

EXHIBIT A

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SC Court of Appeals



Berkeley County 9th Judicial Circuit Court Rosters



South Carolina Judicial Department Home Page Return To Roster Selection Roster News

Court Agency	08002	Judge	Jefferson	Roster Description	Motion Docket Week of Dec 5, 2016 @ 10:30am/ Courtroom B
Roster Type	Motion Hearing	Roster Begin Date	12/05/2016	Roster End Date	12/09/2016
Roster Id	158	Roster Begin Time	9:30 AM		

#	Scheduled Date	Start Time	Duration Hrs:Mins	Description	Filing Party	Filed Date	Case / Case Caption	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
1	12/05/2016	10:30 AM	0:12	Motion/Compel	Rita Brooks-PLT	10/18/2016	2012CP0802981 Rita Brooks VS Velocity Powersports, Llc , defendant, et al	Breach of Cont 140	Edward J. Dennis IV (843) 761-5212	Mary Leigh Arnold (843) 971-6053	
2	12/05/2016	10:30 AM	0:12	Motion for Sanctions	Rita Brooks-PLT	10/18/2016	2012CP0802981 Rita Brooks VS Velocity Powersports, Llc , defendant, et al	Breach of Cont 140	Edward J. Dennis IV (843) 761-5212	Mary Leigh Arnold (843) 971-6053	
3	12/05/2016	10:30 AM	0:12	Motion/Enforce Settlement Agreement	Avis Rent A Center System-PLT	10/21/2016	2014CP0800461 Avis Rent A Center System VS Michael Robert Zltnik	Debt Collection 110	Joseph Ernest Brown (864) 605-3832 x4003 Amanda Mange Scott (866) 629-0912		
4	12/05/2016	10:30 AM	0:12	Motion/Stay	Robert S. Cumbee-PLT	10/12/2016	2014CP0801522 Robert S. Cumbee VS Jeffery N. Byrd, defendant, et al	Motor Veh Accid 320	Darrel L. Wigger (843) 553-9800	Margaret Fanning Horn (843) 762-4567	CONTINUANCE REQUESTED for trial
5	12/05/2016	10:30 AM	0:12	Motion/Summary Judgment	The Eagle Landing Association, Inc-PLT	07/18/2016	2015CP0801007 The Eagle Landing Association, Inc VS Stephanie L. Hendrixson , defendant, et al	Foreclosure 420	Steven L. Smith (843) 760-0220	Stephanie L. Hendrixson (843) 408-8500	
6	12/05/2016	10:30 AM	0:12	Motion/Dismiss	William Andrew Johnstone III-DEF	10/17/2016	2015CP0801258 Shannon M. Floyd-Frawley , plaintiff, et al VS William Andrew Johnstone III , defendant, et al	Real Prop/Other 499	Brian L. Boger (803) 252-2880	George B. Bishop Jr. (843) 761-8213 William Andrew Johnstone III (843) 478-4876	
7	12/05/2016	10:30 AM	0:12	Motion/Dismiss Third Party Complaint	Southern Health Partners, Inc.-DEF	10/11/2016	2015CP0801503 Joseph L. Miller, As Personal Rep III , plaintiff, et al VS Southern Health Partners, Inc. , defendant, et al	Wrongful Death 360	Andrew Wade Creech (803) 324-7574	Eugene P. Corrigan III (843) 327-7187 James Grant Long III (803) 253-8224 John Owens Williams II (843) 719-4011	Continued...until next term of court. Attorney Corrigan Protected 9/30/2016 thru 1/2/2017
8	12/05/2016	10:30 AM	0:12	Motion for Partial Summary Judgment	Cab Comm, Inc-DEF	10/13/2016	2015CP0802162 Harley D. Crosby VS Cab Comm, Inc , defendant, et al	Motor Veh Accid 320	Harley D. Crosby (843) 826-6080 Harley D. Crosby (843) 826-6080 x0	Margaret Fanning Horn (843) 762-4567 Danielle F. Payne (843) 576-2921	NFTB 1/30/2017
9	12/05/2016	10:30 AM	0:12	Motion/Compel	Berkeley County Sheriff's Department-DEF	04/15/2016	2015CP0802282 Lakosha Wade , plaintiff, et al VS Berkeley County Sheriff's Department	Special-Comp/Oth 699	Lakosha Wade Shawn Wade	Christopher Thomas Dorsel (843) 556-4045 Sandra J. Senn (843) 556-4045	
10	12/05/2016	10:30 AM	0:12	Motion/Alter and/or Amend	Eduardo Munoz-PLT	10/21/2016	2016CP0800200 Eduardo Munoz VS Kenneth Slimmons	Motor Veh Accid 320	Jeffrey Wayne Buncher Jr. (843) 723-7491	Jeffrey Michael Crudup (843) 762-8216 Margaret Fanning Horn (843) 762-4567	
11	12/05/2016	10:30 AM	0:12	Motion/Compel	Receille B. Lejarde-DEF	09/22/2016	2016CP0800282 Jeffrey L. Day VS Receille B. Lejarde	Motor Veh Accid 320	Gary Lane Cartee (843) 767-1800	Leslie Brenna Boodry (843) 577-2026	
12	12/05/2016	10:30 AM	0:12	Motion/Summary Judgment	Pilot Travel Center, LLC-DEF	05/12/2016	2016CP0800334 Cynthia Wright , plaintiff, et al VS Marathon Petroleum Company, LP , defendant, et al	Motor Veh Accid 320	Kevin B. Smith (843) 769-7077	Bruce Alan Berlinsky (843) 852-2202 William George Besley (803) 758-6000 Jerome Bennett Crites III (843) 300-6653 Mary Barnwell Ramsay (843) 300-6659 Jeffrey Ian Silverberg	
13	12/05/2016	10:30 AM	0:12	Motion/Damages Hearing	Bernadette Johnson-Hall-PLT	07/14/2016	2016CP0800521 Bernadette Johnson-Hall VS Javon Hall	Motor Veh Accid 320	Richard Charles Alexander (843) 297-8485		
14	12/05/2016	10:30 AM	0:12	Motion Transferring Case to Jury Roster	Elissa R. Ragans-PLT	10/17/2016	2016CP0801142 Elissa R Ragans , plaintiff, et al VS Joan E Peters	Motor Veh Accid 320	Johnny F. Driggers (843) 572-8222	Robert Edward Kneece III (843) 576-2829	
15	12/05/2016	10:30 AM	0:12	Motion/Compel	Diana Cobb Dejesus-PLT	10/31/2016	2016CP0801475 Diana Cobb Dejesus VS Merritt Webb Wilson & Caruso, Pplc	Breach of Cont 140	William Michael Gruenloh (843) 577-0027 Brian Ross Holmes (843) 577-0027	David W. Overstreet (843) 972-9401 Joshua Steven Whitely (843) 606-5635	
16	12/05/2016	10:30 AM	0:12	Motion/Alter and/or Amend Complaint	Michael Sowders-PLT	10/03/2016	2016CP0801509 Michael Sowders VS Larry E. Gilbert	Breach of Cont 140	William Mark Kooztz (843) 225-4252	John Samuel West (843) 761-5626	Completed-11/10/2016

17	12/05/2016	10:30 AM	0:12	Motion/Dismiss	Kirk K. Eiring-DEF	10/04/2016	2016CP0802072	Foreclosure	William Price Stork (803) 767-4657	George John Conits (864) 282-2100 William H. Sloan Jr. (843) 873-7531	
18	12/05/2016	10:30 AM	0:12	Motion to Enforce Assignment of Rent and or to Appoint	254 Seven Farms Drive Condominium Association, Inc.-PLT	10/18/2016	2016CP0802154	Foreclosure	Derek Farrell Dean (843) 762-9132	George John Conits (864) 282-2100	Continued...Nonservice to Def....
19	12/05/2016	1:00 PM	0:12	Motion/Quash or in the Alternative, for a Protective Order	Daniel Island Riverside Developers LLC-PLT	04/02/2016	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
20	12/05/2016	1:00 PM	0:12	Motion/Compel	Daniel Island Riverside Developers LLC-PLT	09/15/2015	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
21	12/05/2016	1:00 PM	0:12	Motion for leave to File an Amended Complaint	Daniel Island Riverside Developers LLC-PLT	04/21/2016	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
22	12/05/2016	1:00 PM	0:12	Motion/Compel Clifford T. Brady and Robert P. Brady Agency,	The Oaks at Rivers Edge Property Owners Asso Inc-DEF	05/09/2016	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
23	12/05/2016	1:00 PM	0:12	Motion/Compel Mt. Hawley Ins. Co. to Answer the Second and	The Oaks at Rivers Edge Property Owners Asso Inc-DEF	05/09/2016	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
24	12/05/2016	1:00 PM	0:12	Motion/Exclude from Evidence or Submission of the Order of	Mt Hawley Insurance Company-DEF	07/02/2015	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
25	12/05/2016	1:00 PM	0:12	Motion/Summary Judgment	Mt Hawley Insurance Company-DEF	07/02/2015	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
26	12/05/2016	1:00 PM	0:12	Motion/Compel		04/13/2015	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
27	12/05/2016	1:00 PM	0:12	Amended Motion/Summary Judgment		06/03/2015	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101 Paul Robert Vancil	
28	12/05/2016	1:00 PM	0:12	Motion/Exclude		06/12/2015	2010CP0804318	Breach of Cont 140	Charles S. Altman (843) 853-9907	Walter Henry Bundy Jr. (843) 212-0525 Allen Leland DuPre (843) 577-7730 Robert T. Lyles Jr. (843) 577-7730 Roy Pearce Maybank (843) 766-8101	

41	12/05/2016	1:00 PM	0:12	Motion/Set Aside Default	Quicken Loans Inc.-DEF	10/24/2016	2016CP0802023	Foreclosure 420	Timothy W. Bouch (843) 937-8811 Yancey Alford McLeod III (843) 513-1074	Brian Montgomery Barnwell (803) 255-9233 Allen Mattison Bogan (803) 255-9589 Karen Marie DeJong (843) 216-6161	
42	12/05/2016	1:00 PM	0:12	Amended Motion to Dismiss and Compel Arbitration	Shelly Leeke Law Firm, Llc-DEF	11/21/2016	2016CP0802050	Breach of Cont 140	Christopher Brandon Belger (843) 225-4252	Wesley Earle Henderson (843) 212-3188	
43	12/05/2016	2:00 PM	0:12	Motion/Summary Judgment as to Plaintiff's Sixth Amended	Builders FirstSource -Southeast Group LLC-DEF	10/24/2016	2013CP0800179	Special-Comp/Oth 699	John T. Chakeris (843) 853-5678 Phillip Ward Segul Jr. (843) 884-1865	Julian Kane Allen (843) 882-5005 Jonathan J. Anderson (843) 723-0185 Edwin Jack Anglin (843) 329-4040 Mark Steven Barrow (803) 256-2233 Amanda Morgan Blundy	Attorney Lacour Protected 11/29 thru 12/6/2016
44	12/05/2016	2:00 PM	0:12	Motion/Summary Judgment as to Plaintiff's Sixth Amended	Builders FirstSource -Southeast Group LLC-DEF	10/24/2016	2013CP0800180	Special-Comp/Oth 699	John T. Chakeris (843) 853-5678 Phillip Ward Segul Jr. (843) 884-1865	Julian Kane Allen (843) 882-5005 Jonathan J. Anderson (843) 723-0185 Edwin Jack Anglin (843) 329-4040 Mark Steven Barrow (803) 256-2233 Amanda Morgan Blundy	Attorney Lacour Protected 11/29 thru 12/6/2016
45	12/05/2016	2:00 PM	0:12	Motion/Compel	Summer Creek Apartments, Llc-DEF	10/31/2016	2015CP0801720	Personal Injury 350	Jeremy Morgan Forrester (843) 722-7733	Duke Raleigh Highfield (843) 720-5456 Brandt R. Horton (843) 720-5459	
46	12/05/2016	2:00 PM	0:12	Motion/Dismiss James C. Simons, Jr. Individually and D/B/A	Eli A. de Carvalho-TDF	10/26/2016	2015CP0802056	Build Code Vio 460	Jesse A. Kirchner (843) 937-8000	Stephen Lynwood Brown (843) 720-5488 Timothy Cooper Dargan (843) 410-4718 Jan Wesley Freeman (843) 727-2242 Kevin W. Mims (843) 410-4713	NFTB 4/24/2017
47	12/05/2016	2:00 PM	0:12	Motion to Transfer Case to Jury Trial Docket	Charles Lewis Jr.-PLT	11/15/2016	2015CP0802104	Motor Veh Accid 320	Johnny F. Driggers (843) 572-8222	Margaret Fanning Horn (843) 762-4567	
48	12/05/2016	2:00 PM	0:12	Damages Hearing for Default Judgment	Peggy Collins-PLT	11/02/2016	2015CP0802851	Motor Veh Accid 320	Bert Glenn Utsey III (843) 549-9544	Christopher William Nickels (843) 577-2026	
49	12/05/2016	2:00 PM	0:12	Motion to Amend Its Answer and Assert a Third Party	General Heating & Air Conditioning Company of Greenville, In-DEF	10/24/2016	2016CP0800109	Constructions 100	Justin O'Toole Lucey (843) 849-8400 Dabny Lynn (843) 849-8400 Anna Scarborough McCann (843) 343-5716 Taylor McCutcheon Morris (843) 849-8400	Mark Steven Barrow (803) 256-2233 L. Dean Best (843) 991-6887 H. Michael Bowers (843) 300-6633 Joseph Kenneth Carter Jr. (803) 227-4279 David Starr Cobb	
50	12/05/2016	2:00 PM	0:12	Notice of Criminal Appeal	Kelana Dukas-PLT	08/21/2015	2015CP0801977	Use AP Case Type 930	Kelana Dukas (904) 201-1833	Kamila Szymczynska-Sas (843) 719-4529	Requested via teleconference. In the Military out of the country.
1	12/06/2016	9:30 AM	0:12	Motion/Compel	Cheryl Mathis-PLT	10/31/2016	2014CP0802117	Premises Liab 330	Benjamin Alexander Crute Traywick (843) 872-1709	George Troy Thames (843) 284-0832	
2	12/06/2016	9:30 AM	0:12	Motion/Set Aside Default	Mosey Creek POA, Inc-DEF	09/19/2016	2014CP0802117	Premises Liab 330	Benjamin Alexander Crute Traywick (843) 872-1709	George Troy Thames (843) 284-0832	
3	12/06/2016	9:30 AM	0:12	Motion/Compel	City Of Goose Creek-DEF	11/02/2016	2015CP0801056	Person Inj/Other 399	David S. Hubbard John Christopher Mills (803) 748-9533	Samuel Richard Clawson Jr. (843) 577-2026 Christopher William Nickels (843) 577-2026	
4	12/06/2016	9:30 AM	0:12	Motion/Summary Judgment	Richard Ingalsbe-DEF	10/31/2016	2015CP0802231	Personal Injury 350	Robert Lee Gaillard (843) 577-5250	Thomas H. Milligan (843) 971-6750	REMOVED from Nov 28 Jury Trial docket Consent Scheduling Order signed NFTB 11/1/2017
5	12/06/2016	9:30 AM	0:12	Motion/Damages	Annie Agatha Owens-PLT	10/28/2016	2015CP0802282	Motor Veh Accid 320	Henry Asby Fulmer III (843) 821-3100		
6	12/06/2016	9:30 AM	0:12	Motion/Summary Judgment	Target Corporation-DEF	11/15/2016	2016CP0800343	Premises Liab 330	Henry Asby Fulmer III (843) 821-3100	Mark Steven Barrow (803) 256-2233 James Eric Cavanaugh (803) 256-2233 x150	
7	12/06/2016	9:30 AM	0:12	Motion/Summary Judgment	American Express Centurion Bank-PLT	11/03/2016	2016CP0800389	Debt Collection 110	Amanda Mange Scott (866) 629-0912	George Hamlin O'Kelley III (843) 856-4488	
8	12/06/2016	9:30 AM	0:12	Motion/Dismiss for Lack of Prosecution	Pamela S. Lewis-DEF	11/03/2016	2016CP0800441	Debt. Collection 110	Edward H. Overcash Jr. (864) 298-1110	Pamela S. Lewis (614) 560-4151	
9	12/06/2016	9:30 AM	0:12	Motion/Compel	Interline Brands, Inc.-DEF	11/04/2016	2016CP0801270	Products Liab 340	John Francis McKenzie (803) 223-6160	Kelly Teague Evans (843) 577-4435 x1224 Robert H. Hood (843) 577-1201 Robert Holmes Hood Jr. (843) 577-4435	

10	12/06/2016	9:30 AM	0:12	Motion/Dismiss Pursuant to RULE 12(b)(5) In Lieu of an	Terese Denesha Howard-DEF	11/01/2016	2016CP0801859	Motor Veh Accid 320	John DeVeaux Stockton (843) 723-7491	John Arthur Jones (843) 577-7700	
11	12/06/2016	9:30 AM	0:12	Motion for Order of Default and Final Order of Forfeiture,	Scarlett A. Wilson, Solicitor-PLT	10/21/2016	2016CP0801924	Forfeited-Petit (840)	Valerie Rains Lowndes (843) 619-7444	C. Carter Elliott Jr. (843) 546-0650	
12	12/06/2016	9:30 AM	0:12	Notice of Motion and Motion For Protective Order	Scarlett A. Wilson, Solicitor-PLT	11/22/2016	2016CP0801924	Forfeited-Petit (840)	Valerie Rains Lowndes (843) 619-7444	C. Carter Elliott Jr. (843) 546-0650	
13	12/06/2016	9:30 AM	0:12	Motion/Set Aside Default, if any, and Motion to Allow Late	Valencia Francisco Lopez-DEF	10/28/2016	2016CP0802151	Motor Veh Accid 320	Carl H. Jacobson (843) 723-7491 John DeVeaux Stockton (843) 723-7491	John Arthur Jones (843) 577-7700	
14	12/06/2016	9:30 AM	0:12	Motion/Dismiss or in the Alternative to Stay this Collection	Melissa R. Deaton-DEF	11/02/2016	2016CP0802248	Debt Collection 110	Paul A. Meding (803) 779-0774	John R Cantrell Jr. (843) 797-2454	
15	12/06/2016	10:30 AM	0:12	Motion to Determine Sufficiency of Plaintiff's Discovery	Crowfield Plantation Community Services Association, Inc-DEF	11/10/2016	2015CP0800485	Breach of Cont 140	David B. Wheeler (843) 579-7015	Paul A. James (843) 849-0111 Douglas Walker MacKeigan III (843) 727-0307	REMOVED from Nov 28 Jury Trial docket Second Consent Scheduling Order NFTA 2/1/2017
16	12/06/2016	10:30 AM	0:12	Motion/Summary Judgment	Crowfield Plantation Community Services Association, Inc-DEF	11/10/2016	2015CP0800485	Breach of Cont 140	David B. Wheeler (843) 579-7015	Paul A. James (843) 849-0111 Douglas Walker MacKeigan III (843) 727-0307	REMOVED from Nov 28 Jury Trial docket Second Consent Scheduling Order NFTA 2/1/2017
17	12/06/2016	10:30 AM	0:12	Motion/Compel	Kyle Scott Seals-PLT	11/10/2016	2015CP0802515	Motor Veh Accid 320	David Wesley Whittington (843) 821-9700	Lauren Nicole Vriesinga (843) 577-2026	
18	12/06/2016	10:30 AM	0:12	Motion/Compel Discovery Responses	Walm-Mart Stores, Inc.-DEF	11/15/2016	2016CP0800345	Premises Liab 330	Heather A. Hartoin (843) 832-6000	Lee Ellen Bagley (803) 790-8838 Amy Lohr Gaffney (803) 790-8838 Randi Lynn Roberts (803) 790-8838 x206	
19	12/06/2016	10:30 AM	0:12	Motion/Compel	Rachel Weaver-PLT	11/14/2016	2015CP0801036	Motor Veh Accid 320	Max Capper Sparwasser (843) 864-6444	Brian James Kern (843) 263-1218	
20	12/06/2016	10:30 AM	0:12	Motion/Quash	Timothy J. Kraft-PLT	11/09/2016	2016CP0801197	Motor Veh Accid 320	Samuel Beverly Cooper Jr. (843) 747-2455	Harry Clayton Walker Jr. (803) 454-0955	
21	12/06/2016	10:30 AM	0:12	Consent Motion/Alter and/or Amend	Karl Hager-PLT	11/21/2016	2016CP0801550	Motor Veh Accid 320	Eric Marc Poulin (843) 614-8888	Thomas H. Milligan (843) 971-6750 Christopher William Nickels (843) 577-2026	
22	12/06/2016	10:30 AM	0:12	Motion/Compel	James Hutson-DEF	11/15/2016	2016CP0801564	Premises Liab 330	Henry Asby Fulmer III (843) 821-3100	Matthew Joseph Story (843) 577-2026	
23	12/06/2016	10:30 AM	0:12	Motion/Compel	John Doe-DEF	11/10/2016	2016CP0801619	Motor Veh Accid 320	Johnny F. Driggers (843) 572-8222	Margaret Fanning Horn (843) 762-4567	
24	12/06/2016	10:30 AM	0:12	Motion/Compel	GEICO-OTH	11/10/2016	2016CP0801742	Motor Veh Accid 320	Ryan Harris Sigal (843) 297-8485	Christina Rae Farnoli (843) 577-2026	
25	12/06/2016	10:30 AM	0:12	Motion/Compel		11/15/2016	2016CP0801817	Premises Liab 330	Christopher P. Blering (843) 761-4888	Penn W Ely (843) 577-2026	
26	12/06/2016	1:00 PM	0:12	Motion/Compel	Patricia Damico-PLT	12/11/2015	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Boineau III	Continued.....Appeal pending
27	12/06/2016	1:00 PM	0:12	Motion for Class Certification	Patricia Damico-PLT	03/24/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Boineau III	Continued.....Appeal pending
28	12/06/2016	1:00 PM	0:12	Motion/Dismiss Plaintiff's Derivative Claims	Lennar Carolinas, Lic-DEF	06/01/2015	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr.	Continued.....Appeal pending

						defendant, et al			(843) 720-2800 Sidney Markey Stubbs (803) 799-9091	(843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III (803) 227-4937 Brent Morris Boyd (803) 782-4100 x1210 Stephen Lynwood Brown (843) 720-5488	
29	12/06/2016	1:00 PM	0:12	Motion/Compel	Manale - Landscaping, LLC-DEF	11/04/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
30	12/06/2016	1:00 PM	0:12	Motion/Compel	Super Concrete of SC, Inc-DEF	08/21/2015	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
31	12/06/2016	1:00 PM	0:12	Motion/Compel	Super Concrete of SC, Inc-DEF	09/09/2015	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
32	12/06/2016	1:00 PM	0:12	Motion/Compel	Super Concrete of SC, Inc-DEF	05/23/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
33	12/06/2016	1:00 PM	0:12	Motion/Dismiss	Civil Site Environmental-DEF	01/06/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
34	12/06/2016	1:00 PM	0:12	Motion/Dismiss	Civil Site Environmental-DEF	01/07/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
35	12/06/2016	1:00 PM	0:12	Motion/Dismiss	Civil Site Environmental-DEF	01/15/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
36	12/06/2016	1:00 PM	0:12	Civil Site Environmental, Inc's Joinder in Rule 59 Motion	Civil Site Environmental-DEF	10/03/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
37	12/06/2016	1:00 PM	0:12	Motion/Summary Judgment	Coastal Concrete Southeast LLC-DEF	03/22/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
38	12/06/2016	1:00 PM	0:12	Motion/Amend Answer to Third Party Complaint of Lenner	Bulders Firstsource-Southeast Group LLC-TDF	05/02/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
39	12/06/2016	1:00 PM	0:12	Motion/Summary Judgment	Knigh't's Concrete Products Inc.-TDF	03/07/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending

40	12/06/2016	1:00 PM	0:12	Motion/Compel Discovery Responses to Lennar Carolinas, LLC	Knight's Concrete Products Inc.-TDF	09/14/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
41	12/06/2016	1:00 PM	0:12	Motion/Dismiss	DVS, Inc.-TDF	01/08/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
42	12/06/2016	1:00 PM	0:12	Motion/Compel	Alpha Omega Construction Group Inc.-TDF	08/08/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
43	12/05/2016	1:00 PM	0:12	Motion/Dismiss		03/07/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
44	12/06/2016	1:00 PM	0:12	Motion/Compel Plaintiffs to Respond to Discovery Requests	Baranov Flooring LLC-DEF	09/13/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Continued.....Appeal pending
45	12/06/2016	1:00 PM	0:12	South Carolina Exteriors, LLC Notice of and Motion for Leave	South Carolina Exteriors, LLC-TDF	04/11/2016	2014CP0802424	Real Prop/Other 499	David Cooper Cleveland (843) 577-2026 John Calvin Hayes IV (843) 805-7003 Catherine Dunn Meehan (843) 720-2800 Sidney Markey Stubbs (803) 799-9091	Christopher M. Adams (803) 256-2660 Kenneth Michael Barfield (843) 577-7700 Alan Ross Belcher Jr. (843) 720-3460 David Shuler Black (843) 522-2400 Robert Trippett Bolneau III	Completed-11/29/2016 Continued.....Appeal pending
1	12/07/2016	9:30 AM	0:12	Motion/Compel	William Purvis, As Personal Rep-PLT	11/21/2016	2016CP0800336	Breach of Cont 140	Peter Brandt Shelbourne (843) 871-2210	Kristen E. Horne (803) 255-9530 J. Jay Hulst (843) 761-8232 D. Lawrence Kristinik III (803) 255-9531 Mary Elizabeth Sharp (843) 521-4242	
2	12/07/2016	9:30 AM	0:12	Motion/Compel Discovery Responses	Michael Corcell-PLT	11/21/2016	2016CP0800626	Motor Veh Accid 320	Steven Eric Goldberg (843) 871-6522	William Joseph Horvath (843) 579-8305	
3	12/07/2016	9:30 AM	0:12	Motion/Summary Judgment	Hospitality Management Associates Inc-DEF	11/18/2016	2016CP0800645	Person Inj/Other 399	Henry Asby Fulmer III (843) 821-3100	Trevor Alexander Cangelosi (843) 577-2026	
4	12/07/2016	9:30 AM	0:12	Motion/Dismiss	Berkeley County-DEF	11/18/2016	2016CP0800780	Breach of Cont 140	Zachary James Closser (843) 760-0220	Phillip S. Ferderiges (843) 577-7700 x5309	
5	12/07/2016	9:30 AM	0:12	Motion/Compel	Ronald K. Poulin-DEF	11/17/2016	2016CP0801041	Motor Veh Accid 320	Bobby O'Neil Phipps Jr. (843) 832-6000	Michael T. Coulter (864) 232-4400 Benjamin B. Davis (843) 576-2900 Blake Abernethy McKie (843) 576-2900 Thomas Happel Scurry (843) 300-3833	
6	12/07/2016	9:30 AM	0:12	Motion/Compel	Marie Boney-PLT	11/17/2016	2016CP0801289	Breach of Cont 140	E. Warren Moise (843) 722-0311	Thomas Scott Forster (843) 576-5533 James Dunbar Myrick (843) 722-3400 Thomas McRoy Shelley III (803) 771-7900	
7	12/07/2016	9:30 AM	0:12	Damages Hearing from Default Judgment	Clontz Trucking, Inc.-PLT	11/02/2016	2016CP0801617	Debt Collection 110	Thomas R. Goldstein (843) 554-4291		
8	12/07/2016	9:30 AM	0:12	Motion/Default Judgment	Tierra Mills, Individually and as legal Guardian of Tyson Daniels a-PLT	11/16/2016	2016CP0801656	Motor Veh Accid 320	Joshua Timothy Howie (843) 245-3717		
9	12/07/2016	9:30 AM	0:12	Motion to Lift Default, or In the Alternative, Allow Late	Kristal Bowns-DEF	11/16/2016	2016CP0801892	Motor Veh Accid 320	Jarrel L. Wigger (843) 553-9800	Penn Wickenberg Ely (843) 577-2026	

10	12/07/2016	9:30 AM	0:12	Motion/Dismiss	Kelly Spann II -DEF	11/21/2016	2016CP0801951 Jlohna Williams VS Rev. Kelly Spann II , defendant, et al	Personal Injury 350	Jlohana Williams (929) 228-0293	Peter E. Farr (803) 782-4100
11	12/07/2016	9:30 AM	0:12	Motion/Summary Judgment	Bank Of America, N.A.-PLT	11/21/2016	2016CP0801962 Bank Of America, N.A. VS Thomas E. Mullins	Debt Collection 110	Wesley Evander Boyd (864) 605-3832 x4004	David W. Melnyk (803) 732-7800
12	12/07/2016	9:30 AM	0:12	Notice of Appeal	Berkeley Scrap Metal-APL	09/01/2016	2016CP0802064 Berkeley Scrap Metal , plaintiff, et al VS Domodo International Corp	Magistrate Civil 910	Berkeley Scrap Metal (843) 509-5137 William R. Moorer III	Domodo International Corp

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EXHIBIT B

RICHARDSON
PLOWDEN
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

CHARLESTON P.O. Box 21203 • Charleston, SC 29413
171 Church St., Suite 150, Charleston, SC 29401 P 843.805.6550 F 843.805.6599

www.richardsonplowden.com

Reply to: Charleston
E-mail address: jelliott@richardsonplowden.com

November 11, 2016.

Elliotte Quinn, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

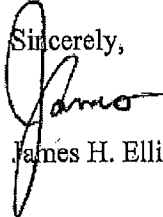
Re: *Particia Damico, et al v. Lennar Carolinas, LLC, et al*
Case No. 2014-CP-08-02424

Dear Elliotte:

Please find attached the 30(b)(6) Notice of Deposition of Lennar Carolinas, LLC concerning the above-referenced matter. The deposition is scheduled on December 15, 2016 at 10:00 am in our office. Please respond to written discovery requests served on Lennar on April 27, 2015, prior to the deposition. If the date and time are not convenient, please give me a call and we can reschedule for a date that is convenient.

With kind regards, I am

Sincerely,


James H. Elliott, Jr.

Enclosure

cc: All Counsel of Record

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

PATRICIA DAMICO, AND LENNA)
LUCAS, Individually and on behalf of all)
other similarly situated, JOSHUA AND)
BRETTANY BUETOW, EDWARD AND)
SYLVIA DENG, JONATHAN AND)
THERESA DOUGLASS, ANTHONY AND)
STACEY RAY, DANNY AND ELLEN)
DAVIS MORROW, CZARA AND CHAD)
ENGLAND, BRYAN AND CYNTHIA)
CAMARA, AND MATTHEW COLLINS,)

Plaintiffs,)

v.)

LENNAR CAROLINAS, LLC, SPRING)
GROVE PLANTATION DEVELOPMENT,)
INC., MANALE LANDSCAPING, LLC,)
SUPER CONCRETE OF SC, INC.,)
SOUTHERN GREEN, INC. TJB)
TRUCKING/LEASING, LLC, PARAGON)
SITE CONSTRUCTORS, INC., CIVIL)
SITE ENVIRONMENTAL AND RICK)
BRYANT, Individually.)

Defendants.)

LENNAR CAROLINAS, LLC,)

Third-Party Plaintiff,)

v.)

THE EARTHWORKS GROUP, INC.,)
VOLKMAR CONSULTING SERVICES,)
LLC, GEOMETRICS CONSULTING,)
LLC, LAND/SITE SERVICES, INC.,)
MYERS LANDSCAPING, INC., A.C. & A.)
CONCRETE, INC., KNIGHT'S)
CONCRETE PRODUCTS, INC.,)
KNIGHT'S REDI-MIX, INC., COASTAL)
CONCRETE SOUTHEAST, LLC,)
COASTAL CONCRETE SOUTHEAST II,)
LLC, GUARANTEED FRAMING, LLC,)
OZZY CONSTRUCTION, LLC,)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-08-02424

**MANALE LANDSCAPING,
LLC'S NOTICE OF TAKING
30(b)(6) DEPOSITION OF
LENNAR CAROLINAS, LLC**

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SC Court of Appeals

CONSTRUCTION APPLICATORS)
CHARLESTON, LLC, LA NEW)
ENTERPRISES, LLC, DÉCOR)
CORPORATION, DVS, INC., RAUL)
MARTINEZ MASONRY, LLC, ALPHA)
OMEGA CONSTRUCTION GROUP,)
INC., SOUTH CAROLINA EXTERIORS,)
LLC, BUILDERS FIRSTSOURCE -)
SOUTHEAST GROUP, LLC, AND LOW)
COUNTRY RENOVATIONS AND)
SIDING, LLP,)

Third-Party Defendants.)

DÉCOR CORPORATION,)

Fourth Party Plaintiff,)

v.)

BARANOV FLOORING, LLC, DJ)
CONSTRUCTION SERVICES, LLC,)
CREATIVE WOOD FLOORS, LLC,)
GERALDO CUNHA, EBENEZER)
FLOORING, LLC, ENMANUEL)
FLOORING AND SIDING, LLC, EUSI)
FLOORING AND COVERING, LLC,)
NICOLAS FLORES, ALEXANDER)
MARTINEZ, ISIDRU MEJIA, JUAN)
PEREZ SON, ERNESTO M. PEREZ,)
N&B CONSTRUCTION, LLC, JOSE DIAS)
RODRIGUES, LIVIA SOUSA, JOSE)
BETIO PEREIRA, JOSE PAZ CASTRO)
HERNANDEZ, DIVINIO APARECIDO)
CORGOSINHO, RICARDO CHICHE,)
CEBS CONSTRUCTION, BAYSHORE)
SIDING AND FLOORING, SEBASTIO)
LUIZ DE ARAUJO, AND JOHN DOES 1-)
4,)

Fourth-Party Defendants.)

ALPHA OMEGA CONSTRUCTION)
GROUP, INC.)

Fourth-Party Plaintiff,)

v.)

GARCIA ROOFING, LLC, ADOLFO)
GARCIA d/b/a GARCIA ROOFING,)
and JUAN GARZA RAMOS,)

	Fourth-Party Defendants.)
<hr/>		
	SOUTH CAROLINA EXTERIORS, LLC,)
	Fourth-Party Plaintiff,)
v.)
	JUAN GARZA RAMOS d/b/a JUAN)
	CONSTRUCTORS,)
	Fourth-Party Defendants.)
<hr/>		
	DVS, Inc.,)
	Fourth-Party Plaintiff,)
v.)
	SOUSA CONSTRUCTION, LLC, LIMA)
	CONSTRUCTION, LLC, N&B)
	CONSTRUCTION, LLC, ITATIAIA)
	CONSTRUCTION, LLC, and)
	JC CONTRACTORS, LLC,)
	Fourth-Party Defendants.)
<hr/>		
	GUARANTEED FRAMING, LLC,)
	Fourth-Party Plaintiff,)
v.)
	FIRST CONSTRUCTION, LLC,)
	JC CONTRACTORS, LLC, JESSICA)
	MARROQUIN d/b/a MARROQUIN)
	CONSTRUCTION and UNIQUE)
	FRAMING, LLC,)
	Fourth-Party Defendants.)
<hr/>		

TO: JENNA K. MCGEE, ESQUIRE AND ELLIOTTE QUINN, ESQUIRE, ATTORNEYS
FOR LENNAR CAROLINAS, LLC

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Manale Landscaping, LLC (“Manale”) will take the 30(b)(6) oral deposition of Lennar Carolinas, LLC (“Lennar”) beginning at 10:00 a.m. on December 15, 2016, at the law offices of Richardson Plowden and Robinson, 171 Church Street, Suite 150, Charleston, South Carolina in accordance

with Rule 30 of the South Carolina Rules of Civil Procedure. The said deposition will be taken before a Notary Public for the State of South Carolina or other authorized individual.

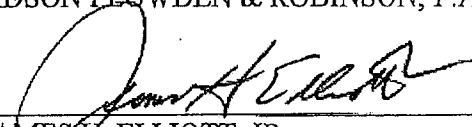
Pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Lennar shall designate one or more officers, directors or managing agents or such other persons who consent to testify on their behalf, as to the following matters upon which examination is requested:

1. Lennar's answer to written discovery served on Lennar by Manale.
2. Identity of all Lennar employees involved in the construction of the homes located in the Abbey Development (the "project") that is the subject of this litigation.
3. All contracts with Manale.
4. All scope of work of Manale at the project.
5. All landscape maintenance at the homes in the project.
6. Identity of other landscape contractors that worked at the project.
7. Address of each home where Manale allegedly performed work at the project.
8. Identify of other subcontractors at the subject project and their scopes of work, including but not limited to, the entities whose scope of work included site preparation, grading, drainage, backfill, dirt fill, foundation construction, mucking and cleaning of the site.
9. The alleged defects in the work of Manale.
10. Evidence that Manale's scope of work impacted the site drainage.
11. Allegations that Manale performed grading work at the project.
12. Lennar's records for the construction of the project.
13. Lennar's record retention policy.
14. Lennar's on-site construction practices and procedures.
15. Lennar employee training.
16. Lennar subcontractor training.
17. Documents that support Lennar's assertions and its pleadings.

18. Claims against Manale.
19. Entity responsible for site and drainage design.
20. Lennar's instructions to and oversight of Manale related to the project.
21. All facts, documents, information and other evidence whatsoever that Manale performed the work that allegedly resulted in damages to the Plaintiffs.
22. Documents produced by Lennar in this litigation.

RICHARDSON PLOWDEN & ROBINSON, P.A.

By: _____


 JAMES H. ELLIOTT, JR.
 F. HEYWARD GRIMBALL
 17 Church Street, Suite 150
 Charleston, SC 29401
 (843) 805-6550 FAX (843) 805-6599
jelliott@richardsonplowden.com
fhgrimball@richardsonplowden.com

ATTORNEYS FOR MANALE
 LANDSCAPING, LLC

November 10, 2016
 Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 11, 2016 a copy of the within pleading was served upon opposing counsel of record by mailing a copy properly addressed with sufficient postage affixed thereto, or via e-mail as agreed, as follows:

John C. Hayes, IV, Esquire Mary-Margaret F. Noland, Esquire Hayes Law Firm, LLC 180 Meeting Street, Suite 330 Charleston, SC 20401 -and- Catherine K. Dunn, Esquire The Steinberg Law Firm, LLP P.O. Box 1028 Goose Creek, SC 29445 <i>Attorneys for Plaintiff</i>	Jenna K. McGee, Esquire Laura Figueroa Locklair, Esquire Parker Poe Adams & Bernstein, LLP 200 Meeting Street, Suite 301 Charleston, SC 29401 <i>Attorney for Lennar Carolinas, LLC</i>
--	--

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SC Court of Appeals

<p>Robert Trippett Boineau, III, Esquire Heath McAlvin Stewart, III, Esquire McAngus GoudeLOCK Courie PO Box 12519 Columbia, SC 29211 <i>Attorneys for Spring Grove Plantation Development Inc.</i></p>	<p>Robert Batten Farrar, Esquire Ronald G. Tate, Jr., Esquire Gallivan White & Boyd, PA P.O. Box 10589 Greenville, SC 29603 <i>Attorneys for Southern Green Consulting Services, LLC</i></p>
<p>David S. Black, Esquire Howell, Gibson and Hughes, PA P.O. Box 40 Beaufort, SC 29901 <i>TJB Trucking/Leasing, LLC</i></p>	<p>Bachman S. Smith, IV, Esquire Haynsworth Sinkler Boyd, PA P.O. Box 340 Charleston, SC 29402-0340 <i>Attorneys for Southern Green, Inc.</i></p>
<p>R. Patrick Flynn, Esquire Michael E. Wright, Esquire. Robertson Hollingsworth & Flynn, LLC Wells Fargo Center 177 Meeting Street, Suite 300 Charleston, SC 29401 <i>Super Concrete of SC, Inc.</i></p>	<p>Samia H. Nettles, Esquire Richardson Plowden Robinson PA P.O. Box 21203 Charleston, SC 29413 <i>Décor Corporation</i></p>
<p>N. Keith Emge, Jr, Esquire Kathy A. Carlsten, Esquire Carlock Copeland 40 Calhoun Street, Ste 400 Charleston, SC 29401 <i>Attorney for Civil Site Environmental</i></p>	<p>Ronald G. Tate, Jr. Gallivan, White & Boyd, P.A. POB 10589 Greenville, South Carolina 29603 <i>Attorney for Volkmar Consulting Services, LLC</i></p>
<p>David C. Cleveland, Esquire Clawson & Staubes, LLC 126 Seven Farms drive, Suite 200 Charleston, South Carolina 29494-8144 <i>Attorney for Low Country Renovations and Sliding, LLP</i></p>	<p>Stephen L. Brown, Esquire Catherine H. Chase, Esquire Young Clements Rivers, LLP 25 Calhoun Street, Suite 400 Charleston, South Carolina 29401 -and- Preston Bruce Dawkins, Jr. Aiken Bridges, P.A. P.O. Drawer 1931 Florence, SC 29503 <i>Attorney for Alpha Omega Construction Group, Inc</i></p>
<p>Stephen P. Hughes, Esquire Howell, Gibson and Hughes, P.A. Post Office Box 40 Beaufort, SC 29901-0040 <i>Attorney for Builders FirstSource-Southeast Group, LLC</i></p>	<p>Derek Newberry, Esquire Hall Booth Smith, P.C. 40 Calhoun Street, Suite 550 Charleston, SC 29401 <i>Attorney for Guaranteed Framing</i></p>
<p>Erin D. Dean, Esquire Tupper, Grimsley & Dean, P.A. Post Office Box 2055 Beaufort, South Carolina 29901-2055 <i>Attorney for LA New Enterprises, LLC and Raul Martinez Masonry, LLC</i></p>	<p>Jenny C. Honeycutt, Esquire Best Honeycutt, PA PO Box 13466 Charleston, SC 29422 <i>Attorney for South Carolina Exteriors, LLC</i></p>
<p>Steven W. Ouzts, Esquire Turner Padget Graham & laney, P.A. POB 1473</p>	<p>Stephen P. Hughes, Esquire Howell, Gibson and Hughes, P.A. Post Office Box 40</p>

Columbia, SC 29202 <i>Attorney for CEBS Construction</i>	Beaufort, SC 29901-0040 <i>Attorney for Builders FirstSource-Southeast Group, LLC</i>
Michal Kalwajtys, Esquire Dougall & Collins 1700 Woodcreek Farms Road, Suite 100 Elgin, SC 29045 <i>Attorney for Baranov Flooring, LLC</i>	Michal Kalwajtys, Esq. Dougall & Collins 1700 Woodcreek Farms Road Elgin, South Carolina 29045 <i>Attorneys for Fourth-Party Defendant Baranov Flooring</i>
Rogers E. Harrell, III, Esquire Murphy & Grantland, P.A. PO Box 6648 Columbia, South Carolina 29260 <i>Attorneys for Fourth-Party Defendant Isidro Mejia</i>	Steven W. Ouzts, Esquire Turner Padgett PO Box 1473 Columbia, SC 29202 <i>Attorneys for Fourth-Party Defendant CEBS Construction, Inc.</i>
Michal Kalwajtys, Esquire Dougall & Collins 1700 Woodcreek Farms Road, Suite 100 Elgin, South Carolina 29045 <i>Attorneys for Fourth-Party Defendant Juan Garza Ramos</i>	Tommy Boger, Esquire Wall Templeton PO Box 1200 Charleston, South Carolina 29402 <i>Attorneys for Fourth-Party Defendant First Construction, LLC</i>
Christopher Adams, Esquire Collins & Lacy PO Box 12487 Columbia, South Carolina 29211 <i>Attorneys for Fourth-Party Defendant Unique Framing, LLC</i>	

By:

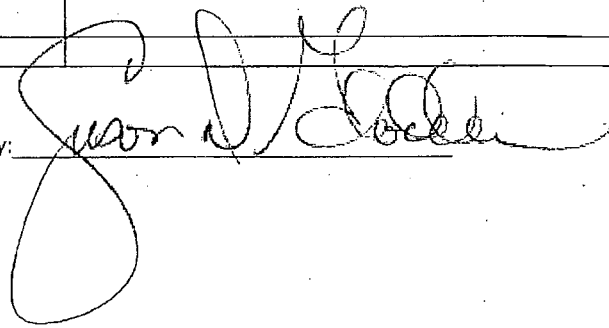


EXHIBIT C

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040
www.hghpa.com

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

STEPHEN P. HUGHES
PATRICK M. HIGGINS *
ROBERT W. ACHURCH III *
DAVID S. BLACK
MARY BASS LOHR
THOMAS A. BENDLE, JR.

MATT WILLIAMS
WILLIAM H. COX, III

JAMES S. GIBSON, JR. *
Of Counsel

* Certified Mediator

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: sphughes@hghpa.com
WRITER'S DIRECT: 843-522-2414

VIA EMAIL AND U.S. MAIL

November 15, 2016

John E. Rogers, II, Esquire
The Ward Law Firm, P.A.
Post Office Box 5663
Spartanburg, SC 29304

Re: Damico, et al (The Abbey at Spring Grove Plantation) v. Lennar
Carolinas, LLC, etc. v. Builders FirstSource-Southeast Group, LLC, etc.
Civil Action No: 2014-CP-08-02424
Our File No: 11742 SPH

Dear John:

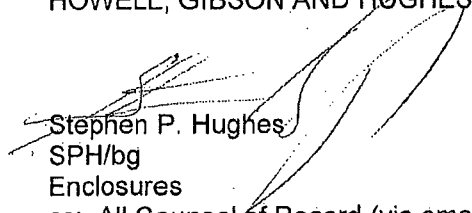
Please find enclosed herein for service upon you the Interrogatories and Request for Production to Land/Site Services, Inc. served on behalf of Builders FirstSource-Southeast Group, LLC in connection with the above captioned matter.

If you should have any questions regarding this matter, please feel free to contact me.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A



Stephen P. Hughes

SPH/bg

Enclosures

cc: All Counsel of Record (via email only)

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2014-CP-08-02424

PATRICIA DAMICO and LENNA LUCAS,
Individually and on behalf of all others similarly
situated; JOSHUA and BRETTANY BUETOW;
EDWARD and SYLVIA DENGGE; JONATHAN and
THERESA DOUGLASS; ANTHONY and STACEY
RAY; DANNY and ELLEN DAVIS MORROW;
BRYAN and CYNTHIA CAMARA; and MATTHEW
COLLINS,

Plaintiffs,

vs.

LENNAR CAROLINAS, LLC; SPRING GROVE
PLANTATION DEVELOPMENT, INC.; MANALE
LANDSCAPING, LLC; SUPER CONCRETE OF
SC, INC.; SOUTHERN GREEN, INC.; TJB
TRUCKING/LEASING, LLC; PARAGON SITE
CONSTRUCTORS, INC.; CIVIL SITE
ENVIRONMENTAL; and RICK BRYANT,
Individually,

Defendants.

LENNAR CAROLINAS, LLC,

Third-Party Plaintiff,

vs.

THE EARTHWORKS GROUP, INC.; VOLKMAR
CONSULTING SERVICES, LLC; GEOMETRICS
CONSULTING, LLC; LAND/SITE SERVICES,
INC.; MYERS LANDSCAPING, INC.; A.C. & A.
CONCRETE, INC.; KNIGHT'S CONCRETE
PRODUCTS, INC.; KNIGHT'S REDI-MIX, INC.;
COASTAL CONCRETE SOUTHEAST, LLC;
COASTAL CONCRETE SOUTHEAST II, LLC;
GUARANTEED FRAMING, LLC; OZZY
CONSTRUCTION, LLC; CONSTRUCTION
APPLICATORS CHARLESTON, LLC; LA NEW
ENTERPRISES, LLC; DÉCOR CORPORATION;
DVS, INC.; RAUL MARTINEZ MASONRY, LLC;
ALPHA OMEGA CONSTRUCTION GROUP, INC;
SOUTH CAROLINA EXTERIORS, LLC;

Builders FirstSource-Southeast
Group's Interrogatories to
Land/Site Services, Inc.

BUILDERS FIRSTSOURCE – SOUTHEAST
GROUP, LLC; and LOW COUNTRY
RENOVATIONS AND SIDING, LLP,

Third-Party Defendants.

ALPHA OMEGA CONSTRUCTION GROUP, INC.,

Fourth Party Plaintiff,

vs.

GARCIA ROOFING, LLC, ADOLFO GARCIA
D/B/A GARCIA ROOFING, AND JUAN GARZA
RAMOS,

Fourth Party Defendants.

DÉCOR CORPORATION,

Fourth Party Plaintiff,

vs.

BARANOV FLOORING, LLC, DJ
CONSTRUCTION SERVICES, LLC, CREATIVE
WOOD FLOORS, LLC, GERALDO CUNHA,
EBENEZER FLOORING, LLC, ENMANUEL
FLOORING AND SIDING, LLC, EUSI FLOORING
AND COVERAGE, LLC, NICOLAS FLORES,
ALEXANDER MARTINEZ, ISIDRU MEJIA, JUAN
PEREZ SON, ERNESTO M. PEREX, N&B
CONSTRUCTION, LLC, JOSE DIAS RODRIGUES,
LIVIA SOUSE, JOSE BETIO PEREIRA, JOSE PAZ
CASTRO HERNANDEZ, DIVINIO APARECIDO
CORGOSINHO, RICARDO CHICHE, CEBS
CONSTRUCTION, BAYSHORE SIDING AND
FLOORING, SEBASTIO LUIZ DE ARAUJO, AND
JOHN DOES 1-4,

Fourth Party Defendants.

SOUTH CAROLINA EXTERIORS, LLC,

Fourth Party Plaintiff,

Vs.

JUAN GARZA RAMOS d/b/a JUAN
CONSTRUCTORS,

Fourth Party Defendant.)
<hr/>)
GUARANTEED FRAMING, LLC,)
Fourth Party Plaintiff,)
Vs.)
FIRST CONSTRUCTION, LLC, JC)
CONTRACTORS, LLC, JESSICA MARROQUIN)
d/b/a MARROQUIN CONSTRUCTION and)
UNIQUE FRAMING, LLC,)
Fourth Party Defendants.)
<hr/>)

TO: LAND/SITE SERVICES, INC. AND THEIR COUNSEL:

The Third Party Defendant, Builders FirstSource-Southeast Group, LLC, hereby requires the Co-Defendant, Land/Site Services, Inc., to answer under oath the Interrogatories set forth within thirty (30) days after the serving thereof in accordance with Rule 33 of the Code of South Carolina Civil Procedure.

1. Give the names and addresses of persons known to the Third Party Defendant or Third Party Defendant's counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements, including prior depositions, have been taken from the witnesses which in any way relate to this lawsuit and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches, videotapes, or other prepared documents in the possession of the Third Party Defendant or Third Party Defendant's counsel that relate to the claim in the case.
3. Set forth the names and addresses of all insurance companies which have liability coverage relating to the claim and set forth the number or numbers of the policies involved, the amount or amounts of liability coverage provided in each policy, and the effective period and/or periods of such coverage.
4. For each policy of insurance identified in your Answers to Interrogatory No. 3 hereof, whether primary or excess, state whether the available limits of coverage are anything less than the full policy limits. If so, please state the amount of available limits of coverage for each policy.

5. Set forth the name, address, and telephone number of each insurance sales agent and/or agency from whom or from which you have purchase or renewed any commercial general liability, umbrella or excess insurance policies from the date of construction to the present.

6. List the full names, addresses and telephone numbers of any expert witnesses whom the Third Party Defendant or Third Party Defendant's counsel expects to use as a witness or witnesses at the trial of the case, and as to each expert, state the subject matter on which he is expected to testify, the substance of the facts and opinions to which he is expected to testify, and a summary of the grounds for each opinion.

7. For each person known to the Third Party Defendant or Third Party Defendant's counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Third Party Defendant, Builders FirstSource-Southeast Group, LLC, of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

8. Please identify, by full name, address, and telephone number, any expert or experts with whom the party, its representatives or counsel, have consulted with regard to the subject matter of this litigation.

9. If the Third Party Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

10. With regard to any inspection, analysis, investigation, evaluation, etc., of the conditions at the residence at subject premises, set forth the following:

- a. The nature of the investigation, inspection, evaluation, etc.;
- b. Identify the person making the investigation, and on whose behalf such person was acting in making such investigation, inspection, evaluation, etc.
- c. State the date of the investigation, inspection, evaluation, etc.;
- d. Set forth the findings, conclusions, and/or recommendations which resulted from the investigation, inspection, evaluation, etc.;
- e. Identify all documentation or other materials relevant to the investigation, inspection, evaluation, etc.;
- f. Identify all personnel performing any services relating to any investigation, inspection, evaluation, etc.;

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g. Identify all persons who assisted in any way with the preparation of the answers on behalf of the party to the within Interrogatories or the First Request for Production, listing particular Interrogatories and/or Request for Production for which the individual provided responsive information.

11. Identify, with specificity and in detail, any and all contracts relating to the subject premises, to which the Party is presently or has been a party.

12. Please furnish a detailed factual basis for the claims and/or defenses, cross actions, and/or counterclaims you assert in your pleadings.

13. Describe in detail all laws and acts having force and effect of law, codes, regulations, and legal principles, standards, customs, or usages, including building codes and/or other codes, which you contend are applicable to the issues involved in this action.

14. Please state the legal status of your organization, its state of incorporation, its principal place of business, its domicile, the date of its incorporation, its principal officers, and its affiliates, successors, and/or subsidiaries at the time of filing of the Complaint in this action.

15. If you contend that there were any errors, omissions, and/or defects in the construction of the subject premises, describe with specificity and in detail such errors, omissions, and/or defects, and to whom you attribute such specific errors.

16. Please set forth the scope of work, inclusive of all materials and services, provided by the party in connection with original design, development and/or construction of the subject structures, and/or any subsequent remediation, repair, renovation, remodeling, alteration or rehabilitation of such structures.

17. Please provide a listing of any and/or all materials relating to provision of materials and/or services, by the party, in connection with original construction and/or subsequent or renovation of the subject premises, including but not limited to any and/or all proposals, documents, undertakings, bids, specifications, drawings, contracts, amendments, addenda, correspondence, change orders, etc.

18. Please provide a listing of any and/or all documents and/or other materials relating to payment, consideration, and/or other compensation claimed by and/or paid to the party, in connection with any materials and/or services rendered by the party, in connection with original construction and/or subsequent repair or renovation of the subject premises, including but not limited any and/or all invoices, billings, accountings, checks, ledgers, etc.

19. Describe in detail any and/or all settlements that have been reached between you and/or any person or entity regarding the alleged damages at the subject structure for which you are seeking damages in the instant action.

20. Please set forth the names and addresses of all insurance companies with which any claim has been made relating to damage to and/or sustained by the subject property, whether such damage was a result of natural disaster, wind, flood, rain or fire, or other destructive or damaging cause, and/or any alleged defect in design, development construction, repair, maintenance, etc.

21. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

22. List all subcontractors and suppliers with which the Defendant/Third Party Defendant contracted or dealt in conjunction of its provision of labor, materials, and/or services to the subject project.

23. Identify any and/or all correspondence or other communications between the Defendant/Third Party Defendant and any other person or entity which provided materials and/or services in connection with, or in any manner related to, the design, installation, performance, construction, and/or implementation of soil testing, concrete testing, drainage plans, and/or specifications, landscaping, irrigation, site clearing, rough grading, final grading, preparation of building pads, foundations, concrete work, and/or drainage pipes.

24. Identify the plans, drawings, and/or specifications used by the Defendant/Third Party Defendant and/or its subcontractors in provision of materials and/or services in connection with the subject project.

25. Identify the plans, drawings, specifications, and/or other documents for the project which addressed, provided for, and/or otherwise related to:

a. Soil testing, concrete testing, drainage, landscaping, irrigation, site clearing, rough grading, final grading, building pads, foundations, concrete flat work, and/or installation of drainage pipes at the subject project.

These Interrogatories shall be deemed to continue from the time of service until the time of trial.

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SC Court of Appeals

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Builders FirstSource-

Southeast Group, LLC

Beaufort, South Carolina

November 15, 2016

CERTIFICATE OF SERVICE

I certify that I served the foregoing Interrogatories upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 15th day of November, 2016

By: 

Stephen P. Hughes

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2014-CP-08-02424

PATRICIA DAMICO and LENNA LUCAS,
Individually and on behalf of all others similarly
situated; JOSHUA and BRETTANY BUETOW;
EDWARD and SYLVIA DENG; JONATHAN and
THERESA DOUGLASS; ANTHONY and STACEY
RAY; DANNY and ELLEN DAVIS MORROW;
BRYAN and CYNTHIA CAMARA; and MATTHEW
COLLINS,

Plaintiffs,

vs.

LENNAR CAROLINAS, LLC; SPRING GROVE
PLANTATION DEVELOPMENT, INC.; MANALE
LANDSCAPING, LLC; SUPER CONCRETE OF
SC, INC.; SOUTHERN GREEN, INC.; TJB
TRUCKING/LEASING, LLC; PARAGON SITE
CONSTRUCTORS, INC.; CIVIL SITE
ENVIRONMENTAL; and RICK BRYANT,
Individually,

Defendants.

LENNAR CAROLINAS, LLC,

Third-Party Plaintiff,

vs.

THE EARTHWORKS GROUP, INC.; VOLKMAR
CONSULTING SERVICES, LLC; GEOMETRICS
CONSULTING, LLC; LAND/SITE SERVICES,
INC.; MYERS LANDSCAPING, INC.; A.C. & A.
CONCRETE, INC.; KNIGHT'S CONCRETE
PRODUCTS, INC.; KNIGHT'S REDI-MIX, INC.;
COASTAL CONCRETE SOUTHEAST, LLC;
COASTAL CONCRETE SOUTHEAST II, LLC;
GUARANTEED FRAMING, LLC; OZZY
CONSTRUCTION, LLC; CONSTRUCTION
APPLICATORS CHARLESTON, LLC; LA NEW
ENTERPRISES, LLC; DÉCOR CORPORATION;
DVS, INC.; RAUL MARTINEZ MASONRY, LLC;
ALPHA OMEGA CONSTRUCTION GROUP, INC;
SOUTH CAROLINA EXTERIORS, LLC;

Builders FirstSource --Southeast
Group, LLC's Request for
Production to Land/Site Services

BUILDERS FIRSTSOURCE – SOUTHEAST
GROUP, LLC; and LOW COUNTRY
RENOVATIONS AND SIDING, LLP,

Third-Party Defendants.

ALPHA OMEGA CONSTRUCTION GROUP, INC.,

Fourth Party Plaintiff,

vs.

GARCIA ROOFING, LLC, ADOLFO GARCIA
D/B/A GARCIA ROOFING, AND JUAN GARZA
RAMOS,

Fourth Party Defendants.

DÉCOR CORPORATION,

Fourth Party Plaintiff,

vs.

BARANOV FLOORING, LLC, DJ
CONSTRUCTION SERVICES, LLC, CREATIVE
WOOD FLOORS, LLC, GERALDO CUNHA,
EBENEZER FLOORING, LLC, ENMANUEL
FLOORING AND SIDING, LLC, EUSI FLOORING
AND COVERAGE, LLC, NICOLAS FLORES,
ALEXANDER MARTINEZ, ISIDRU MEJIA, JUAN
PEREZ SON, ERNESTO M. PEREX, N&B
CONSTRUCTION, LLC, JOSE DIAS RODRIGUES,
LIVIA SOUSE, JOSE BETIO PEREIRA, JOSE PAZ
CASTRO HERNANDEZ, DIVINIO APARECIDO
CORGOSINHO, RICARDO CHICHE, CEBS
CONSTRUCTION, BAYSHORE SIDING AND
FLOORING, SEBASTIO LUIZ DE ARAUJO, AND
JOHN DOES 1-4,

Fourth Party Defendants.

SOUTH CAROLINA EXTERIORS, LLC,

Fourth Party Plaintiff,

Vs.

JUAN GARZA RAMOS d/b/a JUAN
CONSTRUCTORS,

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SC Court of Appeals

Fourth Party Defendant.)
<hr/>)
GUARANTEED FRAMING, LLC,)
Fourth Party Plaintiff,)
Vs.)
FIRST CONSTRUCTION, LLC, JC)
CONTRACTORS, LLC, JESSICA MARROQUIN)
d/b/a MARROQUIN CONSTRUCTION and)
UNIQUE FRAMING, LLC,)
Fourth Party Defendants.)
<hr/>)

TO: LAND/SITE SERVICES, INC. AND THEIR ATTORNEY:

The Third Party Defendant(s), Builders FirstSource-Southeast Group, LLC, hereby requires the Third Party Defendant, Land/Site Services, Inc. , to answer under oath the Interrogatories set forth within thirty (30) days after the serving thereof in accordance with Rule 33 of the Code of South Carolina Civil Procedure.

1. Give the names and addresses of persons known to the Third Party Defendant or Third Party Defendant's counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements, including prior depositions, have been taken from the witnesses which in any way relate to this lawsuit and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches, videotapes, or other prepared documents in the possession of the Third Party Defendant or Third Party Defendant's counsel that relate to the claim in the case.
3. Set forth the names and addresses of all insurance companies which have liability coverage relating to the claim and set forth the number or numbers of the policies involved, the amount or amounts of liability coverage provided in each policy, and the effective period and/or periods of such coverage.
4. For each policy of insurance identified in your Answers to Interrogatory No. 3 hereof, whether primary or excess, state whether the available limits of

coverage are anything less than the full policy limits. If so, please state the amount of available limits of coverage for each policy.

5. Set forth the name, address, and telephone number of each insurance sales agent and/or agency from whom or from which you have purchase or renewed any commercial general liability, umbrella or excess insurance policies from the date of construction to the present.

6. List the full names, addresses and telephone numbers of any expert witnesses whom the Third Party Defendant or Third Party Defendant's counsel expects to use as a witness or witnesses at the trial of the case, and as to each expert, state the subject matter on which he is expected to testify, the substance of the facts and opinions to which he is expected to testify, and a summary of the grounds for each opinion.

7. For each person known to the Third Party Defendant or Third Party Defendant's counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Third Party Defendant, Builders FirstSource-Southeast Group, LLC, of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

8. Please identify, by full name, address, and telephone number, any expert or experts with whom the party, its representatives or counsel, have consulted with regard to the subject matter of this litigation.

9. If the Third Party Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

10. With regard to any inspection, analysis, investigation, evaluation, etc., of the conditions at the residence at subject premises, set forth the following:

- a. The nature of the investigation, inspection, evaluation, etc.;
- b. Identify the person making the investigation, and on whose behalf such person was acting in making such investigation, inspection, evaluation, etc.
- c. State the date of the investigation, inspection, evaluation, etc.;
- d. Set forth the findings, conclusions, and/or recommendations which resulted from the investigation, inspection, evaluation, etc.;
- e. Identify all documentation or other materials relevant to the investigation, inspection, evaluation, etc.;

f. Identify all personnel performing any services relating to any investigation, inspection, evaluation, etc.;

g. Identify all persons who assisted in any way with the preparation of the answers on behalf of the party to the within Interrogatories or the First Request for Production, listing particular Interrogatories and/or Request for Production for which the individual provided responsive information.

11. Identify, with specificity and in detail, any and all contracts relating to the subject premises, to which the Party is presently or has been a party.

12. Please furnish a detailed factual basis for the claims and/or defenses, cross actions, and/or counterclaims you assert in your pleadings.

13. Describe in detail all laws and acts having force and effect of law, codes, regulations, and legal principles, standards, customs, or usages, including building codes and/or other codes, which you contend are applicable to the issues involved in this action.

14. Please state the legal status of your organization, its state of incorporation, its principal place of business, its domicile, the date of its incorporation, its principal officers, and its affiliates, successors, and/or subsidiaries at the time of filing of the Complaint in this action.

15. If you contend that there were any errors, omissions, and/or defects in the construction of the subject premises, describe with specificity and in detail such errors, omissions, and/or defects, and to whom you attribute such specific errors.

16. Please set forth the scope of work, inclusive of all materials and services, provided by the party in connection with original design, development and/or construction of the subject structures, and/or any subsequent remediation, repair, renovation, remodeling, alteration or rehabilitation of such structures.

17. Please provide a listing of any and/or all materials relating to provision of materials and/or services, by the party, in connection with original construction and/or subsequent or renovation of the subject premises, including but not limited to any and/or all proposals, documents, undertakings, bids, specifications, drawings, contracts, amendments, addenda, correspondence, change orders, etc.

18. Please provide a listing of any and/or all documents and/or other materials relating to payment, consideration, and/or other compensation claimed by and/or paid to the party, in connection with any materials and/or services rendered by the party, in connection with original construction and/or subsequent repair or

renovation of the subject premises, including but not limited any and/or all invoices, billings, accountings, checks, ledgers, etc.

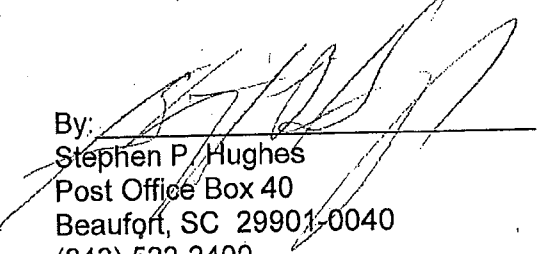
19. Describe in detail any and/or all settlements that have been reached between you and/or any person or entity regarding the alleged damages at the subject structure for which you are seeking damages in the instant action.

20. Please set forth the names and addresses of all insurance companies with which any claim has been made relating to damage to and/or sustained by the subject property, whether such damage was a result of natural disaster, wind, flood, rain or fire, or other destructive or damaging cause, and/or any alleged defect in design, development construction, repair, maintenance, etc.

21. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

These Interrogatories shall be deemed to continue from the time of service until the time of trial.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Builders FirstSource-
Southeast Group, LLC

Beaufort, South Carolina

November 15, 2016

CERTIFICATE OF SERVICE

I certify that I served the foregoing Interrogatories to Land/Site Services, Inc. upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 17 day of November, 2016.

By: 
Stephen P. Hughes

EXHIBIT D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No 2011-CP-08-985

Cape Romain Contractors, Inc

Respondent,

v

Wando E, LLC and Sean Barnes a/k/a Sean A Barnes

Appellants

**MOTION TO REMAND FOR
PURPOSES OF LIMITED DISCOVERY**

Albert A Lacour, III
CLAWSON AND STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026
Attorney for the Respondent

Denied.

John Cannon Jr

*Filed 2/20/15
Carter*

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SC Court of Appeals

Now comes the Respondent, Cape Romain Contractors, Inc and respectfully moves that the Court of Appeals remand this case to the Circuit Court for the purpose of allowing limited discovery pending the appeal Respondent respectfully requests that all project documents be exchanged between the parties and that the engineer on the project and the material supplier for the project, who are not parties to the present litigation, be required to produce their files

The grounds for this motion are that the Respondent served interrogatories and requests for production on the Defendants prior to the appeal The Defendants objected to answering interrogatories or responding to formal requests for production due to the pending appeal (Objections dated August 18 2011 attached) Counsel for Respondent then wrote opposing counsel and suggested that the parties voluntarily exchange files, including all documents which are not privileged (letter of October 26, 2011) Counsel for the Respondent also prepared and served a subpoena for the entire file of the engineer engaged by the Defendants to design the project (letter and subpoena of October 26, 2011) The engineer is not a party to the pending suit The proposal to exchange producible documents was rejected and Counsel for Defendants contacted the engineer to object to engineer's compliance with the subpoena (letter of November 2, 2011) Counsel for the engineer objected to the subpoena and based the objection on the pending appeal after apparent consultation with counsel for the Defendants (letter of November 10, 2011)

The Respondent, Cape Romain Contractors, Inc is concerned that important records in the files of the Defendants and the files of the Defendants engineer and the files of the material supplier, may become lost or destroyed or damaged during the pendency

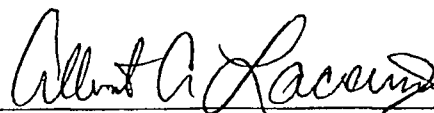
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SC Court of Appeals
SC Court of Appeals

of the appeal. This appeal may be pending for two or more years. Counsel is concerned that electronic information and correspondence stored in the computers of Defendants and Defendants' engineer and material supplier may become lost, damaged or destroyed during the pendency of the appeal.

Whether this matter is heard in arbitration or in circuit court, the file records concerning the project will almost certainly be exchanged by the parties and obtained from the engineer and supplier. The production and exchange of the files containing relevant documents is almost always required in the course of an arbitration. The correspondence attached hereto and the subpoena and accompanying correspondence all indicate that the proposed production of the records was to be accomplished at no expense to the party producing the records. The Respondent's objective is simply to preserve the records while the appeal instituted by the Defendants runs its course. S C A C R 205 allows matters unaffected by the appeal to proceed in the trial court. Discovery has been allowed to proceed in the Circuit Court during the pendency of an appeal when the discovery dispute was not the subject of the appeal. Metts v Mims 384 S C 491, 682 S E 2d 813 (2009), Cousar v New London Engineering Co., Inc. 306 S C 37, 410 S E 2d 243 (1991).

For the foregoing reasons, Cape Romain Contractors, Inc. moves the Court of Appeals to remand the case to the Circuit Court in Berkeley County for the purpose of allowing the Circuit Court to retain jurisdiction over limited discovery. The particular discovery sought at this time includes (1) a mutual production and exchange of the file records of the parties, and (2) the ability to obtain the records of the project engineer and the supplier of the dock materials for the purpose of securing the records at this time instead of delaying production of such records until after the appeal.

RESPECTFULLY SUBMITTED,



Albert A. Lacour, III
CLAWSON AND STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026
Attorney for the Respondent

Charleston, South Carolina

Dec 21, 2011

2010-1273

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
CAPE ROMAIN CONTRACTORS INC)
)
Plaintiff)
)
vs)
)
WANDO E LLC AND SEAN BARNES)
A/K/A SEAN BARNES)
)
Defendants)

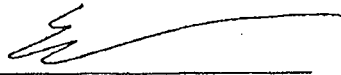
IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO 2011 CP 08 985

DEPENDANTS OBJECTIONS TO
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
CAPE ROMAIN CONTRACTORS INC

TO Albert A LaCour III Esq
Attorney for Plaintiff

Defendants hereby object to each and every interrogatory and request for production of Cape Romain Contractors Inc on the ground that Defendants have filed a Notice of Appeal and all proceedings in this Court are stayed Defendants reserve all other objections to the interrogatories and requests for production until such time as further responses are required

Respectfully Submitted



Edward J Westbrook
Richardson Patrick Westbrook & Brickman
1037 Chuck Dawley Blvd Bldg A
Mount Pleasant SC 29464
(843) 727 6513
ATTORNEY FOR DEFENDANTS

Charleston, South Carolina
August 12, 2011

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SC Court of Appeals

EXHIBIT E

2006 WL 6087626 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina.
Hampton County

Vicki F. CHASSEREAU, Plaintiff,

v.

GLOBAL-SUN POOLS, INC. and Ken Darwin, Defendants.

No. 03-CP-25-476.

March 29, 2006.

Order

John C. Few, Judge.

This matter came before the Court on motion of the Plaintiff to Compel Discovery in this matter. The motion was heard in the Hampton County Courthouse on September 12, 2005. The Plaintiff appeared through her attorney, Lee D. Cope; the Defendants were represented by their attorney, Michael H. Montgomery.

This case is presently on appeal. At issue is whether the Federal Arbitration Act requires that the dispute between the parties be arbitrated. Presently the parties are awaiting a decision by the South Carolina Supreme Court whether it will issue its *writ of certiorari* to review the ruling of the Court of Appeals that sustained the lower court.

Subsequent to a decision by the Court of Appeals sustaining the lower court, the Plaintiff issued a notice of deposition for Mr. Ken Darwin. The Defendant wrote to the Plaintiff and objected to the proceeding due to the pendency of a petition before the Supreme Court. The Plaintiff responded by informing the Defendant of its intention to proceed with the deposition. The Defendant failed to appear citing no jurisdiction for the issuance of the notice. The Plaintiff then filed this motion seeking an Order of the Court compelling the Defendant to move forward with the Discovery and seeking sanctions by way of costs. For the reasons enumerated herein, the Plaintiff's motions are DENIED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The general rule in South Carolina is that discovery is stayed pending an appeal unless the court has previously issued an Order retaining jurisdiction for purposes of Discovery. This court has never issued an order purporting to retain jurisdiction over discovery matters pending disposition of the appeal. *See, e.g., Cousar v. New London Engineering Company, Inc.*, 306 S.C. 37, 410 S.E.2d 243 (1991).

While there are no South Carolina cases directly addressing the issue, the majority of federal circuits follow the rule that an "agreement to arbitrate is an agreement to proceed under arbitration and not under court rules." *Humberto Suarez-Valdez v. Shearson Lehman/American Express, Inc.*, 845 F.2d 950, 951 (1th Cir. 1988).¹ Discovery may or may not be permitted by the arbitrator or provided for in the rules applicable to the arbitration. *See, e.g., Carolina Care Plan, Inc. v. United Health Care Services*, 361 S.C. 544, 606 S.E.2d 752 (2004). However, whether discovery is permitted or not is an issue in the arbitration and is not a matter for the court.

The issue of whether a trial court continued to have jurisdiction to permit discovery to continue was addressed in *Bradford-Scott Data Corporation v. Physician Computer Network*, 128 F.3d 504 (7th Cir. 1997). It noted that a

continuation of proceedings “largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals.” *Id.* at 505. The court also noted as follows:

The worst possible outcome would be to litigate the dispute, to have the court of appeals reverse and order the dispute arbitrated, to arbitrate the dispute, and finally to return to the court to have the award enforced. *Id.* at 506.

The court also noted that continuing with litigation may result in combining the costs of litigation and arbitration.

In the Fourth Circuit the most recent ruling has been from a Maryland district court. *Hill v. Peoplesoft USA, Inc.*, 341 F.Supp.2d 559 (D. Md. 2004) where, except for exceptional circumstances, the court noted that it would ordinarily grant a stay of all proceedings in the lower court.²

Permitting discovery to proceed while an appellate court has jurisdiction of the case may, in some circumstances, affect the mode of trial of the case. If the rules of the applicable arbitration do not provide for discovery as part of the arbitration process, the granting of discovery to either of the parties affects the mode of trial between the parties. *In this case the arbitration agreement does not provide for discovery between the parties.*

The only South Carolina case in which a similar issue has been raised is *Cousar v. New London Engineering Company, Inc.*, 306 S.C. 37, 410 S.E.2d 243 (1991). At issue on appeal in that case was an order issued by the circuit court retaining jurisdiction over discovery matters pending disposition of the appeal. The Supreme Court concluded that retention of jurisdiction over discovery “in this case” was not an abuse of discretion. 410 S.E.2d at 245. The case concerned contribution among joint tortfeasors not arbitration.

In *Patterson v. McNeill-Patterson & Associates, Inc.*, 312 S.C. 471, 441 S.E.2d 328 (Ct. App. 1994) the court recognized the very clear possibility of prejudice and a tactical advantage being enjoyed by one of the parties to an action when it is given access to discovery which would not otherwise be authorized. In particular, the court referred to the fact that under either option at issue, the *South Carolina Rules of Civil Procedure* applied in the same manner. 441 S.E.2d at 329. That is not true in this case.

The Plaintiff is not entitled to engage in formal discovery under the South Carolina Rules of Civil Procedure until the Circuit Court receives the remittitur from the Supreme Court or Court of Appeals.

IT IS SO ORDERED.

<<signature>>

John C. Few, Judge

Court of Common Pleas

Fourteenth Judicial Circuit

Greenville, SC

March 29, 2006

Footnotes

- 1 For a discussion of the issue, see *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Mathes*, 1990 U.S. Dist. LEXIS 20963 (E.D. Wa. 1990) where the court stated, citing Moore's Federal Practice and a Massachusetts decision stated as follows:
It is well established that discovery regarding matters to be arbitrated is generally denied, absent exceptional circumstances.
- 2 The issue on appeal in the present case is whether the dispute should be litigated in the courts with the applicable rules of civil procedure or arbitrated. Judge Karen Henderson of the District of Columbia Court of Appeals, was a member of the panel that noted an emergency stay of proceedings in the district court was unnecessary. That court stated that "this court has exclusive jurisdiction to resolve the threshold issue whether the dispute is arbitrable, and the district court may not proceed until the appeal is resolved." *Bombardier Corporation v. N.R.P.C.*, No. 02-7125, 2002 U.S.App. LEXIS 25858 (D.C. Cir. 2002).

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EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-10-3870

Peter Phillips
PLAINTIFF(S)

Omega Flex Inc. ET AL
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

JULIE J. ABRAHAMSON
 CLERK OF COURT
 2013 JUL 30 PM 2:43
FILED

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

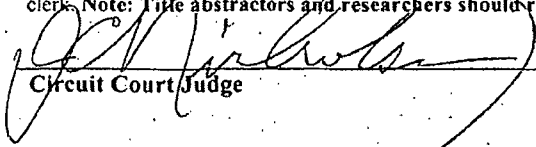
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Court grants Defense Motion to Stay case until Appeal is decided.

ORDER INFORMATION

This order ends X does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2117
Judge Code

07/30/2013
Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
Peter T. Phillips and Summar C. Phillips,	)	C/A No. 2012-CP-10-3870
)	
Plaintiffs,	)	DEFENDANT OMEGA FLEX, INC.'S
	)	NOTICE OF MOTION AND MOTION
Versus	)	TO ENFORCE AN AUTOMATIC
	)	STAY OF THIS ACTION OR, IN THE
Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc.,	)	ALTERNATIVE, TO ISSUE AN
	)	ORDER STAYING THIS ACTION,
	)	OR, IN THE ALTERNATIVE, TO
	)	RECONSIDER THE JULY 3, 2013
	)	FILING OF THE SCHEDULING
Defendants.	)	ORDER

FILED
 JUL 15 PM 3:50
 CLERK OF COURT

TO: COUNSEL FOR ALL PARTIES:

PLEASE TAKE NOTICE that the Defendant, Omega Flex, Inc. (hereinafter "this Defendant"), by and through its undersigned attorneys, will move ten days hence or as soon as may be heard, pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules and Rules 52 and 59 of the South Carolina Rules of Civil Procedure and other applicable authority, for an Order from the Court Granting this Defendant's Motion to Enforce an Automatic Stay of this Action or, in the alternative, for an Order Staying this Action, or, in the alternative, to Reconsider the July 3, 2013 filing of the Scheduling Order. This Defendant has performed Rule 11 consultations with all parties prior to filing this Motion.

In light of (a) Judge Nicholson's recent ruling denying a request filed by Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.'s ("John Wieland") seeking mandatory arbitration of all of Plaintiffs' claims asserted against all Defendants except for this Defendant, (b) Judge Nicholson's recent ruling denying John Wieland's Motion to Reconsider, (c) a Notice of Appeal filed by John Wieland as to Judge Nicholson's rulings and (d) a letter dated July 9, 2013

addressed to all parties in this case from Deputy Clerk V. Claire Allen of the South Carolina Court of Appeals (Exhibit A), this Defendant requests an Order from the Court Granting this Defendant's Motion to Enforce an Automatic Stay of this Action or, in the alternative, for an Order Staying this Action, or, in the alternative, to Reconsider the July 3, 2013 filing of the Scheduling Order.

I. The Court should grant an automatic stay of this action pending John Wieland's appeal.

Pursuant to South Carolina Appellate Court Rules 205 and 241, an automatic stay is appropriate for this case until the appellate court renders a ruling regarding John Wieland's appeal of Judge Nicholson's Order Denying Arbitration filed April 25, 2013 (Exhibit B).

Rule 205 of the SCACR states that "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal. . . Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal." SCACR 205.

Rule 241 of the SCACR states that:

[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court . . . The lower court . . . retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

SCACR 241(a).

This case involves a fire which allegedly occurred at Plaintiffs' residence. John Wieland was the general contractor for the construction of Plaintiffs'

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residence. This case is premised upon allegations of (a) improper construction work performed by all Defendants other than this Defendant and (b) a product defect as to this Defendant. As previously stated, John Wieland is attempting to enforce a mandatory arbitration provision contained within a contract it had with Plaintiffs to force all parties except for this Defendant to arbitrate this matter.

Whether John Wieland will be allowed to enforce arbitration on all parties except for this Defendant has a significant effect on this Defendant's ability to defend the claims made against it by Plaintiffs. As this Defendant is the only Defendant in this case with no personal knowledge of any of the construction aspects of this case, this Defendant would be particularly prejudiced if the case is allowed to proceed against it without the presence of John Wieland and the subcontractor Defendants John Wieland hired for this job. Allowing this case to proceed against this Defendant pending the appeal would have a particularly prejudicial effect on this Defendant if the appellate court eventually rules that John Wieland is not in fact entitled to arbitration with the other parties in this case and that litigation was proper forum to adjudicate this matter all along.

Furthermore, this case does not fit into any of the exceptions enumerated in Rule 241(b) of the Appellate Court Rules.

The need for a Court Order is necessary in light of the fact that the parties received notification on July 9, 2013 that a hearing had been scheduled by the Circuit Court before Judge Dennis for August 7, 2013 as to (a) Defendant Charleston LEC, Inc.'s ("Charleston LEC") Motion for Summary Judgment (Exhibit C) and (b) John Wieland's Motion to Reconsider Judge Nicholson's Order Denying Arbitration. John Wieland's Motion to Reconsider is clearly moot in light

of an Order by Judge Nicholson filed May 30, 2013 denying John Wieland's Motion to Reconsider (**Exhibit D**). On June 26, 2013, John Wieland filed a Notice of Appeal with the Charleston County Clerk of Court (**Exhibit E**) informing the Circuit Court of its appeal.

In light of all of the circumstances above and applicable South Carolina common law and rules, it is inappropriate for the Court to hear Charleston LEC's Motion for Summary Judgment pending John Wieland's appeal.

II. If this Court is not persuaded that an automatic stay is appropriate, it should still grant a stay of this action pending John Wieland's appeal.

If the Court is not persuaded that this Defendant is entitled to an Automatic Stay of this Action pending John Wieland's appeal, this Defendant would request an Order Staying this Action pending John Wieland's appeal. Allowing this case to proceed against this Defendant pending John Wieland's appeal would result in a high likelihood of confusion, inequity, increased costs and lost efficiency, time and resources. Furthermore, this Defendant would request a stay of all discovery in this case, including the consideration of dispositive motions.

III. If this Court is not persuaded that a stay is appropriate, it should reconsider the filing of the Scheduling Order filed July 3, 2013.

If the Court is not persuaded by this Defendant's request for a Stay pending John Wieland's appeal, this Defendant requests, in the alternative and pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, that the Court reconsider the filing of the Scheduling Order signed by Judge Young and filed July 3, 2013 (**Exhibit F**).

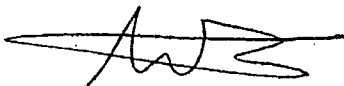
This Defendant consented to the terms of the Scheduling Order prior to the knowledge that John Wieland was going to file a Notice of Appeal. In light of John Wieland's appeal, this Defendant requests an Order confirming that the Scheduling Order is no longer applicable to this case until the South Carolina Court of Appeals issues a ruling as to John Wieland's appeal.

This Motion is supported by statutory and common law of the state of South Carolina and other applicable authority and may be supported by a memorandum of law or other supporting material as permitted under the South Carolina Rules of Civil Procedure.

CONCLUSION

For the reasons set forth above, this Defendant respectfully requests that the Court enter an Order Granting this Defendant's Motion to Enforce an Automatic Stay of this Action or, in the alternative, for an Order Staying this Action, or, in the alternative, to Reconsider the July 3, 2013 filing of the Scheduling Order. This Defendant has attached a proposed Order for the Court's consideration (Exhibit G).

HOOD LAW FIRM, LLC
172 Meeting Street / P.O. Box 1508
Charleston, SC 29402
P: (843) 577-4435 / F: (843) 722-1630
Email: Info@hoodlaw.com



Robert H. Hood (SC #2599)
Robert H. Hood, Jr. (SC #13491)
A. Walker Barnes (SC # 78485)

Attorneys for Defendant Omega Flex, Inc.

July 15, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED

THE COURT OF COMMON PLEAS

Peter T. Phillips and Summar C. Phillips,
Plaintiffs,

2013 JUL 29 AM 8:52
C/A No. 2012-CP-10-3870
JULIE J. ARMSTRONG
CLERK OF COURT

Versus

Omega Flex, Inc., John Wieland Homes
and Neighborhoods of the Carolinas,
Inc., AAA Plumbing, LLC, Fogel
Services, Inc., Charleston LEC, Inc.,
Defendants.

DEFENDANT OMEGA FLEX, INC.'S
MEMORANDUM IN SUPPORT OF
ITS MOTION TO ENFORCE AN
AUTOMATIC STAY OF THIS
ACTION OR, IN THE
ALTERNATIVE, TO ISSUE AN
ORDER STAYING THIS ACTION,
OR, IN THE ALTERNATIVE, TO
RECONSIDER THE JULY 3, 2013
FILING OF THE SCHEDULING
ORDER

In further support of its Motion filed July 15, 2013 ("July 15 Motion") seeking to Enforce an Automatic Stay of this Action or, in the alternative, for an Order Staying this Action, or, in the alternative, to Reconsider the July 3, 2013 filing of the Scheduling Order, the Defendant, Omega Flex, Inc. (hereinafter "this Defendant"), files the following Memorandum. In addition to the statutory authority cited in its July 15 Motion, Section 18-9-220 of the South Carolina Code supports this Defendant's argument that an automatic stay of all discovery and dispositive motions is required.

For the following reasons, this Defendant asks that the Court grant its Motion to Enforce an Automatic Stay of this Action or, in the alternative, for an Order Staying this Action, or, in the alternative, to Reconsider the July 3, 2013 filing of the Scheduling Order.

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STATEMENT OF FACTS

A statement of facts was included in this Defendant's July 15 Motion, and therefore this Defendant incorporates the same as the factual basis for this Memorandum.

LAW/ANALYSIS

One of the primary reasons for the present Memorandum is to highlight to the Court that in a February 2011 opinion, *Levin v. Alms and Associates, Inc.*, 634 F.3d 260 (4th Cir. 2011) (Exhibit A), the United States Court of Appeals for the Fourth Circuit ("the Fourth Circuit") directly addressed the issues pertinent to this Defendant's July 15 Motion and ruled in favor of this Defendant's argument that it is entitled to an automatic stay of all discovery and dispositive motions in this case pending the appeal filed by Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc ("John Wieland") of this Court's denial of John Wieland's Motion to Compel Arbitration.

Specifically, the Fourth Circuit ruled in *Levin* that this Circuit was joining the majority view that the filing of an arbitrability appeal divests the trial court of jurisdiction over the underlying claims. This is exactly the remedy requested by this Defendant in its July 15 Motion, i.e. that this case should be stayed in its entirety pending John Wieland's arbitrability appeal.

In South Carolina, trial courts retain the authority to stay an action subject to review for abuse of discretion. *See, e.g., Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 328 S.E.2d 621 (1985) (holding the trial court abused its discretion in denying a stay); 4 S.C. Jur Action §40 ("The granting or denying of a motion for a stay of an action is in the discretionary power of the court, subject to review for

abuse of discretion.”); *see also Rhines v. Weber*, 544 U.S. 269, 276 (2005) (“District courts do ordinarily have authority to issue stays where such a stay would be a proper exercise of discretion.” (citations omitted)).

“An equitable stay may be invoked if justified by circumstances which outweigh any potential harm to the party against whom it is operative.” *Merritt Bros., Inc. v. Marine Midland Realty Credit Corp.*, 307 S.C. 213, 216, 414 S.E.2d 167, 169 (1992). In making this determination, the court must weigh competing interests and maintain an even balance. *Id.* Further, trial courts may grant a stay to “provide for the efficient and economic use of judicial resources.” 1 Am. Jur. 2d *Actions* §68.

Section 18-9-220 of the South Carolina Code states that “[i]n cases not provided for in Sections 18-9-130 and 18-9-150 to 18-9-180 (which deal with executions of judgments and conveyances and sales of property, which have nothing to do with this case), the notice of appeal shall stay proceedings in the court below upon the judgment appealed from, except that when it directs the sale of perishable property . . .” S.C. Code Ann. § 18-9-220 (emphasis added). This case does not involve the sale of perishable property.

In this case, as was more specifically outlined in this Defendant’s July 15 Motion, whether John Wieland is allowed to enforce an arbitration provision of a contract with Plaintiffs upon all parties in this case *except for this Defendant* has a significant effect on this Defendant’s ability to defend the claims made against it by Plaintiffs. As this Defendant is the only Defendant in this case without any personal knowledge of any of the construction aspects of this case, specifically as to how this Defendant’s product, corrugated stainless steel tubing (“CSST”), was

installed at Plaintiffs' residence, this Defendant would be particularly prejudiced if the case was allowed to proceed against it without the presence of John Wieland and the subcontractor Defendants John Wieland hired for this job.

Allowing this case to proceed against this Defendant pending John Wieland's appeal would have an especially prejudicial effect on this Defendant if the appellate court eventually rules that John Wieland – as was determined by this Court in April 2013 – is not entitled to arbitration and that litigation is the proper forum to adjudicate this matter. Furthermore, allowing this case to proceed against this Defendant pending John Wieland's appeal would result in a high likelihood of potentially inconsistent handling by two different tribunals, confusion, inequity, increased costs and lost efficiency, time and resources.

Most importantly, as stated above, the Fourth Circuit has spoken on this issue. In *Levin*, Judge Allyson Kay Duncan ruled that this Circuit was joining the majority view that the filing of an arbitrability appeal divests the trial court of jurisdiction over the underlying claims pending the appeal. Therefore, this case should be stayed pending the arbitrability appeal filed by John Wieland.

As a general rule, the filing of an appeal “confers jurisdiction on the court of appeals and divests the [trial court] of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982).

The Third, Seventh, Tenth, Eleventh *and most recently the Fourth* Circuits have held that “an appeal regarding arbitrability of claims does divest the [trial court] of jurisdiction over those claims, as long as the appeal is not frivolous.”

Levin, 634 F.3d, at 263. The Second and Ninth Circuit have held that “no such divestiture occurs.” *Id.*

The Fourth Circuit explained why it joined the position adopted by the majority of the circuits as follows: “The seminal case adopting the majority position is *Bradford-Scott Data Corp. v. Physician Computer Network*, 128 F.3d 504 (7th Cir.1997). *Id.* “There the court held that a [trial court] was automatically divested of jurisdiction by the filing of an appeal that alleged that the claims before the [trial court] were subject to mandatory arbitration.” *Id.* The *Bradford-Scott* Court explained that “[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the [trial court] of its control over those aspects of the case involved in the appeal.” *Bradford-Scott*, 128 F.3d at 505.

The *Bradford-Scott* Court further found that the underlying claims before the [trial court] were necessarily “involved in the appeal” because “[w]hether the case should be litigated in the [trial court] is not an issue collateral to the question presented by an appeal ... [I]t is the mirror image of the question presented on appeal.” *Id.* The *Bradford-Scott* Court also noted that “[c]ontinuation of proceedings in the [trial court] largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals.” *Id.*

Finally, the *Bradford-Scott* Court explained how the principles underlying arbitration supported its rationale:

Arbitration clauses reflect the parties' preference for non-judicial dispute resolution, which may be faster and cheaper. These benefits are eroded, and may be lost or even turned into net losses, if it is necessary to proceed in both judicial and arbitral forums, or to do this sequentially.... Immediate appeal ... helps to cut the loss

from duplication. Yet combining the costs of litigation and arbitration is what lies in store if a [trial court] continues with the case while an appeal ... is pending. Cases of this kind are therefore poor candidates for exceptions to the principle that a notice of appeal divests the [trial court] of power to proceed with the aspects of the case that have been transferred to the court of appeals.

Id. at 506.

The *Levin* Court pointed out that three other circuits have adopted the *Bradford-Scott* rationale. See *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n. 6 (3d Cir.2007); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1162-63 (10th Cir.2005); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1253 (11th Cir.2004).

The *Levin* Court pointed out that the Seventh Circuit explained that, although "arbitrability is distinct from the merits of the litigation," an appeal "presents the question whether the [trial court] must stay its own proceedings pending arbitration" and therefore "[w]hether the litigation may go forward in the [trial court] is precisely what the court of appeals must decide." *Bradford-Scott*, 128 at 506.

Similarly, the Eleventh Circuit explained that "[t]he only aspect of the case involved in an appeal from an order denying a motion to compel arbitration is whether the case should be litigated at all in the [trial court]" and thus "[t]he issue of continued litigation in the [trial court] is not collateral to the question presented by an appeal." *Blinco*, 366 F.3d at 1251.

The *Levin* Court found the majority view persuasive: "[t]he core subject of an arbitrability appeal is the challenged continuation of proceedings before the [trial court] on the underlying claims. Therefore, because the [trial court] lacks jurisdiction over 'those aspects of the case involved in the appeal,' it must

necessarily lack jurisdiction over the continuation of any proceedings relating to the claims at issue.” *Levin*, 634 F.3d at 264 (citing *Griggs*, 459 U.S. at 58, 103 S.Ct. 400).

The *Levin* Court explained that “[d]iscovery is a vital part of the litigation process and permitting discovery constitutes permitting the continuation of the litigation, over which the [trial court] lacks jurisdiction.” *Id.* See also *Bradford-Scott*, 128 F.3d at 506 (“[P]reparation for trial must be suspended until the court of appeals renders a decision.”). “[A]llowing discovery to proceed would cut against the efficiency and cost-saving purposes of arbitration.” See *Id.* at 506; *Blinco*, 366 F.3d at 1251 (“[T]he principal benefits of arbitration, avoiding the high costs and time involved in judicial dispute resolution, [are] lost if the case proceeds in both judicial and arbitral forums.”).

Furthermore, the *Levin* Court stated that “allowing discovery to proceed could alter the nature of the dispute significantly by requiring parties to disclose sensitive information that could have a bearing on the resolution of the matter.” *Levin*, 634 F.3d at 265. The *Levin* Court concluded its analysis by stating: “[i]f we later hold that the claims were indeed subject to mandatory arbitration, the parties will not be able to unring any bell rung by discovery, and they will be forced to endure the consequences of litigation discovery in the arbitration process.” *Id.*

As previously argued, and for all of the reasons cited by the *Levin* Court, this Court should rule that all proceedings in this case, including all discovery and the consideration of any dispositive motions, are stayed pending the appellate court’s ruling on John Wieland’s denial of its motion to compel arbitration.

So as to distinguish the present scenario from circumstances appropriate for a trial court to retain jurisdiction over matters unrelated to an appeal, this Defendant would refer the Court to a 2009 South Carolina Supreme Court opinion, *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009) (Exhibit B). In *Metts*, the Plaintiff argued on appeal that the trial court lacked jurisdiction to consider Defendant newspapers' summary judgment motion because Plaintiff had filed an appeal of a contempt order relating to discovery issues prior to the trial court judge having heard and granted summary judgment for Defendant newspapers.

The Plaintiff argued that the service of a Notice of Appeal gave the appellate court exclusive jurisdiction over the appeal. *Metts*, 384 S.C. at 498. The Supreme Court pointed out that Rule 205 of the South Carolina Appellate Court Rules also provides that a trial court may proceed "with matters not affected by the appeal." *Id.* The contempt order in *Metts* resulted from the Defendant newspapers' refusal to comply with a discovery order compelling it to provide financial data relevant to Plaintiff's punitive damages claim. *Id.* The Supreme Court explained that the Defendant newspapers' motion for summary judgment was on the merits of Plaintiff's libel claim. *Id.*

For this reason, the Supreme Court found that the summary judgment matter was unaffected by the appeal of the contempt order. *Id.* (citing *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n. 7, 659 S.E.2d 112, 122 n. 7 (2008) (where the Court noted that the trial court properly ruled on a second discovery matter involving a deposition after the parties had filed appeals from the trial court's first order because the first order dealt with the subject of initial discovery responses)).

The Supreme Court concluded its analysis by stating that “the trial court's ruling on the constitutional actual malice issue was clearly unrelated to the discovery dispute involving the [Defendant newspapers'] financial data . . . [and] . . . the trial court properly proceeded on the summary judgment motion, despite the pending appeal on the contempt order.” *Id.*

The *Metts* opinion highlights an appropriate scenario for a trial court to hear matters unaffected by a party's appeal and fully supports this Defendant's argument that this case should be stayed pending John Wieland's appeal. John Wieland's appeal directly affects this Defendant's ability to defend the merits of all claims asserted by Plaintiffs. Unlike *Metts*, where the appeal related solely to a discovery issue (whether a contempt order was appropriately granted due to a party's unwillingness to abide by a discovery order), John Wieland's appeal directly affects this Defendant's ability to adequately refute the merits of all allegations against it.

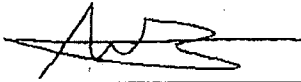
If the Court is not convinced that an automatic stay is appropriate, this Court should grant an equitable stay that is justified by the circumstances of this case. The potential harm of allowing discovery and dispositive motions to proceed – notably the high likelihood of potentially inconsistent handling by two different tribunals, confusion, inequity, increased costs and lost efficiency, time and resources – outweighs any potential benefits to the parties involved.

Finally, if this Court is not convinced that a stay of all discovery and dispositive motions is appropriate, then this Court should reconsider its July 3, 2013 Scheduling Order based upon changed circumstances, notably John Wieland's appeal.

CONCLUSION

For the reasons set forth above, this Defendant respectfully requests that the Court enter an Order Granting this Defendant's Motion to Enforce an Automatic Stay of this Action or, in the alternative, for an Order Staying this Action, or, in the alternative, to Reconsider the July 3, 2013 filing of the Scheduling Order. This Defendant has attached a proposed Order for the Court's consideration (Exhibit C).

HOOD LAW FIRM, LLC
172 Meeting Street / P.O. Box 1508
Charleston, SC 29402
P: (843) 577-4435 / F: (843) 722-1630
Email: Info@hoodlaw.com



Robert H. Hood, Jr. (SC #13491)
A. Walker Barnes (SC # 78485)

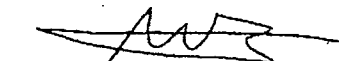
Attorneys for Defendant Omega Flex, Inc.

July 29, 2013
Charleston, South Carolina

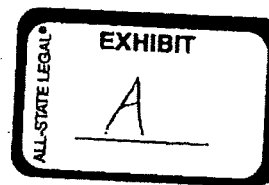
CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 29th day of July, 2013.



A. Walker Barnes



634 F.3d 260
United States Court of Appeals,
Fourth Circuit.

Eric M. LEVIN, Plaintiff–Appellee,
v.
ALMS AND ASSOCIATES, INCORPORATED; Steven P. Alms, Defendants–Appellants.

No. 10–1896. | Argued: Dec. 9, 2010. | Decided: Feb. 10, 2011.

Synopsis

Background: Investor filed suit against investment advisers, raising claims for negligence, negligent misrepresentation, violation of the Investment Advisers Act, and breach of contract. Upon advisers' motion to dismiss, the United States District Court for the District of Maryland, Marvin J. Garbis, Senior District Judge, found that certain underlying claims were not subject to mandatory arbitration, and advisers appealed.

Holdings: The Court of Appeals, Duncan, Circuit Judge, held that:

- ^[1] appeal on issue of arbitrability automatically divested the district court of jurisdiction over the underlying claims, and
- ^[2] language of parties' agreement was broad enough to encompass claims accruing before the agreement.

Reversed.

Attorneys and Law Firms

*261 ARGUED: Christopher R. Mellott, Venable, LLP, Baltimore, Maryland, for Appellants. Steven Jonathan Kelly, Miles & Stockbridge, PC, Towson, Maryland, for Appellee. ON BRIEF: Viktoriya M. Shpigelman, Venable, LLP, Baltimore, Maryland, for Appellants. Matthew S. Sturtz, Miles & Stockbridge, PC, Towson, Maryland, for Appellee.

Before NIEMEYER, DUNCAN, and KEENAN, Circuit Judges.

Opinion

Reversed by published opinion. Judge DUNCAN wrote the opinion, in which Judge NIEMEYER and Judge KEENAN joined.

OPINION

DUNCAN, Circuit Judge:

This action arises from the district court's holding that certain disputes between Alms and Associates, Incorporated and

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SC Court of Appeals

Steven P. Alms ("Appellants") and Eric Levin ("Appellee") were not subject to mandatory arbitration. Following the filing of this appeal, Appellants asked this court to stay the district court proceedings on the underlying claims pending resolution of the appeal. On September 20, 2010, we issued an interim one-judge order staying proceedings pending resolution of the motion. Upon further consideration of the motion, for the reasons detailed below, we joined the majority of the circuits to have decided the issue in holding that the filing of the arbitrability appeal, as would be true of appeals generally, divested the district court of jurisdiction over the underlying claims. Accordingly, on December 9, 2010, we issued an order extending the stay pending resolution of the appeal. Having reviewed the merits of the appeal, we now hold that the district court erred in finding that the underlying claims were not subject to mandatory arbitration.

I.

Beginning in 2004, Appellants provided financial advisory services to Appellee. In 2004, 2005, 2006, and 2007 the parties entered into agreements referred to as "CFO Advisory Agreements," which governed the advisory relationship and the payment of fees.

According to Appellee, his relationship with Appellants was plagued by irregularities. For example, he asserts that in early 2006 Appellants advised him to invest more than \$83,000 in a land development company called SilverDeer Olde Liberty, LLC. That same year, Appellants also *262 advised Appellee to invest \$500,000 in a related real estate venture known as SilverDeer Lakebound Fixed Return, LLC. Appellee alleges that, in so doing, Appellants failed to disclose that they were paid consultants for the SilverDeer entities and that they had an advising agreement with SilverDeer under which they were entitled to receive \$150,000 in annual fees. Appellee further alleges that "there is reason to believe" that Appellants knew that SilverDeer was having financial difficulties as early as 2005. Appellee's Br. at 8. Appellee asserts that Appellants neither informed him about the "blatant conflict of interest" nor disclosed SilverDeer's financial problems. *Id.*

Appellee also alleges that, from 2004 to 2009, Appellants received fees from a financial firm known as Lydian Wealth Management in exchange for placing Appellee's investment account with that firm. According to Appellee, the CFO Agreements with Appellants required them to fully disclose the commission to Appellee and to reduce their yearly advising fees based on that commission. Appellee asserts that Appellants did not inform him about the commission and did not reduce their fees. Finally, Appellee alleges that, in 2007, Appellants misled him into giving them a loan that contained terms unfavorable to him.

In 2009, Appellee filed suit against Appellants based on the allegations described. The complaint raised claims for negligence, negligent misrepresentation, violation of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1, and breach of contract.

Appellants moved to dismiss the action or to stay the proceedings pending arbitration. They alleged that the 2007 CFO Agreement with Appellee dictated that "any dispute" between the parties would be submitted to binding arbitration. They further noted that the 2007 Agreement also purported to "encompass[] and embod[y] all terms, understandings and agreements by and between those parties." J.A. 36. On that basis, Appellants argued that all of Appellee's claims were subject to arbitration.

The district court ordered Appellee to pursue any claims accrued after January 1, 2007, in arbitration, but found that the arbitration agreement did not cover the pre-2007 claims. The court reasoned that the arbitration clause in the 2007 agreement was not worded such that it would apply retroactively to claims accrued before the agreement was signed.

Appellants filed a notice of appeal with this court and moved the district court to stay all proceedings pending appeal. The district court specifically found that the appeal was not frivolous. It nevertheless denied the motion in part, explaining:

Plaintiff has a strong interest in avoiding delay of the ultimate resolution of the case. In addition, Defendants certainly will not suffer undue prejudice from allowing proceedings in the instant case to continue, at least through discovery. Moreover, in view of the apparent presence of threshold limitations issues pertaining to the pre-2007 claims, it would appear beneficial to all concerned to

proceed expeditiously.

Levin v. Alms, No. 09-3403 (D.Md. filed Aug. 31, 2010), ECF No. 32. The district court therefore allowed discovery regarding Plaintiffs pre-2007 claims to proceed. Appellants petitioned this court to stay the proceedings.

On September 20, 2010 we issued a temporary one-judge order staying the proceedings pending resolution of the stay motion. We scheduled the motion and the merits of the case for oral argument on December 9, 2010. Immediately following *263 oral argument on the motion, we issued an order granting the motion and extending the interim stay pending resolution of the appeal, with the panel's reasons to be explained in this opinion.

II.

Appellants assert that the filing of this appeal challenging the district court's arbitrability decision divested that court of jurisdiction over the underlying claims. They further argue that the district court erred in holding that the 2007 CFO Agreement did not bind the parties to arbitrate any claims that accrued prior to 2007. We address each contention in turn.

A.

¹⁾ As a general rule, the filing of an appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982). Section 16(a)(1)(A) of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 16(a)(1)(A), authorizes an appeal from a district court's denial of a petition to stay an action pending arbitration under § 3 of that act.¹ Appellants' motion required us to decide whether the general rule applies in an appeal under § 16(a)(1)(A) to divest the district court of jurisdiction over the proceedings relating to the underlying claims. The Third, Seventh, Tenth, and Eleventh Circuits have held that an appeal regarding arbitrability of claims does divest the district court of jurisdiction over those claims, as long as the appeal is not frivolous. The Second and Ninth Circuit have held that no such divestiture occurs. For the reasons explained below, we join the position adopted by the majority of the circuits. We first discuss the issue of divestiture and then examine the frivolousness exception.

¹ Although Appellants state that the original motion they filed with the district court was a motion to stay under § 4 of the FAA, 9 U.S.C. § 4, that statement is in error. See Appellants' Motion Br. at 4. The section of the FAA referring to motions to stay an action pending arbitration is § 3. A review of Appellants' original motion filed with the district court reveals that the motion was correctly filed pursuant to § 3 of the FAA, not § 4.

1.

The seminal case adopting the majority position is *Bradford-Scott Data Corp. v. Physician Computer Network*, 128 F.3d 504 (7th Cir.1997). There the court held that a district court was automatically divested of jurisdiction by the filing of an appeal that alleged that the claims before the district court were subject to mandatory arbitration. *Id.* at 505. The court explained that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Id.* (quoting *Griggs*, 459 U.S. at 58, 103 S.Ct. 400). It further found that the underlying claims before the district court were necessarily "involved in the appeal" because "[w]hether the case should be litigated in the district court is not an issue collateral to the question presented by an appeal under § 16(a)(1)(A) ... [I]t is the mirror image of the question presented on appeal." *Id.* The court also noted that "[c]ontinuation of proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent

handling of the case by two tribunals." *Id.* Finally, the court explained how the principles underlying arbitration supported its rationale:

Arbitration clauses reflect the parties' preference for non-judicial dispute resolution, which may be faster and cheaper. *264 These benefits are eroded, and may be lost or even turned into net losses, if it is necessary to proceed in both judicial and arbitral forums, or to do this sequentially.... Immediate appeal under § 16(a) helps to cut the loss from duplication. Yet combining the costs of litigation and arbitration is what lies in store if a district court continues with the case while an appeal under § 16(a) is pending. Cases of this kind are therefore poor candidates for exceptions to the principle that a notice of appeal divests the district court of power to proceed with the aspects of the case that have been transferred to the court of appeals.

Id. at 506. Three other circuits have adopted the *Bradford-Scott* rationale. See *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n. 6 (3d Cir.2007); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1162-63 (10th Cir.2005); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1253 (11th Cir.2004).

The Ninth Circuit and the Second Circuit have taken the contrary view. In *Britton v. Co-op Banking Group*, 916 F.2d 1405 (9th Cir.1990), the court found that the district court was not divested of jurisdiction, reasoning that because "arbitrability was the only substantive issue presented in [the] appeal" the claims before the district court were not "the subject of the appeal." *Id.* at 1412. In *Motorola Credit Corp. v. Uzan*, 388 F.3d 39 (2d Cir.2004), the Second Circuit adopted the Ninth Circuit's holding. See *id.* at 54 ("[We] explicitly adopt the Ninth Circuit's position that further district court proceedings in a case are not 'involved in' the appeal of an order refusing arbitration, and that a district court therefore has jurisdiction to proceed with a case absent a stay from this Court.").

The courts adopting the majority position have expressly rejected the contrary rationale. The Seventh Circuit explained that although "arbitrability is distinct from the merits of the litigation," an appeal under § 16(a)(1)(A) "presents the question whether the district court must stay its own proceedings pending arbitration" and therefore "[w]hether the litigation may go forward in the district court is precisely what the court of appeals must decide." *Bradford-Scott*, 128 at 506. Similarly, the Eleventh Circuit explained that "[t]he only aspect of the case involved in an appeal from an order denying a motion to compel arbitration is whether the case should be litigated at all in the district court" and thus "[t]he issue of continued litigation in the district court is not collateral to the question presented by an appeal under § 16(a)(1)(A)." *Blinco*, 366 F.3d at 1251.

¹²¹ We find the majority view persuasive. The core subject of an arbitrability appeal is the challenged continuation of proceedings before the district court on the underlying claims. Therefore, because the district court lacks jurisdiction over "those aspects of the case involved in the appeal," it must necessarily lack jurisdiction over the continuation of any proceedings relating to the claims at issue. *Griggs*, 459 U.S. at 58, 103 S.Ct. 400. That the present case involves only the continuation of discovery does not change that rationale. Discovery is a vital part of the litigation process and permitting discovery constitutes permitting the continuation of the litigation, over which the district court lacks jurisdiction. See *Bradford-Scott*, 128 F.3d at 506 ("[P]reparation for trial must be suspended until the court of appeals renders a decision."). Furthermore, allowing discovery to proceed would cut against the efficiency and cost-saving purposes of arbitration. See *id.* at 506; *Blinco*, 366 F.3d at 1251 ("[T]he principal benefits of arbitration, avoiding the high costs and time involved *265 in judicial dispute resolution, [are] lost if the case proceeds in both judicial and arbitral forums."). Also, allowing discovery to proceed could alter the nature of the dispute significantly by requiring parties to disclose sensitive information that could have a bearing on the resolution of the matter. If we later hold that the claims were indeed subject to mandatory arbitration, the parties will not be able to unring any bell rung by discovery, and they will be forced to endure the consequences of litigation discovery in the arbitration process.

2.

The approach discussed above is subject to certain safeguards against frivolous appeals. As the Ninth Circuit noted in *Britton*, it would be inadvisable to "allow a defendant to stall a trial simply by bringing a frivolous motion to compel arbitration." 916 F.2d at 1412. For this reason, each of the circuits adopting the majority view has created a frivolousness exception to the

divestiture of jurisdiction. The Seventh Circuit found that the frivolousness concern "is met by the response that the appellee may ask the court of appeals to dismiss the appeal as frivolous or to affirm summarily." *Bradford-Scott*, 128 F.3d at 506. It further held that "[e]ither the court of appeals or the district court may declare that the appeal is frivolous, and-if it is the district court may carry on with the case." *Id.* The Tenth Circuit elaborated on the mechanics of the frivolousness exception as follows:

[U]pon the filing of a motion to stay litigation pending an appeal from the denial of a motion to compel arbitration, the district court may frustrate any litigant's attempt to exploit the categorical divestiture rule by taking the affirmative step, after a hearing, of certifying the § 16(a) appeal as frivolous or forfeited. That certification will prevent the divestiture of district court jurisdiction. Appellant may then move this court for a stay pending appeal, asserting that the district court's finding of frivolousness is not supported by the record. If this court determines that the appeal is not frivolous, we will stay the litigation in the district court pending the appeal of the denial of the motion to compel arbitration.

McCauley, 413 F.3d at 1162 (internal citations omitted); see also *Ehleiter*, 482 F.3d at 215 n. 6 (agreeing "with the majority rule of automatic divestiture where the Section 16(a) appeal is neither frivolous nor forfeited"); *Blinco*, 366 F.3d at 1253 ("When a litigant files a motion to stay litigation in the district court pending an appeal from the denial of a motion to compel arbitration, the district court should stay the litigation so long as the appeal is non-frivolous.").

We find the frivolousness safeguard as articulated by the Tenth Circuit to be not only sensible but also consistent with our approach in other areas of the law. For example, in the double-jeopardy context, this court has recognized a "dual jurisdiction" rule, "which allows a district court to proceed with trial while a defendant pursues [a] ... double jeopardy appeal, where the district court has concluded that the appeal is frivolous." *United States v. Montgomery*, 262 F.3d 233, 240 (4th Cir.2001).² In recognizing this doctrine, we *266 noted that it was not legally foreclosed by the divestiture of jurisdiction rule because that rule is "not based upon statutory provisions or the rules of civil or criminal procedure" but rather "is a judge made rule originally devised ... to avoid confusion or waste of time." *Id.* at 239-40. The frivolousness exception adopted by the majority of the circuits is analogous to and consistent with this "dual jurisdiction" doctrine.

² As Appellants note, the Supreme Court has recently held that an appellate court has jurisdiction over any appeal under 9 U.S.C. § 16, regardless of whether the issue is frivolous. *Arthur Andersen LLP v. Carlisle*, — U.S. —, 129 S.Ct. 1896, 1900-01, 173 L.Ed.2d 832 (2009). However, this holding does not affect the validity of the "dual jurisdiction" doctrine because that doctrine acknowledges that the appellate court has jurisdiction but grants special permission for the district court to exercise jurisdiction as well.

We therefore hold that an appeal on the issue of arbitrability automatically divests the district court of jurisdiction over the underlying claims and requires a stay of the action, unless the district court certifies the appeal as frivolous or forfeited. In the event that such certification occurs, the party alleging arbitrability may move this court to stay the district court proceedings pending a review of the frivolousness determination. Given that the district court here specifically held that the appeal was not frivolous, a stay of the action during the pendency of this appeal was required. It is for these reasons that we granted Appellants' motion to stay the proceedings below, pending resolution of this appeal.

B.

We turn now to the merits of this appeal. The issue before us is whether the district court erred in holding that the arbitration clause in the 2007 CFO Advisory Agreement did not apply to claims that accrued prior to January 1, 2007. We "review de novo the district court's conclusions regarding the arbitrability of the disputes." *Am. Recovery Corp. v. Computerized Thermal Imaging*, 96 F.3d 88, 91 (4th Cir.1996).

¹³¹ ¹⁴¹ "Whether a party has agreed to arbitrate an issue is a matter of contract interpretation: '[A] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" *Id.* at 92 (quoting *United Steehyorkers of America*

v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960)). However, the Supreme Court has consistently encouraged a “healthy regard for the federal policy favoring arbitration.” *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). This federal policy is based on the FAA, which “establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” *Id.* at 24–25, 103 S.Ct. 927. The “heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.” *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir.1989). It is through this lens that we must evaluate the language of the 2007 CFO Agreement.

The Agreement includes the following integration clause:

It is agreed by and between the parties hereto that this agreement encompasses and embodies all terms, understandings and agreements by and between those parties and the terms may not be amended except in writing by the parties hereto.

J.A. 36. The agreement also includes the following paragraph:

Any dispute shall be submitted to binding arbitration before a single arbitrator in Howard County, Maryland, under the rules of the American Arbitration *267 Association, and the decision of the arbitrator shall be final and binding upon the parties. In the event that the client shall implement any advice, suggestion, proposal or plan advanced by the advisor or developed as a result of interaction between the client, the advisor and/or any other advising professionals, the advisor shall not be liable to the client for any loss, liability, costs or expenses which the client may incur as a result thereof in excess of the actual amount of fees paid to the advisor by the client under this contract.

Id. (emphasis added). The first sentence in this paragraph is the arbitration clause that is the subject of this appeal.

¹⁶¹ Appellee alleges that it is not the integration language that is relevant here, but rather the allegedly narrower arbitration provision. Specifically, he alleges that the arbitration provision’s “any dispute” language refers only to disputes arising after the signing of the 2007 CFO agreement and that it trumps the reference to “all terms, understandings and agreements” in the integration clause. Our precedent instructs that the contract must be read “as a whole.” *Gresham v. Lumbermen’s Mut. Cas. Co.*, 404 F.3d 253, 260 (4th Cir.2005). Furthermore, whether one of two provisions in a contract controls “is irrelevant where, as here, the two provisions can be comfortably read together.” *Universal Concrete Prods. Corp. v. Turner Constr. Co.*, 595 F.3d 527, 531 (4th Cir.2010). Here, the integration and arbitration clauses can easily be read together to state that the “agreement encompasses and embodies all terms, understandings and agreements by and between those parties” and that “[a]ny dispute shall be submitted to binding arbitration.” J.A. 36. The language is broad enough to encompass *all* agreements and *any* disputes, past and present, especially given that the presumption in favor of arbitrability is particularly applicable when the arbitration clause is broadly worded. See *AT & T Techs. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986) (finding the presumption “particularly applicable where the clause is as broad as the one employed in this case, which provides for arbitration of ‘any differences arising with respect to the interpretation of this contract’ ”); see also *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir.1988) (“The International Chamber of Commerce’s recommended clause which provides for arbitration of ‘[a]ll disputes arising in connection with the present contract’ ... does not limit arbitration to the literal interpretation or performance of the contract. It embraces every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute.”).

Although the arbitration clause does not specifically state that it applies to claims accruing before the 2007 Agreement, courts have generally applied broad “any dispute” language retroactively, especially when combined with language that refers to all dealings between the parties. For example, in *Cara’s Notions v. Hallmark Cards*, 140 F.3d 566, 568 (4th Cir.1998), we applied retroactively an arbitration clause that stated that the parties would arbitrate “[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, or any aspects of the relationship between” the parties. *Id.* (emphasis in the original). We found relevant a separate section of the agreement that stated “[t]his agreement supersedes all prior oral or written representations and constitutes the entire understanding.” *Id.* at 570. While the agreement here does not specifically state that it supersedes others, it does similarly state that it “encompasses and embodies *all* ... agreements,” *268 which would seem to include prior agreements, making the arbitration clause referring to “all disputes” applicable retroactively.

Our sister circuits give retroactive application to broad arbitration clauses as well. For instance, in *Kristian v. Comcast Corp.*, 446 F.3d 25 (1st Cir.2006), the First Circuit found that an agreement to arbitrate "any claim or dispute relating to or arising out of this agreement or the services provided" could be applied retroactively because "the phrase 'or the services provided' covers claims or disputes that do not arise 'out of this agreement' and hence are not limited by the time frame of the agreements." *Id.* at 33. Similarly, in *Zink v. Merrill Lynch Pierce Fenner & Smith*, 13 F.3d 330 (10th Cir.1993), the court found that the language "[a]ny controversy between [the parties] arising out of [plaintiff's] business or this agreement shall be submitted to arbitration" was "clearly broad enough to cover the dispute at issue despite the fact that the dealings giving rise to the dispute occurred prior to the execution of the agreement." *Id.* at 332. Also, in *Coenen v. R.W. Pressprich & Co.*, 453 F.2d 1209 (2d Cir.1972), the court found that an agreement to arbitrate "any controversy between ... members" encompassed controversies that accrued before the members entered into the agreement. *Id.* at 1212.

Appellee argues that he cannot be forced to arbitrate his claims because he did not "knowingly and deliberately" waive his right to judicial forum by entering into an "express and specific" agreement to arbitrate the prior claims. Appellee's Br. at 11-13. He relies on the limitation of losses statement following the arbitration clause which provides as follows: "the advisor shall not be liable to the client for any loss ... in excess of the actual amount of fees paid to the advisor by the client under this contract." J.A. 36. Citing cases in which the arbitration clause at issue stated that it applied to "this agreement," Appellee argues that the "this contract" language restricts the arbitration clause only to the 2007 CFO Agreement. Appellee's Br. at 14-15; see, e.g., *Peerless Importers, Inc. v. Wine, Liquor & Distillery Workers Union Local One*, 903 F.2d 924, 927-28 (2d Cir.1990) (finding that the language "arising under this Agreement and during its term" did not apply retroactively). These cases provide no support for Appellee's view precisely because the limitation in them inhered in the arbitration clause itself. Here, the "this contract" language applies only to the limitation of losses provision, not to the arbitration clause. The loss provision makes no reference to arbitration and there is nothing in the language or structure of the paragraph that indicates that the second sentence is intended to limit or qualify the first in any way. Furthermore, even assuming that the "this contract" language in the loss limitation provision creates some confusion as to the retroactivity of the arbitration provision preceding it, the arbitrability presumption applied to broad arbitration clauses would require us to resolve "any doubts concerning the scope of arbitrable issues ... in favor of arbitration." *Moses H. Cone Memorial Hosp.*, 460 U.S. at 24-25, 103 S.Ct. 927.

Appellee further asserts, and the district court agreed, that the arbitration clause is not retroactively applicable because it is contained in only the most recent of successive contracts and therefore the clause cannot be read to constitute a waiver of Appellee's right to a judicial forum for previously accrued claims. As support for this proposition, both the district court and Appellee rely heavily on *Hendrick v. Brown & Root, Inc.*, 50 F.Supp.2d 527 (E.D.Va.1999), which concluded that an arbitration *269 clause contained in the last of a series of project-by-project contracts did not apply to claims that accrued under previous agreements in that series. *Hendrick*, too, is easily distinguishable on its facts. The parties in that case had no ongoing business relationship like the one that existed here. Rather, the parties entered into four discrete and separate "project-by-project" agreements spanning specific periods of time and with lengthy gaps between each agreement. The *Hendrick* court described the contracts at issue as follows:

Hendrick was hired pursuant to a different contract for each period of employment and, pursuant to those contracts, Hendrick was hired for separate and distinct projects. On each occasion, he was treated as a new employee; and, therefore, each time he was hired, Hendrick was required to submit a new job application and to complete new tax and other personnel forms. Each period of employment was formally terminated in writing and Brown & Root processed termination forms which made clear that Hendrick was no longer entitled to compensation, medical coverage and other benefits. As is evident from each of the four employment contracts, Hendrick was an at-will employee and then only for the particular assignment for which he was hired under the operative employment contract.

Id. at 529. The court specifically distinguished *Zink*, discussed above, in which the 10th Circuit held that the language "[a]ny controversy between [the parties] arising out of [plaintiff's] business or this agreement shall be submitted to arbitration" applied to claims that accrued before the arbitration agreement was entered into. See *Zink*, 13 F.3d at 332. *Hendrick* found *Zink* inapplicable to the case before it, stating "*Zink* does not apply here because the parties did not have an ongoing relationship under the 1988 employment contract." *Id.* at 536. According to the *Hendrick* court, *Zink* gave the clause retroactive application because the activity on which the underlying claim was based "was part and parcel of the ongoing business dealings between the parties." *Id.*

The circumstances in this case are far more similar to *Zink* than *Hendrick*. Unlike in *Hendrick*, here there is no evidence that the parties had stop-and-go business dealings that periodically ended completely and began from scratch again. Instead, the parties here had an ongoing relationship that was seamlessly renewed on an annual basis. Furthermore, the underlying claims in this case concern events that are "part and parcel" of the long-standing financial advising relationship between Appellants and Appellee. Thus, *Hendrick* does not support the conclusion that the arbitration provision here is not retroactively applicable.

Accordingly, given the broad scope of the arbitration clause applying to "any dispute" between the parties, and in light of the arbitrability presumption that applies with special force to broadly written clauses, we find that the district court erred in holding that claims that accrued before 2007 were not subject to arbitration. We therefore remand this matter to the district court for further proceedings consistent with this opinion.

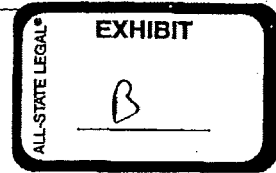
III.

For the foregoing reasons we

REVERSE

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377 S.C. 12
Supreme Court of South Carolina.

An L. GROSSHUESCH, Guardian and Conservator of Eleanor A. Breedlove, and An L. Grosshuesch, Guardian and Conservator of Bernard H. Breedlove, Respondents/Appellants,

v.

Lisa CRAMER, Nathan Cramer, Lawrence H. Gray, Jr., Duane Marie Gray, and Sweetgrass Land Company, LLC, Defendants,

of whom Lisa Cramer is Appellant/Respondent.

and

Ex Parte Charles B. Macloskie, Appellant,

In re An L. Grosshuesch, Guardian and Conservator of Eleanor A. Breedlove, and An L. Grosshuesch, Guardian and Conservator of Bernard H. Breedlove, Respondents,

v.

Lisa Cramer, Nathan Cramer, Lawrence H. Gray, Jr., Duane Marie Gray, and Sweetgrass Land Company, LLC, Defendants.

and

An L. Grosshuesch, Guardian and Conservator of Eleanor A. Breedlove, and An L. Grosshuesch, Guardian and Conservator of Bernard H. Breedlove, Appellants,

v.

Lisa Cramer, Nathan Cramer, Lawrence H. Gray, Jr., Duane Marie Gray, and Sweetgrass Land Company, LLC, Respondents.

and

Ex Parte Lionel S. Lofton, Appellant,

In re An L. Grosshuesch, Guardian and Conservator of Eleanor A. Breedlove, and An L. Grosshuesch, Guardian and Conservator of Bernard H. Breedlove, Respondents,

v.

Lisa Cramer, Nathan Cramer, Lawrence H. Gray, Jr., Duane Marie Gray, and Sweetgrass Land Company, LLC, Defendants.

No. 26453. | Heard Jan. 9, 2008. | Decided March 10, 2008.

Synopsis

Background: Property owners brought action against their former caregiver and her spouse to set aside transfers on grounds of undue influence and fraud. The Circuit Court, Beaufort County, Curtis L. Coltrane, J., denied owners' request for preliminary injunction. Owners appealed. After the case was certified from Court of Appeals, the Supreme Court, 367 S.C. 1, 623 S.E.2d 833, reversed. Property owners sought discovery from defendants and served defendants' attorneys with subpoenas duces tecum. Defendants invoked their privilege against self-incrimination and attorneys sought to quash the subpoenas. The Circuit Courts, Beaufort and Charleston Counties, Curtis L. Coltrane and R. Markley Dennis, Jr., J., found caregiver in contempt, issued a protective order on discovery, and found defendants' attorneys in contempt. All parties appealed.

Holdings: After certifying and consolidating all of the appeals, the Supreme Court, Toal, C.J., held that:

^[1] defendants did not lose their privilege against self-incrimination, by maintaining that the transfers from property owners were gifts;

^[2] defendants did not lose their privilege against self-incrimination by asserting they would testify at their criminal trial;

^[3] though defendants' fear of self-incrimination was due some deference, trial court had the final word on whether the

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privilege was applicable;

^[4] trial court could not compel defendants to disclose information subject to the privilege if it found the privilege was applicable;

^[5] property owners could not use subpoenas duces tecum served on defendants' attorneys to obtain information that was subject to the privilege against self-incrimination; and

^[6] privilege against self-incrimination did not bar trial court from determining, in camera if necessary, whether defendants violated injunction by using assets received from property owners to pay for attorney fees.

Appeals vacated in part, reversed in part, and dismissed in part.

Attorneys and Law Firms

****115** Lionel S. Lofton and V. Lynn Lofton, both of Lofton & Lofton, of Charleston, and Charles B. Macloskie, of the Macloskie Law Firm, of Beaufort, for Appellant/Respondent Lisa Cramer and for Appellants Lofton and Macloskie.

Richard S. Rosen and Andrew D. Gowdown, both of Rosen, Rosen & Hagood, of Charleston, for Respondents/Appellants.

Opinion

Chief Justice TOAL.

***18** These consolidated appeals relate to several discovery orders in a civil action. Bernard and Eleanor Breedlove initiated the underlying lawsuit seeking to set aside several transfers of assets to Lisa and Nathan Cramer on the grounds of fraud and undue influence. The parties contest several issues on appeal, but the foremost is whether the trial court erred in imposing discovery-related sanctions on Lisa Cramer. The Cramers argue that the trial court should not have imposed sanctions, and the Breedloves argue that the trial court should have imposed more. Additionally, the Cramers' attorneys argue that the trial court erred in requiring them to produce documents and information relating to the location of assets allegedly transferred from the Breedloves, and the Breedloves argue that the trial court erred in issuing a protective order making discovery in the case confidential.

Though these issues are couched as different types of discovery disputes, they deal primarily with the Cramers' ***19** invocation of the privilege against self-incrimination found in the Fifth Amendment to the United States Constitution. Because we find that the trial court did not apply the proper standard when judging the Cramers' invocation of the Fifth Amendment, we vacate the trial court's imposition of discovery-related sanctions on Lisa Cramer. Similarly, we find that the trial court erred in ordering the Cramers' attorneys to produce documents and information which relate to their representation of the Cramers. The remaining questions on appeal, specifically, whether the trial court erred in declining to impose additional sanctions on Lisa Cramer and whether the trial court erred in issuing a protective order, are not immediately appealable and are therefore dismissed.

FACTUAL/PROCEDURAL BACKGROUND

The Breedloves are elderly individuals with substantial assets who reside in Hilton Head, South Carolina. In their complaint, the Breedloves alleged that they became acquainted with Lisa Cramer through her employment at the Breedloves' bank, and that after learning of the Breedloves' substantial ****116** wealth, the Cramers conspired to develop an enduring relationship with the Breedloves and to exploit that relationship for financial gain. The Breedloves alleged that over time, they transferred several million dollars worth of real estate and liquid assets to the Cramers. During the time of these transfers, the Breedloves were allegedly suffering from some degree of dementia related to their advanced age. The Beaufort County Probate Court

appointed An L. Grosshuesch as guardian and conservator for the Breedloves after the Breedloves commenced this lawsuit.

This appeal represents the third time this Court has addressed issues arising out of this litigation. As their first step in defending the lawsuit, the Cramers requested that the trial court stay the suit pending the resolution of the criminal actions filed against them relating to these conveyances. The trial court denied this request, and we dismissed the Cramers' appeal from the denial of the stay on the grounds that the trial court's order was interlocutory, not affecting the merits, and thus, not immediately appealable.

*20 Next, this Court addressed the trial court's denial of the Breedloves' request for a preliminary injunction. The Breedloves sought to prevent the Cramers and others acting on the Cramers' behalf from transferring or otherwise disposing of the assets at issue. In so seeking, the Breedloves filed *lis pendens* against the subject real estate and sought a preliminary injunction preventing the Cramers from exercising control over some of the accounts and assets in dispute. In seeking the injunction, the specific focus of the Breedloves' concern was a Merrill Lynch account which they alleged initially contained \$2 million, but has been almost completely depleted. The trial court denied the Breedloves' request for an injunction, and this Court reversed. *Grosshuesch v. Cramer*, 367 S.C. 1, 623 S.E.2d 833 (2005).

The consolidated appeals now at issue deal with several orders related to discovery. Over the course of this litigation, the Breedloves sought extensive discovery relating to the amount of assets the Cramers received from the Breedloves, expenses the Cramers appeared to authorize on behalf of the Breedloves, and the present location of all assets acquired from the Breedloves. When the Breedloves received no response to their discovery requests, they sought and were granted an order compelling Lisa Cramer to respond to discovery.¹

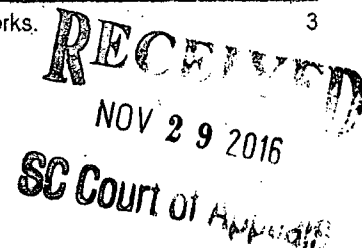
¹ Counsel for Nathan Cramer did not appear at the hearing on the motion to compel. From this point on, the parties appear to have been content to litigate these discovery disputes solely from Lisa Cramer's perspective.

The Cramers again entered no substantive response to the vast amount of Breedloves' discovery, answering only that any response to discovery would be deemed a waiver of rights secured by the Fifth Amendment to the United States Constitution and by Article I, Section 12 of the South Carolina Constitution. After receiving what were in their view insufficient responses to their discovery requests, the Breedloves sought an order of contempt and sanctions as to Lisa Cramer. The trial court ordered Lisa Cramer to fully respond to discovery and held her in contempt, but imposed no sanctions. In this order, the trial court additionally prohibited the Breedloves from disseminating any information acquired in discovery to anyone not directly connected with this litigation. The *21 purpose of this protective order, in the trial court's view, was to guard the integrity of the case and to prevent any criminal harm to the Cramers from their discovery responses. Lisa Cramer appealed from her finding of contempt, and the Breedloves cross-appealed the imposition of the protective order.

Although the Cramers' depositions followed this contempt order, the Breedloves' quest for information fared no better. Ultimately, the trial court entertained a second motion for contempt and sanctions arising out of Lisa Cramer's essentially blanket refusal to answer questions in her deposition. The trial court denied this request for contempt and sanctions, and the Breedloves appealed.

Roughly around the same time they served their initial discovery requests, the Breedloves issued subpoenas *duces tecum* to the Cramers' attorneys. The subpoenas requested that the attorneys produce documents evidencing any fees they had received from **117 the Cramers, withdrawals from the \$2 million Merrill Lynch account, and transfers of cash to the Cramers from the Breedloves. The trial court denied the attorneys' requests to quash the subpoenas and ultimately held the attorneys in contempt. Both attorneys appealed.

As a result of the parties' prolific appealing at each stage of litigation, the court of appeals had several appeals related to this litigation pending by early 2007. Specifically, the court of appeals had the appeal and cross-appeal relating to the order holding Lisa Cramer in contempt for her initial discovery responses; the Breedloves' appeal of the order declining to hold Lisa Cramer in contempt for her deposition conduct; and the Cramers' attorneys' appeals from their contempt orders. This Court issued an order certifying and consolidating all of the pending appeals, and the parties present the following issues for review:



- I. Did the trial court err in holding Lisa Cramer in contempt for failing to respond to discovery? (Lisa Cramer's appeal)
- II. Did the trial court err in finding the Cramers' attorneys in contempt for failing to comply with the subpoenas duces tecum? (The attorneys' appeals)
- *22 III. Did the trial court err in issuing a protective order prohibiting the Breedloves from disseminating any information or discovery responses to anyone not directly connected with this litigation? (the Breedloves' cross-appeal)
- IV. Did the trial court err in denying the Breedloves' second request for contempt and sanctions as to Lisa Cramer? (the Breedloves' appeal)

LAW/ANALYSIS

I. The Order of Contempt

Lisa Cramer argues that the trial court erred in holding her in contempt for failing to respond to discovery. We agree.

¹¹ Both the Fifth Amendment to the United States Constitution and Article I, Section 12 of the South Carolina Constitution declare that no person shall be compelled to be a witness against himself in any criminal case. In interpreting the Fifth Amendment, the privilege against self-incrimination has been explained in practical terms as an assurance that an individual will not be compelled to produce evidence or information which may be used against him in a later criminal proceeding. *Maness v. Meyers*, 419 U.S. 449, 461, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975). The settled law provides that the privilege extends not only to answers that would themselves support a criminal conviction, but also to answers furnishing a link in the chain of evidence needed to prosecute an individual. *Hoffman v. United States*, 341 U.S. 479, 486, 71 S.Ct. 814, 95 L.Ed. 1118 (1951).

¹² ¹³ That a party has invoked the privilege against self-incrimination, however, does not end the matter. Instead, it is well-settled that an invocation of the privilege is confined to instances where a person has reasonable cause to apprehend danger from his answer. *Id.* Indeed:

The witness is not exonerated from answering merely because he declares that in doing so he [will] incriminate himself—his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified ... and to require him to answer if "it clearly appears to the court that he is mistaken."

*23 *Id.* (citing *Temple v. Commonwealth*, 75 Va. 892, 899); see also *First Union Nat'l Bank v. First Citizens Bank & Trust Co. of S.C.*, 346 S.C. 462, 467, 551 S.E.2d 301, 303 (Ct.App.2001).

The Fourth Circuit has instructed that a court judging the invocation of the privilege against self-incrimination asks first whether the information is incriminating in nature, and second, whether there is a sufficient possibility of criminal prosecution to trigger the privilege. *United States v. Sharp*, 920 F.2d 1167, 1170-71 (4th Cir.1990). In determining whether the information is incriminating, the *Sharp* court recognized that at least two categories of potentially incriminating questions exist. First, there are questions **118 whose incriminating nature is evident on the question's face in light of the question asked and the surrounding circumstances. *Id.* at 1170. Second, there are questions which though not overtly incriminating, can be shown to be incriminating through further contextual proof. *Id.* It is with these principles in mind that we turn to an analysis of the trial court's order holding Lisa Cramer in contempt.²

² As our recitation of the law illustrates, there is a great deal of jurisprudence interpreting the Fifth Amendment's privilege against self-incrimination and setting forth clear guideposts for judging an invocation of the privilege. The parties have not offered any arguments as to how the analysis might differ under Article I, Section 12 of the South Carolina Constitution, so we assume in this case that the analysis under the two provisions is identical.

When comparing this analytical rubric to the trial court's order of contempt, it is clear that the order does not apply the correct standard when examining Lisa Cramer's invocation of the constitutional privilege. The trial court opined that the privilege against self-incrimination was completely inapplicable in the instant case for two reasons. First, the trial court noted that the Cramers have maintained that the transfers from the Breedloves were gifts. Second, the trial court emphasized that the Cramers have unequivocally stated that they intend on testifying at their criminal trial. The Breedloves rely heavily on these justifications in their argument before this Court, but although these facts are extremely odd, they are irrelevant to constitutional privilege analysis.

*24 ¹⁴, ¹⁵ Dealing first with the fact that the Cramers have maintained that the transfers from the Breedloves were gifts, the question when judging the application of the privilege against self-incrimination does not revolve around what defenses a party has asserted in a civil action, but whether there is a reasonable possibility that requiring a party to answer a certain question would provide information that could be used against the party in a criminal proceeding or would lead to the discovery of such information. *Hoffman*, 341 U.S. at 486-87, 71 S.Ct. 814; *Sharp*, 920 F.2d at 1170. The Cramers are entitled to assert that they did not engage in any criminal conduct over the course of their relationship with the Breedloves, and this entitlement applies with equal force in both this action and the pending criminal action. Just as they would not lose the protections against self-incrimination by entering a criminal plea of not-guilty, so too does their assertion in this action that these transactions were arms-length have no impact on the analysis of whether the Cramers have a reasonable fear that their answers provided in discovery might be used against them in a criminal proceeding.

¹⁶ ¹⁷ ¹⁸ The trial court's speculation about whether the Cramers would testify at their criminal trial suffers from a similarly fatal flaw. We are aware of no authority providing that a party waives the application of the privilege against self-incrimination by stating that they ultimately intend to testify at trial. Courts employ a high bar when judging the waiver of constitutional rights. See *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) (noting that "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."). In this vein, we think that a pronouncement that one intends to waive a constitutional right in the future does not amount to a waiver of that right. Indeed, it stands to reason that if one says he intends to waive a right in the future, he is invoking that right in the present.³

³ The case *Raffel v. United States*, 271 U.S. 494, 46 S.Ct. 566, 70 L.Ed. 1054 (1926), is not to the contrary. That case deals with the entirely different question of whether inconsistent conduct with respect to the invocation of the Fifth Amendment may be used as impeachment evidence if a party takes the witness stand.

*25 What then were the circumstances available for the trial court to consider in making its decision in this case? The record reflects that the trial court possessed the following information: (1) that the Breedloves sued the Cramers seeking to set aside several transfers of assets; (2) that the Breedloves are seeking discovery as to a great deal of information, some of which deals directly with **119 their relationship to the Cramers and their transfers of assets to the Cramers; and (3) that the Cramers have been involved in a criminal proceeding which relates to their receipt of assets from the Breedloves since before the inception of this civil action. Given this information, the second step of the privilege analysis is the easy assessment. It is clear that a criminal prosecution of the Cramers is not an event which might occur sometime in the future—it is a present reality.

The more difficult question, in our opinion, is the examination of the nature of the questions asked in this case. It is arguable, we think, that any discovery directed at transfers of assets from the Breedloves to the Cramers might be incriminating on its face. It would seem that such discovery directly seeks the information and transactions which are at the heart of the pending criminal proceeding involving the Cramers. Accordingly, it would appear probable that the Cramers could have a reasonable fear that their answers to questions focused on this information would ultimately be used against them in the pending criminal proceeding.

But not all of the Breedloves' focus in discovery was so directed. During discovery, the Breedloves sought information related to the Cramers' marriage, their employment history, and other areas which do not implicate the Cramers' relationship with the Breedloves or transfers of assets over the course of that relationship. Though it is possible that the discovery of information relating to these subjects could implicate the privilege against self-incrimination, that is not the only possibility.

Indeed, when judging the invocation of the privilege in response to these and similar questions, it might have been reasonable for the trial court to ask for more information in order to effectively judge whether there was a reasonable possibility that answers to these questions would provide incriminating information. Lisa Cramer offered the *26 trial court nothing more, and for this reason, a passage in *Hoffman* seems to ring true:

The witness here failed to give the judge any information which would allow the latter to rule intelligently on the claim of privilege for the witness simply refused to say anything and gave no facts to show why he refused to say anything.

341 U.S. at 484, 71 S.Ct. 814.

[9] [10] [11] [12] [13] As this analysis illustrates, the fault for swaying the trial court's attention from the proper standard is shared among the parties. For while we have outlined why the reasons offered by the Breedloves do not measure up, we must also reject at least part of the Cramers' argument relating to the constitutional privilege. The Cramers have maintained that once a witness invokes the privilege against self-incrimination, that invocation is due a significant degree of deference and the court may not inquire further. Of course, the principle of deference to a witness's fear of self-incrimination is included in the recognition that a court may only require a witness to answer a question when "it clearly appears to the court that he is mistaken," and that "if the witness, upon interposing his claim, were required to prove the hazard [of self-incrimination] in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee." *Hoffman*, 341 U.S. at 486, 71 S.Ct. 814. But with these principles of deference in mind, courts have nonetheless instructed that the question of application of the privilege is one for the court, and that the guiding principle in a self-incrimination inquiry is the objective reasonableness of a witness's claimed fear of future prosecution. *Sharp*, 920 F.2d at 1171. In this case, the Cramers correctly state that the witness's fear of self-incrimination is due some deference, but they carry this principle too far. The final word on the application of the constitutional privilege is one for the court and the court alone.⁴

⁴ Though the trial court's protective order regarding discovery is the subject of a separate issue on appeal, we note that the use of protective orders has been widely rejected as a prophylactic measure which cures the compelled disclosure of incriminating information. As this Court and the federal courts have made clear, if the privilege against self-incrimination applies, the government must either be content with having no response to its inquiry, or must grant the witness immunity. See *State v. Thrift*, 312 S.C. 282, 301, 440 S.E.2d 341, 351 (1994) (interpreting S.C. Const. art. I, § 12); *Kastigar v. United States*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972) (addressing the Fifth Amendment). Although this principle is admittedly problematic in the civil context because neither a civil plaintiff nor a judge in a civil action possesses the power to grant a witness immunity, the principle simply establishes that in a civil action, a court may not compel a witness to disclose information to an adverse party if the court finds that the privilege against self-incrimination is properly asserted.

**120 *27 As a housekeeping matter, the parties appear to have exhibited a great deal of unnecessary confusion regarding the injunction that this Court previously issued. Specifically, the parties have expressed confusion regarding a footnote in the Court's opinion which provides that "[s]ince possession of the assets is not at issue in either of the Cramer's pending legal matters, we do not view the Fifth Amendment as an impediment to the issuance of a preliminary injunction." *Grosshuesch v. Cramer*, 367 S.C. at 6 n. 4, 623 S.E.2d at 835 n. 4. The parties have, at times, asserted the position that this footnote represents a pronouncement from this Court on the applicability of the Fifth Amendment.

¹⁴ We do not understand the source of the parties' confusion. An injunction is binding upon the parties to an action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order. Rule 65(d), SCRCP. The clear import of the Court's footnote is that because the Cramers do not contest that they possess the property in dispute, there is no reason to doubt that the injunction will be effective. Any attempt to read more into the injunction relies upon verbiage that is not there.⁵

⁵ Furthermore, although the issue is not raised in this appeal, the parties expressed confusion in the trial court on the issue of posting a bond for the injunction. In our review of the trial court's denial of an injunction, the only issue presented was whether the trial court erred in holding that the Breedloves had an adequate remedy at law to secure the \$2 million originally in the Cramers' Merrill Lynch account. We held that attachment was not an adequate remedy at law, and we remanded the matter to the trial court to

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proceed accordingly. The rule governing the issuance of injunctions controls whether the Breedloves are required to post a bond to secure the injunction in this case, *see* Rule 65(c), SCRCP, and the proposition that this Court somehow suspended the operation of this requirement is wholly inaccurate.

*28 ¹¹⁵¹ In sum, the tortured procedural history of this case illustrates that debate regarding the application of the constitutional privilege against self-incrimination has fueled nearly every dispute brought to the trial court in this case. The Cramers asked that this action be stayed largely on the basis that litigating the civil proceeding would undermine their privilege against self-incrimination, and they have reiterated this concern in their motion to stay discovery and in response to the motions to compel and for sanctions. It is equally clear, however, that the trial court did not approach the question involving the constitutional privilege against self-incrimination from the proper perspective. For this reason, we must vacate the trial court's order finding Lisa Cramer in contempt. It should not be necessary to reiterate that when judging the invocation of the privilege against self-incrimination, the trial court must make a question-specific inquiry, focusing on whether a question is incriminating on its face, whether the question can be shown to be incriminating through further contextual proof, and whether there is a sufficient possibility of criminal prosecution to trigger the privilege.

II. The Attorneys' Appeals

¹¹⁶¹ ¹¹⁷¹ The Cramers' attorneys argue that the trial court erred in finding them in contempt for failing to comply with the Breedloves' subpoenas duces tecum. We agree.⁶

⁶ This issue is, of course, presently appealable because the trial court held the Cramers' attorneys in contempt, and we review a trial court's imposition of discovery sanctions under an abuse of discretion standard. *See Ex parte Whetstone*, 289 S.C. 580, 581-81, 347 S.E.2d 881, 881-82 (1986); *Laney v. Hefley*, 262 S.C. 54, 58, 202 S.E.2d 12, 14 (1974).

¹¹⁸¹ We can resolve this issue rather quickly, because the documents the Breedloves sought through the subpoenas are not properly discoverable through the Cramers' ¹¹²¹ attorneys. Looking first at the court's order to Lionel Lofton, Lisa Cramer's attorney, the order requires Lofton to produce "any and all documents he has in his possession which disclose the location of any funds obtained by [Lisa Cramer] from the *29 Breedloves," and the order further requires Lofton to disclose the amounts of any and all funds currently held in escrow or on deposit by him or his firm. This request is indistinguishable from the discovery the Breedloves sought from the Cramers, and it is clear that Lofton would only have obtained documents relating to the Cramers' finances through his status as Lisa Cramer's attorney. The Breedloves cannot discover documents through the Cramers' attorneys when the compelled disclosure by the Cramers would be protected by the privilege against self-incrimination. Thus, although the Rules of Professional Conduct provide that an attorney may disclose privileged information when ordered by the court, *see* Rule 1.6(b) (7), RPC, Rule 407, SCACR, we find the disclosure ordered here highly improper.

The order directed to Charles Macloskie, Nathan Cramer's attorney, provides another illustrative point. Specifically, the order professes that the Breedloves are seeking the information described in the subpoenas "in aid of enforcing an injunction issued by [this Court]," and that "without the information, [the Breedloves] cannot locate or trace the assets that are the subject of [this Court's] injunction." This justification is completely at odds with the purpose of discovery and demonstrates a fundamental misunderstanding by the Breedloves of their obligations in connection with this Court's injunction. Discovery is, of course, the process of seeking information from an adverse party to prepare for litigation, and the discovery sought in this case relates largely to the nature of the Breedloves' relationship with the Cramers. The Cramers have refused to respond to this discovery by asserting the constitutional privilege against self-incrimination, and this Court's issuance of an injunction has no impact on this analysis.

¹¹⁹¹ If the privilege against self-incrimination protects the Cramers from disclosing the location of their assets to the Breedloves, that is the end of the matter. The Court's issuance of an injunction does not grant the Breedloves a license to use discovery as a tool to ensure that the injunction is being given effect. As a court order, the injunction is binding on the

Cramers, their agents and attorneys, and anyone in active concert with the Cramers receiving actual notice of the injunction. Rule 65(d), SCRCP. A party who *30 refuses to abide by an injunction entered by the court would of course be in contempt of court and subject to sanctions, and our jurisprudence clearly establishes that the proper procedure to determine whether a party should be held in contempt is to bring a summons and a rule to show cause. See *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994). Treating the injunction as a back door to allow the discovery of otherwise non-discoverable information gives the privilege against self-incrimination an impermissibly shallow dimension.

¹²⁰ Not to be outdone, the Cramers also misunderstand an important aspect of this Court's injunction. Specifically, the Cramers appear to overextend the privilege against self-incrimination and treat it as a limitation on what information a court may ascertain in its own right. Stated differently, the question of what information the Breedloves may not obtain in discovery is completely separate from what information a court may require to be disclosed, *in camera* if necessary, to ensure that court orders are observed. While the appearance that the Cramers are using money they obtained from the Breedloves to pay their attorneys' fees ought to be of significant concern, and thus, the Breedloves' desire for this information is understandable, this issue should be resolved rather quickly and easily without the involvement of the civil discovery process.

For these reasons, we reverse the trial court's decision finding the Cramers' attorneys in contempt.

III. & IV. The Protective Order & The Order Denying Contempt

¹²¹ ¹²² The Breedloves argue that the trial court erred in issuing a protective order over discovery in this case and in denying **122 their second request for contempt and sanctions as to Lisa Cramer. Though these issues raise interesting questions, the fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right. *31 *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); *Wallace v. Interamerican Trust Co.*, 246 S.C. 563, 568-69, 144 S.E.2d 813, 816 (1965).⁷

⁷ We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal. See Rules 205 & 225, SCACR. In the instant case, the trial court's orders dealing with contempt did not run afoul of this proscription, because while the trial court's first order deals with the subject of the Cramers' initial discovery responses, the second order deals with the subject of Lisa Cramer's responses to questions in her deposition.

CONCLUSION

For the foregoing reasons, these appeals are vacated in part, reversed in part, and dismissed in part. Specifically, we vacate the trial court's order finding Lisa Cramer in contempt; we reverse the trial court's finding of contempt as to the Cramers' attorneys; and we dismiss the remaining appeals as interlocutory and not immediately appealable.

MOORE, WALLER, PLEICONES and BEATTY, JJ., concur.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON.)

Peter T. Phillips and Summar C. Phillips,) C/A No. 2012-CP-10-3870
)
Plaintiffs,)

Versus)

Omega Flex, Inc., John Wieland Homes)
and Neighborhoods of the Carolinas, Inc.,)
AAA Plumbing, LLC, Fogel Services, Inc.,)
Charleston LEC, Inc.,)
Defendants.)

ORDER



This matter comes before the Court upon Motion of Defendant, Omega Flex, Inc. (hereinafter "this Defendant") requesting that this Court grant this Defendant's Motion to Enforce an Automatic Stay of this Action or, in the alternative, for an Order Staying this Action, or, in the alternative, to Reconsider the July 3, 2013 filing of the Scheduling Order, pending the appeal filed by Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.'s ("John Wieland") in which John Wieland seeks to overturn this Court's ruling denying arbitration of all of Plaintiffs' claims asserted against all Defendants except for this Defendant.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- (a) This action is stayed pending a final resolution by the appellate court(s) as to John Wieland's appeal seeking arbitration of Plaintiffs' claims; OR
- (b) The Scheduling Order for this case filed July 3, 2013 is no longer applicable to the parties pending a final resolution by the appellate court(s) as to John Wieland's appeal seeking arbitration of Plaintiffs' claims.

