

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-10-3326
Case No. 2014-CP-10-4335
Appellate Case No. 2017-000542

RECEIVED

MAY 30 2017

SC Court of Appeals

Waverly at Hamlin Plantation Townhome Association,
Inc.,

Plaintiff,

v.

John Wieland Homes and Neighborhoods of the
Carolinas, Inc. as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes, Inc.,

Defendants,

And

John Wieland Homes and Neighborhoods of the
Carolinas, Inc., as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes Inc., Builders Support Services
of the Carolinas, Inc.,

*Third-Party
Plaintiffs,*

v.

Barr Construction, Inc. Benjamin Mora d/b/a Mora
Construction, a/k/a Benjamin Mora Construction,
LLC, Builders FirstSource, Inc., a/k/a Builders
FirstSource-Southeast Group, LLC, a/k/a Builders
FirstSource-Atlantic Group, LLC, DBC Construction
Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a
GR Painting, George Medina, George Medina a/k/a JMC
Construction, LLC a/k/a JMC Construction, Inc., Jesus
Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan
Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez
Brothers Painting, Latitude Construction Services,
LLC, The Muhler Company, Inc., Paul M. Vasquez,
Richard Ditullio, Richard Ditullio a/k/a RDT

Contracting, LLC,

*Third-Party
Defendants,*

Of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant,

And

Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are

Respondents.

And

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespe, Jared D. Overcash,

Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC

d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, Jeorge Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC,

Defendants,

Of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

And

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Giles pie, Jared D. Overcash, Jeorge Medina, Jeorge Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

**APPELLANT JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE
CAROLINAS, INC. AS SUCCESSOR BY STATUTORY MERGER TO JOHN WIELAND
HOMES AND NEIGHBORHOODS OF SOUTH CAROLINA, INC., JOHN WIELAND
HOMES OF CHARLESTON, INC., JOHN WIELAND HOMES, INC., BUILDERS
SUPPORT SERVICES OF THE CAROLINAS, INC.'S
RETURN TO MOTION TO DISMISS APPEAL**

Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. ("Appellant") hereby opposes the relief sought by Respondents Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespe, Jared D. Overcash, and Waverly at Hamlin Plantation Townhome Association, Inc. ("Respondents Waverly") in the Motion to Dismiss

Appeal filed on May 23, 2017 (“Motion to Dismiss”), pursuant to Rule 240(e), SCACR, and moves this Court for an Order denying the Motion to Dismiss on the grounds that (1) Appellant complied with Rules 203 and 262(b), SCACR, and, therefore, timely served the Notice of Appeal on March 1, 2017, (2) Respondents Waverly have otherwise submitted this matter to the jurisdiction of the South Carolina Court of Appeals through the timely service and filing of the Notice of Cross-Appeal in accordance with in accordance with Rules 203(b),(c), SCACR, and (3) the South Carolina Court of Appeals otherwise has jurisdiction over this matter by the consolidation of the appeal filed by Appellant on March 1, 2017, and the appeal filed by Appellant on April 7, 2017.

STANDARD OF REVIEW

“A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules.” Rule 203(a), SCACR. “A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b), SCACR. “A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties . . . within five (5) days after receipt of appellant’s notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.” Rule 203(c), SCACR.

“Service and filing are defined by Rule 262.” Rule 203(a), SCACR. “Service by mail is complete upon mailing.” Rule 262(b), SCACR. “Where service by mail is permitted, it is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage.” Southbridge Properties, Inc. v. Jones, 292 S.C. 198, 198, 355 S.E.2d 535, 535 (1987) (citing Town of Honea

Path v. Wright, 194 S.C. 461, 9 S.E.2d 924 (1940); Walters v. Lauren Cotton Mills, 53 S.C. 155, 31 S.E. 1 (1898)).

“Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.” Rule 214, SCACR. “Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file . . . his return with the clerk and serve on all parties a copy of the return[.]” Rule 240(e), SCACR. “Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.” Rule 240(e), SCACR.

ARGUMENT

Appellant moves this Court for an Order denying Respondents Waverly’s Motion to Dismiss on the grounds that (1) Appellant complied with Rules 203 and 262(b), SCACR, and, therefore, timely served the Notice of Appeal on March 1, 2017, (2) Respondents Waverly have otherwise submitted this matter to the jurisdiction of the South Carolina Court of Appeals through the timely service and filing of the Notice of Cross-Appeal in accordance with in accordance with Rules 203(b),(c), SCACR, and (3) the South Carolina Court of Appeals otherwise has jurisdiction over this matter by the consolidation of the appeal filed by Appellant on March 1, 2017, and the appeal filed by Appellant on April 7, 2017.

1. The South Carolina Court of Appeals has jurisdiction over this matter because Appellant timely served the Notice of Appeal.

On February 9, 2017, The Honorable Deadra L. Jefferson executed a written order denying Appellant’s post-trial motions argued immediately upon the

conclusion of the trial of these matters on January 30, 2017. Form Order, Feb. 9, 2017 (Exhibit A). On February 14, 2017, the Clerk of Court mailed the written notice of the entry of the order to all counsel of record. Notice, Feb. 14, 2017 (Exhibit B). Appellant and Respondents Waverly received the Clerk of Court's written notice of the entry of the order on February 21, 2017. Mot. Dismiss Appeal, p. 6, ll. 5-7.

On March 1, 2017,¹ counsel for Appellant prepared correspondence containing Appellant's Notice of Appeal for filing with the South Carolina Court of Appeals and for service upon all counsel of record in accordance with Rules 203 and 262(b), SCACR. Notice of Appeal, Mar. 1, 2017 (Exhibit C); Novak Aff., ¶ 3 (Exhibit D). The parties listed in the contemporaneously prepared Proof of Service include all counsel for Respondents Waverly. *Id.* ¶ 4. On March 1, 2017, counsel for Appellant supervised a paralegal make copies of the correspondence containing the Notice of Appeal and place those copies into envelopes with sufficient postage prepaid addressed to those parties listed in the Proof of Service. *Id.* ¶ 5. The paralegal then deposited the correspondence containing the copies of the Notice of Appeal into the United States Mail via a mailbox at a United States Post Office. Cox Aff., ¶ 4 (Exhibit E) Counsel for Appellant has not received any of the correspondence returned because of insufficient postage, incorrect address, or for any other reason. Novak Aff., ¶ 7; Cox Aff., ¶ 4.

Respondents Waverly argue that this appeal should be dismissed solely because they did not receive Appellant's correspondence containing the Notice of

¹ Although Appellant and Respondents Waverly had until March 23, 2017, to serve and file any Notices of Appeal, out of an abundance of caution, counsel for Appellant served and filed Appellant's Notice of Appeal within less than thirty days of the oral denial of Appellant's post-trial motions.

Appeal.² *See* Mot. Dismiss Appeal. Service by mailing, however, is “complete upon mailing[.]” Rule 262(b), SCACR, which is “complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage,” Southbridge Properties, Inc. v. Jones, 292 S.C. 198, 198, 355 S.E.2d 535, 535 (1987). Respondents Waverly do not contest that counsel for Appellant deposited the Notice of Appeal with the United States Postal Service, properly addressed with sufficient postage. *See* Mot. Dismiss Appeal.

As Appellant complied with the requirements of the South Carolina Appellate Court Rules and perfected service upon Respondents Waverly by depositing the Notice of Appeal with the United States Postal Service, properly addressed with sufficient postage, on March 1, 2017, the South Carolina Court of Appeals has jurisdiction over this matter. As a result, Respondent Waverly’s Motion to Dismiss should be denied.

2. The South Carolina Court of Appeals has jurisdiction over this matter because Respondents Waverly timely served and filed a Notice of Cross-Appeal.

Respondents Waverly argue that this appeal should be dismissed because the South Carolina Court of Appeals does not have jurisdiction over this matter solely because they did not receive Appellant’s correspondence containing the Notice of Appeal. Respondents Waverly, however, “timely served their own Notice of Appeal

² Although counsel for Respondents Waverly deny receiving the Notice of Appeal served by mailing on March 1, 2017, counsel for Respondents Waverly expressly admit “learning that an appeal had been initiated upon receiving Appellant’s letter to the Court Reporter, requesting a copy of the transcript[.]” Mot. Dismiss Appeal, p. 6 n.4, which Appellant also served by mailing on March 1, 2017, Ltr. Ct. Rep, Mar. 1, 2017 (Exhibit F). As a result, Respondents Waverly received actual notice of the appeal at the same time as if they had received the Notice of Appeal served by mailing on March 1, 2017.

as a cross-appeal on March 21, 2017.”³ Mot. Dismiss Appeal, p. 6 n.4. As a result, Respondents Waverly timely submitted this matter to the jurisdiction of the South Carolina Court of Appeals independently from Appellant’s Notice of Appeal. See Rules 203(b),(c), SCACR.

As Respondents Waverly served and filed their own Notice of Appeal within the time prescribed by Rules 203(b),(c), SCACR, the South Carolina Court of Appeals has jurisdiction over this matter regardless of whether Appellant perfected service upon Respondents Waverly by mailing the Notice of Appeal on March 1, 2017. As a result, Respondent Waverly’s Motion to Dismiss should be denied.

3. The South Carolina Court of Appeals has jurisdiction over this matter because the appeal filed by Appellant on March 1, 2017, has been consolidated with the appeal served by Appellant on April 7, 2017.

After Appellant served and filed the Notice of Appeal on March 1, 2017, Appellant served and filed a second Notice of Appeal in a related matter.⁴ Notice of Appeal, April 7, 2015 (Exhibit G). Appellant timely served the second Notice of Appeal on Respondents Waverly by mailing on April 5, 2017. *Id.* The second Notice of Appeal was received and filed by the South Carolina Court of Appeals on April 7, 2017. Respondents Waverly do not contest that the South Carolina Court of Appeals has jurisdiction of the appeal filed on April 7, 2017. See Motion to Dismiss.

On April 26, 2017, Appellant served and filed a Motion to Consolidate the Appeal filed by Appellant on April 7, 2017 and the Appeal filed by Appellant on

³ Appellant and Respondents Waverly had until March 23, 2017, to serve and file any Notices of Appeal.

⁴ On April 7, 2017, Appellant appealed a subsequent order denying Appellant's motion to enforce an enhanced set-off agreement entered into by Appellant, Respondents Waverly, and a third-party prior to the trial of matters addressed in the Notice of Appeal filed on March 1, 2017. The Circuit Court's Order Denying Appellant's Motion to Enforce Enhanced Set-off was filed on March 3, 2017, and the Circuit Court's Order Denying Appellant's Motion for Reconsideration was filed on March 17, 2017.

March 1, 2017. Mot. Consolidate. Respondents Waverly failed within ten (10) days to oppose the motion by timely filing a return, Order, May 24, 2017 (Exhibit H), and, therefore, consented to the consolidation of the appeals, Rule 240(e), SCACR. As a result, on May 24, 2017, the South Carolina Court of Appeals ordered consolidation of the appeals. Order, May 24, 2017 ("Counsel for appellant filed a motion to consolidate appeals and a motion to supplement the record. No returns were filed. The motions are Granted.")

As it is uncontested that the South Carolina Court of Appeals has jurisdiction over the appeal filed on April 7, 2017, with which the appeal filed on March 1, 2017, has been consolidated, the South Carolina Court of Appeals has jurisdiction in this matter regardless of whether Appellant perfected service upon Respondents Waverly by mailing the Notice of Appeal on March 1, 2017. As a result, Respondent Waverly's Motion to Dismiss should be denied.

CONCLUSION

For the foregoing reasons, Appellant respectfully opposes the relief sought by Respondents Waverly in the Motion to Dismiss Appeal filed on May 23, 2017, and moves this Court for an Order denying the Motion to Dismiss, which, if granted, would permit future respondents to avoid appeals simply by arguing that they did not receive an appellant's correspondence containing a notice of appeal. To the extent this Court deems it necessary, Appellant would also request oral argument of these matters upon the next available term of Court.

[Separate Signature Page Follows]

Respectfully submitted,



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Justin Paul Novak
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***Attorneys for Builder Support Services
of the Carolinas, Inc., John Wieland
Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes and
Neighborhoods of the Carolinas, Inc.,
John Wieland Homes Inc., John Wieland
Homes of Charleston, Inc.***

May 26, 2017

EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Waverly at Hamlin Plantation Townhome
Association, Inc.

v.

**JUDGMENT IN A CIVIL
CASE**

CASE NO. 2013-CP-10-03326

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.,
et al,

PLAINTIFF

DEFENDANT

CHECK ONE:

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case was called before the Court for a jury trial on January 23-30, 2017. On January 30, 2017, a judgment was rendered by the jury. The jury reached a verdict in favor of Plaintiff Waverly at Hamlin Plantation Townhome Association, Inc. in the amount of \$ 7,000,000.00 dollars actual damages.

At the end of the trial, post-trial motions were required and heard. The Defendant filed its Post-Trial Motions numbered 1-15. The Defendant's concede that numbers 3, 4, and 6 are moot. Defendants also withdraw number 13. Defendant John Wieland Homes made a Motion for Judgment Notwithstanding the Verdict pursuant to SCRPC, Rule 50. SCRPC Rule 50 states that "[w]henever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to

have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict." "Motions for directed verdict or JNOV should be denied if the evidence yields more than one reasonable inference or its inference is in doubt." *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994). Further, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

The Defendant additionally made a Motion for both a New Trial and a Remittitur of the Award. "A motion for a new trial nisi remittitur asks the trial court in its discretion to reduce the verdict because it is 'merely excessive,' although not motivated by considerations such as passion, caprice, or prejudice. If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute, not a new trials nisi remittitur." *Hunter v. Staples*, 335 S.C. 93, 515 S.E.2d 261, 268 (Ct. App. 1999). A circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. "The jury's determination of damages, however, is entitled to substantial deference." *RRR, Inc. v. Toggas*, 378 S.C. 174, 662 S.E.2d 438, 442–43 (Ct. App. 2008). The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. . . . Similarly, the circuit court alone has the power to grant a new trial nisi when it finds the amount of the verdict to be merely inadequate or excessive. "Compelling reasons, however, must be given to justify invading the jury's province in this manner." *Id.*

Accordingly, JNOV, a new trial, or a remittitur of the damages award would be improper as a reasonable jury could have reached the challenged verdict. Further, the jury's verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict. *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819, 823 (Ct. App. 1996). The Court further finds that the verdict is not shockingly disproportionate to the injuries sustained by the Plaintiff as to indicate passion, caprice, prejudice, or some other influence outside the evidence. *Kalchthaler v. Workman*, 316 S.C. 499, 450 S.E.2d 621 (Ct. App. 1994). Pursuant to SCRCP Rule 59, "the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." The Court required motions to be made promptly after the jury was discharged. The Court heard argument on motions numbered 1-2, 5, 7-12, and 14-15. At that time the Court made contemporaneous findings of fact and conclusions of law for the record which are incorporated herein. No other motions were made and are therefore waived. Accordingly, the Defendant's Motions were heard and respectfully denied.

Subsequent to trial, on February 3, 2017 the Defendants filed a motion for set-off. Accordingly, a hearing was held on February 9, 2017 on Defendant's Motion to Enforce Set-Off and Reduce Judgment. Present at the hearing were John Hayes, Esquire and I. Keith McCarty, Esquire, representing the Plaintiff, and Theodore Manos, Esquire and Andrew Haselden, Esquire, representing Defendant John Wieland Homes. "Before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury; when the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188 (Ct. App. 2012). After hearing from all parties present, the parties stipulate, without objection, that the Defendants are entitled to a set-off in the amount of \$1,919,000.00. Therefore, Judgment is entered

against the Defendants in the amount of \$5,081,000.00. Further, the gravamen of Defendant John Wieland Homes' Motion is their contention that they are entitled to an enhanced set-off in the amount of \$434,000.00. They maintain this is the result of an alleged settlement with Benjamin Mora d/b/a Mora Construction a/k/a Benjamin Mora Construction, LLC. The Court heard argument on the matter and has taken this matter under advisement. The Court will issue a Supplemental Order concerning this matter.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Waverly at Hamlin Plantation Townhome Association, Inc.	John Wieland Homes and Neighborhoods of the Carolinas, Inc. As successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc.	\$ 5,081,000.00
If applicable, describe the property, including tax map information and address		

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


Circuit Court Judge

2128
Judge Code

2/9/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or

to parties (when appearing pro se) as follows:

John C. Hayes, Esq., I. Keith McCarty, Esq.
Mary Margaret Noland, Esq.

PLAINTIFF

Theodore Manos, Esq., Andrew Haselden Esq.,
Justin Novak, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Ruth Weese

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO.: 2013-CP-10-03326

Waverly at Hamlin Plantation)
Townhome Association, Inc.)

Plaintiff,)

v.)

VERDICT FORM

John Wieland Homes and)
Neighborhoods of the Carolinas, Inc.)
As successor by statutory merger to)
John Wieland Homes and)
Neighborhoods of South Carolina,)
Inc., John Wieland Homes of)
Charleston, Inc., John Wieland)
Homes, Inc.,)

Defendants,)

AS TO THE NEGLIGENCE CAUSE OF ACTION:

1. We, the jury, unanimously find for the Plaintiff in the amount

\$ 7,000,000 (dollars) actual damages.

OR

2. We, the jury, unanimously find for the Plaintiff in the amount of

\$ _____ (dollars) actual damages.

\$ _____ (dollars) punitive damages.

OR

3. _____ We, the jury, unanimously find for the Defendants.

Please sign and date.

Chris Donnan

Foreperson

1/30/17

Date

Please notify the Bailiff when you have completed your deliberations.

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Stephen Denby, Individually and as Class Representative, et al, v.

PLAINTIFF

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-04335

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.,
et al,

DEFENDANT

FILED
2017 FEB -9 PM 4:13
JULIE ARMSTRONG
CLERK OF COURT

CHECK ONE:

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

BOX: **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE)**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case was called before the Court for a jury trial on January 23-30, 2017. On January 30, 2017, a judgment was rendered by the jury. The jury reached a verdict in favor of Plaintiff Stephen Denby, Individually and as Class Representative, in the amount of \$ 200,000.00 dollars actual damages.

At the end of the trial, post-trial motions were required and heard. The Defendant filed its Post-Trial Motions numbered 1-15. The Defendant's concede that numbers 3, 4, and 6 are moot. Defendants also withdraw number 13. Defendant John Wieland Homes made a Motion for Judgment Notwithstanding the Verdict pursuant to SCRPC, Rule 50. SCRPC Rule 50 states that "[w]henver a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to

have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict." "Motions for directed verdict or JNOV should be denied if the evidence yields more than one reasonable inference or its inference is in doubt." *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). Further, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

The Defendant additionally made a Motion for both a New Trial and a Remittitur of the Award. "A motion for a new trial nisi remittitur asks the trial court in its discretion to reduce the verdict because it is 'merely excessive,' although not motivated by considerations such as passion, caprice, or prejudice. If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute, not a new trials nisi remittitur." *Hunter v. Staples*, 335 S.C. 93, 515 S.E.2d 261, 268 (Ct. App. 1999). A circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. "The jury's determination of damages, however, is entitled to substantial deference." *RRR, Inc. v. Toggas*, 378 S.C. 174, 662 S.E.2d 438, 442-43 (Ct. App. 2008). The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. . . . Similarly, the circuit court alone has the power to grant a new trial nisi when it finds the amount of the verdict to be merely inadequate or excessive. "Compelling reasons, however, must be given to justify invading the jury's province in this manner." *Id.*

Accordingly, JNOV, a new trial, or a remittitur of the damages award would be improper as a reasonable jury could have reached the challenged verdict. Further, the jury's verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict. *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819, 823 (Ct. App. 1996). The Court further finds that the verdict is not shockingly disproportionate to the injuries sustained by the Plaintiff as to indicate passion, caprice, prejudice, or some other influence outside the evidence. *Kalchthaler v. Workman*, 316 S.C. 499, 450 S.E.2d 621 (Ct. App. 1994). Pursuant to SCRPC Rule 59, "the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." The Court required motions to be made promptly after the jury was discharged. The Court heard argument on motions numbered 1-2, 5, 7-12, and 14-15. At that time the Court made contemporaneous findings of fact and conclusions of law for the record which are incorporated herein. No other motions were made and are therefore waived. Accordingly, the Defendant's Motions were heard and respectfully denied.

Subsequent to trial, on February 3, 2017 the Defendants filed a motion for set-off. Accordingly, a hearing was held on February 9, 2017 on Defendant's Motion to Enforce Set-Off and Reduce Judgment. Present at the hearing were John Hayes, Esquire and I. Keith McCarty, Esquire, representing the Plaintiff, and Theodore Manos, Esquire and Andrew Haselden, Esquire, representing Defendant John Wieland Homes. "Before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury; when the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188 (Ct. App. 2012). After hearing from all parties present, the parties stipulate, without objection, that the Defendants are entitled to a set-off in the amount of \$200,000.00. Therefore,

no Judgment is entered against the Defendants. Further, the gravamen of Defendant John Wieland Homes' Motion is their contention that they are entitled to an enhanced set-off in the amount of \$434,000.00. They maintain this is the result of an alleged settlement with Benjamin Mora d/b/a Mora Construction a/k/a Benjamin Mora Construction, LLC. The Court heard argument on the matter and has taken this matter under advisement. The Court will issue a Supplemental Order concerning this matter.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

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

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

John C. Hayes
Circuit Court Judge

2128
Judge Code

2/9/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John C. Hayes, Esq., I. Keith McCarty, Esq.
Mary Margaret Noland, Esq.

PLAINTIFF

Theodore Manos, Esq., Andrew Haselden Esq.,
Justin Novak, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Ruth Weese

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stephen Denby, Individually and as Class
Representative, Marie Labarowski,
Stephanie Adili, Marc and Brandy
Lynn Russell Robinson, Jessica,
Baucom, Nancy S. Coleman, Linda
Glitz, Maryann Walsh, Patty Whitmire,
Donald L. Tomasella and Patricia
Kelly, Chris Leigh-Jones, Edward
Ray and Kathy Jo Feagins,
William and Carolyn Barone,
William Abel, Dean and Conny
Mason, Paul and Patricia Waters,
R. Robinson, Jr., Lisa Roeck,
Elizabeth Jackson, Joe and
Anita Brittain, Gilbert J. Hager and
Kelly Hager Holmes,
Jessica Shipman, Arlene Conte, Carol Ann
Dumond, Lawrence Murray, Yvonne
Walker, Darlene and Richard
Gleeson, Robert and Michell Bagrie,
Russell Johnston, Kathryn Howle,
Dorothy Newman, Nicholas and
Debora Yost, Helen and Bob Harmon
Estate of Rose Minton,
Stephen and Merifaith Perdue.

Plaintiffs,

v.

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.
As successor by statutory merger to
John Wieland Homes and
Neighborhoods of South Carolina,
Inc., John Wieland Homes of
Charleston, Inc., John Wieland
Homes, Inc.,

Defendants,

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-10-04335

VERDICT FORM

AS TO THE NEGLIGENCE CAUSE OF ACTION:

1. We, the jury, unanimously find for the Plaintiffs in the amount
\$ 200,000 (dollars) actual damages.

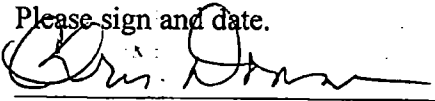
OR

2. We, the jury, unanimously find for the Plaintiffs in the amount of
\$ _____ (dollars) actual damages.
\$ _____ (dollars) punitive damages.

OR

3. _____ We, the jury, unanimously find for the Defendants.

Please sign and date.


Foreperson

1/30/17
Date

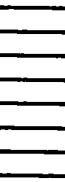
Please notify the Bailiff when you have completed your deliberations.

EXHIBIT B

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org



35



ANDREW ELLIOTT HASELDEN
215 E BAY ST STE 303
CHARLESTON SC 29401-2636

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Jury Verdict, Post Trial Motions, & Matters Under Advis

CASE NO: 2013CP1003326

Waverly at Hamlin Plantation Townhome Association Inc VS John Wieland Homes and Neighborhoods of

This judgment was entered on the 09th day of February, 2017, and notice mailed first class on Tuesday, February 14, 2017, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

EXHIBIT C

R. Davis Howser
James P. Newman, Jr. <
William G. Besley <
Benjamin D. McCoy ^
Kelley Shull Cannon †
Andrew E. Haselden <
George V. Hanna, IV *
Michal Cooper Jones
Kyllene L. Keesley ^
Jennifer E. Thomas
Albert Richard Pierce, Jr. *
James P. Sullivan
Justin P. Novak
Jeffrey I. Silverberg
Trevor P. Eddy ‡
M. Claire Hall

< Certified Circuit Court Mediator
^ Certified Circuit Court Mediator and Arbitrator
† Certified Circuit Court Arbitrator
* Also Admitted in North Carolina
‡ Also Admitted in Maryland



**HOWSER, NEWMAN
& BESLEY, LLC**

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March 1, 2017

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VIA HAND DELIVERY

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

RE: *Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. and Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc. and John Wieland Homes and Neighborhoods of the Carolinas, Inc., as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes Inc., Builders Support Services of the Carolinas, Inc. v. Barr Construction, Inc. Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builders FirstSource, Inc., a/k/a Builders FirstSource-Southeast Group, LLC, a/k/a Builders FirstSource-Atlantic Group, LLC, DBC Construction Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a GR Painting, George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant and Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the Respondents.*

Case No. 2013-CP-10-3326

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, George Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant and Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, George Medina, George Medina a/k/a JMC

Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the Respondents.
Case No. 2014-CP-10-4335

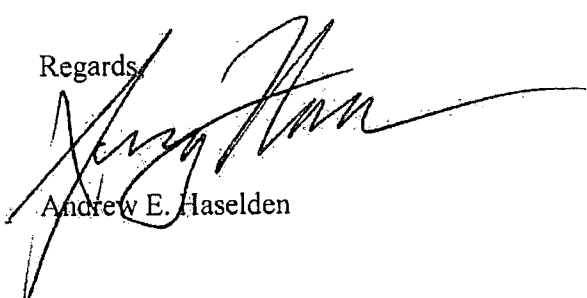
Dear Ms. Kitchings:

Please find enclosed for service and filing a *Notice of Appeal* in the above-referenced matters. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on all counsel of record, the Clerk of Court of Appeals, and the Clerk of Court for Charleston County;
- (2) a copy of the orders being challenged on appeal; and
- (3) a check for the required filing fee of \$100.00.

Thank you for your assistance in this matter. Please do not hesitate to contact me with any questions or concerns.

Regards,


Andrew E. Haselden

AEH/jnov

cc: All Counsel of Record
The Honorable Julie J. Armstrong

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson
Circuit Court Judge

Case No. 2013-CP-10-3326

Waverly at Hamlin Plantation Townhome Association,
Inc.,

Plaintiff,

v.

John Wieland Homes and Neighborhoods of the
Carolinas, Inc. as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes, Inc., Builders Support Services
of the Carolinas, Inc. and Wheelock Street Capital, LLC
d/b/a John Wieland Homes and Neighborhoods, Inc.,

Defendants,

and

John Wieland Homes and Neighborhoods of the
Carolinas, Inc., as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes Inc., Builders Support Services
of the Carolinas, Inc.,

*Third-Party
Plaintiffs,*

v.

Barr Construction, Inc. Benjamin Mora d/b/a Mora
Construction, a/k/a Benjamin Mora Construction,
LLC, Builders FirstSource, Inc., a/k/a Builders
FirstSource-Southeast Group, LLC, a/k/a Builders
FirstSource-Atlantic Group, LLC, DBC Construction
Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a
GR Painting, George Medina, George Medina a/k/a JMC

Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC,

*Third-Party
Defendants.*

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

Case No. 2014-CP-10-4335

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia

Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash,

Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, Jeorge Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC,

Defendants,

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

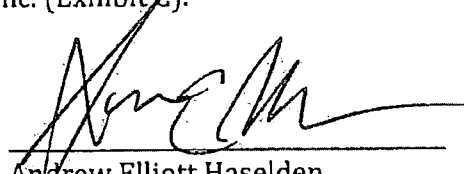
Respondents.

NOTICE OF APPEAL

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. ("Appellant"), appeals the following:

- The jury's verdict in these matters, which were tried together, entered into the Record on January 30th, 2017 (Exhibit A);

- The Court's oral denial of Appellant's *Post-Trial Motions* which was entered on the Record on January 30th, 2017;
- The Court's written Order denying Appellant's *Post-Trial Motions* entered on January 30th, 2017 (Exhibit B);
- The Court's oral denial of Appellant's *Motions for Directed Verdict* at Trial;
- Any and/or all orders addressing any and/or all motions made by Appellant prior to trial and contemporaneously raised at trial by Appellant which the Court denied; and
- The Court's Orders bifurcating Appellant's cross-claims against Third-Party Defendants George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc. (Exhibit C).



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***Attorneys for Builder Support Services
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Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes and
Neighborhoods of the Carolinas, Inc.,
John Wieland Homes Inc., John Wieland
Homes of Charleston, Inc.***

March 1, 2017

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Pro Se

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Attorneys for The Muhler Company Inc

Peter Gunnar Nistad
GALLIVAN WHITE & BOYD, PA
Post Office Box 22768
Charleston, SC 29413

(843) 735-7600

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Waverly at Hamlin Plantation
Townhome Association, Inc.

Plaintiff,

v.

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.
As successor by statutory merger to
John Wieland Homes and
Neighborhoods of South Carolina,
Inc., John Wieland Homes of
Charleston, Inc., John Wieland
Homes, Inc.,

Defendants,

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-10-03326

VERDICT FORM

AS TO THE NEGLIGENCE CAUSE OF ACTION:

1. We, the jury, unanimously find for the Plaintiff in the amount

\$ 7,000,000 (dollars) actual damages.

OR

2. We, the jury, unanimously find for the Plaintiff in the amount of

\$ _____ (dollars) actual damages.

\$ _____ (dollars) punitive damages.

OR

3. _____ We, the jury, unanimously find for the Defendants.

Please sign and date.

Chris Donnan

Foreperson

1/30/17

Date

Please notify the Bailiff when you have completed your deliberations.

EXHIBIT B

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Waverly at Hamlin Plantation Townhome
Association, Inc.

v.

**JUDGMENT IN A CIVIL
CASE**

CASE NO. 2013-CP-10-03326

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.,
et al,

PLAINTIFF

DEFENDANT

CHECK ONE:

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

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**

BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case was called before the Court for a jury trial on January 23-30, 2017. On January 30, 2017, a judgment was rendered by the jury. The jury reached a verdict in favor of Plaintiff Waverly at Hamlin Plantation Townhome Association, Inc. in the amount of \$ 7,000,000.00 dollars actual damages.

At the end of the trial, post-trial motions were required and heard. The Defendant filed its Post-Trial Motions numbered 1-15. The Defendant's concede that numbers 3, 4, and 6 are moot. Defendants also withdraw number 13. Defendant John Wieland Homes made a Motion for Judgment Notwithstanding the Verdict pursuant to SCRPC, Rule 50. SCRPC Rule 50 states that "[w]henver a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to

have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict." "Motions for directed verdict or JNOV should be denied if the evidence yields more than one reasonable inference or its inference is in doubt." *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994). Further, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

The Defendant additionally made a Motion for both a New Trial and a Remittitur of the Award. "A motion for a new trial nisi remittitur asks the trial court in its discretion to reduce the verdict because it is 'merely excessive,' although not motivated by considerations such as passion, caprice, or prejudice. If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute, not a new trials nisi remittitur." *Hunter v. Staples*, 335 S.C. 93, 515 S.E.2d 261, 268 (Ct. App. 1999). A circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. "The jury's determination of damages, however, is entitled to substantial deference." *RRR, Inc. v. Toggas*, 378 S.C. 174, 662 S.E.2d 438, 442–43 (Ct. App. 2008). The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. . . . Similarly, the circuit court alone has the power to grant a new trial nisi when it finds the amount of the verdict to be merely inadequate or excessive. "Compelling reasons, however, must be given to justify invading the jury's province in this manner." *Id.*

Accordingly, JNOV, a new trial, or a remittitur of the damages award would be improper as a reasonable jury could have reached the challenged verdict. Further, the jury's verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict. *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819, 823 (Ct. App. 1996). The Court further finds that the verdict is not shockingly disproportionate to the injuries sustained by the Plaintiff as to indicate passion, caprice, prejudice, or some other influence outside the evidence. *Kalchthaler v. Workman*, 316 S.C. 499, 450 S.E.2d 621 (Ct. App. 1994). Pursuant to SCRPC Rule 59, "the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." The Court required motions to be made promptly after the jury was discharged. The Court heard argument on motions numbered 1-2, 5, 7-12, and 14-15. At that time the Court made contemporaneous findings of fact and conclusions of law for the record which are incorporated herein. No other motions were made and are therefore waived. Accordingly, the Defendant's Motions were heard and respectfully denied.

Subsequent to trial, on February 3, 2017 the Defendants filed a motion for set-off. Accordingly, a hearing was held on February 9, 2017 on Defendant's Motion to Enforce Set-Off and Reduce Judgment. Present at the hearing were John Hayes, Esquire and I. Keith McCarty, Esquire, representing the Plaintiff, and Theodore Manos, Esquire and Andrew Haselden, Esquire, representing Defendant John Wieland Homes. "Before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury; when the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188 (Ct. App. 2012). After hearing from all parties present, the parties stipulate, without objection, that the Defendants are entitled to a set-off in the amount of \$1,919,000.00. Therefore, Judgment is entered

against the Defendants in the amount of \$5,081,000.00. Further, the gravamen of Defendant John Wieland Homes' Motion is their contention that they are entitled to an enhanced set-off in the amount of \$434,000.00. They maintain this is the result of an alleged settlement with Benjamin Mora d/b/a Mora Construction a/k/a Benjamin Mora Construction, LLC. The Court heard argument on the matter and has taken this matter under advisement. The Court will issue a Supplemental Order concerning this matter.

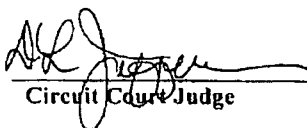
ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Waverly at Hamlin Plantation Townhome Association, Inc.	John Wieland Homes and Neighborhoods of the Carolinas, Inc. As successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc.	\$ 5,081,000.00
If applicable, describe the property, including tax map information and address		

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


Circuit Court Judge

2128
Judge Code

2/9/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or

to parties (when appearing pro se) as follows:

John C. Hayes, Esq., I. Keith McCarty, Esq.
Mary Margaret Noland, Esq.

PLAINTIFF

Theodore Manos, Esq., Andrew Haselden Esq.,
Justin Novak, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Ruth Weese

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Waverly at Hamlin Plantation
Townhome Association, Inc.

Plaintiff,

v.

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.
As successor by statutory merger to
John Wieland Homes and
Neighborhoods of South Carolina,
Inc., John Wieland Homes of
Charleston, Inc., John Wieland
Homes, Inc.,

Defendants,

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-10-03326

VERDICT FORM

AS TO THE NEGLIGENCE CAUSE OF ACTION:

1. We, the jury, unanimously find for the Plaintiff in the amount

\$ 7,000,000 (dollars) actual damages.

OR

2. We, the jury, unanimously find for the Plaintiff in the amount of

\$ _____ (dollars) actual damages.

\$ _____ (dollars) punitive damages.

OR

3. _____ We, the jury, unanimously find for the Defendants.

Please sign and date.

Chris Donnan

Foreperson

1/30/17

Date

Please notify the Bailiff when you have completed your deliberations.

EXHIBIT C

FORM 4

STATE OF SOUTH CAROLINA

**JUDGMENT IN A CIVIL
CASE**

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-10-03326

Waverly at Hamlin Plantation Townhome
Association, Inc.,

v.

John Wieland Homes and
Neighborhoods of the Carolinas, Inc., et
al,

PLAINTIFF

DEFENDANT

CHECK ONE:

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**

BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case was before the Court on January 17, 2017 for a hearing on Defendant Juan Luis Sanchez and Juan Luis Sanchez A/K/A Sanchez Brothers Painting's Notice of Motion and Motion to Bifurcate Wieland's Cross-Claims, filed January 17, 2017. SCRCP Rule 42 governs the consolidation and separation of trials and states;

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

FILED
2017 JAN 26 AM 9:04
JULIENNE P. COLE
CLERK OF COURT

SCRCP 42. Further, "[a] motion seeking bifurcation of the issues of liability and damages . . . is addressed to the sound discretion of the trial court pursuant to Rule 42(b), SCRCP." Senter v. Piggly Wiggly Carolina Co., 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000). "Trial judges have discretion as to whether to bifurcate a trial. . . . A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." Wright v. Hiester Constr. Co., Inc., 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010). See also, The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc., 418 S.C. 142, 153, 791 S.E.2d 152, 158 (Ct. App. 2016), reh'g denied (Oct. 21, 2016). The Court, finding bifurcation will neither prejudice the parties and finding that bifurcation of the John Wieland Cross-Claims will promote convenience and be conducive to expedition and economy grants Defendant's Motion for Bifurcation of the John Wieland Cross-Claims.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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


Circuit Court Judge

2128
Judge Code

1/24/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John C. Hayes, Esq., I. Keith McCarty, Esq.

Mary Margaret Noland, Esq.

PLAINTIFF

Sarah L. Fragale, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Phyllis Norton

FILED
FORM 4

STATE OF SOUTH CAROLINA JAN 26 AM 9:06 JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-10-04335

Jeffrey Sills, et al,

John Wieland Homes and
Neighborhoods of the Carolinas, Inc., et
al,

PLAINTIFF

DEFENDANT

CHECK ONE:

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

BOX:

- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case was before the Court on January 17, 2017 for a hearing on Defendant Juan Luis Sanchez and Juan Luis Sanchez A/K/A Sanchez Brothers Painting's Notice of Motion and Motion to Bifurcate Wieland's Cross-Claims, filed January 17, 2017. SCRCP Rule 42 governs the consolidation and separation of trials and states;

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

SCRCP 42. Further, "[a] motion seeking bifurcation of the issues of liability and damages . . . is addressed to the sound discretion of the trial court pursuant to Rule 42(b), SCRCP." Senter v. Piggly Wiggly Carolina Co., 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000). "Trial judges have discretion as to whether to bifurcate a trial. . . . A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." Wright v. Hiester Constr. Co., Inc., 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010). See also, The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc., 418 S.C. 142, 153, 791 S.E.2d 152, 158 (Ct. App. 2016), reh'g denied (Oct. 21, 2016). The Court, finding bifurcation will neither prejudice the parties and finding that bifurcation of the John Wieland Cross-Claims will promote convenience and be conducive to expedition and economy grants Defendant's Motion for Bifurcation of the John Wieland Cross-Claims.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

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

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Alk Jaffer
Circuit Court Judge

2128
Judge Code

1/24/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John C. Hayes, Esq., I. Keith McCarty, Esq.

Mary Margaret Noland, Esq.

PLAINTIFF

Sarah L. Fragale, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Phyllis Norton

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Waverly at Hamlin Plantation Townhome
Association, Inc.,

v.

John Wieland Homes and
Neighborhoods of the Carolinas, Inc., et
al,

PLAINTIFF

DEFENDANT

FORM 4

JUDGMENT IN A CIVIL

CASE

CASE NO. 2013-CP-10-03326

CHECK ONE:

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

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**

BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case was before the Court on January 17, 2017 for a hearing on Defendant Jeorge Medina A/K/A JMC Construction, LLC A/K/A JMC Construction, Inc.'s Supplemental Motion for Summary Judgment as to the Cross-Claims Asserted by the John Wieland Homes Entities or in the Alternative For a Motion to Bifurcate the Equitable Indemnity Cross-Claims Asserted by the John Wieland Homes Entities, filed January 17, 2017. "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRPC. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id. "Summary judgment is not appropriate where

further inquiry into the facts of the case is desirable to clarify the application of the law. . . . Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Based on arguments of the parties presented at the hearing and the memoranda submitted, this Court finds that a question of fact exists. Therefore, Defendant's Motion for Summary Judgment is heard and respectfully denied.

As to Defendant's alternative request to bifurcate the equitable indemnity Cross-Claim asserted by the John Wieland Home entities, the Motion is heard and granted with further instruction that the John Wieland Cross-Claim is to be bifurcated in its entirety. SCRCF Rule 42 governs the consolidation and separation of trials and states;

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

SCRCF 42. Further, "[a] motion seeking bifurcation of the issues of liability and damages . . . is addressed to the sound discretion of the trial court pursuant to Rule 42(b), SCRCF." Senter v. Piggly Wiggly Carolina Co., 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000). "Trial judges have discretion as to whether to bifurcate a trial. . . . A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." Wright v. Hiester Constr. Co., Inc., 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010). See also, The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc., 418 S.C. 142, 153, 791 S.E.2d 152, 158 (Ct. App. 2016), reh'g denied (Oct. 21, 2016).

The Court, finding bifurcation will neither prejudice the parties and finding that bifurcation of the John Wieland Cross-Claims will promote convenience and be conducive to expedition and economy grants Defendant's Motion in the Alternative for Bifurcation of the John Wieland Equitable Cross-Claims with further instruction that the entire claim will be bifurcated. In its Motion, Defendant JMC seeks to bifurcate only the equitable indemnity claim. However, "when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims." Johnson v. S.C. Nat. Bank, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). The Court having found that the bifurcation of only the equitable claim would be contrary to precedent, orders that the Cross-Claim asserted by John Wieland be bifurcated in its entirety. Accordingly, Defendants Motion as to Bifurcation is granted with further instruction that the John Wieland Cross-Claims are to be bifurcated in its entirety.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2128
 Judge Code

1/25/17
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

Ivon Keith McCarty Esq., John C. Hayes Esq.,
Mary Margaret Noland, Esq.

PLAINTIFF

Andrew N. Cole, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Phyllis Norton

FORM 4**STATE OF SOUTH CAROLINA****JUDGMENT IN A CIVIL
CASE**COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-10-04335

Jeffrey Sills, et al,

v.

John Wieland Homes and
Neighborhoods of the Carolinas, Inc., et
al,

PLAINTIFF

DEFENDANT

CHECK ONE:

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

BOX):☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
- ☒ Statement of Judgment by the Court:

This case was before the Court on January 17, 2017 for a hearing on Defendant Jeorge Medina A/K/A JMC Construction, LLC A/K/A JMC Construction, Inc.'s Supplemental Motion for Summary Judgment as to the Cross-Claims Asserted by the John Wieland Homes Entities or in the Alternative For a Motion to Bifurcate the Equitable Indemnity Cross-Claims Asserted by the John Wieland Homes Entities, filed January 17, 2017. "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCP. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id. "Summary judgment is not appropriate where

further inquiry into the facts of the case is desirable to clarify the application of the law. . . . Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Based on arguments of the parties presented at the hearing, this Court finds that a question of fact exists. Therefore, Defendant's Motion for Summary Judgment is heard and respectfully denied.

As to Defendant's alternative request to bifurcate the equitable indemnity Cross-Claim asserted by the John Wieland Home entities, the Motion is heard and granted with further instruction that the John Wieland Cross-Claim is to be bifurcated in its entirety. SCRCF Rule 42 governs the consolidation and separation of trials and states;

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

SCRCF 42. Further, "[a] motion seeking bifurcation of the issues of liability and damages . . . is addressed to the sound discretion of the trial court pursuant to Rule 42(b), SCRCF." Senter v. Piggly Wiggly Carolina Co., 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000). "Trial judges have discretion as to whether to bifurcate a trial. . . . A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." Wright v. Hiester Constr. Co., Inc., 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010). See also, The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc., 418 S.C. 142, 153, 791 S.E.2d 152, 158 (Ct. App. 2016), reh'g denied (Oct. 21, 2016).

The Court, finding bifurcation will neither prejudice the parties and finding that bifurcation of the John Wieland Cross-Claims will promote convenience and be conducive to expedition and economy grants Defendant's Motion in the Alternative for Bifurcation of the John Wieland Equitable Cross-Claims with further instruction that the entire claim will be bifurcated. In its Motion, Defendant JMC seeks to bifurcate only the equitable indemnity claim. However, "when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims." Johnson v. S.C. Nat. Bank, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). The Court having found that the bifurcation of only the equitable claim would be contrary to precedent, orders that the Cross-Claim asserted by John Wieland be bifurcated in its entirety. Accordingly, Defendant's Motion as to Bifurcation is granted with further instruction that the John Wieland Cross-Claims are to be bifurcated in its entirety.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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


Circuit Court Judge

2128
Judge Code

1/25/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Ivon Keith McCarty Esq., John C. Hayes Esq.,
Mary Margaret Noland, Esq.

PLAINTIFF

Andrew N. Cole, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Phyllis Norton

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson
Circuit Court Judge

Case No. 2013-CP-10-3326

Waverly at Hamlin Plantation Townhome Association,
Inc.,

Plaintiff,

v.

John Wieland Homes and Neighborhoods of the
Carolinas, Inc. as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes, Inc., Builders Support Services
of the Carolinas, Inc. and Wheelock Street Capital, LLC
d/b/a John Wieland Homes and Neighborhoods, Inc.,

Defendants,

and

John Wieland Homes and Neighborhoods of the
Carolinas, Inc., as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes Inc., Builders Support Services
of the Carolinas, Inc.,

*Third-Party
Plaintiffs,*

v.

Barr Construction, Inc. Benjamin Mora d/b/a Mora
Construction, a/k/a Benjamin Mora Construction,
LLC, Builders FirstSource, Inc., a/k/a Builders
FirstSource-Southeast Group, LLC, a/k/a Builders
FirstSource-Atlantic Group, LLC, DBC Construction
Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a
GR Painting, George Medina, Jeorge Medina a/k/a JMC

Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC,

*Third-Party
Defendants.*

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

Case No. 2014-CP-10-4335

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia

Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gillespie, Jared D. Overcash,

Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, George Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC,

Defendants,

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, Jeorge Medina, Jeorge Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

Proof of Service

I, the undersigned employee of Howser Newman & Besley, LLC, hereby certify that pursuant to Rules 203 and 262(b), SCACR, I have served the Notice of Appeal of John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. in these matters on all counsel of record, the Clerk of the Court of Appeals, and the Clerk of Court for Charleston County by delivering a copy or mailing a copy, United States Mail, postage prepaid, on March 1, 2017, to the following addresses:

Clerk of the Court of Appeals:

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

Clerk of Court for Charleston County:

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Attorneys for Waverly @ Hamlin Plantation Townhome Association, Inc., and Jeffrey Sills, et al.:

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Mary-Margaret Fitzhenry Noland
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(843) 805-7003

Ivon Keith McCarty
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Jesse Sanchez
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Pro Se:

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Attorneys for Juan Luis Sanchez, Sanchez Brothers Painting:

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TURNER PADGET GRAHAM & LANEY, PA
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Attorneys for Builders Firstsource Southeast Group LLC:

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Attorneys for Richard Ditullio and RDT Contracting LLC:

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Attorneys for Latitude Construction Services LLC:

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Laura Elizabeth Paris Paton
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Elizabeth Fraysure Fulton
PRITCHARD LAW GROUP LLC
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John Elliott Rogers II
Carl Reed Teague
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Attorneys for The Muhler Company Inc:

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GALLIVAN WHITE & BOYD, PA
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Andrew Elliott Haselden
Justin Paul Novak
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Theodore Luke Manos
ROBERTSON HOLLINGSWORTH & FLYNN
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(843) 723-6470

***Attorneys for Builder Support Services
of the Carolinas, Inc., John Wieland
Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes and
Neighborhoods of the Carolinas, Inc.,
John Wieland Homes Inc., John Wieland
Homes of Charleston, Inc.***

March 1, 2017

EXHIBIT D

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-10-3326
Case No. 2014-CP-10-4335
Appellate Case No. 2017-000542

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc.,

Appellant,

v.

Waverly at Hamlin Plantation Townhome Association, Inc., et al.,

Respondents.

And

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc.,

Appellant,

And

Jeffrey Sills, Individually and as Class Representative, et al.

Respondents.

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, Justin P. Novak, after being duly sworn,
deposes and states:

1. I am a member of the South Carolina Bar employed by Howser, Newman & Besley, LLC at 215 East Bay Street, Suite 303, Charleston, SC 29401.

2. I am an attorney of record for John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. in the foregoing action.

3. On March 1, 2017, I prepared correspondence to the Court of Appeals and all counsel containing the Notice of Appeal in the foregoing action attached hereto as Exhibit A ("Correspondence") for service upon those parties listed in the Proof of Service.

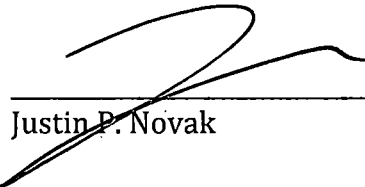
4. The parties listed on the Proof of Service include, John C. Hayes, IV, Esquire, Mary-Margaret Fitzhenry Noland, Esquire, Ivon Keith McCarty, Esquire, and Jesse Sanchez, Esquire, as counsel for Waverly at Hamlin Plantation Townhome Association, Inc., and Jeffrey Sills, et al.

5. On March 1, 2017, I supervised Danielle Cox, who is a Paralegal employed by Howser, Newman & Besley, LLC, while she made copies of the correspondence and placed those into envelopes, sufficient postage prepaid, addressed to those parties listed in the Proof of Service.

6. In accordance with the Proof of Service, Danielle Cox informed me that she deposited the Correspondence into the United States Mail, sufficient postage prepaid, on March 1, 2017.

7. Howser, Newman & Besley, LLC has not received any of the Correspondence returned because of insufficient postage, incorrect address, or for any other reason.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


_____(L.S.)
Justin P. Novak

SWORN TO BEFORE ME this

26 day of May 2017

Kristen H. Miller (L.S.)
Notary Public for South Carolina

My Commission Expires: 9/4/2023

EXHIBIT E

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-10-3326
Case No. 2014-CP-10-4335
Appellate Case No. 2017-000542

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc.,

Appellant,

v.

Waverly at Hamlin Plantation Townhome Association, Inc., et al.,

Respondents.

And

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc.,

Appellant,

And

Jeffrey Sills, Individually and as Class Representative, et al.

Respondents.

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, Danielle Cox, after being duly sworn,
deposes and states:

1. I am a Paralegal employed by Howser, Newman & Besley, LLC at 215 East Bay Street, Suite 303, Charleston, SC 29401.

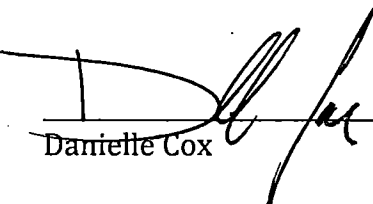
2. On March 1, 2017, I made copies of the correspondence to the Court of Appeals and all counsel containing the Notice of Appeal in the foregoing action attached hereto as Exhibit A ("Correspondence") for service upon those parties listed in the Proof of Service.

3. On March 1, 2017, I also placed copies of the Correspondence into envelopes, sufficient postage prepaid, addressed to those parties listed in the Proof of Service.

4. In accordance with the Proof of Service, on March 1, 2017, I deposited the Correspondence into the United States Mail, sufficient postage prepaid, at the United States Post Office located at 557 East Bay Street, Charleston, SC 29403.

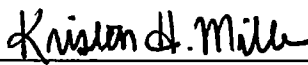
5. Howser, Newman & Besley, LLC has not received any of the Correspondence returned because of insufficient postage, incorrect address, or for any other reason.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

 (L.S.)
Danielle Cox

SWORN TO BEFORE ME this

26 day of May 2017

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 9/4/2023

EXHIBIT F

R. Davis Howser
James P. Newman, Jr.
William G. Besley^c
Benjamin D. McCoy^a
Kelley Shull Cannonⁱ
Andrew E. Haselden^c
George V. Hanna, IV^{*}
Michal Cooper Jones
Kylene L. Keesley^a
Jennifer E. Thomas
Albert Richard Pierce, Jr.^{*}
James P. Sullivan
Justin P. Novak
Jeffrey I. Silverberg
Trevor P. Eddy[‡]
M. Claire Hall

^c Certified Circuit Court Mediator
^a Certified Circuit Court Mediator and Arbitrator
ⁱ Certified Circuit Court Arbitrator
^{*} Also Admitted in North Carolina
[‡] Also Admitted in Maryland

HNB
**HOWSER, NEWMAN
& BESLEY, LLC**

Attorneys and Counselors at Law

215 East Bay Street
Suite 303
Charleston, SC 29401

www.hnblaw.com

March 1, 2017

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Charleston Office
215 East Bay Street
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Charleston, SC 29401
Telephone 843.216.6940
Fax 843.216.6942
Toll Free 877.216.6970

Ms. Ruth C. Weese
1554 Chastain Road
Johns Island, SC 29455

RE: *Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. and Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.*

Case No. 2013-CP-10-3326

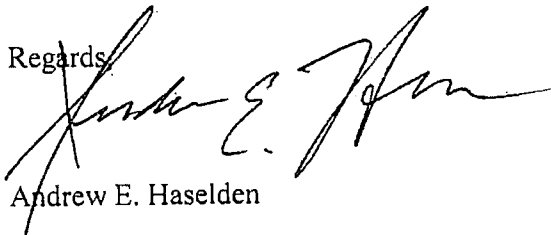
Jeffrey Sills, et al. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. and Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.

Case No. 2014-CP-10-4335

Dear Ms. Weese:

The above-referenced cases were tried before The Honorable Deadra L. Jefferson, Circuit Court Judge, in Charleston County, on January 17, 19, 23, 24, 25, 26, 27, and 30, 2017. My records indicate that you served as the court reporter during the trial. Please provide a transcription of the entire proceedings. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Regards,


Andrew E. Haselden

AEH/jnov

cc: All Counsel of Record
The Honorable Jenny A. Kitchings
S.C. Court Administration

EXHIBIT G

R. Davis Howser
James P. Newman, Jr. <
William G. Besley <
Benjamin D. McCoy <
Kelley Shull Cannon †
Andrew E. Haselden <
George V. Hanna, IV *
Michael Cooper Jones
Kyllene L. Keesley <
Albert Richard Pierce, Jr. *
James P. Sullivan
Justin P. Novak
Jeffrey I. Silverberg
Trevor P. Eddy ‡
M. Claire Hall
Sarah Rand-McDaniel

< Certified Circuit Court Mediator
< Certified Circuit Court Mediator and Arbitrator
† Certified Circuit Court Arbitrator
* Also Admitted in North Carolina
‡ Also Admitted in Maryland

HNB
**HOWSER, NEWMAN
& BESLEY, LLC**

Attorneys and Counselors at Law

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April 5, 2017

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

RE: *Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. and Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc. and John Wieland Homes and Neighborhoods of the Carolinas, Inc., as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes Inc., Builders Support Services of the Carolinas, Inc. v. Barr Construction, Inc. Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builders FirstSource, Inc., a/k/a Builders FirstSource-Southeast Group, LLC, a/k/a Builders FirstSource-Atlantic Group, LLC, DBC Construction Services, LLC, Eli, Inc. Gerardo Rosette Sanchez a/k/a GR Painting, George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant and Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the Respondents.*
Case No. 2013-CP-10-3326

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, George Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant and Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, George Medina, George Medina a/k/a JMC

Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the Respondents.
Case No. 2014-CP-10-4335

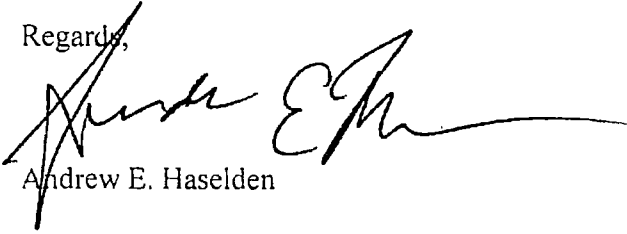
Dear Ms. Kitchings:

Please find enclosed for service and filing a *Notice of Appeal* in the above-referenced matters. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on all counsel of record, the Clerk of Court of Appeals, and the Clerk of Court for Charleston County;
- (2) a copy of the orders being challenged on appeal; and
- (3) a check for the required filing fee of \$100.00.

Thank you for your assistance in this matter. Please do not hesitate to contact me with any questions or concerns.

Regards,


Andrew E. Haselden

AEH/jnov

cc: All Counsel of Record
The Honorable Julie J. Armstrong

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson
Circuit Court Judge

Case No. 2013-CP-10-3326

Waverly at Hamlin Plantation Townhome Association,
Inc.,

Plaintiff,

v.

John Wieland Homes and Neighborhoods of the
Carolinas, Inc. as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes, Inc., Builders Support Services
of the Carolinas, Inc. and Wheelock Street Capital, LLC
d/b/a John Wieland Homes and Neighborhoods, Inc.,

Defendants,

and

John Wieland Homes and Neighborhoods of the
Carolinas, Inc., as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes Inc., Builders Support Services
of the Carolinas, Inc.,

*Third-Party
Plaintiffs,*

v.

Barr Construction, Inc. Benjamin Mora d/b/a Mora
Construction, a/k/a Benjamin Mora Construction,
LLC, Builders FirstSource, Inc., a/k/a Builders
FirstSource-Southeast Group, LLC, a/k/a Builders
FirstSource-Atlantic Group, LLC, DBC Construction
Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a
GR Painting, George Medina, George Medina a/k/a JMC

Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC,

*Third-Party
Defendants.*

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

Case No. 2014-CP-10-4335

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia

Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gillespie, Jared D. Overcash,

Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, George Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC,

Defendants,

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

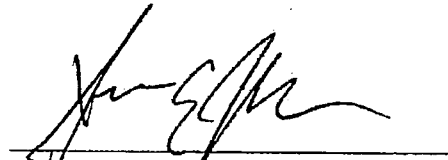
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Respondents.

NOTICE OF APPEAL

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. ("Appellant"), appeals the Court's Order Denying Appellant's Motion to Enforce Enhanced Set-off filed March 3, 2017,

(Exhibit A) and the Court's Order Denying Appellant's Motion for Reconsideration
filed on March 17, 2017 (Exhibit B).



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April 5, 2017

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EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Waverly at Hamlin Plantation
Townhome Association, Inc.)

Plaintiff,)

v.)

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.
As successor by statutory merger to
John Wieland Homes and
Neighborhoods of South Carolina,
Inc., John Wieland Homes of
Charleston, Inc., John Wieland
Homes, Inc.,)

Defendants,)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-10-03326

**SUPPLEMENTAL ORDER DENYING
DEFENDANT JOHN WIELAND
HOMES' MOTION TO ENFORCE
ENHANCED SET-OFF**

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Stephen Denby, Individually and as Class
Representative, Marie Labarowski,
Stephanie Adili, Marc and Brandy
Lynn Russell Robinson, Jessica,
Baucom, Nancy S. Coleman, Linda
Glitz, Maryann Walsh, Patty Whitmire,
Donald L. Tomasella and Patricia
Kelly, Chris Leigh-Jones, Edward
Ray and Kathy Jo Feagins,
William and Carolyn Barone,
William Abel, Dean and Conny
Mason, Paul and Patricia Waters,
R. Robinson, Jr., Lisa Roëck,
Elizabeth Jackson, Joe and
Anita Brittain, Gilbert J. Hager and
Kelly Hager Holmes,
Jessica Shipman, Arlene Conte, Carol Ann
Dumond, Lawrence Murray, Yvonne)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-10-04335

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2017 MAR -3 AM 9:46

FILED

10/7
[Signature]

Walker, Darlene and Richard)
Gleeson, Robert and Michell Bagrie,)
Russell Johnston, Kathryn Howle,)
Dorothy Newman, Nicholas and)
Debora Yost, Helen and Bob Harmon)
Estate of Rose Minton,)
Stephen and Merifaith Perdue)

Plaintiffs,)

v.)

John Wieland Homes and)
Neighborhoods of the Carolinas, Inc.)
As successor by statutory merger to)
John Wieland Homes and)
Neighborhoods of South Carolina,)
Inc., John Wieland Homes of)
Charleston, Inc., John Wieland)
Homes, Inc.,)

Defendants,)

Presiding Judge:
Counsel for Plaintiff:

Counsel for John Wieland Homes:

Counsel for JMC Construction:
Counsel for Sanchez Brothers Painting:
Counsel for The Muhler Company:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
John Hayes, IV, Esq.
I. Keith McCarty, Esq.
Mary Margaret Noland, Esq.
Theodore Manos, Esq.
Andrew Haselden, Esq.
Andrew Cole, Esq.
Sarah Fragale, Esq.
Peter Gunnar Nistad, Esq.
January 17, 2016
Phyllis Norton

THIS MATTER came before the Court on Defendant John Wieland Homes' Motion to Enforce Setoff and Reduce Judgment, filed February 3, 2017. A hearing was held on February 9, 2017. Present at the hearing were John Hayes, Esquire and I. Keith McCarty, Esquire, representing the Plaintiff, and Theodore Manos, Esquire and Andrew Haselden, Esquire, representing Defendant John Wieland Homes. Curtis Martin, Esquire representing Defendant Benjamin Mora was not present at the hearing.

2017
2/9

"Before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury; when the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188 (Ct. App. 2012).

After hearing from all parties present, the parties stipulated, without objection, that the Defendants were entitled to a set-off in the amount of \$2,119,000.00¹ to the combined jury verdict of \$7,200,000.00². Therefore, Judgment was entered against the Defendants in the amount of \$5,081,000.00 for the Plaintiffs Waverly at Hamlin Plantation Townhome Association and no judgment for the Plaintiffs in the class action companion suit. Accordingly, a Form 4 was signed and entered for both cases on February 9, 2017 issuing the judgment with the agreed upon set-off. This Supplemental Order addresses the gravamen of Defendant John Wieland Homes' Motion. Defendant John Wieland Homes' contends that they are entitled to an enhanced set-off in the amount of \$434,000.00.³ They maintain this is the result of an alleged settlement with Benjamin Mora d/b/a Mora Construction a/k/a Benjamin Mora Construction, LLC (hereinafter referred to as "Benjamin Mora").

A trial court has inherent jurisdiction to enforce settlement agreements entered before it, and the inherent power to refuse to enforce settlements. Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 419 S.E.2d 841 (Ct. App. 1992). With regards to agreements between parties, SCRPC Rule 43(k) states that:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed

¹ The settlement funds totaling \$2,119,000.00 are as follows: Jesus Mora; \$100,000.00; Benjamin Mora Construction; \$70,000.00; Barr Construction; \$15,000.00; Latitude Construction; \$50,000.00; AC Construction; \$67,500.00; and Builders First Source; \$7,500.00. Additionally, the set-off encompasses the outstanding settlements pending class action approval. These additional settlements are as follows: JMC Construction; \$1,250,000.00; The Muhler Company; \$250,000.00; RDT; \$125,000.00; and Sanchez Brothers Painting; \$184,000.00. The combined settlements from the various Defendants totals to the applied set-off of \$2,119,000.00. Cross-claims by Defendant John Wieland Homes are still pending for the following parties: JMC Construction, The Muhler Company, and Sanchez Brothers Painting. These claims were bifurcated and will be tried separately.

² This judgment reflects the total verdict from the combined cases. In the class action suit, the jury returned a verdict in favor of the Plaintiffs in the amount of \$200,000 actual damages. The jury reached a verdict of \$7,000,000.00 actual damages for Plaintiff Waverly at Hamlin Plantation Townhome Association. By consent of counsel, the set-off was applied as follows: \$200,000.00 towards the class action suit resulting in no judgment and \$1,919,000.00 applied towards the judgment for Plaintiff Waverly at Hamlin Plantation Townhome Association resulting in a judgment of \$5,081,000.00.

³ The alleged enhanced set-off of \$434,000.00 does not include the already approved settlement of \$70,000.00 between Plaintiffs and Defendant Benjamin Mora.

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[Signature]

by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP 43. SCRCP Rule 43(k) allows for agreements between counsel to be binding under four scenarios. However, three of the scenarios require that the agreement be noted and entered on the record. As a fourth option, SCRCP Rule 43(k) allows an agreement to be binding if an agreement is "reduced to writing and signed by the parties and their counsel." The signature of the party to the agreement is a requirement under the plain language of SCRCP Rule 43(k). Further, South Carolina courts have consistently throughout the years ruled that in order for a settlement to be enforced an agreement must strictly adhere to SCRCP Rule 43(k).

Defendant John Wieland Homes' Motion for an Enhanced Set-Off in the amount of \$434,000.00 fails for several reasons. First, Defendant John Wieland Homes' request must be denied because no documentation of the alleged set-off complies with the requirements of SCRCP Rule 43(k). Defendant John Wieland Homes urges this Court to accept a chain of e-mail correspondence as evidence of the alleged negotiated settlement. However, e-mail correspondence as evidence of a negotiated settlement do not meet any of the four scenarios mandated by SCRCP Rule 43(k). Accordingly, Defendant John Wieland Homes' motion fails on this ground.

In the alternative, Defendant John Wieland Homes argues that the alleged Benjamin Mora settlement agreement concerning the enhanced set-off was memorialized, in open court on the record, and thus complies with SCRCP Rule 43(k). In further support of their argument, Defendant John Wieland Homes contends that on Tuesday, January 17, 2017, Plaintiffs' counsel and Defendant John Wieland Homes' counsel notified the Court, on the record, that Plaintiffs and Defendant John Wieland Homes had settled with Defendant Benjamin Mora. However, after reviewing the record from both January 17, 2017 and January 23, 2017, this Court cannot discern

A handwritten signature in black ink, appearing to be "H. J. [unclear]", is written over the page number.

from the record that a settlement agreement was ever articulated between Plaintiffs, Defendant Benjamin Mora, and Defendant John Wieland Homes.

Further, even if a conversation mentioning the alleged settlement agreement were made on the record, it still would not comply with SCRCP 43(k) because all parties needed for the agreement to be enforceable were not present. In order for the alleged settlement agreement to have been made enforceable on the record, all parties would have had to be present, indicate their intention to enter into the alleged settlement agreement, and meet one of the scenarios contemplated by SCRCP Rule 43(k). This would require Defendant Benjamin Mora and/or its counsel, Curtis B. Martin, Esquire, to be present as it was to be a party to this alleged settlement agreement. Accordingly, on January 17, 2017 and January 23, 2017, neither Defendant Benjamin Mora nor his counsel were present. In fact, Defendant Benjamin Mora did not make an appearance at any time throughout the proceedings even though his counsel received notice of the proceedings. As such, there is no way the alleged settlement agreement could have been binding and enforceable based upon SCRCP Rule 43(k). Accordingly, Defendant John Wieland Homes' motion fails on this ground.

Finally, Defendant John Wieland Homes' cites Byrd v. Livingston, as being analogous to the present situation. See Byrd v. Livingston, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012). In Byrd, the plaintiff entered into a contract with the defendant to purchase property after winning the bid at a live auction. Id. at 240, 727 S.E.2d at 621. Litigation ensued over the purchase property, and following pretrial discovery, the parties attended a mediation and signed an "Agreement in Principle" which stated that the agreement will be supplemented by a more formal and detailed written agreement. Id. However, the subsequent agreement was never signed. Id. The trial court found the agreement enforceable against the parties and ordered the parties to prepare and execute

a formal settlement document. Id. On appeal, the Court of Appeals affirmed the trial court's decision stating, "[w]e find no error with the court's determination that the subsequent conduct of the parties and attorneys established the parties had a meeting of the minds and intended to be bound by the Agreement." Id. at 243, 727 S.E.2d at 624.

The present case is not analogous to Byrd v. Livingston, as Defendant John Wieland Homes suggests. In Byrd, there was a clear meeting of the minds that was formalized in a writing. In the present case, there is no written agreement in the record that complies with SCRCP Rule 43(k). The alleged written agreement at issue is a proposed settlement agreement releasing the claims against Defendant Benjamin Mora. Defendant John Wieland Homes' Attorney Theodore Manos presented this release for Plaintiff's Attorney I. Keith McCarty's review and signature. Even after Attorney McCarty received the proposed written settlement agreement, he refused to sign it because he did not believe it was meant for his client. At the hearing, Attorney McCarty indicated to the Court that although he had received the release, he thought the release concerned only Defendant John Wieland Homes and Defendant Benjamin Mora. This is made evident by Attorney McCarty's refusal to sign the release. As such, because there is no written agreement by counsel, there is no evidence in the record to indicate that there was a meeting of the minds between the parties. If anything, Attorney McCarty's confusion surrounding the proposed release agreement as well as his refusal to sign the release evidences a lack of a meeting of the minds and distinguishes the present case from that of Byrd v. Livingston. Accordingly, Defendant John Wieland Homes' motion fails on this ground.

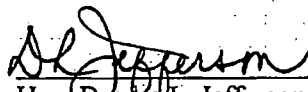
Finally, it is of importance to note that on January 23, 2017, counsel for JMC Construction, Andrew Cole, Esq., indicated to the Court that his client, JMC Construction, had settled with the Plaintiffs. He indicated to the Court that this settlement agreement was memorialized in writing

6/27/17
APC

and noted on the record, thus complying with SCRCP Rule 43(k). At that time, this Court stressed to all parties the importance of SCRCP Rule 43(k) and made clear that unless there was strict compliance, agreements would not be binding. This Court read the rule verbatim into the record to assure that the parties had fully complied with the requirements of SCRCP Rule 43(k) concerning the settlement.

Accordingly, it is hereby ordered, adjudged, and decreed, that Defendant John Wieland Homes' Motion to Enforce Setoff and Reduce Judgment is denied as to the enhanced setoff of \$434,000.00.

IT IS SO ORDERED.


Hon. Deandra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

March 1, 2017
Charleston, South Carolina
At Chambers

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Waverly at Hamlin Plantation
Townhome Association, Inc.)

Plaintiff,)

v.)

John Wieland Homes and
Neighborhoods of the Carolinas, Inc.
As successor by statutory merger to
John Wieland Homes and
Neighborhoods of South Carolina,
Inc., John Wieland Homes of
Charleston, Inc., John Wieland
Homes, Inc.,)

Defendants,)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-10-03326

**SUPPLEMENTAL ORDER DENYING
DEFENDANT JOHN WIELAND
HOMES' MOTION TO ENFORCE
ENHANCED SET-OFF**

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Stephen Denby, Individually and as Class
Representative, Marie Labarowski,
Stephanie Adili, Marc and Brandy
Lynn Russell Robinson, Jessica,
Baucom, Nancy S. Coleman, Linda
Glitz, Maryann Walsh, Patty Whitmire,
Donald L. Tomasella and Patricia
Kelly, Chris Leigh-Jones, Edward
Ray and Kathy Jo Feagins,
William and Carolyn Barone,
William Abel, Dean and Conny
Mason, Paul and Patricia Waters,
R. Robinson, Jr., Lisa Roeck,
Elizabeth Jackson, Joe and
Anita Brittain, Gilbert J. Hager and
Kelly Hager Holmes,
Jessica Shipman, Arlene Conte, Carol Ann
Dumond, Lawrence Murray, Yvonne)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-10-04335

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2017 MAR -3 AM 9:46

FILED

10/7
[Signature]

Walker, Darlene and Richard)
Gleeson, Robert and Michell Bagrie,)
Russell Johnston, Kathryn Howle,)
Dorothy Newman, Nicholas and)
Debora Yost, Helen and Bob Harmon)
Estate of Rose Minton,)
Stephen and Merifaith Perdue)

Plaintiffs,)

v.)

John Wieland Homes and)
Neighborhoods of the Carolinas, Inc.)
As successor by statutory merger to)
John Wieland Homes and)
Neighborhoods of South Carolina,)
Inc., John Wieland Homes of)
Charleston, Inc., John Wieland)
Homes, Inc.,)

Defendants,)

Presiding Judge:
Counsel for Plaintiff:

Counsel for John Wieland Homes:

Counsel for JMC Construction:
Counsel for Sanchez Brothers Painting:
Counsel for The Muhler Company:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
John Hayes, IV, Esq.
I. Keith McCarty, Esq.
Mary Margaret Noland, Esq.
Theodore Manos, Esq.
Andrew Haselden, Esq.
Andrew Cole, Esq.
Sarah Fragale, Esq.
Peter Gunnar Nistad, Esq.
January 17, 2016
Phyllis Norton

THIS MATTER came before the Court on Defendant John Wieland Homes' Motion to Enforce Setoff and Reduce Judgment, filed February 3, 2017. A hearing was held on February 9, 2017. Present at the hearing were John Hayes, Esquire and I. Keith McCarty, Esquire, representing the Plaintiff, and Theodore Manos, Esquire and Andrew Haselden, Esquire, representing Defendant John Wieland Homes. Curtis Martin, Esquire representing Defendant Benjamin Mora was not present at the hearing.

2017
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"Before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury; when the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188 (Ct. App. 2012).

After hearing from all parties present, the parties stipulated, without objection, that the Defendants were entitled to a set-off in the amount of \$2,119,000.00¹ to the combined jury verdict of \$7,200,000.00². Therefore, Judgment was entered against the Defendants in the amount of \$5,081,000.00 for the Plaintiffs Waverly at Hamlin Plantation Townhome Association and no judgment for the Plaintiffs in the class action companion suit. Accordingly, a Form 4 was signed and entered for both cases on February 9, 2017 issuing the judgment with the agreed upon set-off. This Supplemental Order addresses the gravamen of Defendant John Wieland Homes' Motion. Defendant John Wieland Homes' contends that they are entitled to an enhanced set-off in the amount of \$434,000.00.³ They maintain this is the result of an alleged settlement with Benjamin Mora d/b/a Mora Construction a/k/a Benjamin Mora Construction, LLC (hereinafter referred to as "Benjamin Mora").

A trial court has inherent jurisdiction to enforce settlement agreements entered before it, and the inherent power to refuse to enforce settlements. Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 419 S.E.2d 841 (Ct. App. 1992). With regards to agreements between parties, SCRPC Rule 43(k) states that:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed

¹ The settlement funds totaling \$2,119,000.00 are as follows: Jesus Mora; \$100,000.00; Benjamin Mora Construction; \$70,000.00; Barr Construction; \$15,000.00; Latitude Construction; \$50,000.00; AC Construction; \$67,500.00; and Builders First Source; \$7,500.00. Additionally, the set-off encompasses the outstanding settlements pending class action approval. These additional settlements are as follows: JMC Construction; \$1,250,000.00; The Muhler Company; \$250,000.00; RDT; \$125,000.00; and Sanchez Brothers Painting; \$184,000.00. The combined settlements from the various Defendants totals to the applied set-off of \$2,119,000.00. Cross-claims by Defendant John Wieland Homes are still pending for the following parties: JMC Construction, The Muhler Company, and Sanchez Brothers Painting. These claims were bifurcated and will be tried separately.

² This judgment reflects the total verdict from the combined cases. In the class action suit, the jury returned a verdict in favor of the Plaintiffs in the amount of \$200,000 actual damages. The jury reached a verdict of \$7,000,000.00 actual damages for Plaintiff Waverly at Hamlin Plantation Townhome Association. By consent of counsel, the set-off was applied as follows: \$200,000.00 towards the class action suit resulting in no judgment and \$1,919,000.00 applied towards the judgment for Plaintiff Waverly at Hamlin Plantation Townhome Association resulting in a judgment of \$5,081,000.00.

³ The alleged enhanced set-off of \$434,000.00 does not include the already approved settlement of \$70,000.00 between Plaintiffs and Defendant Benjamin Mora.

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JH

by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP 43. SCRCP Rule 43(k) allows for agreements between counsel to be binding under four scenarios. However, three of the scenarios require that the agreement be noted and entered on the record. As a fourth option, SCRCP Rule 43(k) allows an agreement to be binding if an agreement is "reduced to writing and signed by the parties and their counsel." The signature of the party to the agreement is a requirement under the plain language of SCRCP Rule 43(k). Further, South Carolina courts have consistently throughout the years ruled that in order for a settlement to be enforced an agreement must strictly adhere to SCRCP Rule 43(k).

Defendant John Wieland Homes' Motion for an Enhanced Set-Off in the amount of \$434,000.00 fails for several reasons. First, Defendant John Wieland Homes' request must be denied because no documentation of the alleged set-off complies with the requirements of SCRCP Rule 43(k). Defendant John Wieland Homes urges this Court to accept a chain of e-mail correspondence as evidence of the alleged negotiated settlement. However, e-mail correspondence as evidence of a negotiated settlement do not meet any of the four scenarios mandated by SCRCP Rule 43(k). Accordingly, Defendant John Wieland Homes' motion fails on this ground.

In the alternative, Defendant John Wieland Homes argues that the alleged Benjamin Mora settlement agreement concerning the enhanced set-off was memorialized, in open court on the record, and thus complies with SCRCP Rule 43(k). In further support of their argument, Defendant John Wieland Homes contends that on Tuesday, January 17, 2017, Plaintiffs' counsel and Defendant John Wieland Homes' counsel notified the Court, on the record, that Plaintiffs and Defendant John Wieland Homes had settled with Defendant Benjamin Mora. However, after reviewing the record from both January 17, 2017 and January 23, 2017, this Court cannot discern

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JH

from the record that a settlement agreement was ever articulated between Plaintiffs, Defendant Benjamin Mora, and Defendant John Wieland Homes.

Further, even if a conversation mentioning the alleged settlement agreement were made on the record, it still would not comply with SCRCP 43(k) because all parties needed for the agreement to be enforceable were not present. In order for the alleged settlement agreement to have been made enforceable on the record, all parties would have had to be present, indicate their intention to enter into the alleged settlement agreement, and meet one of the scenarios contemplated by SCRCP Rule 43(k). This would require Defendant Benjamin Mora and/or its counsel, Curtis B. Martin, Esquire, to be present as it was to be a party to this alleged settlement agreement. Accordingly, on January 17, 2017 and January 23, 2017, neither Defendant Benjamin Mora nor his counsel were present. In fact, Defendant Benjamin Mora did not make an appearance at any time throughout the proceedings even though his counsel received notice of the proceedings. As such, there is no way the alleged settlement agreement could have been binding and enforceable based upon SCRCP Rule 43(k). Accordingly, Defendant John Wieland Homes' motion fails on this ground.

Finally, Defendant John Wieland Homes' cites Byrd v. Livingston, as being analogous to the present situation. See Byrd v. Livingston, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012). In Byrd, the plaintiff entered into a contract with the defendant to purchase property after winning the bid at a live auction. Id. at 240, 727 S.E.2d at 621. Litigation ensued over the purchase property, and following pretrial discovery, the parties attended a mediation and signed an "Agreement in Principle" which stated that the agreement will be supplemented by a more formal and detailed written agreement. Id. However, the subsequent agreement was never signed. Id. The trial court found the agreement enforceable against the parties and ordered the parties to prepare and execute

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[Signature]

a formal settlement document. Id. On appeal, the Court of Appeals affirmed the trial court's decision stating, "[w]e find no error with the court's determination that the subsequent conduct of the parties and attorneys established the parties had a meeting of the minds and intended to be bound by the Agreement." Id. at 243, 727 S.E.2d at 624.

The present case is not analogous to Byrd v. Livingston, as Defendant John Wieland Homes suggests. In Byrd, there was a clear meeting of the minds that was formalized in a writing. In the present case, there is no written agreement in the record that complies with SCRCP Rule 43(k). The alleged written agreement at issue is a proposed settlement agreement releasing the claims against Defendant Benjamin Mora. Defendant John Wieland Homes' Attorney Theodore Manos presented this release for Plaintiff's Attorney I. Keith McCarty's review and signature. Even after Attorney McCarty received the proposed written settlement agreement, he refused to sign it because he did not believe it was meant for his client. At the hearing, Attorney McCarty indicated to the Court that although he had received the release, he thought the release concerned only Defendant John Wieland Homes and Defendant Benjamin Mora. This is made evident by Attorney McCarty's refusal to sign the release. As such, because there is no written agreement by counsel, there is no evidence in the record to indicate that there was a meeting of the minds between the parties. If anything, Attorney McCarty's confusion surrounding the proposed release agreement as well as his refusal to sign the release evidences a lack of a meeting of the minds and distinguishes the present case from that of Byrd v. Livingston. Accordingly, Defendant John Wieland Homes' motion fails on this ground.

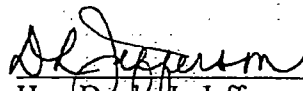
Finally, it is of importance to note that on January 23, 2017, counsel for JMC Construction, Andrew Cole, Esq., indicated to the Court that his client, JMC Construction, had settled with the Plaintiffs. He indicated to the Court that this settlement agreement was memorialized in writing

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JMC

and noted on the record, thus complying with SCRCF Rule 43(k). At that time, this Court stressed to all parties the importance of SCRCF Rule 43(k) and made clear that unless there was strict compliance, agreements would not be binding. This Court read the rule verbatim into the record to assure that the parties had fully complied with the requirements of SCRCF Rule 43(k) concerning the settlement.

Accordingly, it is hereby ordered, adjudged, and decreed, that Defendant John Wieland Homes' Motion to Enforce Setoff and Reduce Judgment is denied as to the enhanced setoff of \$434,000.00.

IT IS SO ORDERED.


Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

March 1, 2017
Charleston, South Carolina
At Chambers

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Waverly at Hamlin Plantation Townhome
Association, Inc.,

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods
of the Carolinas, Inc., et al.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stephen Denby, et al.,

Plaintiff,

vs.

John Wieland Homes and Neighborhoods
of the Carolinas, Inc., et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-10-3326

**ORDER DENYING DEFENDANT JOHN
WIELAND HOMES' MOTION FOR
RECONSIDERATION**

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-10-4335

FILED
2017 MAR 17 AM 10:10
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:
Counsel for Plaintiff:

Counsel for John Wieland Homes:

Counsel for JMC Construction:
Counsel for Sanchez Brothers Painting:
Counsel for The Muhler Company:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
John Hayes, IV, Esq.
I. Keith McCarty, Esq.
Mary Margaret Noland, Esq.
Theodore Manos, Esq.
Andrew Haselden, Esq.
Andrew Cole, Esq.
Sarah Fragale, Esq.
Peter Gunnar Nistad, Esq.
February 9, 2016
Phyllis Norton

1023
JMC

THIS MATTER came before the Court on Defendant John Wieland Homes' Motion for Reconsideration, filed March 10, 2017, and received by this Court on the same date. Defendant moves for this Court to reconsider an Order Denying Defendant John Wieland Homes' Motion for Enhanced Set-Off signed March 1, 2017 and subsequently filed March 3, 2017. Counsel for Plaintiff Waverly at Hamlin Plantation was given the opportunity to respond and instead relied on their previous written submissions and oral arguments from the hearing in opposing the motion. Having considered Defendant's Motion, as well as the various interests balanced by the Court at the time of the ruling, Defendant's Motion for Reconsideration is hereby denied.

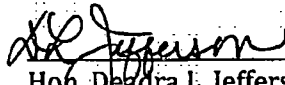
Rule 59(e) of the South Carolina Rules of Civil Procedure states that "(a) motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of entry of the order." Rule 59(e), SCRPC. The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to allow the parties liberal opportunity to move for the trial judge to reconsider matters properly encompassed in a decision on the merits, regardless of whether the issues and arguments have been previously presented. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400

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[Signature]

(Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)). See Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

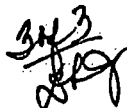
Defendant presented no novel facts, arguments, or theories in support of their Motion for Reconsideration. Moreover, Defendant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, Defendant's Motion to Reconsider is hereby DENIED.¹

IT IS SO ORDERED.


Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

March 5, 2017
Charleston, South Carolina
At Chambers

¹ This Motion is disposed of without the necessity of a hearing and decided on the record, written motion, and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Waverly at Hamlin Plantation Townhome
Association, Inc.,

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods
of the Carolinas, Inc., et al.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stephen Denby, et al.,

Plaintiff,

vs.

John Wieland Homes and Neighborhoods
of the Carolinas, Inc., et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-10-3326

**ORDER DENYING DEFENDANT JOHN
WIELAND HOMES' MOTION FOR
RECONSIDERATION**

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-10-4335

FILED
2017 MAR 17 AM 10:10
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:
Counsel for Plaintiff:

Counsel for John Wieland Homes:

Counsel for JMC Construction:
Counsel for Sanchez Brothers Painting:
Counsel for The Muhler Company:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
John Hayes, IV, Esq.
I. Keith McCarty, Esq.
Mary Margaret Noland, Esq.
Theodore Manos, Esq.
Andrew Haselden, Esq.
Andrew Cole, Esq.
Sarah Fragale, Esq.
Peter Gunnar Nistad, Esq.
February 9, 2016
Phyllis Norton

1023
2/9/16

THIS MATTER came before the Court on Defendant John Wieland Homes' Motion for Reconsideration, filed March 10, 2017, and received by this Court on the same date. Defendant moves for this Court to reconsider an Order Denying Defendant John Wieland Homes' Motion for Enhanced Set-Off signed March 1, 2017 and subsequently filed March 3, 2017. Counsel for Plaintiff Waverly at Hamlin Plantation was given the opportunity to respond and instead relied on their previous written submissions and oral arguments from the hearing in opposing the motion. Having considered Defendant's Motion, as well as the various interests balanced by the Court at the time of the ruling, Defendant's Motion for Reconsideration is hereby denied.

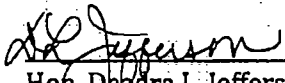
Rule 59(e) of the South Carolina Rules of Civil Procedure states that "(a) motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of entry of the order." Rule 59(e), SCRPC. The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to allow the parties liberal opportunity to move for the trial judge to reconsider matters properly encompassed in a decision on the merits, regardless of whether the issues and arguments have been previously presented. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400

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[Signature]

(Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)). See Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

Defendant presented no novel facts, arguments, or theories in support of their Motion for Reconsideration. Moreover, Defendant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, Defendant's Motion to Reconsider is hereby DENIED.¹

IT IS SO ORDERED.


Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

March 5, 2017
Charleston, South Carolina
At Chambers

¹ This Motion is disposed of without the necessity of a hearing and decided on the record, written motion, and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson
Circuit Court Judge

Case No. 2013-CP-10-3326

Waverly at Hamlin Plantation Townhome Association,
Inc.,

Plaintiff,

v.

John Wieland Homes and Neighborhoods of the
Carolinas, Inc. as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes, Inc., Builders Support Services
of the Carolinas, Inc. and Wheelock Street Capital, LLC
d/b/a John Wieland Homes and Neighborhoods, Inc.,

Defendants,

and

John Wieland Homes and Neighborhoods of the
Carolinas, Inc., as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes Inc., Builders Support Services
of the Carolinas, Inc.,

*Third-Party
Plaintiffs,*

v.

Barr Construction, Inc. Benjamin Mora d/b/a Mora
Construction, a/k/a Benjamin Mora Construction,
LLC, Builders FirstSource, Inc., a/k/a Builders
FirstSource-Southeast Group, LLC, a/k/a Builders
FirstSource-Atlantic Group, LLC, DBC Construction
Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a
GR Painting, George Medina, George Medina a/k/a JMC

Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC,

*Third-Party
Defendants.*

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

Case No. 2014-CP-10-4335

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and

Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespe, Jared D. Overcash,

Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, George Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC,

Defendants,

of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

and

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

Proof of Service

I, the undersigned employee of Howser Newman & Besley, LLC, hereby certify that pursuant to Rules 203 and 262(b), SCACR, I have served the Notice of Appeal of John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc. in these matters on all counsel of record, the Clerk of the Court of Appeals, and the Clerk of Court for Charleston County by delivering a copy or mailing a copy, United States Mail, postage prepaid, on April 5, 2017, to the following addresses:

Clerk of the Court of Appeals:

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

Clerk of Court for Charleston County:

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Attorneys for Waverly @ Hamlin Plantation Townhome Association, Inc., and Jeffrey Sills, et al.:

John C. Hayes IV
Mary-Margaret Fitzhenry Noland
HAYES LAW FIRM LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
(843) 805-7003

Ivon Keith McCarty
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Post Office Box 30055
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Jesse Sanchez
THE LAW OFFICE OF JESSE SANCHEZ
98½ Broad Street, Suite B
Charleston, SC 29401

Attorneys for AC Construction Inc.:

Caroline Coward McIntosh
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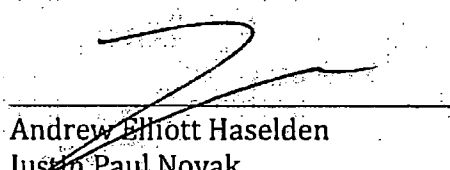
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Neighborhoods of the Carolinas, Inc.,
John Wieland Homes Inc., John Wieland
Homes of Charleston, Inc.***

April 5, 2017

EXHIBIT H

The South Carolina Court of Appeals

Waverly at Hamlin Plantation Townhome Association,
Inc., Respondent/Appellant,

v.

John Wieland Homes and Neighborhoods of the
Carolinas, Inc. as Successor by Statutory Merger to John
Wieland Homes and Neighborhoods of South Carolina,
Inc., John Wieland Homes of Charleston, Inc., John
Wieland Homes, Inc., Defendants,

And

John Wieland Homes and Neighborhoods of the
Carolinas, Inc., as Successor by Statutory Merger to John
Wieland Homes and Neighborhoods of South Carolina,
Inc., John Wieland Homes of Charleston, Inc., John
Wieland Homes Inc., Builders Support Services of the
Carolinas, Inc., Third-Party Plaintiffs,

v.

Barr Construction, Inc., Benjamin Mora d/b/a Mora
Construction, a/k/a Benjamin Mora Construction, LLC,
Builders FirstSource, Inc., a/k/a Builders FirstSource-
Southeast Group, LLC, a/k/a Builders FirstSource-
Atlantic Group, LLC, DBC Construction Services, LLC,
Eli, Inc., Gerardo Rosette Sanchez a/k/a GR Painting,
George Medina, George Medina a/k/a JMC Construction,
LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J.
Mora Brick & Block Mason, LLC, Juan Luis Sanchez,
Juan Luis Sanchez a/k/a Sanches Brothers Painting,
Latitude Construction Services, LLC, The Muhler
Company, Inc., Paul M. Vasquez, Richard Ditullio,
Richard Ditullio a/k/a RDT Contracting, LLC, Third-
Party Defendants,

Of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc., as Succesor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant/Respondent,

And George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and the Muhler Company, Inc. are the Respondents,

And

Jeffery Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Partricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespie, Jared D. Overcash, Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as Successor by Statutory Merger to John

Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a/ Benjamin Mora Construction, LLC, Builder's FirstSource, Inc. a/k/a Builders FirstSource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, Jeorge Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sachez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC, Defendants,

Of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant/Respondent,

And Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck,

Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespe, and Jared D. Overcash are the Respondents/Appellants,

And George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the Respondents.

Appellate Case No. 2017-000542

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2013CP1003326, 2014CP1004335

ORDER

Counsel for appellant filed a motion to consolidate appeals and a motion to supplement the record. No returns were filed. The motions are Granted.

The initial briefing schedule will be held in abeyance pending a decision by the Court on the respondents/appellants' motion to dismiss, filed May 23, 2017. Any return to the motion to dismiss is due to be served and filed no later than June 1, 2017.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

May 24, 2017

cc:

Andrew Elliott Haselden, Esquire

Justin Paul Novak, Esquire

Theodore Luke Manos, Esquire

John Calvin Hayes, IV, Esquire

Ivon Keith McCarty, Esquire

Jesse Sanchez, Esquire

Andrew N. Cole, Esquire

Christopher M. Adams, Esquire

Sarah Louise Fragale, Esquire

Peter Gunnar Nistad, Esquire

Mary-Margaret Fitzhenry Noland, Esquire

Julian Kane Allen, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

Deadra L. Jefferson, Circuit Court Judge

MAY 8 0 2017

SC Court of Appeals

Case No. 2013-CP-10-3326
Case No. 2014-CP-10-4335
Appellate Case No. 2017-000542

Waverly at Hamlin Plantation Townhome Association,
Inc.,

Plaintiff,

v.

John Wieland Homes and Neighborhoods of the
Carolinas, Inc. as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes, Inc.,

Defendants,

And

John Wieland Homes and Neighborhoods of the
Carolinas, Inc., as Successor by Statutory Merger to
John Wieland Homes and Neighborhoods of South
Carolina, Inc., John Wieland Homes of Charleston, Inc.,
John Wieland Homes Inc., Builders Support Services
of the Carolinas, Inc.,

*Third-Party
Plaintiffs,*

v.

Barr Construction, Inc. Benjamin Mora d/b/a Mora
Construction, a/k/a Benjamin Mora Construction,
LLC, Builders FirstSource, Inc., a/k/a Builders
FirstSource-Southeast Group, LLC, a/k/a Builders
FirstSource-Atlantic Group, LLC, DBC Construction
Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a
GR Painting, George Medina, George Medina a/k/a JMC
Construction, LLC a/k/a JMC Construction, Inc., Jesus
Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan
Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez
Brothers Painting, Latitude Construction Services,

LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC,

*Third-Party
Defendants,*

Of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant,

And

Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are

Respondents.

And

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash,

Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, George Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC,

Defendants,

Of whom

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the

Appellant.

And

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sunders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen

Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are the

Respondents.

PROOF OF SERVICE

I, the undersigned employee of Howser Newman & Besley, LLC, hereby certify that pursuant to Rules 240(e) and 262(b), SCACR, I have served the *Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc.'s Return to Motion to Dismiss Appeal* in this matter on all counsel of record and pro se parties by delivering a copy or mailing a copy, United States Mail, postage prepaid, on May 26, 2017, to the following addresses:

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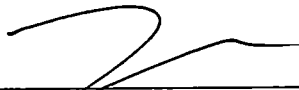
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Homes of Charleston, Inc.***

May 26, 2017

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Kelley Shull Cannon †
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RECEIVED

MAY 30 2017

SC Court of Appeals

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

RE: *Waverly at Hamlin Plantation Townhome Association, Inc., Plaintiff, v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Defendants, and John Wieland Homes and Neighborhoods of the Carolinas, Inc., as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes Inc., Builders Support Services of the Carolinas, Inc., Third-Party Plaintiffs, v. Barr Construction, Inc. Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builders FirstSource, Inc., a/k/a Builders FirstSource-Southeast Group, LLC, a/k/a Builders FirstSource-Atlantic Group, LLC, DBC Construction Services, LLC, Eli, Inc, Gerardo Rosette Sanchez a/k/a GR Painting, George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, Richard Ditullio, Richard Ditullio a/k/a RDT Contracting, LLC, Third-Party Defendants, of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant, and Waverly at Hamlin Plantation Townhome Association, Inc., George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are Respondents. And Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili,*

Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, Plaintiffs, v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc., Bar Construction, Inc., Benjamin Mora d/b/a Mora Construction, a/k/a Benjamin Mora Construction, LLC, Builder's Firstsource, Inc. a/k/a Builders Firstsource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/k/a GR Painting, George Medine a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasque, Richard Ditullio, Richard Ditullio a/k/a ROT Contracting, LLC, Defendants, of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant, and Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brandy Lynn, Russell Robinson, George Busnach, Helen Furtado, Jessica Baucom, Nancy S. Coleman, Linda Glitz, Peggy Gerou, Shannon Bebout, Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carolyn Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David McCartney, Paul and Patricia Waters, James and Andrea Lowry, R. Robinson, Jr. Thaddeus R. and Barbara A. Kuczynski, Beverly Sanders Carlson, Lisa Roeck, Elizabeth Jackson, Charles and Mary Kathleen Jenkins, Linda M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Hager and Kelly Hager Holmes, Carol and Chris Gilespeie, Jared D. Overcash, George Medina, George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction,

Inc., Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, and The Muhler Company, Inc., are Respondents.

Appellate Case No. 2017-000542

Dear Ms. Kitchings:

Please find enclosed for filing in the above-referenced matter:

- (1) an original and seven (7) copies of ***Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builders Support Services of the Carolinas, Inc.s Return to Motion to Dismiss Appeal***; and
- (2) an original and one (1) copy of the ***Proof of Service*** with respect to the return.

After filing the original and six (6) copies of these documents, please return the extra clocked-in copies in the self-addressed, stamped envelope provided. By copy of this letter, I am serving all counsel of record and pro se respondents with copies of each of the above-described documents.

Thank you for your assistance in this matter. Please do not hesitate to contact me with any questions or concerns.

Regards,



Andrew E. Haselden

AEH/jnov

cc: All Counsel of Record and Pro Se Parties (w/ encls.)



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MAY 30 2017

SC Court of Appeals

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



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