

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Longcreek Plantation Plantation Property Owner's )  
 Association, Inc., )  
 Plaintiff )  
 )  
 v. )  
 )  
 Charles Marshall, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-40-03713

MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

**RECEIVED**  
**JUL 27 2016**  
**SC Court of Appeals**

Plaintiff's Attorney: Jonston Cox, Bar No. Address: <u>P.O. Box 7368</u> 1201 Main Street, Suite 1200 Columbia, SC 29201 phone: 803-779-1833 fax: 803-779-1767 e-mail: jcox@gwblawfirm.com other:	Defendant's Attorney: Susan Batten Lipscomb, Bar No. 39901 Address: 1634 Main Street, Suite 200 Columbia, SC 29201 phone: 803-233-6654 fax: 803-233-6663 e-mail: lipscomblaw@gmail.com other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Motion to Reconsider Estimated Time Needed: none Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<u>Susan B. Lipscomb</u> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	<u>April 9, 2015</u> Date submitted
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> PAID - AMOUNT: <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____	Date Filed: _____

CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

LongCreek Plantation Property Owners'  
Association, Inc. and Fairways  
Development General Partnership,  
Plaintiffs,

Case No. 2006-CP-40-03713

vs.

PLAINTIFF'S MOTION TO  
RECONSIDER, ALTER, AMEND  
OR MODIFY ORDER

Charles Marshall,

Defendant.

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TO: PLAINTIFF LONGCREEK PLANTATION PROPERTY OWNERS'  
ASSOCIATION AND ITS ATTORNEY S. JOHNSTON COX, ESQUIRE

Please take notice that Defendant Charles Marshall, by and through his undersigned attorneys, will move, before the Honorable Judge Joseph M. Strickland, Master-in-Equity, for the Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the tenth (10<sup>th</sup>) day after service hereof, or as soon as counsel may be heard, pursuant to the provisions of Rules 50, 52(b), 59(e), 60(a) and 62 SCRPC, and other applicable statutes and rules, for an Order reconsidering, amending, altering, and modifying the Order by the Honorable Joseph M. Strickland, dated March 3, 2015, and filed on March 5, 2015, received by e-mail on March 30, 2015, copy attached. The grounds for the Motion are as follows:

1. The Court erred in denying and dismissing Defendant's Counterclaim for Promissory Estoppel where the evidence was that Plaintiff LongCreek by and through its agents, Halcyon, acting within the course and scope of its authority made an unambiguous promise to Defendant Marshall, i.e. that the Marshall's property at 864 Longtown Road West, Blythewood, South Carolina (Subject Property") was not in the LongCreek Property Owner's Association, no fees

Handwritten signature or initials.

were due and further the Property was “grandfathered” out of the restrictions and the Association; Defendant Marshall reasonably relied on the promise; Marshall’s reliance was expected and foreseeable by the party who made the promise and Marshall sustained injury and damages in reliance on the promise.

2. The Court erred in finding that Mr. Jordon testified that even if Halcyon had stated that the Subject Property was not subject to the Covenants and Restriction, he would not have relied on those representation when Mr. Jordan testified that there were only two ways to make the Subject Property encumbered by the Covenants and Restrictions and neither way had been followed by the Association or the Developer.

3. The Court erred in finding that Marshall’s damages incurred because of the temporary injunction were not recoverable, when the evidence was that he did suffer damages because of the injunction which was then lifted.

4. The Court erred in denying and dismissing Marshall’s counterclaim for negligent misrepresentation when he proved and the evidence was that all elements for negligent misrepresent were met, to wit:

- a. A false representation was made by a party to another;
- b. The representation was material;
- c. That the party making the representation made the representation in the course of its business;
- d. The party making the representation owed a duty of care to see that truthful information was communicated to the other party;
- e. The party breached that duty of care;
- f. The other party justifiably relied on the representation; and,
- g. The relying party suffered a pecuniary loss as a direct and proximate result of reliance on the representation.

*Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847, 842 (Ct.App.1997).

5. The Court erred in denying and dismissing Marshall’s counterclaim for Slander of Title, in that all elements of slander of title were proven, to wit: (1) the publication of

a false statement; (2) derogatory to the Plaintiff's title; (3) made with malice; (4) causing special damages; as a result of diminution of value in the eyes of third parties.

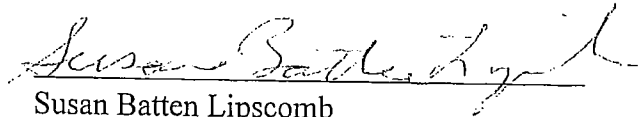
*Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 886 (Ct.App.1995), citing *TXO Production Corp v. Alliance Resources Corp.*, 187 W.Va. 457, 419 S.E.2d 870 (1992), aff'd, 509 U.S. 443, 113 S.Ct. 2711 (1993). *Pond Place Partners, Inv. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct.App.2007).

6. The Court erred in failing to award actual and punitive damages for slander of title when as set for above the elements were proven and the slander of title was made recklessly. See *Solley v. Navy Federal Credit Union, Inc.*, 297 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct.App.2012), quoting *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 89, 447 S.E.2d 194, 196 (1994).
7. The Court erred in failing to award Marshall actual and punitive damages and attorney fees and costs when he was required to take legal action to defend the situation and clear the title to the Subject Property. See *Solley v. Navy Federal Credit Union, Inc.*, 297 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct.App.2012), citing *Neff v. Neff*, 247 P.3d 380, 401 (Utah 2011). See also Restatement (Second) of Torts §633.
8. The Court erred in finding that printing the Association newsletter stating that Marshall had failed to pay his Association assessments or dues was entitled to a qualified privilege, even when it knew that Marshall was disputing that the Subject Property was in the Association or subject to the Covenants and Restrictions or he was subject to assessment of dues, when it does not enjoy that defense.
9. The Court erred in dismissing Marshall's claim for defamation when the evidence was that the Association made a false and defamatory statement concerning him; it

was an unprivileged publication to a third party; there was fault on the part of the Association; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. See Restatement § 558.

10. The Court erred in dismissing Marshall's claim for defamation when the defamation was libel and there for actionable per se, thereby should have presumed malice and in such cases the court presumes that Marshall had damages.
11. The Court erred in dismissing Marshall's claim for defamation when the Association attempted to use defamation to coerce payment of a debt by holding out to the public that Marshall was a debtor, when it was not true and when the Association knew that Marshall disputed any debt.

Respectfully submitted,



Susan Batten Lipscomb

John Richard Lipscomb

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*Attorneys for Defendant*

April 9, 2015  
Columbia, SC

CERTIFICATE OF SERVICE

I, Susan Batten Lipscomb, attorney for Defendant, do hereby certify that on April 9, 2015, DEFENDANT'S MOTION TO RECONSIDER, ALTER, AMEND OR MODIFY ORDER (DISMISSING ACTION) was served on counsel of record by causing a copy thereof to be placed in the United States Mail, postage prepaid, addressed as set forth below:

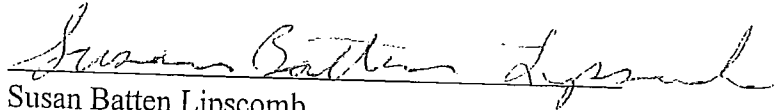
A. Johnston Cox  
PO Box 7368  
Columbia, SC 29201

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SC Court of Appeals

CLERK OF COURT  
COURT OF APPEALS  
COLUMBIA, SC  
JUL 27 2016

  
Susan Batten Lipscomb