010, was not effective so as to start the time for their appeal in this case. Appellants' position is untenable.

---

[2] In January, 2010, after dismissal of the single appeal to this Court, which was filed jointly by Appellants in all five cases, and denial of their single, joint Petition for Writ of Prohibition or in the Alternative Writ of Certiorari in the Supreme Court, the *Parkview* Appellants, alone, served amended responses to Respondents' discovery requests that did not cure the prior deficiencies.

B. "Notice of Entry of the Order or Judgment"

Rule 203(b)(1), SCACR, requires that a party serve his notice of appeal on all respondents "within thirty (30) days after receipt of written notice of entry of the order or judgment." It does not specify who must provide the notice, or even what the notice must state, other than "notice of entry of the order." In this case, Appellants received a signed and file-stamped (*i.e.*, entered and final) copy of the **single** Order Denying Motion for Reconsideration on October 1, 2010. It clearly applied on its face to all five cases, in both the caption and the body of the Order. It denied the combined motion of Appellants in all five cases for reconsideration of the Sanctions Order, which, itself, applied to all five cases. The copy received by Appellants clearly showed that the Order had been signed by Judge Early and entered by the Charleston County Clerk of Court. Like the Sanctions Order and the plaintiffs' Motion for Reconsideration before it, the file-stamped Order Denying Motion for Reconsideration was a single and indivisible instrument. Once the instrument was entered, it was entered for all purposes stated therein. This is in accord with the established law of South Carolina.

In short, Appellants had **literally** received "notice of entry of order." **Substantively**, they were also on notice that the Order was final, *i.e.*, could not be withdrawn or amended without further order of the Court. **Administratively**, the Order had been entered by all clerks of court on September 20, 2010, and this information was publicly available on the respective clerks' online dockets within a week of Appellants' receipt of the October 1, 2010 notice, if not sooner (see **Exhibit 7**, Craddock Affidavit at Paragraph 8).

In Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006), the Supreme Court of South Carolina considered the key language in Rule 203(b), SCACR, "receipt of written notice of entry of the order or judgment." The court focused on notice of the *entry* of the order or judgment, noting:

> 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. *Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) (citations omitted). However, "the moment [the order] is filed by the clerk of court, it becomes the judgment of the court, and fixes the rights of the parties." *Archer v. Long*, 46 S.C. 292, 295, 24 S.E.2d 83, 84 (1896). Stated otherwise, the effective date of an order is not when it is signed by the judge, but when it is entered by the clerk of court. *Bowman*, 335 S.C. at 93, 515 S.E.2d at 261.

Id. at 22-23, 646. In the present case, it is undisputed that the written notice that Appellants received on October 1, 2010, revealed that the **single** Order Denying Motion for Reconsideration, which applied on its face and by its terms to all five cases (including the instant case), **had been entered by the clerk of court**. The clerk did not and could not enter a mere *part* of the single, indivisible Order Denying Motion for Reconsideration. The entire Order had been entered, it was effective in its entirety, and thus, upon receipt of written notice of entry of the Order, the time for appeal began with respect to *all cases* and *all issues* affected by the filed Order. In the words of Upchurch, the moment the Order was filed by the clerk of court, it became the judgment of the court, and fixed the rights of the parties. Id. at 22-23, 646.

The ultimate holding in Upchurch, that the appellant's notice of appeal was timely, does not apply in this case. In Upchurch, the respondent claimed the notice of appeal was not timely because it was served more than 30 days after appellant received a copy of the court's letter to the clerk of court enclosing the signed order for filing, though

the appellant in that case had not received notice of *entry* of the order until later. In the instant case, though Appellants did receive a copy of the court's September 16, 2010 letters to the clerks of court enclosing the signed Order and instructing the clerks to perform the ministerial task of filing it, **Respondents rely on the subsequent written notice of entry of the Order from the clerk of court on October 1, 2010**, more than 60 days before Appellants filed their Notice of Appeal. The receipt of notice is not disputed, as Appellants' counsel acknowledge receipt of notice of entry of the Order from Charleston County on October 1, 2010, in the Notice of Appeal filed in the *Orleans Gardens* case. "Entry of the order occurs when the clerk of court files 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." Id. at 24, 647. Thus, the holding in Upchurch supports a finding that Appellants failed to timely serve their Notice of Appeal in this case.

This Court's opinion in Rosen, Rosen & Hagood v. Hiller, 307 S.C. 331, 415 S.E.2d 117 (Ct. App. 1992) (cited by the Supreme Court in Upchurch), addresses the type and quality of notice that is sufficient to satisfy the requirement of "notice of entry of the order or judgment." Though Rosen does not directly address timely notice of appeal under Rule 203(b), SCACR, it does address the question of sufficient notice under Rule 77(d), SCRCP, which includes the same "notice of the entry of an order or judgment" language. Rosen makes it clear that the person providing notice of entry of an order need not be the clerk of court, nor must the notice include an actual copy of the signed and recorded order. Id. at 334-35, 118-19 (discussing Rule 77(d), SCRCP, 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). See also Official Notes to Rule 77, SCRCP ("This Rule 77 is substantially identical to the Federal Rule and present State practice. The only additions are the requirement in Rule 77(d) that the Clerk mail notice of entry of orders or judgment, **unless (as is customary) they have been notified, usually by the judge**..." (emphasis added)).

In Rosen, the court issued an order on April 11, 1989, denying the appellants' motion to transfer venue. The respondent mailed a letter to counsel for the appellants on April 17, 1989, enclosing unsigned, undated, and unfiled copies of the April 11 order, and stating, "In the event you have not received copies directly from the clerk's office, I am enclosing copies of an order denying your motion for Change of Venue..." Rosen, 307 S.C. at 332-33 (including Note 1), 415 S.E.2d at 117. This Court held the April 17 notice from respondent was sufficient to constitute notice to appellants of the order's filing. Id. at 335, 119. In light of the holding in Rosen, the notice of entry of the Order Denying Motion for Reconsideration, which Appellants received from the clerk of court on October 1, 2010, is clearly sufficient.

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).

II. APPELLANTS' CURRENT CLAIM OF INSUFFICIENT NOTICE OF ENTRY OF THE ORDER IS CONTRARY TO ITS PRIOR FILINGS THROUGHOUT THE LITIGATION

Appellants in all five cases seem to argue that they must receive written notice of entry of an Order from the clerk of court of the county in which they filed their lawsuit before there is the requisite "finality" necessary to appeal (or by extension, file a Rule 59(e) motion). History does not support their position.

Prior to the service of the untimely Notice of Appeal that initiated this appeal, Appellants made numerous Motions for Reconsideration, pursuant to Rule 59(e), SCRCP, and an earlier Notice of Appeal (dismissed as premature because it sought review of an interlocutory discovery order), in the five related cases, including the case giving rise to this appeal. In each of those instances preceding entry of the pivotal Order Denying Motion for Reconsideration, spanning from December 2008 through September 2010, Appellants in all five cases filed a **single** Rule 59 Motion or Notice of Appeal, **without having first received notice of entry of the subject orders from each of the three clerks of court**, as they *now* claim is necessary. This is significant because the relevant language in Rule 203(b)(1), SCACR ("after receipt of written notice of entry of the order or judgment"), is virtually the same as the relevant language in Rule 59(e), SCRCP ("after receipt of written notice of the entry of the order"). Appellants' history of filing Rule 59 Motions and a prior Notice of Appeal in all five cases without first receiving notice of entry by each of the clerks, coupled with the notice they *actually* received of the entry of the single Order Denying Motion for Reconsideration in these

cases, highlight the incongruity of Appellants' current argument that they did not have sufficient notice of the entry of the Order as of October 1, 2010.

The information pertaining to Appellants' various Rule 59 motions and previous appeal, the entry of the subject orders by the clerks of court, and the notice (or lack thereof) received from the clerks is presented more fully in the Affidavit of Hugh Craddock, which is attached hereto as **Exhibit 7**. The information presented concerning the entry of the subject orders and any notice sent to the parties by the clerks of court is based on the information published on each of the three clerks' online dockets for these cases. See Rule 77(d), SCRCP ("Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by first class mail upon every party affected thereby ..., **and shall make a note in the case file or docket sheet of the mailing.**" (emphasis added)). These prior instances, which unanimously contradict Appellants' current position as to the sufficiency of the October 1, 2010 notice of entry of the Order Denying Motion for Reconsideration, are summarized as follows:

- **Order Denying Plaintiffs' Motion to Compel No. 2 (12/17/08)**
    - Order entered by the Beaufort clerk on 12/23/08;
    - service of Plaintiffs' single Motion to Alter or Amend for all five cases on 12/30/08;
    - Order entered by the Charleston clerk on 12/31/08 and by the Orangeburg clerk on 1/5/09;
    - no record of notice of entry of Order sent by any clerk.
- **Order Appointing the Honorable Gary E. Clary as Special Master for Resolution of Specified Discovery Disputes (12/30/08)**
    - Order entered by the Beaufort clerk on 1/6/09, by the Orangeburg clerk on 1/8/09, and by the Charleston clerk on 1/12/09;

- service of Plaintiffs' single Motion to Alter or Amend for all five cases on 1/13/09;

- no record of notice of entry of Order sent by any clerk.

- **Order Granting in Part and Denying in Part Plaintiffs' Motion to Compel, Dated July 29, 2005 (3/3/09)**

  - Order entered by the Beaufort clerk on 3/9/09;

  - service of Plaintiffs' single Motion to Alter or Amend for all five cases on 3/13/09;

  - Order entered by Orangeburg clerk on 3/17/09;

  - no record of notice of entry of Order sent by any clerk.

- **Order Granting Defendants' Motion to Compel, Dated November 6, 2008 (3/3/09)**

  - Order entered by the Beaufort clerk on 3/10/09;

  - service of Plaintiffs' single Motion to Alter or Amend for all five cases on 3/13/09;

  - Order entered by Charleston clerk on 3/16/09;

  - Charleston clerk sent notice of entry of Order to the parties on 3/20/09;

  - no record of notice of entry of Order sent by any other clerk.

- **Order (Granting Motion to Continue the Trial) (3/9/09)**

  - Order entered by the Beaufort clerk on 3/16/09, by the Charleston clerk on 3/19/09 and by the Orangeburg clerk on 3/20/09;

  - service of Plaintiffs' single Motion to Alter or Amend for all five cases on 3/23/09;

  - Charleston clerk sent notice of entry of Order to the parties on 3/24/09;

  - no record of notice of entry of Order sent by any other clerk.

- **Order Adopting Findings and Conclusions of Special Master Clary (6/2/09)**

  - order entered by the Beaufort clerk on 6/4/09;

- Service of Plaintiffs' single Motion to Alter or Amend for all five cases on 6/11/09;

- no record of notice of entry of Order sent by any clerk.

- **Order Amending Court's Order Dated June 2, 2009 (7/28/09)**

  - Order entered by the Beaufort clerk on 8/3/09 and by the Orangeburg and Charleston clerks on 8/6/09;

  - Charleston clerk sent notice of entry of Order to the parties on 8/12/09;

  - no record of notice of entry of Order sent by any other clerk;

  - service of **Plaintiffs' <u>single</u> Notice of Appeal <u>for all five cases</u>** on 9/10/09 (i.e., within 30 days of receipt of written notice from the Charleston County Clerk that it had entered the subject order; *compare* to the present facts).

- **Order Granting Defendants' Two Motions for Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt (4/6/10)**

  - Order entered by the Orangeburg clerk on 4/8/10 and by the Beaufort and Charleston clerks on 4/9/10;

  - Beaufort clerk sent notice of entry of Order to the parties on 4/12/10;

  - Charleston clerk sent notice of entry of Order to the parties on 4/15/10;

  - no record of notice of entry of Order by Orangeburg clerk;

  - service of Plaintiffs' single Motion for Reconsideration, Alteration or Amendment for all five cases on 4/22/10;

  - *Order Denying Motion for Reconsideration signed 9/16/10, and entered by all three clerks of court on 9/20/10 (Appellants' counsel acknowledges receipt of written notice of entry of the Order from Charleston County Clerk of Court on 10/1/10)*

Appellants' current position, that it could not or need not serve Notice of Appeal in each of the five affected cases until it received written notice of entry of the Order from each of the respective clerks of court, is a clear departure from their prior Rule

59(e), SCRCP, and Rule 203(b)(1), SCACR, practices in this litigation, as well as the parties' and the trial court's treatment of the motions and orders as consolidated for all intents and purposes.

III. MISCELLANEOUS ARGUMENTS ADVANCED BY APPELLANTS

Appellants make a number of arguments, which are not relevant to the narrow issue presented by Respondents' Motion to Dismiss. These arguments are addressed briefly below. More than anything, Appellants focus on *entry* of the Order Denying Motion for Reconsideration in each of the three counties, but that is not the issue in the Motion to Dismiss, in light of the fact that the Order was *entered by each of the clerks of court* on September 20, 2010. The issue is whether the written notice of entry of the Order received by Appellants' counsel on October 1, 2010 was sufficient to commence the time for serving Notice of Appeal in each of the five cases affected by the entered Order.

A. Appellants claim that their attorneys never received notice that the Order Denying Motion for Reconsideration had been entered by the Orangeburg County Clerk of Court.

Appellants claim in their Return, dated January 28, 2011 (and their attorneys, Mr. Bailey and Mr. Pendarvis, and a paralegal, Ms. Clark, claim in sworn affidavits attached to the Return), that their attorneys had not, as of that date, received written notice of the entry of the Order Denying Motion for Reconsideration by the Orangeburg County Clerk of Court. In fact, Ms. Clark states that, when she spoke with the Orangeburg Clerk of Court's office on November 29, 2010, it did not have a copy of the Order and she has not heard from the clerk's office on the subject since. Appellants' claim is as puzzling as it is

ludicrous. **The Amended Notice of Appeal filed by Appellants' attorneys (Bailey and Pendarvis) in the *Roosevelt Gardens* appeal** (Court of Appeals Case No. 2010180086; Appeal from Orangeburg County Court of Common Pleas) on or about January 28, 2011, states, at Paragraph 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." See **Exhibit 10** hereto (emphasis added). Further, the copy of the Order attached to the Amended Notice of Appeal (and to the original December 3, 2010 Notice of Appeal) as Exhibit 9 is file-stamped, and clearly bears the "True Copy" stamp of the Orangeburg County Clerk of Court. As if the above were not enough, the Orangeburg County Clerk of Court's online docket shows that the Order was entered on September 20, 2010, as a matter of public record (see **Exhibit 7**, Craddock Affidavit at Paragraph 10 and Exhibit G thereto). In light of this irrefutable evidence, Appellants' current claim that they have not yet received sufficient notice of entry of the Order by Orangeburg County begs the question: Exactly what would Appellants concede constitutes sufficient notice of entry of the Order under Rule 203(b)(1), SCACR?

B. Appellants argue the five related cases should not be treated as a group.

Appellants argue that the five cases involve different persons, different partnerships, different properties and, though the claims for breach of fiduciary duties are the same, each case has specific facts and circumstances that are applicable only to it and not to the other cases. They imply that it would be unfair and inequitable to group the cases together. This ignores the fact that the Appellants' inadequate discovery responses, which prompted the General Discovery Order (3/3/09) and Privilege Discovery Order

(7/28/09), and which ultimately resulted in the Sanctions Order (4/6/10) due to Appellants' continuing failure to comply, were joint and combined responses of all plaintiffs in all five cases (see e.g., **Exhibits 1-5** hereto), without differentiating the responses provided or objections made among the plaintiffs in the five cases. All plaintiffs in all five cases responded to Respondents' discovery requests with a singular shotgun approach, yet now they argue that they should be treated separately. The fact that each case involves a different property, and that there is some variance in the plaintiffs from case-to-case (though all were represented by attorneys Bailey and Pendarvis), does not affect the commonality of the inadequate joint discovery responses or the unified contempt of court of all plaintiffs in all five cases. Further, as shown above, the procedural history of the case is that Judge Early's orders, not *just* the Order Denying Motion for Reconsideration that triggered the time for appeal, were single orders applicable to all five cases, as were the motions of plaintiffs and defendants.

In any event, all Appellants in all five cases were fully aware of the single entered Sanctions Order, their single, consolidated Motion for Reconsideration of the Sanctions Order, and, as of October 1, 2010, the single entered Order Denying Motion for Reconsideration.

C. Appellants now complain of the "single order, multiple caption format" utilized in the five related cases.

Appellants argue that Respondents used a single order, multiple caption format for their proposed order, which was ultimately signed by Judge Early on April 6, 2010 (the Sanctions Order), that this was improper, and that individual Appellants should not be penalized because of that format. First, notice of entry of the Order Denying Motion for Reconsideration, which was entered on September 20, 2010, triggered the start of the

time for appeal, not the Sanctions Order. The Order Denying Motion for Reconsideration was drafted by Judge Early, without assistance from any counsel, and in response to *Respondents'* single, consolidated Motion for Reconsideration. Second, Appellants conveniently ignore the history of all parties and the trial court using such a consolidated format for filings (discovery, motions, memoranda and orders) in the five cases.

At least as early as August 2006, three and one-half years before the Sanctions Order was ever entered, Appellants themselves used a multi-caption format in responding to various memoranda of law, and even captioned the cases as being "consolidated cases" (see **Exhibit 8** hereto). This consolidated format was utilized by all parties, and Judge Early, during the litigation. In fact, Appellants in this case, as well as the four related cases, filed a single Notice of Appeal in this Court on September 10, 2009, as a consolidated appeal on behalf of all plaintiffs in all five cases (see **Exhibit 9** hereto). That was seven months before the Sanctions Order was entered. That appeal was ultimately dismissed as being a premature appeal from an interlocutory discovery order, but that consolidated appeal, as well as the various motions, discovery responses and orders referenced in the parties' memoranda relating to the instant Motion to Dismiss, all demonstrate that the parties and the trial court consistently treated the five cases as a consolidated group. The fact that Appellants never before voiced their complaint regarding the single order, multi-caption format, but actually utilized that format themselves, speaks volumes as to the legitimacy of their complaint now. For Appellants to claim Respondents sought some unfair advantage by utilizing a combined case caption, under these circumstances, is wrong.

In any event, and focusing on the issue at hand, what is important is that Appellants had actual knowledge of the entry of the single, multi-captioned Order Denying Motion for Reconsideration upon their receipt of the written notice from the clerk of court on October 1, 2010.

D. Each of South Carolina's counties is a separate body politic.

Respondents agree that each of the State's counties is a separate body politic, and that each county has a clerk of court, etc., but those facts have no relevance in the current Motion to Dismiss. The purpose of Rule 203(b)(1), SCACR, is to provide an aggrieved party a time frame in which to timely file an appeal. In the absence of a timely notice of appeal, the Court is without jurisdiction. Here, as set forth supra, the filing of the single, indivisible Order in Charleston alone made it a final Order, as it could not be altered, amended, or withdrawn without a separate order of the Court. In fact, the Order was entered by each of the three clerks of court on September 20, 2010, a fact that was reflected in the public record, i.e., the clerks' online dockets. Appellants were on notice that the Order was final no later than October 1, 2010, when they received written notice of its entry from the Charleston County Clerk of Court. In light of these facts, Appellants' counsel could not reasonably be said to have been oblivious to the entry of the Order after October 1, 2010, let alone a month later. Appellants should not be allowed to escape the consequences of the notice of entry of the Order by hiding their heads in the sand.

E. Appellants claim the Respondents' Motion to Dismiss is defective.

Appellants' construction of Rule 240(c)(3), SCACR, is so strained as to require little response. Respondents are required to attach an affidavit to their Motion to Dismiss

(or Memorandum in Support) **if** Respondents rely on affidavit testimony in support of their Motion. Respondents did not rely on affidavit testimony in support of their Motion to Dismiss (though they do rely on the Affidavit of Hugh Craddock now, in rebuttal to Appellants' arguments, and Mr. Craddock's affidavit is attached hereto). The documents attached to Respondents' Motion to Dismiss and supporting memorandum were the very documents attached to Appellants' Notice of Appeal, with the sole exception of Appellants' Motion for Reconsideration of the lower court's Sanction Order. It is respectfully submitted that it is not necessary to file an affidavit to authenticate documents already before the Court of Appeals and filed by the opposing party. In an abundance of caution, Respondents attach hereto the Affidavit of Ellis M. Johnston, II (see **Exhibit 13**), for the purpose of authenticating certain documents filed in the lower court.

F. Appellants contend the Order denying their Motion for Reconsideration was not final because there was then pending a Motion for Recusal and Vacation of Prior Orders and a Motion for Protective Order.

First, it is difficult to imagine a more final order than one which dismisses a case, i.e., the Sanctions Order.

Second, Appellants' Motion for Reconsideration of the trial court's Sanctions Order presented the same issues as were presented in Appellants' separate motions for recusal and for protective order:

> This motion is subject to and not in wavier 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.

See **Exhibit 11** hereto, Motion for Reconsideration at p. 2. Among the reasons espoused by Appellants in support of their Motion for Reconsideration was:

> [The Sanctions Order] 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...

See **Exhibit 11**, Motion for Reconsideration at p. 3. Appellants' Motion for Reconsideration, attached in its entirety to the Memorandum in Support of Respondents' Motion to Dismiss as Exhibit C, is 52 pages long, and argues extensively the same grounds that are argued in Appellants' separate motions for recusal and for protective order. Thus, the Order denying Appellants' Motion for Reconsideration implicitly, if not expressly, denied Appellants' Motion for Recusal and Vacation of Prior Orders and Motion for Protective Order.

Appellants, after being informed of Judge Early's ruling on their Motion for Reconsideration, requested a separate written Order on the Recusal Motion and the Protective Order Motion (see **Exhibit 12** hereto). Judge Early accommodated that request. This did not make the Order denying Appellants' Motion for Reconsideration any less final.

G. Appellants' "fairness and equity" argument

Appellants take the Supreme Court's discussion of the principles of fairness and equity in Upchurch out of context. In Upchurch, the court stated, "To hold Wife responsible for notice of an event [filing of the order by the clerk of court] that had not yet occurred runs afoul of the notions of fairness and equity articulated in *Bowman*." Upchurch, 367 S.C. at 24, 624 S.E.2d at 646-47 (citing Bowman v. Richland Mem'l

Hosp., 335 S.C. 88, 515 S.E.2d 259 (Ct. App. 1999)). That is not the case here, as all clerks had filed the Order on September 20, 2010, before the Appellants' counsel received notice of entry of the Order on October 1, 2010. Under the facts in the instant case, equitable relief from the consequences of Appellants' failure to comply with Rule 203(b), SCACR, is not available, as a matter of law. "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." USAA Property and Casualty Insurance Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)).

In addition, it is clear that, even giving Appellants the reasonable benefit of the doubt, they failed to exercise any semblance of vigilance or diligence in this matter. Under these circumstances, "the ancient maxim that 'equity aids the vigilant and diligent' operates to deprive [the litigant] of any possible relief in equity." Collins v. Sigmon, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989) (citing Hemingway v. Mention, 228 S.C. 211, 89 S.E.2d 369 (1955)).

IV. 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.

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 8th day of February, 2011
Greenville, South Carolina

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

November 14, 2008

VIA E-MAIL AND U.S. MAIL
Calvin T. Vick, Jr., J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville SC 29602
tvick@hsblawfirm.com

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

Dear Ted:

Enclosed please find for service upon you as counsel for Defendants in the foregoing *Parkview*, *Palmetto*, *Orleans Gardens*, and *Roosevelt I* matters, PLAINTIFFS' RESPONSES TO DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS DATED AUGUST 28, 2008, and PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG dated November 14, 2008.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, J.D.

TAP/pdh
Enclosures

EXHIBIT
tabbies
1

cc: Joel D. Bailey, J.D. (via e-mail w/enclosures)
Ellis M. Johnston, II, J.D. (via e-mail and U.S. Mail w/enclosures)
Marvin D. Infinger, J.D. (via e-mail and U.S. Mail w/enclosures)
Jesse C. Belcher, J.D. (via e-mail and U.S. Mail w/enclosures)
Anne Ross Rosen, J.D. (via e-mail and U.S. Mail w/enclosures)

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**) **PLAINTIFFS' RESPONSES TO DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS DATED AUGUST 28, 2008**

TO: MARVIN D. INFINGER, J.D., ANNE ROSS ROSEN, J.D, ELLIS M. JOHNSTON, II, J.D., JESSE C. BELCHER, J.D., AND CALVIN T. VICK, J.D., ATTORNEYS FOR DEFENDANTS:

Pursuant to Rules 26, 33, and 34, SCRCP, Plaintiffs[1] in all of the above-captioned actions[2] hereby serve Defendants with their full and complete responses to DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS IN THE ABOVE-CAPTIONED ACTIONS, DATED AUGUST 28, 2008.

[1] Contrary to Defendants' definition of "Plaintiffs" in the subject discovery requests that improperly includes Plaintiffs' counsel, the term "Plaintiffs" as used herein refers only to the named Plaintiffs.

[2] Pursuant to the agreement between counsel in these consolidated matters suspending discovery activities in the *Pinewood* matter 2005-CP-07-1990 (Beaufort), these discovery responses are made only by and on behalf of the Plaintiffs in the remaining four cases.

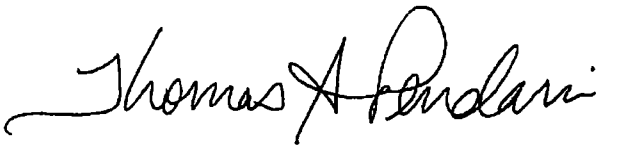
discovery of evidence admissible at the trial of this case.

INTERROGATORY NO. 24: Set forth the name and address of each person who participated in answering the interrogatories contained herein.

ANSWER: Counsel for Plaintiffs, and Plaintiffs to a limited extent.

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

PENDARVIS LAW OFFICES, P.C.



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

Attorneys for Plaintiffs

Beaufort, South Carolina

November 14, 2008

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

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

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

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

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

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

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 3715-3519	02/09/2001	Bailey	Davis	Letter	Attorney-Client
Bailey 3721-3726	02/16/2001	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 3731-3732	02/17/2001	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 3735	02/14/2001	Bailey	Davis	Letter	Attorney-Client
Bailey 3737	03/18/2001	Davis	Bailey	Handwritten Note	Attorney-Client
Bailey 3738	03/01/2001	Adams	Davis	Fax Letter	Work Product
Bailey 3754-3755	06/05/2001	Bailey	Limited Partners c/o Davis	Letter	Attorney-Client
Bailey 3756-3757	06/05/2001	Robinson	Davis	Letter Responding to Requests for Tax Advice Based on Possible Settlement Legal Action	Work Product
Bailey 3758-3759	06/05/2001	Bailey	Limited Partners c/o Davis	Letter	Attorney-Client
Bailey 3768	06/27/2001	Bailey	Limited Partners	Letter	Attorney-Client
Bailey 3799	04/15/2002	Davis	Bailey	Fax Letter	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4019-4020	09/19/2002	Bailey	Davis, Rentz, Miller, Pike, Reynolds	Letter	Attorney-Client
Bailey 4043-4044	12/04/2002	Rowell	Bailey	Letter	Work Product
Bailey 4046-4047	01/06/2003	Bailey	Rowell	Letter and E-mail	Work Product
Bailey 4063	03/26/2003	Rowell	Bailey	Letter	Work Product
Bailey 4054	04/11/2003	Bailey	Rowell	Letter	Work Product
Bailey 4055	04/22/2003	Bailey	Davis, Hodge, Miller, Pike, Rentz	Letter	Attorney-Client
Bailey 4107	05/20/2003	Pike	Bailey	Fax Letter	Attorney-Client
Bailey 4125 -4128	08/27/2003	Bailey	C. Bailey	Letter	Work Product
Bailey 4144-4145	09/30/2003	Bailey	Adams	Fax Letter	Work Product
Bailey 4185	10/31/2003	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 4193-4206	10/29/2003	Bailey		Internal Memorandum	Work Product
Bailey 4211-4212	12/29/2003	Bailey		Internal Memorandum	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4218-4219	04/03/2000	Weinberg	Davis	Letter	Attorney-Client; Work Product; Common Interest Privilege
Bailey 4232-4234	12/29/2003	Bailey		Typewritten Note	Work Product
Bailey 4280-4281	12/29/2003	Bailey		Typewritten Note	Work Product
Bailey 4374	12/20/2003	Bailey		Typewritten Note	Work Product
Bailey 4380-4381	12/29/2003	Bailey		Typewritten Note	Work Product
Bailey 4467-4468	02/15/1999	Davis	Griffin, Hodge, Coastal Contractors	Memorandum	Common Interest Privilege
Bailey 4471	04/02/2000	Griffin	Davis	Handwritten Note	Common Interest Privilege
Bailey 4473	04/02/2000	Griffin	Davis	Handwritten Note	Common Interest Privilege
Bailey 4540-4543	09/05/2000	Davis	Bailey	Letter	Attorney-Client
Bailey 4547	10/11/2000	Bailey	All Limited Partners	Letter	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4548	10/25/2000	Warren Griffin	Davis	Handwritten Note	Common Interest Privilege
Bailey 4560	03/13/2001	Rentz	Bailey	Fax Letter	Attorney-Client
Bailey 4565	03/08/2001	Miles Hodge	Bailey	Fax Letter	Attorney-Client
Bailey 4572-4575	04/24/2001	Bailey	Hodge	Letter	Attorney-Client
Bailey 4576-4577	08/02/2001	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 4580–4582	08/02/2001	Bailey	Davis, Rentz, Hodge	Fax Letter	Attorney-Client
Bailey 4584–4583	08/07/2001	Rentz	Bailey	Fax Letter	Attorney-Client
Bailey 4591-4592	06/29/2004	Bailey	Rentz / Hodge	Letter	Attorney-Client
Bailey 4593	08/03/2004	Bailey	Rentz / Hodge	Letter	Attorney-Client
Bailey 4763	03/16/2000	Davis	Mercy	Memorandum	Common Interest Privilege
Bailey 4783	06/14/2000	Bailey	Advantage Title	Fax Letter	Work Product

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4785-4787	06/14/2000	Advantage Tile	Bailey	Hand Written Report	Work Product
Bailey 4804	07/24/2000	Bailey	Advantage Title	Fax Letter	Work Product
Bailey 4808-4809	08/17/2000	Bailey	Advantage Title	Fax Letter	Work Product
Bailey 4810	08/29/2000	Bailey	Mercy	Letter	Attorney-Client
Bailey 4811	09/05/2000	Davis	Mercy	Letter	Common Interest Privilege
Bailey 4027	10/10/2000	Bailey	Adams	Letter	Work Product
Bailey 4831	10/16/2000	Bailey	All Limited Partners	Letter	Attorney-Client
Bailey 4837	11/02/2000	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 4842	03/30/2001	Bailey	Mercy	Fax Letter	Attorney-Client
Bailey 4843	04/06/2001	Bailey	Mercy	Fax Letter	Attorney-Client
Bailey 4846	06/18/2001	Davis	Mercy	Fax Letter	Common Interest Privilege
Bailey 4847-4851	06/26/2001	Bailey	Davis, Mercy	Fax Letter and Memorandum	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4854	03/15/2002	Rentz	Bailey	Fax Letter	Attorney-Client
Bailey 4859-4868	09/19/2002	Bailey	Haggard	Letter	Attorney-Client; Work Product
Bailey 4874-4875	06/28/2004	Bailey	Haggard, Hodge, Miller, Pike, Rentz	Letter	Attorney-Client
Bailey 4876	07/08/2004	Bailey	Haggard	E-mail	Attorney-Client; Work Product
Bailey 4877	07/23/2004	Haggard	Bailey	Letter	Attorney-Client; Work Product
Bailey 4878	08/02/2004	Bailey	Haggard, Hodge, Miller, Pike, Rentz	Letter	Attorney-Client
Bailey 4885-4886	undated	Bailey		Internal Memorandum Concerning Property Value	Work Product
Bailey 4968	10/30/1998	Wildman	Davis	Letter	Attorney-Client; Work Product; Common Interest Privilege

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 4980	02/09/1999	Davis	Wildman	Letter	Attorney-Client; Work Product; Common Interest Privilege
Bailey 4993	undated	Davis	Bailey	Internal Memorandum	Attorney-Client; Work Product
Bailey 4996	03/16/2000	Davis	James Ivey / Erin Ivey	Internal Memorandum Concerning Lawsuit Investigation	Common Interest Privilege
Bailey 4998	09/05/2000	Davis	Wildman	Letter Concerning Plans for Lawsuit Activities	Common Interest Privilege
Bailey 4999	09/05/2000	Davis	Bailey	Letter	Attorney-Client
Bailey 5002-5004	09/12/2000	Bailey	Wildman	Facsimile with Attachments	Attorney-Client; Work Product
Bailey 5008-5012	09/12/2000	Wildman	Bailey	Facsimile with Attachments	Attorney-Client; Work Product
Bailey 5016	09/14/2000	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5024	10/10/2000	Bailey	Adams	Letter	Work Product
Bailey 5025	10/16/2000	Bailey	Clients	Letter	Attorney-Client

PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG
(Dated November 14, 2008)

Bates No.	Date	From	To	Description	Privilege
Bailey 5028	11/02/2000	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 5056	11/14/2000	Davis	Bailey	Fax Letter	Attorney-Client
Bailey 5062	03/16/2001	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5064	03/26/2001	Bailey	Wildman	Fax Letter	Attorney-Client; Work Product
Bailey 5065-5069	02/09/2001	Bailey	Davis	Letter	Attorney-Client
Bailey 5071	11/28/2001	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5073	01/31/2002	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5074	11/28/2001	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5080-5081	03/15/2002	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5088-5089	03/29/2002	Bailey	Davis	Fax Letter	Attorney-Client
Bailey 5092	04/08/2002	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product

Bates No.	Date	From	To	Description	Privilege
Bailey 5094-5097	02/25/2003	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5098	04/21/2003	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5102	04/29/2003	Wildman	Bailey	Letter	Attorney-Client; Work Product
Bailey 5107-5108	06/29/2004	Bailey	Clients	Letter	Attorney-Client
Bailey 5109-5110	07/07/2004	Wildman	Bailey	Fax Letter	Attorney-Client; Work Product
Bailey 5113	08/02/2004	Bailey	Davis, Ivey, McCarthy, Wildman	Letter	Attorney-Client
Bailey 5114	09/07/2004	Davis	Bailey	Fax Letter	Attorney-Client
	03/00/2008	Pendarvis / Bailey		Valuations & Damages Analysis Memoranda for each Limited Partnership	Work Product; Mediation

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

INDEX

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

PLAINTIFFS' PRIVILEGE LOG
(Dated July 28, 2008)

INDEX

	IDENTIFICATION
Pike	Mary Jane R. Pike, Plaintiff – James Pike, Plaintiff
Rentz	Rhonda G. Rentz, Plaintiff – Timothy Rentz, Plaintiff
Reynolds	Eva Marie Reynolds, Plaintiff
Robinson	William C. Robinson, CPA, expert tax advisor
Rowell	A. Hoyt Rowell, III, J.D., consulting attorney
Weinberg	Mortimer M. Weinberg, Jr., J.D., Plaintiff
Wildman	Donald B. Wildman, J.D., counsel for Ivey

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. BartonTuck, 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, P.C. 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' Responses to Defendants' Discovery Requests to All Plaintiffs Dated August 28, 2008; and

2. Plaintiffs' Supplemental Privilege Log (Dated November 14, 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
November 14, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	CA # 2005-CP-38-1131
Rhoda G. Rentz, *et al*, Plaintiffs,	)	
-vs-	)	Charleston County
Orleans Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	CA # 2005-CP-10-4229
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	Beaufort County
Palmetto Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	C/A #2005-CP-07-1989
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	Beaufort County
Parkview Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	C/A # 03-CP-07-726

PLAINTIFFS' SUPPLEMENTAL ANSWERS TO DEFENDANTS' INTERROGATORIES

Subject to the objections previously made with respect to Defendants' discovery requests, the Plaintiffs submit the following supplemental answers to the Defendants' Interrogatories:

6. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession of the Plaintiff or counsel that relate to the claim or defense in the case.

ANSWER: In addition to the documents previously produced, Plaintiffs' counsel is in possession of the following documents; copies of said documents are attached to Plaintiffs' Response to Defendants' Request to Produce:

Photograph depicting the ground breaking ceremony of Parkview Apartments in Beaufort, South Carolina.

EXHIBIT 2

11. Set forth a list of all exhibits or other documents which may be used in the trial of the case.

ANSWER: Plaintiffs may use any and/or all of the documents set forth in their previous answers to interrogatories and listed in Interrogatory # 6 above, as well as any and/or all of the documents produced by the Defendants, Gary R. Hediger and/or any other documents that may become available through discovery, depositions, subpoenae or FOIA requests.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902
843-524-9500

and

THE BAILEY LAW FIRM, P.A.
Post Office Box 1437, 510 Ribaut Road
Beaufort, South Carolina 29901-1437
(843) 525-6090

ATTORNEYS FOR THE PLAINTIFFS

By: Joel D. Bailey
Joel D. Bailey

Beaufort, South Carolina
January 22, 2009

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**Orangeburg County**
Roosevelt Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	**CA # 2005-CP-38-1131**
Rhoda G. Rentz, *et al*, Plaintiffs,	)	
-vs-	)	**Charleston County**
Orleans Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	**CA # 2005-CP-10-4229**
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**Beaufort County**
Palmetto Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	**C/A #2005-CP-07-1989**
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**Beaufort County**
Parkview Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	**C/A # 03-CP-07-726**

PLAINTIFFS' SUPPLEMENTAL RESPONSES TO DEFENDANTS' REQUEST TO PRODUCE

Subject to the objections previously made with respect to Defendants' discovery requests, the Plaintiffs submit the following supplemental responses to the Defendants' Request to Produce:

2. Any and all correspondence, memos, reports or other written, printed or electronic documents in the possession of any of the Plaintiffs in any way mentioning or relating to the Defendants or the Property or the Limited Partnership.

RESPONSE: See Response to Request for Production # 6 below.

6. All photographs, plats, sketches, documents, papers, records or things of any kind whatsoever relating to Parkview Apartments Limited Partnership and the property which is the subject matter of this litigation.

RESPONSE: The following documents are attached hereto:

Photograph depicting the ground breaking ceremony of Parkview Apartments in Beaufort, South Carolina.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902
843-524-9500

and

THE BAILEY LAW FIRM, P.A.
Post Office Box 1437, 510 Ribaut Road
Beaufort, South Carolina 29901-1437
(843) 525-6090

ATTORNEYS FOR THE PLAINTIFFS

By: Joel D. Bailey
Joel D. Bailey

Beaufort, South Carolina
January 22, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**Orangeburg County**
Roosevelt Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	**CA # 2005-CP-38-1131**
Rhoda G. Rentz, *et al*, Plaintiffs,	)	
-vs-	)	**Charleston County**
Orleans Gardens, a South Carolina Limited Partnership, *et al*, Defendants.	)	**CA # 2005-CP-10-4229**
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**Beaufort County**
Palmetto Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	**C/A #2005-CP-07-1989**
Laurance H. Davis, Jr., *et al*, Plaintiffs,	)	
-vs-	)	**Beaufort County**
Parkview Apartments, a South Carolina Limited Partnership, *et al*, Defendants.	)	**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 here certify that on the 22nd day of January, 2009, I mailed a copy of the Plaintiffs' Supplemental Discovery Reque (Interrogatories and Request for Production), the same being addressed to:

Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, 11th Floor
Greenville, South Carolina 29601

Calvin T. Vick, Esquire
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, 11th Floor
Greenville, South Carolina 29601

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
January 22, 2009

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT 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.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2003-CP-07-726 **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**) **PLAINTIFFS' SUPPLEMENTAL RESPONSES TO DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS DATED AUGUST 28, 2008**

TO: MARVIN D. INFINGER, J.D., ANNE ROSS ROSEN, J.D, JESSE C. BELCHER, J.D., CALVIN T. VICK, J.D., AND ELLIS M. JOHNSTON, II, J.D., ATTORNEYS FOR DEFENDANTS:

Pursuant to Rules 26 and 34, SCRCP, Plaintiffs[1] ***in the Parkview Apartments above captioned matter only*** hereby serve Defendants with their Supplemental responses to DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS IN THE ABOVE-CAPTIONED ACTIONS, DATED AUGUST 28, 2008. The *Parkview Apartments* matter is currently scheduled for a date-certain trial. PLAINTIFFS' SUPPLEMENTAL RESPONSES TO DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS DATED AUGUST 28, 2008 in the companion captioned cases above, will be supplemented at a later date.

[1] Contrary to Defendants' definition of "Plaintiffs" in the subject discovery requests that improperly includes Plaintiffs' counsel, the term "Plaintiffs" as used herein refers only to the named Plaintiffs.

EXHIBIT
tabbies
3

INTERROGATORY NO. 24: Set forth the name and address of each person who participated in answering the interrogatories contained herein.

ANSWER: Counsel for Plaintiffs, and Plaintiffs to a limited extent.

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

PENDARVIS LAW OFFICES, P.C.

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

Attorneys for Plaintiffs

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. BartonTuck, 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

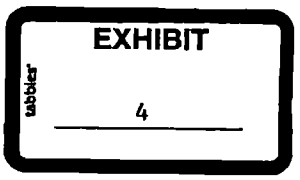
Beaufort, South Carolina
January 26, 2009

STATE OF SOUTH CAROLINA	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-07-0726
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
Rhoda 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

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

TO: CALVIN T. VICK, J.D., AND ELLIS M. JOHNSTON, II, J.D., ATTORNEYS FOR DEFENDANTS:

INTRODUCTION

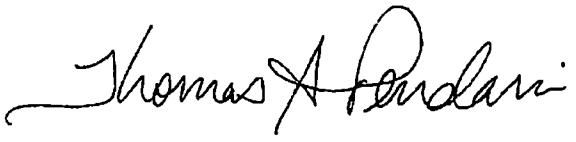


Respectfully submitted,

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

PENDARVIS LAW OFFICES, P.C.
Thomas A. Pendarvis
500 Carteret St Ste A
Beaufort SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Attorneys for the Plaintiffs



Thomas A. Pendarvis, J.D. (SC Bar # 064918)

Beaufort, South Carolina

August 24, 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

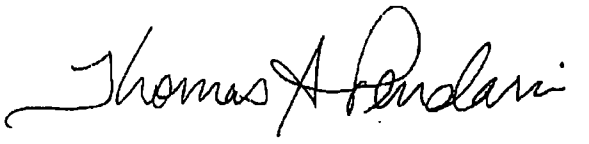
I, Thomas A. Pendarvis, counsel for Plaintiffs in the above-referenced matters, hereby certify that I have served the documents listed below upon all counsel of record by hand-delivery on August 24, 2009:

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



Thomas A. Pendarvis, J.D.

Beaufort, South Carolina

August 24, 2009

THE
BAILEY LAW FIRM
A PROFESSIONAL ASSOCIATION
510 RIBAUT ROAD
POST OFFICE BOX 1457 • BEAUFORT, SOUTH CAROLINA 29901-1457

EMAIL ADDRESS:
BAILEYLAWFIRM@CHARTER.NET

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

January 25, 2010

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

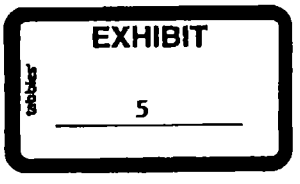
Re: Davis, et al. vs. Parkview Apartments Limited Partnership, et al.
C/A # 03-CP-07-726

Dear Judge Early:

Per our meeting in chambers following the recent hearing in Aiken, I am enclosing Plaintiffs Third Supplemental Response to Defendants' discovery requests dated August 28, 2008. 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. It also addresses those discovery areas which Ellis emphasized during his argument at the hearing. 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.

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. The response as amended is much closer to the requirements for disclosure of expert testimony in federal court than the state court requirements contained in the South Carolina Rules of Civil Procedure. I am hopeful that you will find these to be sufficient.

The amended response concerning the Plaintiffs' involvement in other HUD-type projects is made in light of Ellis's comments on our prior response at the hearing. I think we misread the interrogatory earlier and I agree that our prior response was inaccurate and insufficient. I believe the enclosed amended response should satisfy the objections of Defendants' counsel, keeping in mind that, with the exception of the Plaintiff Laurance Davis, we are dealing with heirs of the original participants. These people had no direct involvement in the property or partnership and must rely upon their memories or any documents which may have been retained by the deceased partners. Since the Defendants were apparently the general partners in all of the limited partnerships, they are already in possession of the specific information relating to time frames of operation, etc.



Finally, the amended response concerning the FOIA requests adds specifics concerning the identity of the contact person for the documents already produced. We inadvertently left this information off the prior answer to the interrogatory, believing that it was contained within the documents produced.

We are also in receipt of Ted Vick's latest proposed Order relating to sanctions in all five pending cases. As you instructed, I will respond to his proposed Order by Thursday in order to comply with the 10-day time for response you allotted to us.

By copy of this letter, I am providing opposing counsel and co-counsel with a copy of this response, as well as the amended discovery responses.

Thank you for your attention to 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, Esquire (w/enclosures)
Calvin T. Vick, Esquire (w/enclosures)
Thomas A. Pendarvis, Esquire (w/enclosures)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C/A # 03-CP-07-726

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

Plaintiffs,

vs.

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

Defendants.

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

TO: ELLIS M. JOHNSTON, JR., Esquire and CALVIN T. VICK, Esquire, Attorneys for the Defendants:

Documents received in response to this FOIA request to HUD were previously produced by Plaintiffs' counsel to Defendants' counsel in their prior supplemental discovery response dated August 24, 2009 (Bate Stamp # US HUD 000001-000576).

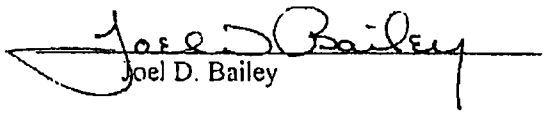
The foregoing supplemental information is provided in addition to, and not in lieu of, information previously provided to Defendants and/or their counsel with respect to other FOIA requests.

Respectfully submitted,

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

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

Attorneys for the Plaintiffs

By: 
Joel D. Bailey

Beaufort, South Carolina

January 25, 2010

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

By: Joel D. Bailey
Joel D. Bailey

Beaufort, South Carolina
January 25, 2010

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 5, 2009

VIA E-MAIL
The Honorable Gary E. Clary, J.D.
Special Master
111 Hammock Court
Central SC 29630
gclaryj@bellsouth.net

Re: Lawrence H. Davis, Jr., et al. v. Parkview Apartments, et al.
Lawrence H. Davis, Jr., et al. v. Palmetto Apartments, et al.
Rhoda G. Rentz, et al. v. Orleans Gardens, et al.
Lawrence H. Davis, Jr., et al. v. Roosevelt Gardens, et al.

Dear Judge Clary:

Enclosed please find PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG (DATED DECEMBER 31, 2008), which is one of the subjects of the *in camera* inspection commencing on Tuesday, January 6, 2009, in regard to the above-referenced matters. The documents identified in PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG (DATED DECEMBER 31, 2008) will be delivered to you at the meeting.

Also enclosed please find Plaintiffs' MEMORANDUM TO SPECIAL MASTER IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF ATTORNEY INFORMATION. For your reference and review, we will have available for you tomorrow the original PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL, which was submitted to Judge Early in December 2007.

Thank you for your assistance in this matter, and we look forward to seeing you tomorrow.

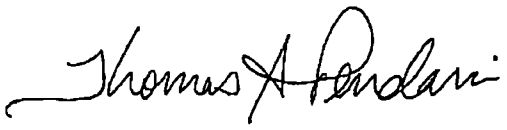
Haynsworth Sinkler Boyd, P.A.
Date Recd 1/8/09
C/M # 11471.000
Docketed
CTV, HGC, SL

EXHIBIT
6

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis, J.D.

TAP/pdh
Enclosures
cc: Joel D. Bailey, J.D. (via e-mail w/enclosures)
Ellis M. Johnston, II, J.D. (via e-mail w/enclosures and U.S. Mail)
Calvin T. Vick, Jr., J.D. (via e-mail w/enclosures and U.S. Mail)
Marvin D. Infinger, J.D. (via e-mail w/enclosures and US mail)
Jesse C. Belcher, J.D. (via e-mail w/enclosures and US mail)
Anne Ross Rosen, J.D. (via e-mail w/enclosures and U.S. Mail)

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

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

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

#	Bates No.	Date	From	To	Description	Privilege
8	Parkview 2114-2115	06/28/2004	Bailey	Davis, Rentz, Miller, Pike, Reynolds	Letter concerning status of pending *Parkview* lawsuit, and among other things, agreement at meeting with representatives and counsel for AIMCO to delay all litigation activities regarding Parkview and all related properties pending completion of appraisals on the properties and then mediation.	Attorney-Client
9	Parkview 2143	08/02/2004	Bailey	Clients	Letter concerning AIMCO's unilateral cancellation of mediation	Attorney-Client
10	Parkview 2165-2168	08/24/2004	Pike	Bailey	Fax letter listing real estate sales data and comments on appraisal	Attorney-Client
11	Parkview 2177-2182	09/16/2004	Davis	Bailey	Memorandum concerning suggestions for appraisals prepared by Atlantic Appraisals	Attorney-Client

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#	Bates No.	Date	From	To	Description	Privilege
64	Bailey 4193-4206	10/29/2003	Bailey		Internal memorandum organizing file, client contact information, and attorney impressions of chronological outline for Roosevelt I partnership	Work Product
65	Bailey 4211-4212	12/29/2003	Bailey		Internal Memorandum containing attorney impressions of chronological outline for Roosevelt I partnership	Work Product
66	Bailey 4218-4219	04/03/2000 and 05/12/2000	Weinberg	Davis	Letter enclosing payments and file materials for delivery to Bailey	Attorney-Client; Work Product; Common Interest Privilege
67	Bailey 4232-4234	12/29/2003	Bailey		Internal memorandum organizing file, client contact information, and attorney impressions of chronological outline for Roosevelt I partnership	Work Product
68	Bailey 4280-4281	12/29/2003	Bailey		Internal Memorandum containing attorney impressions of chronological outline for Roosevelt I partnership	Work Product

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INDEX

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

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

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