

RECEIVED David J. Parrish
Member
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NOV 09 2015

November 6, 2015

S.C. SUPREME COURT

Linda Allen
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

**Re: 3 Chisolm Street Homeowners Association, Inc. vs. Chisolm
Street Partners, LLC, et al; Charleston County Civil Action No.:
2009-CP-10-26
Supreme Court Case No.: 2014-001578**

Dear Mrs. Allen:

On behalf of Appellant 3 Chisolm Street Homeowners Association, Inc., I write regarding 3 Chisolm's petition for writ of certiorari that has been held in abeyance during settlement discussions.

Charleston

- Charlotte
- Columbia
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

All of the parties involved in this appeal (i.e., Appellant 3 Chisolm, and Respondents Genoa Construction Services, Inc., Masterpiece Millwork, Inc., and Brock Green Architects and Planners, LLC) have executed a written settlement agreement that resolves and ends this appeal. A copy of that settlement agreement is enclosed with this letter (paragraph 10 specifically reflects withdrawal of 3 Chisolm's petition for writ of certiorari). Accordingly, by this letter I am notifying the South Carolina Supreme Court that 3 Chisolm's pending petition for writ of certiorari is voluntarily withdrawn with prejudice.

Please let me know if you have any questions or need anything else from me regarding this matter and request.

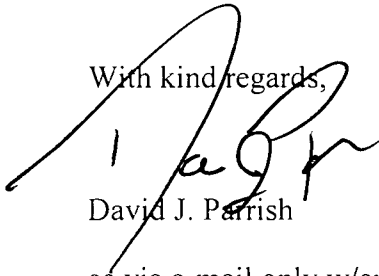
All counsel of record in this appeal are copied on this letter.

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Attorneys and Counselors at Law

Linda Allen
South Carolina Supreme Court
November 6, 2015
Page 2

With kind regards,

A handwritten signature in black ink, appearing to read "D. Parrish", written over the typed name.

David J. Parrish

cc via e-mail only w/encl:

Franklin H. Turner, III, attorney for Genoa Construction Services, Inc.
Paul E. Sperry, attorney for Brock Green Architects and Planners, LLC
J. Patrick Norris, attorney for Brock Green Architects and Planners, LLC
Jenny C. Honeycutt, attorney for Masterpiece Millwork, Inc.
G. Hamlin O'Kelley, III, attorney for 3 Chisolm Street Homeowner's
Association, Inc.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
3 CHISOLM STREET HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC,
MURRAY SCHOOL PARTNERS, LLC,
GENOA CONSTRUCTION SERVICES,
INC., MASTERPIECE MILLWORK,
INC., FERST PLASTERING, INC.,
MASONRY BRICKWORK, CAROLINA
ROOFING SYSTEMS, INC., AND
LACY PAINTING,

Defendants.

GEONA CONSTRUCTION SERVICES,
INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY,
CAROLINA SERVICES, INC., LESCO
RESTORATION, INC., FERST
PLASTERING, INC., CHARLESTON
GLASS & MIRROR COMPANY, 3D
RENOVATIONS, WILLIAMS
MECHANICAL, MASTERCRAFT
INTERIOR & EXTERIOR, BONIFAY
MASONRY, COASTAL GLASS AND
BLOCK, ADAMS DAVIS &
PARTNERS, TROY PARDEE HEATING
AND AIR CONDITIONING (d/b/a
PARDEE HEATING AND AIR) AND
BROCK GREEN ARCHITECTS AND
PLANNERS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

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S.C. SUPREME COURT

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|---|
| LESCO RESTORATION, INC., Fourth-Party Plaintiff, v. COASTAL WATERPROOFING, INC., n/d/b/a WARDS WATERPROOFING, INC. Fourth-Party Defendants. |
|---|

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered by and among the undersigned this 16th day of September, 2015.

WITNESSETH:

WHEREAS, 3 Chisolm Street Homeowners Association, Inc. ("HOA" or "RELEASOR") is an eleemosynary corporation organized and existing under the laws of the State of South Carolina which has certain obligations under the Master Deed creating the HOA for buildings located at 3 Chisolm Street in Charleston, South Carolina; and

WHEREAS, the HOA instituted the above-captioned civil action against various defendants ("Direct Defendants") shown in the caption above and bearing case number Case No. 2009-CP-10-267 (hereinafter the "Lawsuit"); and

WHEREAS Genoa Construction Services, Inc. ("Genoa") filed Answers denying the HOA's claims and filed third-party claims against various subcontractors, other contractors, and/or material suppliers ("Third-Party Defendants") as shown in the caption above; and

WHEREAS Third-Party Defendants and Direct Defendants filed, in the same civil action, various answers, counter-claims, cross-claims, and fourth-party claims denying that the alleged defects and problems exist and denying responsibility for any damages; and

WHEREAS, the Lawsuit concerned three buildings (a main building, gymnasium, and care taker's cottage) located on the site of the old Andrew B. Murray Vocational School at 3 Chisolm Street, Charleston, South Carolina that were converted from school buildings into condominiums (the "Project"); and

WHEREAS, RELEASOR has alleged that there are construction defects and deficiencies and water damage and water intrusion in the Project arising out of the original conversion work

and repairs to same and specifically including the following: (a) improper installation of windows; (b) improperly manufactured wood windows supplied to the project; (c) improper priming and painting of the windows; (d) improper flashing of the windows and window openings; (e) improper connection of the windows to side walls; (f) rusting and deterioration of the brick lintel over windows; (g) improper installation of firewalls between condominium units in the gymnasium building, namely improper blocking, missing insulation, and absent/improperly installed sealants at the fire wall penetrations; (h) improper installation of the roofs on the buildings; (i) improper installation of interior grade doors in exterior applications; (j) cladding issues; (k) improper repairs and waterproofing to the terra cotta and stucco facade; (l) improper window design and selection (“hereinafter Alleged Deficiencies”).

WHEREAS, RELEASOR has alleged damages resulting from the above problems, and that such alleged problems and defects are the responsibility of the Direct Defendants, including Genoa; and

WHEREAS, RELEASOR has asserted claims against Direct Defendants for damages allegedly resulting from the above problems; and

WHEREAS, Direct Defendants, Third-Party Defendants, and Fourth-Party Defendant, Coastal Waterproofing, Inc., n/d/b/a Wards Waterproofing, Inc. (“Coastal”), have all denied that such defects and problems exist within the work of the original conversion or repair of same and that they have responsibility for any resulting damages; and

WHEREAS, Genoa, as the general contractor, by and through and in conjunction with, subcontractors and other contractors, constructed the Project pursuant to the terms of a written contract; and

WHEREAS, Masterpiece Millwork, Inc. (“Masterpiece”) manufactured and supplied the window units installed in the gymnasium and cottage buildings during the Project; and

WHEREAS, WHEREAS, Brock Green Architects and Planners, LLC (“Brock Green”) provided architectural services and served as the architect of record for the Project; and

WHEREAS, Carolina Services, Inc. (“Carolina”) provided and installed light gauge metal framing (including interior and exterior walls), drywall on metal framing and repaired walls, new framing and sheetrock ceilings interior acoustical and batt insulation, Durock, framing in the sunrooms, and fire stopping (including two hour chases and one hour walls); and

WHEREAS Lesco Restoration, Inc. (“Lesco”) among other things provided various repairs including restoration and cleaning around the windows and to the stucco and terra cotta facade; and

WHEREAS Coastal among other things provided various repairs including restoration and cleaning around the windows and to the stucco and terra cotta façade; and

WHEREAS the trial court granted summary judgment to various Direct Defendants and Third-Party Defendants and Partial Summary Judgment as to original work on the Project to Genoa; and

WHEREAS the HOA appealed the orders granting summary judgment to Masterpiece and Brock Green and the order granting partial summary judgment to Genoa; and

WHEREAS the South Carolina Court of Appeals affirmed the orders of the trial court; and

WHEREAS the HOA petitioned the South Carolina Supreme Court for a Writ of Certiorari; and

WHEREAS, Genoa, Masterpiece, Brock Green, Lesco, Carolina Services, and Coastal (collectively the "Settling Defendants") and the RELEASOR desire to fully, finally, and forever compromise, release, void and settle all claims related to Alleged Deficiencies that were made; and

WHEREAS, the HOA currently has another case pending in the Court of Common Pleas for Charleston County, South Carolina, in that case entitled *3 Chisolm Street Homeowners Association, Inc. v. Genoa Construction Services, et al.* Case Number 2014-CP-10-6805, and it is understood and agreed that the Parties hereto entered into the settlement of the claims outlined above and this Settlement Agreement and Release signed as part of that settlement will not be used or asserted, in any way, as a defense in that lawsuit entitled *3 Chisolm Street Homeowners Association, Inc. v. Genoa Construction Services, et al.* Case Number 2014-CP-10-6805. Furthermore, the release contained herein, does not release any claims or parties in the case entitled *3 Chisolm Street Homeowners Association, Inc. v. Genoa Construction Services, et al.* Case Number 2014-CP-10-6805.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT,

FOR AND IN CONSIDERATION for the mutual promises set forth herein, the undersigned duly authorized representatives do hereby agree as follows:

1. RELEASOR shall be paid a total of Thirty-One Thousand and 00/100 (\$31,000.00) Dollars by or on behalf of Genoa (\$10,000.00), Masterpiece (\$2,500.00), Brock Green (\$1,500.00), LESCO (\$7,500.00), Carolina (\$2,000.00), and Coastal (\$7,500.00).

2. For and in consideration of the above payment and other valuable consideration, RELEASOR for itself and its respective directors, officers, shareholders, present and former employees, servants, agents, members, owners, insurers, successors, purchasers and assigns (collectively referred to hereafter as "RELEASORS") shall and does hereby forever dismiss, discharge, release, the Settling Defendants and their parent and subsidiary companies, related companies, affiliates, directors, officers, shareholders, employees, agents, owners, subcontractors, attorneys, insurers, sureties, successors, purchasers and assigns (collectively referred to hereinafter as "RELEASEES"), and all other persons, firms, corporations and associations or partnerships, whether herein named, who may be liable, jointly or severally or otherwise, to the RELEASORS, of and from liability for all claims that were raised, in the Lawsuit

3. RELEASEES, for and in consideration of their respective contributions to the settlement amount and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do for themselves, their successors and assigns, hereby remise, release, acquit and forever discharge each other and their respective heirs, assigns, successors, partners, agents, insurers, re-insurers, parent companies, affiliates, subsidiaries, subcontractors, suppliers, retailers, wholesalers, servants, and employees, of and from any and all past, present, and future claims, demands, debts, rights, actions, counterclaims, cross-claims, third-party claims, fourth-party claims, damages (including direct, indirect, incidental, and consequential damages), costs, causes of actions, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, warranties (express and implied), guarantees, and all claims related to the Alleged Deficiencies

4. The undersigned understand and agree that this Agreement affects their legal rights and they have executed the same on the advice of counsel; that they understand and appreciate the consequences attendant to the execution of this Agreement; that they have full and complete authority to execute this Agreement on behalf of the entity or entities they purport to represent; that this Agreement is a compromise of hotly disputed claims; that this Agreement is contractual in nature and not a mere recital; that this Agreement is an accord and satisfaction as among the RELEASORS and the RELEASEES, that this Agreement shall be construed under and subject to the laws of the State of South Carolina; and that this Agreement was drafted with input from counsel for all the undersigned and shall not be construed against or in favor of any party.

6. Notwithstanding any other provision, RELEASORS and RELEASEES agree and acknowledge that this settlement is a compromise of disputed claims and neither the existence of the Agreement, nor any recitals, terms, conditions, or other statements contained in it, nor the payment of the Settlement Amount, shall be construed as an admission of liability by or on the part of either REALEASORS or RELEASEES for any allegation or claim asserted against them related to the Project. RELEASORS and RELEASEES do not admit, but expressly deny, all liability for the claims asserted against them in the Lawsuit, and enter into this settlement solely to avoid the expense, uncertainties, and risks of further litigation. Consequently, this Agreement

shall not be admissible in any other action, suit or legal proceeding as evidence of any liability, culpability, or fault of or on the part of any party hereto, or for any other purpose except to enforce the terms expressed herein.

7. The parties hereto declare and represent that they have read this Agreement and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that the instrument contains the entire agreement between the parties hereto. This Agreement will not be challenged subsequently as not reflecting the sole intentions of the parties.

8. The provisions, sections and paragraphs, and the specific terms set forth therein, of this Agreement are severable. If any provision, section or paragraph, or specific term contained in the Agreement or the application thereof is determined by a court to be illegal, invalid or unenforceable, that provision, section, paragraph, or term shall not be a part of this Agreement, and the legality, validity, and enforceability of remaining provisions, sections and paragraphs, and all other terms therein, of this Agreement shall not be affected thereby.

9. The undersigned understand and agree that their respective counsel are hereby authorized and directed to execute and file such documents as are necessary to secure the dismissal with prejudice of all claims in the Lawsuit remaining or pending at the trial court level against any party.

10. The undersigned understand and agree that counsel for the HOA will withdraw, with prejudice, its Petition for a Writ of Certiorari to the South Carolina Supreme Court in this Lawsuit and stipulate to the dismissal, with prejudice, of any remaining causes of action which may or may not have stayed during the pendency of the appellate process.

11. This Agreement shall be binding upon the RELEASORS, and their members, owners, related entities, affiliated entities, joint venturers, assignors, purchasers, successors and assigns.

12. The RELEASORS represent and warrant that they have not assigned to any other person or entity any of the claims with respect to the Project, whether they are its own claims or those asserted by way of assignment, and that they are the sole and proper party to receive the settlement proceeds.

13. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement to be effective as of the effective date set forth hereinabove. Photocopies, electronic copies, or executed copies of this Agreement may be treated as an original.

14. It is understood and agreed that the Parties hereto entered into the settlement of the claims outlined above and this Settlement Agreement and Release signed as part of that settlement will not be used or asserted, in any way, as a defense in that lawsuit entitled *3 Chisolm Street Homeowners Association, Inc. v. Genoa Construction Services, et al.* Case Number 2014-CP-10-6805. Furthermore, the release contained herein, does not release any claims or parties in the case entitled *3 Chisolm Street Homeowners Association, Inc. v. Genoa Construction Services, et al.* Case Number 2014-CP-10-6805.

IN WITNESS WHEREOF, the undersigned have set their hand hereto on the date(s) set forth below:

SIGNATURE PAGES FOLLOW

3 Chisolm Street Homeowners Association, Inc.

Signature

Date: _____

By: _____ (Print Name)

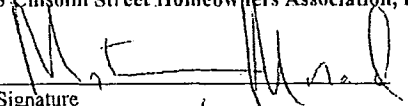
Its: _____ (Print Title)

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IN WITNESS WHEREOF, the undersigned have set their hand hereto on the date(s) set forth below:

SIGNATURE PAGES FOLLOW

3 Chisolm Street Homeowners Association, Inc.


Signature

Date: Sept 11/15

By: MARTIN V. GARCIA (Print Name)

Its: President of the (Print Title)
3 Chisolm BOD

Genoa Construction Services, Inc.



Signature

Date: 9/18/15

By: Franklin Turner (Print Name)

Its: Attorney (Print Title)

Brock Green Architects and Planners, LLC



Signature

Date: 9.3.2015

By: ERIC BROCK (Print Name)

Its: PRINCIPAL (Print Title)

Masterpiece Millwork, Inc.


Signature

Date: 9/13/15

By: JENNY C. HONEYCUTT (Print Name)

Its: ATTORNEY (Print Title)

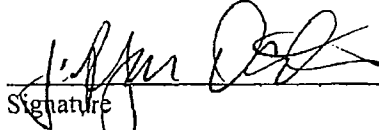
3 Chisolm Street HOA v. Chisolm Street Partners, LLC, et al.

Civil Action No.: 2009-CP-10-267

SETTLEMENT AGREEMENT AND RELEASE

Page 11 of 12

Lesco Restoration, Inc.


Signature

Date: 9/3/15

By: J. Ryan Oates (Print Name)

Its: Attorney (Print Title)

Carolina Services, Inc.

J. Edgar Tarr, Jr. Pres., Carolina Services, Inc.
Signature

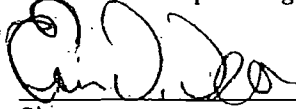
Date: 9/3/15

By: J. Edgar Tarr, Jr. (Print Name)

Its: President (Print Title)

3 Chisolm Street HOA v. Chisolm Street Partners, LLC, et al.
Civil Action No.: 2009-CP-10-267
SETTLEMENT AGREEMENT AND RELEASE
Page 13 of 12 13

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc.



Signature

Date: 9/8/15

By: Erin D. Dean (Print Name)

Its: Attorney (Print Title)