

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

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

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-Atlantic Group, LLC, DBC Construction Services, LLC, Eli, Inc., Gerardo Rosette Sanchez a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick and 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

RECEIVED

JUN 02 2017

SC Court of Appeals

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., 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.

And

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephanie 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 Carolyne 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. Kucysnksi, 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 Successory by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc. John Wieland Homes of Charleston, Inc., John Wieland Hoems, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc. Barr Construction, Inc. Benjamine Mora d/b/a Mora Construction, a/k/a Builders FirstSource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/ka/a GR Painting, Jeorge Medina a/k/a JMC Construction, LLC, JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick and Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vaquez, 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 Hoems, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant,

And

Jeffrey Sills, individually and as Class Representative, Marie Labarawoksi, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brady Lynn, Russel 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 Joe Feagins, Cindy Hund 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, Lind M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Haver and Kelly Hager Holes, Carol and Chris Gillespie, 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.

REPLY TO APPELLANTS' RETURN TO MOTION TO DISMISS APPEAL

Respondents Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephanie 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 Carolyne 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. Kucysnksi, 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 Gillespie, Jared D. Overcash, and Waverly at Hamlin Plantation Townhome

Association, Inc., through their undersigned counsel, hereby respectfully submit this Reply in Response to Appellants' Return to Motion to Dismiss Appeal.

Appellants' Return provides further support for dismissing all matters pending for appeal that are listed in Appellant's March 1, 2017 Notice of Appeal. First, despite signing the Proof of Service for the March 1, 2017 Notice of Appeal (Exhibit A), Appellants' counsel, Andrew Haselden, now admits that he did not personally prepare the correspondence containing the Notice of Appeal and Proof of Service, nor did he personally supervise the paralegal make copies of the correspondence containing the Notice of Appeal or place them in envelopes with sufficient postage, nor did he personally mail the Notice of Appeal, nor did he personally supervise the paralegal in depositing the Notice of Appeal in the United States Mail (Exhibit B, page 7). Instead, Appellant's Return now states that another lawyer at Mr. Haselden's firm, Justin Novak, "supervised a paralegal make copies of the correspondence containing the Notice of Appeal and place those copies into envelopes with sufficient prepaid [sic] addressed to those parties listed in the Proof of Service," and that the paralegal, Danielle Cox, not Mr. Haselden or Mr. Novak deposited the Notice of Appeal in the mail. (Id.) The purpose of a Proof of Service is to certify to the Court that a copy has been mailed to or otherwise served on all other parties.¹ Black's Law Dictionary defines Certify as follows: "1. To authenticate or verify in writing. 2. To attest as being true or meeting certain criteria." Id. Despite filing a Proof of Service, Mr. Haselden could not verify that the Notice of Appeal was mailed to all parties of record, nor could he attest to the truth of whether it was deposited in the mail because he did not mail the Notice of Appeal or witness the paralegal deposit the Notice of Appeal in the mail.

¹ Black's Law Dictionary (9th ed. 2009) provides the same definition for Proof of Service as Certificate of Service, which it defines as follows: **A section of a pleading or motion filed with the court, usu. contained separately on the last page, in which the filing party certifies to the court that a copy has been mailed or otherwise served on all parties. [...] Also termed *proof of service*.**

If the paralegal served the Notice of Appeal by depositing it in the mail, then the paralegal, not Mr. Haselden, should have signed the Proof of Service because only the paralegal could verify or attest to whether the Notice of Appeal was served. Accordingly, the Proof of Service submitted to the Court is defective because it does not, in actuality, provide *proof of service* as required by Rule 203(d)(1)(B)(i).

Second, it is worth noting that Appellants do not provide a single affidavit from *any* counsel of record corroborating that they were timely served with the March 1st Notice of Appeal. Appellants list twenty-three (23) counsel of record across sixteen (16) different law firms in their Proof of Service, but fail to provide any evidence or documentation (affidavit or otherwise) demonstrating that any of these attorneys or law firms received the March 1st Notice of Appeal. Indeed, at least four (4) attorneys, representing three (3) different law firms, at three different addresses, did not receive the Notice of Appeal (See Respondents' Motion to Dismiss Appeal, filed May 23, 2017).

Based on the fact that none of the attorneys listed hereunder received the Notice of Appeal at their respective offices, Respondents believe that Appellants did not serve all counsel of record with the Notice of Appeal, as required by Rule 203(d)(1)(B)(i). If the Appellants cannot confirm that at least some of the twenty-three (23) counsel of record were served with the Notice of Appeal, it bears to reason that the Notice of Appeal was not deposited in the mail by the paralegal, as Counsel for Appellants now contends for the first time in Appellants' Return.² Even if other counsel of record

² Although Mr. Haselden signed the Proof of Service, certifying "I have served the Notice of Appeal of John Wieland Homes and Neighbourhoods of the Carolinas, Inc. [et. al] [...] 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: [...]" Appellants' Return now states that Ms. Cox, not Mr. Haselden, mailed the copies of the Notice of Appeal to all Counsel of Record. [Emphasis Added] (see Exhibit A at p. 4 and Exhibit B at p. 7).

were to confirm that they received the March 1st Notice of Appeal, the fact remains that John C. Hayes IV and Mary-Margaret F. Noland of Hayes Law Firm, LLC, I. Keith McCarty of McCarty Law Firm, PC, and Jesse Sanchez of the Law Office of Jesse Sanchez, LLC did not receive the Notice of Appeal at any of their respective offices.

In the event that the Court of Appeals cannot reach a factual determination as to whether service was effected upon any or all parties, Respondents would respectfully request, pursuant to Rule 240(a), SCACR, that this matter be remanded to the Circuit Court for an evidentiary hearing, with discovery, to establish whether service was effected upon all other counsel of record in this action.

Third, Appellants' return incorrectly argues that the "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," because "*Respondents* Waverly served and filed their own Notice of Appeal within the time prescribed by Rule 20(3)(b)(c)." [Emphasis added] Appellants cite no authority to support this position. A review of the controlling caselaw demonstrates that the opposite is true. In *USAA Property and Cas. Ins. Co. v. Clegg*, the South Carolina Supreme Court once again noted, "The notice of appeal in a case appealed from the Court of Common Pleas **must** be served on **all** respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. **The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice.**" 661 S.E.2d 791, 795 (S.C., 2008), citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004), and *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). [Emphasis Added]

While Respondents timely filed and served their own Notice of Appeal, said filing only gives the Court of Appeals jurisdiction over those issues, which *Respondents* are appealing. It does not, as Appellants propose, rescue or excuse Appellants from timely filing or serving of their own Notice of Appeal. In any event, Respondents' Notice of Appeal is specifically limited to the ruling of the Honorable Deadra L. Jefferson, which granted Appellants' motion for a directed verdict as to Respondents' Unfair Trade Practices Act cause of action. It does not in anyway extend to those matters listed under Appellants' March 1st Notice of Appeal.

Fourth, Appellants' Return incorrectly argues that "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," because the multiple Notices of Appeals filed in this action have been consolidated under a single Appellate Case Number. Respondents did not object to consolidation of the multiple Notices of Appeals before the Court, including their own, because consolidation is proper given that all issues before the Court arise from the same underlying action, the multiple Notices of Appeal share the same Record on Appeal, and the parties are same. However, consolidation of multiple Notices of Appeals does not "rescue" a party who has failed to serve their Notice of Appeal. Specifically, consolidation of the multiple Notices of Appeals does not confer upon the Court of Appeals the jurisdiction to consider Appellants' March 1st Notice of Appeal "regardless of whether Appellant perfected service upon Respondents Waverly by mailing the Notice of Appeal on March 1, 2017," as Appellants contend. Appellants cite no authority to support this position, which again runs contrary to the South Carolina Supreme Court's holdings in *USAA Property and Cas. Ins. Co. v. Clegg*, *Elam v. S.C. Dep't of Transp.*, and *Mears v. Mears*, cited supra. The Supreme Court's language is clear and unambiguous:

“The notice of appeal in a case appealed from the Court of Common Pleas **must** be served on **all** respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. **The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice.**” 361 S.C. 9, 14, 602 S.E.2d 772 (S.C. 2004); citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985).

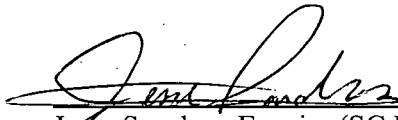
USAA Property and Cas. Ins. Co. v. Clegg, 661 S.E.2d 791, 795 (S.C., 2008)

Appellants’ argument that “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” is unsupported by the South Carolina Appellate Court Rules and runs contrary to South Carolina caselaw. Accordingly, Appellants March 1st, 2017 Notice of Appeal should be dismissed.

CONCLUSION

For each of the foregoing reasons, as well as those reasons stated in Respondents’ Motion to Dismiss Appeal, Respondents respectfully request that the Court dismiss any matters pending for appeal that are listed in Appellants’ March 1, 2017 Notice of Appeal.

[Signature on following page.]



Jesse Sanchez, Esquire (SC Bar #101906)
The Law Office of Jesse Sanchez, LLC
98 ½ Broad Street, Suite B
Charleston, SC 29401
Phone: 843-814-8181
Fax: 843-284-3953
jesse@jessesanchezlaw.com

and

John C. Hayes, IV, Esquire (SC Bar # 69740)
Mary-Margaret F. Noland, Esquire (SC Bar # 71713)
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
mnoland@hayeslaw.org

and

I. Keith McCarty, Esquire (SC Bar # 66447)
McCarty Law Firm, PC
1212 Wappoo Road
Charleston, SC 29407
Phone: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR RESPONDENTS

June 1, 2017
Charleston, South Carolina

EXHIBIT A

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

RECEIVED

MAR 01 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., 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, Jeorge 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, 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 Peysér, 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 Gilespie, 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.:

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
McCARTY LAW FIRM, PC
Post Office Box 30055
Charleston, SC 29417
(843) 793-1272

Jesse Sanchez
THE LAW OFFICE OF JESSE SANCHEZ
98½ Broad Street, Suite B
Charleston, SC 29401

Attorneys for AC Construction Inc.:

Caroline Coward McIntosh
Kevin W. Mims
LUZURIAGA MIMS, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
(843) 410-4713

Attorneys for Barr Construction Inc.:

Erin DuBose Dean
TUPPER GRIMSLEY & DEAN, PA
Post Office Box 2055
Beaufort, SC 29901-2055
(843) 524-1116

Pro Se:

Paul M. Vasquez
1417 Peach Blossom Lane
Charleston, SC 29492-8263

Attorneys for Benjamin Mora Construction LLC, Benjamin Mora, Mora Construction:

Jonathan J. Anderson
Curtis Brent Martin
ANDERSON REYNOLDS & STEPHENS, LLC
Post Office Box 87
Charleston, SC 29402
(843) 723-0185

Attorneys for John Wieland Homes and Neighborhoods Inc., Wheelock Street Capital LLC:

Marvin D. Infinger
Cheryl D. Shoun
NEXSEN PRUET, LLC
Post Office Box 486
Charleston, SC 29402
(843) 577-9440

Attorneys for JMC Construction, Inc., JMC Construction, LLC, Jorge Medina:

Christopher M. Adams
Andrew N. Cole
COLLINS & LACY, PC
Post Office Box 12487
Columbia, SC 29211
(803) 256-2660

Attorneys for Juan Luis Sanchez, Sanchez Brothers Painting:

Sarah Louise Fragale
TURNER PADGET GRAHAM & LANEY, PA
40 Calhoun Street, Suite 200
Charleston, SC 29401
(843) 576-2800

Attorneys for Builders Firstsource Southeast Group LLC:

Stephen P. Hughes
HOWELL GIBSON & HUGHES, PA
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

Attorneys for Richard Ditullio and RDT Contracting LLC:

Jared Hudson Garraux
RICHARDSON PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, SC 29201
(803) 771-4400

Attorneys for Eli Inc.:

Patrick T. Morrissey
CLAWSON & STAUBES, LLC
127 Seven Farms Drive, Suite 200
Charleston, SC 29492-7595
(843) 577-2026

Attorneys for Latitude Construction Services LLC:

Robert Michael Ethridge
Laura Elizabeth Paris Paton
CARLOCK COPELAND & STAIR, LLP
Post Office Box 20969
Charleston, SC 29413
(843) 727-0307

Attorneys for J Mora Brick & Block Mason LLC, Jesus Mora:

Elizabeth Fraysure Fulton
PRITCHARD LAW GROUP LLC
129 Broad Street

Charleston, SC 29401
(843) 722-3300

John Elliott Rogers II
Carl Reed Teague
THE WARD LAW FIRM, P.A.
Post Office Box 5663
Spartanburg, SC 29304
(864) 573-8500

Attorneys for The Muhler Company Inc:

Peter Gunnar Nistad
GALLIVAN WHITE & BOYD, PA
Post Office Box 22768
Charleston, SC 29413
(843) 735-7600



Andrew Elliott Haselden
Justin Paul Novak
HOWSER NEWMAN & BESLEY, LLC
215 East Bay Street, Suite 303
Charleston, SC 29401
(843) 216-6940

Theodore Luke Manos
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, SC 29401
(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 B

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, Jeorge 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., 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

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 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, 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 Gilespe, 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 Whitnire, 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, 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,



Andrew Elliott Haselden
Justin Paul Novak
HOWSER NEWMAN & BESLEY, LLC
215 East Bay Street, Suite 303
Charleston, SC 29401
(843) 216-6940

Theodore Luke Manos
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, SC 29401
(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.***

May 26, 2017

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

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

RECEIVED
JUN 02 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-Atlantic Group, LLC, DBC Construction Services, LLC, Eli, Inc., Gerardo Rosette Sanchez a/k/a JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick and 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.

And

Jeffrey Sills, Individually and as Class Representative, Marie Labarowski, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephanie 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 Carolyne 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. Kucysnksi, 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 Gillespie, Jared D. Overcash, Plaintiffs,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., as Successory by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc. John Wieland Homes of Charleston, Inc., John Wieland Hoems, Inc., Builders Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a Jon Wieland Homes and Neighborhoods, Inc. Barr Construction, Inc. Benjamine Mora d/b/a Mora Construction, a/k/a Builders FirstSource-Atlantic Group, LLC, DBC Construction Services, LLC, Gerardo Rosette Sanchez a/ka/a GR Painting, George Medina a/k/a JMC Construction, LLC, JMC Construction, Inc., Jesus Mora a/k/a J. Mora Brick and Block Mason, LLC, Juan Luis Sanchez a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vaquez, 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 Hoems, Inc., Builders Support Services of the Carolinas, Inc., is the Appellant,

And

Jeffrey Sills, individually and as Class Representative, Marie Labarawoksi, Edward and Nancy Peyser, Francis Sills, Daniel and Suzanne Ruth, Stephani Adili, Marc and Brady Lynn, Russel 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 Joe Feagins, Cindy Hund 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, Lind M. and Earl K. Rigler, Jr., John Twomey, Joe and Anita Brittain, Gilbert J. Haver and Kelly Hager Holes, Carol and Chris Gillespie, 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, certify that I have served Respondents' Reply to Appellants' Return to Motion to Dismiss Appeal to the attorneys of record by depositing a copy of it in the United States Mail on June 1, 2017, addressed to the following:

Andrew E. Haselden, Esquire
Howser, Newman & Besley, LLC
215 East Bay Street, Suite 303
Charleston, SC 29401
(843) 216-6940

and

Theodore L. Manos, Esquire
Robertson Hollingsworth & Flynn, LLC
Wells Fargo Center
177 Meeting Street, Suite 300
Charleston, SC 29401
(843) 723-6470

Attorneys for Third-Party Defendants 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., and Builder Support Services of the Carolinas, Inc.

Andrew N. Cole, Esquire
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, SC 29211
(803) 256-2660

Attorneys for Jeorge Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc.

Cheryl D. Shoun, Esquire
Marvin D. Infinger, Esquire
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
(843) 577-9440

Attorneys for Wheelock Street Capital, LLC

Sarah Fragale, Esquire
Julian K. Allen, Esquire
Turner, Padget, Graham & Laney, P.A.
40 Calhoun Street
Charleston, SC 29401
(843) 576-2800

Attorneys for Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting

Peter Gunnar Nistad, Esquire
Gallivan, White & Boyd, P.A.
40 Calhoun Street, Suite 315
Charleston, SC 29401
(843) 734-7600

Attorneys for The Muhler Company, Inc.

--

Caroline Coward McIntosh, Esquire
Kevin W. Mims, Esquire
Luzuriaga Mims, LLC
50 Immigration Street, Suite 200
Charleston, SC 29403
(843) 410-4713

Attorneys for AC Construction Inc.

Erin Dubose Dean, Esquire
Tupper Grimsley & Dean, PA
Post Office Box 2055
Beaufort, SC 29901-2055
(843) 524-1116

Attorneys for Barr Constructin Inc.

Paul M. Vasquez, Esquire
1417 Peach Blossom Lane
Charleston, SC 29492-8263
Pro Se

Jonathan J. Anderson, Esquire
Curtis Brent Martin, Esquire
Anderson Reynolds & Stephens, LLC
PO Box 87
Charleston, SC 29402
(843) 723-0185

Attorneys for Benjamin Mora Construction LLC, Benjamin Mora, Mora Construction

Stephen P. Hughes, Esquire
Howell Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
(843) 522-2400

Attorneys for Builders Firstsource Southeast Group LLC

Jarred Hudson Garraux, Esquire
Richardson Plowden & Robinson, PA
1900 Barnwell Street
Columbia, SC 29201
(803) 771-4400

Attorneys for Richard Ditullio and RDT Contracting LLC

Patrick T. Morrissey, Esquire
Clawson & Staubes, LLC
127 Seven Farms Drive, Suite 200
Charleston, SC 29492-7595
(843) 577-2026

Attorneys for Eli Inc.

Robert Michale Ethridge, Esquire
Laura Elizabeth Paris Paton, Esquire
Carlock Copeland & Stair, LLP
Post Office Box 20969
Charleston, SC 29413
(843) 727-0307

Attorneys for Latitude Construction Services, LLC

Elizabeth Fraysure Fulton, Esquire
Pritchard Law Group LLC

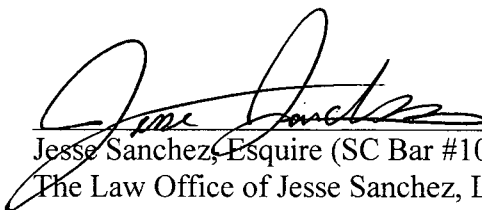
129 Broad Street
Charleston, SC 29401
(843) 722-3300

John Elliott Rogers II, Esquire
Carl Read Teague
The Ward Law Firm, P.A.
Post Office Box 5663
Spartanburg, SC 29304
(864) 573-8500

Attorneys for J Mora Brick & Block Mason LLC, Jesus Mora

[Signature on following page]

THE LAW OFFICE OF JESSE SANCHEZ, LLC



Jesse Sanchez, Esquire (SC Bar #101906)
The Law Office of Jesse Sanchez, LLC
98 ½ Broad Street, Suite B
Charleston, SC 29401
Phone: 843-814-8181
Fax: 843-284-3953
jesse@jessesanchezlaw.com

and

John C. Hayes, IV, Esquire (SC Bar # 69740)
Mary-Margaret F. Noland, Esquire (SC Bar # 71713)
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
mnoland@hayeslaw.org

and

I. Keith McCarty, Esquire (SC Bar # 66447)
McCarty Law Firm, PC
1212 Wappoo Road
Charleston, SC 29407
Phone: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR RESPONDENTS

June 1, 2017
Charleston, South Carolina



June 01, 2017

VIA US PRIORITY OVERNIGHT MAIL

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

RECEIVED

JUN 02 2017

SC Court of Appeals

Re: Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland
Homes and Neighborhoods of the Carolinas, Inc., et al.
Appellate Case No: 2017-000542

Dear Ms. Kitchings,

Enclosed herewith please find an original and seven (7) copies of Respondents' Reply to Appellants' Return to Respondents' Motion to Dismiss Appeal for the above-referenced case. Please file the same and return one (1) file-stamped copy in the enclosed prepaid envelope.

Thank you for your assistance with this matter. Should you have any questions, please do not hesitate to contact me.

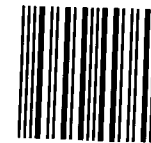
Sincerely,

Jesse Sanchez

Cc: All counsel of record.



1007



29211

U.S. POSTAGE
PAID
CHARLESTON, SC
29403
JUN 01 17
AMOUNT

\$23.85
R2303S100577-5

RECEIVED

JUN 02 2017

SC Court of Appeals



EL417959821US

GOV
ONLINE



**PRIORITY
★ MAIL ★
EXPRESS™**

CUSTOMER USE ONLY

FROM: (PLEASE PRINT)

PHONE 803 814-8181

THE LAW OFFICE OF JESSE SPANIER LLC
98 1/2 BROAD STREET, SUITE B
CHARLESTON, SC 29401

PAYMENT BY ACCOUNT (if applicable)

DELIVERY OPTIONS (Customer Use Only)

- SIGNATURE REQUIRED Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.
- Delivery Options**
- No Saturday Delivery (delivered next business day)
- Sunday/Holiday Delivery Required (additional fee, where available*)
- 10:30 AM Delivery Required (additional fee, where available*)
- *Refer to USPS.com* or local Post Office* for availability.

TO: (PLEASE PRINT)

PHONE ()

THE HON. JENNY ARBON KITCHINGS
CLERK OF COURT
SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629, COLUMBIA, SC

ZIP + 4* (U.S. ADDRESSES ONLY)

2 9 2 1 1

- For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
- \$100.00 insurance included.

ORIGIN (POSTAL SERVICE USE ONLY)

<input checked="" type="checkbox"/> 1-Day		<input type="checkbox"/> 2-Day		<input type="checkbox"/> Military		<input type="checkbox"/> DPO	
PO ZIP Code 29403	Scheduled Delivery Date (MM/DD/YY) 6/2/17	Postage \$ 23.85					
Date Accepted (MM/DD/YY) 6/1/17	Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 3:00 PM <input checked="" type="checkbox"/> 12 NOON	Insurance Fee \$	COD Fee \$				
Time Accepted 3:51	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	10:30 AM Delivery Fee \$	Return Receipt Fee \$	Live Animal Transportation Fee \$			
Weight 3.2 lbs.	<input type="checkbox"/> Flat Rate	Sunday/Holiday Premium Fee \$	Total Postage & Fees 23.85				
Acceptance Employee Initials TPT							
DELIVERY (POSTAL SERVICE USE ONLY)							
Delivery Attempt (MM/DD/YY) 6/2	Time 803	Employee Signature [Signature]					
Delivery Attempt (MM/DD/YY) 6/2	Time 803	Employee Signature [Signature]					

LABEL 11-B SEPTEMBER 2015

PSN 7690-02-000-9996

3-ADDRESSEE COPY

WRITE FIRMLY WITH BALL POINT PEN ON HARD SURFACE TO MAKE ALL COPIES LEGIBLE.