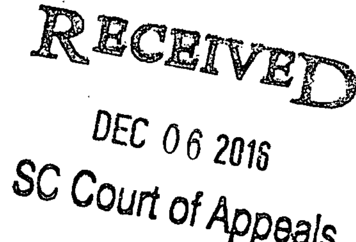
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2016-002379




Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc. . . . . . . . . . . . . . Respondents,

v.

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

Of Whom

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens are Appellants,

---

# MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

---

Charles T. Smith (S.C. Bar #5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc.

This action to foreclose a mortgage on real property was commenced on August 31, 2012. The complaint alleges Respondents (hereinafter "the Charltons") are the owners and holders of a promissory note from South Bay Properties, LLC in the principal sum of $14,580,662.92 secured by a purchase money mortgage on property in a subdivision known as Harbor Club on Winyah Bay.[1] Parties that may have or claim an interest in the subject property are named as defendants.

All defendants are in default or consented to referring this action to the Master in Equity or filed answers consisting of only qualified denials. The answers filed by Appellants (hereinafter "the Goodwins and Owenses") are qualified denials and do not assert any counter-claims, cross-claims or third party claims and do not demand a jury trial.[2]

The Charltons moved to refer this action to the Master in Equity. An order of reference was issued on January 28, 2013. The Goodwins and Owenses moved for reconsideration of the issuance of the order of reference, then moved for reconsideration of the denial of the motion for reconsideration, then appealed. By an Order filed August 12, 2015, in Appellate Case No. 2013-000712, the South Carolina Court of Appeals found the order being appealed was in fact not appealable and dismissed the appeal.

The Goodwins and Owenses moved to amend their answers.[3] The Honorable William H. Seals, Jr. heard the motion on October 29, 2015. After carefully considering the oral arguments of the attorneys, the memorandums submitted in support of the motion and in opposition to the

---

[1] A copy of the Charltons' Complaint is attached.

[2] Copies of the Goodwins' and Owenses' Answers are attached.

[3] A copy of the Goodwins' and Owenses' Amended Motion to Amend Answer is attached.

motion and the pleadings in this action and the pleadings in *John Steven Goodwin et al. v. Landquest Development LLC et al.* (civil action no. 2009-CP-22-1045), Judge Seals found and concluded that the motion to amend answer should be denied.[4]

The motion to amend answer requests leave to add twelve (12) counter-claims, cross-claims and third party claims and to add seven (7) third party defendants to the Goodwins' and Owenses' answers. The proposed new counter-claims, cross-claims and third party claims are all claims asserted in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* (civil action number 2009-CP-22-1045). The proposed new third party defendants are all defendants in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* The effect of granting the Goodwins and Owens leave to amend their answers would be to create a second action between the same parties for the same twelve (12) claims. Therefore Judge Seals found and concluded the proposed amended answers would violate Rule 12(b)(8), SCRCP.

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

---

[4] A copy of Judge Seals' Order is attached.

the proposed third party claims are dependent on the outcome of the Charltons' mortgage foreclosure.

The Goodwins and Owenses propose to join as new third party defendants: (1) Landquest Development, LLC, (2) Kyle V. Corkum, (3) C. R. Thompson and Sons, LLC, (4) The City of Georgetown, (5) Hartford Casualty Insurance Company, (6) Hartford Fire Insurance Company, and (7) National Land Sales, Inc. The Goodwins' and Owenses' proposed third party claims are not derivative liability claims as required by Rule 14, SCRCP. Therefore, Judge Seals found and concluded leave to add seven (7) third party defendants to this mortgage foreclosure should be denied.

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

Judge Seals also found and concluded that the requirement of Rule 15(a), SCRCP, that amendment would not prejudice any other party, was not satisfied:

> Granting leave to add twelve (12) counter-claims, cross-claims and third party claims and to add seven (7) third party defendants to this mortgage foreclosure would prejudice the Plaintiffs by unduly complicating and delaying

> the adjudication of a relatively simple action and all but submerge the Plaintiffs' claim. Granting leave would also prejudice the other owners of lots in Harbor Club on Winyah Bay by indefinitely postponing clearing title to portions of the subdivision still held in the name of South Bay Properties, LLC, including roads, parks and other common elements. Granting leave would also prejudice the defendants in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* by exposing them to duplicative litigation and possibly inconsistent ruling in two separate actions regarding the same claims. Granting leave would also prejudice the other defendants in this action indefinitely delaying resolution of their claims against the subject property.
>
> Judge Seals' Order at page 7

On November 16, 2015, Judge Seals' Order denying the motion to amend answer was filed and served. On December 7, 2015, the Goodwins and Owenses filed a motion to alter or amend the order. However, the Goodwins and Owenses did not schedule a hearing or obtain a ruling on the motion to alter or amend.

The Charltons completed discovery and attempted to schedule a hearing to foreclose their mortgage. The Goodwins and Owens responded by filing a motion to stay the trial of the mortgage foreclosure. The first reason offered for staying the trial was that their motion to alter or amend Judge Seals' Order was still outstanding. Counsel for the Charltons contacted Judge Seals' office and Judge Seals invited the parties to submit memorandums concerning the motion to alter or amend. Following submission of the memorandums Judge Seals issued an order denying the motion to alter or amend.[5] After arguments were heard on their motion to stay the trial of the mortgage foreclosure, the Goodwins and Owenses filed this appeal.

---

[5] The order attached as Exhibit B to the Notice of Appeal was issued by the Master in Equity for Georgetown County and does not pertain to this appeal. The Goodwins and Owenses obviously intended to attached Judge Seals' Order Denying Motion to Alter or Amend filed October 26, 2016, a copy of which is attached.

This mortgage foreclosure has been pending since August 31, 2012. This appeal is the second interlocutory appeal filed by the Goodwins and Owenses. Based upon a very similar factual situation, the South Carolina Supreme Court held that an order denying a motion to amend an answer is not directly appealable. *Baldwin Construction Company, Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004). Respondents respectfully request that this appeal be dismissed without prejudice to Appellants' right to appeal from a final judgment.

Charles T. Smith

Charles T. Smith (S.C. Bar # 5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc.

STATE OF SOUTH CAROLINA )
)
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012 CP 22 00934

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

Plaintiffs,

vs.

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

Defendants.

**COMPLAINT**

FILED
GEORGETOWN COUNTY, S.C.
2012 AUG 31 PM 3:46
ALMA Y. WHITE
CLERK OF COURT

The Plaintiffs, complaining of the Defendants herein, would respectfully show unto the Court as follows:

1. The Plaintiffs Bonnie N. Charlton and Ronald L. Charlton are citizens and residents of the City of Georgetown, State of South Carolina. The Plaintiff Bayside Property, Inc. is a corporation organized and existing under the laws of the State of South Carolina.
2. The Defendant South Bay Properties, LLC is a limited liability company organized under the

laws of the State of North Carolina and authorized to do business in the State of South Carolina. The Defendant Stantec Consulting Services, Inc. is a corporation organized under the laws of the State of New York and authorized to do business in the State of South Carolina. The Defendant Milone & MacBroom, Inc. is a corporation organized under the laws of the State of Connecticut and authorized to do business in the State of South Carolina. The Defendants John Steven Goodwin, Louise C. Goodwin, Robert Nahama, Jeanne E. Nahama, Patrick A. DiAngelo, Deborah A. DiAngelo, Gary E. Owens, Joyce M. Owens, Dennis Ridgeway amd Teresa Lynn Ridgeway are residents of Horry County, South Carolina. The Defendants Thomas Holland and Sharon Louise Holland are residents of Bergen County, New Jersey. The Defendant Joyce K. Sobel is a resident of Cobb County, Georgia. The Defendant Robert W. Waruszewski is a resident of the State of Tennessee. The Defendant Richard N. Taylor is a resident of Cumming, Georgia. The Defendants Robert K. Spillers (a/k/a Robert Spillers) and Deborah T. Spillers (a/k/a Deborah Spillers) are residents of Greenville, South Carolina. The Defendants Fount L. Shults and Lynda M. Shults are residents of Georgetown County, South Carolina. Georgetown County Forfeited Land Commission exists by virtue of *S. C. Code* §12-59-10 et seq, to bid on real property otherwise unsold at tax sales and to hold title to that property as an asset of the County and then sell or dispose of the property on such terms and conditions as appear to be in the County's best interest.

3. This is an action to foreclose a mortgage on real property located in Georgetown County. This Court has jurisdiction of the parties and subject matter of this proceeding.

4. Heretofore on or about September 12, 2007, the Defendant South Bay Properties, LLC for

value received, made, executed and delivered to Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. its certain Promissory Note in writing, a copy of which is attached hereto and incorporated herein, wherein and whereby it promised to pay to the order of Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. the principal sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-Two and 92/100 ($14,580,662.92) Dollars, together with interest at the rate of Fifteen (15%) percent per annum in a single installment due September 30, 2008.

5. In order to better secure the payment of the said note and debt, in accordance with the terms and conditions thereof, the Defendant South Bay Properties, LLC did execute and deliver on the 11th day of September, 2007, unto Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc., its successors and assigns, its mortgage covering the following described property:

ALL those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, containing a "Total Area = 79.866 Acres", which is comprised of "HOA/Wetlands Area = 33.120 Acres", "Lot Area = 34,870 Acres", and "R/W Area = 11.876 Acres", said property being further shown and delineated on a plat entitled "Final Bonded Subdivision Plat Showing the Plantation @ Winyah Bay, 79.866 Acres Prepared for Landquest", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Pages 1- 10 in the Office of the Register of Deeds for Georgetown County, South Carolina, said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid map, which map is incorporated herein by reference.

**LESS AND EXCEPTING** all those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, more particularly shown and delineated as Lots 1, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 54, 55, 57, 58, 65, 70, 72, 73, 85, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 103, 104, 105, 107, 110, 112, 113, 117, 118, 133, 134, 140, 141, 142, 143, 144, 149, 150, 151, 153, 154, 155, 156, 157, 158, 159, 160 and 161, Harbour Club on Winyah Bay, as shown on that certain plat entitled "Final Bonded Subdivision Plat Showing the Plantation @ Winyah Bay, 79.866 Acres Prepared for Landquest", prepared by Trico

Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Pages 1 - 10 in the Office of the Register of Deeds for Georgetown County, South Carolina.

This being a portion of the property conveyed to South Bay Properties, LLC by deed of Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. dated August 22, 2007 and recorded September 17, 2007 in the Office of the Register of Deeds for Georgetown County in Record Book 686 at Page 90.

6. On the 17th day of September, 2007, said Mortgage was duly recorded in the Office of the Register of Deeds for Georgetown County in Record Book 686 at Page 135.

7. According to the terms and conditions of said Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default remains unpaid after a date specified by a notice, the entire principal and accrued interest shall at once become due and payable at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, shall become an obligation of South Bay Properties, LLC to be secured by said mortgage as a part of the debt secured thereby.

8. The payment due on said Note and Mortgage is in default since September 30, 2008 and the conditions of said Note and Mortgage have been broken and the Plaintiff elects to, and does hereby declare the entire balance of said indebtedness due and payable.

9. The Plaintiffs are the owners and holders of the aforesaid Note and Mortgage.

10. Notice was sent to the Defendant South Bay Properties, LLC on October 7, 2008.

11. The Defendant Stantec Consulting Services, Inc. f/k/a Trico Engineering Consultants, Inc. is made a party to this action because it may have or claim an interest in the premises because of the judgment obtained against South Bay Properties, LLC and Landquest, LLC recorded

August 29, 2008 (Case Number 2008-CP-22-00723).

12. The Defendant Milone & MacBroom, Inc. is made a party to this action because it may have or claim a lien on the premises because of the Notice and Certificate of Mechanics Lien filed on June 6, 2008 in the Office of the Register of Deeds for Georgetown County in Mechanic's Lien Book 43 at Page 332.

13. The Plaintiffs Bonnie N. Charlton and Ronald L. Charlton have an interest in the premises because of the judgment obtained against South Bay Properties, LLC recorded June 22, 2010 (Case Number 2008-CP-22-01490).

14. The Defendants John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett, Brenda C. Puckett, Robert Nahama, Jeanne E. Nahama, Thomas Holland, Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo, Deborah A. DiAngelo, Gary E. Owens, Joyce M. Owens, Fount L. Shults, Lynda M. Shults, Dennis Ridgeway and Teresa Lynn Ridgeway are made parties to this action because they may have or claim an interest in the premises because of the Lis Pendens and Complaint filed in Case Number 2009-CP-22-1045.

15. The Defendant Georgetown County Forfeited Land Commission is made a party to this action because it may have or claim an interest in Lots 47, 48, 49, 50, 51, 52, 53, 56, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 71, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 97, 100, 101, 102, 106, 108, 109, 111, 114, 115, 116, 120, 124, 125, 126, 127, 128, 129, 130, 131, 135, 136, 137, 138, 145, 146, 147 and 152 which were sold for taxes on November 2, 2009 and the Georgetown County Forfeited Land Commission was the high bidder.

16. The Plaintiffs waive their right to a personal or deficiency judgment against the Defendant South Bay Properties, LLC.

WHEREFORE, Plaintiff prays judgment:

1. That the amount due upon said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

2. That the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereof, together with a reasonable sum as attorney's fees, and for the costs of this action.

3. That the real property securing the debt owed to the Plaintiff be sold under the direction of this Court and that the equity of redemption be barred.

4. That the proceeds of sale be applied as follows:

   a. First, to the costs and expenses of the within action and said sale.

   b. Second, to the payment and discharge of the amount due on Plaintiff's Note, Addendum and Mortgage, together with attorney's fees as aforesaid.

   c. Third, the surplus, if any, be distributed according to law.

5. For such other and further relief as may be just and proper.

Charles T. Smith

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Plaintiff

August 30, 2012

$14,580,662.92 Georgetown, South Carolina
September 12, 2007

# PROMISSORY NOTE

FOR VALUE RECEIVED, **South Bay Properties, LLC**, hereinafter collectively referred to as the Maker, does hereby promise and agree to pay in lawful money of the United States of America to the order of **Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc.**, hereinafter collectively referred to as the Note Holder, at their place of business at P.O. Box 1958,Georgetown, SC 29440, or such other place as the Note Holder hereof may from time to time designate in writing, the principal sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-Two and 92/100 ($14,580,662.92) Dollars, or so much thereof as may be advanced together with interest computed from the date of advance at the rate or rates hereinafter prescribed and as follows:

Maker agrees to pay interest at Fifteen (15%) percent per annum (hereinafter the "Note Rate of Interest") payable on the Maturity Date as set forth below.

All unpaid principal and accrued interest, and all other sums due Note Holder from Maker shall be due and payable in full on September 30, 2008 (the "Maturity Date"). All payments received will be applied first to accrued interest due and then to principal.

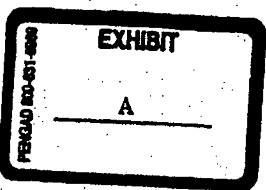
Borrower shall pay Note Holder a late charge of five (5%) percent of any installment not received by the Note Holder within ten (10) days after the installment is due.

If any installment under this Note is not paid and remains unpaid after a date specified by a notice to Maker, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note Holder. From the date of default or after the maturity of this Note, either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at the Note Rate of Interest provided hereinabove plus five (5%) percentage points, provided that there shall be no automatic reduction to the highest lawful rate as to any maker hereof barred by law from availing itself in any action or proceeding of the defense of usury, or any maker barred or exempted from the operation of any law limited the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money.

The time of repayment of said principal sum on the Maturity Date or however such maturity may be brought about, is of unique and specific importance and financial necessity to Note Holder or other holder of this Note and is hereby made of the essence.

The Maker waives presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note and agrees to perform and comply with each of the covenants, conditions, provisions and agreements of the Maker contained in every instrument evidencing or securing said indebtedness. No extension of the time for payment of this Note made by agreement with any person now or hereafter liable for the payment of this Note shall





operate to otherwise release, discharge, modify, change or affect the original liability of the Maker under this Note, either in whole or in part.

The Maker and all others who may become liable for all or any part of this obligation consent to any number of renewals or extensions of the time of payment hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability.

In the event it shall become necessary for the Note Holder hereof to employ counsel to collect this Note or to protect or foreclose the security given for this Note, the undersigned also agrees to pay to the Note Holder hereof for those services including a reasonable attorney's fee for the services of such counsel and all costs of collection.

Any failure of the Note Holder or any subsequent holder hereof to exercise any rights hereunder shall not constitute a waiver of the rights to the later exercise thereof.

It is the intention of the parties that under no circumstances shall the Maker be charged more than the highest rate permitted by law. It is thereof, agreed that at the time of the final settlement or acceleration of the indebtedness under the terms of the Note the total charges for interest or in the nature of interest herein shall be limited to that amount which if apportioned over the life of the loan to the Maturity Date herein provided would not exceed the highest rate of interest permitted by law, and any excess portion of such charges that may have been prepaid shall be refunded to the Maker at the time of final settlement or acceleration, as the case may be. Such refunding may be made by application of the amount involved as a credit against the sums then due under the terms of such Note.

The Maker shall have the right to pay all or part of the unpaid indebtedness at any time without premium of penalty, but with interest to the date of said prepayment.

This instrument was executed and delivered in the State of South Carolina and shall be governed by and construed in accordance with the laws of the State of South Carolina, without giving effect to the principles of conflicts of laws.

Whenever used, the words, "Maker" and "Note Holder" shall be deemed to include the respective successors and assigns of the Maker and Note Holder, and the singular number shall include the plural, the plural and singular and the use of any gender shall be applicable to all genders.

This Note may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Signed, Sealed and Delivered
In the Presence of:

SOUTH BAY PROPERTIES, LLC

By: _________________________ (Seal)
KYLE KORKUM

Its: MANAGER

Maker's Address:

5511 Capital Center Drive, Suite 105
Raleigh, North Carolina 27606

STATE OF SOUTH CAROLINA )
)
COUNTY OF GEORGETOWN )

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

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

Plaintiffs,

vs.

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

Defendants.

ANSWER

The Defendants John Steven Goodwin and Louise C. Goodwin, answering Plaintiffs' Complaint, would respectfully show unto this Honorable Court and allege as follows:

1. Defendants deny each and every allegation of the Complaint unless specifically admitted, qualified or explained hereinbelow, and further allege:

2. Defendants admit the allegations of Paragraphs 1 and 14.

3. The Defendants admit so much of paragraph 2 as alleges that they are residents of Horry County, South Carolina. Defendants lack knowledge or information with which to form a belief as to the remaining allegations of paragraph 2 wherefore they deny same and demand strict proof thereof.

4. Defendants lack knowledge or information with which to form a belief or opinion as to the matters alleged in paragraphs 3, 8, 9, 10, 11, 12, 13, 15, and 16 of the Complaint, wherefore they deny same and demand strict proof thereof.

5. Defendants admit so much of paragraph 4 as alleges matters consistent with the promissory note referred to therein, a copy of which is attached to the Complaint. Defendants deny the remaining allegations of paragraph 4 and demand strict proof thereof.

6. Defendants admit so much of paragraph 5 as is or may be consistent with the subject mortgage, and the public records of Georgetown County. Defendants deny the remaining allegations of paragraph 5 and demand strict proof thereof.

7. Defendants admit so much of paragraph 6 as alleges matters consistent with the subject mortgage and matters of public record of Georgetown County. Defendants deny the remaining allegations of paragraph 6 and demand strict proof thereof.

8. Defendants admit so much of paragraph 7 as is or may be consistent with the terms of the subject note and mortgage. Defendants deny the remaining allegations of paragraph 7, and demand strict proof thereof.

WHEREFORE, having set forth their Answer to Plaintiffs' Complaint, Defendants pray for an Order of this Court:

A. Dismissing Plaintiffs' Complaint with prejudice;

B. Awarding Defendants all costs and fees incurred herein; and

C. Awarding Defendants such other and further relief as this Court may deem just and proper.

John Steven Goodwin

Louise C. Goodwin

Conway, South Carolina

Dated: 10/26/12

STATE OF SOUTH CAROLINA )
)
COUNTY OF GEORGETOWN )

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

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

Plaintiffs,

vs.

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

Defendants.

ANSWER

The Defendants Gary E. Owens and Joyce M. Owens, answering Plaintiffs' Complaint, would respectfully show unto this Honorable Court and allege as follows:

1. Defendants deny each and every allegation of the Complaint unless specifically admitted, qualified or explained hereinbelow, and further allege:

2. Defendants admit the allegations of Paragraphs 1 and 14.

3. The Defendants admit so much of paragraph 2 as alleges that they are residents of Horry County, South Carolina. Defendants lack knowledge or information with which to form a belief as to the remaining allegations of paragraph 2 wherefore they deny same and demand strict proof thereof.

4. Defendants lack knowledge or information with which to form a belief or opinion as to the matters alleged in paragraphs 3, 8, 9, 10, 11, 12, 13, 15, and 16 of the Complaint, wherefore they deny same and demand strict proof thereof.

5. Defendants admit so much of paragraph 4 as alleges matters consistent with the promissory note referred to therein, a copy of which is attached to the Complaint. Defendants deny the remaining allegations of paragraph 4 and demand strict proof thereof.

6. Defendants admit so much of paragraph 5 as is or may be consistent with the subject mortgage, and the public records of Georgetown County. Defendants deny the remaining allegations of paragraph 5 and demand strict proof thereof.

7. Defendants admit so much of paragraph 6 as alleges matters consistent with the subject mortgage and matters of public record of Georgetown County. Defendants deny the remaining allegations of paragraph 6 and demand strict proof thereof.

8. Defendants admit so much of paragraph 7 as is or may be consistent with the terms of the subject note and mortgage. Defendants deny the remaining allegations of paragraph 7, and demand strict proof thereof.

WHEREFORE, having set forth their Answer to Plaintiffs' Complaint, Defendants pray for an Order of this Court:

A. Dismissing Plaintiffs' Complaint with prejudice;

B. Awarding Defendants all costs and fees incurred herein; and

C. Awarding Defendants such other and further relief as this Court may deem just and proper.

Gary E. Owens

Joyce M. Owens

Conway, South Carolina

Dated: 10/26/12

STATE OF SOUTH CAROLINA )
)
COUNTY OF GEORGETOWN )

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Properties, Inc.,

Plaintiffs,

vs.

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

Defendants.

AMENDED MOTION TO AMEND ANSWER
(Rule 15, SCRCP)

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens,

Third Party Plaintiffs,

vs.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C.R. Thompson and Sons, LLC, The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a Source One Signature Communities,

Third Party Defendants.

TO: PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY OF RECORD, CHARLES T. SMITH, ESQUIRE:

**YOU WILL PLEASE TAKE NOTICE THAT** the Defendants, John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, by and through its undersigned counsel, will move before this Honorable Court on the 10th day following service hereof, or as soon hereafter as counsel may be heard, for an Order of this Court granting it leave to amend its Answer, in accordance with the proposed Amended Answer and Counterclaim, a copy of which is attached hereto and incorporated herein in its entirety as **Exhibit "A".**

In support of this Motion, Defendant would show the Court that this amendment does not prejudice any other party, and is necessary for purposes of judicial economy, to enable Defendant to assert all necessary defenses, affirmative defenses, counterclaims, cross-claims, and Third Party Complaints relevant to the issues raised in

Plaintiff's Complaint. This Motion will be supported by such other and further fact and law and may appear necessary and appropriate at the hearing hereof.

K. Douglas Thornton
Thornton Law Firm, LLC
1025 Third Avenue
Conway, SC 29526
Tel: (843) 488-5858/Fax: (843) 488-5859
kdouglasthornton@gmail.com

LAW OFFICES OF JOHN M. LEITER, P.A.

John M. Leiter (By: KDT)

John M. Leiter
1203 48th Ave. North, Suite 109
Myrtle Beach, South Carolina 29577
Telephone: (843) 449-1451
Facsimile: (843) 449-4884
jleiter@48th.com

**ATTORNEYS FOR PLAINTIFFS**

Conway, South Carolina

Dated: September 9, 2013

# EXHIBIT "A"

STATE OF SOUTH CAROLINA )
)
COUNTY OF GEORGETOWN )

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Properties, Inc.,

Plaintiffs,

vs.

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

Defendants.

---

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens,

AMENDED ANSWER, COUNTERCLAIMS CROSS-CLAIMS, AND THIRD PARTY COMPLAINT
**(JURY TRIAL DEMANDED)**

Third Party Plaintiffs, )
)
vs. )
)
Landquest Development, LLC, )
Kyle V. Corkum, South Bay )
Properties, LLC, C.R. Thompson )
and Sons, LLC, The City of )
Georgetown, Hartford Casualty )
Insurance Company, Hartford )
Fire Insurance Company, and )
National Land Sales, Inc., f/k/a )
Source One Communities, LLC, )
a/k/a Source One Signature )
Communities, James R. Charlton)
)
Third Party Defendants. )
)
______________________ )

TO: PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY OF RECORD, CHARLES T. SMITH, ESQUIRE:

The Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens amending their answer to Plaintiffs' Complaint, would respectfully show unto this Honorable Court and allege as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Complaint unless specifically admitted, qualified or explained hereinbelow, and further allege:

2. Defendants admit the allegations of Paragraphs 1 and 14.

3. The Defendants admit so much of paragraph 2 as alleges that they are residents of Horry County, South Carolina. Defendants lack knowledge or information with which to form a belief as to the remaining allegations of paragraph 2 wherefore they deny same and demand strict proof thereof.

4. Defend~~ts lack knowledge or information with which to form a belief or opinion as to the matters alleged in paragraphs 3, 8, 9, 10, 11, 12, 13, 15, and 16 of the Complaint, wherefore they deny same and demand strict proof thereof.

5. Defendants admit so much of paragraph 4 as alleges matters consistent with the promissory note referred to therein, a copy of which is attached to the Complaint. Defendants deny the remaining allegations of paragraph 4 and demand strict proof thereof.

6. Defendants admit so much of paragraph 5 as is or may be consistent with the subject mortgage, and the public records of Georgetown County. Defendants deny the remaining allegations of paragraph 5 and demand strict proof thereof.

7. Defendants admit so much of paragraph 6 as alleges matters consistent with the subject mortgage and matters of public record of Georgetown County. Defendants deny the remaining allegations of paragraph 6 and demand strict proof thereof.

8. Defendants admit so much of paragraph 7 as is or may be consistent with the terms of the subject note and mortgage. Defendants deny the remaining allegations of paragraph 7, and demand strict proof thereof.

## JURISDICTION AND VENUE AS TO COUNTERCLAIMS, CROSS-CLAIMS AND THIRD PARTY COMPLAINT

9. Defendants affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

10. Plaintiffs Bonnie N. Charlton and Ronald L. Charlton are citizens and residents of the County of Georgetown, State of South Carolina. Plaintiff Bayside

Property, Inc., is a corporation organized and existing under the laws of the State of South Carolina, having its principal place of business situate within the County of Georgetown, State of South Carolina.

11. Upon information and belief, Third Party Defendant, Ronald L. Charlton ("TPD Charlton") is a resident of the County Georgetown, State of South Carolina. TPD Charlton was a party Seller to the Contract, and subsequent amendments, for the sale of the subdivision property to South Bay.

12. Defendants John Steven Goodwin and Louise C. Goodwin (son and mother), are residents of the County of Horry, State of South Carolina. Defendants are owners as joint tenants with right of survivorship of Lot 160, Harbor Club on Winyah Bay, by virtue of a General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and filed in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 688, at Page 45. Said Defendants' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

13. Upon information and belief, Third Party Defendant Landquest Development, LLC ("Landquest") is a limited liability company established pursuant to the laws of another state, but all times relevant hereto was authorized to do business in the State of South Carolina, and is or was doing business in Georgetown County, South Carolina.

14. Third Party Defendant Kyle V. Corkum ("Corkum"), upon information and belief, is a resident of the State of North Carolina.

15. Cross Defendant South Bay Properties, LLC ("South Bay"), upon information and belief, is a limited liability company formed and existing pursuant to the laws of North Carolina, but all times relevant hereto was and is authorized to do business in this State, and is or was doing business in Georgetown County, South Carolina.

16. Upon information and belief, Third Party Defendant, C. R. Thompson and Sons, LLC ("CRT") is a limited liability company formed and existing pursuant to the laws of the State of South Carolina, and doing business in Georgetown County, South Carolina.

17. Third Party Defendant City of Georgetown ("City") is a municipality and governmental entity organized and existing pursuant to the laws of the State of South Carolina, and exists within Georgetown County, South Carolina.

18. Third Party Defendant Hartford Casualty Insurance Company ("Hartford Casualty") is a corporation organized and existing under the laws of the State of

Indiana. At all times relevant herein, Defendant Hartford Casualty was authorized to do and was doing business in Georgetown County, South Carolina.

19. Upon information and belief, Third Party Defendant Hartford Fire Insurance Company ("Hartford Fire") is a corporation organized and existing under the laws of the State of Connecticut. At all times relevant herein, the Defendant Hartford Fire was authorized to and was doing business in Georgetown County, South Carolina.

20. Third Party Defendant National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities ("Source One"), upon information and belief, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal office in Georgetown County, South Carolina.

21. The subdivision which forms the subject matter of this action is situate and located within Georgetown County, South Carolina, known and designated as "Harbor Club on Winyah Bay" ("the Subdivision"). The Subdivision is situate upon approximately 79.866 acres contiguous with and bounded along portions of its eastern boundary by Winyah Bay, and is more fully described as follows:

> ALL those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, containing a "Total Area = 79.866 Acres," which is comprised of "HOA/Wetlands Area = 33.120 Acres," "Lot Area = 34.870 Acres," and R/W Area = 11.876 Acres," said property being further shown and delineated on a plat entitled "FINAL BONDED SUBDIVISION PLAT SHOWING THE PLANTATION @ WINYAH BAY, 79.866 ACRES PREPARED FOR LANDQUEST", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Page 1 – 10 in the Office of the Register of Deeds for Georgetown County, South Carolina, said property having such metes,

bounds, courses and distances as will more fully appear by reference to the aforesaid map, which map is incorporated herein by reference.

22. All transactions, occurrences, acts and omissions alleged and complained of herein, transpired and occurred within Georgetown County, South Carolina, and/or were directly related to the Subdivision located within Georgetown County, South Carolina.

23. The parties and the subject matter of this action are within the jurisdiction of this Court.

24. Venue is proper in Georgetown County, South Carolina.

FACTUAL ALLEGATIONS, UNDERLYING SUBSEQUENT DEFENSES, COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD PARTY COMPLAINT

25. Defendants/Third Party Plaintiffs, Goodwin and Owens, (hereinafter "Third Party Plaintiffs") affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

26. Upon information and belief, at all times relevant hereto, Corkum is and has been the Manager-Member of both Third Party Defendant Landquest ("Landquest") and Cross-Defendant South Bay ("South Bay").

27. Upon information and belief, at all times relevant hereto, Landquest and South Bay have been managed and controlled by Corkum.

28 Upon information and belief, at the direction and control of Corkum, Landquest entered into a Joint Venture Agreement with Third Party Defendant CRT ("CRT"), dated July 3, 2006, for the purpose of evaluating, conducting due diligence, conducting financial analysis and feasibility studies, and thereafter financing, acquiring,

developing, designing, permitting, constructing, marketing and selling four (4) specific real estate developments, including the Subdivision identified herein.

29. Upon information and belief, Corkum and CRT utilized Landquest for the purpose of conducting initial evaluations, financial analysis and feasibility studies, and to negotiate the acquisition and financing for the acquisition of the property. On further information and belief, CRT and/or Corkum thereafter personally, or through Landquest, conducted all due diligence investigations, and arranged for necessary surveys, final planning, permitting, construction, marketing, and sale of the Subdivision.

30. Upon information and belief, Corkum, Landquest and CRT formed, or caused to be formed, in accordance with the Landquest-CRT Joint Venture Agreement, Cross-Defendant South Bay, on or about June 29, 2006, for the purpose of owning, holding, and conveying lots in the Subdivision to ultimate purchasers, including but not limited to the Third Party Plaintiffs herein.

31. At all times relevant hereto, South Bay was and is the designated owner and "developer" of the Subdivision.

32. Upon information and belief, at all times relevant hereto, South Bay has possessed inadequate capital and financial resources to perform its obligations as represented and undertaken, and its contractual obligations and duties to Third Party Plaintiffs, as described more fully herein below.

33. Upon information and belief, Corkum has utilized the assets and resources of Landquest, in addition to the pledge of his personal assets and resources, in conjunction with the assets and resources of CRT as joint venturer, and other third

parties, to create the perception that South Bay had the necessary capital and financial ability to perform and complete its obligations for the acquisition of the Subdivision, and its obligations to the Third Party Plaintiffs herein and other lot purchasers, as described more fully herein below.

34. On or about August 14, 2006, upon information and belief, South Bay, by and through its manager Corkum, utilizing the assets and resources of Corkum, Landquest and CRT, and other third parties, as alleged hereinabove, entered into a contract with Plaintiffs and TPD Charlton, for the purchase of the Subdivision for the sum of Twenty Million and 00/100 Dollars ($20,000,000.00). This Purchase Contract was subsequently amended on January 23, 2007, and again on May 9, 2007 (collectively referred to as the "Purchase Contract").

35. Upon information and belief, prior to September 17, 2007, Plaintiffs and Third Party Defendant Charlton were informed by Corkum that South Bay's development loan commitment had been withdrawn, and there were no funds available, therefore for South Bay to either complete the purchase of the Subdivision, or to construct infrastructure and amenities in the Subdivision.

36. Corkum, individually and as an authorized agent for South Bay, Landquest, CRT, and Source One, tendered the decision to Plaintiffs and Third Party Defendant Charlton, whether to rescind/and cancel all existing contracts, and refund all deposits, or to proceed with the scheduled closings in order to fund the purchase of the Subdivision by South Bay, in conjunction with South Bay's Promissory Note and Mortgage to secure the balance of the purchase price.

37. In response to the foregoing notice and tender of decision, Plaintiffs and Third Party Defendant Charlton made the decision to proceed with the scheduled closings.

38. Third Party Plaintiffs are informed and believe that on the basis of the foregoing facts and circumstances, and the degree of control retained by them under the Contract, and ceded to them by South Bay, Landquest, Corkum, CRT, and Source One, Plaintiffs and TPD Charlton were joint ventures with such parties in the development of the Subdivision.

39. South Bay eventually closed the Purchase Contract with the Plaintiffs and TPD Charlton as sellers on or about September 17, 2007, the date of filing of a General Warranty Deed conveying the property to South Bay for the sum of Twenty Million Eight Hundred and Fifty Thousand and 00/100 Dollars ($20,850,000.00), in Deed Book 686, at Page 90 ("South Bay's Deed"). The unpaid balance of the purchase price was secured by a Mortgage from South Bay to Plaintiffs and TPD Charlton, recorded on the same date, in the sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars ($14,580,662.92), in Mortgage Book 686, at Page 135 ("South Bay Mortgage").

40. Also on September 17, 2007, following the recording of South Bay's Deed and Mortgage as recited hereinabove, South Bay conveyed twenty-nine (29) lots to various purchasers by General Warranty Deeds recorded on this date, generating total gross lot sale proceeds of Seven Million Nine Hundred Twenty-six Thousand Five Hundred and Fifty and 00/100 Dollars ($7,926,550.00).

41. The Purchase Contract provided, among other things, that (i) Plaintiffs and TPD Charlton would have unlimited ingress and egress over the Subdivision for the Charltons' own purposes, and that (ii) the Charltons had the right to use the Subdivision, infrastructure and amenities at no cost to the Charltons. This right included use of all amenities, including the clubhouse, and to receive a portion of the boat slips upon completion of the build-out of the marina.

42. Between September 29, 2007 and January 4, 2008, South Bay conveyed twenty-five (25) more lots in the Subdivision to ultimate purchasers, generating additional gross lot sale proceeds of Six Million Eight Hundred Eleven Thousand-Fifty and 00/100 Dollars ($6,811,050.00), resulting in total gross lot sale proceeds of Fourteen Million Seven Hundred Thirty-seven Thousand Six Hundred and 00/100 Dollars ($14,737,600.00).

43. Thirty-one (31) lots in the Subdivision were excepted from the lien of South Bay's Mortgage, representing gross lot sale proceeds of Seven Million Seven Hundred Forty-five Thousand Eight Hundred and 00/100 Dollars ($7,745,800.00).

44. Third Party Plaintiffs are informed and believe that South Bay has invested no capital, funds or other expenditures in or for the Subdivision, with the exception of lot release fees paid to Plaintiffs and Third Party Defendant Charlton.

45. Third Party Plaintiffs are further informed and believe that South Bay's only assets are the remaining 107 unsold, unimproved lots in the Subdivision, less those lots purchased at Tax Sales by Plaintiffs, Third Party Defendant Charlton, and/or Defendant Georgetown County Forfeited Land Commission. Any such lots remaining

vested in South Bay are subject to the lien of South Bay's Mortgage in the original principal amount of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars ($14,580,662.92).

46. Third Party Plaintiffs are therefore informed and believe that South Bay has, at no time since its purchase of the Subdivision, owned or possessed any equity in the property, or possessed other adequate capital or resources to perform its obligations to Plaintiffs or other lot purchasers in the Subdivision, as described more fully herein below.

47. On or about July 17, 2007, in order to obtain final Plat approval for the Subdivision, thereby enabling South Bay and/or its joint venturers and principals to lawfully sell lots in the Subdivision, South Bay procured the issuance of a "Subdivision Performance Bond" ("Performance Bond"), issued by Hartford Casualty insurance Company. South Bay is the principal; Hartford Casualty Insurance Company is the surety; and the Third Party Defendant City of Georgetown is the obligee upon the Subdivision Performance Bond, in the principal penal sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars ($7,882,359.00).

48. Upon information and belief, Hartford Casualty Insurance Company's rights and liabilities under the Performance Bond were subsequently assigned by rider to Hartford Fire Insurance.

49. The purpose of the Performance Bond, in addition to facilitating the Final Subdivision Plat approval, was to assure construction of the infrastructure (roads and utilities) in the Subdivision.

50. Third Party Plaintiffs are informed and believe that South Bay was incapable of obtaining and procuring the issuance of the Performance Bond, and that the Performance Bond was issued by Hartford Casualty, and subsequently by Hartford Fire, in reliance upon a General Indemnity Agreement, executed and delivered by Corkum, South Bay, and six (6) other third parties, on or about July 13, 2007.

51. That Corkum and/or Landquest conducted all due diligence, required and permitted under the Contract for the purchase and development of the Subdivision for themselves, CRT, Plaintiffs and Third party Defendant Charlton.

52. At some date subsequent to August 14, 2006, Landquest, Corkum, CRT, South Bay, Plaintiffs, and Third Party Defendant Charlton, or some combination thereof, selected Third Party Defendants Source One ("Source One") as the sales and marketing agent for the Subdivision, and commenced marketing lots in the Subdivision to prospective purchasers, including but not limited to Third Party Plaintiffs.

53. Upon information and belief, Source One solicited and procured potential and actual purchasers of lots in the Subdivision by providing photographs, artist renderings and allegedly factual information about the ultimate appearance, and expected completion of the infrastructure, facilities, amenities and common areas to be constructed, provided and established in the Subdivision, and regarding the ultimate value thereof, based on information and material provided by Corkum, Landquest, CRT,

South Bay, Plaintiffs, Third Party Defendant Charlton, or some combination thereof, or otherwise approved and ratified by said Plaintiffs, Cross-Defendant, and Third Party Defendants.

54. Third Party Plaintiffs further relied upon Third Party Defendant City's approval of the Final Subdivision Plat, and the Performance Bond upon which TPD City approved same, as assurance and warranty that the Subdivision's infrastructure, in the very least, would be constructed in accordance with representations and covenants made by Corkum, Landquest, CRT, South Bay, Plaintiffs, TPD Charlton, or some combination of one or more of Plaintiffs, Cross-Defendants and Third Party Defendants.

55. Despite such representations and covenants, none of the promised infrastructure, amenities or other such facilities have been commenced or completed in the Subdivision.

56. There has been such an amalgamation of corporate interests, entities and activity so as to blur the legal distinction between Corkum, South Bay, Landquest, CRT, Plaintiffs, Third party Defendant Charlton, and their activities.

<u>FOR A SECOND DEFENSE AND BY WAY OF FIRST COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT</u>
(Breach of Contract/Rescission v. Corkum, Landquest, CRT, South Bay, Plaintiffs, Third Party Defendant Charlton and Source One)

57. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

58. All matters alleged herein specifically and exclusively refer to and assert a cause of action for relief from Third Party Defendants Corkum, Landquest, and CRT, Cross-Defendant South Bay, Plaintiffs, and Third Party Defendants Charlton

Defendants and Source One, jointly and/or severally, hereinafter referred to as the "Developer Defendants."

59. In response to, and in reliance upon, the marketing efforts, representations, covenants and contractual undertakings of the Developer Defendants and their agents, Third Party Plaintiffs and other third parties executed Reservation Agreements and "Agreement(s) to Buy and Sell Real Estate" ("Purchase Agreements") for various lots in the Subdivision, for various prices, on various dates.

60. Third Party Plaintiffs were induced to execute and enter into the Reservation Agreements and Purchase Agreements based upon the following representations and contractual terms made and entered into by the Developer Defendants and/or their agents, to wit:

a. At no cost to Third Party Plaintiffs, the Developer Defendants were going to build a turning lane from South Island Road into the Subdivision, as well as roads, water, sewer, electrical service and telephone service to all lots throughout the Subdivision, in accordance with the Final Subdivision Plat;

b. The Developer Defendants, at no cost to Third Party Plaintiffs, were going to build and provide a Clubhouse, Swimming Pool, a Boathouse and Fishing Pier, as a portion of the common areas and amenities of the Subdivision;

c. At no cost to Third Party Plaintiffs, the Developer Defendants were going to provide various improvements to the 1.95± acre island, and its connecting pedestrian bridge, which form a portion of the common areas and amenities of the Subdivision;

d. At no cost to Third Party Plaintiffs, the Developer Defendants were going to provide landscaping throughout the Subdivision to enhance and preserve its aesthetic appearance, as a portion of the common areas and amenities;

e. The infrastructure and amenity construction would be commenced

in September, 2007, and was expected to be complete in approximately August, 2008;

f. The value and marketability of Plaintiffs' lots would increase substantially once the infrastructure and amenities were completed; and,

g. Third Party Defendant Source One would set aside, or escrow, approximately $3,700.00 to $4,000.00 per lot closed, with such funds to be used for the purpose of conducting at least two major re-marketing events, coinciding with completion of the above-referenced infrastructure and amenities, the purpose and result of which would be to assist Third Party Plaintiffs in re-selling their lots at a substantial profit, if they so desired. Therefore, Source One covenanted with Third Party Plaintiffs, and all other lot purchasers, with the knowledge approval of the other Developer Defendants, to escrow $199,800.00 to $216,000.00 for such purpose

61. The Developer Defendants, or a combination of one or more of said Defendants, separately or through their authorized agents, represented, covenanted and bound themselves to provide the foregoing infrastructure and amenities to Third Party Plaintiffs and other purchasers in the Subdivision.

62. The Purchase Agreements were, or appeared to be, supported by good and valuable consideration, and were mutually binding and enforceable upon all parties thereto.

63. The representations, covenants, and obligations made and entered into by the Developer Defendants and their agents were express and implied executory terms of the Purchase Agreements, and were specifically intended to and did survive the execution of the Purchase Agreements, and the subsequent execution, delivery and filing of the General Warranty Deeds to various lots which vested title to such lots in Third Party Plaintiffs.

64. The Third Party Plaintiffs have fully performed all obligations and conditions precedent required of them to render the terms of the parties' Purchase Agreements, and other representations and inducements preceding same, fully enforceable as against one or more of these Plaintiffs, Cross-Defendants, and/or Third Party Defendants.

65. Despite Third Party Plaintiffs' full performance of all obligations required of them under the Purchase Agreements, including without limitation payment of the full purchase price demanded by one or more of the Developer Defendants, together with closing costs and other substantial expenses incurred by each of the Third Party Plaintiffs, and other lot purchasers, said Plaintiffs, Cross-Defendants, and Third Party Defendants have failed and refused to perform any of the obligations, representations, warranties or undertakings made, set forth, and entered into by them. More particularly, the Developer Defendants and Source One have failed to commence, and therefore have not completed, the construction of paved roads providing access to Third Party Plaintiffs lots; water or sewer service lines, or other necessary and appropriate utilities and services to the boundary lines of said lots; or the clubhouse, pool, boathouse, fishing pier, landscaping, or improvements to and around the 1.945± acre island as specifically represented, covenanted and warranted, or set up an escrow account for remarketing efforts.

66. As a direct, proximate and foreseeable result of the Plaintiffs', Cross-Defendants, and/or Third Party Defendants' substantial and unexcused breach of the parties' Purchase Agreements as set forth herein, Third Party Plaintiffs have sustained

foreseeable actual and special damages and loss, including, but not limited to the following:

a. In that Third Party Plaintiffs have paid and delivered a full and excessive purchase price to said Plaintiffs, Cross-Defendants and Third Party Plaintiffs for their respective lots, and have each undertaken debt and liability for this purpose, far in excess of the actual fair market value of the lots without such infrastructure and amenities;

b. In that Third Party Plaintiffs have incurred interest, property taxes, closing costs, and other consequential and/or special damages as a result of their closing upon the purchase of their respective lots, and undertaking the debt and liabilities resulting directly therefrom;

c. In that Third Party Plaintiff's have incurred substantial attorneys' fees and costs herein, in pursuit of recovery of their rights, interests and damages under their Purchase Agreements;

d. In that the Third Party Plaintiffs have been denied reasonable access to, or any beneficial use of, their individual lots;

e. In that more than one Third Party Plaintiff has been unable or unwilling to comply with the terms of their purchase money financing, and to pay the monthly costs of such financing, as well as excessive property taxes assessed upon their unimproved and inaccessible lots, resulting in substantial damage to Third Party Plaintiffs' credit, and multiple threats of mortgage and property tax foreclosures, together with assessments of penalties and interest on past due financing and property tax payments;

f. In that, upon information and belief, no funds were or have been "set aside" or escrowed by Third party Defendant Source One, for the purpose of conducting the two significant re-marketing events as promised and represented, and no such events have been planned or conducted;

g. In that Third party Plaintiffs' investment is jeopardized by virtue of the Plaintiffs and Third Party Defendant Charlton's apparent right to foreclose on all the property that would constitute the common elements to be located within the Property, which

would include the roads, easements for utilities, amenities, the marina and the island; and

h. In such other and further particulars as may be established hereafter.

67. Third Party Plaintiffs are informed and believe that Plaintiffs, Cross-Defendants and Third Party Defendants' breach of their covenants and Purchase Agreements have been so fundamental and substantial that Third Party Plaintiffs are entitled to judgment against the Plaintiffs, Cross-Defendants, and Third Party Defendants, jointly and/or severally, awarding Third Party Plaintiffs complete Rescission of their Purchase Agreements, and restoring them to the status quo ante, immediately prior to the execution of their Reservation Agreements and Purchase Agreements, by Declaratory Judgment and related relief as follows:

a. Requiring one or more of the Plaintiffs, Cross-Defendants, and/or Third Party Defendants named- herein to refund all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Third Party Plaintiffs, to Third Party Plaintiffs;

b. Directing and requiring that one or more of the Plaintiffs, Cross-Defendants, and/or Third Party Defendants fully pay and satisfy all purchase money debt incurred by Third Party Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose;

c. Awarding Third Party Plaintiffs judgment against Plaintiffs, Cross-Defendants, and/or Third Party Defendants in a sum equal to the monetary value of all damage to Third Party Plaintiffs' credit which has or may have occurred as of the date of judgment; upon completion of which, at said Plaintiffs, Cross-Defendants' and/or Third Party Defendants' expense, Third Party Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to such Plaintiffs, Cross-Defendants and/or Third Party Defendants as this Court shall direct;

d. Awarding Third Party Plaintiffs Judgment for all attorneys' fees and costs incurred by them herein; and,

e. Awarding Third Party Plaintiffs such other and further relief as may be necessary and appropriate to make Third Party Plaintiffs whole, and to restore them to the status quo ante prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

FOR A THIRD DEFENSE AND BY WAY OF SECOND COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT
(Breach of Contract - Declaratory Relief, Specific Performance and Damages v. Plaintiffs, Cross-Defendant, South Bay, Third Party Defendants, Corkum, Landquest, CRT, Charlton and Source One)

68. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated verbatim, and further allege in the alternative:

69. Without just cause or excuse, the Third Party Defendants Landquest, Corkum, CRT, Cross-Defendant South Bay, Plaintiffs, and Third Party Defendants Charlton and Source One ("Developer Defendants"), or one or more of them, materially and substantially breached the Purchase Agreements, as alleged more fully hereinabove, all to Third Party Plaintiffs' great damage and loss.

70. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, as follows:

a. Declaring the Developer Defendants to be in material and substantial breach of their obligations under the parties' Purchase Agreements, and other representations, covenants and obligations made and entered into by them;

b. Requiring the Developer Defendants to specifically perform their covenants and obligations to Third Party Plaintiffs, by immediately commencing and timely completing the construction

of all infrastructure and amenities, in accordance with existing plans; and consistent with the planned exclusive subdivision portrayed by the Developer Defendants and their agents where plans do not exist; the Final Subdivision Plat; and applicable building codes and standards; as alleged more fully hereinabove;

c. Awarding Third Party Plaintiffs judgment against the Developer Defendants, and Source One jointly and/or severally, in a sum equal to all actual, special and consequential damages incurred by them, together with pre-judgment interest on such sums;

d. Awarding Third Party Plaintiffs all costs and fees incurred herein, including without limitation a reasonable attorneys' fee; and,

e. Awarding Third Party Plaintiffs such other and further relief as this Court may deem just and proper.

FOR A FOURTH DEFENSE AND BY WAY OF THIRD COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT

(Breach of Contract Accompanied by Fraudulent Acts v. Third Party Defendants Corkum, Landquest, CRT, Cross-Defendants South Bay, Plaintiffs, and Third Party Defendant Charlton)

71. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

72. The Developer Defendants have materially, substantially and fundamentally breached their Purchase Agreements with Third Party Plaintiffs, and have defaulted upon the representations, inducements, covenants and warranties given, as alleged more fully hereinabove.

73. The Developer Defendants' breach of contracts were accompanied by fraudulent acts, in the following particulars:

a. The Developer Defendants made such representations inducements, covenants and warranties regarding their construction and/or delivery of the infrastructure, amenities and other facilities in the Subdivision, for the purpose and with the intent of inducing Third Party Plaintiffs' reliance

thereon, without securing or depositing into a bona fide escrow account, or otherwise securing and undertaking appropriate and sufficient financial arrangements, to assure completion of same;

b. The Developer Defendants specifically intended for Third Party Plaintiffs to rely upon such representations, covenants, warranties and contractual obligations, and Third Party Plaintiffs did justifiably rely thereon in electing to proceed with execution and performance of their Purchase Agreements for their respective lots, at grossly inflated and excessive values without such infrastructure, amenities and other facilities in place;

c. The Developer Defendants , or one or more of them, provided the further assurance of compliance with said representations, covenants, warranties and contractual obligations, by procuring the issuance of a Performance Bond, allegedly assuring the completion of at least the infrastructure in the Subdivision, and pursuant to which the Developer Defendants were enabled and allowed by Defendant City to proceed with the sale and closings upon lots within the Subdivision;

d. Upon information and belief, the Developer Defendants attempted to avoid and disclaim their duties, responsibilities, obligations and representations, by language contained in their HUD Property Report. However, the Developer Defendants, or one or more of them, instructed, requested or otherwise approved and ratified subsequent representations and "explanations" by Third Party Defendant Source One of the HUD Property Report, which negated, glossed over, and otherwise reassured Third Party Plaintiffs of the Developer Defendants financial ability to perform their representations; covenants, warranties and contractual obligations, and of the Developer Defendants' intention and ability to do so, as allegedly evidenced by the Hartford Performance Bond;

e. The Third Party Plaintiffs justifiably relied upon the Developer Defendants' assurances and reassurances, as alleged herein, were entitled to do so, and had no reasonable means of otherwise discovering the Developer Defendants' fraudulent intent, and acted to their detriment in reliance upon such representations and assurances, by electing and deciding to execute and enter into the Purchase Agreements

for their lots, to expend sums required for the performance of such Purchase Agreements, and to undertake substantial purchase money debt in order to perform such Purchase Agreements, all to Third Party Plaintiffs' great damage and loss;

f. The Developer Defendants, despite such representations, assurances and reassurances, and despite the fact that one or more of the Developer Defendants, jointly and/or severally, are financially capable of fully performing their obligations to Third Party Plaintiffs, constructed the transaction with Plaintiffs and Third Party Defendant Charlton, and secured the issuance of the Hartford Performance Bond, without having any financial obligation or funds committed to construction of the infrastructure, amenities and facilities of the Subdivision;

g. Upon information and belief, the Developer Defendants, or one or more of them, intentionally refrained from undertaking any financial obligation or commitment for the construction of infrastructure, amenities and other such facilities, because of their perception of a pending real estate, and real estate financial market crisis, and the Developer Defendants objectively intended, at the time of closing upon the sale of lots to Third Party Plaintiffs, to repudiate, deny and avoid any obligation for the construction and provision of such infrastructure, amenities and related facilities;

h. The Developer Defendants, or one or more of them, were therefore aware at the time of such closings, that Third Party Plaintiffs' lots were grossly. over-valued, and that the Developer Defendants had received far in excess of the actual fair market value of such lots, in the absence of said infrastructure, amenities and related facilities, which the Developer Defendants had then decided not to construct and/or provide;

i. The Developer Defendants have not commenced or completed construction of any infrastructure, amenities or related facilities in the subdivision, despite their representations, warranties and assurances that such construction would commence in or about September, 2007, and thereafter representing that such construction would commence in or about January, 2008, and in both Instances such construction would be complete in or about August, 2008;

j. The Developer Defendants' representations, inducements, covenants and warranties were material and fundamental, and were false and deceptive as recited herein; such material and false representations were made by the Developer Defendants for the purpose of invoking and inducing Third Party Plaintiffs' reliance thereon; that Third Party Plaintiffs justifiably relied thereon, and had no reason to disbelieve or reasonable ability to discover the falsity of such representations; that Third Party Plaintiffs did in fact rely upon such representations to their detriment; and, as a direct and proximate result of such materially false and deceptive misrepresentations and the Developer Defendants breach of their resulting duties, obligations and covenants, Third Party Plaintiffs have been severely and egregiously damaged, as recited more fully hereinabove.

74. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Plaintiffs, Cross Defendant South bay, and Third Party Defendants Corkum, Landquest, CRT, Charlton and Source One, jointly and/or severally, for all actual and punitive damages sustained herein.

## FOR A FIFTH DEFENSE, AND BY WAY OF FOURTH COUNTERCLAIM, CROSS-CLAIM, AND THIRD PARTY COMPLAINT

(Violation of S.C. Unfair Trade Practices Act vs. Third Party Defendants Corkum, Landquest, CRT, Charlton, Source One, Cross Defendant South Bay and Plaintiffs)

75. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

76. Third Party Defendants Corkum, Landquest, and CRT and Cross-Defendant South Bay, at all times relevant hereto, have held themselves out as experts, and have engaged in business with Third Party Plaintiffs and the public at large in the field of real estate development, marketing and sales. Plaintiffs and Third Party

Defendant Charlton, by virtue of their joint venture status as a Developer Defendant, are vicariously liable for the acts and omissions of the other Developer Defendants.

77. At all times relevant hereto, the Third Party Defendant Source One has held itself out as an expert, and has engaged in business with Third Party Plaintiffs and with the public at large in the field of real estate marketing and sales.

78. The Developer Defendants named herein have solicited and procured Third Party Plaintiffs' reliance upon their expertise, integrity and abilities, as alleged more fully hereinabove, and have thereby procured Third Party Plaintiffs' Purchase Agreements and performance of same for the purchase of various lots in the Subdivision, as alleged more fully hereinabove.

79. That the Developer Defendants' acts and omissions, in breach and violation of their representations to and agreements with Third Party Plaintiffs, as alleged more fully hereinabove, constitute unfair or deceptive acts in the conduct of trade or commerce, as provided in the South Carolina Unfair Trade Practices Act [S.C. Code Ann. §§ 39-5-10, et seq. (1976 as amended).] ("the Act").

80. The Developer Defendant and Source One's acts and omissions, as alleged more fully hereinabove, are capable of, and have the potential to be repeated, to the damage of the general public and contrary to the public interest and principles of good faith and fair dealing in the conduct of trade and commerce.

81. Third Party Plaintiffs are therefore informed and believe that the Plaintiffs, Cross-Defendant South Bay, Third Party Defendants Corkum, Landquest, CRT, Source

One and Charlton, or one or more of them, have negligently, willfully and recklessly violated the terms and provisions of the Act.

82. That as a direct and proximate result of such Developer Defendants' negligent, willful, and reckless violation of the Act, Third Party Plaintiffs have sustained financial damage and property loss, as alleged more fully hereinabove.

83. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, for all actual damages, treble damages, and attorneys' fees, in accordance with the Act.

FOR A SIXTH DEFENSE AND BY WAY OF FIFTH COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT
(Negligent Misrepresentation v. Third Party Defendants Corkum, Landquest, CRT, Source One, Charlton, Cross Defendant South Bay, and Plaintiffs)

84. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

85. The Developer Defendants, jointly and/or severally, made false representations to Third Party Plaintiffs, as alleged more fully hereinabove. Such false representations included:

a. Defendant South Bay would construct and provide, at no cost toPlaintiffs, the infrastructure, amenities and other related facilities described hereinabove;

b. the Hartford Performance Bond provided assurance that at least the infrastructure would be constructed and provided; construction of the infrastructure, amenities and related facilities would be complete in or around August, 2008;

d. Third Party Plaintiffs' lots would be worth substantially

more than their purchase price, upon completion of the infrastructure, amenities and related facilities;

e. Third Party Defendant Source One would "set aside", or escrow, $3,700.00 to$4,000.00 per lot closing, for the purpose of funding two significant re-marketing events, the first of which would be scheduled to occur in August or September, 2008, for the purpose of assisting those Third Party Plaintiffs and other lot purchasers who so desired in re-selling their lots at a substantial profit.

86. The Developer Defendants, jointly and/or severally, had a pecuniary interest in making these false representations to Third Party Plaintiffs, thereby inducing Third Party Plaintiffs to enter into and perform their Purchase Agreements for their various lots.

87. The Developer Defendants, jointly and/or severally, owed Third Party Plaintiffs a duty of care to assure that truthful information was conveyed to Third Party Plaintiffs regarding their ability to perform as represented, covenanted and undertaken by them in their various contracts with Third Party Plaintiffs.

88. The Developer Defendants, jointly and/or severally, negligently, carelessly, recklessly and willfully breached their duties to Third Party Plaintiffs, and failed either consciously or negligently, to ensure that truthful and accurate information was conveyed to Third Party Plaintiffs regarding these material issues of fact.

89. The Third Party Plaintiffs justifiably relied on the Developer Defendants' representations, having no reason to doubt or suspect that the Developer Defendants and Source One were incapable of performing, or lacked the integrity and financial commitment or obligation to compel them to perform as represented, covenanted and undertaken.

90. As a direct and proximate result of Third Party Plaintiffs' reliance upon such false and material misrepresentations, and said Developer Defendants failure to perform such obligations, covenants and representations, Third Party Plaintiffs have been severely and egregiously damaged as alleged more fully hereinabove.

91. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

## FOR A SEVENTH DEFENSE AND BY WAY OF SIXTH CROSS-CLAIM AND THIRD PARTY COMPLAINT

(Actual Fraud/Constructive Fraud v. Third Party Defendants Corkum, Landquest, CRT, and Source One, and Cross-Defendant South Bay)

92. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

93. Third Party Defendants, Corkum, Landquest, CRT and Source One, and Cross-Defendant South Bay, or one or more of them, by and through their principals and agents, made the representations set forth more fully hereinabove, all of which were material and were false.

94. Said Third Party Defendants and Cross-Defendant knew or should have known of the falsity of said representations at the time they were made, or made such representations in reckless disregard of their falsity.

95. Said Third Party Defendants and Cross-Defendant made such representations with the intent and purpose that they be acted upon by Third Party Plaintiffs as true.

96. Third Party Plaintiffs were ignorant of the falsity of the said Third Party Defendants' and Cross-Defendants' representations, had no reason to doubt the veracity of such representations, and had no means of reasonably discovering their falsity. Third Party Plaintiffs were therefore entitled to rely upon the truth of such representations, and did in fact rely upon the truth of such representations in executing and performing their respective Purchase Agreements for lots in the Subdivision.

97. That, as a direct and proximate result of the said Third Party Defendants' and Cross-Defendants' actual or constructive fraud in making such false representations, and Third Party Plaintiffs' material change of position in reliance thereon, Third Party Plaintiffs have sustained severe damages and loss, as set forth more fully hereinabove.

98. Third Party Plaintiffs are informed and believe that they are entitled to judgment against said Third Party Defendants and Cross-Defendant, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

FOR AN EIGHTH DEFENSE AND BY WAY OF SEVENTH COUNTERCLAIM, CROSS CLAIM AND THIRD PARTY COMPLAINT
(Third Party Beneficiaries/Declaratory Judgment v. City of Georgetown, Hartford Casualty, Hartford Fire, South Bay, Landquest, CRT, Plaintiffs and Third Party Defendant, Charlton)

99. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

100. Upon information and belief, Third Party Plaintiffs were intended beneficiaries of the Subdivision Performance Bond issued by Hartford Casualty and subsequently undertaken by Hartford Fire, as follows:

a. The Hartford Performance Bond was issued for the purpose of obtaining the Defendant City's approval of the Final Bonded Subdivision Plat;

b. The Third Party Defendant City's approval of the Final Bonded Subdivision Plat was a condition precedent to the Developer Defendants being authorized to convey title to lots within the Subdivision to ultimate purchasers of said lots, including Third Party Plaintiffs;

c. Plaintiffs and Third Party Defendant Charlton had to join in and consent to the Final Bonded Plat before it was approved by the Third Party Defendant City and/or Georgetown County before it was recorded;

d. Third Party Defendant City accepted the Hartford Performance Bond and, in reliance thereon, approved the Final Bonded Subdivision Plat for the Subdivision; and,

e. The preceding facts were conveyed to Third Party Plaintiffs by the Developer Defendants, whereafter and in reliance whereof, Third Party Plaintiffs proceeded to closing on their respective lots, and discharged their duties and obligations fully under their Contracts to purchase said lots.

101. That Third Party Defendants City and Hartford knew or should have known that Third Party Plaintiffs would rely upon the City's acceptance of the Hartford Performance Bond, and its consequent approval of the Final Bonded Subdivision Plat for the Subdivision, and that Third Party Plaintiffs were entitled to rely thereon in accordance with relevant statutory and municipal code provisions as alleged more fully herein below.

102. Pursuant to Code 1964, §17-16(2), Code of Ordinances, City of Georgetown, the City's planning commission is required to "undertake plans and programs designed to promote public health, safety, morals, convenience, prosperity, or the general welfare ..." In discharging its responsibilities, the planning commission has the power and duty to recommend for adoption regulations for the development of land pursuant to S.C. Code of Laws, as amended, §§6-29-1110 through 6-29-1200.

103. S.C. Code §6-29-1120 states that: The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; ... and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

104. S.C. Code §6-29-1180 provides that in: circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond,

certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

105. S.C. Code §6-29-1120 further states that the: Owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records....

106. Upon information and belief, in April, 1999, pursuant to the statutory authority granted by S.C. Code §§ 6-29-110-1200, the City enacted Land Development Regulations. The purpose of these Regulations, among other things, was to "assure the timely provision of required street utilities and other facilities and services to new land development." Sec. 102, Land Development Regulations of the City of Georgetown.

107. The Land Development Regulations of the City of Georgetown, in pertinent part, require the following:

a. Sec. 107: Planning Commission approval and recording of a plat of a subdivision prior to any transfer, sale, agreement to sell, negotiating for sale or advertising for sale of any "land by reference to or exhibition of or by other use of a plat of subdivision of such, and."

b. Sec. 203.1: Approval of the Final Plat requires certification from the City that "... improvements have been installed to

the City's satisfaction or that an acceptable technique in lieu of completion of all improvements has been proposed for the subdivision."

c. Sec. 302.8: "Financial guarantees' as required in Section 502 shall be submitted ... along with the Final Plat. Approval shall not be granted in the absence of such guarantee."

d. Sec. 500.1: Approval of the Final Plat for recording shall not be given unless "the subdivider has installed ... Improvements as herein specified and required, or has provided a financial guarantee therefore as specified in Section 502."

e. Sec. 501: Improvements required to be made by every subdivision developer include grading and improving streets and alleys, installing curbs, monuments, sewers, storm water inlets, and water mains.

f. Sec. 502.1: "Financial Guarantees covering all improvements required by this Ordinance shall be prerequisite to Planning Commission action on the application for Final Plat approval. The subdivider shall submit such guarantees...in accordance with the requirements of this section."

g. Sec. 502.3: "Prior to completion of any or all required improvements by the subdivides the subdivider may post a performance bond...guaranteeing the completion of said improvements in compliance with the requirements herein..."

h. Sec. 502.321: The performance bond shall "[r]un to the governing authority or, if applicable, any other governmental unit having legal responsibility for the construction and completion of said improvements."

i. Sec. 502.324: The performance bond shall specify "that all said required improvements shall be completed in accordance with the requirements of this Ordinance within a period not to exceed one year from the date of posting said bond; provided, however, that the governing authority may, by proper application, for good cause shown, extend the time of completion of all or part of such improvements for such period of time as it deems is in the public interest."

108. Upon information and belief, prior to the closing of the individual lots to Third Party Plaintiffs, the Developer Defendants applied to Third Party Defendant City for approval and/or pre-approval of the Subdivision Plat, and for subsequent closing of sales of lots in the Subdivision to third parties, including Third Party Plaintiffs. At the time that Cross-Defendant South Bay applied to the Third Party Defendant City, it did not own the Property, but rather the Plaintiffs and Third Party Defendant Charlton did. As a result, Plaintiffs and Third Party Defendant Charlton were either expressly or impliedly co-applicants with Cross-Defendant Defendant South Bay. As required by the Land Development Regulations of the City of Georgetown, on or about July 17, 2007, Cross-Defendants South Bay and Third Party Defendant Hartford Casualty executed the Subdivision Performance Bond for the benefit of the Third Party Defendant City, with Third Party Plaintiffs and other third party lot purchasers and property owners as intended beneficiaries thereof, in the sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars ($7,882,359.00) to guarantee the completion of required improvements and site infrastructure, specifically roads and utilities, for the Subdivision within one year.

109. The Performance Bond, which was executed by a Power of Attorney, may or may not have been assigned by rider, also executed by a separate Power of Attorney, to Third Party Defendant Hartford Fire.

110. Upon the submission of the Bond, the Final Plat was approved by the City and recorded.

111. Third Party Plaintiffs are informed and believe that the amount of the Bond was necessarily determined by Third Party Defendant City in reliance upon specific, and adequately complete, plans and specifications for the required infrastructure and site improvements, and/or by specific bids and/or contracts for such work by third party contractors, as submitted to Third Party Defendant City by the Developer Defendants.

112. Thereafter, upon information and belief, the Developer Defendants sold fifty-four (54) lots in the Subdivision to various third parties, including Third Party Plaintiffs.

113. As part and parcel of their fee simple ownership interest in their respective lots, Third Party Plaintiffs should have been granted easements for access and egress to and from their lots, and throughout the Subdivision, over and along the roadways depicted and described on the Final Subdivision Plat, as well as the use of all amenities and common areas of the Subdivision which were to be constructed by the Developer Defendants, and the right to assign and convey such easements, rights and interest to subsequent purchasers, and their heirs and assigns. Third Party Plaintiffs should have also been granted the right and beneficial use of all utilities, which were to be constructed and provided by the Developer Defendants to and serving all lots in the Subdivision, including without limitation Third Party Plaintiffs' lots.

114. Third Party Plaintiffs' respective decisions to enter into, execute and perform their obligations under their Purchase Agreements for their respective lots, were made in reliance upon the Developer Defendants' promises and assurances that the Subdivision infrastructure would be completed, as guaranteed by issuance of the

Subdivision Performance Bond and the City's acceptance thereof and its subsequent approval of the Final Subdivision Plat.

115. Such decisions and performance by Third Party Plaintiffs were further made and delivered in reliance upon the Developer Defendants' promises, assurances, representations and contractual covenants to provide all amenities and related facilities as described more fully hereinabove.

116. Third Party Plaintiffs allegedly received permanent easements appurtenant, in perpetuity, for the use of all roads and utilities in the Subdivision, and membership in the Property Owners Association which provided them perpetual and assignable rights to use all amenities and common areas in the Subdivision subject only to payment of appropriate regime fees.

117. Third Party Plaintiffs specifically relied on Third Party Defendant City's approval of the Final Plat and its recording with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements.

118. The prices, terms and conditions of lot sales in the Subdivision, including those lots purchased and closed by Third Party Plaintiffs, were premised on, and conducted in reliance upon, the full development of the Subdivision, and the Developer Defendants' promises, covenants, and assurances that the Subdivision improvements would be completed in a timely fashion.

119. Third Party Plaintiffs' lots purchases and closings were premised upon, and made in reliance of, Defendant City's approval of the Final Plat and its recording

with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements within one year.

120. As of January 1, 2013, no site infrastructure or required improvements as stipulated by Section 501 of the Land Development Regulations of the City of Georgetown had been commenced in the Subdivision.

121. Further, as of January 1, 2013, no amenities or related facilities, as represented, covenanted, and undertaken by the Developer Defendants, had been commenced in the Subdivision.

122. Upon information and belief, Third Party Defendant City has received demands and inquiries from interested parties with standing, requesting that the City enforce the Performance Bond and/or take action to require or cause the Developer Defendants to perform the required improvements and install the site infrastructure, but Third Party Defendant City has taken no action thereon, or has otherwise refused to prosecute its action to enforce the Performance Bond and the Developer Defendants obligations to perform in a timely fashion, or at all.

123. Upon information and belief, pursuant to the referenced statutes, ordinances and regulations, and the terms and conditions of the Performance Bond, the required improvements and site infrastructure in the Subdivision must be commenced and completed in a timely manner.

124. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal duties and obligations to Third Party Plaintiffs specifically, and to the public generally, and whether and to what extent under the facts, law and

circumstances described above, Third Party Defendant City is bound to notify Third Party Defendants Hartford of Defendant Developers' failure to perform, and/or demand that Third Party Defendants Hartford pay to Third Party Defendant City the bonded sum for Defendant Developers' failure to start and complete the required improvements and site infrastructure.

125. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, Third Party Defendant City is now required itself to timely undertake and complete the required improvements and site infrastructure at the Subdivision in light of Defendant Developers' failure to start or complete the work.

126. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, Third Party Defendant City is permitted to extend, and for how long, the time of completion for the benefit of Defendant Developers and/or Third Party Defendants Hartford of all or part of such required improvements and site infrastructure.

127. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal obligations and duties to Third Party Plaintiffs specifically, and to the public generally, and whether and to what extent under the facts, law and circumstances described above, Third Party Defendant City has abused, or failed to

properly exercise its discretion by failing to take, or failing to prosecute, appropriate and timely action to compel completion of the required infrastructure and site improvements by the Developer Defendants, or to enforce the Performance Bond and complete such infrastructure and site improvements itself.

128. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendants Hartford's legal duties and obligations to Third Party Defendant City and Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances, Third Party Defendants Hartford's Rider and the attendant Power of Attorney purportedly assigning the Bond from Hartford Casualty Insurance Company to Hartford Fire Insurance Company are valid and enforceable, and as such, which Third Party Defendant Hartford is the applicable entity holding and responsible for the Bond.

129. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant Hartford's legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances described above, Third Party Plaintiffs are entitled to enforce the Bond and demand Third Party Defendant Hartford pay to Third Party Defendant City the bonded sum for Defendant Developers' failure to start or complete the required improvements and site infrastructure.

130. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of the Developer Defendants' legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and

circumstances described above, the Developer Defendants have violated their obligations regarding the required improvements, site infrastructure, amenities and related facilities.

131. Third Party Plaintiffs are informed and believe that the declaratory relief sought by them herein will terminate the controversies among the parties to this action with respect to the required infrastructure and site improvements in the Subdivision, and will remove the uncertainties with respect to these issues. Further, the declaratory relief sought by Third Party Plaintiffs herein will partially mitigate Third Party Plaintiffs' damages to which Third Party Plaintiffs otherwise claim entitlement.

132. Third Party Plaintiffs are informed and believe that there is no adequate remedy at law with respect to these issues, except by way of the relief provided by the declaratory judgment statutes aforesaid, with respect to the Developer Defendants' obligations, and Third Party Plaintiffs' rights and interest therein, to build and provide the requisite infrastructure and utility services and related improvements in the Subdivision.

133. Further, Third Party Plaintiffs are entitled to recovery of their costs and attorneys fees in the present declaratory judgment action.

FOR A NINTH DEFENSE, AND BY WAY OF EIGHTH COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT
(Violation of Interstate Land Sales Full Disclosure Act - Damages v. Third Party Defendants Corkum, Landquest, CRT, Charlton and Source One, Cross Defendant South Bay, and Plaintiffs)

134. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

135. The Developer Defendants are "developers" of the Subdivision as defined by the Interstate Land Sales Full Disclosure Act ("ILSFDA") 15 USCA § 1701 et seq.

136. The Third Party Defendant Source One is an "agent" of the Project as defined by the ILSFDA. This Defendant represented and acted for the Developer Defendants in both marketing and selling of lots and has engaged in such behavior before, during and after the sale of the lots.

137. The Third Party Plaintiffs constitute "purchasers" as defined by the ILSFDA.

138. The Subdivision is a "subdivision" as defined by the ILSFDA, as it contains more than one hundred (100) lots.

139. The lots within the Subdivision were offered and marketed under a common promotional plan as defined by the ILSFDA.

139. The Subdivision is subject to the ILSFDA, including, without limitation, the marketing and sale of lots therein.

140. As described above, each of the Third Party Plaintiffs entered into Purchase Agreements to purchase lots within the Subdivision. At the time of sale, each such lot was titled in the name of South Bay.

141. As required by the ILSFDA, a Property Report was presented to the Third Party Plaintiffs at the time each Purchase Agreement was signed and the sale was made with such report being a part of the transaction. Each of the Third Party Plaintiffs has closed on the purchase of his, her or their respective lot.

142. The Third Party Defendant Signature One acted as either developer or agent in consummating the sale of the lots.

143. The lots were marketed and sold by the Developer Defendants for the purpose of building residential dwellings on the lots.

144. The Developer Defendants and Signature One knew, or should have known, at the time of the sale and the presentation of the Property Report, that the lots were not useable for the purpose for which they were sold and that certificates of occupancy could not have been obtained for a dwelling constructed on such lots and still cannot be obtained for such purpose.

145. The Property Report presented by the Developer Defendants to Third Party Plaintiffs, and required by the United States Department of Housing and Urban Development ("HUD"), contains misrepresentations of fact and omitted material facts, all contrary to the provisions of the ILSFDA. Specifically, the Property Report misrepresented or omitted the following:

a. The name of the Subdivision; to-wit: Plantation at Winyah Bay.

b. At the time the Third Party Plaintiffs closed on their respective lot purchases, the Property Report misrepresented the escrow agent holding escrow funds;

c. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that an occupancy permit to occupy a house could not be issued until the Subdivision was completed and accepted by the Third Party City of Georgetown.

d. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Charltons held and hold a reversionary interest in a 1.945 acre tract, being a portion of the Subdivision, now known as

Harbor Club on Winyah Bay.

e. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Plaintiffs held and hold a mortgage on the Subdivision less and excepting lots 21, 44, 45, 46, 57, 58, 85, 89, 90, 91, 92, 93, 95, 98, 104, 105, 110, 112, 113, 117, 118, 140, 149, 151, 153, 154, 155, 157, 158, 159, and 160; said mortgage encumbering all land considered common areas, as well as all land being designated for streets and rights of way, and land required for utility easements, and land to be held in the name of Harbor Club on Winyah Bay Homeowners Association.

f. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Harbor Club on Winyah Bay required authorization from the U.S. Army Corps of Engineers and through the U.S. Army Corps of Engineers, approvals from South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resources Management ("OCRM") for permits issued by the U.S. Army Corps of Engineers under Section 10 and Section 404.

g. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Defendant Defendants had or needed to request (and later requested), a permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) Section 401 of the Clean Water Act (33 U.S.C. 1344), and the South Carolina Coastal Zone Management Act (S.C. Code Ann. § 48-39-10 et seq.) to enlarge an existing docking facility into a community marina containing fifty-six (56) slips in Winyah Bay, at Plantation at Winyah Bay a/k/a Harbor Club at Winyah Bay, Georgetown, Georgetown County, South Carolina.

146. The Developer Defendants failed to file amendments to the Property Report, as required by law, when material changes occurred.

147. The Developer Defendants failed to keep Third Party Plaintiffs advised concerning additional liens and encumbrances being placed on the Subdivision.

148. The Purchase Agreements executed by the Third Party Plaintiffs did not contain the language required by ILSFDA found in 15 U.S.C.A. §1703.

149. The acts and omissions of the Developer Defendants constitute devices, schemes or artifices to defraud, all of which are prohibited by ILSFDA.

150. On information and belief, the lots purchased by the Third Party Plaintiffs are, at present, of little or no value.

151. Third Party Plaintiffs are informed and believe that the Developer Defendants' violation of ILSFDA entitle the Third Party Plaintiffs to:

a. Judgment against the Plaintiffs, Cross Defendant South Bay, and Third Party Defendants Corkum, Landquest, CRT, Source One and Charlton, jointly and severally, for actual, compensatory, consequential, and punitive damages to be determined by a jury;

b. Pre-judgment and post-judgment interest on the damages awarded according to law;

c. Attorneys fees and the costs and expenses of litigation; and

d. Such further and other relief as may be deemed necessary and appropriate to make the Third Party Plaintiffs whole and that this Court deems just and proper.

<u>FOR A TENTH DEFENSE, AND BY WAY OF NINTH COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT</u>

(Violation of Interstate Land Sales Full Disclosure Act - Rescission v. Third Party Defendants Corkum, Landquest, CRT, Source One, Charlton, Cross Defendant South Bay, and Plaintiffs)

152. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

153. In response to, and in reliance upon, representations, covenants and contractual undertakings of Cross Defendant South Bay, Third party Defendants Landquest, Corkum, CRT, Charlton, Source One, Cross Defendant South Bay, and Plaintiffs, and their agents, each of the Third Party Plaintiffs executed Purchase Agreements for the lots upon which they ultimately closed.

154. Pursuant to the ILSFDA, the Third Party Plaintiffs are entitled to rescission of their purchases and a refund of the purchase price and all incidental and consequential costs related to their purchase of lots including, without limitation, reimbursement for property taxes, attorney's fees and related costs and expenses.

155. The Third Party Plaintiffs are informed and believe that the said Third Party Defendants', Cross Defendants' and Plaintiffs' violations of ILSFDA entitle the Third Party Plaintiffs to judgment against the said Third Third Party Defendants; Cross Defendant and Plaintiffs, awarding Third Party Plaintiffs' complete rescission of their Purchase Agreements and restoring them to the status quo ante immediately prior to the execution of their Purchase Agreements and related relief as follows:

a. Requiring one or more of the said named Plaintiffs, Cross Defendant, and/or Third party Defendants to refund to the Third Party Plaintiffs all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Third Party Plaintiffs;

b. Directing and requiring that one or more of the said Third Party Defendants, Cross-Defendant and Plaintiffs fully pay and satisfy all purchase money debt incurred by Third Party Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose; awarding Third Party Plaintiffs judgment against the said Third Party Defendants, Cross-Defendant and Plaintiffs in a sum equal to the monetary value of all damage

to Third Party Plaintiffs' credit which has or may have occurred as of the date of judgment; upon completion of which, at said Third Party Defendants', Cross Defendant's and Plaintiffs' expense, Third Party Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to the said Third Party Defendants, Cross Defendants and or Plaintiffs, as this Court shall direct;

c. Directing and requiring that the lenders satisfy, release or cancel all debt obligations incurred by the Third Party Plaintiffs.

d. Awarding Third Party Plaintiffs judgment for all attorneys' fees and costs incurred by them herein; and,

e. Awarding Third Party Plaintiffs such other and further relief as may be necessary and appropriate to make Third Party Plaintiffs whole, and to restore them to the status quo ante prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

FOR AN ELEVENTH DEFENSE, AND BY WAY OF TENTH COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT

(Violation of South Carolina Uniform Land Sales Full Disclosure Act v. Third Party Defendants Corkum, Landquest, CRT, Charlton, Source One, Cross Defendant South Bay, and Plaintiffs)

156. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

157. The Developer Defendants and Source One failed to make application and register the Subdivision with the South Carolina Real Estate Commission or its duly authorized assistant or deputy appointed by the Director of the South Carolina Department of Labor.

158. The Third Party Plaintiffs are informed and believe that they are entitled to:

a. Judgment against the Third Party Defendants Corkum, Landquest, CRT, Source one, Charlton, Cross Defendant

South Bay, and Plaintiffs, jointly and severally, for actual compensatory, consequential, and punitive damages to be determined by a jury;

b. Recover the consideration paid for each lot, together with interest at the rate of six percent per year from the date of payment; property taxes paid, costs and reasonable attorneys fees; and

c. such further and other relief as that this Court deems just and proper.

FOR AN TWELFTH DEFENSE AND BY WAY OF ELEVENTH COUNTERCLAIM, CROSS-CLAIM, AND THIRD PARTY COMPLAINT
(Equitable Lien v. Plaintiffs, Third Party Defendant Charlton and Cross-Defendant South Bay)

159. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

160. As alleged above, the Plaintiffs, and Third Party Defendant Charlton, and Cross Defendant South Bay are joint venture partners in the development and sale of lots within the Subdivision.

161. The amalgamation of identities, interests and activities by the Charltons and South Bay has blurred their separate identities rendering them both the developer of the subdivision.

162. The Charltons intended to develop their property contiguous to the Subdivision using, without cost to the Charltons, the infrastructure and amenities, to be constructed by South Bay.

163. The Charltons also knew that South Bay intended to sell lots to purchasers who were promised the installation of infrastructure and amenities, which infrastructure and amenities were going to be used by the Charltons.

164. The Charltons also knew that South Bay's Development loan commitment had been withdrawn, prior to September 17, 2007; that there was no funding available or in place with which to construct the promised infrastructure and amenities; and, that South Bay was willing to rescind and cancel all contracts and scheduled closings, and to refund all deposits. Despite such knowledge, Plaintiffs and Third Party Defendant Charlton made the decision to retain all such contracts and deposits, and proceed with scheduled closings and future closings, for their own substantial profit and gain.

165. The South Bay Deed and the South Bay mortgage should be subject to and inferior to the rights, claims and liens of the Plaintiffs including, without limitation, their claims for damages and the cost, if necessary, of completing the Subdivision.

166. The Third Party Plaintiffs are informed and believe they are entitled to a declaration from this honorable Court that their rights, claims and liens are superior to those of South Bay and the Charltons.

## FOR A THIRTEENTH DEFENSE, AND BY WAY OF TWELFTH COUNTERCLAIM, CROSS-CLAIM, AND THIRD PARTY COMPLAINT

(Civil Conspiracy v. Third Party Defendants Corkum, Landquest, CRT, Charlton, and Source One, Cross Defendant South Bay, and Plaintiffs)

167. Third Party Plaintiffs affirm and reallege each and every allegation set forth above, as fully as if repeated herein verbatim, and further allege:

168. The Developer Defendants conspired together to have the Third Party Plaintiffs close on their respective lots by utilization of the acts and omissions on the part Third Party Defendants Landquest, Corkum, Charlton, Source One, Cross Defendant South Bay, and Plaintiffs, as described hereinabove.

169. As a result of these Third Party Defendants', Cross-Defendant's, and Plaintiffs' consummation of the conspiracy by inducing the Third Party Plaintiffs to purchase their respective lots, the Third Party Plaintiffs have been specially damaged including, but not limited to the following:

a. Credit damage - from closing and undertaking excessive debt for the acquisition of their lots;

b. Legal fees and costs to rescind, or attain specific performance;

c. Legal fees and costs to defend property tax assessments and collection at inflated value; and

d. Lost opportunity to resell, build or otherwise derive benefit from their lots.

170. The Plaintiffs are informed and believe that they are entitled to actual, compensatory, consequential, special and punitive damages against these Third Party Defendants, Cross-Defendant and Plaintiffs.

WHEREFORE, the Plaintiffs pray as follows:

A. As to the First Defense, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One

Communities, LLC, a/k/a Source One Signature Communities, jointly and severally for an Order declaring that these defendants have breached the Purchase Agreements with the Plaintiffs and that the Plaintiffs are entitled to rescission and a refund of all earnest monies, closing costs, interest, property taxes, and such actual and consequential damages and expenses incurred by the Plaintiffs;

B. As to the Second Defense and First Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment of rescission, declaratory relief, and damages sustained therein, together with attorney's fees, costs and pre-judgment interest thereon;

C. As to the Third Defense and Second Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs declaratory relief, specific performance, and judgment for all actual, special and consequential damages sustained, together with attorney's fees, costs and pre-judgment interest thereon;

D. As to the Fourth Defense and Third Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Plaintiffs, Cross Defendant South Bay and Third Party Defendants Corkum, Landquest, CRT, Charlton and Source One, for all actual and punitive damages sustained therein;

E. As to the Fifth Defense and Fourth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Charlton, Source One, Cross-Defendant

South Bay and Plaintiffs, for all actual damages, treble damages and attorney's fees sustained therein;

F. As to the Sixth Defense and Fifth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Source One, Charlton, Cross-Defendant South Bay, and Plaintiffs, for all actual, compensatory and punitive damages sustained therein;

G. As to the Seventh Defense and Sixth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs, judgment against Third Party Defendants Corkum, Landquest, CRT, Source One, and Cross-Defendant South Bay, for all actual, compensatory, and punitive damages sustained therein;

H. As to the Eighth Defense and Seventh Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Cross Plaintiffs declaratory judgment, attorney's fees and costs as sustained therein;

I. As to the Ninth Defense and Eight Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Plaintiffs, Cross-Defendant South Bay, and Third Party Defendants Corkum, Landquest, CRT, Source One and Charlton, for all actual, compensatory, consequential and punitive damages, pre and post-judgment interest, attorney's fees and costs sustained therein;

J. As to the Tenth Defense and Ninth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment of rescission,

declaratory relief, actual and punitive damages, attorney's fees, costs and pre-judgment interest, as sustained therein;

K. As to the Eleventh Defense and Tenth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Cross Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Source One, Charlton, Cross-Defendant South Bay and Plaintiffs, for all actual, compensatory, consequential and punitive damages sustained therein, together with pre and post-judgment interest, attorney's fees and costs;

L. As to the Twelfth Defense and Eleventh Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendant/Third Party Plaintiffs an equitable lien and declaratory relief, finding that Plaintiffs and Third Party Defendant Charlton's mortgage from Cross-Defendant South Bay should be subject to and inferior to the rights, claims, and liens of Defendants/Third Party Plaintiffs herein;

M. As to the Thirteenth Defense and Twelfth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendant/Third Party Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Charlton and Source One, Cross-Defendant South Bay, and Plaintiffs for all actual, compensatory, consequential, special and punitive damages sustained therein;

N. Awarding Defendants/Third Party Plaintiffs all attorney's fees, costs and expenses of litigation incurred herein; and

O. Awarding Defendants/Third Party Plaintiffs such other and further relief as this Court may deem just and proper.

THORNTON LAW FIRM, LLC

K. Douglas Thornton
1025 Third Avenue
Conway, South Carolina 29526
Telephone: (843) 488-5858
Facsimile: (843) 488-5859
kdouglasthornton@gmail.com

LAW OFFICES OF JOHN M. LEITER, P.A.

John M. Leiter (By: KDT w/Consent)

John M. Leiter
1203 48th Ave. North, Suite 109
Myrtle Beach, South Carolina 29577
Telephone: (843) 449-1451
Facsimile: (843) 449-4884
jleiter@48th.com

**ATTORNEYS FOR PLAINTIFFS**

Conway, South Carolina

Dated: September 9, 2013

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN ) CASE NO.: 2012-CP-22-00934

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

Plaintiffs,

vs.

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

Defendants.

ORDER

FILED
GEORGETOWN COUNTY, S.C.
2015 NOV 15 PM 3:09
ALMA Y. WHITE
CLERK OF COURT

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

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

1. Procedural History

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

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

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

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

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

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

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

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

Remittitur was issued on August 28, 2015.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 15(a), SCRCP, provides:

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

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

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

> When considering a request to strike or to sever a third-party claim, the court may properly consider 'the effect the additional parties and claims will have on the adjudication of the main action-in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way.' 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1460 at 319 (1971).
>
> In our view, the assertion against four additional parties of seven additional causes of action in the third-party complaint, involving as those causes of action do allegations, among other things, of fraud, negligence, recklessness, outrage, and unfair trade practices, treble damages, and repeated demands for punitive damages, will unduly complicate the adjudication of the relatively simple contract action brought by the plaintiffs. Indeed, the causes of action asserted by Hudson, if tried alongside the plaintiffs' claim, would all but submerge the plaintiffs' claim.
>
> We therefore find no abuse of discretion by the trial court in granting the motion by the third-party defendants to strike the third-party complaint, even were we to conclude that each of the causes of action asserted therein under Rule 14(a) is, as Hudson argues, dependent on the outcome of the plaintiffs' claim. See 6 C. WRIGHT AND A. MILLER, supra § 1446 at 246 ('A third-party claim may be asserted under Rule 14(a) only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant.').
>
> 298 S.C. at 426-27, 380 S.E. 2d at 871

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

6. Conclusion.

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

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

November 10, 2015

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-22-00934

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

Plaintiffs,

vs.

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

Defendants.

# ORDER DENYING MOTION TO ALTER OR AMEND

FILED
GEORGETOWN COUNTY, S.C.
2016 OCT 26 PM 3:05
ALMA Y. WHITE
CLERK OF COURT

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

attorneys, the memorandums submitted in support of the motion and in opposition to the motion and the pleading in this action and in *John Steven Goodwin et al. v. Landquest Development, LLC et al.* (civil action no. 2009-CP-22-1045), I found and concluded, in an order dated November 10, 2015, that the Amended Motion to Amend Answer should be denied.

The matter now before this Court is the Goodwins' and Owenses' Motion to Alter or Amend the order denying their Amended Motion to Amend Answer. Having carefully considered the arguments presented in the motion and the memorandums submitted in support of the motion and in opposition to the motion, I find and conclude that the Motion to Alter or Amend should be denied.

The order denying the Goodwins' and Owenses' Amended Motion to Amend Answer to add twelve (12) new counter-claims, cross-claims and third party claims and to add seven (7) new third party defendants properly addressed each issue raised by the motion. The new issues raised in the Motion to Alter or Amend are not properly before this court. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Lewin v. Lewin*, 396 S.C. 349, 721 S.E.2d 1 (S.C. App. 2012). Therefore, I find and conclude the Motion to Alter or Amend should be denied.

AND IT IS SO ORDERED.

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

~~November~~ October 23, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
DEC 06 2016
SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2016-002379

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc. . . . . . . . . . . . . Respondents,

v.

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

Of Whom

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens are Appellants,

---

CERTIFICATE OF SERVICE

---

Charles T. Smith (S.C. Bar #5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton,
Ronald L. Charlton, and Bayside Property, Inc.

I certify that on the 5th day of December, 2016, I served Respondents' Motion to Dismiss Appeal and Memorandum in Support of Motion to Dismiss Appeal by depositing copies in the United States Mail, with sufficient postage affixed, addressed to:

K. Douglas Thornton, Esquire
Thornton Law Firm, LLC
1025 Third Avenue
Conway, SC 29526
Attorney for John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens

John M. Leiter, Esquire
Law Offices of John M. Leiter, PA
1203 48th Avenue N, Suite 109
Myrtle Beach, SC 29577
Attorney for John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens

Charles T. Smith

Charles T. Smith (S.C. Bar #5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc.

CHARLES T. SMITH
ATTORNEY AND COUNSELOR AT LAW
(843) 545-6578 608 CYPRESS STREET charles.smith@scbar.us
GEORGETOWN, SOUTH CAROLINA 29440

December 5, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: Bonnie N. Charlton, et al. v. South Bay Properties, LLC, et al.
Appellate Case Number 2016-002379

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of Respondents' Motion to Dismiss Appeal and Memorandum in Support of Motion to Dismiss Appeal. Also inclosed are the Certificate of Service and the motion filing fee. By copies of this letter copies of the motion and memorandum are being served on Appellants' counsel.

Sincerely,

Charles T. Smith

Charles T. Smith

Enclosures

cc: Bonnie N. Charlton
K. Douglas Thornton, Esquire
John M. Leiter, Esquire

RECEIVED
DEC 06 2016
SC Court of Appeals