

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-10-5559
Appellate Case No. 2015-000201

Madison at Hamlin Plantation Townhome Association, Inc., and Thomas C. Koontz and Jane A. Marshall, individually and on behalf of all others similarly situated, Respondents,

v.

Builders Support Services of the Carolinas, Inc., individually and f/k/a John Wieland Homes and Neighborhoods of the Carolinas, Inc., individually and f/k/a John Wieland Homes and Neighborhoods of NC, Inc., individually and f/k/a John Wieland Homes and Neighborhoods of SC, Inc., John Wieland Homes of SC, Inc.; John Wieland Homes, Inc.; John Wieland Homes of Charleston, Inc.; AAA Plumbing; American Residential Services, LLC; Builders Firstsource-Southeast Group, LLC; Carolina Custom Security, Inc.; Creative Touch Interiors, Inc., individually and f/k/a Rice Planters Carpets, Inc.; Fogel Services, Inc.; Larry's Termite Control, Inc.; McClellan Plumbing, LLC; Neighborhood Management Associates, Inc.; George Ryan Butler; Paul Spencer; and John Doe 1-50, Defendants,

Of which Builders Support Services of the Carolinas, Inc., individually and f/k/a John Wieland Homes and Neighborhoods of the Carolinas, Inc., individually and f/k/a John Wieland Homes and Neighborhoods of NC, Inc., individually and f/k/a John Wieland Homes and Neighborhoods of SC, Inc.; John Wieland Homes of SC, Inc.; John Wieland Homes, Inc.; John Wieland Homes of Charleston, Inc. are the Appellants.

**MOTION FOR LEAVE OR TO CONFIRM CIRCUIT COURT AUTHORITY
TO APPROVE SETTLEMENTS (OR FOR TEMPORARY REMAND)**

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JUL 21 2017

SC Court of Appeals

Justin O'Toole Lucey, Esq.
Joshua F. Evans, Esq.
Justin O'Toole Lucey, P.A.
415 Mill Street
Mt. Pleasant, SC 29464
(843) 849-8400
Attorneys for Respondents

COME NOW the Respondents, Madison at Hamlin Plantation Townhome Association, Inc. and Thomas C. Koontz and Jane A. Marshall, individually, and on behalf of all others similarly situated, by and through their undersigned counsel, and move before this Honorable Court for an Order as follows:

An Order granting leave or confirming the jurisdiction of the Circuit Court (or temporarily remanding this Appeal to the Circuit Court) to approve various settlements between Respondents (Plaintiffs) and other Defendants who are not Appellants.

The background of this matter and the need for this relief is described in further detail below.

MEMORANDUM IN SUPPORT

On appeal in this matter are the Circuit Court's Orders denying Appellants' Motion to Compel Arbitration and granting Respondents' Motion for Class Certification. The parties have proceeded with discovery and other matters in this case while this appeal has been pending.

All parties (Appellants, Respondents, and many other Defendants who are not parties to this appeal) mediated this case in early December 2016. At mediation, Respondents (Plaintiffs) reached compromises with a number of Appellants' co-Defendants (mostly subcontractors). Plaintiffs have settled, covenanted, or otherwise reached some accommodation with approximately half of the subcontractor Defendants for slightly above \$2.1m.

As these settlements have taken place in the context of a class action, SCRCF Rule 23 provides for Court approval of a compromise or dismissal. Therefore, on April 28, 2017, Plaintiffs moved for the dismissal of the Settled Defendants in the Circuit Court,

which was preliminarily heard by the Judge assigned to this case (the Honorable R. Markley Dennis, Jr., Ninth Judicial Circuit) on June 5, 2017 and remains under advisement.

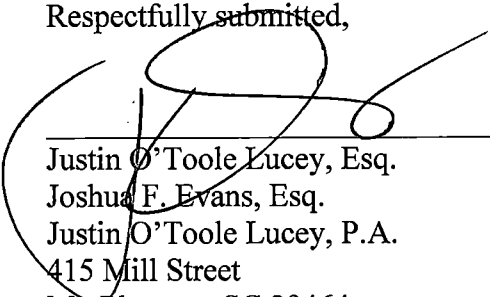
However, in negotiating a consent order of dismissal to be submitted to the Circuit Court for consideration, Settling Defendants have expressed their concern to Movants that the Circuit Court may not have the authority/jurisdiction to approve a settlement involving a class action or even a "settlement class" while the original class certification is on appeal. Therefore, to accommodate the Settling Defendants' concerns and to achieve their order of dismissal with prejudice, Respondents file the instant motion.¹ Releases have been executed, most funds have been tendered, and all that is left to be done is to procure the Circuit Court's approval of the dismissal of these Settling Defendants.

Appellants have consented to this motion.²

WHEREFORE, Respondents respectfully request:

An Order granting leave or confirming the jurisdiction of the Circuit Court (or temporarily remanding this Appeal to the Circuit Court) to approve various settlements between Respondents (Plaintiffs) and other Defendants who are not Appellants.

Respectfully submitted,



Justin O'Toole Lucey, Esq.
Joshua F. Evans, Esq.
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(843) 849-8400
Attorneys for Respondents

July 20, 2017

¹ Settling Defendants justifiably want a Circuit Court approval (and notice to class members) that is sustainable upon a later challenge.

² Appellants are, in fact, parties to the foregoing settlements, as they had asserted crossclaims against most of the Settling Defendants. Plaintiffs granted Appellants uncontested set-offs in consideration of Appellants' dismissal of their crossclaims against Settling Defendants.

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PROOF OF SERVICE

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SC Court of Appeals

I certify that I have served the **MOTION FOR LEAVE OR TO CONFIRM
CIRCUIT COURT AUTHORITY TO APPROVE SETTLEMENTS (OR FOR
TEMPORARY REMAND)** on Appellants by delivering a copy of it in the United States
Mail, postage prepaid, on July 20, 2017, addressed as follows:

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

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July 20, 2017

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Reply to:
P.O. Box 806
Mount Pleasant, SC 29465

July 20, 2017

VIA FEDEX

Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Madison at Hamlin Plantation Townhome Association, Inc., et al. v. Builders Support Services of the Carolinas, Inc., et al.*
Appellate Case No.: 2015-000201
Common Pleas Case No.: 2013-CP-10-5559

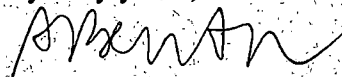
Dear Ms. Kitchings:

I hope this finds you well. Enclosed for filing, please find the original and six (6) copies of **Respondents' Motion for Leave or to Confirm Circuit Court Authority to Approve Settlements (or for Temporary Remand)** in the above-referenced matter. Also enclosed is a check in the amount of \$25.00, which serves as the appropriate filing fee for this document. Please forward these documents to the appropriate person for filing, and return a file-stamped copy to our office in the enclosed envelope.

Please feel free to contact me should you have any questions or concerns regarding this matter. Thank you in advance for your attention to this request.

With best regards, I remain

Very truly yours,



Alicia M. Benton

Paralegal to Justin O. Lucey and Joshua F. Evans

Enclosures (as stated)

cc: Andrew E. Haselden, Esq.
Theodore L. Manos, Esq.

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SC Court of Appeals

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 Second business morning.*
 Saturday Delivery NOT available.

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 Second business afternoon.* Thursday shipments
 will be delivered on Monday unless SATURDAY
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 SATURDAY Delivery
 NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

 No Signature Required
 Package may be left without
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 Direct Signature
 Someone at recipient's address
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 If no one is available at recipient's
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Does this shipment contain dangerous goods?

One box must be checked.

 No Yes As per attached Shipper's Declaration. Yes Shipper's Declaration not required. Dry Ice Dry ice, 9 UN 1845 _____ x _____ kg

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7 Payment Bill to:

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Obtain recip. Acct. No.
 Sender Acct. No. in Section I will be billed. Recipient Third Party Credit Card Cash/Check

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