

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

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SEP 12 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.*

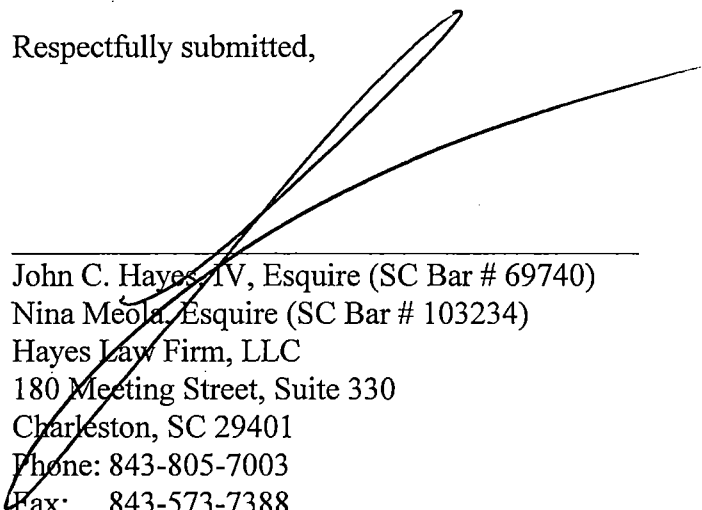
4) Appellant's memorandum, which unnecessarily includes nearly seven hundred (700) pages of exhibits, muddles the procedural history of this case and makes serious accusations against counsel for Respondents, meriting the opportunity for a clear, and well-articulated response.

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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John C. Hayes, IV, Esquire (SC Bar # 69740)  
Nina Meola, Esquire (SC Bar # 103234)  
Hayes Law Firm, LLC  
180 Meeting Street, Suite 330  
Charleston, SC 29401  
Phone: 843-805-7003  
Fax: 843-573-7388  
[jhayes@hayeslaw.org](mailto:jhayes@hayeslaw.org)  
[nmeola@hayeslaw.org](mailto:nmeola@hayeslaw.org)

and

I. Keith McCarty, Esquire  
McCarty Law Firm, P.C. (SC Bar # 66447)  
Post Office Box 30055  
Charleston, SC 29417  
Phone: (843) 793-1272  
[ikeithmccarty@gmail.com](mailto:ikeithmccarty@gmail.com)

***ATTORNEYS FOR RESPONDENTS***

September 11, 2019  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Craig D. Brown, Circuit Court Judge

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

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Gary Keisler, Individually and as Class Representative,  
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Wheelock Street Real Estate Fund, LP and Wheelock Street Capital, LLC Appellants.

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SC Court of Appeals

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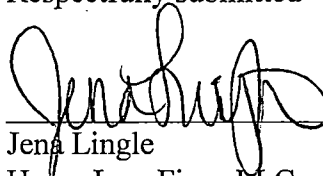
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I, Jena Lingle, Paralegal at Hayes Law Firm, LLC certify that I have served Respondents' *Motion to File Memorandum Outside of Deadline* on Appellants and all other parties on September 11, 2019 by U.S. First Class Mail to their attorneys of record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

|  |  |
|--|--|
| <p>Theodore L. Manos<br/>Robertson Hollingsworth Manos &amp; Rahn, LLC<br/>550 King Street, Suite 300<br/>Charleston, SC 29403<br/><a href="mailto:tlm@roblaw.net">tlm@roblaw.net</a><br/><i>Attorneys for John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builder Support Services of the Carolinas, Inc., Scott Parker, Doug Pilcher, Michael Cassidy, JW Realty Associates, Inc. f/k/a Wieland Realty Associates, Inc., and Neighborhood Management Associates, Inc.</i></p> | <p>Brian C. Duffy<br/>Blake A. McKie<br/>Stephen Jenkins Bell<br/>Duffy &amp; Young, LLC<br/>96 Broad Street<br/>Charleston, SC 29401<br/><a href="mailto:bduffy@duffyandyoung.com">bduffy@duffyandyoung.com</a><br/><a href="mailto:bmckie@duffyandyoung.com">bmckie@duffyandyoung.com</a><br/><a href="mailto:sbell@duffyandyoung.com">sbell@duffyandyoung.com</a><br/><i>Attorneys for RP Falcon Properties, LLC, RP Falcon Land, LLC, RP Falcon Realty, LLC, Residential Partners, LLC, JWH RRIV, LLC, WSREF NRT, LLC, WS JWH, LLC, Wheelock Street Capital, LLC, Wheelock Street Investment Management, LLC, and Wheelock Street Real Estate Fund V, LP</i></p> |
| <p>Jay Jones<br/>Paige C. Ornduff<br/>Gallivan, White &amp; Boyd, P.A.<br/>40 Calhoun Street, Suite 315<br/>Charleston, SC 29401<br/><a href="mailto:jjones@gwblawfirm.com">jjones@gwblawfirm.com</a><br/><a href="mailto:pcornduff@gwblawfirm.com">pcornduff@gwblawfirm.com</a><br/><i>Attorneys for The Muhler Company, Inc.</i></p>   | <p>Ian W. Freeman<br/>Walker Gressette Freeman &amp; Linton, LLC<br/>P.O. Drawer 22167<br/>Charleston, SC 29413-2216<br/><a href="mailto:freeman@wgflaw.com">freeman@wgflaw.com</a><br/><i>Attorneys for Middlesex Holdings, LLC</i></p>   |
| <p>Andrew N. Cole<br/>Collins &amp; Lacy, P.C.<br/>Post Office Box 12487<br/>Columbia, SC 29211<br/><a href="mailto:acole@collinsandlacy.com">acole@collinsandlacy.com</a><br/><i>Attorney for George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc.</i></p>  | <p>Stephen P. Hughes<br/>Howell, Gibson &amp; Hughes, P.A.<br/>Post Office Box 40<br/>Beaufort, SC 29901-0040<br/><a href="mailto:sphughes@hgpha.com">sphughes@hgpha.com</a><br/><i>Attorney for Builders FirstSource Southeast Group, LLC</i></p>   |

|   |   |
|---|---|
| <p>Stephen L. Brown<br/>         Joanna B. Stroud<br/>         Young Clement Rivers, LLP<br/>         P.O. Box 993<br/>         Charleston, SC 29401<br/> <a href="mailto:sbrown@ycrlaw.com">sbrown@ycrlaw.com</a><br/> <a href="mailto:jstroud@ycrlaw.com">jstroud@ycrlaw.com</a><br/> <i>Attorneys for New Construction<br/>         Drywall Hanger, LLC f/k/a New<br/>         Construction Drywall Hanger, Inc.</i></p> | <p>Donna O. Tillis<br/>         Robert C. Calamari<br/>         Nelson Mullins Riley &amp; Scarborough,<br/>         LLP<br/>         1320 Main Street, 17<sup>th</sup> Floor<br/>         Columbia, SC 29201<br/> <a href="mailto:Donna.tillis@nelsonmullins.com">Donna.tillis@nelsonmullins.com</a><br/> <a href="mailto:Bob.calamari@nelsonmullins.com">Bob.calamari@nelsonmullins.com</a><br/> <i>Attorneys for YKK (U.S.A.) Inc.</i></p> |
| <p>Jason A. Daigle<br/>         Young Clement Rivers, LLP<br/>         25 Calhoun Street, Suite 400<br/>         Charleston, SC 29402<br/> <a href="mailto:jdaigle@ycrlaw.com">jdaigle@ycrlaw.com</a><br/> <i>Attorney for Daniel L. Rogers d/b/a<br/>         Rogers Roofing Co., Inc. n/k/a Dan<br/>         Rogers Roofing, LLC</i></p>  | <p>Kevin W. Mims<br/>         Chase McNair<br/>         Luzuriaga Mims, LLP<br/>         50 Immigration Street, Suite 200<br/>         Charleston, SC 29403<br/> <a href="mailto:kmims@lmlawllp.com">kmims@lmlawllp.com</a><br/> <a href="mailto:cmcnair@lmlawllp.com">cmcnair@lmlawllp.com</a><br/> <i>Attorneys for AC Construction, Inc.</i></p>   |

Respectfully submitted




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Jena Lingle  
 Hayes Law Firm, LLC  
 180 Meeting Street, Suite 330  
 Charleston, SC 29401  
 Phone: 843-805-7003  
 Fax: 843-573-7388  
[jlingle@hayeslaw.org](mailto:jlingle@hayeslaw.org)

September 11, 2019  
 Charleston, South Carolina

# HAYES LAW FIRM, LLC

180 Meeting Street – Suite 330  
Charleston, South Carolina 29401  
Tel: (843) 805-7003

John C. Hayes, IV  
Email: [jhayes@hayeslaw.org](mailto:jhayes@hayeslaw.org)

Nina E. Meola  
Email: [nmeola@hayeslaw.org](mailto:nmeola@hayeslaw.org)

September 11, 2019

VIA US PRIORITY MAIL EXPRESS AND FAX (803) 743-1839

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SEP 12 2019

SC Court of Appeals

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

RE: 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

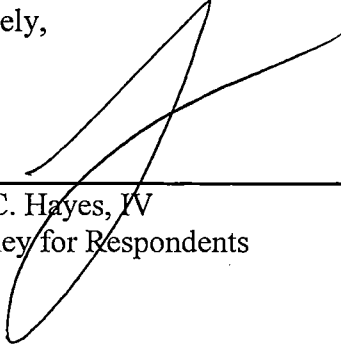
Dear Ms. Kitchings:

Enclosed for filing, please find the following:

- (1) One (1) original and six (6) copies of Respondent One Hamlin Place Townhome Association, Inc.'s *Motion to File Memorandum Outside of Deadline*, and the corresponding proof of service.
- (2) One (1) original and six (6) copies of Respondents Gary Keisler, et al.'s *Motion to File Memorandum Outside of Deadline*, and the corresponding proof of service.
- (3) Two (2) checks, totaling Fifty Dollars (\$50.00) each, for the corresponding filing fees.

Thank you for your time and attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

  
\_\_\_\_\_  
John C. Hayes, IV  
Attorney for Respondents

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