

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

FEB 24 2014

Case No. 2012-CP-22-934

SC Court of Appeals

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc.

Plaintiffs

v.

South Bay Properties, LLC, Stantec Consulting Services, Inc., f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett, Brenda C. Puckett, Robert Nahama, Jeanne E. Nahama, Thomas Holland Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo, Deborah A. DiAngelo, Gary E. Owens, Joyce M. Owens, Fount L. Shults, Lynda M. Shults, Dennis Ridgeway, Teresa Lynn Ridgeway and Georgetown County Forfeited Land Commission Defendants

of Whom

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens are Appellants

and

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc., South Bay Properties, LLC, Stantec Consulting Services, Inc., f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., Patrick A. DiAngelo, Deborah A. DiAngelo, and Georgetown County Forfeited Land Commission, are the Respondents

RECORD ON APPEAL

RECORD ON APPEAL
PAGES 1 - 199

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Bayside Property, Inc.*

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STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-22-_____

John Steven Goodwin, Louise C.
Goodwin, Thomas I. Puckett and
Brenda C. Puckett, Robert Nahama
and Jeanne E. Nahama,
Thomas Holland and Sharon
Louise Holland, Joyce K. Sobel,
Robert W. Waruszewski,
Richard N. Taylor, Robert K. Spillers
(a/k/a Robert Spillers), and Deborah T.
Spillers (a/k/a Deborah Spillers),
Patrick A. DiAngelo and Deborah A.
DiAngelo, Gary E. Owens and
Joyce M. Owens, Fount L. Shults and
Lynda M. Shults, and Dennis Ridgeway
and Teresa Lynn Ridgeway,

Plaintiffs,

v.

Landquest Development, LLC,
Kyle V. Corkum, South Bay Properties,
LLC, C. R. Thompson and Sons, LLC,
Ronald L. Charlton, Bonnie N. Charlton
James R. Charlton and Bayside Property
Inc., The City of Georgetown, Hartford
Casualty Insurance Company, Hartford
Fire Insurance Company, and
National Land Sales, Inc., f/k/a Source
One Communities, LLC, a/k/a Source
One Signature Communities

Defendants.

2009CP221045

COMPLAINT

Jury Trial Demanded

FILED
GEORGETOWN COUNTY, S.C.
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ALMA Y. WHITE
CLERK OF COURT

Plaintiffs, complaining of the Defendants, would respectfully show unto this
Honorable Court and allege as follows:

JURISDICTION AND VENUE

1. As described more fully herein below, Plaintiffs are owners of various lots located in a subdivision situate in Georgetown County, South Carolina, known and designated as "Harbor Club on Winyah Bay" ("the Subdivision"). The Subdivision is situate upon approximately 79.866 acres contiguous with and bounded along portions of its Eastern boundary by Winyah Bay, and is more fully described as follows:

ALL those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, containing a "Total Area = 79.866 Acres," which is comprised of "HOA/Wetlands Area = 33.120 Acres," "Lot Area = 34.870 Acres," and R/W Area = 11.876 Acres," said property being further shown and delineated on a plat entitled "FINAL BONDED SUBDIVISION PLAT SHOWING THE PLANTATION @ WINYAH BAY, 79.866 ACRES PREPARED FOR LANDQUEST", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Page 1 – 10 in the Office of the Register of Deeds for Georgetown County, South Carolina, said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid map, which map is incorporated herein by reference.

2. In accordance with Rule 20, SCRPC, all Plaintiffs herein are asserting discrete rights and claims, jointly and severally, arising from a series of similar and/or related transactions and occurrences, and affected or controlled by common questions of fact and/or law.

3. Plaintiffs are informed and believe that they are entitled to join their similar and related rights and claims within this action for purposes of determining the joint and/or several liability of the Defendants with respect to same, in the form of appropriate declaratory relief, and to thereafter conduct hearings as this Court may deem necessary and appropriate, upon breach of contract and related issues, for the purpose of

determining the actual, compensatory, consequential, special and/or punitive damages to be awarded to each Plaintiff, or group of Plaintiffs, as separate purchasers and lot owners within the Subdivision.

4. Plaintiffs John Steven Goodwin and Louise C. Goodwin are residents of the Horry County, South Carolina. Said Plaintiffs are owners as joint tenants with right of survivorship of Lot 160 in the Subdivision, by virtue of a General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and filed in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 688, at Page 45. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

5. Plaintiffs Thomas I. Puckett and Brenda C. Puckett are residents of Bristol, Virginia. Said Plaintiffs are owners in fee simple, as joint tenants with right of survivorship, of Lot 93 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 318. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges

as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

6. Plaintiffs Robert Nahama and Jeanne E. Nahama are residents of the Horry County, South Carolina. Plaintiffs Thomas Holland and Sharon Louise Holland are residents of Bergen County, New Jersey. Plaintiff Joyce K. Sobel is a resident of Cobb County, Georgia. Said Plaintiffs, jointly, are the owners in fee simple of undivided interests totaling 100% ownership interest, of Lot 44 in the Subdivision, as more fully described and defined in that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 687, at Page 19. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

7. Plaintiff Robert W. Waruszewski is a resident of the State of Tennessee, and is the fee simple owner of Lots 65, 151 and 157 in the Subdivision, by virtue of General Warranty Deeds executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County on September 19, 2007, in Deed Book 692, at Page 51 (Lot 65); on September 17, 2007, in Deed Book 687, at Page 244 (Lot 151); and, on September 21, 2007, in Deed Book 696, at Page 48 (Lot 157). Said Plaintiff's fee simple ownership interests in said lots includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

8. Plaintiff Richard N. Taylor is a resident of Cumming, Georgia. Plaintiffs Robert K. Spillers and Deborah T. Spillers are residents of Greenville, South Carolina. Said Plaintiffs, jointly, are the owners in fee simple of undivided interests totaling 100% ownership interest of Lot 154 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 688, at Page 201. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing

Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

9. Plaintiffs Robert K. Spillers and Deborah T. Spillers are residents of Greenville, South Carolina, and are the fee simple owners, as joint tenants with right of survivorship, of Lot 98 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 687, at Page 308. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

10. Plaintiffs Patrick A. DiAngelo and Deborah A. DiAngelo are residents of Horry County, South Carolina, and are fee simple owners as joint tenants with right of survivorship, of Lot 91 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the

Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 688, at Page 108. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

11. Plaintiffs Gary E. Owens and Joyce M. Owens are residents of Horry County, South Carolina, and are the joint owners in fee simple of Lot 94 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on December 21, 2007, in Deed Book 798, at Page 263. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

12. Plaintiffs Fount L. Shults and Lynda M. Shults are residents of Georgetown County, South Carolina, and are the fee simple owners, as joint tenants with right of survivorship, of Lot 89 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 688, at Page 1. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

13. Plaintiffs Dennis Ridgeway and Teresa Lynn Ridgeway are residents of Horry County, South Carolina, and are the fee simple owners, as joint tenants with right of survivorship, of Lot 92 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 686, at Page 258. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions

and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

14. Upon information and belief, the Defendant Landquest Development, LLC, ("Landquest") is a limited liability company established pursuant to the laws of another state, but at all times relevant hereto was authorized to do business in the State of South Carolina, and is or was doing business in Georgetown County, South Carolina.

15. Defendant Kyle V. Corkum ("Corkum"), upon information and belief, is a resident of the State of North Carolina.

16. The Defendant South Bay Properties, LLC ("South Bay"), upon information and belief, is a limited liability company formed and existing pursuant to the laws of North Carolina, but at all times relevant hereto was and is authorized to do business in this state, and is doing business in Georgetown County, South Carolina.

17. Upon information and belief, Defendant C.R. Thompson and Sons, LLC ("CRT") is a limited liability company formed and existing pursuant to the laws of the State of South Carolina, and doing business in Georgetown County, South Carolina.

18. The Defendants Ronald L. Charlton and Bonnie N. Charlton ("the Charltons") are citizens and residents of South Carolina.

19. The Defendant Bayside Property, Inc. is a corporation formed and existent pursuant to the laws of the State of South Carolina and at all times relevant hereto was and is doing business in Georgetown County, South Carolina. Together with the

Charltons, these Defendants are collectively hereinafter referred to as the "Charlton Defendants").

20. The Defendant City of Georgetown ("City") is a municipality and governmental entity organized and existing pursuant to the laws of the State of South Carolina, and exists within Georgetown County, South Carolina.

21. The Defendant Hartford Casualty Insurance Company ("Hartford Casualty") is a corporation organized and existing under the laws of the State of Indiana. At all times relevant herein, Defendant Hartford Casualty was authorized to do and was doing business in Georgetown County, South Carolina.

22. Upon information and belief, the Defendant Hartford Fire Insurance Company ("Hartford Fire") is a corporation organized and existing under the laws of the State of Connecticut. At all times relevant herein, the Defendant Hartford Fire was authorized to do and was doing business in Georgetown County, South Carolina.

23. The Defendant National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities ("Source One"), upon information and belief, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal office in Georgetown County, South Carolina.

24. As described more fully hereinabove, the Subdivision which forms the subject matter of this action, is situate and located within the Georgetown County, South Carolina.

25. All transactions, occurrences, acts and omissions alleged and complained of herein, transpired and occurred within Georgetown County, South Carolina, and/or

were directly related to the Subdivision located within Georgetown County, South Carolina.

26. The parties and the subject matter of this action are within the jurisdiction of this Court.

27. Venue is proper in Georgetown County, South Carolina.

FACTUAL ALLEGATIONS

28. Plaintiffs affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

29. Upon information and belief, at all times relevant hereto, the Defendant Corkum is and has been the Manager-Member of both Defendants Landquest and South Bay.

30. Plaintiffs are informed and believe that, at all times relevant hereto, Defendants Landquest and South Bay have been managed and controlled by Defendant Corkum.

31. Upon information and belief, at the direction and control of Defendant Corkum, Defendant Landquest entered into a Joint Venture Agreement with Defendant CRT, dated July 3, 2006, for the purpose of evaluating, conducting due diligence, conducting financial analysis and feasibility studies, and thereafter financing, acquiring, developing, designing, permitting, constructing, marketing and selling four (4) specific real estate developments, including the Subdivision identified herein.

32. Upon information and belief, Defendants Corkum and CRT utilized Defendant Landquest for the purpose of conducting initial evaluations, financial analysis

and feasibility studies, and to negotiate the acquisition and financing for the acquisition of the property. On information and belief, Defendant CRT and/or Defendant Corkum thereafter personally, or through Defendant Landquest, conducted all due diligence investigations, and arranged for necessary surveys, final planning, permitting, construction, marketing, and sale of the Subdivision.

33. Upon information and belief, Defendants Corkum, Landquest and CRT formed, or caused to be formed, in accordance with the Landquest-CRT Joint Venture Agreement, the Defendant South Bay, on or about June 29, 2006, for the purpose of owning, holding, and conveying lots in the Subdivision to ultimate purchasers, including but not limited to the Plaintiffs herein.

34. At all times relevant hereto, Defendant South Bay was and is the designated owner and "developer" of the Subdivision.

35. Plaintiffs are informed and believe that, at all times relevant hereto, Defendant South Bay has possessed inadequate capital and financial resources to perform its obligations as represented and undertaken, and its contractual obligations and duties to Plaintiffs, as described more fully herein below.

36. Plaintiffs are informed and believe that Defendant Corkum has utilized the assets and resources of Defendant Landquest, in addition to the pledge of his personal assets and resources, in conjunction with the assets and resources of Defendant CRT as joint venturer, and other third parties, to create the perception that South Bay had the necessary capital and financial ability to perform and complete its obligations for the acquisition of the Subdivision, and its obligations to the Plaintiffs herein and other lot purchasers, as described more fully herein below.

37. On or about August 14, 2006, upon information and belief, Defendant South Bay, by and through its manager Defendant Corkum, utilizing the assets and resources of Defendants Corkum, Landquest and CRT, and other third parties, as alleged hereinabove, entered into a contract with the Charlton Defendants for the purchase of the Subdivision for the sum of Twenty Million and 00/100 Dollars (\$20,000,000.00). This Purchase Contract was subsequently amended on January 23, 2007, and again on May 9, 2007 (collectively referred to as the "Purchase Contract").

38. South Bay eventually closed the Purchase Contract with the Charlton Defendants as sellers on or about September 17, 2007, the date of filing of a General Warranty Deed conveying the property to Defendant South Bay for the sum of Twenty Million Eight Hundred and Fifty Thousand and 00/100 Dollars (\$20,850,000.00), in Deed Book 686, at Page 90 ("South Bay's Deed"). The unpaid balance of the purchase price was secured by a Mortgage from Defendant South Bay to the Charlton Defendants, recorded on the same date, in the sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars (\$14,580,662.92), in Mortgage Book 686, at Page 135 ("South Bay Mortgage").

39. Also on September 17, 2007, following the recording of South Bay's Deed and Mortgage as recited hereinabove, Defendant South Bay conveyed twenty-nine (29) lots to various purchasers by General Warranty Deeds recorded on this date, generating total gross lot sale proceeds of Seven Million Nine Hundred Twenty-six Thousand Five Hundred and Fifty and 00/100 Dollars (\$7,926,550.00).

40. The Purchase Contract provided, among other things, that (i) the Charlton Defendants would have unlimited ingress and egress over the Subdivision for the

37. On or about August 14, 2006, upon information and belief, Defendant South Bay, by and through its manager Defendant Corkum, utilizing the assets and resources of Defendants Corkum, Landquest and CRT, and other third parties, as alleged hereinabove, entered into a contract with the Charlton Defendants for the purchase of the Subdivision for the sum of Twenty Million and 00/100 Dollars (\$20,000,000.00). This Purchase Contract was subsequently amended on January 23, 2007, and again on May 9, 2007 (collectively referred to as the "Purchase Contract").

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40. The Purchase Contract provided, among other things, that (i) the Charlton Defendants would have unlimited ingress and egress over the Subdivision for the

Charlton Defendants' own purposes, and that (ii) the Charlton Defendants had the right to use the Subdivision, infrastructure and amenities at no cost to the Charlton Defendants. This right included use of all amenities, including the clubhouse, and to receive a portion of the boat slips upon completion of the build-out of the marina.

41. Between September 29, 2007 and January 4, 2008, Defendant South Bay conveyed twenty-five (25) more lots in the Subdivision to ultimate purchasers, generating additional gross lot sale proceeds of Six Million Eight Hundred Eleven Thousand-Fifty and 00/100 Dollars (\$6,811,050.00), resulting in total gross lot sale proceeds of Fourteen Million Seven Hundred Thirty-seven Thousand Six Hundred and 00/100 Dollars (\$14,737,600.00).

42. Thirty-one (31) lots in the Subdivision were excepted from the lien of Defendant South Bay's Mortgage, representing gross lot sale proceeds of Seven Million Seven Hundred Forty-five Thousand Eight Hundred and 00/100 Dollars (\$7,745,800.00).

43. Plaintiffs are informed and believe that Defendant South Bay has invested no capital, funds or other expenditures in or for the Subdivision, with the exception of lot release fees paid to its Sellers.

44. Plaintiffs are further informed and believe that the Defendant South Bay's only assets are the remaining 107 unsold, unimproved lots in the Subdivision, all of which are subject to the lien of South Bay's Mortgage in the original principal amount of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars (\$14,580,662.92).

45. Plaintiffs are therefore informed and believe that the Defendant South Bay has, at no time since its purchase of the Subdivision, owned or possessed any equity in the property, or possessed other adequate capital or resources to perform its obligations to Plaintiffs or other lot purchasers in the Subdivision, as described more fully herein below.

46. On or about July 17, 2007, in order to obtain final Plat approval for the Subdivision, thereby enabling Defendant South Bay and/or its principals to lawfully sell lots in the Subdivision, Defendant South Bay procured the issuance of a "Subdivision Performance Bond" ("Performance Bond"), issued by Hartford Casualty Insurance Company. Defendant South Bay is the principal; Hartford Casualty Insurance Company is the surety; and the City of Georgetown is the obligee upon the Subdivision Performance Bond, in the principal penal sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars (\$7,882,359.00).

47. Upon information and belief, Hartford Casualty Insurance Company's rights and liabilities under the Performance Bond were subsequently assigned by rider to Hartford Fire Insurance.

48. The purpose of the Performance Bond, in addition to facilitating the Final Subdivision Plat approval, was to assure construction of the infrastructure (roads and utilities) in the Subdivision.

49. Plaintiffs are informed and believe the Defendant South Bay was incapable of obtaining and procuring the issuance of the Performance Bond, and that the Performance Bond was issued by Hartford Casualty and subsequently by Hartford Fire, in reliance upon a General Indemnity Agreement, executed and delivered by the

Defendants Corkum, South Bay, and six (6) other third parties, on or about July 13, 2007.

50. The Defendant Corkum and/or Landquest conducted all due diligence, required and permitted under the Contract for the purchase of the Subdivision for themselves, CRT and the Charlton Defendants.

51. At some date subsequent to August 14, 2006, Defendants Landquest, Corkum, CRT, South Bay and the Charlton Defendants, or some combination thereof, selected Defendant Source One as the sales and marketing agent for the Subdivision, and commenced marketing lots in the Subdivision to prospective purchasers, including but not limited to Plaintiffs.

52. Upon information and belief, Defendant Source One solicited and procured potential and actual purchasers of lots in the Subdivision by providing photographs, artist renderings and allegedly factual information about the ultimate appearance, infrastructure, facilities, amenities and common areas to be constructed, provided and established in the Subdivision, and regarding the ultimate value thereof, based on information and material provided by Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants, or some combination thereof, or otherwise approved and ratified by said Defendants.

53. Plaintiffs further relied upon Defendant City's approval of the Final Subdivision Plat, and the Performance Bond upon which Defendant City approved same, as assurance and warranty that the Subdivision's infrastructure, in the very least, would be constructed in accordance with representations and covenants made by

Defendants Corkum, Landquest, CRT, South Bay and the Charlton Defendants, or some combination of one or more of said Defendants.

54. Despite such representations and covenants, none of the promised infrastructure, amenities or other such facilities have been commenced or completed in the Subdivision.

55. At all times referenced in this Complaint, the Charlton Defendants were joint venture partners with Corkum, Landquest, CRT and South Bay, for the purpose of developing the Subdivision.

56. There has been such an amalgamation of corporate interests, entities and activity so as to blur the legal distinction between Corkum, South Bay, Landquest, CRT, and the Charlton Defendants, and their activities.

FOR A FIRST CAUSE OF ACTION

**(Breach of Contract/Rescission v. Defendants Corkum, Landquest, CRT,
South Bay, the Charlton Defendants and Source One)**

57. Plaintiffs affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

58. All matters alleged herein specifically and exclusively refer to and assert a cause of action for relief from Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants (hereinafter referred to as the "Developer Defendants") and Source One, jointly and/or severally.

59. In response to, and in reliance upon, the marketing efforts, representations, covenants and contractual undertakings of the Developer Defendants and their agents, Plaintiffs and other third parties executed Reservation Agreements

and "Agreement(s) to Buy and Sell Real Estate" ("Purchase Agreements") for various lots in the Subdivision, for various prices, on various dates.

60. The Plaintiffs were induced to execute and enter into the Reservation Agreements and Purchase Agreements based upon the following representations and contractual terms made and entered into by the Developer Defendants and/or their agents, to wit:

- a. At no cost to Purchasers/Plaintiffs, the Developer Defendants were going to build a turning lane from South Island Road into the Subdivision, as well as roads, water, sewer, electrical service and telephone service to all lots throughout the Subdivision, in accordance with the Final Subdivision Plat;
- b. The Developer Defendants, at no cost to Purchasers/Plaintiffs, were going to build and provide a Clubhouse, Swimming Pool, a Boathouse and Fishing Pier, as a portion of the common areas and amenities of the Subdivision;
- c. At no cost to Purchasers/Plaintiffs the Developer Defendants were going to provide various improvements to the 1.95± acre island, and its connecting pedestrian bridge, which form a portion of the common areas and amenities of the Subdivision;
- d. At no cost to Purchasers/Plaintiffs, the Developer Defendants were going to provide landscaping throughout the Subdivision, to enhance and preserve its aesthetic appearance, as a portion of the common areas and amenities;
- e. The infrastructure and amenity construction would be commenced in September, 2007, and was expected to be complete in approximately August, 2008;
- f. The value and marketability of Plaintiffs' lots would increase substantially once the infrastructure and amenities were completed; and,
- g. Defendant Source One would set aside, or escrow, approximately \$3,700.00 to \$4,000.00 per lot closed, with such funds to be used for the purpose of conducting at least two major re-marketing events, coinciding with completion of the above-referenced infrastructure and amenities, the purpose and result of which would

be to assist Plaintiffs in re-selling their lots at a substantial profit, if they so desired.

61. The Developer Defendants, or a combination of one or more of said Defendants, separately or through their authorized agents, represented, covenanted and bound themselves to provide the foregoing infrastructure and amenities to Plaintiffs and other purchasers in the Subdivision.

62. The Purchase Agreements were supported by good and valuable consideration, and were mutually binding and enforceable upon all parties thereto.

63. The representations, covenants, and obligations made and entered into by the Developer Defendants and their agents were express and implied executory terms of the Purchase Agreements, and were specifically intended to and did survive the execution of the Purchase Agreements, and the subsequent execution, delivery and filing of the General Warranty Deeds to various lots which vested title to such lots in Plaintiffs.

64. The Plaintiffs have fully performed all obligations and conditions precedent required of them to render the terms of the parties' Purchase Agreements, and other representations and inducements preceding same, fully enforceable as against one or more of these Defendants.

65. Despite Plaintiffs' full performance of all obligations required of them under the Purchase Agreements, including without limitation payment of the full purchase price demanded by one or more of the Developer Defendants, together with closing costs and other substantial expenses incurred by each of the Plaintiffs, and other lot purchasers, said Defendants have failed and refused to perform any of the obligations,

representations, warranties or undertakings made, set forth, and entered into by them. More particularly, the Developer Defendants and Source One have failed to commence, and therefore have not completed, the construction of paved roads providing access to Plaintiff's lots; water or sewer service lines, or other necessary and appropriate utilities and services to the boundary lines of said lots; or the clubhouse, pool, boathouse, fishing pier, landscaping, or improvements to and around the 1.945± acre island as specifically represented, covenanted and warranted or set up an escrow account for remarketing efforts.

66. As a direct, proximate and foreseeable result of the Defendants' material, substantial and unexcused breach of the parties' Purchase Agreements as set forth herein, Plaintiffs have sustained foreseeable actual and special damages and loss, including, but not limited to the following:

- a. In that Plaintiffs have paid and delivered a full and excessive purchase price to said Defendants for their respective lots, and have each undertaken debt and liability for this purpose, far in excess of the actual fair market value of the lots without such infrastructure and amenities;
- b. In that Plaintiffs have incurred interest, property taxes, closing costs, and other consequential and/or special damages as a result of their closing upon the purchase of their respective lots, and undertaking the debt and liabilities resulting directly therefrom;
- c. In that Plaintiff's have incurred substantial attorneys' fees and costs herein, in pursuit of recovery of their rights, interests and damages under their Purchase Agreements;
- d. In that the Plaintiffs have been denied reasonable access to, or any beneficial use of, their individual lots;
- e. In that more than one Plaintiff has been unable or unwilling to comply with the terms of their purchase money financing, and to pay the monthly costs of such financing, as well as excessive property taxes assessed upon their unimproved and inaccessible

lots, resulting in substantial damage to Plaintiffs' credit, and multiple threats of mortgage and property tax foreclosures, together with assessments of penalties and interest on past due financing and property tax payments;

- f. In that, upon information and belief, no funds were or have been "set aside" or escrowed by Defendant Source One, for the purpose of conducting the two significant re-marketing events as promised and represented, and no such events have been planned or conducted;
- g. In that Plaintiffs' investment is jeopardized by virtue of the Charlton Defendants' apparent right to foreclose on all the property that would constitute the common elements to be located within the Property, which would include the roads, easements for utilities, amenities, the marina and the island; and
- h. In such other and further particulars as may be established hereafter.

67. Plaintiffs are informed and believe that Defendants' breach of their covenants and Purchase Agreements have been so fundamental and substantial that Plaintiffs are entitled to judgment against the Defendants, jointly and/or severally, awarding Plaintiffs complete Rescission of their Purchase Agreements, and restoring them to the *status quo ante*, immediately prior to the execution of their Reservation Agreements and Purchase Agreements, by Declaratory Judgment and related relief as follows:

- a. Requiring one or more of the Defendants named herein to refund all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Plaintiffs, to Plaintiffs;
- b. Directing and requiring that one or more of the Defendants fully pay and satisfy all purchase money debt incurred by Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose;
- c. Awarding Plaintiff's judgment against the Defendants in a sum equal to the monetary value of all damage to Plaintiffs' credit which

has or may have occurred as of the date of judgment; upon completion of which, at Defendants' expense, Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to such Defendant/Defendants as this Court shall direct;

- d. Awarding Plaintiffs Judgment for all attorneys' fees and costs incurred by them herein; and,
- e. Awarding Plaintiffs such other and further relief as may be necessary and appropriate to make Plaintiffs whole, and to restore them to the *status quo ante* prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract – Declaratory Relief, Specific Performance and Damages v. Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants and Source One)

68. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated verbatim, and further allege in the alternative:

69. Without just cause or excuse, the Defendants Landquest, Corkum, Landquest, CRT, South Bay, the Charlton Defendants and Source One (hereinafter referred to as "the Developer Defendants"), or one or more of them, materially and substantially breached the Purchase Agreements, as alleged more fully hereinabove, all to Plaintiffs' great damage and loss.

70. Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, as follows:

- a. Declaring the Developer Defendants to be in material and substantial breach of their obligations under the parties' Purchase Agreements, and other representations, covenants and obligations made and entered into by them;
- b. Requiring the Developer Defendants to specifically perform their covenants and obligations to Plaintiffs, by immediately commencing and timely completing the construction of all infrastructure and amenities, in accordance with existing plans; and consistent with

the planned exclusive subdivision portrayed by the Developer Defendants and their agents where plans do not exist; the Final Subdivision Plat; and applicable building codes and standards; as alleged more fully hereinabove;

- c. Awarding Plaintiffs judgment against the Developer Defendants, and Source One jointly and/or severally, in a sum equal to all actual, special and consequential damages incurred by them, together with pre-judgment interest on such sums;
- d. Awarding Plaintiffs all costs and fees incurred herein, including without limitation a reasonable attorneys' fee; and,
- e. Awarding Plaintiffs such other and further relief as this Court may deem just and proper.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Acts v. Defendants Corkum, Landquest, CRT, South Bay and the Charlton Defendants)

71. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

72. The Developer Defendants have materially, substantially and fundamentally breached their Purchase Agreements with Plaintiffs, and have defaulted upon the representations, inducements, covenants and warranties given, as alleged more fully hereinabove.

73. The Developer Defendants breach of contracts were accompanied by fraudulent acts, in the following particulars:

- a. the Developer Defendants and Source One made such representations, inducements, covenants and warranties regarding their construction and/or delivery of the infrastructure, amenities and other facilities in the Subdivision, for the purpose and with the intent of inducing Plaintiffs' reliance thereon, without securing or depositing into a *bona fide* escrow account, or otherwise securing and undertaking appropriate and sufficient financial arrangements, to assure completion of same;

- b. the Developer Defendants and Source One specifically intended for Plaintiffs to rely upon such representations, covenants, warranties and contractual obligations, and Plaintiffs did justifiably rely thereon in electing to proceed with execution and performance of their Purchase Agreements for their respective lots, at grossly inflated and excessive values without such infrastructure, amenities and other facilities in place;
- c. the Developer Defendants and Source One, or one or more of them, provided the further assurance of compliance with said representations, covenants, warranties and contractual obligations, by procuring the issuance of a Performance Bond, allegedly assuring the completion of at least the infrastructure in the Subdivision, and pursuant to which the Developer Defendants were enabled and allowed by Defendant City to proceed with the sale and closings upon lots within the Subdivision;
- d. upon information and belief, the Developer Defendants and Source One attempted to avoid and disclaim their duties, responsibilities, obligations and representations, by language contained in their HUD Property Report. However, the Developer Defendants, or one or more of them, instructed, requested or otherwise approved and ratified subsequent representations and "explanations" by Defendant Source One of the HUD Property Report, which negated, glossed over, and otherwise reassured Plaintiffs of the Defendants' financial ability to perform their representations; covenants, warranties and contractual obligations, and of the Developer Defendants intention and ability to do so, as allegedly evidenced by the Hartford Performance Bond;
- e. the Plaintiffs justifiably relied upon the Developer Defendants assurances and reassurances, as alleged herein, were entitled to do so, and had no reasonable means of otherwise discovering the Developer Defendants fraudulent intent, and acted to their detriment in reliance upon such representations and assurances, by electing and deciding to execute and enter into the Purchase Agreements for their lots, to expend sums required for the performance of such Purchase Agreements, and to undertake substantial purchase money debt in order to perform such Purchase Agreements, all to Plaintiff's great damage and loss;
- f. the Developer Defendants, despite such representations, assurances and reassurances, and despite the fact that one or more of the Developer Defendants, jointly and/or severally, are financially capable of fully performing their obligations to Plaintiffs, constructed the transaction with the Charlton Defendants and

secured the issuance of the Hartford Performance Bond, without having any financial obligation or funds committed to construction of the infrastructure, amenities and facilities of the Subdivision;

- g. upon information and belief, the Developer Defendants, or one or more of them, intentionally refrained from undertaking any financial obligation or commitment for the construction of infrastructure, amenities and other such facilities, because of their perception of a pending real estate, and real estate financial market crisis, and Defendants objectively intended, at the time of closing upon the sale of lots to Plaintiffs, to repudiate, deny and avoid any obligation for the construction and provision of such infrastructure, amenities and related facilities;
- h. the Developer Defendants, or one or more of them, were therefore aware at the time of such closings, that Plaintiffs lots were grossly over-valued, and that the Developer Defendants had received far in excess of the actual fair market value of such lots, in the absence of said infrastructure, amenities and related facilities, which the Developer Defendants had then decided not to construct and/or provide;
- i. the Developer Defendants have not commenced or completed construction of any infrastructure, amenities or related facilities in the subdivision, despite their representations, warranties and assurances that such construction would commence in or about September, 2007, and thereafter representing that such construction would commence in or about January, 2008, and in both instances such construction would be complete in or about August, 2008;
- j. the Developer Defendants representations, inducements, covenants and warranties were material and fundamental, and were false and deceptive as recited herein; such material and false representations were made by the Developer Defendants for the purpose of invoking and inducing Plaintiffs' reliance thereon; that Plaintiffs justifiably relied thereon, and had no reason to disbelieve or reasonable ability to discover the falsity of such representations; that Plaintiffs did in fact rely upon such representations to their detriment; and, as a direct and proximate result of such materially false and deceptive misrepresentations and the Developer Defendants breach of their resulting duties, obligations and covenants, Plaintiffs have been severely and egregiously damaged, as recited more fully hereinabove.

74. Plaintiffs are informed and believe that they are entitled to judgment against the Defendants, jointly and/or severally, for all actual and punitive damages sustained herein.

FOR A FOURTH CAUSE OF ACTION

(Violation of South Carolina Unfair Trade Practices Act v. Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants and Source One)

75. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

76. The Defendants Corkum, Landquest, CRT and South Bay, at all times relevant hereto, have held themselves out as experts, and have engaged in business with Plaintiffs and the public at large in the field of real estate development, marketing and sales. The Charlton Defendants, by virtue of their joint venture status as a Developer Defendant, are vicariously liable for the acts and omissions of the other Developer Defendants.

77. At all times relevant hereto, the Defendant Source One has held itself out as an expert, and has engaged in business with Plaintiffs and with the public at large in the field of real estate marketing and sales.

78. The Developer Defendants and Source One named herein have solicited and procured Plaintiffs' reliance upon their expertise, integrity and abilities, as alleged more fully hereinabove, and have thereby procured Plaintiffs' Purchase Agreements and performance of same for the purchase of various lots in the Subdivision, as alleged more fully hereinabove.

79. That the Developer Defendants' and Source One's acts and omissions, in breach and violation of their representations to and agreements with Plaintiffs, as alleged more fully hereinabove, constitute unfair or deceptive acts in the conduct of

trade or commerce, as provided in the South Carolina Unfair Trade Practices Act [S.C. Code Ann. §§ 39-5-10, *et seq.* (1976 as amended).] ("the Act").

80. The Defendants' acts and omissions, as alleged more fully hereinabove, are capable of, and have the potential to be repeated, to the damage of the general public and contrary to the public interest and principles of good faith and fair dealing in the conduct of trade and commerce.

81. Plaintiffs are therefore informed and believe that the Defendants, or one or more of them, have negligently, willfully and recklessly violated the terms and provisions of the Act.

82. That as a direct and proximate result of the Defendants' negligent, willful, and reckless violation of the Act, Plaintiffs have sustained financial damage and property loss, as alleged more fully hereinabove.

83. Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants and Source One, jointly and/or severally, for all actual damages, treble damages, and attorneys' fees, in accordance with the Act.

FOR A FIFTH CAUSE OF ACTION

**(Negligent Misrepresentation v. Defendants Corkum, Landquest, CRT, the
Charlton Defendants, South Bay and Source One)**

84. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

85. The Developer Defendants and Source One, jointly and/or severally, made false representations to Plaintiffs, as alleged more fully hereinabove. Such false representations included:

- a. Defendant South Bay would construct and provide, at no cost to Plaintiffs, the infrastructure, amenities and other related facilities described hereinabove;
- b. the Hartford Performance Bond provided assurance that at least the infrastructure would be constructed and provided;
- c. construction of the infrastructure, amenities and related facilities would be complete in or around August, 2008;
- d. Plaintiffs' lots would be worth substantially more than their purchase price, upon completion of the infrastructure, amenities and related facilities;
- e. Defendant Source One would "set aside", or escrow, \$3,700.00 to \$4,000.00 per lot closing, for the purpose of funding two significant re-marketing events, the first of which would be scheduled to occur in August or September, 2008, for the purpose of assisting those Plaintiffs and other lot purchasers who so desired in re-selling their lots at a substantial profit.

86. The Developer Defendants and Source One, jointly and/or severally, had a pecuniary interest in making these false representations to Plaintiffs, thereby inducing Plaintiffs to enter into and perform their Purchase Agreements for their various lots.

87. The Developer Defendants and Source One, jointly and/or severally, owed Plaintiffs a duty of care to assure that truthful information was conveyed to Plaintiffs regarding their ability to perform as represented, covenanted and undertaken by them in their various contracts with Plaintiffs.

88. The Developer Defendants and Source One, jointly and/or severally, negligently, carelessly, recklessly and willfully breached their duties to Plaintiffs, and failed either consciously or negligently, to ensure that truthful and accurate information was conveyed to Plaintiffs regarding these material issues of fact.

89. The Plaintiffs justifiably relied on the Developer Defendants' and Source One's representations, having no reason to doubt or suspect that the Developer

Defendants and Source One were incapable of performing, or lacked the integrity and financial commitment or obligation to compel them to perform as represented, covenanted and undertaken.

90. As a direct and proximate result of Plaintiffs' reliance upon such false and material misrepresentations, and said Defendants' failure to perform such obligations, covenants and representations, Plaintiffs have been severely and egregiously damaged as alleged more fully hereinabove.

91. Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants and Source One, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

FOR A SIXTH CAUSE OF ACTION
**(Actual Fraud/Constructive Fraud v. Defendants Corkum, Landquest,
CRT, South Bay and Source One)**

92. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

93. The Developer Defendants and Source One, or one or more of them, by and through their principals and agents, made the representations set forth more fully hereinabove, all of which were material and were false.

94. The Developer Defendants and Source One knew or should have known of the falsity of said representations at the time they were made, or made such representations in reckless disregard of their falsity.

95. The Developer Defendants and Source One made such representations with the intent and purpose that they be acted upon by Plaintiffs as true.

96. Plaintiffs were ignorant of the falsity of the Developer Defendants' and Source One's representations, had no reason to doubt the veracity of such representations, and had no means of reasonably discovering their falsity. Plaintiffs were therefore entitled to rely upon the truth of such representations, and did in fact rely upon the truth of such representations in executing and performing their respective Purchase Agreements for lots in the Subdivision.

97. That, as a direct and proximate result of the Developer Defendants' and Source One's actual or constructive fraud in making such false representations, and Plaintiffs' material change of position in reliance thereon, Plaintiffs have sustained damages and loss, as set forth more fully hereinabove.

98. Plaintiffs are informed and believe that they are entitled to judgment against the Defendants, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

FOR A SEVENTH CAUSE OF ACTION

(Third Party Beneficiaries/Declaratory Judgment v. City of Georgetown, Hartford Casualty, Hartford Fire, South Bay Properties, LLC, the Charlton Defendants and Landquest/CRT)

99. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

100. Upon information and belief, Plaintiffs were intended beneficiaries of the Subdivision Performance Bond issued by Hartford Casualty and subsequently undertaken by Hartford Fire, as follows:

- a. The Hartford Performance Bond was issued for the purpose of obtaining the Defendant City's approval of the Final Bonded Subdivision Plat;

- b. The Defendant City's approval of the Final Bonded Subdivision Plat was a condition precedent to the Developer Defendants, being authorized to convey title to lots within the Subdivision to ultimate purchasers of said lots, including Plaintiffs;
- c. The Charlton Defendants had to join in and consent to the Final Bonded Plat before it was approved by the Defendant City and/or Georgetown County before it was recorded;
- d. The Defendant City accepted the Hartford Performance Bond and, in reliance thereon, approved the Final Bonded Subdivision Plat for the Subdivision; and,
- e. The preceding facts were conveyed to Plaintiffs by the Developer Defendants and Source One, whereafter and in reliance whereof, Plaintiffs proceeded to closing on their respective lots, and discharged their duties and obligations fully under their Contracts to purchase said lots.

101. That Defendants City and Hartford knew or should have known that Plaintiffs would rely upon the Defendant City's acceptance of the Hartford Performance Bond, and its consequent approval of the Final Bonded Subdivision Plat for the Subdivision, and that Plaintiffs were entitled to rely thereon in accordance with relevant statutory and municipal code provisions as alleged more fully herein below.

102. Pursuant to Code 1964, §17-16(2), Code of Ordinances, City of Georgetown, the City's planning commission is required to "undertake plans and programs designed to promote public health, safety, morals, convenience, prosperity, or the general welfare . . ." In discharging its responsibilities, the planning commission has the power and duty to recommend for adoption regulations for the development of land pursuant to S.C. Code of Laws, as amended, §§6-29-1110 through 6-29-1200.

103. S.C. Code §6-29-1120 states that:

The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land

within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; ... and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

104. S.C. Code §6-29-1180 provides that in:

circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond, certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

105. S.C. Code §6-29-1120 further states that the:

Owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records...

106. Upon information and belief, in April, 1999, pursuant to the statutory authority granted by S.C. Code §§ 6-29-110-1200, the City enacted Land Development Regulations. The purpose of these Regulations, among other things, was to "assure the timely provision of required street utilities and other facilities and services to new land development." Sec. 102, Land Development Regulations of the City of Georgetown.

107. The Land Development Regulations of the City of Georgetown, in pertinent part, require the following:

- a. Sec. 107: Planning Commission approval and recording of a plat of a subdivision prior to any transfer, sale, agreement to sell, negotiating for sale or advertising for sale of any "land by reference to or exhibition of or by other use of a plat of subdivision of such land."
- b. Sec. 203.1: Approval of the Final Plat requires certification from the City that "... improvements have been installed to the City's satisfaction or that an acceptable technique in lieu of completion of all improvements has been proposed for the subdivision."
- c. Sec. 302.8: "Financial guarantees as required in Section 502 shall be submitted ... along with the Final Plat. Approval shall not be granted in the absence of such guarantee."
- d. Sec. 500.1: Approval of the Final Plat for recording shall not be given unless "the subdivider has installed ...improvements as herein specified and required, or has provided a financial guarantee therefore as specified in Section 502."
- e. Sec. 501: Improvements required to be made by every subdivision developer include grading and improving streets and alleys, installing curbs, monuments, sewers, storm water inlets, and water mains.
- f. Sec. 502.1: "Financial Guarantees covering all improvements required by this Ordinance shall be prerequisite to Planning Commission action on the application for Final Plat approval. The subdivider shall submit such guarantees...in accordance with the requirements of this section."

- g. Sec. 502.3: "Prior to completion of any or all required improvements by the subdivider, the subdivider may post a performance bond...guaranteeing the completion of said improvements in compliance with the requirements herein..."
- h. Sec. 502.321: The performance bond shall "[r]un to the governing authority or, if applicable, any other governmental unit having legal responsibility for the construction and completion of said improvements."
- i. Sec. 502.324: The performance bond shall specify "that all said required improvements shall be completed in accordance with the requirements of this Ordinance within a period not to exceed one year from the date of posting said bond; provided, however, that the governing authority may, by proper application, for good cause shown, extend the time of completion of all or part of such improvements for such period of time as it deems is in the public interest."

108. Upon information and belief, prior to the closing of the individual lots to Plaintiffs, the Developer Defendants applied to Defendant City for approval and/or pre-approval of the Subdivision Plat, and for subsequent closing of sales of lots in the Subdivision to third parties, including Plaintiffs. At the time that Defendant South Bay applied to the Defendant City, it did not own the Property, but rather the Charlton Defendants did. As a result, the Charlton Defendants were either expressly or impliedly co-applicants with Defendant South Bay. As required by the Land Development Regulations of the City of Georgetown, on or about July 17, 2007, Defendants South Bay and Hartford Casualty executed the Subdivision Performance Bond for the benefit of the Defendant City, with Plaintiffs and other third party lot purchasers and property owners as intended beneficiaries thereof, in the sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars (\$7,882,359.00) to guarantee the completion of required improvements and site infrastructure, specifically roads and utilities, for the Subdivision within one year.

109. The Performance Bond, which was executed by a Power of Attorney, may or may not have been assigned by rider, also executed by a separate Power of Attorney, to Defendant Hartford Fire.

110. Upon the submission of the Bond, the Final Plat was approved by the City and recorded.

111. Plaintiffs are informed and believe that the amount of the Bond was necessarily determined by Defendant City in reliance upon specific, and adequately complete, plans and specifications for the required infrastructure and site improvements, and/or by specific bids and/or contracts for such work by third party contractors, as submitted to Defendant City by the Developer Defendants.

112. Thereafter, upon information and belief, the Developer Defendants sold fifty-four (54) lots in the Subdivision to various third parties, including Plaintiffs.

113. As part and parcel of their fee simple ownership interest in their respective lots, Plaintiffs should have granted easements for access and egress to and from their lots, and throughout the Subdivision, over and along the roadways depicted and described on the Final Subdivision Plat, as well as the use of all amenities and common areas of the Subdivision which were to be constructed by the Developer Defendants, and the right to assign and convey such easements, rights and interest to subsequent purchasers, and their heirs and assigns. Plaintiffs should have also been granted the right and beneficial use of all utilities, which were to be constructed and provided by the Developer Defendants to and serving all lots in the Subdivision, including without limitation Plaintiffs' lots.

114. Plaintiffs' respective decisions to enter into, execute and perform their obligations under their Purchase Agreements for their respective lots, were made in reliance upon the Developer Defendants' promises and assurances that the Subdivision infrastructure would be completed, as guaranteed by issuance of the Subdivision Performance Bond and the City's acceptance thereof and its subsequent approval of the Final Subdivision Plat.

115. Such decisions and performance by Plaintiffs were further made and delivered in reliance upon the Developer Defendants' promises, assurances, representations and contractual covenants to provide all amenities and related facilities as described more fully hereinabove.

116. Plaintiffs allegedly received permanent easements appurtenant, in perpetuity, for the use of all roads and utilities in the Subdivision, and membership in the Property Owners Association which provided them perpetual and assignable rights to use all amenities and common areas in the Subdivision subject only to payment of appropriate regime fees.

117. Plaintiffs specifically relied on Defendant City's approval of the Final Plat and its recording with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements.

118. The prices, terms and conditions of lot sales in the Subdivision, including those lots purchased and closed by Plaintiffs, were premised on, and conducted in reliance upon, the full development of the Subdivision, and the Developer Defendants' promises, covenants, and assurances that the Subdivision improvements would be completed in a timely fashion.

119. Plaintiffs' lots purchases and closings were premised upon, and made in reliance of, Defendant City's approval of the Final Plat and its recording with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements within one year.

120. As of June 8, 2009, no site infrastructure or required improvements as stipulated by Section 501 of the Land Development Regulations of the City of Georgetown had been commenced in the Subdivision.

121. Further, as of June 8, 2009, no amenities or related facilities, as represented, covenanted, and undertaken by the Developer Defendants, had been commenced in the Subdivision.

122. Upon information and belief, Defendant City has received demands and inquires from interested parties with standing, requesting that the City enforce the Performance Bond and/or take action to require or cause the Developer Defendants to perform the required improvements and install the site infrastructure, but Defendant City has taken no action thereon, or has otherwise refused to take timely action to enforce the Performance Bond and the Developer Defendants obligations to perform in a timely fashion, or at all.

123. Upon information and belief, pursuant to the referenced statutes, ordinances and regulations, and the terms and conditions of the Performance Bond, the required improvements and site infrastructure in the Subdivision must be commenced and completed in a timely manner.

124. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal duties and obligations to Plaintiffs specifically, and to the public generally, and

whether and to what extent under the facts, law and circumstances described above, Defendant City is bound to notify Defendant Hartford of Defendant Developers' failure to perform, and/or demand that Defendant Hartford pay to Defendant City the bonded sum for Defendant Developers' failure to start and complete the required improvements and site infrastructure.

125. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above. Defendant City is now required itself to timely undertake and complete the required improvements and site infrastructure at the Subdivision in light of Defendant Developers' failure to start or complete the work.

126. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, Defendant City is permitted to extend, and for how long, the time of completion for the benefit of Defendant Developers and/or Defendant Hartford of all or part of such required improvements and site infrastructure.

127. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal obligations and duties to Plaintiffs specifically, and to the public generally, and whether and to what extent under the facts, law and circumstances described above, Defendant City has abused, or failed to properly exercise its discretion by failing to take appropriate and timely action to compel completion of the required infrastructure and

site improvements by the Developer Defendants, or to enforce the Performance Bond and complete such infrastructure and site improvements itself.

128. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant Hartford's legal duties and obligations to Defendant City and Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances, Defendant Hartford's Rider and the attendant Power of Attorney purportedly assigning the Bond from Hartford Casualty Insurance Company to Hartford Fire Insurance Company are valid and enforceable, and as such, which Defendant Hartford is the applicable entity holding and responsible for the Bond.

129. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant Hartford's legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances described above, Plaintiffs are entitled to enforce the Bond and demand Defendant Hartford pay to Defendant City the bonded sum for Defendant Developers' failure to start or complete the required improvements and site infrastructure.

130. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of the Developer Defendants' legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, the Developer Defendants have violated their obligations regarding the required improvements, site infrastructure, amenities and related facilities.

131. Plaintiffs are informed and believe that the declaratory relief sought by them herein will terminate the controversies among the parties to this action with respect to the required infrastructure and site improvements in the Subdivision, and will

remove the uncertainties with respect to these issues. Further, the declaratory relief sought by Plaintiffs herein will partially mitigate Plaintiffs' damages to which Plaintiffs otherwise claim entitlement.

132. Plaintiffs are informed and believe that there is no adequate remedy at law with respect to these issues, except by way of the relief provided by the declaratory judgment statutes aforesaid, with respect to the Defendants' obligations, and Plaintiffs' rights and interest therein, to build and provide the requisite infrastructure and utility services and related improvements in the Subdivision.

133. Further, Plaintiffs are entitled to recovery of their costs and attorneys fees in the present declaratory judgment action.

FOR AN EIGHTH CAUSE OF ACTION

**(Violation of Interstate Land Sales Full Disclosure Act – Damages v.
Defendants Corkum, Landquest, CRT, South Bay,
the Charlton Defendants, and Source One)**

134. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

135. The Developer Defendants are "developers" of the Subdivision as defined by the Interstate Land Sales Full Disclosure Act ("ILSFDA") 15 USCA § 1701 *et seq.*

136. The Defendant Signature Properties is an "agent" of the Project as defined by the ILSFDA. This Defendant represented and acted for the Developer Defendants in both marketing and selling of lots and has engaged in such behavior before, during and after the sale of the lots.

137. The Plaintiffs constitute "purchasers" as defined by the ILSFDA.

138. The Subdivision is a "subdivision" as defined by the ILSFDA, as it contains more than one hundred (100) lots.

139. The lots within the Subdivision were offered and marketed under a common promotional plan as defined by the ILSFDA.

140. The Subdivision is subject to the ILSFDA, including, without limitation, the marketing and sale of lots therein.

141. As described above, each of the Plaintiffs entered into Purchase Agreements to purchase lots within the Subdivision. At the time of sale, each such lot was titled in the name of South Bay.

142. As required by the ILSFDA, a Property Report was presented to the Plaintiffs at the time each Purchase Agreement was signed and the sale was made with such report being a part of the transaction. Each of the Plaintiffs has closed on the purchase of his, her or their respective lot.

143. The Defendant Signature One acted as either developer or agent in consummating the sale of the lots.

144. The lots were marketed and sold by the Defendants for the purpose of building residential dwellings on the lots.

145. The Developer Defendants and Signature One knew, or should have known, at the time of the sale and the presentation of the Property Report, that the lots were not useable for the purpose for which they were sold and that certificates of occupancy could not have been obtained for a dwelling constructed on such lots and still cannot be obtained for such purpose.

146. The Property Report presented by the Defendants to Plaintiffs, and required by the United States Department of Housing and Urban Development ("HUD"), contains misrepresentations of fact and omitted material facts, all contrary to the provisions of the ILSFDA. Specifically, the Property Report misrepresented or omitted the following:

- a. The name of the Subdivision; to-wit: Plantation at Winyah Bay.
- b. At the time the Plaintiffs closed on their respective lot purchases, the Property Report misrepresented the escrow agent holding escrow funds;
- c. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that an occupancy permit to occupy a house could not be issued until the Subdivision was completed and accepted by the City of Georgetown.
- d. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Charlton Defendants held and hold a reversionary interest in a 1.945 acre tract, being a portion of the Subdivision, now known as Harbor Club on Winyah Bay.
- e. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Charlton Defendants held and hold a mortgage on the Subdivision less and excepting lots 21, 44, 45, 46, 57, 58, 85, 89, 90, 91, 92, 93, 95, 98, 104, 105, 110, 112, 113, 117, 118, 140, 149, 151, 153, 154, 155, 157, 158, 159, and 160; said mortgage encumbering all land considered common areas, as well as all land being designated for streets and rights of way, and land required for utility easements, and land to be held in the name of Harbor Club on Winyah Bay Homeowners Association.
- f. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Harbor Club on Winyah Bay required authorization from the U.S. Army Corps of Engineers and through the U.S. Army Corps of Engineers, approvals from South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resources Management ("OCRM") for permits issued by the U.S. Army Corps of Engineers under Section 10 and Section 404.

- g. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Defendants had or needed to request (and later requested), a permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) Section 401 of the Clean Water Act (33 U.S.C. 1344), and the South Carolina Coastal Zone Management Act (S.C. Code Ann. § 48-39-10 *et seq.*) to enlarge an existing docking facility into a community marina containing fifty-six (56) slips in Winyah Bay, at Plantation at Winyah Bay a/k/a Harbor Club at Winyah Bay, Georgetown, Georgetown County, South Carolina.

147. The Defendants failed to file amendments to the Property Report, as required by law, when material changes occurred.

148. The Defendants failed to keep Plaintiffs advised concerning additional liens and encumbrances being placed on the Subdivision.

149. The Purchase Agreements executed by the Plaintiffs did not contain the language required by ILSFDA found in 15 U.S.C.A. §1703.

150. The acts and omissions of the Defendants constitute devices, schemes or artifices to defraud, all of which are prohibited by ILSFDA.

151. On information and belief, the lots purchased by the Plaintiffs are, at present, of little or no value.

152. Plaintiffs are informed and believe that Defendants' violation of ILSFDA entitle the Plaintiffs to:

- a. judgment against the Defendants, jointly and severally, for actual, compensatory, consequential, and punitive damages to be determined by a jury;
- b. pre-judgment and post-judgment interest on the damages awarded according to law;
- c. attorneys fees and the costs and expenses of litigation; and
- d. such further and other relief as may be deemed necessary and appropriate to make the Plaintiffs whole and that this Court deems

just and proper.

FOR AN NINTH CAUSE OF ACTION

(Violation of Interstate Land Sales Full Disclosure Act – Rescission v. Defendants
Corkum, Landquest, CRT, South Bay, and the Charlton Defendants)

153. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

154. In response to, and in reliance upon, representations, covenants and contractual undertakings of said Defendants and their agents, each of the Plaintiffs executed Purchase Agreements for the lots upon which they ultimately closed.

155. Pursuant to the ILSFDA, the Plaintiffs are entitled to rescission of their purchases and a refund of the purchase price and all incidental and consequential costs related to their purchase of lots including, without limitation, reimbursement for property taxes, attorney's fees and related costs and expenses.

156. The Plaintiffs are informed and believe that the Defendants' violations of ILSFDA entitle the Plaintiffs to judgment against the Defendants awarding Plaintiffs' complete rescission of their Purchase Agreements and restoring them to the *status quo ante* immediately prior to the execution of their Purchase Agreements and related relief as follows:

- a. Requiring one or more of the Defendants named herein to refund to the Plaintiffs all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Plaintiffs;
- b. Directing and requiring that one or more of the Defendants fully pay and satisfy all purchase money debt incurred by Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose; awarding Plaintiff's judgment against the Defendants in a sum equal to the

monetary value of all damage to Plaintiffs' credit which has or may have occurred as of the date of judgment; upon completion of which, at Defendants' expense, Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to the Defendant/Defendants as this Court shall direct;

- c. Directing and requiring that the lenders satisfy, release or cancel all debt obligations incurred by the Plaintiffs.
- d. Awarding Plaintiffs judgment for all attorneys' fees and costs incurred by them herein; and,
- e. Awarding Plaintiffs such other and further relief as may be necessary and appropriate to make Plaintiffs whole, and to restore them to the *status quo ante* prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

FOR A TENTH CAUSE OF ACTION

(Violation of South Carolina Uniform Land Sales Full Disclosure Act v. Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants, and SourceOne)

157. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

158. The Developer Defendants and Source One failed to make application and register the Subdivision with the South Carolina Real Estate Commission or its duly authorized assistant or deputy appointed by the Director of the South Carolina Department of Labor.

159. The Plaintiffs are informed and believe that they are entitled to:

- a. judgment against the Defendants, jointly and severally, for actual, compensatory, consequential, and punitive damages to be determined by a jury;
- b. recover the consideration paid for each lot, together with interest at the rate of six percent per year from the date of payment; property taxes paid, costs and reasonable attorneys fees; and

- c. such further and other relief as that this Court deems just and proper.

FOR AN ELEVENTH CAUSE OF ACTION

(Equitable Lien v. the Charlton Defendants and South Bay)

160. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

161. As alleged above, the Charlton Defendants are joint venture partners in the development and sale of lots within the Subdivision.

162. The amalgamation of identities, interests and activities by the Charlton Defendants and South Bay has blurred their separate identities rendering them both the developer of the subdivision.

163. The Charlton Defendants intended to develop their property contiguous to the Subdivision using, without cost to the Charlton Defendants, the infrastructure and amenities, to be constructed by South Bay.

164. The Charlton Defendants also knew that South Bay intended to sell lots to purchasers who were promised the installation of infrastructure and amenities, which infrastructure and amenities were going to be used by the Charlton Defendants.

165. The South Bay Deed and the South Bay mortgage should be subject to and inferior to the rights, claims and liens of the Plaintiffs including, without limitation, their claims for damages and the cost, if necessary, of completing the Subdivision.

166. The Plaintiffs are informed and believe they are entitled to a declaration from this honorable Court that their rights, claims and liens are superior to those of South Bay and the Charlton Defendants.

FOR A TWELFTH CAUSE OF ACTION

(Civil Conspiracy v. Defendants Corkum, Landquest, CRT, South Bay, the
Charlton Defendants, and Source One)

167. Plaintiffs affirm and reallege each and every allegation set forth above, as fully as if repeated herein verbatim, and further allege:

168. The Developer Defendants and Source One conspired together to have the Plaintiffs close on their respective lots by utilization of the acts and omissions on the part of each Defendant described hereinabove.

169. As a result of these Defendants' consummation of the conspiracy by inducing the Plaintiffs to purchase their respective lots, the Plaintiffs have been specially damaged including, but not limited to the following:

- a. Credit damage - from closing and undertaking excessive debt for the acquisition of their lots;
- b. Legal fees and costs to rescind, or attain specific performance;
- c. Legal fees and costs to defend property tax assessments and collection at inflated value; and
- d. Lost opportunity to resell, build or otherwise derive benefit from their lots.

170. The Plaintiffs are informed and believe that they are entitled to actual, compensatory, consequential, special and punitive damages against these Defendants.

WHEREFORE, the Plaintiffs pray as follows:

- a. As to the First Cause of Action, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One

Communities, LLC, a/k/a Source One Signature Communities, jointly and severally for an Order declaring that these defendants have breached the Purchase Agreements with the Plaintiffs and that the Plaintiffs are entitled to rescission and a refund of all earnest monies, closing costs, interest, property taxes, and such actual and consequential damages and expenses incurred by the Plaintiffs;

b. As to the Second Cause of Action, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for an Order that these Defendants specifically perform under the Purchase Agreements with the Plaintiffs, or in the alternative, judgment against these Defendants, jointly and/or severally, in a sum equal to all actual, special and consequential damages, expenses incurred by the Plaintiffs, together with pre-judgment interest;

c. As to the Third Cause of Action, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., jointly and/or severally, for actual, consequential, special and punitive damages;

d. As to the Fourth Cause of Action, judgment for Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a

Source One Signature Communities jointly and/or severally, for actual damages, together with treble damages, as allowed by the South Carolina Unfair Trade Practices Act;

e. As to the Fifth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally, for actual, consequential, special and punitive damages;

f. As to the Sixth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally, for actual, consequential, special and punitive damages;

g. As to the Seventh Cause of Action, for an Order declaring and requiring that the City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc. an Order utilizing the bond to start or complete the required improvements and site infrastructure or, in the alternative, for an Order declaring and requiring that the City of Georgetown and the other

Defendants build and provide the requisite infrastructure and utility services and related improvements to the subdivision;

h. As to the Eighth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for actual, consequential, special and punitive damages.

i. As to the Ninth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., jointly and/or severally for an Order declaring that these Defendants have breached the Purchase Agreements with the Plaintiffs and that the Plaintiffs are entitled to rescission and a refund of all earnest monies, closing costs, interest, property taxes, and such actual and consequential damages and expenses incurred by the Plaintiffs;

j. As to the Tenth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for actual, consequential, special and punitive damages.

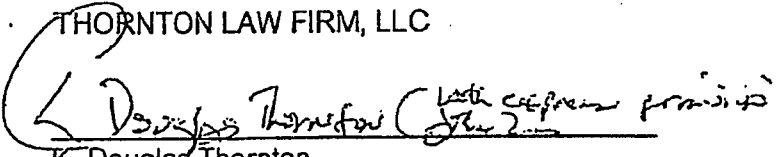
k. As to the Eleventh Cause of Action, for an Order imposing an equitable lien on the Subdivision in favor of Plaintiffs, securing the relief prayed for herein, and declaring the lien to be superior to that of Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc.

l. As to the Twelfth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for actual, consequential, and punitive damages;

m. For attorney's fees and the costs and expenses of litigation; and

n. For such other and further relief as this Court may deem just and proper.

THORNTON LAW FIRM, LLC


K. Douglas Thornton

1025 Third Avenue

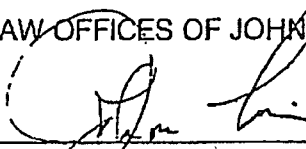
Conway, SC 29526

843.488.5858; Fax 843.488.5859

Conway, South Carolina

Dated: July 9, 2009

LAW OFFICES OF JOHN M. LEITER, PA


John M. Leiter

1203 48th Ave. N, Suite 109

Myrtle Beach, SC 29577

843.449-1451; Fax 843.449-4884

Myrtle Beach, SC

Dated: July 1, 2009

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP2201045

John Steven Goodwin vs. Landquest Development Llc

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(c), SCRCP (Settled); ☐ Other: _____
- ☒ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☒ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;
(Formal order to follow)

☒ Statement of Judgment by the Court

Case Stricken Due To Bankruptcy

Dated at Georgetown, South Carolina, this 22nd day of July, 2011.

Court Reporter:

S/ Larry B. Hynman, Jr.
PRESIDING JUDGE - Larry B Hynman, Jr

This judgment was entered on the 22nd day of July, 2011, and a copy mailed first class this 22nd day of July, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

K. Douglas Thornton Thornton Law Firm 1025
Third Ave Conway, SC 29526
John M. Leiter Law Offices Of John M. Leiter PA
1203 48Th Avenue N Suite 109 Myrtle Beach, SC
29577

Elise Freeman Crosby Crosby & Crosby Law Firm
405 Dozier Street Georgetown, SC 29440
Joseph Kevin Qualey Qualey & Beck 23 Broad St.
Charleston, SC 29401
James Lynn Werner Parker Poe Adams &

CPFORM44M
SCCA SCRCP Form 4 Revised 06/2008

SCANNED

SO ORDERED.

SIGNED this 12 day of August, 2011.



Stephani W. Humrickhouse
Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

SOUTH BAY PROPERTIES, LLC

DEBTOR

CASE NO.

10-04922-8-SWH

ORDER ALLOWING MOTIONS TO DISMISS

The matters before the court are the motions of Ronald L. Charlton, Bonnie N. Charlton, and Bayside Property, Inc. (collectively, "Bayside"), as well as the bankruptcy administrator, to dismiss the debtor's case. Hearings took place in Raleigh, North Carolina on April 6, 2011, and August 1, 2011. For the reasons that follow, the case will be dismissed.

Background

In 2006, South Bay entered into a contract with Bayside for the purchase of approximately 80 acres of real property on Winyah Bay in Georgetown, South Carolina, which South Bay intended to develop as a residential subdivision. In 2007, after a bank loan fell through, Bayside financed the transaction in exchange for a promissory note and mortgage for over \$14 million, which was to be later replaced by permanent commercial financing.

South Bay filed a petition for relief under chapter 11 of the Bankruptcy Code on June 18, 2010, at which time the balance owed to Bayside on the note was approximately \$15,282,370.04. Shortly thereafter, another creditor, Milone & MacBroom, Inc. ("M&M"), filed a motion to dismiss

the case. Alleging bad faith, among other things, M&M contended that the debtor had nearly ceased property development and filed the petition in order to delay ongoing litigation and protect the guarantors of a construction bond. On November 10, 2010, this court denied the motion, finding that the debtor had potential avenues to pursue toward confirmation, and that the petition did not appear to have been filed in bad faith.

In the meantime, on August 27, 2010, Bayside filed a motion for relief from the automatic stay, seeking to foreclose on the subject property. On September 16, 2010, during the pendency of the stay motion, the debtor initiated an adversary proceeding against Bayside to avoid Bayside's lien on the property. The debtor alleged that because the mortgage deed refers to a note of even date, and the note is dated one day later than the mortgage, the mortgage is invalid and the debt to Bayside is unsecured. Because the result of the stay motion necessarily depended on the result of the adversary proceeding, on December 14, 2010, the parties requested and received a continuance of the stay motion until a determination could be made in the adversary proceeding as to the validity of Bayside's lien. The next day, on December 15, 2010, Bayside filed its motion to dismiss the debtor's case.

On June 15, 2011, upon Bayside's motion, the court dismissed the adversary proceeding, finding Bayside's mortgage lien valid and enforceable. Shortly thereafter, the debtor withdrew its response to Bayside's motion for relief from stay, and the stay lifted as to Bayside on July 12, 2011. The bankruptcy administrator filed her motion to dismiss on July 6, 2011, and M&M filed a response in support of the motions to dismiss on July 18, 2011. If and when Bayside forecloses on the property, the only remaining assets in the debtor's estate will be permits to develop boat slips near the property.

In support of their motions to dismiss, both Bayside and the bankruptcy administrator contend that the debtor essentially has nothing left to reorganize, in light of the debtor's inability to avoid Bayside's lien and Bayside's anticipated foreclosure on the property. The debtor, on the other hand, believes that the appointment of a trustee is warranted, in order to determine whether reorganization is possible and potentially negotiate a compromise. The debtor represents that it has two potential assets for a trustee to work with: (1) boat slip permits and (2) a promised \$150,000 cash infusion from one of the debtor's principals.

Discussion

Under § 1112(b) of the Bankruptcy Code, "the court shall convert a case under [chapter 11] to a case under chapter 7 or dismiss a case under [chapter 11], whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1). The primary 'cause' asserted by Bayside and the bankruptcy administrator for dismissal pursuant to the statute is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

Based on this standard, the court finds more than ample cause to dismiss the debtor's case. Although the debtor initially had 80 acres of property to develop, foreclosure recently became final on 79 lots on account of unpaid property tax obligations. Loss of the remaining lots appears imminent and inevitable, given that the debtor's challenge to Bayside's lien was unsuccessful, and Bayside has been granted relief from the automatic stay for the purpose of foreclosure. The debtor's only remaining assets are permits to build boat slips, which may be of extremely limited value to

the debtor once the debtor loses access to the adjoining property. This leaves the debtor with virtually no assets to reorganize or liquidate, and the court with little choice but to dismiss the case.

Incidentally, the debtor foreshadowed this result in its response to Bayside's motion to dismiss, describing the avoidance of liens on its real property as a "seminal issue" to plan feasibility. Debtor's Response at 3. Later, at a hearing on the motion to dismiss, the debtor indicated that if Bayside's lien was upheld, dismissal or conversion would likely follow. Although the debtor seeks the appointment of a trustee, it is questionable what value a trustee could provide under these particular circumstances. In general, a debtor is in the best position to formulate a strategy for its own reorganization. In light of the present circumstances, and the amount of time which the debtor has had to devise a feasible plan of reorganization, a trustee is not likely to be able to accomplish what this debtor could not. Even though a principal of the debtor has pledged \$150,000 as a show of goodwill, this amount is almost negligible in comparison to the multi-million dollar debt, and has no practical purpose (for example, it cannot be used toward development of infrastructure if the property is no longer the debtor's to develop). Nor does the court find any practical value in the permits to build boat slips, in light of the differences between the debtor and Bayside (the inevitable new owner of the property adjacent to the slip area), as well as the fact that permits certainly have less value than actual boat slips.

Based on the foregoing, it is apparent that the debtor has no *reasonable* likelihood of rehabilitation. Allowing the debtor to continue in chapter 11 would amount to offering the debtor a last gasp effort at rehabilitation, but with no source of air. Accordingly, the case is **DISMISSED**.

SO ORDERED.

END OF DOCUMENT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Bonnie N. Charlton, et al.,

Plaintiff(s)

vs.

South Bay Properties, LLC, et al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 22- 00934

Submitted By: Charles T. Smith

Address: 1112 Highmarket St., Georgetown, SC 29440

SC Bar #: 5070

Telephone #: (843) 546-6131

Fax #: (843) 527-6692

Other:

E-mail: charles.smith@coastallaw.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | ☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Employment Security Comm (991)
☐ Other (999) |

Submitting Party Signature: Charles T. Smith

Date: August 30, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
Bonnie N. Charlton, et al.,)
Plaintiff,)
)
vs.)
)
South Bay Properties, LLC, et al.,)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

FILE NO.: 2012-CP-22-

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

- A. X I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Charles T. Smith
Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Charles T. Smith
Print Name

Print Name

(843) 546-6131/(843) 527-6692
Phone/Fax
Date: August 30, 2012

Phone/Fax

- B. _____ 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

3. The ADR was conducted on _____, 200 _____

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

CASE NO.: 2012 CP 22 00934

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,)

Non-Jury
Foreclosure

Plaintiffs,)

vs.)

SUMMONS

South Bay Properties, LLC, Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone
& MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland
Sharon Louise Holland, Joyce K. Sobel,
Robert W. Waruszewski, Richard N.
Taylor, Robert K. Spillers (a/k/a Robert
Spillers) Deborah T. Spillers (a/k/a Deborah
Spillers), Patrick A. DiAngelo, Deborah A.
DiAngelo, Gary E. Owens, and Joyce M.
Owens, Fount L. Shults, Lynda M. Shults,
Dennis Ridgeway, Teresa Lynn Ridgeway
and Georgetown County Forfeited Land
Commission,)

Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2012 AUG 31 PM 3:46
ALMA Y. WHITE
CLERK OF COURT

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. or their attorney, Charles T. Smith, at his office, 1112 Highmarket Street, Georgetown, South Carolina, within thirty (30) days after service

hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. will apply to the Court for judgment by default for the relief demanded in the Complaint. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney, if signed by your attorney.

Charles T. Smith
Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for Plaintiffs

August 30, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

CASE NO.: 2012 CP 22 00934

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,)

Plaintiffs,)

vs.)

COMPLAINT

~~South Bay Properties, LLC~~ Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone
& MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland
Sharon Louise Holland, Joyce K. Sobel,
Robert W. Waruszewskiu, Richard N.
Taylor, Robert K. Spillers (a/k/a Robert
Spillers) Deborah T. Spillers (a/k/a Deborah
Spillers), Patrick A. DiAngelo, Deborah A.
DiAngelo, Gary E. Owens, and Joyce M.
Owens, Fount L. Shults, Lynda M. Shults,
Dennis Ridgeway, Teresa Lynn Ridgeway
and Georgetown County Forfeited Land
Commission,)

Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2012 AUG 31 PM 3:46
ALMA Y. WHITE
CLERK OF COURT

The Plaintiffs, complaining of the Defendants herein, would respectfully show unto the Court as follows:

1. The Plaintiffs Bonnie N. Charlton and Ronald L. Charlton are citizens and residents of the City of Georgetown, State of South Carolina. The Plaintiff Bayside Property, Inc. is a corporation organized and existing under the laws of the State of South Carolina.
2. The Defendant South Bay Properties, LLC is a limited liability company organized under the

laws of the State of North Carolina and authorized to do business in the State of South Carolina. The Defendant Stantec Consulting Services, Inc. is a corporation organized under the laws of the State of New York and authorized to do business in the State of South Carolina. The Defendant Milone & MacBroom, Inc. is a corporation organized under the laws of the State of Connecticut and authorized to do business in the State of South Carolina. The Defendants John Steven Goodwin, Louise C. Goodwin, Robert Nahama, Jeanne E. Nahama, Patrick A. DiAngelo, Deborah A. DiAngelo, Gary E. Owens, Joyce M. Owens, Dennis Ridgeway and Teresa Lynn Ridgeway are residents of Horry County, South Carolina. The Defendants Thomas Holland and Sharon Louise Holland are residents of Bergen County, New Jersey. The Defendant Joyce K. Sobel is a resident of Cobb County, Georgia. The Defendant Robert W. Waruszewski is a resident of the State of Tennessee. The Defendant Richard N. Taylor is a resident of Cumming, Georgia. The Defendants Robert K. Spillers (a/k/a Robert Spillers) and Deborah T. Spillers (a/k/a Deborah Spillers) are residents of Greenville, South Carolina. The Defendants Fount L. Shults and Lynda M. Shults are residents of Georgetown County, South Carolina. Georgetown County Forfeited Land Commission exists by virtue of *S. C. Code* §12-59-10 et seq, to bid on real property otherwise unsold at tax sales and to hold title to that property as an asset of the County and then sell or dispose of the property on such terms and conditions as appear to be in the County's best interest.

3. This is an action to foreclose a mortgage on real property located in Georgetown County. This Court has jurisdiction of the parties and subject matter of this proceeding.
4. Heretofore on or about September 12, 2007, the Defendant South Bay Properties, LLC for

value received, made, executed and delivered to Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. its certain Promissory Note in writing, a copy of which is attached hereto and incorporated herein, wherein and whereby it promised to pay to the order of Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. the principal sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-Two and 92/100 (\$14,580,662.92) Dollars, together with interest at the rate of Fifteen (15%) percent per annum in a single installment due September 30, 2008.

5. In order to better secure the payment of the said note and debt, in accordance with the terms and conditions thereof, the Defendant South Bay Properties, LLC did execute and deliver on the 11th day of September, 2007, unto Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc., its successors and assigns, its mortgage covering the following described property:

ALL those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, containing a "Total Area = 79.866 Acres", which is comprised of "HOA/Wetlands Area = 33.120 Acres", "Lot Area = 34,870 Acres", and "R/W Area = 11.876 Acres", said property being further shown and delineated on a plat entitled "Final Bonded Subdivision Plat Showing the Plantation @ Winyah Bay, 79.866 Acres Prepared for Landquest", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Pages 1- 10 in the Office of the Register of Deeds for Georgetown County, South Carolina, said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid map, which map is incorporated herein by reference.

LESS AND EXCEPTING all those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, more particularly shown and delineated as Lots 1, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 54, 55, 57, 58, 65, 70, 72, 73, 85, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 103, 104, 105, 107, 110, 112, 113, 117, 118, 133, 134, 140, 141, 142, 143, 144, 149, 150, 151, 153, 154, 155, 156, 157, 158, 159, 160 and 161, Harbour Club on Winyah Bay, as shown on that certain plat entitled "Final Bonded Subdivision Plat Showing the Plantation @ Winyah Bay, 79.866 Acres Prepared for Landquest", prepared by Trico

Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Pages 1 - 10 in the Office of the Register of Deeds for Georgetown County, South Carolina.

This being a portion of the property conveyed to South Bay Properties, LLC by deed of Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. dated August 22, 2007 and recorded September 17, 2007 in the Office of the Register of Deeds for Georgetown County in Record Book 686 at Page 90.

6. On the 17th day of September, 2007, said Mortgage was duly recorded in the Office of the Register of Deeds for Georgetown County in Record Book 686 at Page 135.
7. According to the terms and conditions of said Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default remains unpaid after a date specified by a notice, the entire principal and accrued interest shall at once become due and payable at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, shall become an obligation of South Bay Properties, LLC to be secured by said mortgage as a part of the debt secured thereby.
8. The payment due on said Note and Mortgage is in default since September 30, 2008 and the conditions of said Note and Mortgage have been broken and the Plaintiff elects to, and does hereby declare the entire balance of said indebtedness due and payable.
9. The Plaintiffs are the owners and holders of the aforesaid Note and Mortgage.
10. Notice was sent to the Defendant South Bay Properties, LLC on October 7, 2008.
11. The Defendant Stantec Consulting Services, Inc. f/k/a Trico Engineering Consultants, Inc. is made a party to this action because it may have or claim an interest in the premises because of the judgment obtained against South Bay Properties, LLC and Landquest, LLC recorded

August 29, 2008 (Case Number 2008-CP-22-00723).

12. The Defendant Milone & MacBroom, Inc. is made a party to this action because it may have or claim a lien on the premises because of the Notice and Certificate of Mechanics Lien filed on June 6, 2008 in the Office of the Register of Deeds for Georgetown County in Mechanic's Lien Book 43 at Page 332.
13. The Plaintiffs Bonnie N. Charlton and Ronald L. Charlton have an interest in the premises because of the judgment obtained against South Bay Properties, LLC recorded June 22, 2010 (Case Number 2008-CP-22-01490).
14. The Defendants John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett, Brenda C. Puckett, Robert Nahama, Jeanne E. Nahama, Thomas Holland, Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo, Deborah A. DiAngelo, Gary E. Owens, Joyce M. Owens, Fount L. Shults, Lynda M. Shults, Dennis Ridgeway and Teresa Lynn Ridgeway are made parties to this action because they may have or claim an interest in the premises because of the Lis Pendens and Complaint filed in Case Number 2009-CP-22-1045.
15. The Defendant Georgetown County Forfeited Land Commission is made a party to this action because it may have or claim an interest in Lots 47, 48, 49, 50, 51, 52, 53, 56, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 71, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 97, 100, 101, 102, 106, 108, 109, 111, 114, 115, 116, 120, 124, 125, 126, 127, 128, 129, 130, 131, 135, 136, 137, 138, 145, 146, 147 and 152 which were sold for taxes on November 2, 2009 and the Georgetown County Forfeited Land Commission was the high bidder.

16. The Plaintiffs waive their right to a personal or deficiency judgment against the Defendant South Bay Properties, LLC.

WHEREFORE, Plaintiff prays judgment:

1. That the amount due upon said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
2. That the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereof, together with a reasonable sum as attorney's fees, and for the costs of this action.
3. That the real property securing the debt owed to the Plaintiff be sold under the direction of this Court and that the equity of redemption be barred.
4. That the proceeds of sale be applied as follows:
 - a. First, to the costs and expenses of the within action and said sale.
 - b. Second, to the payment and discharge of the amount due on Plaintiff's Note, Addendum and Mortgage, together with attorney's fees as aforesaid.
 - c. Third, the surplus, if any, be distributed according to law.
5. For such other and further relief as may be just and proper.


Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Plaintiff

August 30, 2012

\$14,580,662.92

Georgetown, South Carolina
September 12, 2007

PROMISSORY NOTE

FOR VALUE RECEIVED, South Bay Properties, LLC, hereinafter collectively referred to as the Maker, does hereby promise and agree to pay in lawful money of the United States of America to the order of Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc., hereinafter collectively referred to as the Note Holder, at their place of business at P.O. Box 1958, Georgetown, SC 29440, or such other place as the Note Holder hereof may from time to time designate in writing, the principal sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-Two and 92/100 (\$14,580,662.92) Dollars, or so much thereof as may be advanced together with interest computed from the date of advance at the rate or rates hereinafter prescribed and as follows:

Maker agrees to pay interest at Fifteen (15%) percent per annum (hereinafter the "Note Rate of Interest") payable on the Maturity Date as set forth below.

All unpaid principal and accrued interest, and all other sums due Note Holder from Maker shall be due and payable in full on September 30, 2008 (the "Maturity Date"). All payments received will be applied first to accrued interest due and then to principal.

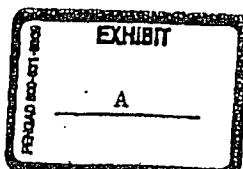
Borrower shall pay Note Holder a late charge of five (5%) percent of any installment not received by the Note Holder within ten (10) days after the installment is due.

If any installment under this Note is not paid and remains unpaid after a date specified by a notice to Maker, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note Holder. From the date of default or after the maturity of this Note, either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at the Note Rate of Interest provided hereinabove plus five (5%) percentage points, provided that there shall be no automatic reduction to the highest lawful rate as to any maker hereof barred by law from availing itself in any action or proceeding of the defense of usury, or any maker barred or exempted from the operation of any law limited the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money.

The time of repayment of said principal sum on the Maturity Date or however such maturity may be brought about, is of unique and specific importance and financial necessity to Note Holder or other holder of this Note and is hereby made of the essence.

The Maker waives presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note and agrees to perform and comply with each of the covenants, conditions, provisions and agreements of the Maker contained in every instrument evidencing or securing said indebtedness. No extension of the time for payment of this Note made by agreement with any person now or hereafter liable for the payment of this Note shall

GEORGETOWN 119083v1



operate to otherwise release, discharge, modify, change or affect the original liability of the Maker under this Note, either in whole or in part.

The Maker and all others who may become liable for all or any part of this obligation consent to any number of renewals or extensions of the time of payment hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability.

In the event it shall become necessary for the Note Holder hereof to employ counsel to collect this Note or to protect or foreclose the security given for this Note, the undersigned also agrees to pay to the Note Holder hereof for those services including a reasonable attorney's fee for the services of such counsel and all costs of collection.

Any failure of the Note Holder or any subsequent holder hereof to exercise any rights hereunder shall not constitute a waiver of the rights to the later exercise thereof.

It is the intention of the parties that under no circumstances shall the Maker be charged more than the highest rate permitted by law. It is thereof, agreed that at the time of the final settlement or acceleration of the indebtedness under the terms of the Note the total charges for interest or in the nature of interest herein shall be limited to that amount which if apportioned over the life of the loan to the Maturity Date herein provided would not exceed the highest rate of interest permitted by law, and any excess portion of such charges that may have been prepaid shall be refunded to the Maker at the time of final settlement or acceleration, as the case may be. Such refunding may be made by application of the amount involved as a credit against the sums then due under the terms of such Note.

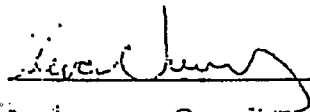
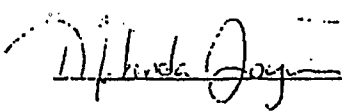
The Maker shall have the right to pay all or part of the unpaid indebtedness at any time without premium or penalty, but with interest to the date of said prepayment.

This instrument was executed and delivered in the State of South Carolina and shall be governed by and construed in accordance with the laws of the State of South Carolina, without giving effect to the principles of conflicts of laws.

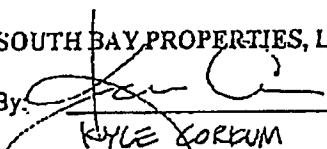
Whenever used, the words, "Maker" and "Note Holder" shall be deemed to include the respective successors and assigns of the Maker and Note Holder, and the singular number shall include the plural, the plural and singular and the use of any gender shall be applicable to all genders.

This Note may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Signed, Sealed and Delivered
In the Presence of:

SOUTH BAY PROPERTIES, LLC

By:  (Seal)

KYLE GORKUM

Its:

MANAGER

Maker's Address:

5511 Capital Center Drive, Suite 105
Raleigh, North Carolina 27606

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

CASE NO.: 2012 CP 22 00934

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,)

BK21-0348

Plaintiffs,)

vs.)

LIS PENDENS

South Bay Properties, LLC, Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone
& MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland
Sharon Louise Holland, Joyce K. Sobel,
Robert W. Waruszewski, Richard N.
Taylor, Robert K. Spillers (a/k/a Robert
Spillers) Deborah T. Spillers (a/k/a Deborah
Spillers), Patrick A. DiAngelo, Deborah A.
DiAngelo, Gary E. Owens, and Joyce M.
Owens, Fount L. Shults, Lynda M. Shults,
Dennis Ridgeway, Teresa Lynn Ridgeway
and Georgetown County Forfeited Land
Commission,)

Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2012 AUG 31 PM 3:46
ALMA Y. WHITE
CLERK OF COURT

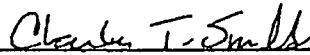
NOTICE IS HEREBY GIVEN that an action will be commenced or is now pending in this Court upon complaint of the above named Plaintiffs against the above named Defendants for the foreclosure of a certain mortgage of real estate given by South Bay Properties, LLC to Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. dated September 11, 2007, and recorded in the office of the Register of Deeds for Georgetown County on September 17, 2007 in Record

Book 686 at Page 135. The premises covered and affected by said Mortgage and by the foreclosure thereof were at the time of the filing of this Notice, described as follows:

ALL those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, containing a "Total Area = 79.866 Acres", which is comprised of "HOA/Wetlands Area = 33.120 Acres", "Lot Area = 34,870 Acres", and "R/W Area = 11.876 Acres", said property being further shown and delineated on a plat entitled "Final Bonded Subdivision Plat Showing the Plantation @ Winyah Bay, 79.866 Acres Prepared for Landquest", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Pages 1 - 10 in the Office of the Register of Deeds for Georgetown County, South Carolina, said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid map, which map is incorporated herein by reference.

LESS AND EXCEPTING all those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, more particularly shown and delineated as Lots 1, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 54, 55, 57, 58, 65, 70, 72, 73, 85, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 103, 104, 105, 107, 110, 112, 113, 117, 118, 133, 134, 140, 141, 142, 143, 144, 149, 150, 151, 153, 154, 155, 156, 157, 158, 159, 160 and 161, Harbour Club on Winyah Bay, as shown on that certain plat entitled "Final Bonded Subdivision Plat Showing the Plantation @ Winyah Bay, 79.866 Acres Prepared for Landquest", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Pages 1 - 10 in the Office of the Register of Deeds for Georgetown County, South Carolina.

This being a portion of the property conveyed to South Bay Properties, LLC by deed of Bonnie N. Charlton, Ronald L. Charlton and Bayside Property, Inc. dated August 22, 2007 and recorded September 17, 2007 in the Office of the Register of Deeds for Georgetown County in Record Book 686 at Page 90.


Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Plaintiffs

August 30, 2012

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L.
Charlton and Bayside Property,
Inc.,)

Plaintiffs,)

vs.)

South Bay Properties, LLC,)
Santee Consulting Services,)
Inc., f/k/a Trico Engineering)
Consultants, Inc., Milone &)
MacBroom, Inc., John Steven)
Goodwin, Louise C. Goodwin,)
Thomas L. Puckett, Brenda C.)
Puckett, Robert Nahama,)
Jeanne E. Nahama, Thomas)
Holland, Sharon Louise Holland,)
Joyce K. Sobel, Robert W.)
Waruszevskiu, Richard N.)
Taylor, Robert K. Spillers)
(a/k/a Robert Spillers), Deborah)
T. Spillers (a/k/a Deborah)
Spillers), Patrick A. DiAngelo,)
Deborah A. DiAngelo, Gary E.)
Owens, Joyce M. Owens, Fount)
L. Shults, Lynda M. Shults,)
Dennis Ridgeway, Teresa Lynn)
Ridgeway and Georgetown)
County Forfeited Land)
Commission,)

Defendants.)

ANSWER

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV -5 PM 2:04
ALMA Y. WHITE
CLERK OF COURT

The Defendants Gary E. Owens and Joyce M. Owens, answering Plaintiffs' Complaint, would respectfully show unto this Honorable Court and allege as follows:

Charlton, et al. vs. South Bay Properties, LLC, et al.
2012-CP-22-00934
Answer of Gary E. Owens and Joyce M. Owens

Page 1

1. Defendants deny each and every allegation of the Complaint unless specifically admitted, qualified or explained hereinbelow, and further allege:

2. Defendants admit the allegations of Paragraphs 1 and 14.

3. The Defendants admit so much of paragraph 2 as alleges that they are residents of Horry County, South Carolina. Defendants lack knowledge or information with which to form a belief as to the remaining allegations of paragraph 2 wherefore they deny same and demand strict proof thereof.

4. Defendants lack knowledge or information with which to form a belief or opinion as to the matters alleged in paragraphs 3, 8, 9, 10, 11, 12, 13, 15, and 16 of the Complaint, wherefore they deny same and demand strict proof thereof.

5. Defendants admit so much of paragraph 4 as alleges matters consistent with the promissory note referred to therein, a copy of which is attached to the Complaint. Defendants deny the remaining allegations of paragraph 4 and demand strict proof thereof.

6. Defendants admit so much of paragraph 5 as is or may be consistent with the subject mortgage, and the public records of Georgetown County. Defendants deny the remaining allegations of paragraph 5 and demand strict proof thereof.

7. Defendants admit so much of paragraph 6 as alleges matters consistent with the subject mortgage and matters of public record of Georgetown County. Defendants deny the remaining allegations of paragraph 6 and demand strict proof thereof.

8. Defendants admit so much of paragraph 7 as is or may be consistent with the terms of the subject note and mortgage. Defendants deny the remaining allegations of paragraph 7, and demand strict proof thereof.

WHEREFORE, having set forth their Answer to Plaintiffs' Complaint, Defendants pray for an Order of this Court:

- A. Dismissing Plaintiffs' Complaint with prejudice;
- B. Awarding Defendants all costs and fees incurred herein; and
- C. Awarding Defendants such other and further relief as this Court may deem just and proper.



Gary E. Owens



Joyce M. Owens

Conway, South Carolina

Dated: 12/26/12

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L.)
Charlton and Bayside Property,)
Inc.,)

Plaintiffs,)

vs.)

South Bay Properties, LLC,)
Santee Consulting Services,)
Inc., f/k/a Trico Engineering)
Consultants, Inc., Milone &)
MacBroom, Inc., John Steven)
Goodwin, Louise C. Goodwin,)
Thomas L. Puckett, Brenda C.)
Puckett, Robert Nahama,)
Jeanne E. Nahama, Thomas)
Holland, Sharon Louise Holland,)
Joyce K. Sobel, Robert W.)
Waruszewskiu, Richard N.)
Taylor, Robert K. Spillers)
(a/k/a Robert Spillers), Deborah)
T. Spillers (a/k/a Deborah)
Spillers), Patrick A. DiAngelo,)
Deborah A. DiAngelo, Gary E.)
Owens, Joyce M. Owens, Fount)
L. Shults, Lynda M. Shults,)
Dennis Ridgeway, Teresa Lynn)
Ridgeway and Georgetown)
County Forfeited Land)
Commission,)

Defendants.)

ANSWER

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV 19 PM 2:42
ALMA R. WHITE
CLERK OF COURT

The Defendants John Steven Goodwin and Louise C. Goodwin, answering
Plaintiffs' Complaint, would respectfully show unto this Honorable Court and allege as
follows:

Charlton, et al. vs. South Bay Properties, LLC, et al.
2012-CP-22-00934

Answer of John Steven Goodwin and Louise C. Goodwin

Page 1

1. Defendants deny each and every allegation of the Complaint unless specifically admitted, qualified or explained hereinbelow, and further allege:

2. Defendants admit the allegations of Paragraphs 1 and 14.

3. The Defendants admit so much of paragraph 2 as alleges that they are residents of Horry County, South Carolina. Defendants lack knowledge or information with which to form a belief as to the remaining allegations of paragraph 2 wherefore they deny same and demand strict proof thereof.

4. Defendants lack knowledge or information with which to form a belief or opinion as to the matters alleged in paragraphs 3, 8, 9, 10, 11, 12, 13, 15, and 16 of the Complaint, wherefore they deny same and demand strict proof thereof.

5. Defendants admit so much of paragraph 4 as alleges matters consistent with the promissory note referred to therein, a copy of which is attached to the Complaint. Defendants deny the remaining allegations of paragraph 4 and demand strict proof thereof.

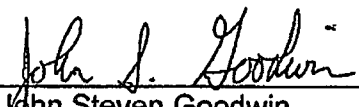
6. Defendants admit so much of paragraph 5 as is or may be consistent with the subject mortgage, and the public records of Georgetown County. Defendants deny the remaining allegations of paragraph 5 and demand strict proof thereof.

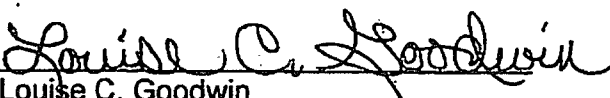
7. Defendants admit so much of paragraph 6 as alleges matters consistent with the subject mortgage and matters of public record of Georgetown County. Defendants deny the remaining allegations of paragraph 6 and demand strict proof thereof.

8. Defendants admit so much of paragraph 7 as is or may be consistent with the terms of the subject note and mortgage. Defendants deny the remaining allegations of paragraph 7, and demand strict proof thereof.

WHEREFORE, having set forth their Answer to Plaintiffs' Complaint, Defendants pray for an Order of this Court:

- A. Dismissing Plaintiffs' Complaint with prejudice;
- B. Awarding Defendants all costs and fees incurred herein; and
- C. Awarding Defendants such other and further relief as this Court may deem just and proper.


John Steven Goodwin


Louise C. Goodwin

Conway, South Carolina

Dated: 10/26/12

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Bonnie N. Charlton, et al.,)

Plaintiff,)

vs.)

South Bay Properties, LLC, et al.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-22-00934

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Charles T. Smith, Bar No. 5070 Address: 1112 Highmarket St., Georgetown, SC 29440 Phone: (843) 546-6131 Fax (843) 527-6692 E-mail: charles.smith@coastallaw.net Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Order of Reference Estimated Time Needed: 15 Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>Charles T. Smith</u> Signature of Attorney for ☒ Plaintiff / ☐ Defendant		November 19, 2012 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>[Signature]</u> Date Filed: <u>11/19/12</u> ☐ MOTION FEE COLLECTED: \$ <u>25</u> ☐ CONTESTED - AMOUNT DUE: \$ _____			

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV 19 PM 2:32
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,)

Plaintiffs,)

vs.)

South Bay Properties, LLC, Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone
& MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland
Sharon Louise Holland, Joyce K. Sobel,
Robert W. Waruszewski, Richard N.
Taylor, Robert K. Spillers (a/k/a Robert
Spillers) Deborah T. Spillers (a/k/a Deborah
Spillers), Patrick A. DiAngelo, Deborah A.
DiAngelo, Gary E. Owens, and Joyce M.
Owens, Fount L. Shults, Lynda M. Shults,
Dennis Ridgeway, Teresa Lynn Ridgeway
and Georgetown County Forfeited Land
Commission,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-22-00934

MOTION FOR ORDER OF REFERENCE

FILED
GEORGETOWN COUNTY S.C.
2012 NOV 19 PM 2:32
ALMA Y. WHITE
CLERK OF COURT

TO: South Bay Properties, LLC
5511 Capital Center Drive
Suite 105
Raleigh, NC 27606
Defendant

Bryon L. Saintsing, Esquire
Smith Debnam Attorneys at Law
Post Office Box 26268
Raleigh, NC 27611-6268
Attorney for Milone & MacBroom, Inc.

John W. Davidson, Esquire
Nexsen Pruet
Post Office Drawer 2426
Columbia, SC 29202
Attorney for Stantec Consulting Services, Inc.

John Steven Goodwin
865 Castlewood Drive
Conway, SC 29526
Defendant

K. Douglas Thornton, Esquire
Thornton Law Firm, LLC
1025 Third Avenue
Conway, SC 29526

Louise C. Goodwin
501 9th Avenue
Conway, SC 29526
Defendant

Brenda C. Puckett
20207 Mosby Avenue
Bristol, VA 24202
Defendant

Sharon Louise Holland
783 June Drive
Paramus, NJ 07652
Defendant

Robert W. Waruszewski
405 Mountain View Court
Blountville, TN 37617
Defendant

Robert K. Spillers
125 Pine Gate Drive
Greenville, SC 29607
Defendant

Patrick A. DiAngelo
1713 Perdez Covey
Myrtle Beach, SC 29588
Defendant

Gary E. Owens
80 Plantation Road
Myrtle Beach, SC 29588
Defendant

Fount L. Shults
106 Ashford Court
Myrtle Beach, SC 29588
Defendant

John M. Leiter, Esquire
Law Offices of John M. Leiter, PA
1203 48th Avenue N, Suite 109
Myrtle Beach, SC 29577

Thomas L. Puckett
20207 Mosby Avenue
Bristol, VA 24202
Defendant

Thomas Holland
783 June Drive
Paramus, NJ 07652
Defendant

Joyce K. Sobel
1954 Hitching Post Lane
Marietta, GA 30068
Defendant

Richard N. Taylor
3545 Chickory Creek Drive
Cumming, GA 30041-2064
Defendant

Deborah T. Spillers
125 Pine Gate Drive
Greenville, SC 29607
Defendant

Deborah A. DiAngelo
1713 Perdez Covey
Myrtle Beach, SC 29588
Defendant

Joyce M. Owens
80 Plantation Road
Myrtle Beach, SC 29588
Defendant

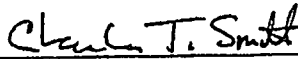
Lynda M. Shults
106 Ashford Court
Myrtle Beach, SC 29588
Defendant

Dennis Ridgeway
430 Fairforest Lane
Greenville, SC 29607
Defendant

Teresa Lynn Ridgeway
430 Fairforest Lane
Greenville, SC 29607
Defendant

Wesley P. Bryant, Esquire
County Attorney
Post Office Box 421270
Georgetown, SC 29442
Attorney for Georgetown County
Forfeited Land Commission

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Georgetown County Courthouse as soon as the parties may be heard that the issues in this action be referred to the Honorable Joe M. Crosby, Master in Equity for Georgetown County, to take the testimony arising under the pleadings and to make his findings of fact and conclusions of law with authority to enter a final judgment in the cause.



Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Plaintiffs

November 19, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,)

Plaintiffs,)

vs.)

CERTIFICATE OF MAILING

South Bay Properties, LLC, Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone
& MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland
Sharon Louise Holland, Joyce K. Sobel,
Robert W. Waruszewski, Richard N.
Taylor, Robert K. Spillers (a/k/a Robert
Spillers) Deborah T. Spillers (a/k/a Deborah
Spillers), Patrick A. DiAngelo, Deborah A.
DiAngelo, Gary E. Owens, and Joyce M.
Owens, Fount L. Shults, Lynda M. Shults,
Dennis Ridgeway, Teresa Lynn Ridgeway
and Georgetown County Forfeited Land
Commission,)

Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV 19 PM 2:32
ALMA Y. WHITE
CLERK OF COURT

I hereby certify that on the 19th day of November, 2012, I mailed copies of the Motion and
Order Information Form and Coversheet and Motion for Order of Reference to:

South Bay Properties, LLC
5511 Capital Center Drive
Suite 105
Raleigh, NC 27606
Defendant

John W. Davidson, Esquire
Nexsen Pruet
Post Office Drawer 2426
Columbia, SC 29202
Attorney for Stantec Consulting Services, Inc.

Bryon L. Saintsing, Esquire
Smith Debnam Attorneys at Law
Post Office Box 26268
Raleigh, NC 27611-6268
Attorney for Milone & MacBroom, Inc.

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Conway, SC 29526

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Conway, SC 29526
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20207 Mosby Avenue
Bristol, VA 24202
Defendant

Sharon Louise Holland
783 June Drive
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Defendant

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430 Fairforest Lane
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Defendant

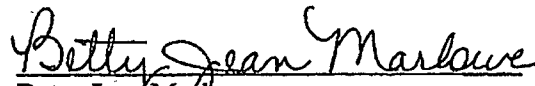
Wesley P. Bryant, Esquire
County Attorney
Post Office Box 421270
Georgetown, SC 29442
Attorney for Georgetown County
Forfeited Land Commission

with sufficient postage attached.

Joyce M. Owens
80 Plantation Road
Myrtle Beach, SC 29588
Defendant

Lynda M. Shults
106 Ashford Court
Myrtle Beach, SC 29588
Defendant

Teresa Lynn Ridgeway
430 Fairforest Lane
Greenville, SC 29607
Defendant


Betty Jean Marlowe
Betty Jean Marlowe

1 (There were no exhibits marked during the hearing.)
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1 (On the record, January 22, 2013.)

2 THE COURT: All right, the next case is 2012-CP-22-
3 934, Bonnie N. Charlton, Ronald L. Charlton and Bayside
4 Property, Inc., versus South Bay Properties, LLC, and others.
5 According to my motion this is a motion for an order of
6 reference.

7 Please give the court reporter your name and who you
8 represent.

9 MR. SMITH: Thank you, Your Honor, Charles Smith. I
10 represent the Plaintiffs in this action. This is an action to
11 foreclose a purchase money mortgage on real property in
12 Georgetown County. The motion is a motion to refer the case
13 to the master-in-equity.

14 Back in September of 2007 the Defendant South Bay
15 executed a promissory note and mortgage to the Plaintiffs in
16 the original principal sum of \$14,580,000 as part of the
17 purchase price of a tract of land on Winyah Bay. South Bay
18 Property created and marketed a development known as Harbour
19 Club on Winyah Bay and although South Bay sold some of the
20 lots, ultimately they were not successful. South Bay became
21 bankrupt. South Bay has not responded to, to the complaint in
22 this action and is now in default.

23 The property that's the subject of this foreclosure
24 action are the lots that South Bay did not sell to a third
25 party. There are several Defendants involved. Stantec is

1 named as a Defendant because it had a judgment against South
2 Bay Properties. Milone and MacBroom is a Defendant because it
3 has a mechanic's lien filed against South Bay. Georgetown
4 Forfeited Land Commission is named as a party because some of
5 the lots still owned by South Bay were sold for taxes although
6 a deed has not yet been issued to the Forfeited Land
7 Commission and also mentioned is Bonnie and Ron Charlton, in
8 addition to being Plaintiffs have a judgment against South Bay
9 Properties. All of the Defendants I have just named have
10 consented to referring this matter to the master-in-equity.

11 In addition to those though 21 individuals are named as
12 Defendants. Those individuals were originally represented by
13 Mr. Thornton and John Leiter in a lawsuit filed back in 2009.
14 That lawsuit named basically everyone involved with the
15 development and had a large number of causes of action but
16 that lawsuit also included a lis pendens which was filed
17 against South Bay's lots. That is the reason for including
18 that group in this mortgage foreclosure action. That case was
19 struck when South Bay filed for bankruptcy. The order
20 striking that case was back in July of 2011, and although
21 South Bay was dismissed from bankruptcy in August of 2011 that
22 case has not been restored although I understand this morning
23 a motion was filed to restore that case.

24 THE COURT: Okay.

25 MR. SMITH: My understanding was that there was some

1 question as to whether Mr. Thornton, Mr. Leiter were still
2 representing those individuals. So although we served the
3 attorneys of record we also served the individuals. In the
4 file there are proofs of service on each of them. Three
5 couples have answered. Those would be Steve - Mr. and Mrs.
6 Goodwin, Mr. and Mrs. Owens and Mr. and Mrs. DiAngelo. All
7 three of them filed answers in October of 2012. All three of
8 the answers were simply qualified denials. None of them
9 requested a jury trial.

10 THE COURT: They filed it pro se or through an
11 attorney?

12 MR. SMITH: Well, they were well done. There was
13 evidence of attorney's participation but there was no attorney
14 of record.

15 THE COURT: Okay.

16 MR. SMITH: They were pro se.

17 THE COURT: They signed it?

18 MR. SMITH: They signed it.

19 THE COURT: Okay, all right.

20 MR. SMITH: My understanding is Mr. Thornton is now
21 representing Mr. - the Goodwins and the Owens.

22 THE COURT: Okay.

23 MR. SMITH: And he this morning also filed a motion to
24 amend those answers.

25 As far as our motion to refer, Your Honor, since everyone

1 has either consented to reference of the foreclosure action or
2 is in default or has waived the right to a jury trial by not
3 demanding it within ten days of the date in which they filed
4 an answer we think it is an appropriate case to refer to the
5 master-in-equity.

6 As far as the motion that was filed this morning to amend
7 the complaint that motion can be heard by the master-in-
8 equity.

9 THE COURT: Okay, all right, Mr. Thornton, who do you
10 represent?

11 MR. THORNTON: Your Honor, if it please the Court, I
12 represent Steve and Louise Goodwin and let me get their names
13 right, Gary Owens and Joyce Owens.

14 THE COURT: Okay.

15 MR. THORNTON: They're two couples of the original 14
16 approximately lot owners that John Leiter and I represented
17 when we filed the action back in 2009. That action, as Mr.
18 Smith indicated, was stricken due to South Bay's bankruptcy.
19 Your Honor held a conference here in this courtroom I think
20 about two years ago, a little over two years ago. I believe
21 there were four failed developments and the same realtor was
22 involved in all four of them. I believe Wachovia Bank was a
23 significant lender on all of those and there was a status
24 conference conducted by Your Honor to determine scheduling,
25 discovery and so forth. We had had trouble being able to

1 proceed with discovery because there were motions to dismiss
2 that were filed by Kyle Corkum and LandQuest and Hartford, I
3 believe, and those were all heard and dismissed and then once
4 they were dismissed we had motions to compel discovery pending
5 and that's when South Bay filed bankruptcy. The case was
6 stricken and it sat dormant for a good while. The order
7 striking the case actually happened, I think, in July of 2011
8 and then the bankruptcy itself was dismissed in August of 2011
9 and as Mr. Smith indicated there was some question,
10 significant questions in our clients' minds about whether they
11 wanted to proceed. It, it drug out for so long. The process
12 was quite expensive. They had all been hurt badly by what
13 happened in this case which essentially was they bought pieces
14 of paper for lots that there were never any infrastructure, no
15 roads or utilities and no amenities or anything put in there.
16 They couldn't do anything with the lots, numerous
17 representations as alleged in the complaint on the marketing
18 of the lots. The anticipated value in many instances was
19 represented in writing that they were going to double or
20 triple their money on this investment, that the subdivision
21 was sold out, they needed to go ahead and sign their
22 reservation agreements and get lined up, and a lot of very
23 questionable practices in the way this subdivision was
24 marketed and sold. We alleged in that original complaint, and
25 again we've moved to reinstate it this morning, and we have

1 raised the same claims, causes of action as counterclaims,
2 cross-claims against South Bay which is a Defendant along with
3 us in this foreclosure case and third-party complaints against
4 the other developer Defendants based on their material,
5 significant misrepresentations of fact, and as Your Honor
6 know, knows there is a \$7,800,000 performance bond that has
7 been filed, was procured by the developers, filed with the
8 city in order to approve the subdivision plat to allow the
9 developers to go ahead and begin selling lots and, and our
10 clients acted in reliance on that and one thing we have
11 discovered is that apparently, and this is alleged in the
12 amended pleadings that we have proposed amending these
13 answers, we've discovered that the developer in the persona of
14 Kyle Corkum, who was the manager member of South Bay, manager
15 member of LandQuest and was in a joint venture agreement with
16 C. R. Thompson and Sons went to the Charltons, according to
17 his deposition testimony in another case, when the development
18 loan was pulled from South Bay, notified the Charltons there
19 were no funds available for the - to complete the purchase or
20 for construction of the infrastructure or amenities and asked
21 the Charltons whether they wanted to proceed with the closings
22 that were scheduled or cancel the contracts and refund the
23 money and walk away from the development, and at the time the
24 Charltons had about \$7 million in debt on this property and
25 they made the decision to proceed with these closings and

1 they, they conveyed the property to South Bay on September 17,
2 2007 for \$20,850,000 I believe it was and they took back this
3 \$14 million mortgage, got about 80 percent of the net proceeds
4 of 29 closings that took place on September 17, 2007. There
5 were another 25 closings that took place then between
6 September of 2007 and January of 2008. They got 80 percent of
7 another 14,000 or so dollars and there was never any
8 development done. Those were the last closings. The
9 completion of the infrastructure and the amenities was
10 supposed to have taken place in August of 2008. That hadn't
11 happened still in 2009 when we initiated this action.

12 In the original complaint in addition to the allegations
13 of joint venture between the Charltons and these developers we
14 have alleged breach of contract, breach of contract
15 accompanied by fraud. There's an - there is a cause of action
16 for fraud and constructive fraud that does not involve the
17 Charltons, but there are 11 causes of action and all but that
18 one includes them. We are seeking rescission under the
19 Interstate Full Disclosure Land Sales Act, under the South
20 Carolina Uniform Land Sales Act, under the breach of contract
21 causes of action to put our clients back at the status quo
22 anti and we're also, Your Honor, we've asserted a right to an
23 equitable lien and we've asserted that the Charltons' mortgage
24 should be subordinate to, inferior to our equitable lien. But
25 for the funds that were generated from these closings at a

1 time when all of the developer Defendants on the other side of
2 these closings knew there was not going to be any
3 infrastructure or amenities constructed, but for those funds
4 that were generated by these closings there would have been no
5 money to pay for the land or to pay for anything else and the
6 Charltons received about 80 percent of all those proceeds.

7 Those are factual issues and legal causes of action, Your
8 Honor, and I'm sure you are very familiar with the law of
9 entitlement to jury trial, that the master-in-equity could
10 hear our motion to amend. I don't, I don't disagree with
11 that, but I submit to you we have filed the motion to amend
12 these answers and to consolidate these two actions, the one
13 that we filed in 2009 with the foreclosure action that the
14 Charltons have now initiated in 2012, and it is my
15 understanding of the law that in legal issues, legal causes of
16 action, claims for damages, monetary damages a person is
17 entitled to a jury trial as a matter of right and that where
18 causes of action exist in the same case for legal and
19 equitable relief that the jury trial issues should be tried
20 first and I submit to the Court for judicial economy it should
21 be tried simultaneously not by the master-in-equity but by
22 this Court. Those equitable issue can be determined by the
23 Court and legal factual issues determined by a jury and that
24 would be more economical and workable than trying to have two
25 different issues and get two different results because our

1 request for lien priority is based significantly on these
2 material, no doubt, contested and disputed facts in this case.

3 THE COURT: Okay.

4 MR. THORNTON: Thank you, Your Honor.

5 THE COURT: All right, well, since you just filed your
6 motion to amend and you say a motion to amend and a motion to
7 restore, okay. Since those and those were both just filed
8 today?

9 MR. THORNTON: Yes, sir.

10 THE COURT: Okay.

11 MR. THORNTON: Motion to restore and then a motion to
12 amend and consolidate the two actions.

13 THE COURT: All right, since that was just filed this
14 morning those issues aren't before the Court. So, in the
15 present posture I'm going to go ahead and allow the referral.
16 The master-in-equity can hear those motions. Certainly if he
17 grants the motions and there are factual issues that are to be
18 heard by a jury then he can send those back and to the circuit
19 court and we'll set them up for trial but since the motion to
20 restore and the motion to amend were just filed this morning
21 I'm going to go ahead in its present structure since there's
22 been no request for a jury trial and since it is a foreclosure
23 action allow it to go to the master-in-equity.

24 MR. SMITH: Thank you, Your Honor.

25 THE COURT: All right, thank you.

1 (On the record, January 22, 2013.)

2 THE COURT: All right, the next case is 2012-CP-22-
3 934, Bonnie N. Charlton, Ronald L. Charlton and Bayside
4 Property, Inc., versus South Bay Properties, LLC, and others.
5 According to my motion this is a motion for an order of
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1 has either consented to reference of the foreclosure action or
2 is in default or has waived the right to a jury trial by not
3 demanding it within ten days of the date in which they filed
4 an answer we think it is an appropriate case to refer to the
5 master-in-equity.

6 As far as the motion that was filed this morning to amend
7 the complaint that motion can be heard by the master-in-
8 equity.

9 THE COURT: Okay, all right, Mr. Thornton, who do you
10 represent?

11 MR. THORNTON: Your Honor, if it please the Court, I
12 represent Steve and Louise Goodwin and let me get their names
13 right, Gary Owens and Joyce Owens.

14 THE COURT: Okay.

15 MR. THORNTON: They're two couples of the original 14
16 approximately lot owners that John Leiter and I represented
17 when we filed the action back in 2009. That action, as Mr.
18 Smith indicated, was stricken due to South Bay's bankruptcy.
19 Your Honor held a conference here in this courtroom I think
20 about two years ago, a little over two years ago. I believe
21 there were four failed developments and the same realtor was
22 involved in all four of them. I believe Wachovia Bank was a
23 significant lender on all of those and there was a status
24 conference conducted by Your Honor to determine scheduling,
25 discovery and so forth. We had had trouble being able to

1 request for lien priority is based significantly on these
2 material, no doubt, contested and disputed facts in this case.

3 THE COURT: Okay.

4 MR. THORNTON: Thank you, Your Honor.

5 THE COURT: All right, well, since you just filed your
6 motion to amend and you say a motion to amend and a motion to
7 restore, okay. Since those and those were both just filed
8 today?

9 MR. THORNTON: Yes, sir.

10 THE COURT: Okay.

11 MR. THORNTON: Motion to restore and then a motion to
12 amend and consolidate the two actions.

13 THE COURT: All right, since that was just filed this
14 morning those issues aren't before the Court. So, in the
15 present posture I'm going to go ahead and allow the referral.
16 The master-in-equity can hear those motions. Certainly if he
17 grants the motions and there are factual issues that are to be
18 heard by a jury then he can send those back and to the circuit
19 court and we'll set them up for trial but since the motion to
20 restore and the motion to amend were just filed this morning
21 I'm going to go ahead in its present structure since there's
22 been no request for a jury trial and since it is a foreclosure
23 action allow it to go to the master-in-equity.

24 MR. SMITH: Thank you, Your Honor.

25 THE COURT: All right, thank you.

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

John Steven Goodwin, et al.)

Plaintiff,)

vs.)

Landquest Development, LLC, et al.)

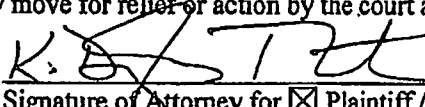
Defendant.)

IN THE COURT OF COMMON PLEAS

15th JUDICIAL CIRCUIT

CASE NO.: 2009-CP-22-1045

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: K. Douglas Thornton, Bar No. 5565 Address: 1025 Third Ave., Conway, SC 29526 Phone: 843-488-5858 Fax 843-488-5859 E-mail: kdouglasthornton@gmail.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Reinstate/Restore Complaint, etc. Estimated Time Needed: 30 Min. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant  1-22-13 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by:  Date Filed: 1/22/13 ☐ MOTION FEE COLLECTED: \$ 50 ☐ CONTESTED - AMOUNT DUE: \$ _____			

FILED
GEORGETOWN COUNTY, S.C.
2013 JAN 22 AM 10:23
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-22-1045

John Steven Goodwin, Louise
C. Goodwin, Gary E. Owens,
and Joyce M. Owens,

Plaintiffs,

Landquest Development, LLC,
Kyle V. Corkum, South Bay
Properties, LLC, C.R. Thompson
and Sons, LLC, Ronald L.
Charlton, Bonnie N. Charlton,
James R. Charlton, Bayside
Property, Inc., The City of
Georgetown, Hartford Casualty
Insurance Company, Hartford
Fire Insurance Company, and
National Land Sales, Inc., f/k/a
Source One Communities, LLC,
a/k/a Source One Signature
Communities,

Defendants.

NOTICE OF MOTION AND MOTION
TO REINSTATE/RESTORE COMPLAINT
AND LIS PENDENS AND
TO CONSOLIDATE
SEPARATE TRIALS

FILED
GEORGETOWN COUNTY, S.C.
2013 JAN 22 AM 10:23
ALMA Y. WHITE
CLERK OF COURT

TO: THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE THAT Plaintiffs John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, will move before this Honorable Court on the tenth (10th) day following service hereof, or as soon hereafter as counsel may be heard, for an Order of this Court reinstating the within action to the active trial docket for Georgetown County, subject to a proposed Scheduling Order to enable all parties to engage in and complete discovery before the case is called to trial

Goodwin, et al. vs. Landquest Development, LLC
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 1

and to consolidate this case with Charlton, et al. v. South Bay Properties, LLC, et al., being Civil Action Number 12-CP-22-934 pending in this court.

In support of this Motion, Plaintiffs would respectfully show the Court as follows:

1. Plaintiffs' Summons and Complaint was filed on July 9, 2009, premised upon various acts and occurrences surrounding the marketing, sale, and failed development of Lots in a subdivision known and designated as "Harbor Club on Winyah Bay." Plaintiffs Goodwins' Lot 160 was closed on about September 17, 2007; Plaintiffs Owens' Lot 94 was closed on or about December 21, 2007.

2. Defendant South Bay Properties, LLC was and is the designated owner and "developer" of the subdivision. As more fully alleged in Plaintiffs' Complaint, the allegations of which are affirmed and reiterated, as fully as if repeated herein verbatim, all infrastructure and amenity construction was to have been completed in or about August, 2008. Defendants Landquest Development, LLC, Kyle V. Corkum, and South Bay Properties, LLC, procured a "Subdivision Performance Bond" issued by Hartford Casualty Insurance Company, in the principal penal sum of \$7,882,359.00. This Bond enabled the Defendants Landquest, Corkum, South Bay, C. R. Thompson & Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., to lawfully sell and convey lots in the subdivision, and was designed to assure construction, at a minimum, of the infrastructure required for the subdivision.

3. As of the date of the filing of Plaintiffs' Complaint, July 9, 2009, no construction of infrastructure or amenities had commenced in the subdivision.

Goodwin, et al. vs. Landquest Development, LLC
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 2

4. Plaintiffs' discovery efforts were delayed by Motions to Dismiss filed by Defendants Corkum and Hartford Casualty Insurance Company/Hartford Fire Insurance Company. The Hartford's Motion was heard and denied by this Court on October 19, 2009. Defendant Corkum's Motion was heard and denied by this Court on November 30, 2009. Thereafter, while Motions to Compel Discovery were pending before the Court, Defendant South Bay Properties, LLC filed a Petition for relief under Chapter 11 of the Bankruptcy Code on June 18, 2010.

5. This Court conducted one or more status conferences with counsel for all parties in the present action, as well as in similar actions affecting other subdivisions in Georgetown County. Due to the complexities of the case, and the pending Bankruptcy of Defendant South Bay, the Court concluded that all further proceedings in this action, including discovery, would be stayed, pending the outcome of South Bay's Bankruptcy Petition.

6. Thereafter, by form Order dated July 22, 2011, this Court struck the within action, noting "*Case Stricken Due to Bankruptcy.*" A copy of this Order is attached hereto and incorporated herein by reference as **Exhibit "A"**.

7. By Order executed on August 12, 2011, the Honorable Stephani W. Humrickhouse, United States Bankruptcy Judge, issued an Order dismissing the Bankruptcy Petition of South Bay Properties, LLC. A copy of this Order is attached hereto and incorporated herein by reference as **Exhibit "B"**.

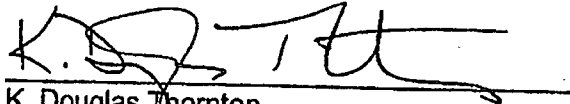
8. Plaintiffs are informed and believe that they are entitled to an Order of this Court restoring and reinstating the within action to the active jury trial docket for the

Court of Common Pleas for Georgetown County. Plaintiffs are further informed and believe that it will be necessary and appropriate for the Court to enter a Scheduling Order, to enable the parties to engage in and complete discovery prior to the case being called for trial.

9. Plaintiffs also move for consolidation of this case with *Charlton, et al. vs. South Bay Properties, et al.* (2012-CP-22-934) pending in this Court, pursuant to Rule 42, SCRPC, because the two actions involve common questions of law and fact.

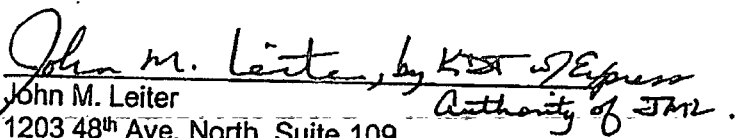
This Motion will be supported by such other and further facts and law as may appear necessary and appropriate at the hearing hereof.

THORNTON LAW FIRM, LLC



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kdouglasthornton@gmail.com

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jleiter@48th.com

ATTORNEYS FOR PLAINTIFFS

Goodwin, et al. vs. Landquest Development, LLC
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 4

Conway, South Carolina
Dated: 1/21/13

Goodwin, et al. vs. Landquest Development, LLC
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 5

EXHIBIT

A

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GEORGETOWN

CASE NO: 2009CP2201045

IN THE COURT OF COMMON PLEAS

John Steven Goodwin vs. Landquest Development Llc

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☒ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☒ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court (Formal order to follow)

Case Stricken Due To Bankruptcy

Dated at Georgetown, South Carolina, this 22nd day of July, 2011.

Court Reporter:

S/ Larry B. Hyman, Jr.
PRESIDING JUDGE - Larry B Hyman, Jr

This judgment was entered on the 22nd day of July, 2011, and a copy mailed first class this 22nd day of July, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

K. Douglas Thornton Thornton Law Firm 1025
Third Ave Conway, SC 29526
John M. Leiter Law Offices Of John M. Leiter PA
1203 43Th Avenue N Suite 109 Myrtle Beach, SC
29577

Elise Freeman Crosby Crosby & Crosby Law Firm
405 Dozier Street Georgetown, SC 29440
Joseph Kevin Qualey Qualey & Beck 23 Broad St.
Charleston, SC 29401
James Lynn Werner Parker Poe Adams &

CPFORM-11M
SCCA SCRCP Form 4 Revised 06/2008

SCANNED

EXHIBIT

B

SO ORDERED.

SIGNED this 12 day of August, 2011.



Stephani W. Humrickhouse
Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES-BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

SOUTH BAY PROPERTIES, LLC

DEBTOR

CASE NO.

10-04922-8-SWH

ORDER ALLOWING MOTIONS TO DISMISS

The matters before the court are the motions of Ronald L. Charlton, Bonnie N. Charlton, and Bayside Property, Inc. (collectively, "Bayside"), as well as the bankruptcy administrator, to dismiss the debtor's case. Hearings took place in Raleigh, North Carolina on April 6, 2011, and August 1, 2011. For the reasons that follow, the case will be dismissed.

Background

In 2006, South Bay entered into a contract with Bayside for the purchase of approximately 80 acres of real property on Winyah Bay in Georgetown, South Carolina, which South Bay intended to develop as a residential subdivision. In 2007, after a bank loan fell through, Bayside financed the transaction in exchange for a promissory note and mortgage for over \$14 million, which was to be later replaced by permanent commercial financing.

South Bay filed a petition for relief under chapter 11 of the Bankruptcy Code on June 18, 2010, at which time the balance owed to Bayside on the note was approximately \$15,282,370.04. Shortly thereafter, another creditor, Milone & MacBroom, Inc. ("M&M"), filed a motion to dismiss

the case. Alleging bad faith, among other things, M&M contended that the debtor had nearly ceased property development and filed the petition in order to delay ongoing litigation and protect the guarantors of a construction bond. On November 10, 2010, this court denied the motion, finding that the debtor had potential avenues to pursue toward confirmation, and that the petition did not appear to have been filed in bad faith.

In the meantime, on August 27, 2010, Bayside filed a motion for relief from the automatic stay, seeking to foreclose on the subject property. On September 16, 2010, during the pendency of the stay motion, the debtor initiated an adversary proceeding against Bayside to avoid Bayside's lien on the property. The debtor alleged that because the mortgage deed refers to a note of even date, and the note is dated one day later than the mortgage, the mortgage is invalid and the debt to Bayside is unsecured. Because the result of the stay motion necessarily depended on the result of the adversary proceeding, on December 14, 2010, the parties requested and received a continuance of the stay motion until a determination could be made in the adversary proceeding as to the validity of Bayside's lien. The next day, on December 15, 2010, Bayside filed its motion to dismiss the debtor's case.

On June 15, 2011, upon Bayside's motion, the court dismissed the adversary proceeding, finding Bayside's mortgage lien valid and enforceable. Shortly thereafter, the debtor withdrew its response to Bayside's motion for relief from stay, and the stay lifted as to Bayside on July 12, 2011. The bankruptcy administrator filed her motion to dismiss on July 6, 2011, and M&M filed a response in support of the motions to dismiss on July 18, 2011. If and when Bayside forecloses on the property, the only remaining assets in the debtor's estate will be permits to develop boat slips near the property.

In support of their motions to dismiss, both Bayside and the bankruptcy administrator contend that the debtor essentially has nothing left to reorganize, in light of the debtor's inability to avoid Bayside's lien and Bayside's anticipated foreclosure on the property. The debtor, on the other hand, believes that the appointment of a trustee is warranted, in order to determine whether reorganization is possible and potentially negotiate a compromise. The debtor represents that it has two potential assets for a trustee to work with: (1) boat slip permits and (2) a promised \$150,000 cash infusion from one of the debtor's principals.

Discussion

Under § 1112(b) of the Bankruptcy Code, "the court shall convert a case under [chapter 11] to a case under chapter 7 or dismiss a case under [chapter 11], whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1). The primary 'cause' asserted by Bayside and the bankruptcy administrator for dismissal pursuant to the statute is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

Based on this standard, the court finds more than ample cause to dismiss the debtor's case. Although the debtor initially had 80 acres of property to develop, foreclosure recently became final on 79 lots on account of unpaid property tax obligations. Loss of the remaining lots appears imminent and inevitable, given that the debtor's challenge to Bayside's lien was unsuccessful, and Bayside has been granted relief from the automatic stay for the purpose of foreclosure. The debtor's only remaining assets are permits to build boat slips, which may be of extremely limited value to

the debtor once the debtor loses access to the adjoining property. This leaves the debtor with virtually no assets to reorganize or liquidate, and the court with little choice but to dismiss the case.

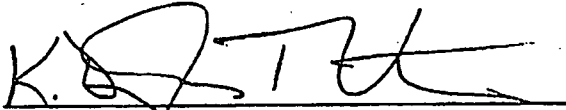
Incidentally, the debtor foreshadowed this result in its response to Bayside's motion to dismiss, describing the avoidance of liens on its real property as a "seminal issue" to plan feasibility. Debtor's Response at 3. Later, at a hearing on the motion to dismiss, the debtor indicated that if Bayside's lien was upheld, dismissal or conversion would likely follow. Although the debtor seeks the appointment of a trustee, it is questionable what value a trustee could provide under these particular circumstances. In general, a debtor is in the best position to formulate a strategy for its own reorganization. In light of the present circumstances, and the amount of time which the debtor has had to devise a feasible plan of reorganization, a trustee is not likely to be able to accomplish what this debtor could not. Even though a principal of the debtor has pledged \$150,000 as a show of goodwill, this amount is almost negligible in comparison to the multi-million dollar debt, and has no practical purpose (for example, it cannot be used toward development of infrastructure if the property is no longer the debtor's to develop). Nor does the court find any practical value in the permits to build boat slips, in light of the differences between the debtor and Bayside (the inevitable new owner of the property adjacent to the slip area), as well as the fact that permits certainly have less value than actual boat slips.

Based on the foregoing, it is apparent that the debtor has no *reasonable* likelihood of rehabilitation. Allowing the debtor to continue in chapter 11 would amount to offering the debtor a last gasp effort at rehabilitation, but with no source of air. Accordingly, the case is **DISMISSED**.

SO ORDERED.

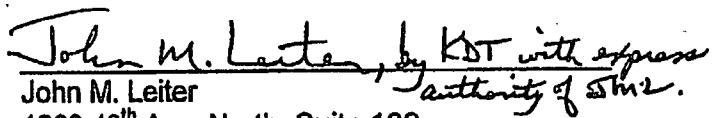
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THORNTON LAW FIRM, LLC



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kdouglasthornton@gmail.com

LAW OFFICES OF JOHN M. LEITER, P.A.



*by KDT with express
authority of SM2.*

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Myrtle Beach, South Carolina 29577
Telephone: (843) 449-1451
Facsimile: (843) 449-4884
jleiter@48th.com

ATTORNEYS FOR PLAINTIFFS

Conway, South Carolina

Dated: 1/21/13

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

John Steven Goodwin, et al.)

Plaintiff,)

vs.)

Landquest Development, LLC, et al.)

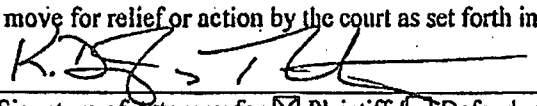
Defendant.)

IN THE COURT OF COMMON PLEAS

15th JUDICIAL CIRCUIT

2012 934
CASE NO.: 2009-CP-22-1045

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: K. Douglas Thornton, Bar No. 5565 Address: 1025 Third Ave., Conway, SC 29526 Phone: 843-488-5858 Fax 843-488-5859 E-mail: kdouglasthornton@gmail.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Amend Estimated Time Needed: 15 Min. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant 1-21-13 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ FILED 2012 JAN 22 AM 10:28 CLERK OF COURT GEORGETOWN COUNTY, S.C.			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by  Date Filed: 1/22/13 ☐ MOTION FEE COLLECTED: \$ 25 ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L.
Charlton, and Bayside Properties,
Inc.,

Plaintiffs,

vs.

South Bay Properties, LLC,
Santee Consulting Services,
Inc., f/k/a Trico Engineering
Consultants, Inc., Milone &
MacBroom, Inc., John Steven
Goodwin, Louise C. Goodwin,
Thomas I. Puckett, Brenda C.
Puckett, Robert Nahama, Jeanne
E. Nahama, Thomas Holland,
Sharon Louise Holland, Joyce
K. Sobel, Robert W.
Waruszewskiu, Richard N.
Taylor, Robert K. Spillers
(a/k/a Robert Spillers), Deborah
T. Spillers (a/k/a Deborah
Spillers, Patrick A. DiAngelo,
Deborah A. DiAngelo, Gary E.
Owens, and Joyce M. Owens,
Fount L. Shults, Lynda M. Shultz,
Dennis Ridgeway, Teresa Lynn
Ridgeway and Georgetown
County Forfeited Land
Commission,

Defendants.

John Steven Goodwin, Louise
C. Goodwin, Gary E. Owens and
Joyce M. Owens,

Third Party Plaintiffs,

MOTION TO AMEND ANSWER
(Rule 15, SCRCP)

FILED
GEORGETOWN COUNTY, S.C.
2013 JAN 22 AM 10:28
ALMA Y. WHITE
CLERK OF COURT

Goodwin, et al. vs. Landquest Development, LLC, et al
2009-CP-22-1045
Motion to Amend

Page 1

Landquest Development, LLC,)
 Kyle V. Corkum, South Bay)
 Properties, LLC, C.R. Thompson)
 and Sons, LLC, The City of)
 Georgetown, Hartford Casualty)
 Insurance Company, Hartford)
 Fire Insurance Company, and)
 National Land Sales, Inc., f/k/a)
 Source One Communities, LLC,)
 a/k/a Source One Signature)
 Communities.)

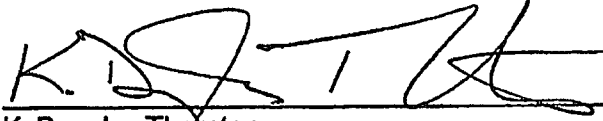
TO: PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY OF RECORD,
CHARLES T. SMITH, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE THAT the Defendants, John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, by and through its undersigned counsel, will move before this Honorable Court on the 10th day following service hereof, or as soon hereafter as counsel may be heard, for an Order of this Court granting it leave to amend its Answer, in accordance with the proposed Amended Answer and Counterclaim, a copy of which is attached hereto and incorporated herein in its entirety as **Exhibit "A"**.

In support of this Motion, Defendant would show the Court that this amendment does not prejudice any other party, and is necessary for purposes of judicial economy, to enable Defendant to assert all necessary defenses, affirmative defenses, counterclaims, cross-claims, and Third Party Complaints relevant to the issues raised in

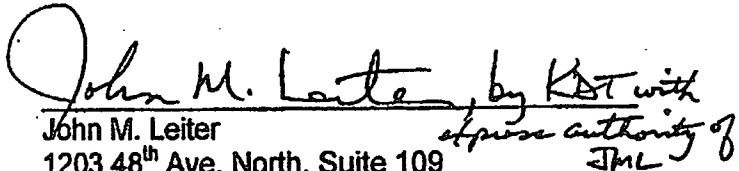
Page 2

Plaintiff's Complaint. This Motion will be supported by such other and further fact and law and may appear necessary and appropriate at the hearing hereof.



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kdouglasthornton@gmail.com

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Facsimile: (843) 449-4884
jleiter@48th.com

*by KDT with
express authority of
JML*

ATTORNEYS FOR PLAINTIFFS

Conway, South Carolina

Dated: 1/21/13

EXHIBIT

A

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L.
Charlton, and Bayside Properties,
Inc.,)

Plaintiffs,)

vs.)

South Bay Properties, LLC,)
Santee Consulting Services,)
Inc., f/k/a Trico Engineering)
Consultants, Inc., Milone &)
MacBroom, Inc., John Steven)
Goodwin, Louise C. Goodwin,)
Thomas I. Puckett, Brenda C.)
Puckett, Robert Nahama, Jeanne)
E. Nahama, Thomas Holland,)
Sharon Louise Holland, Joyce)
K. Sobel, Robert W.)
Waruszewskiu, Richard N.)
Taylor, Robert K. Spillers)
(a/k/a Robert Spillers), Deborah)
T. Spillers (a/k/a Deborah)
Spillers, Patrick A. DiAngelo,)
Deborah A. DiAngelo, Gary E.)
Owens, and Joyce M. Owens,)
Fount L. Shults, Lynda M. Shultz,)
Dennis Ridgeway, Teresa Lynn)
Ridgeway and Georgetown)
County Forfeited Land)
Commission,)

Defendants.)

AMENDED ANSWER, COUNTERCLAIMS
CROSS-CLAIMS, AND THIRD
PARTY COMPLAINT

John Steven Goodwin, Louise)
C. Goodwin, Gary E. Owens and)
Joyce M. Owens,)

Charlton, et al. vs. South Bay Properties, LLC, et al.
2012-CP-22-00934

Amended Answer, Counterclaims, Cross-Claims, and
Third Party Complaint

FILED
GEORGETOWN COUNTY, S.C.
2013 JAN 22 AM 10:28
ALMA Y. WHITE
CLERK OF COURT

Third Party Plaintiffs;)
)
 vs.)
)
 Landquest Development, LLC,)
 Kyle V. Corkum, South Bay)
 Properties, LLC, C.R. Thompson)
 and Sons, LLC, The City of)
 Georgetown, Hartford Casualty)
 Insurance Company, Hartford)
 Fire Insurance Company, and)
 National Land Sales, Inc., f/k/a)
 Source One Communities, LLC,)
 a/k/a Source One Signature)
 Communities, James R. Charlton))
)
 Third Party Defendants.)
)
)
 _____)

TO: PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY OF RECORD,
 CHARLES T. SMITH, ESQUIRE:

The Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens amending their answer to Plaintiffs' Complaint, would respectfully show unto this Honorable Court and allege as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Complaint unless specifically admitted, qualified or explained hereinbelow, and further allege:
2. Defendants admit the allegations of Paragraphs 1 and 14.
3. The Defendants admit so much of paragraph 2 as alleges that they are residents of Horry County, South Carolina. Defendants lack knowledge or information with which to form a belief as to the remaining allegations of paragraph 2 wherefore they deny same and demand strict proof thereof.

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4. Defendants lack knowledge or information with which to form a belief or opinion as to the matters alleged in paragraphs 3, 8, 9, 10, 11, 12, 13, 15, and 16 of the Complaint, wherefore they deny same and demand strict proof thereof.

5. Defendants admit so much of paragraph 4 as alleges matters consistent with the promissory note referred to therein, a copy of which is attached to the Complaint. Defendants deny the remaining allegations of paragraph 4 and demand strict proof thereof.

6. Defendants admit so much of paragraph 5 as is or may be consistent with the subject mortgage, and the public records of Georgetown County. Defendants deny the remaining allegations of paragraph 5 and demand strict proof thereof.

7. Defendants admit so much of paragraph 6 as alleges matters consistent with the subject mortgage and matters of public record of Georgetown County. Defendants deny the remaining allegations of paragraph 6 and demand strict proof thereof.

8. Defendants admit so much of paragraph 7 as is or may be consistent with the terms of the subject note and mortgage. Defendants deny the remaining allegations of paragraph 7, and demand strict proof thereof.

JURISDICTION AND VENUE AS TO COUNTERCLAIMS,
CROSS-CLAIMS AND THIRD PARTY COMPLAINT

9. Defendants affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

10. Plaintiffs Bonnie N. Charlton and Ronald L. Charlton are citizens and residents of the County of Georgetown, State of South Carolina. Plaintiff Bayside
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Property, Inc., is a corporation organized and existing under the laws of the State of South Carolina, having its principal place of business situate within the County of Georgetown, State of South Carolina.

11. Upon information and belief, Third Party Defendant, Ronald L. Charlton ("TPD Charlton") is a resident of the County Georgetown, State of South Carolina. TPD Charlton was a party Seller to the Contract, and subsequent amendments, for the sale of the subdivision property to South Bay.

12. Defendants John Steven Goodwin and Louise C. Goodwin (son and mother), are residents of the County of Horry, State of South Carolina. Defendants are owners as joint tenants with right of survivorship of Lot 160, Harbor Club on Winyah Bay, by virtue of a General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and filed in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 688, at Page 45. Said Defendants' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

13. Upon information and belief, Third Party Defendant Landquest Development, LLC ("Landquest") is a limited liability company established pursuant to the laws of another state, but all times relevant hereto was authorized to do business in the State of South Carolina, and is or was doing business in Georgetown County, South Carolina.

14. Third Party Defendant Kyle V. Corkum ("Corkum"), upon information and belief, is a resident of the State of North Carolina.

15. Cross Defendant South Bay Properties, LLC ("South Bay"), upon information and belief, is a limited liability company formed and existing pursuant to the laws of North Carolina, but all times relevant hereto was and is authorized to do business in this State, and is or was doing business in Georgetown County, South Carolina.

16. Upon information and belief, Third Party Defendant, C. R. Thompson and Sons, LLC ("CRT") is a limited liability company formed and existing pursuant to the laws of the State of South Carolina, and doing business in Georgetown County, South Carolina.

17. Third Party Defendant City of Georgetown ("City") is a municipality and governmental entity organized and existing pursuant to the laws of the State of South Carolina, and exists within Georgetown County, South Carolina.

18. Third Party Defendant Hartford Casualty Insurance Company ("Hartford Casualty") is a corporation organized and existing under the laws of the State of

Indiana. At all times relevant herein, Defendant Hartford Casualty was authorized to do and was doing business in Georgetown County, South Carolina.

19. Upon information and belief, Third Party Defendant Hartford Fire Insurance Company ("Hartford Fire") is a corporation organized and existing under the laws of the State of Connecticut. At all times relevant herein, the Defendant Hartford Fire was authorized to and was doing business in Georgetown County, South Carolina.

20. Third Party Defendant National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities ("Source One"), upon information and belief, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal office in Georgetown County, South Carolina.

21. The subdivision which forms the subject matter of this action is situate and located within Georgetown County, South Carolina, known and designated as "Harbor Club on Winyah Bay" ("the Subdivision"). The Subdivision is situate upon approximately 79.866 acres contiguous with and bounded along portions of its eastern boundary by Winyah Bay, and is more fully described as follows:

ALL those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, containing a "Total Area = 79.866 Acres," which is comprised of "HOA/Wetlands Area = 33.120 Acres," "Lot Area = 34.870 Acres," and R/W Area = 11.876 Acres," said property being further shown and delineated on a plat entitled "FINAL BONDED SUBDIVISION PLAT SHOWING THE PLANTATION @ WINYAH BAY, 79.866 ACRES PREPARED FOR LANDQUEST", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Page 1 – 10 in the Office of the Register of Deeds for Georgetown County, South Carolina, said property having such metes,

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bounds, courses and distances as will more fully appear by reference to the aforesaid map, which map is incorporated herein by reference.

22. All transactions, occurrences, acts and omissions alleged and complained of herein, transpired and occurred within Georgetown County, South Carolina, and/or were directly related to the Subdivision located within Georgetown County, South Carolina.

23. The parties and the subject matter of this action are within the jurisdiction of this Court.

24. Venue is proper in Georgetown County, South Carolina.

**FACTUAL ALLEGATIONS, UNDERLYING SUBSEQUENT DEFENSES,
COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD PARTY COMPLAINT**

25. Defendants/Third Party Plaintiffs, Goodwin and Owens, (hereinafter "Third Party Plaintiffs") affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

26. Upon information and belief, at all times relevant hereto, Corkum is and has been the Manager-Member of both Third Party Defendant Landquest ("Landquest") and Cross-Defendant South Bay ("South Bay").

27. Upon information and belief, at all times relevant hereto, Landquest and South Bay have been managed and controlled by Corkum.

28. Upon information and belief, at the direction and control of Corkum, Landquest entered into a Joint Venture Agreement with Third Party Defendant CRT ("CRT"), dated July 3, 2006, for the purpose of evaluating, conducting due diligence, conducting financial analysis and feasibility studies, and thereafter financing, acquiring,

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developing, designing, permitting, constructing, marketing and selling four (4) specific real estate developments, including the Subdivision identified herein.

29. Upon information and belief, Corkum and CRT utilized Landquest for the purpose of conducting initial evaluations, financial analysis and feasibility studies, and to negotiate the acquisition and financing for the acquisition of the property. On further information and belief, CRT and/or Corkum thereafter personally, or through Landquest, conducted all due diligence investigations, and arranged for necessary surveys, final planning, permitting, construction, marketing, and sale of the Subdivision.

30. Upon information and belief, Corkum, Landquest and CRT formed, or caused to be formed, in accordance with the Landquest-CRT Joint Venture Agreement, Cross-Defendant South Bay, on or about June 29, 2006, for the purpose of owning, holding, and conveying lots in the Subdivision to ultimate purchasers, including but not limited to the Third Party Plaintiffs herein.

31. At all times relevant hereto, South Bay was and is the designated owner and "developer" of the Subdivision.

32. Upon information and belief, at all times relevant hereto, South Bay has possessed inadequate capital and financial resources to perform its obligations as represented and undertaken, and its contractual obligations and duties to Third Party Plaintiffs, as described more fully herein below.

33. Upon information and belief, Corkum has utilized the assets and resources of Landquest, in addition to the pledge of his personal assets and resources, in conjunction with the assets and resources of CRT as joint venturer, and other third

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parties, to create the perception that South Bay had the necessary capital and financial ability to perform and complete its obligations for the acquisition of the Subdivision, and its obligations to the Third Party Plaintiffs herein and other lot purchasers, as described more fully herein below.

34. On or about August 14, 2006, upon information and belief, South Bay, by and through its manager Corkum, utilizing the assets and resources of Corkum, Landquest and CRT, and other third parties, as alleged hereinabove, entered into a contract with Plaintiffs and TPD Charlton, for the purchase of the Subdivision for the sum of Twenty Million and 00/100 Dollars (\$20,000,000.00). This Purchase Contract was subsequently amended on January 23, 2007, and again on May 9, 2007 (collectively referred to as the "Purchase Contract").

35. Upon information and belief, prior to September 17, 2007, Plaintiffs and Third Party Defendant Charlton were informed by Corkum that South Bay's development loan commitment had been withdrawn, and there were no funds available, therefore for South Bay to either complete the purchase of the Subdivision, or to construct infrastructure and amenities in the Subdivision.

36. Corkum, individually and as an authorized agent for South Bay, Landquest, CRT, and Source One, tendered the decision to Plaintiffs and Third Party Defendant Charlton, whether to rescind/and cancel all existing contracts, and refund all deposits, or to proceed with the scheduled closings in order to fund the purchase of the Subdivision by South Bay, in conjunction with South Bay's Promissory Note and Mortgage to secure the balance of the purchase price.

37. In response to the foregoing notice and tender of decision, Plaintiffs and Third Party Defendant Charlton made the decision to proceed with the scheduled closings.

38. Third Party Plaintiffs are informed and believe that on the basis of the foregoing facts and circumstances, and the degree of control retained by them under the Contract, and ceded to them by South Bay, Landquest, Corkum, CRT, and Source One, Plaintiffs and TPD Charlton were joint ventures with such parties in the development of the Subdivision.

39. South Bay eventually closed the Purchase Contract with the Plaintiffs and TPD Charlton as sellers on or about September 17, 2007, the date of filing of a General Warranty Deed conveying the property to South Bay for the sum of Twenty Million Eight Hundred and Fifty Thousand and 00/100 Dollars (\$20,850,000.00), in Deed Book 686, at Page 90 ("South Bay's Deed"). The unpaid balance of the purchase price was secured by a Mortgage from South Bay to Plaintiffs and TPD Charlton, recorded on the same date, in the sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars (\$14,580,662.92), in Mortgage Book 686, at Page 135 ("South Bay Mortgage").

40. Also on September 17, 2007, following the recording of South Bay's Deed and Mortgage as recited hereinabove, South Bay conveyed twenty-nine (29) lots to various purchasers by General Warranty Deeds recorded on this date, generating total gross lot sale proceeds of Seven Million Nine Hundred Twenty-six Thousand Five Hundred and Fifty and 00/100 Dollars (\$7,926,550.00).

41. The Purchase Contract provided, among other things, that (i) Plaintiffs and TPD Charlton would have unlimited ingress and egress over the Subdivision for the Charltons' own purposes, and that (ii) the Charltons had the right to use the Subdivision, infrastructure and amenities at no cost to the Charltons. This right included use of all amenities, including the clubhouse, and to receive a portion of the boat slips upon completion of the build-out of the marina.

42. Between September 29, 2007 and January 4, 2008, South Bay conveyed twenty-five (25) more lots in the Subdivision to ultimate purchasers, generating additional gross lot sale proceeds of Six Million Eight Hundred Eleven Thousand-Fifty and 00/100 Dollars (\$6,811,050.00), resulting in total gross lot sale proceeds of Fourteen Million Seven Hundred Thirty-seven Thousand Six Hundred and 00/100 Dollars (\$14,737,600.00).

43. Thirty-one (31) lots in the Subdivision were excepted from the lien of South Bay's Mortgage, representing gross lot sale proceeds of Seven Million Seven Hundred Forty-five Thousand Eight Hundred and 00/100 Dollars (\$7,745,800.00).

44. Third Party Plaintiffs are informed and believe that South Bay has invested no capital, funds or other expenditures in or for the Subdivision, with the exception of lot release fees paid to Plaintiffs and Third Party Defendant Charlton.

45. Third Party Plaintiffs are further informed and believe that South Bay's only assets are the remaining 107 unsold, unimproved lots in the Subdivision, less those lots purchased at Tax Sales by Plaintiffs, Third Party Defendant Charlton, and/or Defendant Georgetown County Forfeited Land Commission. Any such lots remaining

vested in South Bay are subject to the lien of South Bay's Mortgage in the original principal amount of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars (\$14,580,662.92).

46. Third Party Plaintiffs are therefore informed and believe that South Bay has, at no time since its purchase of the Subdivision, owned or possessed any equity in the property, or possessed other adequate capital or resources to perform its obligations to Plaintiffs or other lot purchasers in the Subdivision, as described more fully herein below.

47. On or about July 17, 2007, in order to obtain final Plat approval for the Subdivision, thereby enabling South Bay and/or its joint venturers and principals to lawfully sell lots in the Subdivision, South Bay procured the issuance of a "Subdivision Performance Bond" ("Performance Bond"), issued by Hartford Casualty Insurance Company. South Bay is the principal; Hartford Casualty Insurance Company is the surety; and the Third Party Defendant City of Georgetown is the obligee upon the Subdivision Performance Bond, in the principal penal sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars (\$7,882,359.00).

48. Upon information and belief, Hartford Casualty Insurance Company's rights and liabilities under the Performance Bond were subsequently assigned by rider to Hartford Fire Insurance.

49. The purpose of the Performance Bond, in addition to facilitating the Final Subdivision Plat approval, was to assure construction of the infrastructure (roads and utilities) in the Subdivision.

50. Third Party Plaintiffs are informed and believe that South Bay was incapable of obtaining and procuring the issuance of the Performance Bond, and that the Performance Bond was issued by Hartford Casualty, and subsequently by Hartford Fire, in reliance upon a General Indemnity Agreement, executed and delivered by Corkum, South Bay, and six (6) other third parties, on or about July 13, 2007.

51. That Corkum and/or Landquest conducted all due diligence, required and permitted under the Contract for the purchase and development of the Subdivision for themselves, CRT, Plaintiffs and Third party Defendant Charlton.

52. At some date subsequent to August 14, 2006, Landquest, Corkum, CRT, South Bay, Plaintiffs, and Third Party Defendant Charlton, or some combination thereof, selected Third Party Defendants Source One ("Source One") as the sales and marketing agent for the Subdivision, and commenced marketing lots in the Subdivision to prospective purchasers, including but not limited to Third Party Plaintiffs.

53. Upon information and belief, Source One solicited and procured potential and actual purchasers of lots in the Subdivision by providing photographs, artist renderings and allegedly factual information about the ultimate appearance, and expected completion of the infrastructure, facilities, amenities and common areas to be constructed, provided and established in the Subdivision, and regarding the ultimate value thereof, based on information and material provided by Corkum, Landquest, CRT,

South Bay, Plaintiffs, Third Party Defendant Charlton, or some combination thereof, or otherwise approved and ratified by said Plaintiffs, Cross-Defendant, and Third Party Defendants.

54. Third Party Plaintiffs further relied upon Third Party Defendant City's approval of the Final Subdivision Plat, and the Performance Bond upon which TPD City approved same, as assurance and warranty that the Subdivision's infrastructure, in the very least, would be constructed in accordance with representations and covenants made by Corkum, Landquest, CRT, South Bay, Plaintiffs, TPD Charlton, or some combination of one or more of Plaintiffs, Cross-Defendants and Third Party Defendants.

55. Despite such representations and covenants, none of the promised infrastructure, amenities or other such facilities have been commenced or completed in the Subdivision.

56. There has been such an amalgamation of corporate interests, entities and activity so as to blur the legal distinction between Corkum, South Bay, Landquest, CRT, Plaintiffs, Third party Defendant Charlton, and their activities.

**FOR A SECOND DEFENSE AND BY WAY OF FIRST COUNTERCLAIM,
CROSS-CLAIM AND THIRD PARTY COMPLAINT**

**(Breach of Contract/Rescission v. Corkum, Landquest, CRT,
South Bay, Plaintiffs, Third Party Defendant Charlton and Source One)**

57. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

58. All matters alleged herein specifically and exclusively refer to and assert a cause of action for relief from Third Party Defendants Corkum, Landquest, and CRT,

Cross-Defendant South Bay, Plaintiffs, and Third Party Defendants Charlton

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Defendants and Source One, jointly and/or severally, hereinafter referred to as the "Developer Defendants."

59. In response to, and in reliance upon, the marketing efforts, representations, covenants and contractual undertakings of the Developer Defendants and their agents, Third Party Plaintiffs and other third parties executed Reservation Agreements and "Agreement(s) to Buy and Sell Real Estate" ("Purchase Agreements") for various lots in the Subdivision, for various prices, on various dates.

60. Third Party Plaintiffs were induced to execute and enter into the Reservation Agreements and Purchase Agreements based upon the following representations and contractual terms made and entered into by the Developer Defendants and/or their agents, to wit:

- a. At no cost to Third Party Plaintiffs, the Developer Defendants were going to build a turning lane from South Island Road into the Subdivision, as well as roads, water, sewer, electrical service and telephone service to all lots throughout the Subdivision, in accordance with the Final Subdivision Plat;
- b. The Developer Defendants, at no cost to Third Party Plaintiffs, were going to build and provide a Clubhouse, Swimming Pool, a Boathouse and Fishing Pier, as a portion of the common areas and amenities of the Subdivision;
- c. At no cost to Third Party Plaintiffs, the Developer Defendants were going to provide various improvements to the 1.95± acre island, and its connecting pedestrian bridge, which form a portion of the common areas and amenities of the Subdivision;
- d. At no cost to Third Party Plaintiffs, the Developer Defendants were going to provide landscaping throughout the Subdivision to enhance and preserve its aesthetic appearance, as a portion of the common areas and amenities;
- e. The infrastructure and amenity construction would be commenced

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in September, 2007, and was expected to be complete in approximately August, 2008;

- f. The value and marketability of Plaintiffs' lots would increase substantially once the infrastructure and amenities were completed; and,
- g. Third Party Defendant Source One would set aside, or escrow, approximately \$3,700.00 to \$4,000.00 per lot closed, with such funds to be used for the purpose of conducting at least two major re-marketing events, coinciding with completion of the above-referenced infrastructure and amenities, the purpose and result of which would be to assist Third Party Plaintiffs in re-selling their lots at a substantial profit, if they so desired. Therefore, Source One covenanted with Third Party Plaintiffs, and all other lot purchasers, with the knowledge approval of the other Developer Defendants, to escrow \$199,800.00 to \$216,000.00 for such purpose

61. The Developer Defendants, or a combination of one or more of said Defendants, separately or through their authorized agents, represented, covenanted and bound themselves to provide the foregoing infrastructure and amenities to Third Party Plaintiffs and other purchasers in the Subdivision.

62. The Purchase Agreements were, or appeared to be, supported by good and valuable consideration, and were mutually binding and enforceable upon all parties thereto.

63. The representations, covenants, and obligations made and entered into by the Developer Defendants and their agents were express and implied executory terms of the Purchase Agreements, and were specifically intended to and did survive the execution of the Purchase Agreements, and the subsequent execution, delivery and filing of the General Warranty Deeds to various lots which vested title to such lots in Third Party Plaintiffs.

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64. The Third Party Plaintiffs have fully performed all obligations and conditions precedent required of them to render the terms of the parties' Purchase Agreements, and other representations and inducements preceding same, fully enforceable as against one or more of these Plaintiffs, Cross-Defendants, and/or Third Party Defendants.

65. Despite Third Party Plaintiffs' full performance of all obligations required of them under the Purchase Agreements, including without limitation payment of the full purchase price demanded by one or more of the Developer Defendants, together with closing costs and other substantial expenses incurred by each of the Third Party Plaintiffs, and other lot purchasers, said Plaintiffs, Cross-Defendants, and Third Party Defendants have failed and refused to perform any of the obligations, representations, warranties or undertakings made, set forth, and entered into by them. More particularly, the Developer Defendants and Source One have failed to commence, and therefore have not completed, the construction of paved roads providing access to Third Party Plaintiffs lots; water or sewer service lines, or other necessary and appropriate utilities and services to the boundary lines of said lots; or the clubhouse, pool, boathouse, fishing pier, landscaping, or improvements to and around the 1.945± acre island as specifically represented, covenanted and warranted, or set up an escrow account for remarketing efforts.

66. As a direct, proximate and foreseeable result of the Plaintiffs', Cross-Defendants, and/or Third Party Defendants' substantial and unexcused breach of the parties' Purchase Agreements as set forth herein, Third Party Plaintiffs have sustained

foreseeable actual and special damages and loss, including, but not limited to the following:

- a. In that Third Party Plaintiffs have paid and delivered a full and excessive purchase price to said Plaintiffs, Cross-Defendants and Third Party Plaintiffs for their respective lots, and have each undertaken debt and liability for this purpose, far in excess of the actual fair market value of the lots without such infrastructure and amenities;
- b. In that Third Party Plaintiffs have incurred interest, property taxes, closing costs, and other consequential and/or special damages as a result of their closing upon the purchase of their respective lots, and undertaking the debt and liabilities resulting directly therefrom;
- c. In that Third Party Plaintiff's have incurred substantial attorneys' fees and costs herein, in pursuit of recovery of their rights, interests and damages under their Purchase Agreements;
- d. In that the Third Party Plaintiffs have been denied reasonable access to, or any beneficial use of, their individual lots;
- e. In that more than one Third Party Plaintiff has been unable or unwilling to comply with the terms of their purchase money financing, and to pay the monthly costs of such financing, as well as excessive property taxes assessed upon their unimproved and inaccessible lots, resulting in substantial damage to Third Party Plaintiffs' credit, and multiple threats of mortgage and property tax foreclosures, together with assessments of penalties and interest on past due financing and property tax payments;
- f. In that, upon information and belief, no funds were or have been "set aside" or escrowed by Third party Defendant Source One, for the purpose of conducting the two significant re-marketing events as promised and represented, and no such events have been planned or conducted;
- g. In that Third party Plaintiffs' investment is jeopardized by virtue of the Plaintiffs and Third Party Defendant Charlton's apparent right to foreclose on all the property that would constitute the common elements to be located within the Property, which

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would include the roads, easements for utilities, amenities, the marina and the island; and

- h. In such other and further particulars as may be established hereafter.

67. Third Party Plaintiffs are informed and believe that Plaintiffs, Cross-Defendants and Third Party Defendants' breach of their covenants and Purchase Agreements have been so fundamental and substantial that Third Party Plaintiffs are entitled to judgment against the Plaintiffs, Cross-Defendants, and Third Party Defendants, jointly and/or severally, awarding Third Party Plaintiffs complete Rescission of their Purchase Agreements, and restoring them to the status quo ante, immediately prior to the execution of their Reservation Agreements and Purchase Agreements, by Declaratory Judgment and related relief as follows:

- a. Requiring one or more of the Plaintiffs, Cross-Defendants, and/or Third Party Defendants named- herein to refund all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Third Party Plaintiffs, to Third Party Plaintiffs;
- b. Directing and requiring that one or more of the Plaintiffs, Cross-Defendants, and/or Third Party Defendants fully pay and satisfy all purchase money debt incurred by Third Party Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose;
- c. Awarding Third Party Plaintiffs judgment against Plaintiffs, Cross-Defendants, and/or Third Party Defendants in a sum equal to the monetary value of all damage to Third Party Plaintiffs' credit which has or may have occurred as of the date of judgment; upon completion of which, at said Plaintiffs, Cross-Defendants' and/or Third Party Defendants' expense, Third Party Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to such Plaintiffs, Cross-Defendants and/or Third Party Defendants as this Court shall direct;

- d. Awarding Third Party Plaintiffs Judgment for all attorneys' fees and costs incurred by them herein; and,
- e. Awarding Third Party Plaintiffs such other and further relief as may be necessary and appropriate to make Third Party Plaintiffs whole, and to restore them to the status quo ante prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

FOR A THIRD DEFENSE AND BY WAY OF SECOND COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT

(Breach of Contract - Declaratory Relief, Specific Performance and Damages v. Plaintiffs, Cross-Defendant, South Bay, Third Party Defendants, Corkum, Landquest, CRT, Charlton and Source One)

68. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated verbatim, and further allege in the alternative:

69. Without just cause or excuse, the Third Party Defendants Landquest, Corkum, CRT, Cross-Defendant South Bay, Plaintiffs, and Third Party Defendants Charlton and Source One ("Developer Defendants"), or one or more of them, materially and substantially breached the Purchase Agreements, as alleged more fully hereinabove, all to Third Party Plaintiffs' great damage and loss.

70. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, as follows:

- a. Declaring the Developer Defendants to be in material and substantial breach of their obligations under the parties' Purchase Agreements, and other representations, covenants and obligations made and entered into by them;
- b. Requiring the Developer Defendants to specifically perform their covenants and obligations to Third Party Plaintiffs, by immediately commencing and timely completing the construction

of all infrastructure and amenities, in accordance with existing plans; and consistent with the planned exclusive subdivision portrayed by the Developer Defendants and their agents where plans do not exist; the Final Subdivision Plat; and applicable building codes and standards; as alleged more fully hereinabove;

- c. Awarding Third Party Plaintiffs judgment against the Developer Defendants, and Source One jointly and/or severally, in a sum equal to all actual, special and consequential damages incurred by them, together with pre-judgment interest on such sums;
- d. Awarding Third Party Plaintiffs all costs and fees incurred herein, including without limitation a reasonable attorneys' fee; and,
- e. Awarding Third Party Plaintiffs such other and further relief as this Court may deem just and proper.

**FOR A FOURTH DEFENSE AND BY WAY OF THIRD COUNTERCLAIM,
CROSS-CLAIM AND THIRD PARTY COMPLAINT**

(Breach of Contract Accompanied by Fraudulent Acts v.
Third Party Defendants Corkum, Landquest, CRT, Cross-Defendants
South Bay, Plaintiffs, and Third Party Defendant Charlton)

71. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

72. The Developer Defendants have materially, substantially and fundamentally breached their Purchase Agreements with Third Party Plaintiffs, and have defaulted upon the representations, inducements, covenants and warranties given, as alleged more fully hereinabove.

73. The Developer Defendants' breach of contracts were accompanied by fraudulent acts, in the following particulars:

- a. The Developer Defendants made such representations inducements, covenants and warranties regarding their construction and/or delivery of the infrastructure, amenities and other facilities in the Subdivision, for the purpose and with the intent of inducing Third Party Plaintiffs' reliance

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thereon, without securing or depositing into a bona fide escrow account, or otherwise securing and undertaking appropriate and sufficient financial arrangements, to assure completion of same;

- b. The Developer Defendants specifically intended for Third Party Plaintiffs to rely upon such representations, covenants, warranties and contractual obligations, and Third Party Plaintiffs did justifiably rely thereon in electing to proceed with execution and performance of their Purchase Agreements for their respective lots, at grossly inflated and excessive values without such infrastructure, amenities and other facilities in place;
- c. The Developer Defendants, or one or more of them, provided the further assurance of compliance with said representations, covenants, warranties and contractual obligations, by procuring the issuance of a Performance Bond, allegedly assuring the completion of at least the infrastructure in the Subdivision, and pursuant to which the Developer Defendants were enabled and allowed by Defendant City to proceed with the sale and closings upon lots within the Subdivision;
- d. Upon information and belief, the Developer Defendants attempted to avoid and disclaim their duties, responsibilities, obligations and representations, by language contained in their HUD Property Report. However, the Developer Defendants, or one or more of them, instructed, requested or otherwise approved and ratified subsequent representations and "explanations" by Third Party Defendant Source One of the HUD Property Report, which negated, glossed over, and otherwise reassured Third Party Plaintiffs of the Developer Defendants' financial ability to perform their representations; covenants, warranties and contractual obligations, and of the Developer Defendants' intention and ability to do so, as allegedly evidenced by the Hartford Performance Bond;
- e. The Third Party Plaintiffs justifiably relied upon the Developer Defendants' assurances and reassurances, as alleged herein, were entitled to do so, and had no reasonable means of otherwise discovering the Developer Defendants' fraudulent intent, and acted to their detriment in reliance upon such representations and assurances, by electing and deciding to execute and enter into the Purchase Agreements

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for their lots, to expend sums required for the performance of such Purchase Agreements, and to undertake substantial purchase money debt in order to perform such Purchase Agreements, all to Third Party Plaintiffs' great damage and loss;

- f. The Developer Defendants, despite such representations, assurances and reassurances, and despite the fact that one or more of the Developer Defendants, jointly and/or severally, are financially capable of fully performing their obligations to Third Party Plaintiffs, constructed the transaction with Plaintiffs and Third Party Defendant Charlton, and secured the issuance of the Hartford Performance Bond, without having any financial obligation or funds committed to construction of the infrastructure, amenities and facilities of the Subdivision;
- g. Upon information and belief, the Developer Defendants, or one or more of them, intentionally refrained from undertaking any financial obligation or commitment for the construction of infrastructure, amenities and other such facilities, because of their perception of a pending real estate, and real estate financial market crisis, and the Developer Defendants objectively intended, at the time of closing upon the sale of lots to Third Party Plaintiffs, to repudiate, deny and avoid any obligation for the construction and provision of such infrastructure, amenities and related facilities;
- h. The Developer Defendants, or one or more of them, were therefore aware at the time of such closings, that Third Party Plaintiffs' lots were grossly over-valued, and that the Developer Defendants had received far in excess of the actual fair market value of such lots, in the absence of said infrastructure, amenities and related facilities, which the Developer Defendants had then decided not to construct and/or provide;
- i. The Developer Defendants have not commenced or completed construction of any infrastructure, amenities or related facilities in the subdivision, despite their representations, warranties and assurances that such construction would commence in or about September, 2007, and thereafter representing that such construction would commence in or about January, 2008, and in both Instances such construction would be complete in or about August, 2008;

- j. The Developer Defendants' representations, inducements, covenants and warranties were material and fundamental, and were false and deceptive as recited herein; such material and false representations were made by the Developer Defendants for the purpose of invoking and inducing Third Party Plaintiffs' reliance thereon; that Third Party Plaintiffs justifiably relied thereon, and had no reason to disbelieve or reasonable ability to discover the falsity of such representations; that Third Party Plaintiffs did in fact rely upon such representations to their detriment; and, as a direct and proximate result of such materially false and deceptive misrepresentations and the Developer Defendants breach of their resulting duties, obligations and covenants, Third Party Plaintiffs have been severely and egregiously damaged, as recited more fully hereinabove.

74. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Plaintiffs, Cross Defendant South bay, and Third Party Defendants Corkum, Landquest, CRT, Charlton and Source One, jointly and/or severally, for all actual and punitive damages sustained herein.

**FOR A FIFTH DEFENSE, AND BY WAY OF FOURTH
COUNTERCLAIM, CROSS-CLAIM,
AND THIRD PARTY COMPLAINT**

(Violation of S.C. Unfair Trade Practices Act vs. Third Party Defendants
Corkum, Landquest, CRT, Charlton, Source One,
Cross Defendant South Bay and Plaintiffs)

75. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

76. Third Party Defendants Corkum, Landquest, and CRT and Cross-Defendant South Bay, at all times relevant hereto, have held themselves out as experts, and have engaged in business with Third Party Plaintiffs and the public at large in the field of real estate development, marketing and sales. Plaintiffs and Third Party

Defendant Charlton, by virtue of their joint venture status as a Developer Defendant, are vicariously liable for the acts and omissions of the other Developer Defendants.

77. At all times relevant hereto, the Third Party Defendant Source One has held itself out as an expert, and has engaged in business with Third Party Plaintiffs and with the public at large in the field of real estate marketing and sales.

78. The Developer Defendants named herein have solicited and procured Third Party Plaintiffs' reliance upon their expertise, integrity and abilities, as alleged more fully hereinabove, and have thereby procured Third Party Plaintiffs' Purchase Agreements and performance of same for the purchase of various lots in the Subdivision, as alleged more fully hereinabove.

79. That the Developer Defendants' acts and omissions, in breach and violation of their representations to and agreements with Third Party Plaintiffs, as alleged more fully hereinabove, constitute unfair or deceptive acts in the conduct of trade or commerce, as provided in the South Carolina Unfair Trade Practices Act [S.C. Code Ann. §§ 39-5-10, et seq. (1976 as amended).] ("the Act").

80. The Developer Defendant and Source One's acts and omissions, as alleged more fully hereinabove, are capable of, and have the potential to be repeated, to the damage of the general public and contrary to the public interest and principles of good faith and fair dealing in the conduct of trade and commerce.

81. Third Party Plaintiffs are therefore informed and believe that the Plaintiffs, Cross-Defendant South Bay, Third Party Defendants Corkum, Landquest, CRT, Source

One and Charlton, or one or more of them, have negligently, willfully and recklessly violated the terms and provisions of the Act.

82. That as a direct and proximate result of such Developer Defendants' negligent, willful, and reckless violation of the Act, Third Party Plaintiffs have sustained financial damage and property loss, as alleged more fully hereinabove.

83. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, for all actual damages, treble damages, and attorneys' fees, in accordance with the Act.

**FOR A SIXTH DEFENSE AND BY WAY OF FIFTH COUNTERCLAIM,
CROSS-CLAIM AND THIRD PARTY COMPLAINT**

(Negligent Misrepresentation v. Third Party Defendants Corkum,
Landquest, CRT, Source One, Charlton, Cross Defendant South Bay,
and Plaintiffs)

84. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

85. The Developer Defendants, jointly and/or severally, made false representations to Third Party Plaintiffs, as alleged more fully hereinabove. Such false representations included:

- a. Defendant South Bay would construct and provide, at no cost to Plaintiffs, the infrastructure, amenities and other related facilities described hereinabove;
- b. the Hartford Performance Bond provided assurance that at least the infrastructure would be constructed and provided; construction of the infrastructure, amenities and related facilities would be complete in or around August, 2008;

d. Third Party Plaintiffs' lots would be worth substantially

more than their purchase price, upon completion of the infrastructure, amenities and related facilities;

- e. Third Party Defendant Source One would "set aside", or escrow, \$3,700.00 to \$4,000.00 per lot closing, for the purpose of funding two significant re-marketing events, the first of which would be scheduled to occur in August or September, 2008, for the purpose of assisting those Third Party Plaintiffs and other lot purchasers who so desired in re-selling their lots at a substantial profit.

86. The Developer Defendants, jointly and/or severally, had a pecuniary interest in making these false representations to Third Party Plaintiffs, thereby inducing Third Party Plaintiffs to enter into and perform their Purchase Agreements for their various lots.

87. The Developer Defendants, jointly and/or severally, owed Third Party Plaintiffs a duty of care to assure that truthful information was conveyed to Third Party Plaintiffs regarding their ability to perform as represented, covenanted and undertaken by them in their various contracts with Third Party Plaintiffs.

88. The Developer Defendants, jointly and/or severally, negligently, carelessly, recklessly and willfully breached their duties to Third Party Plaintiffs, and failed either consciously or negligently, to ensure that truthful and accurate information was conveyed to Third Party Plaintiffs regarding these material issues of fact.

89. The Third Party Plaintiffs justifiably relied on the Developer Defendants' representations, having no reason to doubt or suspect that the Developer Defendants and Source One were incapable of performing, or lacked the integrity and financial commitment or obligation to compel them to perform as represented, covenanted and undertaken.

90. As a direct and proximate result of Third Party Plaintiffs' reliance upon such false and material misrepresentations, and said Developer Defendants failure to perform such obligations, covenants and representations, Third Party Plaintiffs have been severely and egregiously damaged as alleged more fully hereinabove.

91. Third Party Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

FOR A SEVENTH DEFENSE AND BY WAY OF
SIXTH CROSS-CLAIM AND THIRD PARTY COMPLAINT
(Actual Fraud/Constructive Fraud v. Third Party Defendants Corkum,
Landquest, CRT, and Source One, and Cross-Defendant South Bay)

92. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

93. Third Party Defendants, Corkum, Landquest, CRT and Source One, and Cross-Defendant South Bay, or one or more of them, by and through their principals and agents, made the representations set forth more fully hereinabove, all of which were material and were false.

94. Said Third Party Defendants and Cross-Defendant knew or should have known of the falsity of said representations at the time they were made, or made such representations in reckless disregard of their falsity.

95. Said Third Party Defendants and Cross-Defendant made such representations with the intent and purpose that they be acted upon by Third Party Plaintiffs as true.

96. Third Party Plaintiffs were ignorant of the falsity of the said Third Party Defendants' and Cross-Defendants' representations, had no reason to doubt the veracity of such representations, and had no means of reasonably discovering their falsity. Third Party Plaintiffs were therefore entitled to rely upon the truth of such representations, and did in fact rely upon the truth of such representations in executing and performing their respective Purchase Agreements for lots in the Subdivision.

97. That, as a direct and proximate result of the said Third Party Defendants' and Cross-Defendants' actual or constructive fraud in making such false representations, and Third Party Plaintiffs' material change of position in reliance thereon, Third Party Plaintiffs have sustained severe damages and loss, as set forth more fully hereinabove.

98. Third Party Plaintiffs are informed and believe that they are entitled to judgment against said Third Party Defendants and Cross-Defendant, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

**FOR AN EIGHTH DEFENSE AND BY WAY OF SEVENTH
COUNTERCLAIM, CROSS CLAIM AND THIRD PARTY COMPLAINT**
(Third Party Beneficiaries/Declaratory Judgment v.
City of Georgetown, Hartford Casualty, Hartford Fire,
South Bay, Landquest, CRT, Plaintiffs and
Third Party Defendant, Charlton)

99. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

100. Upon information and belief, Third Party Plaintiffs were intended beneficiaries of the Subdivision Performance Bond issued by Hartford Casualty and subsequently undertaken by Hartford Fire, as follows:

- a. The Hartford Performance Bond was issued for the purpose of obtaining the Defendant City's approval of the Final Bonded Subdivision Plat;
- b. The Third Party Defendant City's approval of the Final Bonded Subdivision Plat was a condition precedent to the Developer Defendants being authorized to convey title to lots within the Subdivision to ultimate purchasers of said lots, including Third Party Plaintiffs;
- c. Plaintiffs and Third Party Defendant Charlton had to join in and consent to the Final Bonded Plat before it was approved by the Third Party Defendant City and/or Georgetown County before it was recorded;
- d. Third Party Defendant City accepted the Hartford Performance Bond and, in reliance thereon, approved the Final Bonded Subdivision Plat for the Subdivision; and,
- e. The preceding facts were conveyed to Third Party Plaintiffs by the Developer Defendants, whereafter and in reliance whereof, Third Party Plaintiffs proceeded to closing on their respective lots, and discharged their duties and obligations fully under their Contracts to purchase said lots.

101. That Third Party Defendants City and Hartford knew or should have known that Third Party Plaintiffs would rely upon the City's acceptance of the Hartford Performance Bond, and its consequent approval of the Final Bonded Subdivision Plat for the Subdivision, and that Third Party Plaintiffs were entitled to rely thereon in accordance with relevant statutory and municipal code provisions as alleged more fully herein below.

102. Pursuant to Code 1964, §17-16(2), Code of Ordinances, City of Georgetown, the City's planning commission is required to "undertake plans and programs designed to promote public health, safety, morals, convenience, prosperity, or the general welfare ..." In discharging its responsibilities, the planning commission has the power and duty to recommend for adoption regulations for the development of land pursuant to S.C. Code of Laws, as amended, §§6-29-1110 through 6-29-1200.

103. S.C. Code §6-29-1120 states that: The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties or consolidated political subdivisions is authorized for the following purposes, among others:

- (1) to encourage the development of economically sound and stable municipalities and counties;
- (2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; ... and
- (5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

104. S.C. Code §6-29-1180 provides that in: circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond,

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certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

105. S.C. Code §6-29-1120 further states that the: Owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records....

106. Upon information and belief, in April, 1999, pursuant to the statutory authority granted by S.C. Code §§ 6-29-110-1200, the City enacted Land Development Regulations. The purpose of these Regulations, among other things, was to "assure the timely provision of required street utilities and other facilities and services to new land development." Sec. 102, Land Development Regulations of the City of Georgetown.

107. The Land Development Regulations of the City of Georgetown, in pertinent part, require the following:

- a. Sec. 107: Planning Commission approval and recording of a plat of a subdivision prior to any transfer, sale, agreement to sell, negotiating for sale or advertising for sale of any "land by reference to or exhibition of or by other use of a plat of subdivision of such, and."
- b. Sec. 203.1: Approval of the Final Plat requires certification from the City that "... improvements have been installed to

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the City's satisfaction or that an acceptable technique in lieu of completion of all improvements has been proposed for the subdivision."

- c. Sec. 302.8: "Financial guarantees' as required in Section 502 shall be submitted ... along with the Final Plat. Approval shall not be granted in the absence of such guarantee."
- d. Sec. 500.1: Approval of the Final Plat for recording shall not be given unless "the subdivider has installed ... Improvements as herein specified and required, or has provided a financial guarantee therefore as specified in Section 502."
- e. Sec. 501: Improvements required to be made by every subdivision developer include grading and improving streets and alleys, installing curbs, monuments, sewers, storm water inlets, and water mains.
- f. Sec. 502.1: "Financial Guarantees covering all improvements required by this Ordinance shall be prerequisite to Planning Commission action on the application for Final Plat approval. The subdivider shall submit such guarantees...in accordance with the requirements of this section."
- g. Sec. 502.3: "Prior to completion of any or all required improvements by the subdivides the subdivider may post a performance bond...guaranteeing the completion of said improvements in compliance with the requirements herein..."
- h. Sec. 502.321: The performance bond shall "[r]un to the governing authority or, if applicable, any other governmental unit having legal responsibility for the construction and completion of said improvements."
- i. Sec. 502.324: The performance bond shall specify "that all said required improvements shall be completed in accordance with the requirements of this Ordinance within a period not to exceed one year from the date of posting said bond; provided, however, that the governing authority may, by proper application, for good cause shown, extend the time of completion of all or part of such improvements for such period of time as it deems is in the public interest."

108. Upon information and belief, prior to the closing of the individual lots to Third Party Plaintiffs, the Developer Defendants applied to Third Party Defendant City for approval and/or pre-approval of the Subdivision Plat, and for subsequent closing of sales of lots in the Subdivision to third parties, including Third Party Plaintiffs. At the time that Cross-Defendant South Bay applied to the Third Party Defendant City, it did not own the Property, but rather the Plaintiffs and Third Party Defendant Charlton did. As a result, Plaintiffs and Third Party Defendant Charlton were either expressly or impliedly co-applicants with Cross-Defendant Defendant South Bay. As required by the Land Development Regulations of the City of Georgetown, on or about July 17, 2007, Cross-Defendants South Bay and Third Party Defendant Hartford Casualty executed the Subdivision Performance Bond for the benefit of the Third Party Defendant City, with Third Party Plaintiffs and other third party lot purchasers and property owners as intended beneficiaries thereof, in the sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars (\$7,882,359.00) to guarantee the completion of required improvements and site infrastructure, specifically roads and utilities, for the Subdivision within one year.

109. The Performance Bond, which was executed by a Power of Attorney, may or may not have been assigned by rider, also executed by a separate Power of Attorney, to Third Party Defendant Hartford Fire.

110. Upon the submission of the Bond, the Final Plat was approved by the City and recorded.

111. Third Party Plaintiffs are informed and believe that the amount of the Bond was necessarily determined by Third Party Defendant City in reliance upon specific, and adequately complete, plans and specifications for the required infrastructure and site improvements, and/or by specific bids and/or contracts for such work by third party contractors, as submitted to Third Party Defendant City by the Developer Defendants.

112. Thereafter, upon information and belief, the Developer Defendants sold fifty-four (54) lots in the Subdivision to various third parties, including Third Party Plaintiffs.

113. As part and parcel of their fee simple ownership interest in their respective lots, Third Party Plaintiffs should have been granted easements for access and egress to and from their lots, and throughout the Subdivision, over and along the roadways depicted and described on the Final Subdivision Plat, as well as the use of all amenities and common areas of the Subdivision which were to be constructed by the Developer Defendants, and the right to assign and convey such easements, rights and interest to subsequent purchasers, and their heirs and assigns. Third Party Plaintiffs should have also been granted the right and beneficial use of all utilities, which were to be constructed and provided by the Developer Defendants to and serving all lots in the Subdivision, including without limitation Third Party Plaintiffs' lots.

114. Third Party Plaintiffs' respective decisions to enter into, execute and perform their obligations under their Purchase Agreements for their respective lots, were made in reliance upon the Developer Defendants' promises and assurances that the Subdivision infrastructure would be completed, as guaranteed by issuance of the

Subdivision Performance Bond and the City's acceptance thereof and its subsequent approval of the Final Subdivision Plat.

115. Such decisions and performance by Third Party Plaintiffs were further made and delivered in reliance upon the Developer Defendants' promises, assurances, representations and contractual covenants to provide all amenities and related facilities as described more fully hereinabove.

116. Third Party Plaintiffs allegedly received permanent easements appurtenant, in perpetuity, for the use of all roads and utilities in the Subdivision, and membership in the Property Owners Association which provided them perpetual and assignable rights to use all amenities and common areas in the Subdivision subject only to payment of appropriate regime fees.

117. Third Party Plaintiffs specifically relied on Third Party Defendant City's approval of the Final Plat and its recording with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements.

118. The prices, terms and conditions of lot sales in the Subdivision, including those lots purchased and closed by Third Party Plaintiffs, were premised on, and conducted in reliance upon, the full development of the Subdivision, and the Developer Defendants' promises, covenants, and assurances that the Subdivision improvements would be completed in a timely fashion.

119. Third Party Plaintiffs' lots purchases and closings were premised upon, and made in reliance of, Defendant City's approval of the Final Plat and its recording

with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements within one year.

120. As of January 1, 2013, no site infrastructure or required improvements as stipulated by Section 501 of the Land Development Regulations of the City of Georgetown had been commenced in the Subdivision.

121. Further, as of January 1, 2013, no amenities or related facilities, as represented, covenanted, and undertaken by the Developer Defendants, had been commenced in the Subdivision.

122. Upon information and belief, Third Party Defendant City has received demands and inquiries from interested parties with standing, requesting that the City enforce the Performance Bond and/or take action to require or cause the Developer Defendants to perform the required improvements and install the site infrastructure, but Third Party Defendant City has taken no action thereon, or has otherwise refused to prosecute its action to enforce the Performance Bond and the Developer Defendants obligations to perform in a timely fashion, or at all.

123. Upon information and belief, pursuant to the referenced statutes, ordinances and regulations, and the terms and conditions of the Performance Bond, the required improvements and site infrastructure in the Subdivision must be commenced and completed in a timely manner.

124. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal duties and obligations to Third Party Plaintiffs specifically, and to the public generally, and whether and to what extent under the facts, law and

circumstances described above, Third Party Defendant City is bound to notify Third Party Defendants Hartford of Defendant Developers' failure to perform, and/or demand that Third Party Defendants Hartford pay to Third Party Defendant City the bonded sum for Defendant Developers' failure to start and complete the required improvements and site infrastructure.

125. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, Third Party Defendant City is now required itself to timely undertake and complete the required improvements and site infrastructure at the Subdivision in light of Defendant Developers' failure to start or complete the work.

126. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, Third Party Defendant City is permitted to extend, and for how long, the time of completion for the benefit of Defendant Developers and/or Third Party Defendants Hartford of all or part of such required improvements and site infrastructure.

127. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant City's legal obligations and duties to Third Party Plaintiffs specifically, and to the public generally, and whether and to what extent under the facts, law and circumstances described above, Third Party Defendant City has abused, or failed to

properly exercise its discretion by failing to take, or failing to prosecute, appropriate and timely action to compel completion of the required infrastructure and site improvements by the Developer Defendants, or to enforce the Performance Bond and complete such infrastructure and site improvements itself.

128. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendants Hartford's legal duties and obligations to Third Party Defendant City and Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances, Third Party Defendants Hartford's Rider and the attendant Power of Attorney purportedly assigning the Bond from Hartford Casualty Insurance Company to Hartford Fire Insurance Company are valid and enforceable, and as such, which Third Party Defendant Hartford is the applicable entity holding and responsible for the Bond.

129. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of Third Party Defendant Hartford's legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances described above, Third Party Plaintiffs are entitled to enforce the Bond and demand Third Party Defendant Hartford pay to Third Party Defendant City the bonded sum for Defendant Developers' failure to start or complete the required improvements and site infrastructure.

130. S.C. Code §15-53-30 entitles Third Party Plaintiffs to a declaration of the Developer Defendants' legal duties and obligations to Third Party Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and

circumstances described above, the Developer Defendants have violated their obligations regarding the required improvements, site infrastructure, amenities and related facilities.

131. Third Party Plaintiffs are informed and believe that the declaratory relief sought by them herein will terminate the controversies among the parties to this action with respect to the required infrastructure and site improvements in the Subdivision, and will remove the uncertainties with respect to these issues. Further, the declaratory relief sought by Third Party Plaintiffs herein will partially mitigate Third Party Plaintiffs' damages to which Third Party Plaintiffs otherwise claim entitlement.

132. Third Party Plaintiffs are informed and believe that there is no adequate remedy at law with respect to these issues, except by way of the relief provided by the declaratory judgment statutes aforesaid, with respect to the Developer Defendants' obligations, and Third Party Plaintiffs' rights and interest therein, to build and provide the requisite infrastructure and utility services and related improvements in the Subdivision.

133. Further, Third Party Plaintiffs are entitled to recovery of their costs and attorneys fees in the present declaratory judgment action.

**FOR A NINTH DEFENSE, AND BY WAY OF EIGHTH COUNTERCLAIM,
CROSS-CLAIM AND THIRD PARTY COMPLAINT**

(Violation of Interstate Land Sales Full Disclosure Act - Damages v.
Third Party Defendants Corkum, Landquest, CRT, Charlton and
Source One, Cross Defendant South Bay, and Plaintiffs)

134. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

135. The Developer Defendants are "developers" of the Subdivision as defined by the Interstate Land Sales Full Disclosure Act ("ILSFDA") 15 USCA § 1701 et seq.

136. The Third Party Defendant Source One is an "agent" of the Project as defined by the ILSFDA. This Defendant represented and acted for the Developer Defendants in both marketing and selling of lots and has engaged in such behavior before, during and after the sale of the lots.

137. The Third Party Plaintiffs constitute "purchasers" as defined by the ILSFDA.

138. The Subdivision is a "subdivision" as defined by the ILSFDA, as it contains more than one hundred (100) lots.

139. The lots within the Subdivision were offered and marketed under a common promotional plan as defined by the ILSFDA.

139. The Subdivision is subject to the ILSFDA, including, without limitation, the marketing and sale of lots therein.

140. As described above, each of the Third Party Plaintiffs entered into Purchase Agreements to purchase lots within the Subdivision. At the time of sale, each such lot was titled in the name of South Bay.

141. As required by the ILSFDA, a Property Report was presented to the Third Party Plaintiffs at the time each Purchase Agreement was signed and the sale was made with such report being a part of the transaction. Each of the Third Party Plaintiffs has closed on the purchase of his, her or their respective lot.

142. The Third Party Defendant Signature One acted as either developer or agent in consummating the sale of the lots.

143. The lots were marketed and sold by the Developer Defendants for the purpose of building residential dwellings on the lots.

144. The Developer Defendants and Signature One knew, or should have known, at the time of the sale and the presentation of the Property Report, that the lots were not useable for the purpose for which they were sold and that certificates of occupancy could not have been obtained for a dwelling constructed on such lots and still cannot be obtained for such purpose.

145. The Property Report presented by the Developer Defendants to Third Party Plaintiffs, and required by the United States Department of Housing and Urban Development ("HUD"), contains misrepresentations of fact and omitted material facts, all contrary to the provisions of the ILSFDA. Specifically, the Property Report misrepresented or omitted the following:

- a. The name of the Subdivision; to-wit: Plantation at Winyah Bay.
- b. At the time the Third Party Plaintiffs closed on their respective lot purchases, the Property Report misrepresented the escrow agent holding escrow funds;
- c. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that an occupancy permit to occupy a house could not be issued until the Subdivision was completed and accepted by the Third Party City of Georgetown.
- d. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Charltons held and hold a reversionary interest in a 1.945 acre tract, being a portion of the Subdivision, now known as

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Harbor Club on Winyah Bay.

- e. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Plaintiffs held and hold a mortgage on the Subdivision less and excepting lots 21, 44, 45, 46, 57, 58, 85, 89, 90, 91, 92, 93, 95, 98, 104, 105, 110, 112, 113, 117, 118, 140, 149, 151, 153, 154, 155, 157, 158, 159, and 160; said mortgage encumbering all land considered common areas, as well as all land being designated for streets and rights of way, and land required for utility easements, and land to be held in the name of Harbor Club on Winyah Bay Homeowners Association.
- f. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Harbor Club on Winyah Bay required authorization from the U.S. Army Corps of Engineers and through the U.S. Army Corps of Engineers, approvals from South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resources Management ("OCRM") for permits issued by the U.S. Army Corps of Engineers under Section 10 and Section 404.
- g. At the time Third Party Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Defendant Defendants had or needed to request (and later requested), a permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) Section 401 of the Clean Water Act (33 U.S.C. 1344), and the South Carolina Coastal Zone Management Act (S.C. Code Ann. § 48-39-10 et seq.) to enlarge an existing docking facility into a community marina containing fifty-six (56) slips in Winyah Bay, at Plantation at Winyah Bay a/k/a Harbor Club at Winyah Bay, Georgetown, Georgetown County, South Carolina.

146. The Developer Defendants failed to file amendments to the Property Report, as required by law, when material changes occurred.

147. The Developer Defendants failed to keep Third Party Plaintiffs advised concerning additional liens and encumbrances being placed on the Subdivision.

148. The Purchase Agreements executed by the Third Party Plaintiffs did not contain the language required by ILSFDA found in 15 U.S.C.A. §1703.

149. The acts and omissions of the Developer Defendants constitute devices, schemes or artifices to defraud, all of which are prohibited by ILSFDA.

150. On information and belief, the lots purchased by the Third Party Plaintiffs are, at present, of little or no value.

151. Third Party Plaintiffs are informed and believe that the Developer Defendants' violation of ILSFDA entitle the Third Party Plaintiffs to:

- a. Judgment against the Plaintiffs, Cross Defendant South Bay, and Third Party Defendants Corkum, Landquest, CRT, Source One and Charlton, jointly and severally, for actual, compensatory, consequential, and punitive damages to be determined by a jury;
- b. Pre-judgment and post-judgment interest on the damages awarded according to law;
- c. Attorneys fees and the costs and expenses of litigation; and
- d. Such further and other relief as may be deemed necessary and appropriate to make the Third Party Plaintiffs whole and that this Court deems just and proper.

**FOR A TENTH DEFENSE, AND BY WAY OF NINTH
COUNTERCLAIM, CROSS-CLAIM
AND THIRD PARTY COMPLAINT**

(Violation of Interstate Land Sales Full Disclosure
Act - Rescission v. Third Party Defendants Corkum, Landquest,
CRT, Source One, Charlton, Cross Defendant
South Bay, and Plaintiffs)

152. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

153. In response to, and in reliance upon, representations, covenants and contractual undertakings of Cross Defendant South Bay, Third party Defendants Landquest, Corkum, CRT, Charlton, Source One, Cross Defendant South Bay, and Plaintiffs, and their agents, each of the Third Party Plaintiffs executed Purchase Agreements for the lots upon which they ultimately closed.

154. Pursuant to the ILSFDA, the Third Party Plaintiffs are entitled to rescission of their purchases and a refund of the purchase price and all incidental and consequential costs related to their purchase of lots including, without limitation, reimbursement for property taxes, attorney's fees and related costs and expenses.

155. The Third Party Plaintiffs are informed and believe that the said Third Party Defendants', Cross Defendants' and Plaintiffs' violations of ILSFDA entitle the Third Party Plaintiffs to judgment against the said Third Third Party Defendants; Cross Defendant and Plaintiffs, awarding Third Party Plaintiffs' complete rescission of their Purchase Agreements and restoring them to the status quo ante immediately prior to the execution of their Purchase Agreements and related relief as follows:

- a. Requiring one or more of the said named Plaintiffs, Cross Defendant, and/or Third party Defendants to refund to the Third Party Plaintiffs all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Third Party Plaintiffs;
- b. Directing and requiring that one or more of the said Third Party Defendants, Cross-Defendant and Plaintiffs fully pay and satisfy all purchase money debt incurred by Third Party Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose; awarding Third Party Plaintiffs judgment against the said Third Party Defendants, Cross-Defendant and Plaintiffs in a sum equal to the monetary value of all damage

to Third Party Plaintiffs' credit which has or may have occurred as of the date of judgment; upon completion of which, at said Third Party Defendants', Cross Defendant's and Plaintiffs' expense, Third Party Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to the said Third Party Defendants, Cross Defendants and or Plaintiffs, as this Court shall direct;

- c. Directing and requiring that the lenders satisfy, release or cancel all debt obligations incurred by the Third Party Plaintiffs.
- d. Awarding Third Party Plaintiffs judgment for all attorneys' fees and costs incurred by them herein; and,
- e. Awarding Third Party Plaintiffs such other and further relief as may be necessary and appropriate to make Third Party Plaintiffs whole, and to restore them to the status quo ante prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

**FOR AN ELEVENTH DEFENSE, AND BY WAY OF TENTH
COUNTERCLAIM, CROSS-CLAIM AND
THIRD PARTY COMPLAINT**

(Violation of South Carolina Uniform Land Sales Full
Disclosure Act v. Third Party Defendants Corkum, Landquest,
CRT, Charlton, Source One, Cross Defendant South Bay, and Plaintiffs)

156. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

157. The Developer Defendants and Source One failed to make application and register the Subdivision with the South Carolina Real Estate Commission or its duly authorized assistant or deputy appointed by the Director of the South Carolina Department of Labor.

158. The Third Party Plaintiffs are informed and believe that they are entitled to:

- a. Judgment against the Third Party Defendants Corkum, Landquest, CRT, Source one, Charlton, Cross Defendant

Charlton, et al. vs. South Bay Properties, LLC, et al.

2012-CP-22-00934

Amended Answer, Counterclaims, Cross-Claims, and
Third Party Complaint

South Bay, and Plaintiffs, jointly and severally, for actual compensatory, consequential, and punitive damages to be determined by a jury;

- b. Recover the consideration paid for each lot, together with interest at the rate of six percent per year from the date of payment; property taxes paid, costs and reasonable attorneys fees; and
- c. such further and other relief as that this Court deems just and proper.

**FOR AN TWELFTH DEFENSE AND BY WAY OF ELEVENTH
COUNTERCLAIM, CROSS-CLAIM,
AND THIRD PARTY COMPLAINT**
(Equitable Lien v. Plaintiffs, Third Party Defendant Charlton
and Cross-Defendant South Bay)

159. Third Party Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

160. As alleged above, the Plaintiffs, and Third Party Defendant Charlton, and Cross Defendant South Bay are joint venture partners in the development and sale of lots within the Subdivision.

161. The amalgamation of identities, interests and activities by the Charltons and South Bay has blurred their separate identities rendering them both the developer of the subdivision.

162. The Charltons intended to develop their property contiguous to the Subdivision using, without cost to the Charltons, the infrastructure and amenities, to be constructed by South Bay.

163. The Charltons also knew that South Bay intended to sell lots to purchasers who were promised the installation of infrastructure and amenities, which infrastructure and amenities were going to be used by the Charltons.

164. The Charltons also knew that South Bay's Development loan commitment had been withdrawn, prior to September 17, 2007; that there was no funding available or in place with which to construct the promised infrastructure and amenities; and, that South Bay was willing to rescind and cancel all contracts and scheduled closings, and to refund all deposits. Despite such knowledge, Plaintiffs and Third Party Defendant Charlton made the decision to retain all such contracts and deposits, and proceed with scheduled closings and future closings, for their own substantial profit and gain.

165. The South Bay Deed and the South Bay mortgage should be subject to and inferior to the rights, claims and liens of the Plaintiffs including, without limitation, their claims for damages and the cost, if necessary, of completing the Subdivision.

166. The Third Party Plaintiffs are informed and believe they are entitled to a declaration from this honorable Court that their rights, claims and liens are superior to those of South Bay and the Charltons.

**FOR A THIRTEENTH DEFENSE, AND BY WAY OF TWELFTH
COUNTERCLAIM, CROSS-CLAIM,
AND THIRD PARTY COMPLAINT**

(Civil Conspiracy v. Third Party Defendants Corkum, Landquest, CRT,
Charlton, and Source One, Cross Defendant South Bay,
and Plaintiffs)

167. Third Party Plaintiffs affirm and reallege each and every allegation set forth above, as fully as if repeated herein verbatim, and further allege:

168. The Developer Defendants conspired together to have the Third Party Plaintiffs close on their respective lots by utilization of the acts and omissions on the part Third Party Defendants Landquest, Corkum, Charlton, Source One, Cross Defendant South Bay, and Plaintiffs, as described hereinabove.

169. As a result of these Third Party Defendants', Cross-Defendant's, and Plaintiffs' consummation of the conspiracy by inducing the Third Party Plaintiffs to purchase their respective lots, the Third Party Plaintiffs have been specially damaged including, but not limited to the following:

- a. Credit damage - from closing and undertaking excessive debt for the acquisition of their lots;
- b. Legal fees and costs to rescind, or attain specific performance;
- c. Legal fees and costs to defend property tax assessments and collection at inflated value; and
- d. Lost opportunity to resell, build or otherwise derive benefit from their lots.

170. The Plaintiffs are informed and believe that they are entitled to actual, compensatory, consequential, special and punitive damages against these Third Party Defendants, Cross-Defendant and Plaintiffs.

WHEREFORE, the Plaintiffs pray as follows:

A. As to the First Defense, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One

Communities, LLC, a/k/a Source One Signature Communities, jointly and severally for an Order declaring that these defendants have breached the Purchase Agreements with the Plaintiffs and that the Plaintiffs are entitled to rescission and a refund of all earnest monies, closing costs, interest, property taxes, and such actual and consequential damages and expenses incurred by the Plaintiffs;

B. As to the Second Defense and First Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment of rescission, declaratory relief, and damages sustained therein, together with attorney's fees, costs and pre-judgment interest thereon;

C. As to the Third Defense and Second Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs declaratory relief, specific performance, and judgment for all actual, special and consequential damages sustained, together with attorney's fees, costs and pre-judgment interest thereon;

D. As to the Fourth Defense and Third Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Plaintiffs, Cross Defendant South Bay and Third Party Defendants Corkum, Landquest, CRT, Charlton and Source One, for all actual and punitive damages sustained therein;

E. As to the Fifth Defense and Fourth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Charlton, Source One, Cross-Defendant

South Bay and Plaintiffs, for all actual damages, treble damages and attorney's fees sustained therein;

F. As to the Sixth Defense and Fifth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Source One, Charlton, Cross-Defendant South Bay, and Plaintiffs, for all actual, compensatory and punitive damages sustained therein;

G. As to the Seventh Defense and Sixth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs, judgment against Third Party Defendants Corkum, Landquest, CRT, Source One, and Cross-Defendant South Bay, for all actual, compensatory, and punitive damages sustained therein;

H. As to the Eighth Defense and Seventh Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Cross Plaintiffs declaratory judgment, attorney's fees and costs as sustained therein;

I. As to the Ninth Defense and Eight Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment against Plaintiffs, Cross-Defendant South Bay, and Third Party Defendants Corkum, Landquest, CRT, Source One and Charlton, for all actual, compensatory, consequential and punitive damages, pre and post-judgment interest, attorney's fees and costs sustained therein;

J. As to the Tenth Defense and Ninth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Third Party Plaintiffs judgment of rescission,

declaratory relief, actual and punitive damages, attorney's fees, costs and pre-judgment interest, as sustained therein;

K. As to the Eleventh Defense and Tenth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendants/Cross Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Source One, Charlton, Cross-Defendant South Bay and Plaintiffs, for all actual, compensatory, consequential and punitive damages sustained therein, together with pre and post-judgment interest, attorney's fees and costs;

L. As to the Twelfth Defense and Eleventh Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendant/Third Party Plaintiffs an equitable lien and declaratory relief, finding that Plaintiffs and Third Party Defendant Charlton's mortgage from Cross-Defendant South Bay should be subject to and inferior to the rights, claims, and liens of Defendants/Third Party Plaintiffs herein;

M. As to the Thirteenth Defense and Twelfth Counterclaim, Cross-Claim and Third Party Complaint, awarding Defendant/Third Party Plaintiffs judgment against Third Party Defendants Corkum, Landquest, CRT, Charlton and Source One, Cross-Defendant South Bay, and Plaintiffs for all actual, compensatory, consequential, special and punitive damages sustained therein;

N. Awarding Defendants/Third Party Plaintiffs all attorney's fees, costs and expenses of litigation incurred herein; and

O. Awarding Defendants/Third Party Plaintiffs such other and further relief as this Court may deem just and proper.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2200934

Bonnie N Charlton	Ronald L Charlton	South Bay Properties Llc	Stantec Consulting Services Inc
Bayside Property Inc		Trico Engineering Consultants Inc	Milone & MacBroom Inc
		John Steven Goodwin	Louise C Goodwin
		Thomas I Puckett	Brenda C Puckett
		Robert Nahama	
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: <i>Clerk of Court</i>	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
-------------------------------------	---

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol: Dismissal);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED
GEORGETOWN COUNTY, S.C.
2013 JAN 25 AM 8:37
ALISA WHITE
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:
Motion for Order of Reference by Attorney Smith Granted

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

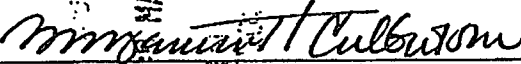
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2148

Judge Code

1/22/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on January 25, 2013, and a copy mailed first class or placed in the appropriate attorney's box on January 25, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Charles T. Smith 608 Cypress Street Georgetown, SC 29440

Wesley Paul Bryant PO Box 421270 Georgetown, SC 29442
John Whitfield Davidson Nexsen Pruet, LLC P.O. Drawer
2426 Columbia, SC 292022426
Byron L Saintsing Smith Debnam Narron Drake & Saintsing
Po Box 26268 Raleigh, NC 27611
K. Douglas Thornton 1025 Third Ave. Conway, SC 29526
Patrick A DiAngelo 1713 Perdez Covey Myrtle Beach, SC
29588
Deborah A DiAngelo 1713 Perdez Covey Myrtle Beach, SC
29588
Samuel David Fleder PO Box 26268 Raleigh, NC 27611

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Alma Y. White - Clerk of Court

Court Reporter *Grace Hurley*

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,

Plaintiffs,

vs.

South Bay Properties, LLC, Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone &
MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama, Jeanne
E. Nahama, Thomas Holland Sharon Louise
Holland, Joyce K. Sobel, Robert W.
Waruszewski, Richard N. Taylor, Robert
K. Spillers (a/k/a Robert Spillers) Deborah
T. Spillers (a/k/a Deborah Spillers), Patrick
A. DiAngelo, Deborah A. DiAngelo, Gary
E. Owens, and Joyce M. Owens, Fount L.
Shults, Lynda M. Shults, Dennis Ridgeway,
Teresa Lynn Ridgeway and Georgetown
County Forfeited Land Commission,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-22-00934

ORDER OF REFERENCE

FILED
GEORGETOWN COUNTY, S.C.
2013 JAN 28 PM 3:43
ALMA Y. WHITE
CLERK OF COURT

This matter came before the Court on motion of Charles T. Smith, attorney for the Plaintiffs, for an Order of Reference. Present in opposition to the motion was K. Douglas Thornton, attorney for the Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens.

This is an action to foreclose a mortgage on real property located in Georgetown County, South Carolina. The Complaint alleges that the Defendant South Bay Properties, LLC made, executed and delivered a promissory note and purchase money mortgage to the Plaintiffs in

September of 2007. South Bay Properties, LLC then created and marketed a development known as Harbor Club on Winyah Bay. Although some of the lots were sold, South Bay Properties, LLC defaulted on the payments due on the promissory note and mortgage and this action seeks to foreclose the mortgage on the lots not sold by South Bay Properties, LLC.

The Defendants Stantec Consulting Services, Inc. f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., and Georgetown County Forfeited Land Commission signed consents to an Order of Reference which are filed herein. The Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, Joyce M. Owens, Patrick A. DiAngelo and Deborah A. DiAngelo answered the Complaint by way of a qualified denial and did not request a jury trial. The Defendants South Bay Properties, LLC, Thomas I. Puckett, Brenda C. Puckett, Robert Nahama, Jeanne E. Nahama, Thomas Holland Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszevskiu, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers, Deborah T. Spillers (a/k/a Deborah Spillers), Fount L. Shults, Lynda M. Shults, Dennis Ridgeway, Teresa Lynn Ridgeway have not answered or otherwise plead to the Complaint and are in default.

On the day of the motion hearing the Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens filed and served Motions to Amend their Answer, and to Reinstate and Consolidate their prior action (C/A No. 2009-CP-22-1045), with the present action. Since the time required by Rule 6(d), SCRCF, had not run, these Motions were not considered by the undersigned. The Goodwins' and Owens' Motion to Amend may be considered by the Master in Equity. Based upon the present pleadings in this action, it appears that this is a proper matter to refer to the Honorable Joe M. Crosby, as Master in Equity for Georgetown County;

NOW, THEREFORE:

IT IS ORDERED that the Defendants South Bay Properties, LLC, Thomas I. Puckett, Brenda C. Puckett, Robert Nahama, Jeanne E. Nahama, Thomas Holland Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers, Deborah T. Spillers (a/k/a Deborah Spillers), Fount L. Shults, Lynda M. Shults, Dennis Ridgeway, Teresa Lynn Ridgeway are in default for failure to plead or otherwise make an appearance within the time prescribed by statute.

IT IS FURTHER ORDERED that the above entitled cause be and the same is hereby referred to the Honorable Joe M. Crosby as Master in Equity for Georgetown County, to take the testimony arising under the pleadings and to make his findings of fact and conclusions of law with authority to enter a final judgment in the cause with any appeal directly to the South Carolina Supreme Court. Nothing herein should be construed as a ruling on the Defendants' Goodwin and Owens recently filed Motions referred to above. These Motions are to be heard and ruled upon by the appropriate Court.

Georgetown, South Carolina

January 28, 2013


Resident Judge,
Fifteenth Judicial Circuit


Master-in-Equity for Georgetown County

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,)

Plaintiffs,)

vs.)

CERTIFICATE OF MAILING

South Bay Properties, LLC, Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone
& MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland
Sharon Louise Holland, Joyce K. Sobel,
Robert W. Waruszewski, Richard N.
Taylor, Robert K. Spillers (a/k/a Robert
Spillers) Deborah T. Spillers (a/k/a Deborah
Spillers), Patrick A. DiAngelo, Deborah A.
DiAngelo, Gary E. Owens, and Joyce M.
Owens, Fount L. Shults, Lynda M. Shults,
Dennis Ridgeway, Teresa Lynn Ridgeway
and Georgetown County Forfeited Land
Commission,)

Defendants.)

I hereby certify that on the 29th day of January, 2013, I mailed copies of the Order of

Reference to:

South Bay Properties, LLC
5511 Capital Center Drive
Suite 105
Raleigh, NC 27606
Defendant

John W. Davidson, Esquire
Nexsen Pruet
Post Office Drawer 2426
Columbia, SC 29202
Attorney for Stantec Consulting Services, Inc.

Bryon L. Saintsing, Esquire
Smith Debnam Attorneys at Law
Post Office Box 26268
Raleigh, NC 27611-6268
Attorney for Milone & MacBroom, Inc.

K. Douglas Thornton, Esquire
Thornton Law Firm, LLC
1025 Third Avenue
Conway, SC 29526

Louise C. Goodwin
501 9th Avenue
Conway, SC 29526
Defendant

Brenda C. Puckett
20207 Mosby Avenue
Bristol, VA 24202
Defendant

Sharon Louise Holland
783 June Drive
Paramus, NJ 07652
Defendant

Robert W. Waruszewski
405 Mountain View Court
Blountville, TN 37617
Defendant

Robert K. Spillers
125 Pine Gate Drive
Greenville, SC 29607
Defendant

Patrick A. DiAngelo
1713 Perdez Covey
Myrtle Beach, SC 29588
Defendant

John Steven Goodwin
865 Castlewood Drive
Conway, SC 29526
Defendant

John M. Leiter, Esquire
Law Offices of John M. Leiter, PA
1203 48th Avenue N, Suite 109
Myrtle Beach, SC 29577

Thomas I. Puckett
20207 Mosby Avenue
Bristol, VA 24202
Defendant

Thomas Holland
783 June Drive
Paramus, NJ 07652
Defendant

Joyce K. Sobel
1954 Hitching Post Lane
Marietta, GA 30068
Defendant

Richard N. Taylor
3545 Chickory Creek Drive
Cumming, GA 30041-2064
Defendant

Deborah T. Spillers
125 Pine Gate Drive
Greenville, SC 29607
Defendant

Deborah A. DiAngelo
1713 Perdez Covey
Myrtle Beach, SC 29588
Defendant

Gary E. Owens
80 Plantation Road
Myrtle Beach, SC 29588
Defendant

Fount L. Shults
106 Ashford Court
Myrtle Beach, SC 29588
Defendant

Dennis Ridgeway
430 Fairforest Lane
Greenville, SC 29607
Defendant

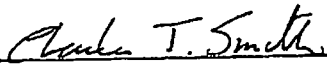
Wesley P. Bryant, Esquire
County Attorney
Post Office Box 421270
Georgetown, SC 29442
Attorney for Georgetown County
Forfeited Land Commission

with sufficient postage attached.

Joyce M. Owens
80 Plantation Road
Myrtle Beach, SC 29588
Defendant

Lynda M. Shults
106 Ashford Court
Myrtle Beach, SC 29588
Defendant

Teresa Lynn Ridgeway
430 Fairforest Lane
Greenville, SC 29607
Defendant



Charles T. Smith

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Bonnie N. Charlton, et al.

☐ Plaintiff

v.

South Bay Properties, Llc, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-22-00934

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Charles T. Smith, Bar No. 5070 Address: 1122 Highmarket Street, Georgetown, SC 29440 phone: 843-546-6131 fax: 843-527-6692 e-mail: charles.smith@coastallaw.net other:		Defendant's Attorney: John M. Leiter, Bar No. 3187 Address: 1203 48 th Avenue North, Suite 109, Myrtle Beach, SC 29577 phone: 843-449-1451 fax: 843-449-4884 e-mail: jleiter@48th.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Reconsideration Estimated Time Needed: 30 minutes Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. February 6, 2013 Date Submitted Signature of Attorney for ☐ Plaintiff / ☒ Defendant			
SECTION III: Motion Fee ☒ PAID-AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>Brooke Cannon</u> ☒ MOTION FEE COLLECTED: \$25 ☐ CONTESTED-AMOUNT DUE: _____ Date Filed: <u>2/11/13</u>			

FILED
GEORGETOWN COUNTY, S.C.
2013 FEB 11 AM 10:37
LMA Y. WHITE
CLERK OF COURT

2/6/13

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L.
Charlton, and Bayside
Property, Inc.,

Plaintiffs,

South Bay Properties, LLC,
et al.

Defendants.

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION

TO: THE ABOVE NAMED PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the Defendants, John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as the Court may set, will move before the Court pursuant to Rule 59(e), SCRCP, for an Order of the Court altering or amending the Order heretofore entered in this matter on January 28, 2013, mailed by Plaintiffs' counsel on January 29, 2013, and received by Defendants' counsel via e-mail on January 29, 2013.

This Motion is based on the following:

1. Defendants Louise Goodwin, Steven Goodwin, Gary Owens, and Joyce Owens are asserting counterclaims in the mortgage foreclosure action brought by the Plaintiffs which they are informed and believe to be compulsory counterclaims. On January 22, 2013, the day of the hearing on the Motion to Refer, the Defendants filed their Motion to Amend Answer to

Charlton, et al. vs. South Bay Properties, LLC
2012-CP-22-00934

Notice of Motion and Motion to Alter/Amend Order of Reference

Page 1

assert counterclaims in this matter as well as having filed their Motion to Reinstate/Restore Complaint and Lis Pendens and to Consolidate Separate Trials in Civil Action No. 2009-CP-22-1045. These two motions were not heard by the Court as they had been filed less than ten days prior to the hearing, and were not yet scheduled for hearing. The two motions referenced above are incorporated herein by reference.

2. With respect to the Defendants' Motion to Amend their Answers in the present case, your movants are informed and believe that they are entitled to a jury trial on the legal issues asserted in their Counterclaims, Crossclaims and Third Party Complaint. This is because there is a logical relationship to the Plaintiffs' claim for the right to foreclose and the Defendants' legal claims challenging the right of the Plaintiffs to foreclose on the property and, further, because an equitable action with compulsory counterclaims asserting legal issues cannot be referred to the Master in Equity for a jury trial on the legal issues.
3. As the movants' Motions are currently now pending before the Court of Common Pleas, by not allowing a consolidation of the actions, there is the distinct possibility of two courts reaching potentially inconsistent outcomes, which would not be judicially economical or in the interest of fairness to all concerned.

This Motion is further supported by the record heretofore made in this matter, together with any and all applicable laws, statutes, rules, regulations, judicial decisions or other matters which may constitute contrary or persuasive authority on any issue

Charlton, et al. vs. South Bay Properties, LLC

2012-CP-22-00934

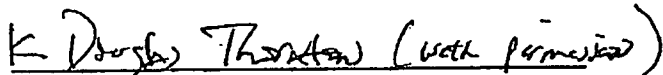
Notice of Motion and Motion to Alter/Amend Order of Reference

Page 2

raised herein, the controlling law, the pleadings and discovery filed in Civil Action No. 2009-CP-22-1045, and such other and further material as the Court may deem appropriate.

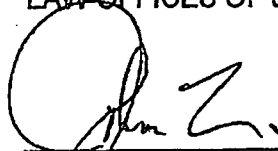
WHEREFORE, these Defendants pray that this Court reconsider its Order allowing this matter to be referred and to further allow the Defendants to amend their Answer and to consolidate the actions.

THORNTON LAW FIRM, LLC

 (with permission)

K. Douglas Thornton
1025 Third Avenue
Conway, South Carolina 29526
Telephone: (843) 488-5858
Facsimile: (843) 488-5859
kdouglasthornton@gmail.com

LAW OFFICES OF JOHN M. LEITER, PA



John M. Leiter
1203 48th Ave. North, Suite 109
Myrtle Beach, South Carolina 29577
Telephone: (843) 449-1451
Facsimile: (843) 449-4884
jleiter@48th.com

ATTORNEYS FOR PLAINTIFFS

Conway, South Carolina
Dated: 2-6-13

Charlton, et al. vs. South Bay Properties, LLC
2012-CP-22-00934

Notice of Motion and Motion to Alter/Amend Order of Reference

Page 3

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L.
Charlton, and Bayside Properties,
Inc.,

Plaintiffs,

vs.

South Bay Properties, LLC,
et al.

Defendants.

CERTIFICATE OF SERVICE

I, Suzy Pettipas, as an employee of the Law Offices of John M. Leiter, PA, certify that a copy of Defendants, John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens' Notice of Motion and Motion for Reconsideration was served upon the below named counsel and/or individuals, on this 6th day of February, 2013, by depositing said document(s) in the U.S. Mail, First Class, with proper postage affixed thereto, and addressed as follows:

Charles T. Smith, Esq.
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
Attorney for Plaintiffs

South Bay Properties, LLC
5511 Capital Center Drive, Suite 105
Raleigh, NC 27606
Defendant

FILED
GEORGETOWN COUNTY, S.C.
2013 FEB 11 AM 10:37
ALMA Y. WHITE
CLERK OF COURT

John W. Davidson, Esquire
Nexsen Pruet
PO Drawer 2426
Columbia, SC 29202
Attorney for Stantec Consulting Services, Inc.

Bryon L. Saintsing, Esquire
Smith Debnam Attorneys at Law
PO Box 26268
Raleigh, NC 27611-6268
Attorney for Milone & MacBroom, Inc.

Brenda C. Puckett
Thomas L. Puckett
20207 Mosby Avenue
Bristol, VA 24202
Defendants

Thomas Holland
Sharon Louise Holland
783 June Drive
Paramus, NJ 07652
Defendants

Joyce K. Sobel
1954 Hitching Post Lane
Marietta, GA 30068
Defendant

Robert W. Waruszewski
405 Mountain View Court
Blountville, TN 37617
Defendant

Robert K. Spillers
Deborah T. Spillers
125 Pine Gate Drive
Greenville, SC 29607
Defendants

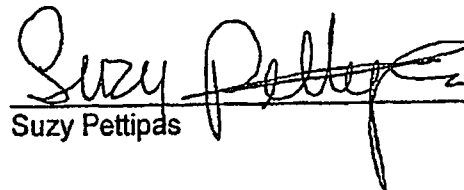
Richard N. Taylor
3545 Chickory Creek Drive
Cumming, GA 30041-2064
Defendant

Patrick A. DiAngelo
Deborah A. DiAngelo
1713 Perdez Covey
Myrtle Beach, SC 29588
Defendants

Fount L. Shults
Lynda M. Shults
106 Ashford Court
Myrtle Beach, SC 29588
Defendants

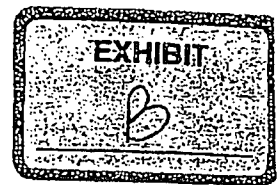
Dennis Ridgeway
Teresa L. Ridgeway
430 Fairforest Lane
Greenville, SC 29607
Defendants

Wesley P. Bryant, Esquire
County Attorney
PO Box 421270
Georgetown, SC 29442
Attorney for Georgetown County
Forfeited Land Commission


Suzy Pettipas

Myrtle Beach, South Carolina

February 6, 2013



FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-22-934

Bonnie N. Charleton, et al.

PLAINTIFF(S)

South Bay Properties, LLC, et al.

DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Motion to Reconsider by the defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens is DENIED. Even though the defendants have a pending Motion to Amend Answer so that they can assert counterclaims, the deadline for requesting a jury trial has expired and, therefore, the defendants have waived their right to a jury trial. See Rules 38(b) and 38(d), SCRPC. See also, King v. Shorter, 291 S.C. 501, 354 S.E.2d 402 (S.C. App. 1987)

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	S N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge
SCRPC Form 4C (12/2011)

2148
Judge CodeFebruary 22, 2013
Date

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Charles T. Smith

K. Douglas Thornton

John M. Leiter

John W. Davidson

Byron L. Saintsing

Wesley P. Bryant

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None

3/7/13

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Bonnie N. Charlton, et al.

☐ Plaintiff

v.

South Bay Properties, Llc, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-22-00934

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Charles T. Smith, Bar No. 5070 Address: 1122 Highmarket Street, Georgetown, SC 29440 phone: 843-546-6131 fax: 843-527-6692 e-mail: charles.smith@coastallaw.net other:	Defendant's Attorney: John M. Leiter, Bar No. 3187 Address: 1203 48 th Avenue North, Suite 109, Myrtle Beach, SC 29577 phone: 843-449-1451 fax: 843-449-4884 e-mail: jleiter@48th.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Reconsideration Estimated Time Needed: 30 minutes Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	Signature of Attorney for ☐ Plaintiff / ☒ Defendant _____ Date submitted <u>March 6, 2013</u> FILED GEORGETOWN COUNTY, S.C. 3 MAR - 7 PM 3:03 ALMA Y. WHITE CLERK OF COURT
CLERK'S VERIFICATION Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11-03)

3/7/13

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L.
Charlton, and Bayside
Property, Inc.,

Plaintiffs,

South Bay Properties, LLC,
et al.

Defendants.

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION

FILED
GEORGETOWN COUNTY, S.C.
2013 MAR -7 PM 3:02
ALMA L. WHITE
CLERK OF COURT

TO: THE ABOVE NAMED PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the Defendants, John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as the Court may set, will move before the Court pursuant to Rule 59(e), SCRPC, for an Order of the Court altering or amending the Order heretofore entered in this matter on February 25, 2013, emailed by the Court and received by Defendants' counsel via e-mail on February 25, 2013.

This Motion is based on the following:

1. The Court erred in stating that the deadline for requesting a jury trial has expired;
and
2. The Court erred by stating that these defendants have waived their right to a jury trial.

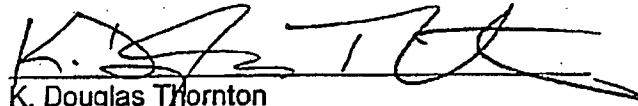
Charlton, et al. vs. South Bay Properties, LLC
2012-CP-22-00934
Notice of Motion and Motion to Alter/Amend Order

Page 1

This Motion is further supported by the record heretofore made in this matter, together with any and all applicable laws, statutes, rules, regulations, judicial decisions or other matters which may constitute contrary or persuasive authority on any issue raised herein, the controlling law, the pleadings and discovery filed in Civil Action No. 2009-CP-22-1045, and such other and further material as the Court may deem appropriate.

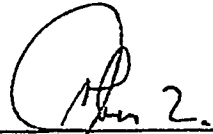
WHEREFORE, these Defendants pray that this Court reconsider its Order allowing this matter to be referred and to further allow the Defendants to amend their Answer and to consolidate the actions.

THORNTON LAW FIRM, LLC



K. Douglas Thornton
1025 Third Avenue
Conway, South Carolina 29526
Telephone: (843) 488-5858
Facsimile: (843) 488-5859
kdouglasthornton@gmail.com

LAW OFFICES OF JOHN M. LEITER, PA



John M. Leiter
1208 48th Ave. North, Suite 109
Myrtle Beach, South Carolina 29577
Telephone: (843) 449-1451
Facsimile: (843) 449-4884
jleiter@48th.com

ATTORNEYS FOR PLAINTIFFS

Conway, South Carolina
Dated: 3/7/13

Charlton, et al. vs. South Bay Properties, LLC
2012-CP-22-00934

Notice of Motion and Motion to Alter/Amend Order

Page 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,

Plaintiffs,

vs.

**ORDER RETURNING ACTION TO
CIRCUIT COURT**

South Bay Properties, LLC, Stantec
Consulting Services, Inc. f/k/a Trico
Engineering Consultants, Inc., Milone
& MacBroom, Inc., John Steven Goodwin,
Louise C. Goodwin, Thomas I. Puckett,
Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland
Sharon Louise Holland, Joyce K. Sobel,
Robert W. Waruszewskiu, Richard N.
Taylor, Robert K. Spillers (a/k/a Robert
Spillers) Deborah T. Spillers (a/k/a Deborah
Spillers), Patrick A. DiAngelo, Deborah A.
DiAngelo, Gary E. Owens, and Joyce M.
Owens, Fount L. Shults, Lynda M. Shults,
Dennis Ridgeway, Teresa Lynn Ridgeway
and Georgetown County Forfeited Land
Commission,

Defendants.

This is an action to foreclose a mortgage on real property located in Georgetown County, South Carolina. The Complaint alleges that the Defendant South Bay Properties, LLC made, executed and delivered a promissory note and purchase money mortgage to the Plaintiffs in September of 2007. South Bay Properties, LLC then created and marketed a development known as Harbor Club on Winyah Bay. Although some of the lots were sold, South Bay Properties, LLC

defaulted on the payments due on the promissory note. This action seeks to foreclose the mortgage on the property not sold by South Bay Properties, LLC.

By an Order of Reference dated and filed January 28, 2013, the Honorable Benjamin H. Culbertson referred this action to the undersigned as Master in Equity for Georgetown County, to take the testimony arising under the pleadings and to make findings of fact and conclusions of law with authority to enter a final judgment in the cause with any appeal directly to the South Carolina Supreme Court.

On the same day Judge Culbertson heard the Motion for an Order of Reference, the Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens filed and served a Motion to Amend Answer. The time required by Rule 6(d), SCRCp, had not run, therefore Judge Culbertson did not consider the Motion to Amend Answer and the Order of Reference provided that the Motion to Amend may be considered by the undersigned.

On February 25, 2013, this action came before the undersigned for consideration of the Motion to Amend. Present were Charles T. Smith, attorney for the Plaintiffs, and K. Douglas Thornton and John M. Leiter, attorneys for John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens.

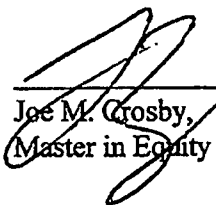
Upon reviewing the proposed amended answer it was apparent that one of the effects of granting the Motion to Amend would be to add The City of Georgetown as a third party defendant in this action. Since 2006 Elise Freeman Crosby has served as City Attorney for the City of Georgetown. Elise Freeman Crosby is the law partner and spouse of the undersigned.

Canon 2 of the Code of Judicial Conduct, Rule 501 of the South Carolina Appellate Court Rules, demands that a judge shall avoid impropriety and the appearance of impropriety in all of the

judge's activities. The commentary states: "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."

Therefore, I conclude that I should refrain from ruling on the Motion to Amend filed by John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens and should return this action to the Circuit Court.

AND IT IS SO ORDERED.



Joe M. Crosby,
Master in Equity for Georgetown County

March 21, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton,
and Bayside Property, Inc.,)

Plaintiffs,)

vs.)

CERTIFICATE OF MAILING

South Bay Properties, LLC, Stantec)
Consulting Services, Inc. f/k/a Trico)
Engineering Consultants, Inc., Milone)
& MacBroom, Inc., John Steven Goodwin,)
Louise C. Goodwin, Thomas I. Puckett,)
Brenda C. Puckett, Robert Nahama,)
Jeanne E. Nahama, Thomas Holland)
Sharon Louise Holland, Joyce K. Sobel,)
Robert W. Waruszewski, Richard N.)
Taylor, Robert K. Spillers (a/k/a Robert)
Spillers) Deborah T. Spillers (a/k/a Deborah)
Spillers), Patrick A. DiAngelo, Deborah A.)
DiAngelo, Gary E. Owens, and Joyce M.)
Owens, Fount L. Shults, Lynda M. Shults,)
Dennis Ridgeway, Teresa Lynn Ridgeway)
and Georgetown County Forfeited Land)
Commission,)

Defendants.)

I hereby certify that on the 22nd day of March, 2013, I mailed copies of the Order Returning

Action to Circuit Court dated March 21, 2013, to:

John W. Davidson, Esquire

Nexsen Pruet

Post Office Drawer 2426

Columbia, SC 29202

Attorney for Stantec Consulting Services, Inc.

Bryon L. Saintsing, Esquire

Smith Debnam

Post Office Box 26268

Raleigh, NC 27611-6268

Attorney for Milone & MacBroom, Inc.

K. Douglas Thornton, Esquire
Thornton Law Firm, LLC
1025 Third Avenue
Conway, SC 29526
Attorney for John Steven Goodwin, Louise C.
Goodwin, Gary E. Owens and Joyce M.
Owens

Patrick A. DiAngelo
1713 Perdez Covey
Myrtle Beach, SC 29588
Defendant

Wesley P. Bryant, Esquire
Georgetown County Attorney
Post Office Box 421270
Georgetown, SC 29442
Attorney for Georgetown County Forfeited
Land Commission

with sufficient postage attached.

John M. Leiter, Esquire
Law Offices of John M. Leiter, PA
1203 48th Avenue N, Suite 109
Myrtle Beach, SC 29577
Attorney for John Steven Goodwin, Louise C.
Goodwin, Gary E. Owens and Joyce M.
Owens

Deborah A. DiAngelo
1713 Perdez Covey
Myrtle Beach, SC 29588
Defendant



Charles T. Smith

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-22-934

Bonnie N. Charlton, et al.
PLAINTIFF(S)

South Bay Properties, LLC, et al.
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion for Reconsideration by defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens dated 3/7/2013 and filed 3/7/2013 is DENIED.
(This motion was decided without oral arguments.)

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

March 26, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8th day of April, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 8th day of April, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Charles T. Smith

K. Douglas Thornton

John M. Leiter

John W. Davidson

Byron L. Saintsing

Wesley P. Bryant

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James D. Lane, Deputy
CLERK OF COURT

Court Reporter: None

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson

Case No. 2012-CP-22-00934

RECEIVED

FEB 24 2014

SC Court of Appeals

Bonnie N. Charlton, Robert L. Charlton, and Bayside
Property, Inc., Plaintiffs

v.

South Bay Properties, LLS, Stantec Consulting Services,
Inc., f/k/a Trico Engineering Consultants, Ind., Milone &
MacBroom, Inc., John Steven Goodwin, Louise C. Goodwin,
Thomas I. Puckett, Brenda C. Puckett, Robert Nahama,
Jeanne E. Nahama, Thomas Holland, Sharon Louise
Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard
N. Taylor, Robert K. Spillers, (a/ka Robert Spillers), Deborah
T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo,
Deborah A. DiAngelo, Gary E. Owens, Joyce M. Owens,
Fount L. Shults, Lynda M. Shults, Dennis Ridgeway, Teresa
Lynn Ridgeway and Georgetown County Forfeited Land
Commission, Defendants,

Of Whom

John Steve Goodwin, Louise C. Goodwin, Gary E. Owens,
and Joyce M. Owens, Appellants,

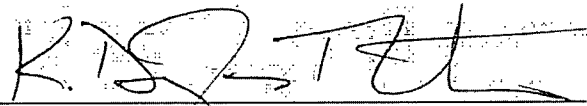
v.

Bonnie N. Charlton, Ronald L. Charlton, and Bayside
Property, LLC, South Bay Properties, LLC, Stantec
Consulting Services, Inc., f/k/a Trico Engineering
Consultants, Inc., Milone & MacBroom, Inc., Patrick A.
DiAngelo, Deborah A. DiAngelo, and Georgetown County
Forfeited land Commission, Respondents.

Case No. 2013-000712

CERTIFICATE OF COUNSEL

Appellants' counsel hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



K. Douglas Thornton
1025 Third Avenue
Conway, South Carolina 29526

and

John M. Leiter
1203 48th Avenue North, Suite 109
Myrtle Beach, South Carolina 29577

Attorneys for Appellants

Conway, South Carolina

February 5, 2014