

THE WARD LAW FIRM, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 5663
SPARTANBURG, SOUTH CAROLINA 29304

RECEIVED

MAY 11 2016

SC Court of Appeals

JAMES W. HUDGENS
GENE ADAMS
H. SPENCER KING
ROBERT E. DAVIS*
JASON M. IMHOFF
JOHN E. ROGERS, II*
GINGER D. GOFORTH
C. REED TEAGUE
CHAD M. GRAHAM

RUFUS M. WARD (1908-1988)
L. PAUL BARNES (1931-1986)

233 SOUTH PINE STREET

SPARTANBURG, S.C. 29302
FAX. No. (864) 585-3090
OFFICE No. (864) 573-8500

RETIRED

CERTIFIED MEDIATOR

* ALSO MEMBER NORTH CAROLINA BAR

E-mail: rteague@wardfirm.com

Direct No. 864-591-2340

May 3, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11639
Columbia, SC 29211

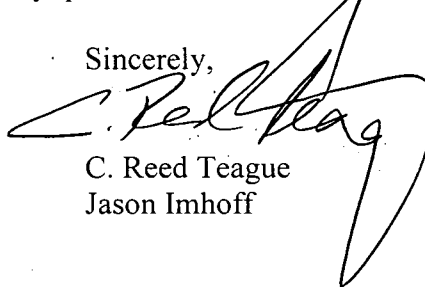
**Re: Stoneledge at Lake Keowee Owners' Association, Inc., et al. vs. IMK
Development Co., LLC, et al. vs. Michael Franz, et al.
CA No.: 2009-CP-37-652
Appellate Case No.: 2013-001401**

Dear Ms. Kitchings:

Enclosed please find a copy of the letter and Motion to Stay Proceedings dated April 27, 2016 regarding the above-referenced matter. The Court of Appeals was carbon copied on said letter and motion for reference pending the outcome of the motion before the lower court (see attached as Exhibit "1"). I discussed this Motion with Amelia at the Court and I am sending this letter per our discussion. The case is not going to trial and thus the matter is moot. The Motion concerned Appellate Case Number 2013-001401. The Court does not need to take any action with regard to the motion. We apologize for any confusion our letter caused.

Please contact me with any questions and/or concerns.

Sincerely,



C. Reed Teague
Jason Imhoff

CRT
Enclosures

cc: Robert Lyles, Esquire

EXHIBIT “1”

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RETIRED
CERTIFIED MEDIATOR
* ALSO. MEMBER NORTH CAROLINA BAR

E-mail: jimhoff@wardfirm.com
Direct No. 864-582-3075

April 27, 2016

The Honorable Beverly H. Whitefield
Oconee County Clerk of Court
PO Box 678
Walhalla, SC 29691

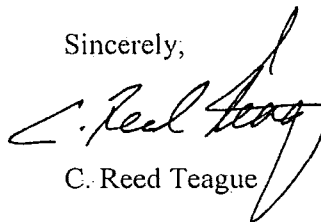
RE: Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou K. Plourde, Carol C. Pope, Steven B. Taylor, Bettie J. Taylor, Robert White, Individually, and on behalf of all others similarly situated, 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. and Miller/Player & Associates

CA #: 2009-CP-37-652

Dear Ms. Whitfield:

Enclosed please find an original and one (1) copy of Defendants, Marick Home Builders, LLC and Rick Thoennes' Motion to Stay Proceedings, a Motion Coversheet, and a check in the amount of \$25.00 for filing-fees regarding the above-referenced matter. Also enclosed is a Certificate of Service. Please return the file-stamped copies to me in the enclosed postage-paid, self-addressed envelope.

Sincerely,



C. Reed Teague

Ms. Whitfield
April 27, 2016
Page 2 of 3

CRT:tws
Enclosures

cc: Robert T. Lyles, Jr., Esquire
Cynthia Buck Brown, Esquire
Rivers S. Stilwell, Esquire
Larry Brandt, Esquire
The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS)
FOR THE TENTH JUDICIAL CIRCUIT)
CASE NUMBER: 2009-CP-37-0652)

RECEIVED

MAY 11 2016

SC Court of Appeals

MOTION INFORMATION FORM
AND COVER SHEET

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,)

vs.)

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, JOHN LUDWIG, 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., 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,)
UPSTATE UTILITIES, INC., MJG)
CONSTRUCTION AND HOMEBUILDERS, INC.)
D/B/A MJG CONSTRUCTION, KMAC OF THE)

CAROLINAS, INC., EUFACIO GARCIA, EVERADO)
 JARMAMILLO, GARCIA PARRA INSULATION,)
 INC., J&J CONSTRUCTION, JOSE NINO, JOSE)
 MANUEL GARCIA, EASON CONSTRUCTION,)
 INC., AND VINCENT MORALES D/B/A MORALES)
 MASONRY,)
)
 Defendants,)
)

check box above indicating submitting party

<p><u>Name, SC Bar #, & address of Plaintiff(s) attorney:</u> Robert T. Lyles, Jr., Esquire Lyles & Lyles, LLC P. O. Box 773 Charleston, SC 29401 843-577-7730 843-577-7172 facsimile rtl@lylesfirm.com</p>	<p><u>Name, SC Bar #, & address of Defendant(s) attorney:</u> Jason M. Imhoff, Esquire C. Reed Teague, Esquire The Ward Law Firm, P.A. Post Office Box 5663 Spartanburg, S.C. 29304 jimhoff@wardfirm.com Attorneys for Marick Home Builders, LLC and Rick Thoennes</p>
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Defendants, Marick Home Builders, LLC's and Rick Thoennes' Motion to Stay Proceedings
 Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion Type

Written motion attached
 Form Motion -
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Defendant Marick Home Builders, LLC and Rick Thoennes
 Date submitted 4-27-2016

SECTION III: Motion Fee

PAID - AMOUNT: \$25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 (check reason) Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)

Proposed order submitted at request of the court; or
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED: _____

Collected by: _____

(print name)

MOTION FEE COLLECTED: _____ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
CA#: 2009-CP-37-652

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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 K. Plourde, Carol C. Pope)
Steven B. Taylor, Bette J. Taylor,)
Robert White, individually, and on)
Behalf of all others similarly situated,)

Plaintiffs,)

v.)

IMK Development Co., LLC,)
Keowee Townhouses, LLC, Ludwig)
Corporation, LLC, SDI Funding,)
LLC, Medallion at Keowee, LLC,)
Integrays Keowee Development, LLC,)
Marick Home Builders, LLC, Bostic)
Brothers Construction, Inc., and)
Miller/Player & Associates,)

Defendants,)

Marick Home Builders, LLC)

Third-Party Plaintiff)

v.)

Michael Franz, Clearview)
Construction, Miguel Porras)
Choncoas, MHC Contractors,)
Miller/Player & Associates, Mike)
Green, Builders Firstsource Southeast)
Group, Keith Groder, and Southern)
Concrete Specialties)

**MARICK HOME BUILDERS, LLC AND
RICK THOENNES' MOTION TO STAY
PROCEEDINGS**

Third-Party Defendants)
)
)

YOU WILL PLEASE TAKE NOTICE that Defendants, Marick Home Builders, LLC and Rick Thoennes, by and through their undersigned attorneys, renews and will move before the resident or presiding judge of the Oconee County Court of Common Pleas as soon hereafter as counsel may be heard, at such time and place as the Court may enter an order staying proceedings pursuant to Rule 241, of the S.C.A.C.R. Pursuant to Rule 241(a) of the South Carolina Appellate Court Rules, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order which is on appeal.

During litigation, Judge McCauley granted summary judgment to almost all of Marick's subcontractors. Marick filed appeals of those orders as they were signed by Judge McCauley and filed a motion to consolidate those appeals in the appellate court which was resisted by Plaintiffs and denied by the appellate court. As such, each of those appeals proceeded at different paces depending upon the date of filing.

As this Court is aware, the appellate court issued an opinion finding that Judge McCauley's order dismissing Marick's cross-claim for equitable indemnity against Clearview Construction and Michael Franz was in error and Clearview returned to the litigation (Appellate Case Number: 2013-001403). By separate order, the Court of Appeals affirmed the dismissal of Marick's breach of warranty and breach of contract claims against all of its subcontractors (Appellate Case Number: 2013-001404). For that appeal, Marick has filed a Motion for Certiorari to the South Carolina Supreme Court.

Unfortunately, the appellate court has not heard oral arguments, nor issued an opinion related to numerous other subcontractors, most importantly Builders First Source or Carl Catoe.

These contractors are necessary and indispensable parties to this litigation because Marick was a "paper contractor" which did not employ its own laborers or craftsmen, but instead relied on subcontractors to do all of the work on the project. In this case, Marick hired a national supplier, Builders First Source (hereinafter "BFS"), to construct all of the framing, exterior siding, and window and door installation pursuant to architectural plans. The framing, exterior siding, and window and door installation are 90% of the issues in the case. In turn, BFS hired Catoe to install the cedar siding.

The basis for the motion to stay is that the issue of Marick's ability to assert cross-claims against subcontractors has been upheld by the appellate court, and Clearview, once dismissed by Judge McCauley, is now a defendant in the case again. If the appellate court follows its own precedence and analysis, it is likely that BFS, Carl Catoe, and the remaining subcontractors will also return to the case, either as equitable indemnity defendants or potentially as defendants to any of the causes of action asserted by Marick such as warranty or contract causes of action. Unfortunately, that remand will not occur until after trial has occurred if this trial is to proceed as scheduled as oral arguments in that case are to be heard in June of 2016 (after trial).

This issue cannot be resolved by Mr. Lyles' agreement to defend these parties as they are not part of the lawsuit and will not be on a jury verdict form for the jury to assign fault. As such, it is Marick's position that if the appellate court finding is consistent with the Clearview opinion, this trial will lack necessary and indispensable parties and will be ripe for retrial. For these reasons, and more, these defendants respectfully request that the trial be stayed until the appellate court can decide the appeals related to Carl Catoe and BFS.

As a result, it is still the position of Marick that this case is and should be stayed pending the outcome in Appellate Case Number: 2013-001401. Upholding a stay in this case until the

appeal is decided would be in the interest of fairness and judicial economy.

This Motion is made upon the common and statutory laws of the State of South Carolina and any applicable federal law or state law. Defendants may further rely upon a memorandum of law which may be presented to the Court in support of this Motion.



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C. Reed Teague (SC Bar #79933)
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Spartanburg, SC 29304
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(864) 585-3090 (fax)
jimhoff@wardfirm.com

ATTORNEYS FOR MARICK HOME
BUILDERS, LLC AND RICK THOENNES

April 27, 2016