

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-10-05245
Appellate Case No. 2019-001245

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SEP 12 2019

SC Court of Appeals

One Hamlin Place Townhouse Association, Inc., Respondent,

v.

Wheelock Street Real Estate Fund, LP, et al., Appellants.

MOTION TO FILE MEMORANDUM OUTSIDE OF DEADLINE

Respondent One Hamlin Townhouse Association, Inc., through its undersigned counsel, hereby respectfully moves for an Order allowing Respondent 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 Respondent did not see the second letter.

2) Counsel for Respondent did not learn about the Court's Request until September 9, 2019,

when it received opposing counsel's memorandum. Counsel for Respondent 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) Respondent shares 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.*

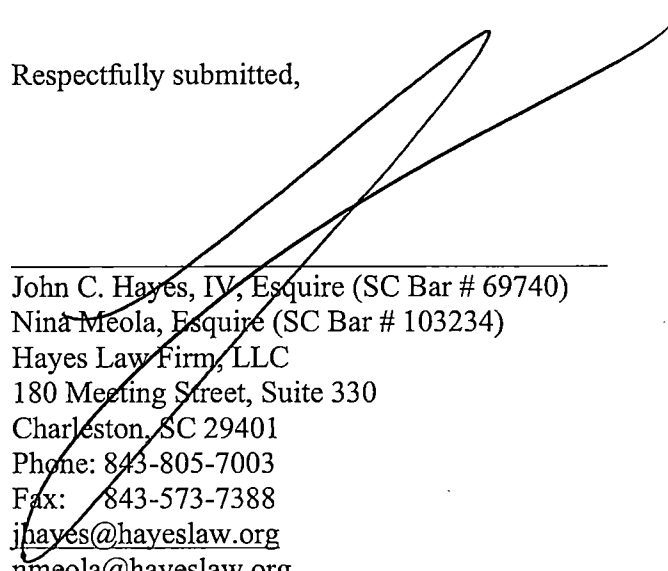
4) Appellant's memorandum, which unnecessarily includes nearly nine hundred (900) pages of exhibits, muddles the procedural history of this case and makes serious accusations against counsel for Respondent, meriting the opportunity for a clear, and well-articulated response.

5) Counsel for Respondent was not privy to communications initiated by opposing counsel to the Court of Appeals, in which they were advised by the Court on August 20th via email that a request for a memorandum regarding appealability would be forthcoming.

Based on the foregoing, Respondent respectfully requests that this Court issue an Order allowing Respondent 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 RESPONDENT

September 11, 2019
Charleston, South Carolina

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-10-05245
Appellate Case No. 2019-001245

One Hamlin Place Townhouse Association, Inc., Respondent,

v.

Wheelock Street Real Estate Fund, LP, et al., Appellants.

PROOF OF SERVICE

I, Jena Lingle, Paralegal at Hayes Law Firm, LLC certify that I have served Respondent's *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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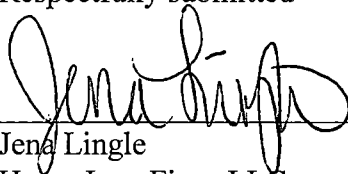
SEP 12 2019

SC Court of Appeals

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

Respectfully submitted



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September 11, 2019
 Charleston, South Carolina

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September 11, 2019

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

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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

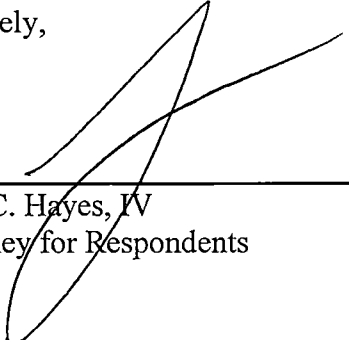
Dear Ms. Kitchings:

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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