

February 21, 2019

G. HAMLIN O'KELLEY, III  
ATTORNEY AT LAW  
Hamlin.okelley@buistbyars.com

VIA OVERNIGHT DELIVERY and U.S. MAIL

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**  
FEB 22 2019  
SC Court of Appeals

Re: *James R. Brady v. Hilton Head Homes at Allenwood, LLC, et al.*  
Case No. 2015-CP-07-2047  
File No.: 1115.0001

Dear Ms. Kitchings:

Enclosed please find a copy of the Court's case summary showing that the proposed Order Granting Summary Judgment is pending in the above-referenced matter. The Form Order filed in this matter is the final Order as demonstrated by Judge Hayes' email requiring his Order be included in the Form 4 Order.

We will forward a filed copy of the Order just as soon as Judge Hayes has signed it and the Clerk has uploaded it to their online system. By copy of this letter, I am serving same upon opposing counsel, Charles W. Thomson, Esquire, and Glynn L. Capell, Esquire.

Should you have any questions, please feel free to contact me. With kindest regards, I remain

Sincerely,

  
G. Hamlin O'Kelley, III

cc: (w/Encl.)

Charles W. Thomson, Esq.  
Glynn L. Capell, Esq.



2015CP0702047 : James R Brady VS Hilton Head Homes At Allenwood Llc , defendant, et al  
Common Pleas

**Case Number** 2015CP0702047  
**Case Subtype** Breach of Cont 140  
**Filed Date** 08-25-2015  
**Status** Appeal

**Plaintiff** James R Brady  
**Defendant** Hilton Head Homes At Allenwood Llc et al  
**Assigned Judge**  
**File Type** Jury

Show/Hide Participants

Name	Description	Type	File Date
James R Brady	NEF(02-11-2019 10:20:28 AM) Proposed Order/Summary Judgm...	Filing	02-12-2019 08:26:24 AM
James R Brady	Order/Order Cover Sheet \$25.00	Filing	02-11-2019 10:20:28 AM
Hilton Head Homes At Allenwood Llc	Notice of Appeal to Court of Appeals	Action	02-09-2019 01:59:11 PM
Hilton Head Homes At Allenwood Llc	Notice of Appeal to Court of Appeals-EX_1	Action	02-09-2019 01:59:11 PM
Hilton Head Homes At Allenwood Llc	NEF(02-08-2019 01:59:11 PM) Appeal/Notice of Appeal to C...	Filing	02-08-2019 04:06:04 PM
James R Brady	NEF(02-08-2019 01:36:01 PM) Order/Electronic Form 4	Filing	02-08-2019 01:36:13 PM
James R Brady	Form 4 Order Granting Summary Judgment	Order	02-08-2019 01:36:01 PM
Hilton Head Homes At Allenwood Llc	NEF(02-04-2019 12:17:46 PM) Memo/Memo in Opposition	Filing	02-04-2019 01:22:45 PM
Hilton Head Homes At Allenwood Llc	Memo in Opposition to Motion for Summary Judgment	Filing	02-04-2019 12:17:46 PM
Hilton Head Homes At Allenwood Llc	Memo in Opposition to Motion for Summary Judgment-EX_1	Filing	02-04-2019 12:17:46 PM
Hilton Head Homes At Allenwood Llc	Memo in Opposition to Motion for Summary Judgment-EX_2	Filing	02-04-2019 12:17:46 PM
James R Brady	NEF(02-04-2019 10:03:45 AM) Memo/Memo in Support	Filing	02-04-2019 10:43:25 AM
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James R Brady	Memo in Support of Motion for Summary Judgment as to CC-EX_1	Filing	02-04-2019 10:03:45 AM
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Hilton Head Homes At Allenwood Llc	Consent Motion for Protection and Status Conference to Set	Motion	01-23-2019 08:24:30 AM
Gary L Grossman	NEF(01-16-2019 12:07:25 PM) Notice/Notice of Hearing	Filing	01-16-2019 12:07:37 PM
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George Hamlin O'Kelley, III	2/6/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	01-15-2019 03:17:25 PM
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Charles Whaley Thomson	2/6/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	01-15-2019 03:17:25 PM
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James R Brady	Commission to Take Out-of-State Depositions-EX_1	Order	06-28-2018	08:25:14 AM
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James R Brady	Notice of Hearing to Gary L Grossman	Filing	05-09-2018	08:37:38 AM
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Gary L Grossman	Motion to Compel	Motion	04-11-2018	11:34:40 AM
Gary L Grossman	Motion to Compel-EX_1	Motion	04-11-2018	11:34:40 AM
Gary L Grossman	Motion to Compel-EX_2	Motion	04-11-2018	11:34:40 AM
Gary L Grossman	Motion to Compel-EX_3	Motion	04-11-2018	11:34:40 AM
Gary L Grossman	Motion to Compel-EX_4	Motion	04-11-2018	11:34:40 AM
James R Brady	ADR/Notice of ADR	Action	01-15-2017	03:43:48 PM
Gary L Grossman	Motion to Compel	Motion	01-09-2017	10:26:43 AM
Gary L Grossman	Motion to Compel-EX_1	Motion	01-09-2017	10:26:43 AM
James R Brady	Motion for Summary Judgment as to Defs' Counterclaims	Motion	01-05-2017	04:14:46 PM
Gary L Grossman	2/2/17 Motions Roster Notification	Filing	01-04-2017	04:12:32 PM
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Gary L Grossman	Motion/Compel	Motion	12-14-2016	01:15:01 PM

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Hilton Head Homes At Allenwood Llc	Notice/Notice of Appearance	Filing	12-14-2016	10:37:26 AM
James R Brady	Motion for Commission to Take Out of State Depo of Ginger	Motion	10-27-2016	03:50:09 PM
James R Brady	Amd Consent Sched Order, tdn 2-15-17	Filing	09-26-2016	11:37:43 AM
James R Brady	Reply to Counterclaim, Certificate of Service 7/25/2016	Filing	07-27-2016	04:14:13 PM
James R Brady	Notice of ADR to all parties	Filing	07-01-2016	03:57:53 PM
Hilton Head Homes At Allenwood Llc	Answer & Counterclaim of the Defendants; Cert of Mailing	Filing	09-14-2015	12:05:28 PM
Hilton Head Homes At Allenwood Llc	Summons for the Defs' Answer & Counterclaim	Filing	09-14-2015	12:04:10 PM
James R Brady	Accept Svc SC by G Hamlin O'Kelly III Esq 8-31-15	Filing	09-08-2015	09:57:17 AM
James R Brady	Summons & Complaint	Filing	08-25-2015	09:00:30 AM

## G. Hamlin O'Kelley

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**From:** Hayes, J. Mark <mhayesj@sccourts.org>  
**Sent:** Friday, February 8, 2019 11:12 AM  
**To:** CThompson@CapellLaw.com; G. Hamlin O'Kelley  
**Cc:** Hayes, J. Mark Law Clerk (James N. Ozmint); Buckner, Perry M.; Buckner, Perry M. Law Clerk (David A. Nasrollahi)  
**Subject:** Brady v. Hilton Head Homes at Allenwood, LLC, et al., 2015-CP-07-2047

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaim asserted against the Plaintiff by the Defendants. According to SCRPC 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the defendant. Plaintiff's counsel is asked to prepare a formal order granting the motion. The formal Order, once signed and filed with the clerk's office, will be final order of this Court on this motion. This email, which will be incorporated into a form 4 for filing with the Clerk's office.

The defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in the amount of "in excess of \$600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The defendants make reference in its memorandum to only pages 7, 37, and 38 to-39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as de bene esse deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issue involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures or actual foreclosures, that Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and that the plaintiff was not an employees of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meets its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trail court that there is an absence of evidence to support the non-moving party's case. As referenced in Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 )Ct App. 2001), once the moving party carries its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

Again, this email will be incorporated into a form 4 for filing with the Clerk's office and this Court requests a formal order be submitted to the Court for signing.

Thank you all for your arguments and briefing

Mark Hayes

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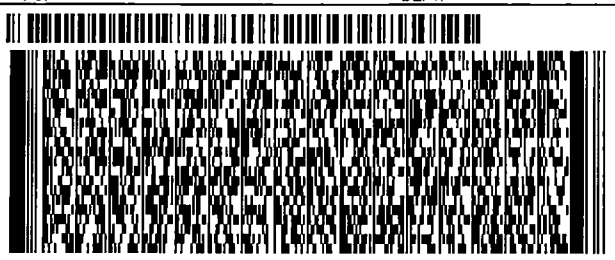
ORIGIN ID:RBWA (843) 856-4488  
AMANDA TAYLOR  
BUJIST, BYARS & TAYLOR, LLC  
652 COLEMAN BLVD  
SUITE 200  
MT. PLEASANT, SC 29464  
UNITED STATES US

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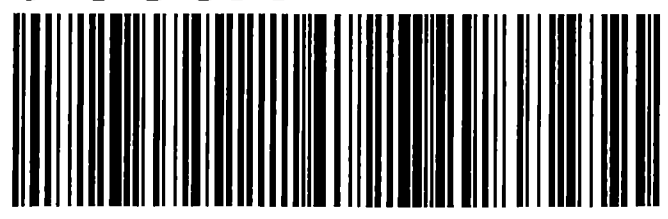


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