

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2013-CP-08-00179

RECEIVED
OCT 04 2017
SC Court of Appeals

Ex Parte:

Nationwide Mutual Fire Insurance Company.....Appellant,

In Re:

Beresford Commons Homeowners Association, Inc.....Respondent,

v.

Superior Solution, LLC.....Respondent.

**RESPONDENT BERESFORD COMMONS HOMEOWNERS
ASSOCIATION, INC.'S RETURN TO APPELLANT NATIONWIDE
MUTUAL FIRE INSURANCE COMPANY'S MOTION TO REINSTATE**

COMES NOW the Respondent, Beresford Commons Homeowners Association, Inc. (hereinafter "Respondent"), by and through their undersigned attorneys, and hereby respond to Appellant Nationwide Mutual Fire Insurance Company's (hereinafter "Appellant") Motion to Reinststate:

1. By letter to the Court dated September 15, 2017, attached as **Exhibit A**, Respondent informed the Court that the above-referenced case had been settled on behalf of Respondent with Appellant, as insurer of Superior Solution, LLC and Superior Solution, LLC. The parties settled this matter on July 20, 2017, and have been negotiating the terms of the settlement release since that date. Due to the length of time that had passed and the fact that Appellant had not yet informed the Court of the pending settlement, Respondent's counsel found it prudent to inform the Court of the pending settlement.

2. On September 20, 2017, the Court issued an Order of satisfaction that the appeal had been fully and finally settled between the parties, attached as **Exhibit B**.

3. On September 21, 2017, Counsel for Respondents agreed to all of the settlement terms requested by Appellant as set forth in the email communications attached as **Exhibit C**.

4. Respondent received a letter dated September 21, 2017 from Appellant, attached as **Exhibit D**, stating that the Respondent had *ex parte* communications with the Court and that the settlement is still in dispute and the Order dismissing the appeal be rescinded, resulting in a motion to reinstate the case, attached as **Exhibit E**.

5. By letter to the Court dated September 25, 2017, Respondent informed the Court that the initial correspondence dated September 15, 2017 was merely a confirmation of the discussions that Respondent had with the Appellant on settlement of the case in order to inform the Court of the settlement and that Respondent had not engaged in any *ex parte* communications, attached as **Exhibit F**.

6. Respondent has agreed to the terms of settlement and therefore, Respondent respectfully requests this appeal be stayed until parties have executed the Settlement Agreement,

which has been fully negotiated by all parties. Respondent's representative will be return from vacation on October 9, 2017 and will be able to fully execute the documents at that time.

Respectfully submitted this 2nd day of October, 2017.

SEGUI LAW FIRM, PC

By: 

Phillip W. Segui, Jr. (Fed. ID #6473)

Amanda M. Blundy (Fed. ID #10146)

864 Lowcountry Blvd., Suite A

Mt. Pleasant, SC 29464

(843) 884-1865

Email: psegui@seguilawfirm.com

ablundy@seguilawfirm.com

October 2, 2017
Mt. Pleasant, South Carolina

and

THE CHAKERIS LAW FIRM

John T. Chakeris

231 Calhoun Street

Charleston, SC 29401

(843) 853-5678

Email: john@chakerislawfirm.com

*Attorneys for Respondent Beresford
Commons Homeowners Association, Inc.*

September 15, 2017

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Beresford Commons Homeowners Association, Inc. v. Portrait Homes-South Carolina, LLC, et al.
Civil Action Case No.: 2013-CP-08-179
Appellate Case No.: 2017-000202

Dear Ms. Kitchings:

We are writing to inform the Court that the above-referenced case has been settled on behalf of Beresford Commons Homeowners Association, Inc. with Nationwide Mutual Fire Insurance Company, as insurer of Superior Solution, LLC, and Superior Solution, LLC.

With best regards, I am

Very truly yours,



Amanda M. Blundy

AMB/jl

Enclosures

cc: John T. Chakeris, Esquire - via electronic mail
J.R. Murphy, Esquire - via U.S. mail and electronic mail
Adam J. Neil, Esquire - via U.S. mail and electronic mail
Timothy J. Newton, Esquire - via U.S. mail and electronic mail
Albert A. Lacour, III, Esquire - via electronic mail

The South Carolina Court of Appeals

Ex Parte:

Nationwide Mutual Fire Insurance Company, Appellant,

In Re:

Beresford Commons Homeowners Association, Inc.,
Respondent,

v.

Superior Solution, LLC, Respondent.

Appellate Case No. 2017-000202

The Honorable Kristi Lea Harrington
Berkeley County
Trial Court Case No. 2013CP0800179

ORDER

It appears to the satisfaction of the Court that the above appeal has been fully and finally settled by agreement between the parties. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED

September 20, 2017 S.S.

EXHIBIT B

Columbia, South Carolina

cc:

John Robert Murphy, Esquire

Adam J. Neil, Esquire

Timothy J. Newton, Esquire

Phillip Ward Segui, Jr., Esquire

Amanda Morgan Blundy, Esquire

Albert A. Lacour, III, Esquire

The Honorable Kristi Lea Harrington

From: Amanda Blundy ablundy@seguilawfirm.com
Subject: Re: Beresford
Date: September 21, 2017 at 4:06 PM
To: Tim J. Newton tnewton@murphygrantland.com
Cc: Sligh, David R. DSligh@turnerpadget.com, Josephine Lyons jlyons@seguilawfirm.com, John@chakerislawfirm.com chakeris@chakerislawfirm.com, Phillip Segui psegui@seguilawfirm.com, Adam Neil aneil@murphygrantland.com



Yes. This is consistent. Please let us know when we can have our client sign. Can you tell us when we will receive the check?

Thanks!

On Sep 21, 2017, at 3:19 PM, Tim J. Newton <tnewton@murphygrantland.com> wrote:

For clarification: Here is a clean copy made by "accepting" the changes indicated in the draft I circulated by e-mail Tuesday September 19, 2017 at 3:55 pm. Please acknowledge if this is consistent with what was agreed to.

Tim N.

<image002.png>
Murphy & Grantland, P.A.
Tim J. Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Amanda Blundy [<mailto:ablundy@seguilawfirm.com>]
Sent: Thursday, September 21, 2017 3:07 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Cc: Sligh, David R. <DSligh@turnerpadget.com>; Josephine Lyons <jlyons@seguilawfirm.com>; John@chakerislawfirm.com chakeris@chakerislawfirm.com; Phillip Segui <psegui@seguilawfirm.com>; Adam Neil <aneil@murphygrantland.com>
Subject: Re: Beresford

Hi Tim,

We can agree to this. Please let me know when your client approves and we will get our clients' signatures.

Thanks,
Amanda

On Sep 19, 2017, at 3:54 PM, Tim J. Newton <TNewton@murphygrantland.com> wrote:

EXHIBIT C

Amanda,

This is our proposed updated draft of the Settlement Agreement and Release as per the concerns you and Johnny raised this morning. The changes are on p. 6. Will this work for you?

If you are okay with it, let me know. We still need to get final client approval. We will do that once we reach an agreement on the language of the document.

Tim N.

<image003.png>

Murphy & Grantland, P.A.

Tim J. Newton, Esquire

tnewton@murphygrantland.com

Post Office Box 6648

Columbia, South Carolina 29260

803-782-4100 ext. 1242

803-454-1242 dd

803-782-4140 fax

www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Amanda Blundy [<mailto:ablundy@seguilawfirm.com>]

Sent: Friday, September 15, 2017 1:33 PM

To: Sligh, David R. <DSligh@turnerpadget.com>; Tim J. Newton <tnewton@murphygrantland.com>

Cc: Josephine Lyons <jlyons@seguilawfirm.com>; John@chakerislawfirm.com chakeris <John@chakerislawfirm.com>; Phillip Segui <psegui@seguilawfirm.com>

Subject: Beresford

David and Tim,

Continuing on with our discussions about the release, here are some additional changes regarding the Nationwide entities. Please redline where you would like "agents" added back in and send to me.

Thanks!

Amanda

<Beresford - Settlement Agreement and Release draft 09-19-2017.DOCX>

<Beresford - Settlement Agreement and Release - FINAL.docx>



MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
newton@murphygrantland.com

September 21, 2017

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

Re: Beresford Commons HOA, Inc. vs. Penuel Construction, LLC aka Superior, et al.
Civil Action No.: 2013-CP-08-00179 and 00180
Appellate Case No.: 2017-000202
Claim No.: 61 39 AC 221437
Insured: Penuel Construction, LLC
Our File No.: 1150-0740

Dear Ms. Kitchings:

This letter follows my receipt of this Court's Order filed September 20, 2017 purporting to dismiss this appeal. I represent the appellant, Nationwide Mutual Fire Insurance Company. As I understand it, the Respondent in this appeal represented to this Court that the matter has settled and can be dismissed. As I understand it, counsel for Respondent engaged in certain *ex parte* communications with this Court yesterday which resulted in the above-referenced order. Nationwide objects to both the *ex parte* communications and the dismissal.

As counsel for Nationwide has previously advised, the status of this case is that the parties have reached a verbal settlement in theory, but the terms of the settlement are still in dispute. Accordingly, Appellant hereby requests that the Order dismissing the appeal be rescinded, and that the appeal be reinstated until such time as Appellant agrees to withdraw its appeal.

Sincerely,

Timothy J. Newton

TJN/sb

cc: Amanda Blundy, Esquire
Phillip W. Segui, Jr., Esquire
Albert A. Lacour, III, Esquire
Mr. John Blanton O'Neal IV
John T. Chakeris, Esquire
Roselyn W. Frierson
Cindy Thomas (via email)

EXHIBIT D



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 26, 2017

Mr. Timothy J. Newton, Esquire
PO Box 6648
Columbia SC 29260

Re: Ex Parte: Nationwide (Beresford Commons v. Superior Solution)
Appellate Case No. 2017-000202

Dear Counsel:

We received your letter dated September 21, 2017 regarding the dismissal of the above mentioned appeal. We construe this filing as a motion to reinstate. This appeal will be held in abeyance pending the Court's decision of your motion to reinstate. Respondent has ten (10) days from the date of service of appellant's motion to reinstate to file a return.

Very truly yours,


CLERK

cc: John Robert Murphy, Esquire
Adam J. Neil, Esquire
Phillip Ward Segui, Jr., Esquire
Amanda Morgan Blundy, Esquire
Albert A. Lacour, III, Esquire

EXHIBIT E

September 25, 2017

Via U.S. Mail and Electronic Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211
jkitchings@sccourts.org

RE: Beresford Commons Homeowners Association, Inc. v. Portrait Homes-South Carolina, LLC, et al.

Civil Action Case No.: 2013-CP-08-179

Appellate Case No.: 2017-000202

Dear Ms Kitchings:

We are writing in response to Tim Newton's correspondence to you dated September 21, 2017, in which he stated that Respondent Beresford Commons Homeowners Association, Inc. had *ex parte* communications with the Court, in the above-captioned matter.

On September 15, 2017, I wrote to the South Carolina Court of Appeals in an effort to inform the Court of the settlement of this matter. We believe it would be a waste of judicial resources for the Court to be working on a matter that had been resolved, especially in light of the parties recently working out the details of the settlement agreement and release. I have attached another copy of this correspondence, wherein I copy Mr. Newton, to illustrate there was no *ex parte* communication regarding this matter.

On September 19, 2017, I spoke with Mr. Newton and advised him of my intent of informing the Court about our settlement due to the fact we agreed to the settlement in July 2017 and had not yet finalized the terms of the settlement or informed the Court. Someone from your office did call my office on September 20, 2017 and inquired whether the settlement was reached with just one party (Nationwide) or both parties (Nationwide and Superior). While I advised the Court that I did not represent the Appellant, I felt it was prudent to keep the Court informed. I advised her that I expected that Nationwide's counsel would be sending the Court a more formal document as they would have to formally dismiss the appeal.

Please allow this correspondence to confirm that Respondent's counsel did not engage in any *ex parte* communications. Should you have any questions or require any additional information, please do not hesitate to contact me and Mr. Newton.

Very truly yours,


Amanda M. Blundy

AMB/jl

Enclosure

cc: The Honorable W. Rosalyn Frierson-Smith - via U.S. Mail
John T. Chakeris, Esquire - via electronic mail
Timothy J. Newton, Esquire - via U.S. mail and electronic mail
J.R. Murphy, Esquire - via U.S. Mail and electronic mail
Adam J. Neil, Esquire - via U.S. Mail and electronic mail
Albert A. Lacour, III, Esquire - via U.S. Mail and electronic mail

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

RECEIVED

OCT 04 2017

The Honorable Kristi Lea Harrington, Circuit Court Judge
CC Court of Appeals

Case No. 2013-CP-08-00179
Appellate Case No. 2017-000202

Ex Parte:

Nationwide Mutual Fire Insurance Company.....Appellant,

In Re:

Beresford Commons Homeowners Association, Inc.....Respondent,

v.

Superior Solution, LLC.....Respondent.

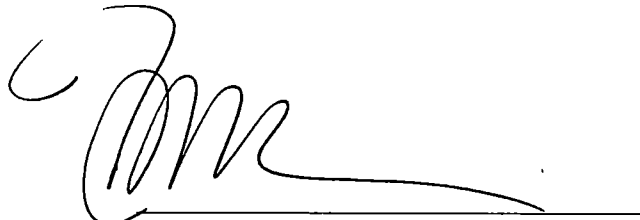
PROOF OF SERVICE

I certify that I have, on the date indicated below, served Respondent Beresford Commons Homeowners Association, Inc.'s Return to Appellant Nationwide Mutual Fire Insurance Company's Motion to Reinstate by electronic mail and mailing a copy of same via United States Mail, to counsel of record, at the following addresses:

J.R. Murphy, Esquire
Adam J. Neil, Esquire
Timothy J. Newton, Esquire
P.O. Box 6648
Columbia, SC 29260
jmurphy@murphygrantland.com
aneil@murphygrantland.com
tnewton@murphygrantland.com
Attorneys for Plaintiff Nationwide Mutual Fire Insurance Company

Albert A. Lacour, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
alacour@clawsonandstaubes.com
Attorney for Superior Solution, LLC

This 2nd day of October, 2017.



Josephine Lyons

SEGUI LAW FIRM PC

864 Lowcountry Boulevard
Suite A
Mount Pleasant, SC 29464

T 843-884-1865

Amanda M. Blundy
ablundy@seguilawfirm.com

October 2, 2017

Via U.S. Mail

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

RECEIVED
OCT 04 2017
SC Court of Appeals

RE: Beresford Commons Homeowners Association, Inc. v. Portrait Homes-South Carolina, LLC, et al.
Civil Action Case No.: 2013-CP-08-179
Appellate Case No.: 2017-000202

Dear Ms. Kitchings:

Enclosed please find original and six (6) copies of Respondent, Beresford Commons Homeowners Association, Inc.'s Return to Appellant Nationwide Mutual Fire Insurance Company's Motion to Reinstate, in connection with the above-referenced appeal.

I would appreciate your filing Respondent's Return to Appellant Nationwide Mutual Fire Insurance Company's Motion to Reinstate with the Court and returning a file-stamped copy thereof to my office in the self-addressed, stamped envelope provided for your convenience.

By copy of this letter, I am serving all counsel of record.

With best regards, I am

Very truly yours,

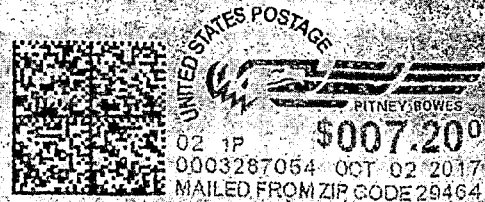


Amanda M. Blundy

AMB/jl

Enclosure

cc: John T. Chakeris, Esquire - via electronic mail
J.R. Murphy, Esquire - via U.S. mail and electronic mail
Adam J. Neil, Esquire - via U.S. mail and electronic mail
Timothy J. Newton, Esquire - via U.S. mail and electronic mail
Albert A. Lacour, III, Esquire - via electronic mail



SEGUI LAW FIRM PC

864 LOWCOUNTRY BOULEVARD, SUITE A
MOUNT PLEASANT, SC 29464

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

RECEIVED
OCT 04 2017
SC Court of Appeals