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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

AUG 27 2015

SC Court of Appeals

Appellate Case Number 2013-001644

John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce C. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway, Appellants,

v.

Landquest Development, LLC, Kyle C. Corkum, South Bay Properties, LLC, C. R. Thomspson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc., The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC a/k/a Source One Signature Communities, Respondents.

PETITION FOR REHEARING

Charles T. Smith
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Ronald L. Charlton,
Bonnie N. Charlton, James R. Charlton, and
Bayside Property, Inc.

The Respondents Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc. petition for rehearing the appeal of John and Louise Goodwin and Gary and Joyce Owens from the circuit court's order denying their motion to restore this case. These Respondents respectfully suggest that the Opinion filed August 12, 2015, overlooked or misapprehended the following matters:

1. *The Opinion states as facts disputed allegations that are not supported by the Record on Appeal.*

The Opinion states that South Bay is a joint venture of Landquest Development, LLC, C.R. Thompson and Sons, LLC and Kyle C. Corkum. The statement was apparently based on allegations in paragraph 33 of the Complaint. The allegations in paragraph 33 of the Complaint were made based upon information and belief. (Complaint p. 12, R. p. 028) These Respondents' Answer denied the allegations. (Answer p. 2, R. p. 069)

The Opinion states that prior to construction, South Bay sold fifty-four lots generating \$14,737,600 in proceeds. The statement was apparently based on allegations in paragraph 41 of the Complaint. (Complaint p. 14, R. p. 030) These Respondents' Answer denied the allegations and stated that the best evidence of the dates, number and amounts of lot sales are the deeds and related documents that speak for themselves. (Answer p. 3-4, R. p. 070-071)

The Opinion states that South Bay failed to build the basic infrastructure of the subdivision in a timely manner. The statement was apparently based on the allegation in Appellants' Brief that no infrastructure or amenities have been built or installed. (Appellants' Amended Final Brief p.1) The City of Georgetown's Memorandum in

Support of Motion to Dismiss informed the Court that the City and Hartford Fire Insurance Company resolved the issue by Hartford Fire Insurance Company engaging a contractor, at its expense, to complete the infrastructure. (Memorandum p. 3-4, R. P. 159-160)

The Opinion states that the Goodwins and Owenses - without an attorney - filed answers in a related mortgage foreclosure action. (The Goodwins and Owenses, along with the other Plaintiffs in this action, were named as defendants in the mortgage foreclosure action because of the lis pendens filed in this action.) The statement was apparently based on allegations in Appellants' Brief that the Goodwins and Owenses filed *pro se* answers in the mortgage foreclosure action and thereafter retained the services of their former attorneys who filed a motion to amend the answers. (Appellants' Amended Final Brief p.3) In order to be removed as counsel of record, an attorney must receive a court order pursuant to Rule 11(b), SCRCF. *Ex parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (2000). The Goodwins and Owenses were not without an attorney because the attorneys that filed the lis pendens, summons and complaint in this action did not receive a court order pursuant to Rule 11(b), SCRCF.

The Opinion states that our rules of procedure do not address how a circuit court must deal with the automatic stay caused by a defendant filing a petition for bankruptcy. But, a later section of the Opinion acknowledges that the Supreme Court's Administrative Order Number 1988-05-04-01 addresses this matter. The order provides that cases stayed as a result of bankruptcy proceeding should be handled consistently and uniformly in all

circuits. "... [W]hen a pending case is stayed as a result of a bankruptcy proceeding, the court may strike the case from the calendar (file book) with leave to restore."

2. *The Opinion overlooks important dates that were the basis for the Circuit Court's decision.*

The critical dates in this action are:

July 9, 2009	This action was commenced. Motion to Reinstate/Restore p. 2, R. p. 102
July 22, 2011	The Honorable Larry B. Hyman, Jr. struck this action due to the bankruptcy of South Bay Properties, LLC and a copy of the order was mailed to the Plaintiffs' attorneys. Form 4, R. p. 001
August 12, 2011	South Bay Properties, LLC's bankruptcy was dismissed. Motion to Reinstate/Restore p. 3, R. p. 103
January 22, 2013	The Goodwins and Owenses moved to restate/restore this action. Motion to Reinstate/Restore p. 1, R. p. 101

After Judge Hyman struck this action, the Goodwins and Owenses did not move for relief from Judge Hyman's order on the grounds of mistake, inadvertence, surprise, excusable neglect or any of the other grounds listed in Rule 60(b), SCRCF. The Goodwins and Owenses did not object that Judge Hyman's order failed to include leave to restore as suggested in the Supreme Court's Administrative Order Number 1988-05-04-01. The Goodwins and Owenses did not appeal from Judge Hyman's order. Because the Goodwins and Owenses failed to act, Judge Hyman's order became the law of the case.

Judge Hyman's order did not include leave to restore the action at a later date. Judge Hyman's order did not toll the statute of limitations. In contrast, Rule 40(j),

SCRCP, does grant leave for a claim to be restored upon motion made within one year of the date stricken and for the statute of limitations to be tolled.

Twenty-one days after Judge Hyman issued his order, South Bay Properties, LLC's bankruptcy was dismissed. The Goodwins and Owenses could have moved to restore this case within a month thereafter relying upon 11 U.S.C.A. § 108(c). Because the Goodwins and Owenses failed to timely act, the protection afforded by 11 U.S.C.A. § 108(c) expired.

The Goodwins and Owenses claims necessarily arose prior to July 9, 2009, the date this action was commenced. The Goodwins and Owenses failed to challenge Judge Hyman's order striking the case or to otherwise seek to restore the case until January 22, 2013, more than three years after the alleged claims arose and more than seventeen months after Judge Hyman issued his order.

3. *The Opinion conflicts with the holdings in Maxwell v. Genez, 356 S.C. 617, 591 S.E. 2d 26 (2003) and Graham v. Dorchester County School District, 339 S.C. 121, 528 S.E.2d 80 (Ct. App. 2000).*

There was no indication in *Maxwell v. Genez, 356 S.C. 617, 591 S.E. 2d 26 (2003)* or *Graham v. Dorchester County School District, 339 S.C. 121, 528 S.E.2d 80 (Ct. App. 2000)* that the plaintiff failed to comply with the statute of limitations when the plaintiff initially filed and served the summons and complaint. If the plaintiff had not complied with the statute of limitation when the plaintiff commenced the action, that failure would have ended the action.

The Maxwells' case was struck pursuant to Rule 40(j), SCRC. The Maxwells' motion to restore was filed more than a year after their case was struck. The Supreme Court held that the statute of limitations had expired when the motion to restore was filed and therefore the Maxwells' claims were barred. The Graham case was struck prior to adoption of current Rule 40(j). Graham's motion to restore was filed ten days past the one year anniversary of the case being stricken. The Court of Appeals affirmed the trial court's dismissal of the action on the basis that the motion to restore was not timely.

The Opinion rejects the *Maxwell* and *Graham* holdings and adopts a new rule by stating: "We hold that because the Goodwins and Owenses complied with the statute of limitations when they initially filed and served the summons and complaint, it was not necessary for them to comply with the statute again when they attempted to restore the case to the docket." The effect of the Opinion is that there is no longer a time limit on restoring cases that have been stricken. Case can be restored many years or even decades after being stricken.

4. *The Opinion creates multiple conflicting rules regarding the time limit for restoring actions which have been stricken.*

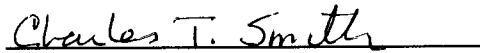
The Opinion appears to acknowledge that actions struck by consent of the parties, in accordance with Rule 40(j), cannot be restored after the statute of limitations, as extended by the rule's tolling provisions, has expired. The Opinion appears to hold that actions struck due to bankruptcy must be restored without regard to the statute of limitations if the summons and complaint were timely filed and served. The Opinion appears to leave open whether there are time limitations on restoring actions struck by

courts for other reasons. The Opinion suggests that an action must be restored, even if the request is not made until decades after the case was stricken, if the filing and service of the initial summons and complaint complied with the statute of limitations.

CONCLUSION

For the reasons stated herein, the Opinion filed August 12, 2015, should be withdrawn and the Order Denying Motions to Restore and to Consolidate and the Order Denying Motion to Alter or Amend Judgment should be affirmed.

Respectfully submitted,



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August 26, 2015

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August 26, 2015

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AUG 27 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: John Steven Goodwin, et al. v. Landquest Development , LLC, et al.
Appellate Case Number 2013-001644

Dear Ms. Kitchings:

Enclosed for filing in the above case are the original and six copies of Petition for Rehearing, Proof of Service and filing fee.

Sincerely,

Charles T. Smith

Charles T. Smith

Enclosures

cc: Ronald L. Charlton
K. Douglas Thornton, Esquire
John M. Leiter, Esquire
Ronald L. Richter, Jr., Esquire
Donald G. Hunt, Jr., Esquire
Elise F. Crosby, Esquire
Andrew F. Lindemann, Esquire
Lawrence M. Hershon, Esquire



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