

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Craig D. Brown, Circuit Court Judge

Case No. 2017-CP-10-05246  
Appellate Case No. 2019-001360

**RECEIVED**

SEP 11 2019

SC Court of Appeals

Gary Keisler, Individually and as Class Representative,  
John Does (1-50) and Jane Does (1-50) , Respondents,

v.

Wheelock Street Real Estate Fund, LP and Wheelock Street Capital, LLC Appellants.

MOTION TO FILE MEMORANDUM OUTSIDE OF DEADLINE

Respondents Gary Keisler, individually and as class representative, John Does (1-50) and Jane Does (1-50), through their undersigned counsel, hereby respectfully move for an Order allowing Respondents to file a Memorandum as to Appealability of this case outside of the deadline set forth by this Court. This Motion is made pursuant to Rule 240 and Rule 263, SCACR. The grounds for this motion are as follows:

1) On August 20, 2019, the Court of Appeals mailed out a two-page letter indicating that it had received the Notice of Appeal for this case. It also mailed out a one-page letter indicating that a preliminary review of the order(s) challenged on appeal indicate that the orders may not be immediately appealable, and requested that counsel for the parties serve and file memorandums

addressing the issue of appealability within ten days of the letter. Counsel for Respondents did not see the second letter.

2) Counsel for Respondents did not learn about the Court's Request until September 9, 2019, when it received opposing counsel's memorandum. Counsel for Respondents would have received the memorandum and moved for an extension sooner had it not been for Hurricane Dorian, which resulted in Governor Henry McMaster ordering the mandatory evacuation of coastal counties during the preceding week.

3) Respondents share the concerns raised by the Court of Appeal in its preliminary review, specifically, that the Orders in question are interlocutory and not immediately appealable. "[T]he denial of a motion to set aside an entry of default is not appealable until after final judgment." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, Op. No. 5661 (S.C. Ct. App. Filed June 26, 2019) (Davis Adv. Sh. No. 26 at 50), citing *Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987). There has been no final judgment in this case: The parties have not participated in a damages hearing and the Special Referee has not entered a default judgment against Appellant. See *Palmetto*, noting, "Appellants appeal from a motion to set aside an entry of default. Furthermore, the parties have not participated in a damages hearing and the master has not entered a default judgment against Appellants. Accordingly, both [orders] are interlocutory and not immediately appealable." *Id.*

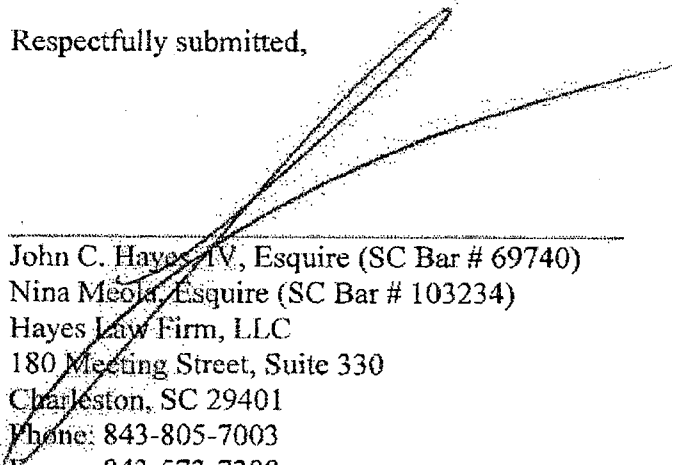
4) Appellant's memorandum, which unnecessarily includes nearly seven hundred (700) pages of exhibits, muddles the procedural history of this case and makes serious accusations against counsel for Respondents, meriting the opportunity for a clear, and well-articulated response.

5) Counsel for Respondents was not privy to communications initiated by opposing counsel

to the Court of Appeals, in which opposing counsel was advised by the Court on August 20<sup>th</sup> via email that a request for a memorandum regarding appealability would be forthcoming.

Based on the foregoing, Respondents respectfully request that this Court issue an Order allowing Respondents to file and serve a Memorandum as to Appealability of this case within five (5) days of this Motion, on September 16, 2019.

Respectfully submitted,



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**ATTORNEYS FOR RESPONDENTS**

September 11, 2019  
Charleston, South Carolina

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In The Court of Appeals

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Court of Common Pleas

Craig D. Brown, Circuit Court Judge

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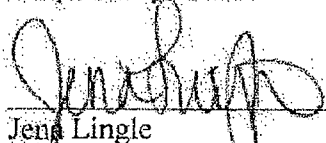
PROOF OF SERVICE

I, Jena Lingle, Paralegal at Hayes Law Firm, LLC certify that I have served Respondents' *Motion to File Memorandum Outside of Deadline* on Appellants and all other parties on September 11, 2019 by U.S. First Class Mail to their attorneys of record as shown:

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Respectfully submitted



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September 11, 2019  
Charleston, South Carolina

**FAX COVER SHEET**

<b>TO</b>	The Hon. Jenny Abbot Kitchings
<b>COMPANY</b>	
<b>FAX NUMBER</b>	18037341839
<b>FROM</b>	Jesse Sanchez
<b>DATE</b>	2019-09-11 18:52:21 GMT
<b>RE</b>	One Hamlin Place Townhome Association, Inc., Respondent, v. Wheelock Street Real Estate Fund, LP, et al., Appellants; Appellate Case No. 2019-001245; and Gary Keisler, Individually and as Class Representative, John Does(1-50) and Jane Does(1-50), Respondents, v. Wheelock Street Real Estate Fund, LP and Wheelock Street Capital, LLC, Appellants; Appellate Case No. 2019-001360

**COVER MESSAGE**

Dear Ms. Kitchings,

Please find the attached Cover Letter, two Motions, and corresponding Proofs of Service from the Hayes Law Firm. Please do not hesitate to contact me at 843-814-8181 should you have any questions.

Best regards,

Jesse Sanchez