

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2009-CP-37-00652

RECEIVED
JAN 21 2016
SC Court of Appeals

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated, Plaintiffs,

Of Whom Stoneledge at Lake Keowee
Owners' Association, Inc. is the, Respondent,

v.

IMK Development Co., LLC; Keowee Townhouses, LLC; Ludwig Corporation, LLC; SDI Funding, LLC; Medallion at Keowee, LLC; Integrys Keowee Development, LLC; Marick Home Builders, LLC; Bostic Brothers Construction, Inc.; Miller/Player & Associates; Bradford D. Seckinger; John Ludwig; William C. Cox; Larry D. Lollis; Rick Thoennes; M. Group Construction and Development, LLC; Mel Morris; Joe Bostic; Jeff Bostic; Clear View Construction, LLC; Michael Franz; MHC Contractors; Miguel Porras Choncoas; Builders First Source-Southeast Group; Mike Green; Southern Concrete Specialties; Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises; Gunter Heating & Air; All Pro Heating; A/C & Refrigeration, LLC; Coleman Waterproofing; Heyward Electrical Services, Inc.; Tinsley Electrical, LLC; Hutch N Son Construction, Inc.; Upstate Utilities, Inc.; Southern Basements; Carl Catoe Construction, Inc.; T.G. Construction, LLC; Delfino Construction; Francisco Javier Zarate d/b/a Zarate Construction; Alejandro Avalos Cruz; Herberto Acros Hernandez; Martin Hernandez-Aviles; Francisco Villalobos Lopez; Ambrosio Martinez-Ramirez; Ester Moran Mentado; Socorro Castillo Montel; MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillio; Garcia Parra Insulation, Inc.; J&J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.;

Vincent Morales d/b/a Morales Masonry and Miller Player & Associates,
Defendants,

Of Whom IMK Development Co., LLC,
Integrays Keowee Development, LLC,
William C. Cox and Larry D. Lollis are the , Appellants.

RETURN TO MOTION TO CONSOLIDATE

This return is filed pursuant to Rule 240(e), SCACR.

Respondent seeks this case's consolidation with two other appeals from the same trial. Each appeal involves the same respondent, but the appellants are all different.

While Appellants in *this* appeal do not object to these cases being heard on the same day, Appellants believe a motion to consolidate is, at best, premature. This appeal will likely involve different questions than the other appeals, and the other appeals already appear to be different from each other. This Court should either deny the motion outright, postpone ruling on the motion until after initial briefing has closed, or deny the motion without prejudice.

DISCUSSION

Rule 214 discusses consolidation and explains the Court has the discretion to consolidate appeals when there is more than one appeal from the same order or when the same question is involved in two or more appeals in different cases.

Although these three appeals meet the letter of the rule—technically, they are all appeals from the same verdict and final judgment—this Court and the Supreme Court tend to combine multiple appeals when the dispositive issues are identical. In *State v. Palmer*, for

example, two criminal defendants were convicted in a joint trial and their appeals involved the same questions. See 408 S.C. 218, 222 n.1, 758 S.E.2d 195, 197 n.1 (Ct. App. 2014). In *Austin v. Stokes-Craven Holding Corp.*, both appeals turned on the Supreme Court's interpretation of its previous opinion. 406 S.C. 187, 196, 750 S.E.2d 78, 82 (2013). Other cases follow the same reasoning. See *Limehouse v. Hulsey*, 404 S.C. 93, 96, 744 S.E.2d 566, 568 (2013) (dispositive issue identical); *Crawford v. Cent. Mortgage Co.*, 404 S.C. 39, 44, 744 S.E.2d 538, 540 (2013) (same); *Stevens & Wilkinson v. City of Columbia*, 396 S.C. 338, 340 n.1, 721 S.E.2d 455, 456 n.1 (Ct. App. 2011) (same); and *Bowers v. Dep't of Transp.*, 360 S.C. 149, 151, 600 S.E.2d 543, 544 (Ct. App. 2004) (same). The sole exception is *Wooten v. Wooten*, which involved separate appeals between the same parties in family court litigation. 364 S.C. 532, 538, 615 S.E.2d 98, 101 (2005).

Appellants have not filed their initial brief, but the appellants in the other cases have filed their briefs. Each case involves different issues.

In one of the appeals—C-TRACK No. 2015-000417—there is a sole appellant (Bostic Brothers) arguing three issues. They are statute of limitations, setoff, and denial of a post-trial motion that challenged an evidentiary ruling and comparative negligence charge.

The appeal taken by Rick Thoenes and Marick Home Builders—C-TRACK No. 2015-000392—involves 9 issues on appeal. These include arguments about certain warranties (workmanlike service and habitability), the conduct of closing arguments, and amalgamation of multiple defendants. The issues also include proximate cause, election of remedies, and the business judgment rule. There is one (1) issue of overlap with the prior appeal, the issue of setoff, but that is it.

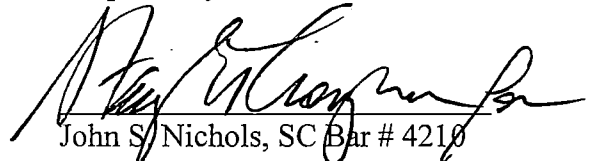
While it might be prudent to hear these three appeals on the same day, true “consolidation”—issuing one decision after a single hearing—would not appear to be functional. A joint hearing would be impractical because the appellants argue different issues, and it is important to remember that *these* Appellants have not yet filed *their* brief. Also, using the filed briefs as a guide, a joint opinion would require addressing 13 issues. Two opinions would divide the workload. Consolidation implies some increased efficiency. Here, it would have the opposite effect. Consolidation would merge three cases, two of which are already sizeable, into something bigger. That appears to be more work, not less.

CONCLUSION

Appellants do not object to these three cases being heard on the same day or to other available measures to save costs, but Appellants believe a motion to consolidate is, at best, premature because their case will likely involve different questions than the other pending cases. This Court should either deny the motion outright, postpone ruling on the motion until after initial briefing has closed, or deny the motion without prejudice.

January 21, 2016

Respectfully Submitted,



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Vincent Morales d/b/a Morales Masonry and Miller Player & Associates,
Defendants,

Of Whom IMK Development Co., LLC,
Integrays Keowee Development, LLC,
William C. Cox and Larry D. Lollis are the , Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Return to Motion to Consolidate* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

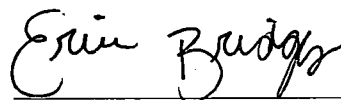
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Erin Bridges
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& DELGADO, LLC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

January 21, 2016

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VIA HAND DELIVERY

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

RE: Stoneledge v. IMK Dev. (Integrus Keowee)
Case Tracking No.: 2015-000343

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Return to Motion to Consolidate* in regards to this case. I have also enclosed a proof of service of this document upon counsel of record. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

/emb

Enclosures

cc: Cynthia B. Brown, Esquire
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Robert T. Lyles, Jr., Esquire
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Elizabeth Wieters, Esquire
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