

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-10-03326
Case No. 2014-CP-10-4335
Appellate Case No. 2017-000542

Waverly at Hamlin Plantation Townhome
Association, Inc.,

Respondent,

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 GR

RECEIVED
JAN 23 2018
SC Court of Appeals

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 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

George Medina, George Medina a/k/a JMC Construction, LLC 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, 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 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 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 a/k/a Sanchez Brothers Painting, Latitude Construction Services, LLC, The Muhler Company, Inc., Paul M. Vasquez, 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

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George Medina, George Medina a/k/a JMC Construction, LLC 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, and The Muhler Company, Inc., are the

Respondents.

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD OF APPEAL OF RESPONDENTS WAVERLY AT HAMLIN PLANTATION TOWNHOME ASSOCIATION, INC., 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 GILESPIE, AND JARED D. OVERCASH

Pursuant to Rule 209, SCACR, Respondents, above named, designate the following materials for inclusion in the record on appeal. Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter that is irrelevant to this appeal.

Orders

1. Consent Bifurcation Orders (May 3, 2016)
2. Order Granting Class Certification (May 4, 2016)
3. Order Granting Class Certification (May 4, 2016)
4. Form 4 Order to Bifurcate, Case No. 2013-CP-10-00326 (Signed Jan. 24, 2017, Filed Jan. 26, 2017)
5. Form 4 Order to Bifurcate, Case No. 2014-CP-10-04335 (Signed Jan. 24, 2017, Filed Jan. 26, 2017) Form 4 Order to Bifurcate, Case No. 2013-CP-10-00326 (Signed Jan. 25, 2017, Filed Jan. 26, 2017) Form 4 Order to Bifurcate, Case No. 2014-CP-10-04335 (Signed Jan. 25, 2017, Filed Jan. 26, 2017)
6. Waverly HOA Order of Judgment (Feb. 9, 2017)
7. Class Order of Judgment (Feb. 9, 2017)
8. Form 4 Order Denying Motion for JNOV as to Class (Feb. 9, 2017)
Case No. 2013-CP-10-00326
9. Form 4 Order Denying Motion for JNOV as to HOA (Feb. 9, 2017)
Case No. 2014-CP-10-04335
10. Order Granting Directed Verdict (March 24, 2017)
Filed under both Case Numbers.
11. Supplemental Order Denying Motion for Enhanced Setoff (March 3, 2017)

Filed under both Case Numbers.

Pleadings

12. Waverly HOA Complaint (June 6, 2013)
13. JWH Answer to Waverly HOA Complaint (April 17, 2014)
14. Class Complaint (July 11, 2014)
15. JWH Answer to Class Complaint (October 6, 2014)
16. Waverly HOA Amended Complaint (December 19, 2014)
17. JWH Answer to Waverly HOA Amended Complaint (January 26, 2015)
18. Class Amended Complaint (March 4, 2015)
19. JWH Answer to Class Amended Complaint (March 6, 2015)

Motions, Supporting Memoranda, & Other Filings

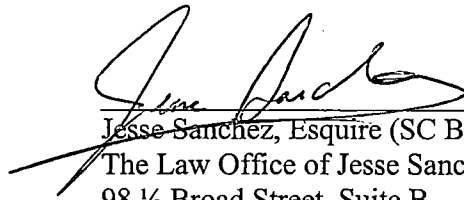
20. Plaintiffs' Motion to Substitute Class Representative (Mar. 21, 2016)
21. JWH's Motion in Limine (January 13, 2017) – Filed under both Case Numbers.
22. Muhler Co. Memorandum of Law in Support of its Motion for Summary Judgment As to Weiland Cross-Claims (Jan. 17, 2017) - Filed under both Case Numbers.
23. Plaintiff's Memorandum in Opposition to Wieland's Request for Enhanced Setoff (Feb. 9, 2017) - Filed under both Case Numbers.
24. JWH Stipulation of Dismissal with Prejudice of Cross-Claims as to Defendants George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc.; the Muhler Company, Inc., and Juan Luis Sanchez, Juan Luis Sanchez a/k/a Sanchez Brothers Painting (June 9, 2017) - Filed under both Case Numbers.
25. Letter from Andrew Cole, Counsel for JMC Construction to Court of Appeals, dated August 15, 2017, Received by Court of Appeal on August 16, 2017.

Transcripts

26. Hearing Transcript (Jan. 17, 2017)
27. Hearing Transcript (Jan. 19, 2017)
28. Trial Transcript Vols. 1-6 (Jan. 23-30, 2017)
29. Hearing Transcript (Feb. 9, 2017)

[Signature on following page]

Respectfully submitted,



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

John C. Hayes, IV, Esquire (SC Bar # 69740)
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388

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

ATTORNEY FOR RESPONDENTS WAVERLY AT HAMLIN PLANTATION TOWNHOME ASSOCIATION, INC., 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

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January 22, 2018
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

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PROOF OF SERVICE

I, the undersigned, certify that I have served the Initial Brief and Designation of Matter to be Included in the Record of Appeal of Respondents Waverly at Hamlin Plantation Townhome Association, Inc., 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. Kucynski, 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, and Jared D. Overcash to the attorneys of record by depositing a copy of it in the United States Mail on January 22, 2018 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
550 King Street, Suite 300
Charleston, SC 29403
(843) 723-6470

Attorneys 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., 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 George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc.

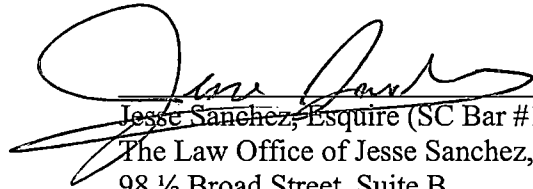
Sarah Fragale, Esquire
Julian K. Allen, Esquire
Turner, Padgett, Graham & Laney, P.A.
40 Calhoun Street
Charleston, SC 29401
(843) 576-2800

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

Peter G. Nistad, Esquire
John A. Jones, Esquire
Paige C. Ordnuff, Esquire
Gallivan, White & Boyd, P.A.
40 Calhoun Street, Suite 315
Charleston, SC 29401
(843) 734-7600

Attorneys for The Muhler Company, Inc.

[Signature of 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

ATTORNEY FOR RESPONDENTS WAVERLY AT HAMLIN PLANTATION TOWNHOME ASSOCIATION, INC., 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 GILESPIE, AND JARED D. OVERCASH

January 22, 2018
Charleston, South Carolina



January 22, 2018

VIA USPS PRIORITY OVERNIGHT MAIL

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

RECEIVED
JAN 23 2018
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 two (2) copies of each of the following documents in the above-captioned action:

1. Initial Brief of Respondents Waverly at Hamlin Plantation Townhome Association, Inc., 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. Kucynski, 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.
2. Designation of Matter to be Included in the Record of Appeal of Respondents Waverly at Hamlin Plantation Townhome Association, Inc., 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,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

98½ Broad Street, Suite B, Charleston, SC 29401 P: 843.814.8181 F: 843.284.3953
jesse@jessesanchezlaw.com jessesanchezlaw.com

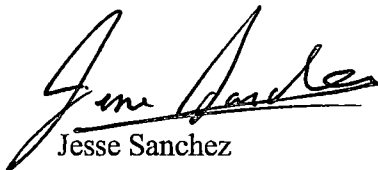
Maryann Walsh, Patty Whitmire, Donald L. Tomasello and Patricia Kelly, Chris Leigh-Jones, Edward Ray and Kathy Jo Feagins, Cindy Hunt for Bentgrass Limited, LLC, Adam A. and Susan S. Sokoloski, William and Carlyne Barone, Michelle Ray, Eugene and Cynthia Ray, William Abel, Dean and Conny Mason, David 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, and Jared D. Overcash.

3. Proof of Service of Respondents' Initial Brief and Designation of Matter to be Included in the Record of Appeal.

By copy of this letter, I am serving all parties to the appeal with copies of each of the above-described documents.

Thank you for your assistance with this matter. Should you have any questions, please do not hesitate to contact me directly at (843) 814-8181.

Sincerely,



Jesse Sanchez

ATTORNEY FOR 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. KUCYSNКСI, BEVERLY SUNDERS CARLSON, LISA ROECK, ELIZABETH JACKSON, CHARLES AND MARY KATHLEEN JENKINS, LINDA M. AND EARL K. RIGLER, JR., JOHN TWOMEY, JOE AND ANITA BRITTAИ, GILBERT J. HAGER AND KELLY HAGER HOLMES, CAROL AND CHRIS GILESPIE, JARED D. OVERCASH, AND WAVERLY AT HAMLIN PLANTATION TOWNHOME ASSOCIATION, INC.

Cc: All counsel of Record



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