

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2016-0002379

Bonnie N. Charlton, Ronald L. Charlton and  
Bayside Property,.....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, Joyce  
M. Owens, Fount L. Shults, Lynda M. Shults, Dennis  
Ridgeway, Teresa Lynn Ridgeway and Georgetown County  
Forfeited Land Commission,

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

APPELLANTS' MEMORANDUM IN RESPONSE  
TO MOTION TO DISMISS APPEAL

Summary of Relevant Facts and Procedural History

*In September of 2007, Bonnie and Ronald Charlton and Bayside Property, Inc.,  
sold a tract of land on Winyah Bay in the City of Georgetown, South Carolina, to South*

*Bay Properties, LLC for \$20.85 million - \$6.27 million in cash and a \$14.58 million note secured by a mortgage. The mortgage was to be paid in a single installment due September 30, 2008. South Bay – a joint venture of Landquest Development, LLC, C. R. Thompson & Sons, LLC, and Kyle C. Corkum – planned to develop the property into a residential subdivision named the Harbor Club on Winyah Bay.<sup>1</sup>*

Between September 2007 and January of 2008, South Bay sold fifty-four (54) lots, generating \$14,737,600.00 in gross proceeds, of which the Charltons and Bayside received approximately \$11,650,066.68, including the \$6.27 million recited above. John and Louise Goodwin, and Gary and Joyce Owens purchased two (2) of those lots.

Prior to the filing of the Charlton foreclosure on July 9, 2009, numerous individual lot purchasers, all of whom were named by the Respondents in their mortgage foreclosure action, filed a Complaint against the Respondents, and nine (9) other Defendants, including South Bay, bearing Case No. 2009-CP-22-1045 (hereafter referred to as "case 2009-1045"). The Appellants' Complaint asserted twelve (12) causes of action, the eleventh (11<sup>th</sup>) of which asserted an equitable lien, and requested that such equitable lien be declared superior to the Respondents' mortgage. Appellants filed and served a Lis Pendens with the case 2009-1045 Complaint.

South Bay filed for bankruptcy on June 18, 2010, automatically staying all proceedings in which South Bay was involved. South Bay's Bankruptcy was dismissed on August 12, 2011, thereby lifting the automatic stay. Case 2009-1045 was stricken due to South Bay's bankruptcy, by Form-4 Order of the Circuit Court filed on July 22, 2011.

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<sup>1</sup> This Court's Order, issued in Appellate Case No. 2013-000712, on August 12, 2015. A copy of this Order is attached.

The Charltons and Bayside filed for foreclosure of the mortgage on August 31, 2012, approximately four (4) years after South Bay defaulted. The foreclosure action was filed in Case No. 2012-CP-22-00934 ("The Charlton Foreclosure.")

On January 22, 2013, Appellants filed a motion to restore/reinstate case 2009-1045, and to consolidate that action with the Charlton Foreclosure.<sup>2</sup> On that same date, Appellants filed a motion under Rule 15, SCRCF, requesting leave to amend their answer to Respondents' foreclosure complaint, in Case No. 2012-934, in order to add necessary parties and to assert all relevant claims against Respondents and the additional parties, consistent with the causes of action alleged by them in case 2009-1045.

Appellants' motion to restore/reinstate and consolidate was denied by the Circuit Court, as were Appellants' Rule 59(e) motions thereafter, resulting in an appeal of those orders, filed by Appellants on or about July 25, 2013. The Circuit Court's order was reversed and remanded by the Court of Appeals on August 12, 2015, re-filed on December 18, 2015. Respondents' Petition for a Writ of Certiorari was denied by the Supreme Court on October 20, 2016, and Appellants' case 2009-1045, has now been reinstated. Appellants' motion to consolidate their action with the Charlton Foreclosure has yet to be heard.<sup>3</sup>

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<sup>2</sup> A copy of Appellants' original Motion to Amend is attached.

<sup>3</sup> The granting of Appellants' Motion to Consolidate their action with the Charlton Foreclosure, would render this appeal moot. Appellants have requested that the Georgetown County Clerk of Court schedule this motion for hearing, with other pending motions, on January 26, 2017.

As recited in Respondents' Memorandum, an Order referring their foreclosure action was issued on January 28, 2013. The Goodwins and Owenses moved for reconsideration of the order of reference, then moved for reconsideration of the denial of the motion for reconsideration, then appealed. The reason for this appeal, was the inclusion of language by the trial court, in its Form-4 Order denying the last motion for reconsideration, stating that: *"Even though the [Goodwins and Owenses] have a pending Motion to Amend Answer so that they can assert counterclaims, the deadline for requesting a jury trial has expired, and, therefore, the Defendants have waived their right to a jury trial."* The Goodwins and Owenses, therefore, appealed the denial of their Motion to Reconsider this apparent extraneous "ruling" by the trial court.

For the first time, during oral argument of this appeal, the Respondents acknowledged that, due to the status of the Appellants' pleadings at the time of the trial court's "ruling" that they had waived their right to a jury trial, such ruling would not be "the law of the case," and Respondents would not seek to enforce it against Appellants in further proceedings before the trial court.<sup>4</sup> Based on this stipulation, the Court found that the subject order was not appealable. *"At oral argument before this Court, it became clear that the Order being appealed was in fact, not appealable."*<sup>5</sup>

Due to these appeals, the Goodwins' and Owenses' motions to amend their answers, including their amended motion to amend their answers, which was filed solely to include a demand for a jury trial on the face of the amended complaint, was not heard until October 29, 2015. After hearing oral argument on these motions, the

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<sup>4</sup> By directive of this Court, the Clerk of Court transmitted an audio recording of the oral argument of this case to the Circuit Court Clerk, with the Remittitur. The colloquy between Judge Few and Respondents' counsel recited above, is found at 27:24 through 28:20, of such audio recording.

<sup>5</sup> This Court's Order in Appellate Case Number 2013-000712, filed August 12, 2015; re-filed December 16, 2015.

Honorable William H. Seals, Jr., issued his order denying the motions, which was filed on November 16, 2015.<sup>6</sup> Respondents thereafter moved for reconsideration of the November 16, 2015 Order<sup>7</sup>, which was denied by Judge Seals' Order, filed on October 26, 2016.<sup>8</sup> The present appeal is from the November 16, 2015, and October 26, 2016, Orders of Judge Seals, denying their Motions to Amend their Answers.

Appellants take exception to the Respondents' argument that the Appellants *"...did not schedule a hearing or obtain a ruling on the motion to alter or amend."* This action is pending in Georgetown County, in the 15<sup>th</sup> Judicial Circuit. Judge Seals is a Resident Judge of the 12th Judicial Circuit. Appellants' counsel requested that their Motion be scheduled for hearing either in Horry County or in Marion County, Judge Seals' home district."<sup>9</sup>

#### Argument

The Respondents have discussed various aspects of the Orders on Appeal in their Memorandum. Appellants have yet to receive the transcript of the hearing before Judge Seals, and have therefore not filed Appellants' Brief, setting forth the grounds that they believe support reversal of the orders. Appellants will briefly address each of the matters raised by Respondents, as follows:

1. Judge Seals' Order of November 16, 2015 ("the Order"), found that: *"Another Action is pending between these Same Parties [sic] for the Same Claims."* (p. 3 of the Order).

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<sup>6</sup> A copy of this Order is attached to Respondents' Memorandum.

<sup>7</sup> A copy of Appellants' Motion for Reconsideration is attached.

<sup>8</sup> A copy of this Order is attached to the Respondents' Memorandum.

<sup>9</sup> A copy of an email from K. Douglas Thornton to the Georgetown County Clerk of Court, dated April 18, 2016, requesting that Appellants' Motion for Reconsideration be scheduled as indicated above, is attached.

As discussed above, the other action being referred to in this part of the Order, was case 2009-1045, which was on appeal at the time the Order was issued. The Order denying Appellants' motion to reinstate/restore held that, because the motion to reinstate/restore was denied, Appellants' motion to consolidate that action with the Charlton foreclosure case, was moot.<sup>10</sup> With the Court of Appeals' reversal of the Order denying Appellants' motion to reinstate/restore, Appellants' concurrent motion to consolidate should now be heard, and granted. This will render Appellants' motion to amend, and this appeal, moot. Similarly, the Rule 12(b)(8), SCRCP, basis for this portion of the Order denying Appellants' motion to amend, would also be rendered moot. Appellants were forced to attempt to assert the counterclaims, cross-claims and third party claims set forth in their proposed amended answer, in order to avoid waiving such compulsory claims. This was only necessary because case 2009-1045 was on appeal, and Appellants' motion to consolidate the two actions had not been heard.

2. Respondents argue, as the order finds, that: *"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 Charltons' mortgage foreclosure."* (p. 5 of the Order; p. 2 of Respondents' Memorandum.) Rule 14(a), SCRCP, states, in pertinent part, that:

*"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."*

In broad summary, the allegations of Appellants' case number 2009-1045, against Respondents and other defendants, all of which are virtually identical to the allegations

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<sup>10</sup> A copy of the Order Denying Appellants' Motion to Reinstate/Restore, is attached.

set forth in the counterclaims, cross-claims, and third party claims of Appellants' proposed amended answer, contend that the Respondents, Landquest Development, LLC, Kyle V. Corkum, South Bay and C.R. Thompson & Sons, were joint venturers; that, as joint venturers, they and their marketing realtor, Defendant/Third Party Defendant National Land Sales, Inc., negligently, recklessly and fraudulently misrepresented material facts about the subdivision; and, that they committed a civil conspiracy in the process of such misrepresentations. The pleadings set forth other causes of action, including a claim to an equitable lien, with superior priority to the Respondents' mortgage.

The fact that Respondents included the Appellants as Defendants to their foreclosure action, because of their still-pending Lis Pendens, is an admission that the claims which Appellants seek to assert against them, are derivative of the Respondents' claims. This is further elucidated below. In order to incorporate into their foreclosure action, the Appellants' claim to an equitable lien, superior to Respondents' mortgage, which facts are only pleaded in case 2009-1045, Respondents should be required to move for consolidation of these two actions themselves.

A key fact or circumstance supporting the theory of Respondents' joint and several liability, as joint venturers and co-conspirators with the other developers, was disclosed by Defendant/Third Party Defendant Kyle V. Corkum, both in deposition testimony and in testimony offered during South Bay's bankruptcy proceedings. The gist of this testimony is that Mr. Corkum informed one or both of the Charltons, prior to the execution of the Promissory Note by South Bay and the filing of the mortgage by South Bay in favor of the Charltons, and therefore prior to any of the lot closings which

took place between September 2007 and January 2008, that a \$10,000,000.00 construction loan commitment in favor of South Bay, had been withdrawn by its bank. As a result, there were no funds available to construct the infrastructure or amenities. The infrastructure and amenities constituted a vast majority of the market value of the lots which were being sold to the individual purchasers, including the Goodwins and Owenses.

After informing the Charltons that the development loan had been withdrawn, Mr. Corkum allowed the Charltons to decide whether to proceed with the individual lot closings that had already been scheduled, or to cancel the closings, refund the purchasers' earnest money, and close the doors on this subdivision. The Charltons, who at that time had approximately \$7,000,000.00 of personal debt secured by the subject property, made the decision to proceed with the 29 lot closings, which had already been scheduled for September 17, 2007. These closings generated gross revenues of \$7,926,550.00, of which the Charltons received approximately \$6,269,337.18.<sup>11</sup>

The Respondents' promissory note and mortgage would not exist, but-for the Respondents' bad faith decision to proceed with these individual lot closings, from which they ultimately received approximately \$11,650,066.68.

Despite the fact that the Respondents' foreclosure complaint fails to allege the priority of their mortgage lien, and fails to mention the Appellants' claim for an equitable

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<sup>11</sup> These figures are based on closing statements collected by the Appellants' counsel, and by a title examination conducted by Appellants' counsel. These matters are not yet "in the record," because neither discovery nor the trial of this case have occurred. Between September 29, 2007, and January 4, 2008, the joint venturers/co-conspirators, closed on another 25 lots in the subdivision, generating additional gross revenues of \$6,811,050.00, of which Respondents received approximately \$5,380,729.50.

lien<sup>12</sup>, the Respondents have been allowed to incorporate the Appellants' equitable lien claim into their foreclosure case.<sup>13</sup> Appellants strenuously object to the Respondents being able to attack, and possibly defeat the Appellants' claims within the foreclosure case, while not being allowed to pursue their substantial claims in the same action. The claims asserted by Appellants in their proposed third party complaint are both derivative and compulsory.

3. Respondents next argue, consistent with Judge Seals' Order, that Appellants knew about the claims they are attempting to raise in their amended answers, no later than July 9, 2009, the date they filed case 2009-1045. Because the Appellants' motion to amend their answer was not filed until January 22, 2013, more than three (3) years after Appellants knew or should have known of such proposed claims, Judge Seals denied the amendment, finding that they were barred by the statute of limitations. To reiterate, case 2009-1045 was on appeal at the time of these motion arguments, and Appellants argued that the statute of limitations would not expire if they prevailed on appeal. Conversely, Appellants stipulated that if they lost their appeal, the subject motion to amend their answers would be moot, as the statute of limitations would have, in fact, expired. Because Appellants prevailed on the Appeal of that issue, this finding by Judge Seals was in error.

4. Respondents next contend that Judge Seals was correct in finding that the proposed amendment of Appellants' answers would violate the requirements of Rule 15(a), SCRPC, by resulting in prejudice to the Respondents, and other proposed third parties. For the reasons discussed hereinabove, to be more fully addressed in

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<sup>12</sup> A copy of Respondents' foreclosure complaint is attached to Respondents' Memorandum.

<sup>13</sup> A copy of the Master in Equity's Order filed on April 27, 2016, granting Respondents the right to proceed with discovery on this issue, is attached.

Appellants' Brief, and because of the Respondents' unclean hands, Appellants respectfully submit that their proposed amendments would not result in any cognizable prejudice to the Respondents or any of the third party defendants. The prejudice to the Appellants of having their claims against Respondents and the third party defendants excluded, while simultaneously allowing the Respondents to attempt to defeat Appellants' claims for an equitable lien, and other substantial relief, is far more prejudicial, and will cause an unjust result. Judge Seals' findings of prejudice to the Respondents, and the proposed third parties, also constitute improper findings on the relative merits of the parties' claims. See: The City of North Myrtle Beach v. Norma Lewis-Davis and Nancy Lewis Worriax, 360 S.C. 225, 599 S.E.2d 462 (Ct. App. 2004).

#### Relevant Law

The Respondents' motion to dismiss the Appeal, and their Memorandum, rely entirely upon 1 case: Baldwin Construction Co., Inc. vs. Graham, 357 S.C. 227, 593 S.E.2d 145 (2004). The Respondents' reliance on Baldwin is misplaced. The facts in Baldwin are easily distinguishable from those in the present case, and Appellants' believe that the Supreme Court's decision in Baldwin should be narrowly construed, based upon its facts.<sup>14</sup>

In Baldwin, the defendants initially attempted to represent themselves, and filed a letter in response to Baldwin's complaint, which letter was construed as an answer. After failing to appear for their scheduled depositions; being sanctioned for such failure to appear; and submitting to their depositions under threat of further sanctions, the Defendants retained counsel more than a year after the complaint had been served.

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<sup>14</sup> Pursuant to Rule 217, S.C.A.C.R., Appellants intend to file a motion for leave to argue against the apparent Baldwin precedent, at the appropriate time.

The Defendants' counsel then moved for leave to file an amended answer, set-offs, and counterclaims, and also moved for a jury trial at this time. These motions were denied by the trial court, due to the substantial prejudice that would have resulted to Baldwin by the addition of numerous new issues at this late stage of the case, which, in turn, would have required substantial additional discovery.

The Court of Appeals found that the order denying the defendants' motion to amend was immediately appealable, focusing on their right to a jury trial, on the breach of contract cause of action they sought to bring through their amended answer.

The Supreme Court found, however, that:

*[T]his reasoning "puts the cart before the horse." Instead of deciding whether an order denying a motion to amend an answer is appealable, the Court of Appeals focused on whether the not yet – amended answer would ultimately lead to a jury trial. 'Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann., Section 14-3-330 (1976 & Supp. [2002]).' Woodard v. Westvaco Corp., 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds Sabb v. South Carolina State University, 350 S.C.416, 567 A.E.2d 231 (2002).*

The Supreme Court found that only subsection (c) of Section 14-3-330(2) would apply.

The Court then concluded that this portion of Section 14-3-330(2), did not support a reversal of the trial court's decision or affirmance of the Court of Appeals' decision, because "...*the trial judge did not strike a pleading, but refused to allow its filing.*" citing: Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988, Id.). The Court therefore found that the order denying the Appellants' motion to amend their answer was not immediately appealable, noting that: "*Petitioners have not 'arrived' at the end of the road, and will be able to appeal the decision after the trial is finished.*"

(citing: Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993).)

It is relatively clear that the Appellants' motion to amend in Baldwin was denied because it was filed more than one year after the complaint, the defendants had failed to cooperate in the discovery process, and the plaintiff/respondent would have been substantially prejudiced. In the present case, the Appellants' motion to amend was filed just two (2) months after their original answers were filed; no discovery had commenced; and there would have been no cognizable prejudice to the Respondents or any of the proposed additional parties.

A better approach for the Court's analysis may be to first determine whether the motion to amend was timely and meritorious. If so, the second step would be to determine whether the denial of such motion resulted in an order which affected a substantial right, making the order immediately appealable under Section 14-3-330.

In the present case, Appellants contend that the orders on appeal are subject to immediate appeal, in accordance with Section 14-3-330(1), because they involve the merits of Appellants' proposed amended pleadings. The orders also qualify for immediate appeal under Section 14-3-330(2), because they affect substantial rights of the Appellants, and prevent a judgment from which an appeal might be taken. Further, the effect of denying Appellants' motion to amend, is the equivalent of striking an answer or part thereof.

In Thornton v. South Carolina Electric & Gas, Corp., 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011), the Court of Appeals reviewed numerous precedential decisions in support of its conclusion that: *"We believe a narrow construction of Section 14-3-*

330(2)(c) requires us to focus on the effect of the order, not the label given to the motion or to the order granting it.” This Court cited Bowen v. Powell, 194 S.C. 482, 10 S.E.2d 8 (1940) for the ruling that:

*“If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings Id. (citing: Harbert v. Atlanta and Charlotte Airline Railway Co., 74 S.C.13, 16, 53 S.E. 1001-2 (1902).)*

The Thornton court then concluded:

“Under the reasoning of Miles [vs. Charleston Light and Water Co., 87 S.C. 254, 69 S.E. 292 (1910)] and Bowden, an appellate court should look to the effect of an interlocutory order to determine the appealability under Section 14-3-330(2)(c). An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.

In the present case, Judge Seals’ order denying Appellants’ motion to amend prevents numerous material issues from being litigated in this case, on the merits, and therefore prevents the Appellants from seeking to correct any errors in the order during or after trial. Further, as a consequence of the denial of Appellants’ motion to amend, Appellants will also be denied their constitutional right to a jury trial on the several legal causes of action which they have attempted to assert in their amended pleadings.

In Baldwin, supra, the defendants were entitled to request a jury trial when they filed their letter/answer, because plaintiff’s complaint set forth one or more legal causes of action (i.e., breach of contract). In the present case, Appellants were not entitled to demand a jury trial at the time they filed their qualified general denials, because the

Respondents' mortgage foreclosure action is quintessentially equitable. Thus, the immediate appealability of Judge Seals' order is also affected, by its effect upon the Appellants' entitlement to a jury trial.

As this Court held in Gates at Williams-Brice Condo. Ass'n v. DDC Constr., Inc., 418 S.C. 282, 792 S.E.2d 240 (Ct. App. 2016): *"Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable."* [citing: Foggie v. CSX Transportation, Inc., 313 S.C. 17, 431 S.E.2d 587 (1993).] In Gates, this court reviewed numerous other cases, including Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997), an attorney's fee collection matter. The defendant client in Lester had moved for a jury trial on two separate occasions, both of which were denied by the circuit court. These denials were not appealed. The defendant renewed his motion for a jury trial during the bench trial, which was again denied. Following trial, the court denied the defendant's motion for reconsideration, which included the alleged error of the circuit court in denying his renewed motion for a jury trial. *"Citing to Foggie, our Supreme Court stated that orders affecting the mode of trial affect substantial rights under our appellate jurisdiction statute and, therefore, must be appealed immediately. Id. at 266, 491 S.E.2d 241. The client's failure to do so precluded the Supreme Court's review of the issue on appeal. Id.*

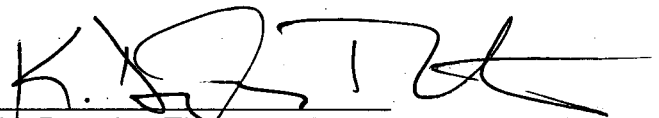
In the present case, Appellants would be deemed to have waived their right to a jury trial, if they failed to immediately appeal Judge Seals' order denying their motion for leave to amend their answers. Appellants' right to a jury trial does not exist without the amendment, and denial of the proposed amendment affects substantial rights, distinct from the mode of trial, under Section 14-3-330. Any apparent inconsistency between

Gates, Thornton, and Baldwin, can be resolved by narrowly construing Baldwin, based on the material facts supporting that decision. These issues should be addressed by this Court, after full briefing by the parties, in order to avoid the enforcement of an order which detrimentally affects very substantial rights of the Appellants, and deprives them of the mode of trial to which they are entitled.

Summary

For the reasons set forth hereinabove, Appellants respectfully request that the Respondents' motion to dismiss their appeal be denied, and that this matter proceed for further review.

Respectfully submitted:



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ATTORNEYS FOR APPELLANTS

Conway, South Carolina

January 16, 2017

# The South Carolina Court of Appeals

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

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. 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, 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 the Appellants,

and

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc., South Bay Properties, LLC, Stantec Consulting Services, Inc., f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., Patrick A. DiAngelo, Deborah A. DiAngelo, and Georgetown County Forfeited Land Commission, are the Respondents.

Appellate Case No. 2013-000712

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ORDER

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In September 2007, Bonnie and Ronald Charlton and Bayside Property, Inc. sold a tract of land on Winyah Bay in the city of Georgetown, South Carolina, to South Bay Properties, LLC for \$20.85 million—\$6.27 million in cash and a \$14.58 million note secured by a mortgage. The mortgage was to be paid in a single installment due September 30, 2008. South Bay—a joint venture of Landquest Development, LLC, C.R. Thompson and Sons, LLC, and Kyle C. Corkum—planned to develop the property into a residential subdivision named the Harbor Club on Winyah Bay. In anticipation of the sale, South Bay obtained a \$7,882,359 subdivision performance bond on July 13, 2007, from Hartford Casualty Insurance Company which allowed South Bay to sell lots prior to construction of the infrastructure. South Bay took advantage of this opportunity and sold fifty-four lots, generating \$14,737,600 in proceeds. Two of those lots were purchased by John and Louise Goodwin and Gary and Joyce Owens.

The subdivision performance bond required South Bay to complete site infrastructure—roads and utilities—within one year. When South Bay failed to do so, a number of the lot owners filed suit ("lot owners' suit") in Georgetown County on July 9, 2009, and recorded a lis pendens on the subdivision land still owned by South Bay.

On June 18, 2010, South Bay filed for bankruptcy in the U.S. Bankruptcy Court for the Eastern District of North Carolina, which automatically stayed all proceedings in which South Bay was involved. On August 12, 2011, the bankruptcy court dismissed South Bay's case, which also had the effect of lifting the automatic stay.

On August 31, 2012, the Charltons and Bayside filed for foreclosure of the mortgage. They named as defendants any party that "may have or claim" an interest or lien on the premises as a defendant to the suit, including the Goodwins and Owenses. At this point in time, the Goodwins and Owenses had not moved to restore their case in the lot owners' suit. The Goodwins and Owenses answered the foreclosure complaint on the 5th and 19th of November 2012, respectively. Their answers contained only a general denial of the allegations in the complaint. Also on November 19, 2012, the Charltons and Bayside filed a motion for an order of reference to the master-in-equity.

On January 22, 2013, the Goodwins and Owenses filed two motions. The first motion was a request to reinstate/restore the lot owners' complaint and lis pendens and to consolidate two cases—the lot owners' suit and the foreclosure suit. The

second motion was to amend the Goodwins' and Owenses' answer in the foreclosure suit.

At the hearing on January 22, 2013, on the motion for an order of reference, the Charltons and Bayside stressed that a referral to a master-in-equity was proper as the Goodwins and Owenses did not request a jury trial. In reply, the Goodwins and Owenses informed the circuit court that their proposed amended answer included claims, counterclaims, and cross-claims against South Bay and others as to which they had a right to trial by jury. At the conclusion of the hearing, the circuit court addressed the two motions—the motion to reinstate/restore and the motion to amend the Goodwins' and Owenses' answers—that the court noted were "just filed this morning," finding "those issues aren't before the Court." Next, the circuit court ordered the referral, noting the "master-in-equity can hear [that] motion[]," referring to the motion to amend. The order of reference was filed on January 28, 2013.

On February 11, 2013, the Goodwins and the Owenses filed a motion to reconsider, and again emphasized their entitlement "to a jury trial on the legal issues asserted in their Counterclaims, Crossclaims and Third Party Complaint." The circuit court denied the motion to reconsider in a Form 4 dated February 22, 2013, noting that "[e]ven though the [Goodwins and Owenses] have a pending Motion to Amend Answer so that they can assert counterclaims, the deadline for requesting a jury trial has expired and, therefore, the defendants have waived their right to a jury trial." On March 7, 2013, the Goodwins and Owenses filed a second motion to reconsider asking the circuit court to reconsider its ruling that the deadline for requesting a jury trial had expired and that their right to a jury trial had been waived. On March 21, 2013, the master issued an order returning the foreclosure suit to the circuit court, finding it had a conflict of interest.

At oral argument before this court, it became clear that the order being appealed was in fact, not appealable. All parties were in agreement that at the time the circuit court ruled to deny reconsideration of the order of reference in the Form 4, the right to a jury trial did not exist, because there were no causes of action at that time for which a jury trial could have been demanded and that the motion to amend—which has yet to be ruled on—if granted, would then allow the Goodwins and Owenses to demand a jury trial. Therefore, we dismiss the appeal. 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. For any necessary clarification, the parties and the circuit court should listen to the discussion this court had with counsel at oral argument. The

clerk of this court shall transmit an audio recording of oral argument to the circuit court clerk with the remittitur.

John Cannon Jr C.J.  
Thomas C. Hoff J.  
H. Bruce Williams J.

Columbia, South Carolina

cc:

John M. Leiter, Esquire  
K. Douglas Thornton, Esquire  
Charles T. Smith, Esquire  
Wesley Paul Bryant, Esquire  
John Whitfield Davidson, Esquire  
Byron L. Saintsing, Esquire  
Kristen G. Atkins, Esquire  
Donald G. Hunt, Jr., Esquire  
Patrick A. and Deborah A. DiAngelo

**FILED**

August 12, 2015

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )  
 )  
 John Steven Goodwin, et al. )  
 Plaintiff, )  
 vs. )  
 Landquest Development, LLC, et al. )  
 Defendant. )

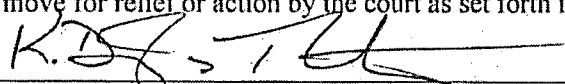
IN THE COURT OF COMMON PLEAS  
 15th JUDICIAL CIRCUIT  
 2012 934  
 CASE NO.: 2009-CP-22-1045

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: K. Douglas Thornton, Bar No. 5565 Address: 1025 Third Ave., Conway, SC 29526 Phone: 843-488-5858 Fax 843-488-5859 E-mail: kdouglasthornton@gmail.com Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
--	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

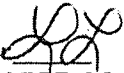
**SECTION I: Hearing Information**  
 Nature of Motion: Motion to Amend  
 Estimated Time Needed: 15 Min. Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**  
 Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.  
  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted 1-21-13

**SECTION III: Motion Fee**  
 PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)
 

<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect
<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party
<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief
<input type="checkbox"/> Motion for Stay in Bankruptcy
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
<input type="checkbox"/> Other: _____

<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

**CLERK'S VERIFICATION**  
 Collected by  Date Filed: 1/22/13  
 MOTION FEE COLLECTED: \$ 25  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

FILED  
 GEORGETOWN COUNTY, S.C.  
 ALMA Y. WHITE  
 CLERK OF COURT  
 2013 JAN 22 AM 10:28

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, )

Third Party Plaintiffs, )

MOTION TO AMEND ANSWER  
(Rule 15, SCRCP)

FILED  
GEORGETOWN COUNTY, S.C.  
2013 JAN 22 AM 10:28  
ALMA Y. WHITE  
CLERK OF COURT

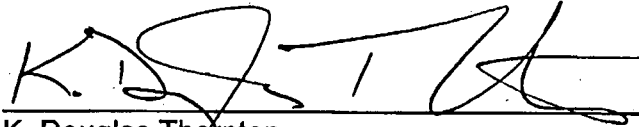
vs. )  
 )  
 )  
 Landquest Development, LLC, )  
 Kyle V. Corkum, South Bay )  
 Properties, LLC, C.R. Thompson )  
 and Sons, LLC, The City of )  
 Georgetown, Hartford Casualty )  
 Insurance Company, Hartford )  
 Fire Insurance Company, and )  
 National Land Sales, Inc., f/k/a )  
 Source One 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 10<sup>th</sup> 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"**.

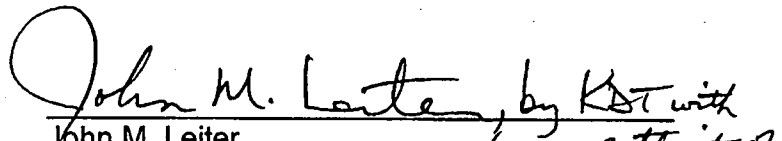
In support of this Motion, Defendant would show the Court that this amendment  
 does not prejudice any other party, and is necessary for purposes of judicial economy,  
 to enable Defendant to assert all necessary defenses, affirmative defenses,  
 counterclaims, cross-claims, and Third Party Complaints 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](mailto:kdouglasthornton@gmail.com)

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



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

*by KDT with  
express authority of  
JML*

ATTORNEYS FOR PLAINTIFFS

Conway, South Carolina

Dated: 1/21/13



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
15<sup>TH</sup> 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 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 I. Spillers (a/k/a) )  
Robert Spiller, Deborah T. )  
Spillers (a/k/a Deborah A. )  
Spillers), Patrick A. DiAngelo, )  
Deborah A. DiAngelo, Gary E. )  
Owens, Joyce M. Owens, Fount )  
L. Shults, Linda M. Shults, )  
Dennis Ridgeway, Teresa Lynn )  
Ridgeway and Georgetown )  
County Forfeited Land )  
Commission, )

Defendants. )

NOTICE OF MOTION AND MOTION  
TO ALTER OR AMEND  
(Rule 59(e))

TO: Plaintiffs, and their attorney, Charles T. Smith:

YOU WILL PLEASE TAKE NOTICE THAT the Defendants John Steven

Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens, hereby move

Charlton, et al. vs. South Bay Properties, LLC, et al.

2012-CP-22-00934

Notice of Motion and Motion to Alter or Amend (Rule 59(e))

Page 1

before this Honorable Court for an order altering or amending its order filed herein on November 16, 2015, and served upon these Defendants by first class mail on that date, reversing such order and awarding Defendants the right to amend their pleadings, pursuant to Rule 15, SCRCF. In support of this Motion, Defendants would respectfully show the Court as follows:

1. The first ground for denial of Defendants' Motion to Amend is based upon Rule 12(b)(8), SCRCF, due to the pendency of Case Number 2009-CP-22-1045. This finding is erroneous, in that Case Number 2009-CP-22-1045, which is currently on Appeal, is accompanied by a Motion to Consolidate that action with the present action. If granted, the Motion to Consolidate would avoid the strictures of Rule 12(b)(8), SCRCF. Further, Defendants asserted virtually identical claims in the present action, as those asserted in 2009-CP-22-1045, for the purpose of avoiding the potential argument by Plaintiffs that Defendants waived such claims by failing to assert them in the present action.

2. The November 16, 2015 Order next finds that Defendants' Motion to Amend should be denied, because: *"None of the proposed Third Party claims are founded on derivative liability. None of the Third Party claims are dependent on the outcome of the Plaintiffs' case."* This finding is erroneous, and fails to take into consideration the Defendants' assertions that Plaintiffs were responsible for proceeding with the individual lot closings, after they were notified by the co-developers, South Bay Properties, LLC and Kyle Corkum, that such co-developers had lost their funding of the subdivision, which was needed for construction of infrastructure and amenities. The vast majority of the "value" of the individual lots, upon which relevant purchase contracts

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Charlton, et al. vs. South Bay Properties, LLC, et al.

2012-CP-22-00934

Notice of Motion and Motion to Alter or Amend (Rule 59(e))

Page 2

and lot financing were determined, was based upon the timely construction/installation of infrastructure and amenities. Defendants contend that Plaintiffs elected to proceed with the individual lot closings, in order to obtain funds with which to satisfy approximately \$7 Million Dollars of their personal debt, which was secured by the subdivision property. If these allegations and assertions are found to be true, the promissory note and mortgage upon which Plaintiffs have filed the within foreclosure action, are derivative of these acts by Plaintiffs, and would not exist but-for this self-serving decision by Plaintiffs

In considering a motion to amend, pursuant to Rule 15, leave to amend should *be freely given when justice so requires and does not prejudice any other party.* (Rule 15(a).) The Court should not consider the merits of the proposed amended pleadings, if well pled, nor its perception of the likelihood of success on the merits. *The City of North Myrtle Beach vs. Norma Lewis-Davis and Nancy Lewis Worriax*, 360 S.C. 225, 599 S.E.2d 462 (Ct. App. 2004). Defendants' proposed amended pleadings set forth meritorious claims, including substantive claims against Plaintiffs and the proposed Third Party Defendants, and the claims alleged against Plaintiffs are derivative liability claims, in accordance with Rule 14, SCRPC.

3. This Court's Order next finds that the proposed counterclaims, cross-claims, and Third Party claims are barred by the statute of limitations. This finding is in error, and would only be correct if Defendants' Appeal of Case Number 2009-CP-22-1045 is not successful.

4. This Court's Order next finds that granting leave to amend Defendants' Answers would prejudice other parties, and should therefore not be granted. This constitutes error on three (3) grounds:

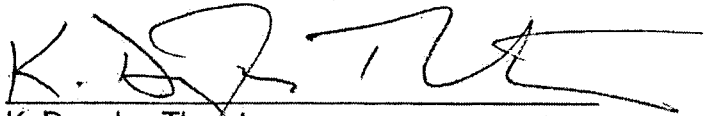
A. Plaintiffs come before this Court with unclean hands, if the allegations of Defendants' amended answer, counterclaims and third party complaints are found to be true;

B. Defendants consider their counterclaims and third party complaint to constitute compulsory claims/counterclaims, which would be waived if not asserted herein; and

C. Any delay occasioned by the amendment of Defendants' answers is not cognizable prejudice, inasmuch as this action has recently been restored, following Appeal. No discovery has yet been conducted; and if the counterclaims and third party claims asserted by Defendants are meritorious, as Defendants contend they are, any alleged prejudice to Plaintiffs is far outweighed by the prejudice the denial of Defendants' requested amendment would cause Defendants.

This Motion will be supported by such other and further fact and law as may appear necessary and appropriate at hearing hereof.

THORNTON LAW FIRM, LLC



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

John M. Leiter, Esquire  
1203 48<sup>th</sup> Avenue, North, Suite 109  
Myrtle Beach, South Carolina 29577  
Telephone: (843) 449-1451  
[jleiter@48th.com](mailto:jleiter@48th.com)

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

Conway, S.C.  
December / , 2015

---

Charlton, et al. vs. South Bay Properties, LLC, et al.  
2012-CP-22-00934

Notice of Motion and Motion to Alter or Amend (Rule 59(e))

Page 4

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
15<sup>TH</sup> 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 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 I. Spillers (a/k/a) )  
Robert Spiller), Deborah T. )  
Spillers (a/k/a Deborah A. )  
Spillers), Patrick A. DiAngelo, )  
Deborah A. DiAngelo, Gary E. )  
Owens, Joyce M. Owens, Fount )  
L. Shults, Linda M. Shults, )  
Dennis Ridgeway, Teresa Lynn )  
Ridgeway and Georgetown )  
County Forfeited Land )  
Commission, )

Defendants. )

CERTIFICATE OF SERVICE

I, Regina R. Cagle, an employee of Thornton Law, LLC, certify that a copy of Defendants' John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens' Motion and Order Coversheet and Notice of Motion and Motion to Alter or Amend (Rule 59(e)), in the above captioned matter, were served upon the following

---

Charlton, et al. vs. South Bay Properties, LLC, et al.  
2012-CP-22-00934

Notice of Motion and Motion to Alter or Amend (Rule 59(e))

Page 1

attorneys and/or litigants, this 1<sup>st</sup> day of December, 2015, by depositing said documents in the U.S. Mail, with proper postage affixed thereto, and addressed as follows:

Charles T. Smith, Esquire  
608 Cypress Street  
Georgetown, SC 29440  
Attorney for Plaintiffs

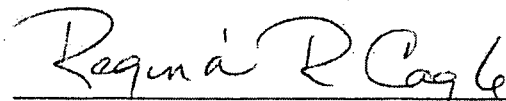
Patrick A. DiAngelo  
Deborah A. DiAngelo  
1713 Perdez Covey  
Myrtle Beach, SC 29588  
Defendants

John W. Davidson, Esquire  
Nexsen Pruet  
P. O. Drawer 2426  
Columbia, SC 29202  
Attorney for Stantec Consulting Service, Inc.

Byron L. Saintsing, Esquire  
Smith Debnam  
P. O. Box 26268  
Raleigh, NC 27611-6268  
Attorney for Milone & MacBroom, Inc.

Wesley P. Bryant, Esquire  
Georgetown County Attorney  
P.O. Box 42120  
Georgetown, SC 29442  
Attorney for Georgetown County Forfeited  
Land Commission

Donald G. Hunt, Jr., Esquire  
Atkins Hunt Atkins, PC  
P. O. Box 266  
Fuquay-Varina, NC 27526  
Attorney for South Bay Properties, LLC

  
Regina R. Cagle

December 1, 2015



Douglas Thornton &lt;kdouglasthornton@gmail.com&gt;

---

**Bonnie N. Charlton, et al. vs. South Bay Properties, LLC, et al. (Case No.: 2012-CP-22-00934)**

1 message

---

**Douglas Thornton** <kdouglasthornton@gmail.com>

Mon, Apr 18, 2016 at 9:56 AM

To: Jennifer Lawrence &lt;jlawrence@gtcounty.org&gt;

Cc: "Charles Smith, Esq." &lt;charles.smith@coastallaw.net&gt;, John Leiter &lt;jleiter@48th.com&gt;, wbryant@gtcounty.org, kga@akinshunt.com, jdavidson@nexsenpruet.com, Deborah DiAngelo &lt;dbbacc@yahoo.com&gt;

Jennifer:

We have a pending Motion to Alter or Amend (Rule 59(e)) in the above captioned action. This Motion was served upon all parties, and Judge Seals, on December 10, 2015. We realize that Judge Seals presides in Marion County. Could you let us know if he will be in Georgetown County in the near future, or should we contact him directly in Marion County to ask that he scheduled it there?

—  
K. Douglas Thornton  
Thornton Law Firm, LLC  
1025 Third Avenue  
Conway, S.C. 29526  
Phone: (843) 488-5858 / Fax: (843) 488-5859  
<http://www.thorntonlawfirmllc.com/>

This message and any attached documents contain information from K. Douglas Thornton, Attorney at Law, that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message. Thank you.



*Bay Properties, LLC, et al.* (case number 2012-CP-22-00934). Arguments in support of the motions were presented by John M. Leiter and K. Douglas Thornton, attorneys for the Plaintiffs. Arguments in opposition to the motions were presented by Lawrence M. Hershon, attorney for Hartford Casualty Insurance Company and Hartford Fire Insurance Company, Elise F. Crosby, attorney for The City of Georgetown, and Charles T. Smith, attorney for Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc.

#### FACTS

This action concerns a real estate development in the City of Georgetown known as Harbor Club on Winyah Bay. The Goodwins purchased Lot 160 on September 17, 2007 and the Owens purchased Lot 94 on December 21, 2007. The other Plaintiffs purchased lots in Harbor Club on Winyah Bay between September 17, 2007 and December 21, 2007.

The Complaint, filed July 9, 2009, alleges twelve causes of action and names twelve defendants. The causes of action include claims for breach of contract, violation of the South Carolina Unfair Trade Practices Act, negligent misrepresentation, fraud, violation of the Interstate Land Sales Full Disclosure Act, violation of the South Carolina Uniform Land Sales Full Disclosure Act, equitable lien and civil conspiracy pertaining to the real estate development. The Complaint also alleges there was an amalgamation of corporate interests, entities and activity so as to establish a joint venture partnership between various Defendants.

This action was struck from the docket on July 22, 2011 due to the bankruptcy of South Bay Properties, LLC. The bankruptcy was dismissed twenty days later on August 12, 2011.

The motion to restore this action to the docket was not filed until January 22, 2013, eighteen months after the action was stricken.

#### ANALYSIS

*Graham v. Dorchester County School District*, 339 S.C. 121, 528 S.E.2d 80 (Ct. App. 2000) addressed a similar factual situation. There the trial court dismissed the case with prejudice because Graham's motion to restore, made after the time allowed by Rule 40(j), SCRPC, was not timely. The Court of Appeals stated: "Rule 40(j) required motions to restore be made within one year of the case being stricken to take advantage of the tolling of the statute of limitations." 528 S.E.2d at 82. The statute of limitations had expired on Graham's cause of action by the time the motion to restore was filed so the decision of the trial court was affirmed.

*Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003) arose from an automobile accident. The action was stricken from the docket on April 13, 1999. On May 1, 2000, one year and eighteen days after the case was stricken, Maxwell moved to restore the case. The circuit court denied Maxwell's motion to restore. The Court of Appeals found there was good cause to enlarge the time for filing the motion to restore and reversed the circuit court. The Supreme Court stated:

"Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period. . . . A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of . . .

Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule.” 591 S.E.2d at 28.

The Supreme Court concluded that the Court of Appeals erred in holding that the one year deadline established by Rule 40(j) may be extended for good cause and reversed the Court of Appeals’ decision allowing restoration of the case.

In the present action the statute of limitations on the Plaintiffs’ claims was not tolled by Rule 40(j) because the motion to restore the action to the docket was filed more than one year after the action was stricken. 11 U.S.C.A. §108(c) provided the Plaintiffs an extension of time because of South Bay Property, LLC’s bankruptcy. But, the extension of time expired thirty days after notice of the termination or expiration of the bankruptcy stay. The bankruptcy was dismissed on August 12, 2011, seventeen months before the motion to restore was filed. Therefore, I find and conclude that the Plaintiffs’ claims are barred by the statute of limitations and restoration of this case should be denied. Since restoration of this case is denied, consolidation of this case with *Bonnie N. Charlton et al. v. South Bay Properties, LLC, et al.* (case number 2012-CP-22-00934) is moot.

#### CONCLUSION

The motions to restore this action to the docket and to consolidate this action with *Bonnie N. Charlton et al. v. South Bay Properties, LLC, et al.* (case number 2012-CP-22-00934) are denied.

AND IT IS SO ORDERED.



Benjamin H. Culbertson  
Resident Circuit Court Judge

March 26, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2009-CP-22-1045

John Steven Goodwin, Louise C. Goodwin, )  
Thomas I. Puckett and Brenda C. Puckett, )  
Robert Nahama and Jeanne E. Nahama, )  
Thomas Holland and Sharon Louise )  
Holland, Joyce C. Sobel, Robert W. )  
Waruszewski, Richard N. Taylor, Robert )  
K. Spillers (a/k/a Robert Spillers), and )  
Deborah T. Spillers (a/k/a Deborah )  
Spillers), Patrick A. DiAngelo and )  
Deborah A. DiAngelo, Gary E. Owens and )  
Joyce M. Owens, Fount L. Shults and )  
Lynda M. Shults, and Dennis Ridgeway )  
and Teresa Lynn Ridgeway, )

Plaintiffs, )

vs. )

Landquest Development, LLC, Kyle C. )  
Corkum, South Bay Properties, LLC, C. )  
R. Thompspon and Sons, LLC, Ronald L. )  
Charlton, Bonnie N. Charlton, James R. )  
Charlton and Bayside Property, Inc., 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, )

Defendants. )

**CERTIFICATE OF MAILING**

FILED  
GEORGETOWN COUNTY, SC  
2013 MAR 27 AM 10:30  
ALMA Y. WHITE  
CLERK OF COURT

I hereby certify that on the 27<sup>th</sup> day of March, 2013, I mailed copies of the Order Denying  
Motions to Restore and to Consolidate to:

K. Douglas Thornton, Esquire  
Thornton Law Firm., LLC  
1025 Third Avenue  
Conway, SC 29526  
Attorney for the Plaintiffs

Kristen G. Atkins, Esquire  
Atkins Hunt, P.C.  
134 N. Main Street, Suite 204  
Post Office Box 266  
Fuquay-Varina, NC 27526  
Attorney for Landquest Development, LLC,  
Kyle V. Corkum and South Bay Properties, LLC

Elise F. Crosby, Esquire  
Crosby Law Firm, LLC  
405 Dozier Street  
Georgetown, SC 29440  
Attorney for The City of Georgetown

Andrew F. Lindemann, Esquire  
Davison, Morrison & Lindemann, PA  
Post Office Box 8568  
Columbia, SC 29202-8568  
Attorney for The City of Georgetown

Source One Communities, LLC  
National Land Sales  
c/o Stephen M. Rayborn  
2586 Highway 17  
Myrtle Beach, SC 29577  
Defendant


with sufficient postage attached.

John M. Leiter, Esquire  
Law Offices of John M. Leiter, PA  
1203 48<sup>th</sup> Avenue North, Suite 109  
Myrtle Beach, SC 29577  
Attorney for the Plaintiffs

Joseph K. Qualey, Esquire  
Qualey & Beck  
23 Broad Street  
Charleston, SC 29401  
Attorney for C. R. Thompson and  
Sons, LLC

James Lynn Werner, Esquire  
Lawrence M. Hershon, Esquire  
Parker, Poe, Adams & Bernstein, LLP  
Post Office Box 1509  
Columbia, SC 29202  
Attorney for Hartford Casualty Insurance  
Company and Hartford Fire Insurance Company

Ronald L. Richter, Esquire  
Bland Richter, LLP  
Peoples Building - Mezzanine Level  
18 Broad Street  
Charleston, SC 29401  
Attorney for Landquest Development, LLC,  
Kyle V. Corkum and South Bay Properties, LLC

  
\_\_\_\_\_  
Charles T. Smith

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

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

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

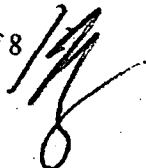
vs. )

ORDER

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

FILED  
GEORGETOWN COUNTY, S.C.  
2016 APR 27 PM 3:38  
ALMA Y. WHITE  
CLERK OF COURT

This action came before me on April 18, 2016, for hearings on three discovery motions: a Motion for Order Compelling Discovery filed by Plaintiffs, a Motion for Protective Order filed by Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, and a Motion for Entry of an Order Compelling Discovery and Assessing Discovery Sanctions filed by Defendant South Bay Properties, LLC. Present for the hearing were: Charles T. Smith, attorney for



Plaintiffs, K. Douglas Thornton and John M. Leiter, attorneys for Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, and Kristen G. Atkins, attorney for Defendant South Bay Properties, LLC.

This is a mortgage foreclosure action. The Complaint alleges Plaintiffs are the owners and holders of a promissory note and mortgage executed by Defendant South Bay Properties, LLC, the payments due on the note and mortgage are in default and the conditions of the note and mortgage have been broken. The Complaint alleges the other Defendants are made parties to this action because they may have or claim interests in the real property that is subject to the mortgage. The Complaint prays the amount due on the note and mortgage be determined, the subject property be sold under the direction of the Court, the proceeds of the sale be applied first to the costs and expenses of this action and then to the amount due on the note and mortgage, and that the Court grant such other and further relief as may be just and proper.

Defendant South Bay Properties, LLC did not answer the Complaint and is in default. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens answered the Complaint by qualified denials admitting they claim an interest in the subject property and denying other allegations in the Complaint.

I. Motion for Order Compelling Discovery

Plaintiffs moved for an order directed to Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens compelling discovery.

Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens claim a first priority equitable lien on the subject property superior to Plaintiffs' mortgage. Whether

these Defendants have a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is relevant to the subject matter of this action. "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Rule 26(b)(1), SCRCP.

Plaintiffs served Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens with interrogatories in accordance with Rule 33, SCRCP, and with requests for production of documents in accordance with Rule 34, SCRCP. The Defendants did not timely object to the interrogatories and did not answer the interrogatories. The Defendants did not timely object to the requests for production and did not produce the requested documents.

Plaintiffs served Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens with notices of deposition duces tecum in accordance with Rule 30(b)(5), SCRCP, and with deposition subpoenas duces tecum in accordance with Rule 45, SCRCP. The Defendants produced some, but not all, of the documents described in the notices of deposition duces tecum and the deposition subpoenas duces tecum. The Defendants did not provide a description of the documents, communications, or things not produced as required by Rule 45(d)(2)(A), SCRCP.

Defendant John Steven Goodwin refused to answer numerous questions at his deposition relying upon his motion for protective order. His counsel argued that the issue of whether the Defendants have a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is not relevant to this foreclosure action and is not a proper subject for discovery. The Defendants'

claim to a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is relevant to this foreclosure action and is a proper subject for discovery.

The Defendants' return to the motion for order compelling discovery requests that the motion be denied on the grounds Plaintiffs' discovery requests exceed the scope of reasonable discovery, are not likely to lead to the production of relevant or probative information, and would be unduly burdensome, expensive and time consuming. The five interrogatories submitted by Plaintiffs are specifically authorized by Rule 33, SCRPC. The three requests for production submitted by Plaintiffs request the documents the Defendants contend support their claim to an equitable lien on the subject property, the documents referenced in the Defendants' answers to interrogatories and the documents the Defendants intend to offer as evidence at trial. The questions asked at the deposition of Defendant John Steven Goodwin are relevant to this foreclosure action and a proper subject for discovery. Plaintiffs' discovery requests do not exceed the scope of reasonable discovery and do not appear to be unduly burdensome, expensive or time consuming.

Therefore I find and conclude the Motion for Order Compelling Discovery should be granted.

## II. Motion for Protective Order

Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens moved to stay their scheduled depositions, or, in the alternative, to limit the scope of the depositions.

The motion argues that the Defendants' claim to a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is not relevant in this action to foreclose Plaintiffs' mortgage. The object of a suit in foreclosure is to settle the priority of liens on the mortgaged property and to sell the property for the payment of the liens.

There are evident differences between a suit at law to establish a money demand and a proceeding in equity to foreclose a mortgage. The sole object of the suit at law on a money demand is to establish the debt and to obtain payment of the money in satisfaction of the judgment; it has no direct relation to specific property either real or personal, while in an action to foreclose a mortgage of real estate the purpose of the proceeding is to defeat the mortgagor's equity of redemption by establishing the liens upon specific property, settling their priority, selling the property for the payment of the lien debts, and finally making settlement through the officer of the court conducting the sale. The controlling purpose of the action of foreclosure is to subject specific property to the payment of the debt and to collect such debt by sale. The object of the action is thus stated in the case of *Ex parte Jones*, 47 S. C. 393, 25 S. E. 285: "In this case the very object of the suit in foreclosure was to settle the priority of liens on the mortgaged property, and to sell the property for the payment thereof."

*Foxworth v. Murchison National Bank*, 136 S.C. 458, 134 S.E. 428, 429-430 (1926)

The Defendants' claim to a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is relevant in this action.

The motion also argues that because there is another action pending between some of the parties in this action and others who are not parties to this action (*Goodwin, et al. v. Landquest Development, LLC, et al.*, 2009-CP-22-01045), discovery in this action should be stayed until the Defendants are allowed to assert in this action the same claims they assert in *Goodwin, et al. v. Landquest Development, LLC, et al.* or until the Defendants are allowed to have the two actions consolidated. ~~Neither of these events is likely to happen in the near future.~~ By an order filed November 16, 2015, the Honorable William H. Seal, Jr. denied the Defendants' request to amend their Answers to assert in this action the same claims they assert in *Goodwin, et al. v. Landquest Development, LLC, et al.* and *Goodwin, et al. v. Landquest Development, LLC, et al.* is currently pending before the South Carolina Supreme Court. The Defendants have not shown why discovery

regarding their claim to a first priority equitable lien superior to Plaintiffs' mortgage should be indefinitely postponed.

Therefore I find and conclude the Motion for Protective Order should be denied.

III. Motion for Entry of an Order Compelling Discovery and Assessing Discovery Sanctions

Defendant South Bay Properties, LLC moved to compel Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens to produce the documents described in the deposition subpoenas duces tecum, to answer questions asked at depositions regarding any matter not privileged which is relevant to the subject matter of this action and to require Defendant John Steven Goodwin to pay the costs and reasonable attorneys' fees associated with his failure to produce documents described in his deposition subpoena duces tecum, with his refusal to answer questions at his deposition and with the preparation, filing and prosecution of the motion. The motion noted that counsel for Defendant South Bay Properties, LLC traveled from North Carolina to Georgetown, South Carolina to participate in the properly noticed depositions of the Defendants.

Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens objected to consideration of the motion because the motion was served less than ten days before the hearing. To the extent the motion seeks to compel the Defendants to produce the documents described in the deposition subpoenas duces tecum and to answer questions asked at depositions regarding any matter not privileged which is relevant to the subject matter of this action, the motion presents substantially the same issues as Plaintiffs' Motion for Order Compelling Discovery so the Defendants received adequate notice. To the extent the motion seeks to require the Defendants to pay costs and attorneys' fees, Defendant South Bay Properties, LLC was aware of the Defendants'

Motion for Protective Order prior to traveling to the scheduled depositions so an award of costs and attorneys' fees would not be appropriate.

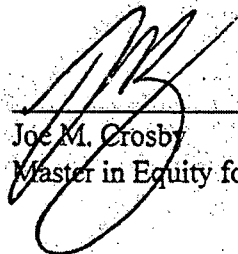
Therefore I find and conclude the Motion for Entry of an Order Compelling Discovery and Assessing Discovery Sanctions should be granted to the extent the motion seeks to compel the Defendants to produce the documents described in the deposition subpoenas duces tecum and to answer questions asked at depositions regarding any matter not privileged which is relevant to the subject matter of this action and should be denied to the extent the motion seeks an award of costs and attorneys' fees.

Therefore, I order, adjudge and decree:

1. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall answer Plaintiffs' Interrogatories dated December 7, 2015, in accordance with Rule 33, SCRCP, on or before June 17, 2016.
2. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall produce the documents described in Plaintiffs' Requests for Production dated December 7, 2015, in accordance with Rule 34, SCRCP, on or before June 17, 2016.
3. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall produce the documents described in Plaintiffs' Deposition Subpoenas Duces Tecum dated December 21, 2015, in accordance with Rule 45, SCRCP, on or before June 17, 2016. If any information subject to the subpoenas is withheld, the claim of privilege shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the Plaintiffs to contest the claim.

4. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall answer all questions asked of them at depositions regarding any matter, not privileged, which is relevant to the subject matter of this action.
5. Plaintiffs' and Defendant South Bay Properties, LLC's requests for attorneys' fees and costs are denied.

AND IT IS SO ORDERED.



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Joe M. Crosby  
Master in Equity for Georgetown County

April 26, 2016

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. )

**CERTIFICATE OF MAILING**

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. )

FILED  
GEORGETOWN COUNTY, S.C.  
2016 APR 27 PM 3:38  
ALMA Y. WHITE  
CLERK OF COURT

I hereby certify that on the 27<sup>th</sup> day of April, 2016, I mailed copies of the Honorable Joe M.

Crosby's Order dated April 26, 2016, addressed to:

John W. Davidson, Esquire  
Nexsen Pruet  
Post Office Drawer 2426  
Columbia, SC 29202  
Attorney for Stantec Consulting Services, Inc.

Bryon L. Saintsing, Esquire  
Smith Debnam  
Post Office Box 26268  
Raleigh, NC 27611-6268  
Attorney for Milone & MacBroom, Inc.

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

Patrick A. DiAngelo  
1713 Perdez Covey  
Myrtle Beach, SC 29588  
Defendant


Wesley P. Bryant, Esquire  
Georgetown County Attorney  
Post Office Box 421270  
Georgetown, SC 29442  
Attorney for Georgetown County Forfeited  
Land Commission

with sufficient postage attached.

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

Deborah A. DiAngelo  
1713 Perdez Covey  
Myrtle Beach, SC 29588  
Defendant

Donald G. Hunt, Jr. Esquire  
Akins Hunt Atkins, P.C.  
134 North Main Street, Suite 204  
Post Office Box 266  
Fuquay-Varina, NC 27526  
Attorney for South Bay Properties, LLC



Charles T. Smith

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

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Appellate Case No. 2016-0002379

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Bonnie N. Charlton, Ronald L. Charlton and  
Bayside Property,.....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, Joyce  
M. Owens, Fount L. Shults, Lynda M. Shults, Dennis  
Ridgeway, Teresa Lynn Ridgeway and Georgetown County  
Forfeited Land Commission,

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

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AFFIDAVIT OF SERVICE

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I, K. Douglas Thornton, as co-counsel for John Steven Goodwin, Louise C.  
Goodwin, Gary M. Owens and Joyce M. Owens, certify that on January 16, 2017, a  
copy of Appellants' Return to Respondents' Motion to Dismiss and Appellants'  
Memorandum in Response to Motion to Dismiss Appeal was served upon

all parties of interest in the within matter, by mailing a copy to their attorneys of record, or the individual, if not represented by counsel, with proper postage affixed thereto, and addressed as follows:

Charles T. Smith, Esquire  
608 Cypress Street  
Georgetown, SC 29440  
Attorney for Bonnie N. Charlton, Ronald L. Charlton and  
Bayside Property, Inc.

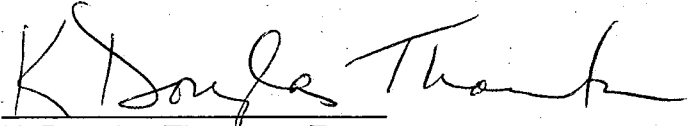
Donald G. Hunt, Jr., Esquire  
Kristin Atkins Lee, Esquire  
P. O. Box 266  
Fuquay-Varina, NC 27526  
Attorneys for South Bay Properties, LLC

John W. Davidson, Esquire  
P. O. Drawer 2426  
Columbia, SC 29202  
Attorney for Stantec Consulting Services, Inc.

Byron L. Saintsing, Esquire  
P. O. Box 26268  
Raleigh, NC 27611  
Attorney for Milone & MacBroom, Inc.

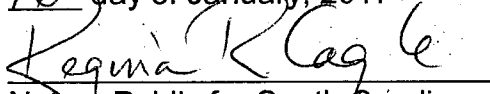
Wesley P. Bryant, Esquire  
Georgetown County Attorney  
P. O. Box 421270  
Georgetown, SC 29442

Patrick A. DiAngelo  
Deborah A. DiAngelo  
1713 Perdez Covey  
Myrtle Beach, SC 29588



K. Douglas Thornton, Esq.  
1025 Third Avenue  
Conway, S.C. 29528

SWORN to before me this  
16 day of January, 2017



Notary Public for South Carolina  
My Commission Expires: 5/31/26

**Thornton Law, LLC**  
**K. Douglas Thornton**

kdouglasthornton@gmail.com

1025 Third Avenue  
Conway, SC 29526

PHONE: 843-488-5858

January 16, 2016

FAX: 843-488-5859

**RECEIVED**

JAN 19 2017

**SC Court of Appeals**

Hon. Jenny Abbott Kitchings, Clerk  
The S.C. Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: Bonnie N. Charlton v. South bay Properties, LLC (2)  
Appellate Case No.: 2016-002379

Dear Ms. Kitchings:

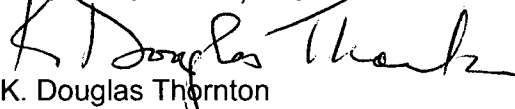
As co-counsel for the Appellants, John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, I am enclosing the original and six (6) copies of each of the following documents:

1. Appellants' Return to Respondents' Motion to Dismiss;
2. Appellants' Memorandum in Response to Motion to Dismiss Appeal; and
3. Affidavit of Service.

Thanking you for your attention to this request, and looking forward to your response, I  
am

Yours very truly,

THORNTON LAW, LLC

  
K. Douglas Thornton

KDT/rrc

cc: Clients  
John M. Leiter, Esquire  
Charles T. Smith, Esquire  
Donald G. Hunt, Esquire  
John W. Davidson, Esquire  
Byron L. Saintsing, Esquire  
Wesley P. Bryant, Esquire  
Patrick A. and Deborah A. DiAngelo