

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Chas)
)
Madison & Hamlin Plantation, et al.)
 Plaintiff,)
 vs.)
Builders Support Services, et al.)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-5559

MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

RECEIVED
 NOV 21 2016
 SC Court of Appeals

Plaintiff's Attorney: <u>Justin O'Toole Lucey</u> , Bar No. _____ Address: <u>415 Mill Street, Mt. Pleasant, SC</u> Phone: _____ Fax: <u>29464</u> E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

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

[Signature]
 Signature of Attorney for Plaintiff / Defendant Date submitted _____

SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- 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, SCRCP)
- 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

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Madison at Hamlin Plantation Townhome Association, Inc. and Sandy Randall and Cherie Berotti, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

Builders Support Services of the Carolinas, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of the Carolinas, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of NC, Inc. individually and f/k/a John Wieland Homes and Neighborhoods of SC, Inc., at al.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-10-05559

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**ORDER GRANTING PLAINTIFFS'
MOTION TO SUBSTITUTE
CLASS REPRESENTATIVES**

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THIS MATTER CAME BEFORE THE COURT on November 18, 2016, upon Plaintiffs Madison at Hamlin Plantation Townhome Association, Inc. and Sandy Randall and Cherie Berotti, individually, and on behalf of all others similarly situated (hereinafter collectively referred to as "Plaintiffs") Motion to Substitute Class Representatives. The original individual Plaintiffs in this matter, Sandy Randall and Cherie Berotti were appointed as class representatives by Order dated September 24, 2014. As Ms. Berotti was the first ("original") purchaser of her townhouse, having purchased directly from John Wieland Homes and Neighborhoods of South Carolina, Inc. ("Wieland"), she was named as the sub-class representative of all original Madison townhome owners who might arguably be subject to various liability disclaimers and arbitration clauses in the original written warranty issued to the

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first purchasers of each residence.¹ As Ms. Randall was not the first (“original”) purchaser of her townhouse, having purchased from someone other than John Wieland Homes and Neighborhoods of South Carolina, Inc., she was named as the class representative of all downstream Madison townhome owners.

These two class representatives (Berotti and Randall) have since sold their residences, and Plaintiffs have moved to substitute new class representatives. Specifically, Plaintiffs have moved to substitute another original owner, Jane A. Marshall, for Cherie Berotti, as the original owner class representative; and to substitute a downstream owner, Thomas C. Koontz, for Sandy Randall, as the downstream owner class representative. It is represented by Plaintiffs that there are currently approximately twenty (20) original owners remaining in the one hundred and fourteen (114) townhouse development.

After this Court’s earlier orders granting class certification and denying the motion to compel Berotti, individually,² to arbitrate her claim, Wieland filed an appeal of these two orders. Recently, prior to arguments on the appeal, Plaintiffs moved to substitute in the Court of Appeals. The Court of Appeals remanded for this Court to consider the motion. In the interim, shortly after the appeal was filed, this Court denied Wieland’s motion to stay pending the appeal by Form 4 Order, dated April 14, 2015, and formal Order, dated July 20, 2015. The parties have advised the Court that discovery has progressed,³ many/most defendants have been deposed, a number of Plaintiffs’ experts have been deposed, and the parties have agreed to, and are scheduled to, mediate this case for three days on December 5-7, 2016. There has been minimum

¹ While this Court denied the motion to compel Berotti to arbitrate by Order, dated January 21, 2015, it was recognized by class counsel and this Court that as this might be a continuing issue, it would be prudent to subclass these class members.

² It is Wieland’s position on appeal that the Order denying arbitration applies to the entire subclass of original owners. Plaintiffs do not object to that interpretation.

³ Wieland’s position is that its participation in discovery is not a waiver of the right to move to compel arbitration where Wieland has previously moved to compel the subclass representative to arbitrate.

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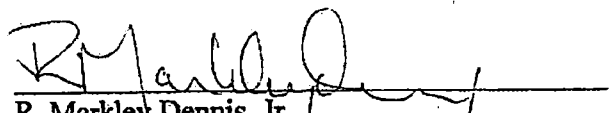
involvement or intervention by the Court during this interim, and the parties and their counsel have continued to move this case forward.

In support of their motion, Plaintiffs have filed the affidavits of Marshall and Koontz, confirming their status and their understanding of the class representative role. These affidavits are nearly identical to those filed by Berotti and Randall at the time of the original class certification.

Notably, Plaintiffs have stipulated that the Berotti and Marshall purchase contracts and warranties are identical in all material respects; and no party has indicted otherwise. Therefore, this Court's Order denying the Motion to Compel Berotti to arbitrate would apply equally to the substituted representative Marshall. Therefore, in the discretion of the Court of Appeals, the instant appeal may continue and the arbitration issue can be decided now in lieu of a second appeal on a second motion to compel arbitration.

Having reviewed and considered the submissions of the parties and the oral arguments presented by counsel, this Court concludes that substitution is necessary and appropriate, and this Court grants the substitution of Jane A. Marshall for Plaintiff Cherie Berotti and the substitution of Thomas C. Koontz for Plaintiff Sandy Randall, both to serve as Class Representatives in this matter. Berotti and Randall are hereby dismissed, as they no longer have an interest in this matter.

THEREFORE, IT IS ORDERED that Plaintiffs' Motion to Substitute Class Representatives is GRANTED.


R. Markley Dennis, Jr.
Circuit Court Judge of the Ninth Judicial Circuit

November 18, 2016
Charleston, South Carolina

Lmc/3

JUSTIN O'TOOLE LUCEY, PA

Attorney at Law

415 Mill Street, Mount Pleasant, SC 29464

Phone: 843.849.8400 · Fax: 843.849.8406 · office@lucy-law.com

Reply to:

P.O. Box 806

Mount Pleasant, SC 29465

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Dabny Lynn
James L. Floyd, III
Anna S. McCann

November 18, 2016

VIA U.S. MAIL, FACSIMILE, AND E-MAIL

Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: *Madison at Hamlin Plantation Townhome Association, Inc., et al. v. Builders Support Services of the Carolinas, Inc., et al.*
Appellate Case No.: 2015-000201
Common Pleas Case No.: 2013-CP-10-5559

Dear Ms. Kitchings:

I hope this finds you well. Attached please find Judge Dennis's Order Granting Plaintiffs' Motion to Substitute Class Representatives, pursuant to Judge Huff's November 2, 2016 Order remanding this matter.

Please feel free to contact me should you have any questions or concerns regarding this matter.

With best regards, I remain

Very truly yours,



Justin O. Lucey

cc: Andrew E. Haselden, Esq.

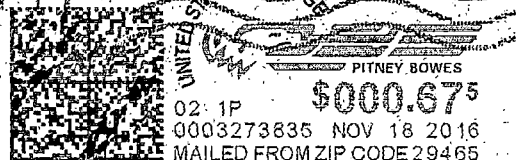
JUSTIN O'TOOLE LUCEY, PA

ATTORNEYS AT LAW

415 MILL STREET • P.O. Box 806 • MT. PLEASANT, SC 29465-0806

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Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
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