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## EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton, )  
and Bayside Property, Inc., )  
 )  
Plaintiffs, )

vs. )

ORDER

South Bay Properties, LLC, Stantec )  
Consulting Services, Inc. f/k/a Trico )  
Engineering Consultants, Inc., Milone )  
& MacBroom, Inc., John Steven Goodwin, )  
Louise C. Goodwin, Thomas I. Puckett, )  
Brenda C. Puckett, Robert Nahama, )  
Jeanne E. Nahama, Thomas Holland )  
Sharon Louise Holland, Joyce K. Sobel, )  
Robert W. Waruszewski, Richard N. )  
Taylor, Robert K. Spillers (a/k/a Robert )  
Spillers) Deborah T. Spillers (a/k/a Deborah )  
Spillers), Patrick A. DiAngelo, Deborah A. )  
DiAngelo, Gary E. Owens, and Joyce M. )  
Owens, Fount L. Shults, Lynda M. Shults, )  
Dennis Ridgeway, Teresa Lynn Ridgeway )  
and Georgetown County Forfeited Land )  
Commission, )

Defendants. )

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NOV 28 2016

SC Court of Appeals

ALMA Y. WHITE  
CLERK OF COURT

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FILED  
GEORGETOWN COURTHOUSE, S.C.

The Amended Motion to Amend Answer filed by John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens (the Goodwins and Owenses) was heard on October 29, 2015. Present were K. Douglas Thornton and John M. Leiter, attorneys for the Goodwins and Owenses; Charles T. Smith, attorney for the Plaintiffs; and, Donald G. Hunt, Jr., attorney for South Bay Properties, LLC. Having carefully considered the arguments of the attorneys, the memorandums submitted in support of the motion and in opposition to the motion

and the pleading in this action and in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* (civil action no. 2009-CP-22-1045), I find and conclude that the motion should be denied.

1. Procedural History

This action to foreclose a mortgage on real property was commenced by the filing of a summons, complaint and lis pendens on August 31, 2012. The complaint alleges Plaintiffs are the owners and holders of a promissory note from South Bay Properties, LLC in the principal sum of \$14,580,662.92 secured by a purchase money mortgage on property in a subdivision known as Harbor Club on Winyah Bay. Parties that may have or claim an interest in the subject property are named as Defendants.

All Defendants are in default or have consented to referring this action to the Master in Equity or have filed answers consisting of only qualified denials. The answer filed by John Steven Goodwin and Louise C. Goodwin and the answer filed by Gary E. Owens and Joyce M. Owens are qualified denials and do not assert any counter-claims, cross-claims or third party claims or demand a jury trial.

Plaintiffs moved to refer this action to the Master in Equity. On January 22, 2013, the day of the hearing on the motion to refer, the Goodwins and Owens filed a Motion to Amend Answer. This action was referred to the Master in Equity by an Order of Reference dated January 28, 2013, with the express provision that nothing in the order should be construed as a ruling on the Motion to Amend Answer.

The Master in Equity was unable to hear the Motion to Amend Answer because the Master's spouse and law partner is the attorney for the City of Georgetown and the motion seeks

to add the City of Georgetown as a third party defendant and to assert third party claims against the City of Georgetown. The Master in Equity refrained from hearing the motion and returned this action to the circuit court by an Order Returning Action to Circuit Court dated March 21, 2013.

The Goodwins and Owenses filed an Amended Motion to Amend Answer on September 23, 2013.

The Goodwins and Owenses filed an appeal which was dismissed by The South Carolina Court of Appeals on August 12, 2015, with directions that:

The case is remanded to the circuit court, and no party is prohibited from bringing any position before the circuit court. The case resumes the precise position it occupied on March 21, 2013.

Remittitur was issued on August 28, 2015.

Therefore, the Amended Motion to Amend Answer is properly before this court.

2. Another Action is pending between the Same Parties for the Same Claims.

The Amended Motion to Amend Answer seeks leave to add twelve (12) counter-claims, cross-claims and third party claims and to add seven (7) third party defendants to the Goodwins' and Owenses' answers. The proposed counter-claims, cross-claims and third party claims are all claims asserted in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* (civil action number 2009-CP-22-1045). The proposed third party defendants are all defendants in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* The Memorandum in Support of Motion to Amend at page 5 confirms that the complaint in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* alleges, "... the same factual basis and legal claims that are asserted in the Owenses' and Goodwins' proposed Amended Answer and Counterclaim." The

effect of granting the Goodwins and Owens leave to amend their answers would be to create a second action between the same parties for the same twelve (12) claims.

“Under Rule 12(b)(8), SCRPC, dismissal is appropriate when another action is pending between the same parties for the same claim.” *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). In *Corbett v. City of Myrtle Beach*, 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct. App. 1999), the Court of Appeals concluded that the trial court properly dismissed the complaint pursuant to Rule 12(b)(8) because the plaintiff’s claim for negligent infliction of emotional distress against a beach service involved the same parties and was "based upon the same facts and circumstances" as the plaintiff’s first two wrongful death actions against the beach service and the City of Myrtle Beach.

Goodwins' and Owenses' proposed amended answers violate Rule 12(b)(8), SCRPC. Therefore, leave to add twelve (12) counter-claims, cross-claims and third party claims and to add seven (7) third party defendants to the Goodwins' and Owenses' answers in this proceeding should be denied.

3. The Proposed Third Party Defendants are not Liable to the Goodwins and Owenses for the Plaintiffs’ Claim.

This is a standard mortgage foreclosure action. The Goodwins and Owenses are named as defendants because they claim an equitable lien on the subject property. The relief sought in the Plaintiffs’ complaint is that the amount due on the note and mortgage from South Bay Properties, LLC be determined, that the Plaintiffs have judgment of foreclosure, that the subject property be sold by the court, that the equity of redemption be barred, and that the proceeds of the sale be distributed according to law.

The Goodwins and Owenses propose to add to their qualified denials third party claims for: (1) Breach of Contract/Rescission, (2) Breach of Contract - Declaratory Relief, Specific Performance and Damages, (3) Breach of Contract Accompanied by Fraudulent Acts, (4) Violation of S.C. Unfair Trade Practices Act, (5) Negligent Misrepresentation, (6) Actual Fraud/Constructive Fraud, (7) Third Party Beneficiaries/Declaratory Judgment, (8) Violation of Interstate Land Sales Full Disclosure Act - Damages, (9) Violation of Interstate Land Sales Full Disclosure Act - Rescission, (10) Violation of South Carolina Uniform Land Sales Full Disclosure Act, (11) Equitable Lien, and (12) Civil Conspiracy. None of the proposed third party claims are founded on derivative liability. None of the proposed third party claims are dependent on the outcome of the Plaintiffs' case.

The Goodwins and Owenses propose to join as third party defendants: (1) Landquest Development, LLC, (2) Kyle V. Corkum, (3) C. R. Thompson and Sons, LLC, (4) The City of Georgetown, (5) Hartford Casualty Insurance Company, (6) Hartford Fire Insurance Company, and (7) National Land Sales, Inc.

The circumstances required for a defendant to bringing in a third party are set forth in Rule 14(a), SCRCF, which provides in part:

**When Defendant May Bring in Third Party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action *who is or may be liable to him for all or part of the plaintiff's claim against him*. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. (emphasis added)

“Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability.” *First General Services of Charleston, Inc. v. Miller*, 314 S.E. 439, 442, 445 S.E.2d 446, 447 (1994).

The Goodwins' and Owenses' proposed third party claims are not derivative liability claims as required by Rule 14, SCRPC. Therefore, leave to add seven (7) third party defendants to this proceeding should be denied.

4. The Proposed Counter-claims, Cross-claims and Third Party Claims are barred by the Statute of Limitations.

The proposed counter-claims, cross-claims and third party claims are the same claims asserted in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* The complaint in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* was dated and filed July 9, 2009. The complaint in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* establishes that the proposed claims arose, and that Goodwins and Owenses knew of the proposed claims, no later than July 9, 2009. The Motion to Amend Answer was originally filed January 22, 2013, more than three years after the proposed claims arose and more than three years after the Goodwins and Owenses knew of the proposed claims.

Litigants alleging property damage or personal injury are generally required to bring suit within three (3) years from when the cause of action arose. *S. C. Code § 15-3-530*. Therefore, leave to add the twelve (12) counter-claims, cross-claims and third party claims to the Goodwins' and Owenses' answers in this proceeding should be denied.

5. Granting Leave to Amend the Answers Would Prejudice Other Parties.

Rule 15(a), SCRCP, provides:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and *leave shall be freely given when justice so requires and does not prejudice any other party*. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders. (emphasis added)

Granting leave to add twelve (12) counter-claims, cross-claims and third party claims and to add seven (7) third party defendants to this mortgage foreclosure would prejudice the Plaintiffs by unduly complicating and delaying the adjudication of a relatively simple action and all but submerge the Plaintiffs' claim. Granting leave would also prejudice the other owners of lots in Harbor Club on Winyah Bay by indefinitely delaying clearing title to portions of the subdivision still held in the name of South Bay Properties, LLC, including roads, parks and other common elements. Granting leave would also prejudice the defendants in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* by exposing them to duplicative litigation and possibly inconsistent rulings in two separate actions regarding the same claims. Granting leave would also prejudice the other defendants in this action indefinitely delaying and complicating resolution of their claims regarding the subject property.

A similar situation was presented in *Beach v. Hudson*, 298 S.C. 424, 380 S.E.2d 869 (Ct. App. 1989) when a defendant in a breach of contract action attempted to assert seven (7) claims against four (4) third party defendants. The trial judge struck the third party complaint and the Court of Appeals affirmed stating:

When considering a request to strike or to sever a third-party claim, the court may properly consider 'the effect the additional parties and claims will have on the adjudication of the main action-in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way.' 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1460 at 319 (1971).

In our view, the assertion against four additional parties of seven additional causes of action in the third-party complaint, involving as those causes of action do allegations, among other things, of fraud, negligence, recklessness, outrage, and unfair trade practices, treble damages, and repeated demands for punitive damages, will unduly complicate the adjudication of the relatively simple contract action brought by the plaintiffs. Indeed, the causes of action asserted by Hudson, if tried alongside the plaintiffs' claim, would all but submerge the plaintiffs' claim.

We therefore find no abuse of discretion by the trial court in granting the motion by the third-party defendants to strike the third-party complaint, even were we to conclude that each of the causes of action asserted therein under Rule 14(a) is, as Hudson argues, dependent on the outcome of the plaintiffs' claim. See 6 C. WRIGHT AND A. MILLER, *supra* § 1446 at 246 ('A third-party claim may be asserted under Rule 14(a) only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant.').

298 S.C. at 426-27, 380 S.E. 2d at 871

Goodwins' and Owenses' proposed amended answers would prejudice other parties.

Therefore, leave to add twelve (12) counter-claims, cross-claims and third party claims and to add seven (7) third party defendants to the Goodwins' and Owenses' answers in this proceeding should be denied.

6. Conclusion.

For the foregoing reasons I find and conclude that the Goodwins' and Owenses' Amended Motion to Amend Answer should be, and hereby is, denied.



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William H. Seals, Jr.  
Chief Judge for Administrative Purposes  
Fifteenth Judicial Circuit

November 10, 2015

## **EXHIBIT B**