

701-4A

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED  
JUN 01 2015  
SC Court of Appeals

Case No. 2013-CP-10-5559

Madison at Hamlin Plantation  
Townhome Association, Inc.,  
and Sandy Randall and Cherie  
Berotti, individually and on  
behalf of all others similarly  
situated,

Respondents,

v.

Builders Support Services of  
the Carolinas, Inc. individually  
and f/k/a John Wieland  
Homes and Neighborhoods of  
the Carolinas, Inc. individually  
and f/k/a John Wieland  
Homes and Neighborhoods of  
NC, Inc. individually and f/k/a  
John Wieland Homes and  
Neighborhoods of SC, Inc.,  
John Wieland Homes of SC,  
Inc., John Wieland Homes,  
Inc., John Wieland Homes of  
Charleston, Inc.,

Appellants.

**APPELLANTS' MOTION TO FILE INITIAL BRIEF AND  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD  
OUT OF TIME, WITH RESPONDENTS' CONSENT**

NOW COME Builders Support Services of the Carolinas, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of the Carolinas, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of NC, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of SC, Inc., John Wieland Homes of SC, Inc., John Wieland Homes, Inc., John Wieland Homes of Charleston, Inc. ("Appellants"), by and through their undersigned counsel, and pursuant to Rules 240(a) and 263(b) of the South Carolina Appellate Court Rules, respectfully request permission to file and serve out of time their initial brief and designation of matter to be included in record.

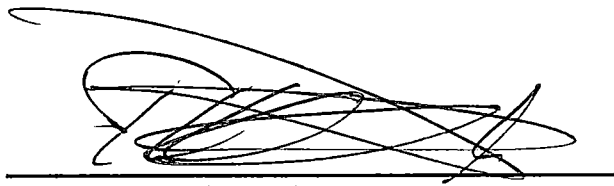
Appellants respectfully contend that good cause exists for this Motion based on the reasons set forth in the supporting Affidavit attached hereto.

The undersigned have consulted with counsel for Respondents, Justin O'Toole Lucey, and he consents to this request.

This Motion is being sent to the Court and to counsel for Respondents by U.S. Mail. The \$25.00 filing fee is attached hereto.

WHEREFORE, Appellants respectfully request an order allowing Appellants to file and serve their initial brief and designation of matter to be included in record within thirty (30) days after the date of this Court's ruling on the instant Motion. Alternatively, Appellants request a thirty (30) day extension from the date of this Motion, which would result in the initial brief and designation of matter to be included in record being due on or before June 29, 2015.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE.]



---

Thomas C. Hildebrand, Jr.  
Kristina Y. Baxley  
F. Elliott Quinn IV  
Parker, Poe, Adams & Bernstein LLP  
200 Meeting Street, Suite 301  
Charleston, South Carolina 29401  
(843) 727-2650  
Attorneys for Appellants

May 29, 2015

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

RECEIVED

JUN 01 2015

R. Markley Dennis, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-10-5559

Madison at Hamlin Plantation  
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the Carolinas, Inc. individually  
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Homes and Neighborhoods of  
NC, Inc. individually and f/k/a  
John Wieland Homes and  
Neighborhoods of SC, Inc.,  
John Wieland Homes of SC,  
Inc., John Wieland Homes,  
Inc., John Wieland Homes of  
Charleston, Inc.,

Appellants.

AFFIDAVIT OF THOMAS C. HILDEBRAND, JR.

PERSONALLY APPEARED BEFORE ME, THOMAS C. HILDEBRAND, JR., who, being duly sworn, deposes and says:

1. This affidavit is given of my own personal knowledge.

2. I am over 18 years of age and otherwise competent to provide this affidavit and the testimony herein.

3. I am a partner with the law firm of Parker Poe Adams & Bernstein and am the principal attorney involved with this case and this appeal. While I am the principal attorney, two Associates, F. Elliotte Quinn and Kristina Y. Baxley, are and have been heavily and substantively involved with this case. A paralegal, Gina Cornwell, has also been substantively involved as well as my secretary, Lauren Heuss.

4. On behalf of the Defendants Builders Support Services of the Carolinas, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of the Carolinas, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of NC, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of SC, Inc., John Wieland Homes of SC, Inc., John Wieland Homes, Inc., John Wieland Homes of Charleston, Inc. (hereinafter "Wieland"), I filed Notice of an Appeal on January 27, 2015.

5. Within the appropriate time I, by US Mail only, requested a copy of the transcript of the hearing in question from the court reporter, Frances B. Ray, by letter dated February 2, 2015, attached hereto as Exhibit "A".

6. Thereafter, I personally had no communications or contact with the court reporter and, upon information and belief, no other person in my office, to include the specific persons assisting me with this matter as noted in Paragraph 3, above, had any communications with the court reporter

(with the exception of my secretary as noted in this Paragraph 6). I am told by my secretary, Lauren Heuss, that she spoke with the court reporter in March and the court reporter subsequently emailed her a bill for payment of the transcript fees, which is attached as Exhibit "B". Ms. Heuss then mailed the court reporter a check for the transcript by letter of March 27, attaches as Exhibit "C".

7. Thereafter, on April 15, 2015, the court reporter sent me by email a copy of the transcript in electronic form. A copy of the email is attached as Exhibit "D", and no one else in my office was copied with or received that email or knew that it had been sent to me. As I had had no email communications with the court reporter, I had no expectation or anticipation that she would send the transcript by email only.

8. My Father died at 5:15 a.m. on the morning of the day that the email was sent to me, April 15. I was responsible for the primary care of my Father (and still am of my Mother) and was in charge of all funeral arrangements, obituary, eulogy, notice to family members and friends, etc.

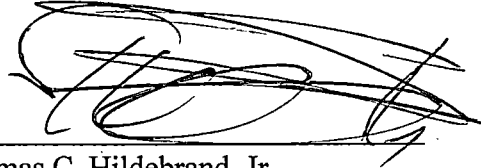
9. Regrettably, I do not remember receiving the email and do not remember whether I opened it or not. In any event, I did not realize that the email had come until Wednesday, May 27, when I was cleaning out my email inbox and forwarded old emails to my secretary, Associates and paralegal for filing, and was advised by one of my Associates that the email had come in.

10. After realizing that our brief was due 30 days from the receipt of the transcript, and that that date had passed, I contacted opposing counsel, Justin Lucey, and he kindly and graciously agreed to consent to an extension of time for Wieland to file its initial briefs.

11. Based upon the above, which I would respectfully hope the court will agree constitutes good cause shown, I would respectfully request a 30 day extension of time from the date of the court's ruling granting the extension (assuming arguendo that the extension is granted) to file

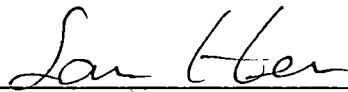
the brief. Alternatively, I would request a 30 day extension from the date of this motion, which would result in the initial brief being due on or before June 29, 2015.

FURTHER AFFIANT SAYETH NOT.



Thomas C. Hildebrand, Jr.

SWORN TO before me this  
May 29, 2015



Notary Public for South Carolina/  
My Commission Expires: 11/15/2017



Thomas C. Hildebrand, Jr.  
Telephone: 843.727 2653  
Direct Fax: 843 727 2680  
tomhildebrand@parkerpoe.com

Charleston, SC  
Charlotte, NC  
Columbia, SC  
Raleigh, NC  
Spartanburg, SC

February 2, 2015

Frances Bakis-Ray  
555 Jeffries Lane  
Florence, SC 29505-2733

Re: Madison at Hamlin Plantation Townhome Association, Inc. and Sandy Randall and Cherie Berotti, individually, and on behalf of all others similarly situated v. Builders Support Services of the Carolinas, Inc., et al.  
Case No.: 2013-CP-10-5559

Dear Ms. Bakis-Ray:

In connection with the above-captioned case, this letter will serve as a written request for a certified copy of the Court's transcript regarding a hearing on Defendants' Motion to Compel Arbitration held before Judge Dennis on Wednesday, September 10, 2014. I also request a certified copy of the hearing on Plaintiffs' motion for class certification held before Judge Dennis on this same date. I would appreciate your forwarding the transcripts to me, along with an invoice for your time and copy expenses.

If you should have any questions or need additional information relating to this request, please do not hesitate to contact me.

With best regards,

Yours very truly,

Thomas C. Hildebrand, Jr.

TCHJr/lah

cc: The Honorable Jenny Abbott Kitchings (via US Mail)  
Justin O. Lucey, Esq. (via email only)  
Joshua F. Evans, Esq. (via email only)  
Everett A. Kendall, Esq. (via email only)  
Christy E. Mahon, Esq. (via email only)  
Jeffrey A. Ross, Esq. (via email only)  
Kevin M. O'Brien, Esq. (via email only)  
Nathan A. Huff, Esq. (via email only)  
Michael D. Freeman, Esq. (via email only)  
David Alfini, Esq. (via email only)  
Stephen P. Hughes, Esq. (via email only)

February 2, 2015

Page 2

J. Andrew Yoho, Esq. *(via email only)*  
Eugene P. Corrigan III, Esq. *(via email only)*  
J. Matthew Johnson, Esq. *(via email only)*  
Robert T. Lyles, Jr. *(via email only)*  
John K. Blincow, Jr., Esq. *(via email only)*  
G. Michael Smith, Esq. *(via email only)*  
Peter Gunnar Nistad, Esq. *(via email only)*  
Andrew N. Cole, Esq. *(via email only)*  
Christopher M. Adams, Esq. *(via email only)*  
Kevin W. Mims, Esq. *(via email only)*  
Caroline C. McIntosh, Esq. *(via email only)*  
Randell C. Stoney, III, Esq. *(via email only)*  
Michael B.T. Wilkes, Esq. *(via email only)*  
Derek M. Newberry, Esq. *(via email only)*  
Ryan Gilsenan, Esq. *(via email only)*  
Sonaly Hendricks, Esq. *(via email only)*  
Sterling G. Davis, Esq. *(via email only)*  
Jason A. Pittman, Esq. *(via email only)*  
Ashley Gwin, Esq. *(via email only)*  
Bachman S. Smith, IV, Esq. *(via email only)*  
T. Scott Forster, Esq. *(via email only)*  
L. Dean Best, Esq. *(via email only)*  
James Elliott, Jr., Esq. *(via email only)*  
Jennie M. Smith, Esq. *(via email only)*  
David S. Cobb, Esq. *(via email only)*



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

Frances B. Ray  
Registered  
Professional  
Reporter

555 Jeffries Lane  
Florence, SC 29505  
FRay@sccourts.org

March 19, 2015

TO: Parker Poe  
Thomas C. Hildebrand, Jr., Esq.  
200 Meeting Street, Suite 301  
Charleston, South Carolina 29401

---

Re: Madison at Hamlin Plantation v. Sandy Randall and Cherie Berotti  
Date of request: February 2, 2015  
Transcript provided on: Upon payment

---

Date billed: March 19, 2015  
Motions hearing (46 pages at \$3.25 a page) \$ 149.50  
Total Due: \$ 149.50

---

PLEASE REMIT  
THANK YOU

KYB



Thomas C. Hildebrand, Jr.  
Telephone 843 727 2653  
Direct Fax: 843.727.2680  
tomhildebrand@parkerpoe.com

Charleston, SC  
Charlotte, NC  
Columbia, SC  
Raleigh, NC  
Spartanburg, SC

March 27, 2015

Frances Bakis-Ray  
555 Jeffries Lane  
Florence, SC 29505-2733

Re: Madison at Hamlin Plantation Townhome Association, Inc. and Sandy Randall and Cherie Berotti, individually, and on behalf of all others similarly situated v. Builders Support Services of the Carolinas, Inc., et al.  
Case No.: 2013-CP-10-5559

Dear Ms. Bakis-Ray:

Enclosed please find a copy of an invoice along with a check in the amount of \$149.50 in payment of the transcript of hearing on Defendants' Motion to Compel Arbitration held before Judge Dennis on Wednesday, September 10, 2014.

With best regards,

Yours very truly,

Lauren Heuss, Legal Professional Assistant to  
Thomas C. Hildebrand, Jr.

/lah  
Enclosures

**PARKER POE ADAMS & BERNSTEIN LLP**

WELLS FARGO BANK, NA - (7995) - 2000021257995

DATE: 03-23-15 PAYEE: STATE OF SOUTH CAROLINA

VENDOR #: 6239

CHECK #: **11037**

DATE	INVOICE #	DESCRIPTION	FILE NO.	G/L ACCT NO.	NET AMOUNT
03-23-15	0323151	LAUREN HEUSS	136558	20200000000000	\$149.50
TOTAL					\$149.50

THE FACE OF THIS CHECK IS PRINTED BLUE - THE BACK CONTAINS A SIMULATED WATERMARK


**Parker Poe**  
 ATTORNEYS AT LAW  
 200 MEETING STREET  
 SUITE 301  
 CHARLESTON, SC 29401  
 PHONE 843-727-2650

WELLS FARGO BANK, NA - (7995)  
 CHARLESTON, SC 29401  
 66-21530

CHECK NO: **11037**  
 CHECK DATE: **03/23/15**

PAY ONE HUNDRED FORTY-NINE AND 50/100 USD\$149.50\*\*\*\*\*  
 CHECK AMOUNT

TO THE ORDER OF: **STATE OF SOUTH CAROLINA**  
**555 JEFFRIES LANE**  
**FLORENCE, SC 29505**

**PARKER POE ADAMS & BERNSTEIN LLP**  
  
 AUTHORIZED SIGNATURE  
 VOID AFTER 90 DAYS

⑈ 11037 ⑈ ⑆053000219⑆ 2000021257995 ⑈

**Heuss, Lauren A.**

**From:** Ray, Frances Bakis <fray@sccourts.org>  
**Sent:** Wednesday, April 15, 2015 6:21 PM  
**To:** Hildebrand, Jr., Thomas C.  
**Subject:** Madison v. Builders support services  
**Attachments:** Madison v. Builders Support-signed.pdf

Mr. Hildebrand, I have attached the transcript you requested. thank you also for the quick payment. If you need anything else or have any questions, please let me know.

Kindly,

?

Frances B. Ray, RPR  
Third Circuit Court Reporter  
555 Jeffries Lane  
Florence, SC 29505-2733

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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JUN 01 2015

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In The Court of Appeals

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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Madison at Hamlin Plantation  
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and Sandy Randall and Cherie  
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Builders Support Services of  
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the Carolinas, Inc. individually  
and f/k/a John Wieland  
Homes and Neighborhoods of  
NC, Inc. individually and f/k/a  
John Wieland Homes and  
Neighborhoods of SC, Inc.,  
John Wieland Homes of SC,  
Inc., John Wieland Homes,  
Inc., John Wieland Homes of  
Charleston, Inc.,

Appellants.

**PROOF OF SERVICE**

I certify that I have served **APPELLANTS' MOTION TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OUT OF TIME, WITH RESPONDENTS' CONSENT** on

PPAB 2817602v1

Respondents by delivering a copy of it in the United States Mail, postage prepaid, on May 29, 2015, addressed as follows:

Justin O. Lucey, Esq.  
Joshua F. Evans, Esq.  
Justin O'Toole Lucey PA  
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*Attorneys for Tracy McCuiston d/b/a MasterCraft Interior and Exterior*



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(843) 727-2650



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tomhildebrand@parkerpoe.com

Charleston, SC  
Charlotte, NC  
Columbia, SC  
Raleigh, NC  
Spartanburg, SC

May 29, 2015

RECEIVED

JUN 01 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: Madison at Hamlin Plantation Townhome Association, Inc. and Sandy Randall and Cherie Berotti, individually, and on behalf of all others similarly situated v. Builders Support Services of the Carolinas, Inc., et al.  
Case No.: 2013-CP-10-5559

Dear Ms. Kitchings:

Enclosed herewith please find the original and six copies of the Appellants' Motion to File Initial Brief and Designation of Matter to be Included in the Record Out of Time, with Respondents' Consent, along with an Affidavit in the above-referenced matter. I also enclose our firm's check in the amount of \$25.00 for the filing fee. Please file the documents and return filed-stamped copies to me.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all counsel of record.

With best regards,

Yours very truly,

Thomas C. Hildebrand, Jr.

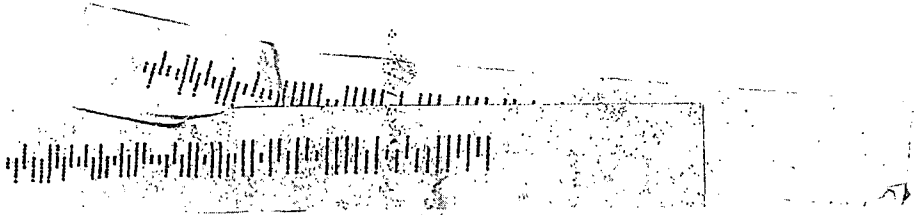
TCHJr/lah  
Enclosure

cc: Justin O. Lucey, Esq. (via email and US Mail)  
Joshua F. Evans, Esq. (via email and US Mail)  
Everett A. Kendall, Esq. (via email and US Mail)  
Christy E. Mahon, Esq. (via email and US Mail)  
Jeffrey A. Ross, Esq. (via email and US Mail)  
Kevin M. O'Brien, Esq. (via email and US Mail)  
Michael D. Freeman, Esq. (via email and US Mail)  
David Alfini, Esq. (via email and US Mail)  
Adam Guetzow, Esq. (via email and US Mail)  
Stephen P. Hughes, Esq. (via email and US Mail)

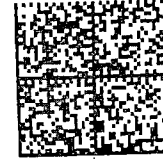
May 29, 2015

Page 2

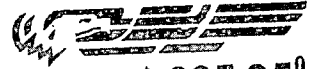
J. Andrew Yoho, Esq. *(via email and US Mail)*  
Eugene P. Corrigan, Esq. *(via email and US Mail)*  
J. Matthew Johnson, Esq. *(via email and US Mail)*  
Robert T. Lyles, Jr., Esq. *(via email and US Mail)*  
Allen Leland DuPre, Esq. *(via email and US Mail)*  
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Kevin W. Mims, Esq. *(via email and US Mail)*  
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Ryan D. Gilsenan, Esq. *(via email and US Mail)*  
T. Scott Forster, Esq. *(via email and US Mail)*  
James H. Elliott, Jr., Esq. *(via email and US Mail)*  
L. Dean Best, Esq. *(via email and US Mail)*  
E. Glenn Elliott, Esq. *(via email and US Mail)*  
Sterling G. Davis, Esq. *(via email and US Mail)*  
Jason A. Pittman, Esq. *(via email and US Mail)*



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0001380105 MAY. 29. 2015.



## Parker Poe

200 Meeting Street, Suite 301  
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Charleston, SC 29402

To:

The Honorable Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201