

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

RECEIVED
SEP 17 2019
SC Court of Appeals

One Hamlin Place Townhouse Association, Inc., Respondent,

v.

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

MEMORANDUM AS TO APPEALABILITY

Respondent One Hamlin Townhouse Association, Inc., through its undersigned counsel, hereby submits this memorandum pursuant to the Clerk's letter dated August 20, 2019. This appeal should be dismissed on the following grounds: 1) Appellants seek to appeal orders that are interlocutory and not immediately appealable; and 2) The Special Referee has jurisdiction to hear Appellants' underlying motions and has yet to hear the motions or render a decision.

RELEVANT PROCEDURAL AND FACTUAL HISTORY

- On June 7th and 8th, 2018, the circuit court entered Entries of Default against Appellants and issued Orders of Referral to the Special Referee. (Entries of Default and Orders of Referral to Special Referee, Exhibit A).
- Counsel for Appellants acknowledged receiving notice of the Entries of Default and Orders of Referral to Special Referee (See July 3, 2018 Letter from Cheryl Shoun, then-counsel for Appellants, acknowledging the Entries of Default and Orders of Referral, and copying Brian Duffy, Appellants' current counsel of record, Exhibit B).

- Despite having knowledge of the Entries of Default and Orders of Referral to Special Referee, **Appellants waited *eight months* to file motions to vacate the Entries of Default and Orders of Referral** (“Motions to Vacate”). Appellants filed their Motions to Vacate directly with the circuit court on February 13, 2019. (Motions to Vacate, Exhibit C).
- On February 28, 2019, the circuit court advised Appellants that it was appropriate for the Special Referee to hear their Motions to Vacate, not the circuit court. (Email from Court, Exhibit D).¹
- On May 2, 2019 **Appellants submitted their Motions to Vacate *directly to the Special Referee* and also included Motions seeking the recusal of the Special Referee.** (Letter from Appellant’s Counsel to Special Referee, Exhibit E). A hearing before the Special Referee on these motions was scheduled for May 10, 2019.
- As the date of the hearing approached, the parties agreed to postpone the hearing in an attempt to mediate the case. (Email, Exhibit F)
- Counsel for Appellants later decided that that they were no longer willing to mediate the case as previously agreed upon by the parties. On June 4, 2019, Appellants filed Motions for an Expedited Hearing and Demand for Jury Trial *with the circuit court*, not the Special Referee as ordered by the Orders of Referral or as previously instructed by the Court. (Motion for Expedited Hearing, Exhibit G).
- Appellants’ Motion for Expedited Hearing and Memorandum in Support failed to provide a single ground or reason as to why Appellants should be granted an expedited hearing by the circuit court on the underlying Motions to Vacate. Appellants had previously filed these exact Motions to Vacate with the Special Referee and had scheduled a hearing before him without issue.
- On Friday, June 7, 2019, at 4:00 PM, Respondent received notice that a hearing on Appellants’ Motion for an Expedited Hearing would be heard by the circuit court on Tuesday, June 11, 2019.

¹ The Orders of Referral directed the Special Referee “to take testimony and direct entry of final damages in this action under Rule 53, SCRCP, and all matters arising from or reasonable related to such action.” The Orders of Referral also stated that the Special Referee “shall retain jurisdiction to perform all necessary acts incident to this action,” and further stated that the Special Referee “shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).” (See Entries of Default and Orders of Referral to Special Referee, Exhibit A)

- On June 11, 2019, a hearing was held before the Honorable Craig D. Brown on Appellants' Motion for an Expedited Hearing. Appellants, again, did not articulate a single ground or reason as to why the underlying Motions to Vacate should be expedited.
- On July 1, 2019, Judge Brown signed a Form 4 Judgment denying Appellants' Motion for an Expedited Hearing. (Form 4 Judgment, entered July 11, 2019, Exhibit H). This Appeal followed.

ARGUMENT

1. This Appeal should be dismissed because Appellants seeks to appeal orders that are interlocutory and not immediately appealable.

Appellants appeal the Form 4 Judgment of the Honorable Craig D. Brown dated July 1, 2019, entered July 11, 2019. (Judgment, Exhibit H). This judgment denies Appellants' Motion for an Expedited Hearing, wherein Appellants had sought "an expedited hearing on their Motions to Vacate Orders of Referral to Special Referee as well as their Motions to Set Aside and Vacate Entry of Default." (Motion for Expedited Hearing, Exhibit G). Judge Brown's Form 4 Judgment simply denies the *expedition* of these underlying Motions to Vacate and refers them to Special Referee in accordance with the standing Orders of Reference entered by the Court. (Orders of Referral to Special Referee, Exhibit A). Appellants' contention that Judge Brown's Form 4 Judgment deprives them of "their substantial right to a jury trial and their due process rights to defend themselves in court" is entirely without merit. **The judgment does not deny the relief sought by Appellants in the underlying Motions to Vacate. The judgment does not preclude Appellants from seeking the recusal of the Special Referee or from seeking to vacate the Entries of Default or from seeking a jury trial.** Specifically, Judge Brown's Form 4 Judgment states:

After reviewing all submissions of counsel, this Court denies [Defendants'] Motion for an Expedited Hearing. Defendant Wheelock's Motion for Recusal of Special Referee shall be decided by the Special Referee. If the Special Referee shall grant such Recusal request, the case shall be sent back to the circuit court for determination of Defendant Wheelock's outstanding Motions. If the Special Referee declines to grant such recusal, then Wheelock's outstanding Motions shall be decided by the Special Referee as authorized by the Order of

Reference.

This judgment neither involves the merits of the case nor deprives Appellants of any substantial rights because Appellants may still seek the requested relief *from the Special Referee*. These underlying Motions to Vacate have yet to been heard or ruled upon by the Special Referee. Accordingly, the judgment is interlocutory and not immediately appealable.

This Appeal is also premature because there has not been a final judgment in this case. Even if the circuit court had granted Appellants' Motion for an Expedited Hearing and thereafter denied the Motions to Set Aside and Vacate the Entries of Default, this case would *still* not be ripe for appeal. "[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 not been a 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. There has not even been a hearing or decision rendered on Appellants' Motions to Set Aside and Vacated the Entries of Default. The appeal is premature and should be dismissed. 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.*

It is also worth noting that Appellants did not present a single argument to the circuit court as to why the Motions to Vacate should be expedited. Neither the Motion for an Expedited Hearing nor its corresponding Memorandum in Support provide any ground or reason for expediting the Motions to Vacate. A review of the procedural history in this case, *supra*, demonstrates that Appellants'

Motion for an Expedited Hearing was not filed in good faith, but rather as an unsuccessful attempt to circumvent the circuit court's Orders of Referral to Special Referee and to prejudice the Plaintiffs by limiting their time to prepare. Appellants did not use their time before the circuit court to argue why the Motions to Vacate should be expedited, but instead attempted to argue the merits of the underlying Motions to Vacate. Judge Brown's Form 4 Judgment denies Appellants' Motion for An *Expedited* Hearing, but does not deny their ability to pursue their Motions to Vacate or their Motions for Recusal of the Special Referee with the Special Referee.

There is nothing preventing Appellants from seeking the relief they want. Indeed, prior to filing a Motion for an Expedited Hearing with the circuit court, Appellants filed the underlying Motions to Vacate with the Special Referee and even scheduled a hearing before him without issue. The Special Referee is ready to hear these matters. Accordingly, the appeal should be dismissed because the Form 4 Judgment is interlocutory and not immediately appealable. The judgment neither involves the merits of the case nor deprives Appellants of any substantial rights because Appellants may still seek the requested relief from the Special Referee.

2. This Appeal should be dismissed because the Special Referee has jurisdiction to hear Appellants' underlying motions and has yet to hear the motions or render a decision.

These matters are properly before the Special Referee. "When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action[.]" S.C. Code Ann. § 14-11-85. Consistent with this statute, Rule 53(c), SCRPC, provides that, once a case has been referred, "the master or special referee shall exercise **all power and authority** which a circuit judge sitting without a jury would have in a similar matter." [Emphasis added.]

"When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his

powers.” *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 74-75, 773 S.E.2d 607, 616 (Ct. App. 2015) (quoting *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993)). “Once an action is referred, the master possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter.” *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009). Appellants’ consent was not required for the circuit court to refer the case to the Special Referee. See *Palmetto*, Op. No. 5661 (S.C. Ct. App. Filed June 26, 2019) (Davis Adv. Sh. No. 26 at p. 51), noting, “Our supreme court analyzed the legal status of defaulting parties in *Roche v. Young Bros., of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998). In that case, the supreme court determined a defaulting party’s consent was not required to refer the case to a special referee.”

The Orders of Referral to Special Referee explicitly give the Special Referee jurisdiction over Appellants’ outstanding motions, noting that he has jurisdiction over “all matters arising from or reasonably related to such action,” including, but not limited to, “jurisdiction over any motions or actions to set aside Entry of Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).” (Orders of Referral to Special Referee, Exhibit A). This is precisely what Appellants seek in their underlying Motions to Vacate. Further, the Orders of Referral explicitly state “**any and all hearings** shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County.” [Emphasis added.] Accordingly, **the Special Referee has proper jurisdiction to hear Appellants’ outstanding Motions to Vacate pursuant to both S.C. Code Ann. § 14-11-85 and Rule 53(c), SCRCP.**

The Special Referee has not heard *any* of Appellants outstanding motions: He has not heard Appellants’ Motions for Recusal of the Special Referee *or* Appellants’ Motions to Vacate the Orders of Referral to Special Referee *or* Appellants’ Motions to Set Aside and Vacate the Entries of

Default. In other words, Appellants have not been denied the relief they seek. There has not been a final judgment as to these matters.

There is nothing preventing Appellants from seeking the relief they want. As noted above, prior to filing its Motion for an Expedited hearing on its Motions to Vacate, Appellants filed the underlying motions with the Special Referee and had scheduled a hearing before him. The Special Referee is ready to hear these matters. Accordingly, this appeal should be dismissed because the Special Referee has jurisdiction to hear Appellants' underlying motions and has yet to hear the motions or render a decision.

Perhaps in a misguided effort to detract attention from their eight-month delay in seeking to vacate the entries of default, Counsel for Appellants have made serious allegations against Respondent's attorneys, accusing them of extrinsic fraud. Respondent's attorneys vehemently deny these allegations and are quiet frankly shocked at the lengths that Appellants' counsel will go to avoid responsibility for their clients' default. Nevertheless, even if extrinsic fraud had been committed, this issue is not ripe for appeal because there has not been a hearing or decision rendered on Appellants' Motions to Set Aside and Vacate the Entries of Default or Appellants' Motion to Vacate the Orders of Referral to Special Referee. The Special Referee has jurisdiction to hear these motions and can properly decide whether to set aside and vacate the orders based on Appellants' allegations after taking testimony and hearing arguments. *See Wachovia Bank of South Carolina v. Player*, 341 S.C. 424, 535 S.E.2d.128 (2000) (finding that the order of reference "gives the master jurisdiction over the case and all matters arising from it [including the Defendant's Rule 60(b) Motion] until the master has performed all duties assigned to him."). Since there has not been a hearing or decision rendered on Appellants' Motions to Set Aside and Vacate Entries of Default, this issue is not ripe for appeal. Accordingly, the Appeal should be dismissed.

CONCLUSION

This appeal should be dismissed because Appellants seek to appeal orders that are interlocutory and not immediately appealable. Judge Brown's Form 4 Judgment on Appellants' Motion denies Appellants Motion for an Expedited Hearing. It does not deny the underlying motions, which Appellant sought to expedite. The judgment does not preclude Appellants from seeking the recusal of the Special Referee or from seeking to set aside and vacate the Entries of Default or from seeking a jury trial. Accordingly, the judgment does not involve the merits of the case or affect a substantial right of Appellants.

This Appeal should also be dismissed because there has not been a 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. There has not even been a hearing on Appellants' Motions to Set Aside and Vacated the Entries of Default. Accordingly, this appeal is gravely premature and should be dismissed. The subject orders are interlocutory and not immediately appealable.

This Appeal should also be dismissed because the Special Referee has jurisdiction to hear Appellants' underlying motions and has yet to hear any of these motions or render a decision. There is nothing preventing Appellants from seeking the relief they want. Indeed, Appellant previously filed these very motions with the Special Referee and he is ready to hear them. Appellant cannot base their appeal on Motions that have not been heard. The appeal should be dismissed.

[Signatures on following page.]

Respectfully submitted,

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
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

ATTORNEYS FOR RESPONDENT

September 16, 2019
Charleston, South Carolina

EXHIBIT A

[Entries of Default and
Orders of Referral to Special Referee]

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5245

One Hamlin Place Townhome Association,
Inc.,

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

John Wieland Homes and Neighborhoods of
the Carolinas, Inc. as successor by statutory
merger to John Wieland Homes and
Neighborhoods of South Carolina, Inc., et
al.,

Defendant.)

Plaintiff's Attorney:

Tyler E. Cloud, Bar No. 103155

Address:

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: 843-805-7003 Fax 843-573-7388

E-mail: tcloud@hayeslaw.org Other: _____

Defendant's Attorney:

Theodore Manos, Bar No. 8660

Address:

550 King Street, Suite 300

Charleston, SC 29403

Phone: 843.723.6470 Fax _____

E-mail: tlm@roblaw.net 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 Default Judgment

Estimated Time Needed: _____

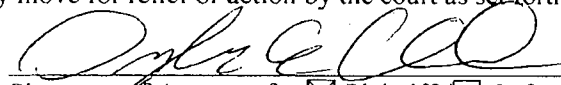
Court Reporter Needed: ☐ YES / ☒ NO

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

5/14/2018

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, 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.

JUDGE CODE _____

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; Wheelock Street Real Estate Fund
V, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

**ENTRY OF DEFAULT AND AGAINST
DEFENDANT WHELOCK STREET INVESTMENT
MANAGEMENT, LLC I, II, & V AND ORDER OF
REFERRAL TO SPECIAL REFEREE**

BY

JULIE A. ARMSTRONG
CLERK OF COURT

2018 JUN -7 PM 2:36

FILED

1064

LLC; Residential Partners II, LLC;)
 Residential Partners III, LLC; Residential)
 Partners IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine Builders,)
 LLC; Jose Alfredo Sandoval; Chad Larsen)
 d/b/a Chad Larsen Co.; Ivan Jose Paiz)
 d/b/a Jose Construction; William B.)
 Angel; East Coast Wall Systems, Inc.;)
 Tracynne Construction a/k/a T&C)
 Construction, LLC; Francisco and)
 Andrea DaCosta d/b/a AAA Coastline,)
 Inc.; Jack R. Clark d/b/a Jack Clark)
 Construction, LLC; Alex Welch; Tracy)
 McCuiston d/b/a Mastercraft Interior)
 and Exterior; Universal Forest Products)
 Eastern Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony Kirksey;)
 Polly S. Clark d/b/a Glenn Clark)
 Construction; Benjamin Mora a/k/a)
 Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel L.)
 Rogers d/b/a Rogers Roofing Co., Inc.)
 n/k/a Dan Rogers Roofing, LLC; William)
 C. Mulhern d/b/a Bill's Painting; Mark A.)
 McFarland d/b/a In the Wind, Inc.;)
 Harbor Master, Inc.; Chad Hood; Kinco)
 Ltd. a/k/a Kinco, Inc.; Atrium)
 Companies, Inc. d/b/a Atrium Windows)
 and Doors, Inc. a/k/a HR Windows; The)
 Contractor Yard, Inc.; New Construction)
 Drywall Hanger, LLC f/k/a New)
 Construction Drywall Hanger, Inc.; Doug)
 Pilcher; and Michael Cassidy; DBC)
 Construction Services, LLC; Gerardo)
 Rosette Sanchez a/k/a GR Painting, LLC;)
 Jesus Mora a/k/a J. Mora Brick & Block)
 Mason, LLC; Juan Luis Sanchez a/k/a)
 Sanchez Brothers Painting; Latitude)
 Construction Services, LLC; Richard)
 Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELLOCK STREET INVESTMENT MANAGEMENT, LLC I, II, & V

This matter comes before the Court upon motion of the Plaintiff for execution of an Entry of Default against Defendant Wheelock Street Investment Management, LLC I, II, & V arising out of a construction defects action brought by the Plaintiff. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiff also seeks referral of the matter to a Special Referee.

It appears that Defendant Wheelock Street Investment Management, LLC I, II, & V are in default on the Complaint filed by Plaintiff as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiff. ✓

IT IS THEREFORE ORDERED that default be entered against Defendant Wheelock Street Investment Management, LLC I, II, & V in favor of the Plaintiff One Hamlin Place Townhome Association, Inc.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

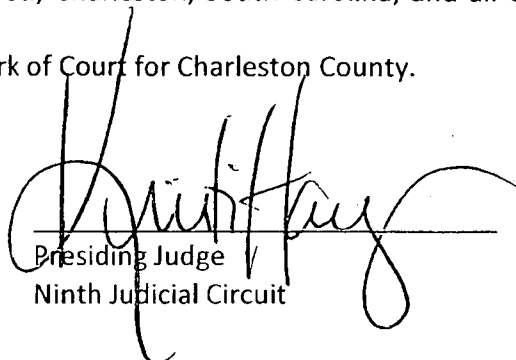
IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRPC, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special

384

Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the
Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!



Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

June 4, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; Wheelock Street Real Estate Fund
V, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE
AND MOTION FOR ENTRY OF DEFAULT AND
REFERRAL**

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

EXHIBIT

A

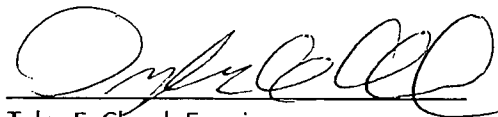
LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Francisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark A.)
McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)
Pilcher; and Michael Cassidy; DBC)
Construction Services, LLC; Gerardo)
Rosette Sanchez a/k/a GR Painting, LLC;)
Jesus Mora a/k/a J. Mora Brick & Block)
Mason, LLC; Juan Luis Sanchez a/k/a)
Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELLOCK STREET INVESTMENT MANAGEMENT, LLC I, II, & V

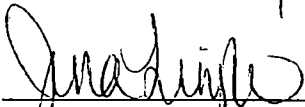
PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Investment Management, LLC I, II, & V by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.



Tyler E. Cloud, Esquire
Attorney for the Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of may, 2018.

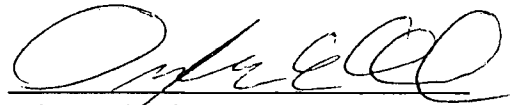


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRPC.

Respectfully submitted,

HAYES LAW FIRM, LLC



Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

One Hamlin Place Townhome)
Association, Inc.,)

Plaintiff,)

vs.)

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. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support Services)
of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a John)
Wieland Homes and Neighborhoods,)
Inc.; Wheelock Street Real Estate Fund,)
LP; Wheelock Street Investment)
Management, LLC; RP Falcon)
Properties, LLC; Residential Partners,)
LLC; Middlesex Holdings, LLC; WS JWH,)
LLC; JWC Phoenix, LLC; Bridgemill Land,)
LLC; Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty Associates,)
Inc. a/k/a Wieland Realty Associates,)
Inc.; John Wieland, individually; Sue)
Wieland; Lindsey Parker; Robert Parker;)
Jack Wieland; Jorge Medina; Jorge)
Medina a/k/a JMC Construction, Inc.)
a/k/a JMC Construction, LLC; John Does)
(20-50); and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource –)
Southeast Group, LLC; Muhler LLC a/k/a)
The Muhler Company, Inc.; YKK (U.S.A),)
Inc.; Wheelock Street Real Estate Fund)

AFFIDAVIT OF SERVICE

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2018 MAY 11 PM 12:58

FILED

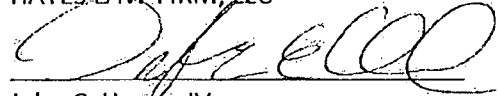
II, LP; Wheelock Street Real Estate Fund)
 V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
 JWH RPIV, LLC; RP Falcon Land, LLC;)
 Wieland Realty, LLC; RP Falcon Realty,)
 LLC; Residential Partners II, LLC;)
 Residential Partners III, LLC; Residential)
 Partners IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine Builders,)
 LLC; Jose Alfredo Sandoval; Chad Larsen)
 d/b/a Chad Larsen Co.; Ivan Jose Paiz)
 d/b/a Jose Construction; William B.)
 Angel; East Coast Wall Systems, Inc.;)
 Tracynne Construction a/k/a T&C)
 Construction, LLC; Francisco and)
 Andrea DaCosta d/b/a AAA Coastline,)
 Inc.; Jack R. Clark d/b/a Jack Clark)
 Construction, LLC; Alex Welch; Tracy)
 McCuiston d/b/a Mastercraft Interior)
 and Exterior; Universal Forest Products)
 Eastern Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony Kirksey;)
 Polly S. Clark d/b/a Glenn Clark)
 Construction; Benjamin Mora a/k/a)
 Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel L.)
 Rogers d/b/a Rogers Roofing Co., Inc.)
 n/k/a Dan Rogers Roofing, LLC; William)
 C. Mulhern d/b/a Bill's Painting; Mark)
 A. McFarland d/b/a In the Wind, Inc.;)
 Harbor Master, Inc.; Chad Hood; Kinco)
 Ltd. a/k/a Kinco, Inc.; Atrium)
 Companies, Inc. d/b/a Atrium Windows)
 and Doors, Inc. a/k/a HR Windows; The)
 Contractor Yard, Inc.; New Construction)
 Drywall Hanger, LLC f/k/a New)
 Construction Drywall Hanger, Inc.; Doug)
 Pilcher; and Michael Cassidy; DBC)

Construction Services, LLC; Gerardo	)
Rosette Sanchez a/k/a GR Painting, LLC;	)
Jesus Mora a/k/a J. Mora Brick & Block	)
Mason, LLC; Juan Luis Sanchez a/k/a	)
Sanchez Brothers Painting; Latitude	)
Construction Services, LLC; Richard	)
Ditullio a/k/a RDT Contracting, LLC;	)
Valencia Medina;	)
	)
Defendants.	)
	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Investment Management, LLC I, II, and V with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature page to follow]

HAYES LAW FIRM, LLC



John C. Hayes, IV

Tyler E. Cloud

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: 843-805-7003

Fax: 843-573-7388

jhayes@hayeslaw.org

tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire

McCARTY LAW FIRM, LLC

Post Office Box 30055

Charleston, SC 29417

Tel: 843-793-1272

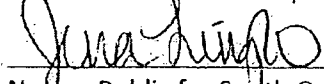
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFF

May 11, 2018

Charleston, South Carolina

SWORN to before me this 11th
day of ~~April~~ 2018. May 2018.



Notary Public for South Carolina

My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Investment Management, LLC I, II & V
251 Little Falls Dr.
Wilmington, DE 19808

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

William Collier ☐ Agent ☐ Address

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

7011 3500 0000 4260 5844

UNITED STATES POSTAL SERVICE
17 JAN 2018 PM 11

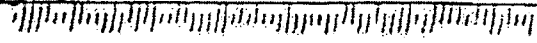
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box: •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

RECEIVED
JAN 22 2018

120 001-~~44~~ 570



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5245

One Hamlin Place Townhome Association,
Inc.,

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

John Wieland Homes and Neighborhoods of
the Carolinas, Inc. as successor by statutory
merger to John Wieland Homes and
Neighborhoods of South Carolina, Inc., et
al.,

Defendant.)

Plaintiff's Attorney:

Tyler E. Cloud, Bar No. 103155

Address:

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: 843-805-7003 Fax 843-573-7388

E-mail: tcloud@hayeslaw.org Other: _____

Defendant's Attorney:

Theodore Manos, Bar No. 8660

Address:

550 King Street, Suite 300

Charleston, SC 29403

Phone: 843.723.6470 Fax _____

E-mail: tlm@roblaw.net 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 Default Judgment

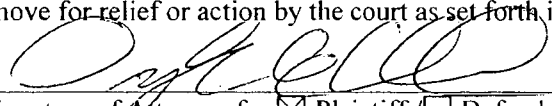
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO

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

5/14/2018

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.

JUDGE CODE _____

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; Wheelock Street Real Estate Fund
V, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

**ENTRY OF DEFAULT AND AGAINST
DEFENDANT WHELOCK STREET CAPITAL, LLC
D/B/A JOHN WIELAND HOMES AND
NEIGHBORHOODS, INC. AND ORDER OF
REFERRAL TO SPECIAL REFEREE**

BY

JULIE A. ANISTONG
CLERK OF COURT

2018 JUN -7 PM 2:35

FILED

LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Francisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark A.)
McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)
Pilcher; and Michael Cassidy; DBC)
Construction Services, LLC; Gerardo)
Rosette Sanchez a/k/a GR Painting, LLC;)
Jesus Mora a/k/a J. Mora Brick & Block)
Mason, LLC; Juan Luis Sanchez a/k/a)
Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANTS WHEELOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

This matter comes before the Court upon motion of the Plaintiff for execution of an Entry of Default against Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. arising out of a construction defects action brought by the Plaintiff. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiff also seeks referral of the matter to a Special Referee.

It appears that Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. are in default on the Complaint filed by Plaintiff as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiff.

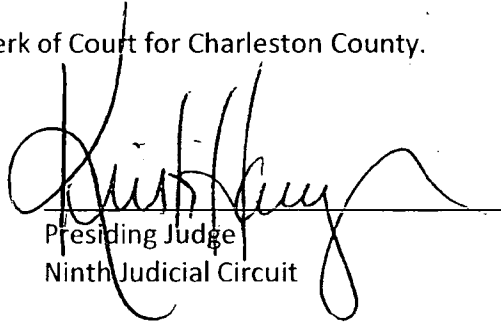
IT IS THEREFORE ORDERED that default be entered against Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. in favor of the Plaintiff One Hamlin Place Townhome Association, Inc.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCF, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

3 064

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!


Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

May 22, 2018

424

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE
AND MOTION FOR ENTRY OF DEFAULT AND
REFERRAL**

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

EXHIBIT

A

tabbles

LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Francisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark A.)
McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)
Pilcher; and Michael Cassidy; DBC)
Construction Services, LLC; Gerardo)
Rosette Sanchez a/k/a GR Painting, LLC;)
Jesus Mora a/k/a J. Mora Brick & Block)
Mason, LLC; Juan Luis Sanchez a/k/a)
Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

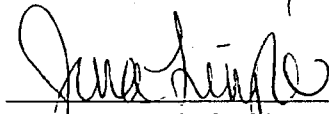
TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELLOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.


Tyler E. Cloud, Esquire
Attorney for the Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRPC.

Respectfully submitted,

HAYES LAW FIRM, LLC



Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

One Hamlin Place Townhome
Association, Inc.,)

Plaintiff,)

vs.)

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. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support Services)
of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a John)
Wieland Homes and Neighborhoods,)
Inc.; Wheelock Street Real Estate Fund,)
LP; Wheelock Street Investment)
Management, LLC; RP Falcon)
Properties, LLC; Residential Partners,)
LLC; Middlesex Holdings, LLC; WS JWH,)
LLC; JWC Phoenix, LLC; Bridgemill Land,)
LLC; Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty Associates,)
Inc. a/k/a Wieland Realty Associates,)
Inc.; John Wieland, individually; Sue)
Wieland; Lindsey Parker; Robert Parker;)
Jack Wieland; Jorge Medina; Jorge)
Medina a/k/a JMC Construction, Inc.)
a/k/a JMC Construction, LLC; John Does)
(20-50); and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource –)
Southeast Group, LLC; Muhler LLC a/k/a)
The Muhler Company, Inc.; YKK (U.S.A),)
Inc.; Wheelock Street Real Estate Fund)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-10-5245

AFFIDAVIT OF SERVICE

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2018 MAY 11 PM 12:58

FILED

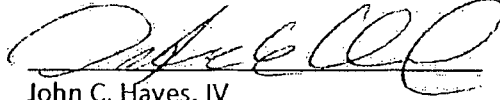
II, LP; Wheelock Street Real Estate Fund)
 V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
 JWH RPIV, LLC; RP Falcon Land, LLC;)
 Wieland Realty, LLC; RP Falcon Realty,)
 LLC; Residential Partners II, LLC;)
 Residential Partners III, LLC; Residential)
 Partners IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine Builders,)
 LLC; Jose Alfredo Sandoval; Chad Larsen)
 d/b/a Chad Larsen Co.; Ivan Jose Paiz)
 d/b/a Jose Construction; William B.)
 Angel; East Coast Wall Systems, Inc.;)
 Tracynne Construction a/k/a T&C)
 Construction, LLC; Francisco and)
 Andrea DaCosta d/b/a AAA Coastline,)
 Inc.; Jack R. Clark d/b/a Jack Clark)
 Construction, LLC; Alex Welch; Tracy)
 McCuiston d/b/a Mastercraft Interior)
 and Exterior; Universal Forest Products)
 Eastern Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony Kirksey;)
 Polly S. Clark d/b/a Glenn Clark)
 Construction; Benjamin Mora a/k/a)
 Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel L.)
 Rogers d/b/a Rogers Roofing Co., Inc.)
 n/k/a Dan Rogers Roofing, LLC; William)
 C. Mulhern d/b/a Bill's Painting; Mark)
 A. McFarland d/b/a In the Wind, Inc.;)
 Harbor Master, Inc.; Chad Hood; Kinco)
 Ltd. a/k/a Kinco, Inc.; Atrium)
 Companies, Inc. d/b/a Atrium Windows)
 and Doors, Inc. a/k/a HR Windows; The)
 Contractor Yard, Inc.; New Construction)
 Drywall Hanger, LLC f/k/a New)
 Construction Drywall Hanger, Inc.; Doug)
 Pilcher; and Michael Cassidy; DBC)

Construction Services, LLC; Gerardo)
Rosette Sanchez a/k/a GR Painting, LLC;)
Jesus Mora a/k/a J. Mora Brick & Block)
Mason, LLC; Juan Luis Sanchez a/k/a)
Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.)
)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc. with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on the following page.]

HAYES LAW FIRM, LLC



John C. Hayes, IV

Tyler E. Cloud

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: 843-805-7003

Fax: 843-573-7388

jhayes@hayeslaw.org

tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire

McCARTY LAW FIRM, LLC

Post Office Box 30055

Charleston, SC 29417

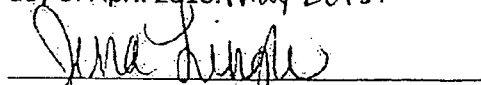
Tel: 843-793-1272

ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFF

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April~~ May 2018.



Notary Public for South Carolina

My Commission Expires: 9/14/20

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Capital, LLC d/b/a John Wieland Homes and
Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature *William Colley* ☐ Agent
☒ X ☐ Address

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

7011 3500 0000 4260 5868

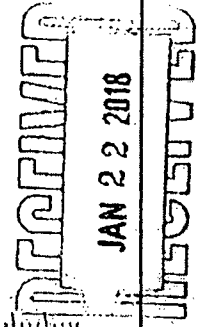
UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401



120.00 ~~514~~

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5245

One Hamlin Place Townhome Association,
Inc.,

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

John Wieland Homes and Neighborhoods of
the Carolinas, Inc. as successor by statutory
merger to John Wieland Homes and
Neighborhoods of South Carolina, Inc., et
al.,

Defendant.)

Plaintiff's Attorney:

Tyler E. Cloud, Bar No. 103155

Address:

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: 843-805-7003 Fax 843-573-7388

E-mail: tcloud@hayeslaw.org Other: _____

Defendant's Attorney:

Theodore Manos, Bar No. 8660

Address:

550 King Street, Suite 300

Charleston, SC 29403

Phone: 843.723.6470 Fax _____

E-mail: tlm@roblaw.net 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 Default Judgment

Estimated Time Needed: _____

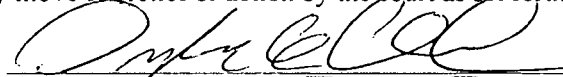
Court Reporter Needed: ☐ YES/☒ NO

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

5/14/2018

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.

JUDGE CODE _____

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; Wheelock Street Real Estate Fund
V, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

**ENTRY OF DEFAULT AND AGAINST
DEFENDANT WHELOCK STREET INVESTMENT
MANAGEMENT, LLC AND ORDER OF
REFERRAL TO SPECIAL REFEREE**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2018 JUN -7 PM 2:42

FILED

LLC; Residential Partners II, LLC;)
 Residential Partners III, LLC; Residential)
 Partners IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine Builders,)
 LLC; Jose Alfredo Sandoval; Chad Larsen)
 d/b/a Chad Larsen Co.; Ivan Jose Paiz)
 d/b/a Jose Construction; William B.)
 Angel; East Coast Wall Systems, Inc.;)
 Tracynne Construction a/k/a T&C)
 Construction, LLC; Francisco and)
 Andrea DaCosta d/b/a AAA Coastline,)
 Inc.; Jack R. Clark d/b/a Jack Clark)
 Construction, LLC; Alex Welch; Tracy)
 McCuiston d/b/a Mastercraft Interior)
 and Exterior; Universal Forest Products)
 Eastern Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony Kirksey;)
 Polly S. Clark d/b/a Glenn Clark)
 Construction; Benjamin Mora a/k/a)
 Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel L.)
 Rogers d/b/a Rogers Roofing Co., Inc.)
 n/k/a Dan Rogers Roofing, LLC; William)
 C. Mulhern d/b/a Bill's Painting; Mark A.)
 McFarland d/b/a In the Wind, Inc.;)
 Harbor Master, Inc.; Chad Hood; Kinco)
 Ltd. a/k/a Kinco, Inc.; Atrium)
 Companies, Inc. d/b/a Atrium Windows)
 and Doors, Inc. a/k/a HR Windows; The)
 Contractor Yard, Inc.; New Construction)
 Drywall Hanger, LLC f/k/a New)
 Construction Drywall Hanger, Inc.; Doug)
 Pilcher; and Michael Cassidy; DBC)
 Construction Services, LLC; Gerardo)
 Rosette Sanchez a/k/a GR Painting, LLC;)
 Jesus Mora a/k/a J. Mora Brick & Block)
 Mason, LLC; Juan Luis Sanchez a/k/a)
 Sanchez Brothers Painting; Latitude)
 Construction Services, LLC; Richard)
 Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHELOCK STREET INVESTMENT MANAGEMENT, LLC

This matter comes before the Court upon motion of the Plaintiff for execution of an Entry of Default against Defendant Wheelock Street Investment Management, LLC arising out of a construction defects action brought by the Plaintiff. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiff also seeks referral of the matter to a Special Referee.

It appears that Defendant Wheelock Street Investment, LLC are in default on the Complaint filed by Plaintiff as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiff.

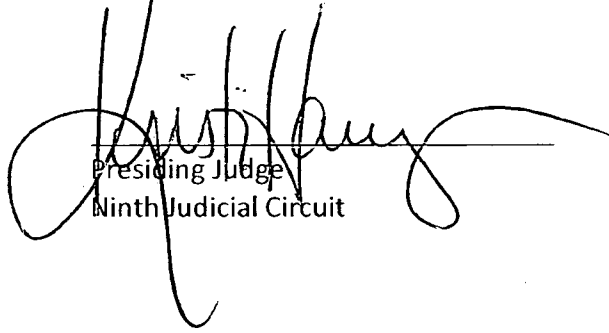
IT IS THEREFORE ORDERED that default be entered against Defendant Wheelock Street Investment Management, LLC. in favor of the Plaintiff One Hamlin Place Townhome Association, Inc.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRPC, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the

Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!


Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

June 4, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; Wheelock Street Real Estate Fund
V, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE
AND MOTION FOR ENTRY OF DEFAULT AND
REFERRAL**

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

EXHIBIT

A

tabbica

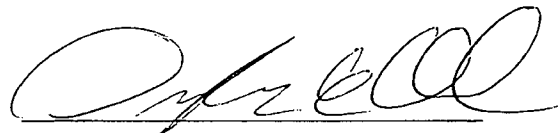
LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Francisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark A.)
McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)
Pilcher; and Michael Cassidy; DBC)
Construction Services, LLC; Gerardo)
Rosette Sanchez a/k/a GR Painting, LLC;)
Jesus Mora a/k/a J. Mora Brick & Block)
Mason, LLC; Juan Luis Sanchez a/k/a)
Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET INVESTMENT MANAGEMENT, LLC

PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Investment Management, LLC by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.



Tyler E. Cloud, Esquire
Attorney for the Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC



Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

One Hamlin Place Townhome
Association, Inc.,)

Plaintiff,)

vs.)

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. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support Services)
of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a John)
Wieland Homes and Neighborhoods,)
Inc.; Wheelock Street Real Estate Fund,)
LP; Wheelock Street Investment)
Management, LLC; RP Falcon)
Properties, LLC; Residential Partners,)
LLC; Middlesex Holdings, LLC; WS JWH,)
LLC; JWC Phoenix, LLC; Bridgemill Land,)
LLC; Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty Associates,)
Inc. a/k/a Wieland Realty Associates,)
Inc.; John Wieland, individually; Sue)
Wieland; Lindsey Parker; Robert Parker;)
Jack Wieland; Jorge Medina; Jorge)
Medina a/k/a JMC Construction, Inc.)
a/k/a JMC Construction, LLC; John Does)
(20-50); and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource –)
Southeast Group, LLC; Muhler LLC a/k/a)
The Muhler Company, Inc.; YKK (U.S.A),)
Inc.; Wheelock Street Real Estate Fund)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

AFFIDAVIT OF SERVICE

FILED
2018 MAY 11 PM 12:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

II, LP; Wheelock Street Real Estate Fund)
 V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
 JWH RPIV, LLC; RP Falcon Land, LLC;)
 Wieland Realty, LLC; RP Falcon Realty,)
 LLC; Residential Partners II, LLC;)
 Residential Partners III, LLC; Residential)
 Partners IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine Builders,)
 LLC; Jose Alfredo Sandoval; Chad Larsen)
 d/b/a Chad Larsen Co.; Ivan Jose Paiz)
 d/b/a Jose Construction; William B.)
 Angel; East Coast Wall Systems, Inc.;)
 Tracynne Construction a/k/a T&C)
 Construction, LLC; Francisco and)
 Andrea DaCosta d/b/a AAA Coastline,)
 Inc.; Jack R. Clark d/b/a Jack Clark)
 Construction, LLC; Alex Welch; Tracy)
 McCuiston d/b/a Mastercraft Interior)
 and Exterior; Universal Forest Products)
 Eastern Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony Kirksey;)
 Polly S. Clark d/b/a Glenn Clark)
 Construction; Benjamin Mora a/k/a)
 Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel L.)
 Rogers d/b/a Rogers Roofing Co., Inc.)
 n/k/a Dan Rogers Roofing, LLC; William)
 C. Mulhern d/b/a Bill's Painting; Mark)
 A. McFarland d/b/a In the Wind, Inc.;)
 Harbor Master, Inc.; Chad Hood; Kinco)
 Ltd. a/k/a Kinco, Inc.; Atrium)
 Companies, Inc. d/b/a Atrium Windows)
 and Doors, Inc. a/k/a HR Windows; The)
 Contractor Yard, Inc.; New Construction)
 Drywall Hanger, LLC f/k/a New)
 Construction Drywall Hanger, Inc.; Doug)
 Pilcher; and Michael Cassidy; DBC)

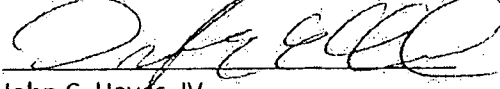
Construction Services, LLC; Gerardo)
Rosette Sanchez a/k/a GR Painting, LLC;)
Jesus Mora a/k/a J. Mora Brick & Block)
Mason, LLC; Juan Luis Sanchez a/k/a)
Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)

Defendants.)
_____)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Investment Management, LLC with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on the following page]

HAYES LAW FIRM, LLC



John C. Hayes, IV

Tyler E. Cloud

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: 843-805-7003

Fax: 843-573-7388

jhayes@hayeslaw.org

I. Keith McCarty, Esquire

McCARTY LAW FIRM, LLC

Post Office Box 30055

Charleston, SC 29417

Tel: 843-793-1272

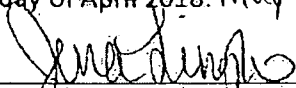
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFF

May 11, 2018

Charleston, South Carolina

SWORN to before me this 11th
day of ~~April~~ May 2018.



Notary Public for South Carolina

My Commission Expires: 9/16/18

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Investment Management, LLC
251 Little Falls Dr.
Wilmington, DE 19808

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *Williamalley*

☐ Agent

☐ Address

B. Received by (Printed Name)**C. Date of Delivery****D. Is delivery address different from item 1? ☐ Yes**

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

7011 3500 0000 4260 6421

UNITED STATES POSTAL SERVICE

W/POSTAGE PAID PERMIT NO. 6-10

3 1/2" X 5" 2018-01-02 10:00 AM

First-Class Mail
Postage & Fees Paid
USPS
Permit No. 6-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

PREMIER
JAN 22 2018
3011

120-001-1000 S.C.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome Association,
Inc.,

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of
the Carolinas, Inc. as successor by statutory
merger to John Wieland Homes and
Neighborhoods of South Carolina, Inc., et
al.,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5245

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:
Tyler E. Cloud, Bar No. 103155
Address:
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003 Fax 843-573-7388
E-mail: tcloud@hayeslaw.org Other: _____

Defendant's Attorney:
Theodore Manos, Bar No. 8660
Address:
550 King Street, Suite 300
Charleston, SC 29403
Phone: 843.723.6470 Fax _____
E-mail: tlm@roblaw.net 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

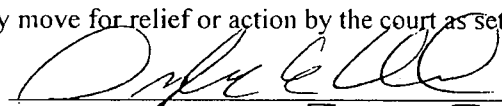
Nature of Motion: Motion for Default Judgment

Estimated Time Needed: _____ 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

5/14/2018
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.

JUDGE CODE _____

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; Wheelock Street Real Estate Fund
V, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

**ENTRY OF DEFAULT AND AGAINST
DEFENDANT WHELOCK STREET REAL ESTATE
LAND FUND, L.P. AND ORDER OF REFERRAL
TO SPECIAL REFEREE**

JULIE S. JONES
CLERK OF COURT

2018 JUN -8 AM 9:24

FILED

LLC; Residential Partners II, LLC;)
 Residential Partners III, LLC; Residential)
 Partners IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine Builders,)
 LLC; Jose Alfredo Sandoval; Chad Larsen)
 d/b/a Chad Larsen Co.; Ivan Jose Paiz)
 d/b/a Jose Construction; William B.)
 Angel; East Coast Wall Systems, Inc.;)
 Tracynne Construction a/k/a T&C)
 Construction, LLC; Francisco and)
 Andrea DaCosta d/b/a AAA Coastline,)
 Inc.; Jack R. Clark d/b/a Jack Clark)
 Construction, LLC; Alex Welch; Tracy)
 McCuiston d/b/a Mastercraft Interior)
 and Exterior; Universal Forest Products)
 Eastern Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony Kirksey;)
 Polly S. Clark d/b/a Glenn Clark)
 Construction; Benjamin Mora a/k/a)
 Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel L.)
 Rogers d/b/a Rogers Roofing Co., Inc.)
 n/k/a Dan Rogers Roofing, LLC; William)
 C. Mulhern d/b/a Bill's Painting; Mark A.)
 McFarland d/b/a In the Wind, Inc.;)
 Harbor Master, Inc.; Chad Hood; Kinco)
 Ltd. a/k/a Kinco, Inc.; Atrium)
 Companies, Inc. d/b/a Atrium Windows)
 and Doors, Inc. a/k/a HR Windows; The)
 Contractor Yard, Inc.; New Construction)
 Drywall Hanger, LLC f/k/a New)
 Construction Drywall Hanger, Inc.; Doug)
 Pilcher; and Michael Cassidy; DBC)
 Construction Services, LLC; Gerardo)
 Rosette Sanchez a/k/a GR Painting, LLC;)
 Jesus Mora a/k/a J. Mora Brick & Block)
 Mason, LLC; Juan Luis Sanchez a/k/a)
 Sanchez Brothers Painting; Latitude)
 Construction Services, LLC; Richard)
 Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHELOCK STREET REAL ESTATE LAND FUND, L.P.

This matter comes before the Court upon motion of the Plaintiff for execution of an Entry of Default against Defendant Wheelock Street Real Estate Fund, L.P. arising out of a construction defects action brought by the Plaintiff. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiff also seeks referral of the matter to a Special Referee.

It appears that Defendant Wheelock Street Real Estate Fund, L.P. are in default on the Complaint filed by Plaintiff as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiff.

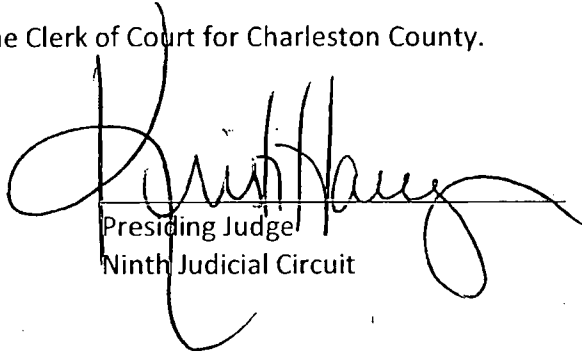
IT IS THEREFORE ORDERED that default be entered against Defendant Wheelock Street Real Estate Fund, L.P. in favor of the Plaintiff One Hamlin Place Townhome Association, Inc.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the

Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!


Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

June 4, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs.

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support Services
of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a John
Wieland Homes and Neighborhoods,
Inc.; Wheelock Street Real Estate Fund,
LP; Wheelock Street Investment
Management, LLC; RP Falcon
Properties, LLC; Residential Partners,
LLC; Middlesex Holdings, LLC; WS JWH,
LLC; JWC Phoenix, LLC; Bridgemill Land,
LLC; Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty Associates,
Inc. a/k/a Wieland Realty Associates,
Inc.; John Wieland, individually; Sue
Wieland; Lindsey Parker; Robert Parker;
Jack Wieland; Jorge Medina; Jorge
Medina a/k/a JMC Construction, Inc.
a/k/a JMC Construction, LLC; John Does
(20-50); and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource –
Southeast Group, LLC; Muhler LLC a/k/a
The Muhler Company, Inc.; YKK (U.S.A),
Inc.; Wheelock Street Real Estate Fund
II, LP; Wheelock Street Real Estate Fund
V, LP; WSREF, NRT, LLC; JW Homes, LLC;
JWH RPIV, LLC; RP Falcon Land, LLC;
Wieland Realty, LLC; RP Falcon Realty,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2017-CP-10-5245

)

)

)

)

)

)

)

**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE
AND MOTION FOR ENTRY OF DEFAULT AND
REFERRAL**

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

EXHIBIT

A

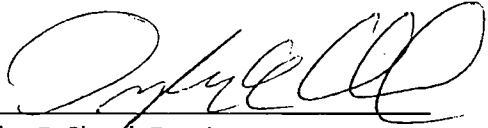
LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Francisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark A.)
McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)
Pilcher; and Michael Cassidy; DBC)
Construction Services, LLC; Gerardo)
Rosette Sanchez a/k/a GR Painting, LLC;)
Jesus Mora a/k/a J. Mora Brick & Block)
Mason, LLC; Juan Luis Sanchez a/k/a)
Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)

Valencia Medina;)
)
Defendants.)

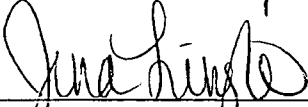
TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Real Estate Land Fund, L.P. by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.


Tyler E. Cloud, Esquire
Attorney for the Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC



Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

One Hamlin Place Townhome)
Association, Inc.,)

Plaintiff,)

vs.)

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. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support Services)
of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a John)
Wieland Homes and Neighborhoods,)
Inc.; Wheelock Street Real Estate Fund,)
LP; Wheelock Street Investment)
Management, LLC; RP Falcon)
Properties, LLC; Residential Partners,)
LLC; Middlesex Holdings, LLC; WS JWH,)
LLC; JWC Phoenix, LLC; Bridgemill Land,)
LLC; Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty Associates,)
Inc. a/k/a Wieland Realty Associates,)
Inc.; John Wieland, individually; Sue)
Wieland; Lindsey Parker; Robert Parker;)
Jack Wieland; Jorge Medina; Jorge)
Medina a/k/a JMC Construction, Inc.)
a/k/a JMC Construction, LLC; John Does)
(20-50); and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource –)
Southeast Group, LLC; Muhler LLC a/k/a)
The Muhler Company, Inc.; YKK (U.S.A),)
Inc.; Wheelock Street Real Estate Fund)

AFFIDAVIT OF SERVICE

FILED
2018 MAY 11 PM 12:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

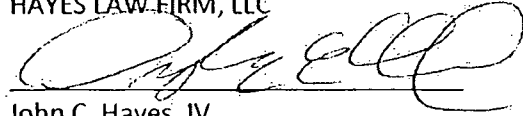
II, LP; Wheelock Street Real Estate Fund)
 V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
 JWH RPIV, LLC; RP Falcon Land, LLC;)
 Wieland Realty, LLC; RP Falcon Realty,)
 LLC; Residential Partners II, LLC;)
 Residential Partners III, LLC; Residential)
 Partners IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine Builders,)
 LLC; Jose Alfredo Sandoval; Chad Larsen)
 d/b/a Chad Larsen Co.; Ivan Jose Paiz)
 d/b/a Jose Construction; William B.)
 Angel; East Coast Wall Systems, Inc.;)
 Tracyinne Construction a/k/a T&C)
 Construction, LLC; Francisco and)
 Andrea DaCosta d/b/a AAA Coastline,)
 Inc.; Jack R. Clark d/b/a Jack Clark)
 Construction, LLC; Alex Welch; Tracy)
 McCuiston d/b/a Mastercraft Interior)
 and Exterior; Universal Forest Products)
 Eastern Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony Kirksey;)
 Polly S. Clark d/b/a Glenn Clark)
 Construction; Benjamin Mora a/k/a)
 Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel L.)
 Rogers d/b/a Rogers Roofing Co., Inc.)
 n/k/a Dan Rogers Roofing, LLC; William)
 C. Mulhern d/b/a Bill's Painting; Mark)
 A. McFarland d/b/a In the Wind, Inc.;)
 Harbor Master, Inc.; Chad Hood; Kinco)
 Ltd. a/k/a Kinco, Inc.; Atrium)
 Companies, Inc. d/b/a Atrium Windows)
 and Doors, Inc. a/k/a HR Windows; The)
 Contractor Yard, Inc.; New Construction)
 Drywall Hanger, LLC f/k/a New)
 Construction Drywall Hanger, Inc.; Doug)
 Pilcher; and Michael Cassidy; DBC)

Construction Services, LLC; Gerardo	)
Rosette Sanchez a/k/a GR Painting, LLC;	)
Jesus Mora a/k/a J. Mora Brick & Block	)
Mason, LLC; Juan Luis Sanchez a/k/a	)
Sanchez Brothers Painting; Latitude	)
Construction Services, LLC; Richard	)
Ditullio a/k/a RDT Contracting, LLC;	)
Valencia Medina;	)
	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Real Estate Fund, L.P. with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature page to follow]

HAYES LAW FIRM, LLC



John C. Hayes, IV

Tyler E. Cloud

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: 843-805-7003

Fax: 843-573-7388

jhayes@hayeslaw.org

tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire

McCARTY LAW FIRM, LLC

Post Office Box 30055

Charleston, SC 29417

Tel: 843-793-1272

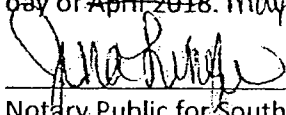
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFF

May 11, 2018

Charleston, South Carolina

SWORN to before me this 11th
day of April 2018. May 2018.



Notary Public for South Carolina

My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Real Estate Fund, LP
251 Little Falls Dr.
Wilmington, DE 19808

2. Article Number
(Transfer from service label)

7011 3500 0000 4260 6445

PS Form 3811, February 2004

Domestic Return Receipt

102506-02-44-1

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *William Lolley* ☐ Agent
☐ Address

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

UNITED STATES POSTAL SERVICE

12001 2018 JAN 22 10 10 AM

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

RECEIVED
JAN 22 2018

120,001 554C

EXHIBIT B

[Letter from Cheryl Shoun, counsel from
Appellants, dated July 3, 2018 w/o Exhibits]

NEXSEN|PRUET

Cheryl D. Shoun
Special Counsel
Admitted in SC

July 3, 2018

John C. Hayes, IV, Esq.
Hayes Law Firm
180 Meeting Street
Suite 330
Charleston, SC 29401

Keith McCarty, Esq.
McCarty Law firm
P.O. Box 30055
Charleston, SC 29417

RE: *One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245 and *Keisler, et al. v. JWHNC, et al.*, 2017-CP-1005246

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

John and Keith:

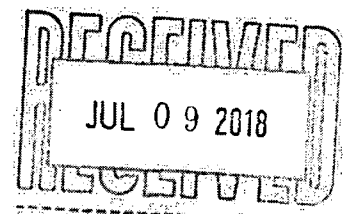
I am reaching out once again in an effort to resolve the issues surrounding the June 7-8 Entries of Default against certain Wheelock defendants in the referenced cases. While not exhaustive, the reasons for this request with respect to each action are reiterated below:

***One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245**

- Entry of Default against Wheelock Street Investment Management, I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC:
 - These entities *are not named in the lawsuit*. That alone justifies the removal of the June 7, 2018 Entry of Default against them.
- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, LP ("WSREF"):

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1762
F 843.414.8238
E CShoun@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law



John C. Hayes, IV, Esq.
Keith McCarty, Esq.
July 3, 2018
Page 2

- Neither WSC nor WSREF received the original Summons or Complaint in this case.
- WSC and WSREF were served with an Amended Summons on or around January 22, 2018. See Ex. 1-2.
- Under SCRCP 4(d), the "summons and complaint must be served together." WSC and WSREF were not served with the Amended Summons and Amended Complaint until May 21, 2018. This was the first proper service of any summons and complaint on WSC and WSREF.
- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
- In the cover letter to these amended papers, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." See Exs. 3-4, at 1. The Amended Summons likewise sets forth 30 days for a response.
- You moved for Entry of Default without notice to me or my client almost two weeks before the 30 days expired, despite our conversations that had been ongoing since February.
- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.
- For all these reasons (though there are more), the June 7-8, 2018 Entries of Default against WSC should be removed.
- Entry of Default against Wheelock Street Investment Management, LLC ("WSIM"):
 - WSIM was served with a Summons and Complaint on or around January 12, 2018.
 - WSIM was served with an Amended Summons on or around January 22, 2018. Ex. 5.

John C. Hayes, IV, Esq.
Keith McCarty, Esq.
July 3, 2018
Page 3

- That Amended Summons prompted me to reach out to you about the missing Amended Complaint and the service issues related to the other Wheelock defendants. See Ex. 6 (My email of Feb. 16, 2018 email to you both).
- During our subsequent conversations, you indicated that you would be serving a *Fourth Amended Complaint* on the Wheelock defendants. See Ex. 7 (March 3, 2018 email). ("As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming.").
- Given the service issues, I agreed to accept service on behalf of all the Wheelock defendants in exchange for an extension of time to answer the *forthcoming* amended pleadings. *Id.*
- You initially agreed but changed your mind for reasons of which I was and remain uncertain. *Id.* (March 6, 2018 email from John to me) ("Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you."); *id.* (March 7, 2018 email from John to me) ("Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.").
- By late April, I asked you to send to me any green cards related to the purported January service of the Wheelock defendants. Ex. 8., to which I received no response, but you instead served WSIM with an Amended Summons and Amended Complaint on May 21, 2018, without any notice to me.
- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSIM, making the prior pleading moot and any response thereto unnecessary.
- In the cover letter to the amended papers, you stated that WSIM had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Ex. 9, at 1. And, again, the Amended Summons indicates a response is due within 30 days.

John C. Hayes, IV, Esq.
Keith McCarty, Esq.
July 3, 2018
Page 4

- Once again, you moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired*.
- WSIM timely answered the Amended Complaint on June 20, 2018.
- For these reasons (though there are more), the June 7, 2018 Entry of Default against WSIM should be removed.

Keisler, et al. v. JWHNC, et al., 2017-CP-1005246

- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, L.P. ("WSREF"):
 - Neither WSC nor WSREF received the original Summons or Complaint in this case.
 - WSC and WSREF were served with the Amended Summons and Amended Complaint on May 21, 2018.
 - When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
 - Identical to your cover letters in *One Hamlin*, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Exs. 10-11, at 1. Again, please refer to what I believe is intended to be the Amended Summons, but instead labelled Amended Verified Complaint, which provides for a response due within 30 days.
 - Once again, you moved for Entries of Default without notice to me or my client almost two weeks *before the 30 days expired*.
 - Moreover, the Motions for the Entries of Default against WSC and WSREF are facially deficient.
 - The first Motion and Entry of Default against WSC, dated June 7, 2018, relies on an Affidavit of Service and mail return receipt for the service of a different party.

John C. Hayes, IV, Esq.
Keith McCarty, Esq.
July 3, 2018
Page 5

- The second Motion and Entry of Default against WSC, dated June 8, 2018, was based on the same incorrect mail return receipt.
 - Similarly, the Motion and Entry of Default against WSREF, dated June 7, 2018, relies on a mail return receipt for the service of a different party.
- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.
 - For these reasons (though there are more), the June 7, 2018 and June 8, 2018 Entries of Default against WSC and WSREF should be removed.

I will be more than happy to meet with you to discuss these defaults and the relevant exhibits, if necessary. It seems, however, that the foregoing, along with the documents referenced is adequate to secure the removal of the defaults and any additional documents resulting therefrom.

I hope to hear with you upon your receipt of this correspondence.

Sincerely,



Cheryl D. Shoun, Esq.

cc: Brian D. Duffy, Esq.
Mark E. Tully, Esq.

EXHIBIT C

[Appellants' Motions to Vacate]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ONE HAMLIN PLACE TOWNHOME ASSOC.,
INC.

☐ Plaintiff

v.

JOHN WIELAND HOMES & NEIGHBORHOODS
OF THE CAROLINAS, INC, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5245

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

I. Keith Mccarty, Bar No.

Address:

1212 Wappoo Road

Charleston, SC 29407

phone: 843-793-1272 fax:

e-mail: other:

Defendant's Attorney:

Brian Duffy, Bar No. 16247

Address:

96 Broad Street

Charleston, SC 29401

phone: 843-720-2044 fax: 843-720-2047

e-mail: bduffy@duffyandyoung.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 to Vacate Order of Referral to Special Referee

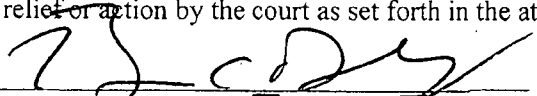
Estimated Time Needed: 15 Court Reporter Needed: ☒ YES / ☐ NO

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.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Feb 13, 2019
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: _____

Date Filed: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs;

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support
Services of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a
John Wieland Homes and
Neighborhoods, Inc.; Wheelock Street
Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; RP
Falcon Properties, LLC; Residential
Partners, LLC; Middlesex Holdings,
LLC; WS JWH, LLC; JWC Phoenix,
LLC; Bridgemill Land, LLC;
Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty
Associates, Inc. a/k/a Wieland Realty
Associates, Inc.; John Wieland,
individually; Sue Wieland; Lindsey
Parker; Robert Parker; Jack Wieland;
Jorge Medina; Jorge Medina a/k/a JMC
Construction, Inc. a/k/a JMC
Construction, LLC; John Does (20-50);
and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource -
Southeast Group, LLC; Muhler LLC
a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:33
JULIE J. ARMSTRONG
CLERK OF COURT

**DEFENDANT WHEELOCK STREET
REAL ESTATE FUND, LP'S NOTICE OF
MOTION AND MOTION TO VACATE
ORDER OF REFERRAL TO SPECIAL
REFEREE**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Francisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR Painting,)
LLC; Jesus Mora a/k/a J. Mora Brick &)
Block Mason, LLC; Juan Luis Sanchez)
a/k/a Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina; J & R Construction, LLC)
a/k/a JJ&R Construction, LLC; Cohen's)
Drywall Company, LLC; All American)
Roofing and Construction, LLC; and Leor)
Construction LLC.)

Defendants.)

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter
as the Court may provide, undersigned counsel will appear on behalf of Defendant Wheelock
Street Real Estate Fund, LP ("this Defendant") and move this Court to vacate the order of
referral to Special Referee as set forth in the Order entered on June 4, 2018. A Motion to Set
Aside and Vacate Entry of Default is being filed concurrently with this motion.

This motion is based on Rule 4(d)(8), Rule 55(c), and Rule 60(b) of the *South Carolina
Rules of Civil Procedure*. The grounds for this motion include Plaintiff's failure to perfect
service upon this Defendant in accordance with the *South Carolina Rules of Civil Procedure* and

that personal jurisdiction, therefore, had not yet attached to this Defendant, rendering the order void. Subsequent amended pleadings and timely answers should also render the Order of Reference void, as should the fact that data relied on in the *ex parte* filings at issue were inaccurate on their face.

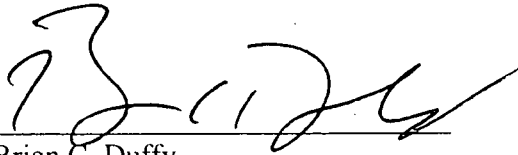
In addition, this Defendant respectfully is entitled to relief under Rule 60(b)(1) & (3) in light of discussions among counsel at the relevant time. While counsel for Plaintiff and this Defendant were corresponding about the efforts to effect and accept service, Plaintiff attempted to serve the client directly and then filed for entry of default and for the referral at issue – all without notice to counsel for this Defendant, and despite naming counsel in the filings at issue.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion. Pursuant to Rules 4(d)(8), 55(c), and 60(b)(4) of the *South Carolina Rules of Civil Procedure*, the order of reference to the special referee is void and must be vacated due to lack of jurisdiction over this Defendant and the additional reasons described above and to be shown in a Memorandum In Support.

This Defendant respectfully requests that, upon vacating the Order of Reference, the Court set aside the entry of default under Rule 55(c) for the reasons described above and in the contemporaneously filed motions and the related Memoranda In Support.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.

Signature on following page



Brian C. Duffy
Blake A. McKie
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044
Fax: (843) 720-2047
bduffy@duffyandyoung.com
bmckie@duffyandyoung.com

*Attorneys for Defendant Wheelock Street Real
Estate Fund, LP*

February 13, 2019
Charleston, South Carolina

2017-CP-10-5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELOCK STREET REAL ESTATE FUND, LP'S NOTICE OF MOTION AND MOTION TO VACATE ORDER OF REFERRAL TO SPECIAL REFEREE** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
tdargan@lmlawllp.com
Attorneys for Fine Builders, LLC

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

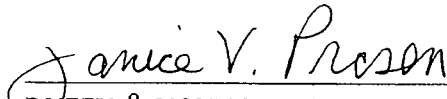
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tln@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:34
JULIE J. ARNSTROM
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@vcrlaw.com
mwillis@vcrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.



DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ONE HAMLIN PLACE TOWNHOME ASSOC.,
INC.

☐ Plaintiff

v.

JOHN WIELAND HOMES & NEIGHBORHOODS
OF THE CAROLINAS, INC, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5245

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
I. Keith Mccarty, Bar No.
Address:
1212 Wappoo Road
Charleston, SC 29407
phone: 843-793-1272 fax:
e-mail: other:

Defendant's Attorney:
Brian Duffy, Bar No. 16247
Address:
96 Broad Street
Charleston, SC 29401
phone: 843-720-2044 fax: 843-720-2047
e-mail: bduffy@duffyandyoung.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 to Vacate Order of Referral to Special Referee

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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

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, 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: _____

Date Filed:

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs;

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support
Services of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a
John Wieland Homes and
Neighborhoods, Inc.; Wheelock Street
Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; RP
Falcon Properties, LLC; Residential
Partners, LLC; Middlesex Holdings,
LLC; WS JWH, LLC; JWC Phoenix,
LLC; Bridgemill Land, LLC;
Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty
Associates, Inc. a/k/a Wieland Realty
Associates, Inc.; John Wieland,
individually; Sue Wieland; Lindsey
Parker; Robert Parker; Jack Wieland;
Jorge Medina; Jorge Medina a/k/a JMC
Construction, Inc. a/k/a JMC
Construction, LLC; John Does (20-50);
and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource -
Southeast Group, LLC; Muhler LLC
a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:35
JULIE J. ARHSTROMS
CLERK OF COURT

**DEFENDANT WHELOCK STREET
CAPITAL, LLC'S NOTICE OF MOTION
AND MOTION TO VACATE ORDER OF
REFERRAL TO SPECIAL REFEREE**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Francisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael	)
Cassidy; DBC Construction Services, LLC;	)
Gerardo Rosette Sanchez a/k/a GR Painting,	)
LLC; Jesus Mora a/k/a J. Mora Brick &	)
Block Mason, LLC; Juan Luis Sanchez	)
a/k/a Sanchez Brothers Painting; Latitude	)
Construction Services, LLC; Richard	)
Ditullio a/k/a RDT Contracting, LLC;	)
Valencia Medina; J & R Construction, LLC	)
a/k/a JJ&R Construction, LLC; Cohen's	)
Drywall Company, LLC; All American	)
Roofing and Construction, LLC; and Leor	)
Construction LLC.	)
	)
	)
Defendants.	)
Builders FirstSource-Southeast Group,	)
LLC,	)
	)
Third-Party Plaintiff,	)
	)
v.	)
	)
AC Construction, Corp.	)
	)
Third-Party Defendant.	)
	)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will appear on behalf of Defendant Wheelock Street Capital, LLC ("this Defendant") and move this Court to vacate the order of referral to Special Referee as set forth in the Order entered on May 22, 2018. A Motion to Set Aside and Vacate Entry of Default is being filed concurrently with this motion.

This motion is based on Rule 4(d)(8), Rule 55(c), and Rule 60(b) of the *South Carolina Rules of Civil Procedure*. The grounds for this motion include Plaintiff's failure to perfect service upon this Defendant in accordance with the *South Carolina Rules of Civil Procedure* and

that personal jurisdiction, therefore, had not yet attached to this Defendant, rendering the order void. Subsequent amended pleadings and timely answers should also render the Order of Reference void, as should the fact that data relied on in the *ex parte* filings at issue were inaccurate on their face.

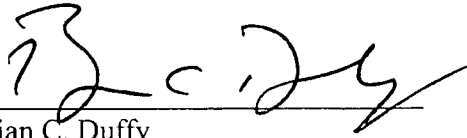
In addition, this Defendant respectfully is entitled to relief under Rule 60(b)(1) & (3) in light of discussions among counsel at the relevant time. While counsel for Plaintiff and this Defendant were corresponding about the efforts to effect and accept service, Plaintiff attempted to serve the client directly and then filed for entry of default and for the referral at issue – all without notice to counsel for this Defendant, and despite naming counsel in the filings at issue.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion. Pursuant to Rules 4(d)(8), 55(c), and 60(b)(4) of the *South Carolina Rules of Civil Procedure*, the order of reference to the special referee is void and must be vacated due to lack of jurisdiction over this Defendant and the additional reasons described above and to be shown in a Memorandum In Support.

This Defendant respectfully requests that, upon vacating the Order of Reference, the Court set aside the entry of default under Rule 55(c) for the reasons described above and in the contemporaneously filed motions and the related Memoranda In Support.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.

Signature on following page



Brian C. Duffy
Blake A. McKie
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044
Fax: (843) 720-2047
bduffy@duffyandyoung.com
bmckie@duffyandyoung.com
*Attorneys for Defendant Wheelock Street Capital,
LLC*

February 13, 2019
Charleston, South Carolina

2017 CP 10-5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELLOCK STREET CAPITAL, LLC'S NOTICE OF MOTION AND MOTION TO VACATE ORDER OF REFERRAL TO SPECIAL REFEREE** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
tdargan@lmlawllp.com
Attorneys for Fine Builders, LLC

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

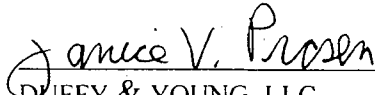
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tlim@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:35
JULIE J. ARMSTRONG
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@ycrlaw.com
mwillis@ycrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.



DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

ONE HAMLIN PLACE TOWNHOME ASSOC.,)
INC.)

CASE NO.

☐ Plaintiff)

2017-CP-10-5245

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

JOHN WIELAND HOMES & NEIGHBORHOODS)
OF THE CAROLINAS, INC, Et Al.)

☒ Defendant.)

Plaintiff's Attorney:

I. Keith Mccarty, Bar No.

Address:

1212 Wappoo Road

Charleston, SC 29407

phone: 843-793-1272 fax:

e-mail: other:

Defendant's Attorney:

Brian Duffy, Bar No. 16247

Address:

96 Broad Street

Charleston, SC 29401

phone: 843-720-2044 fax: 843-720-2047

e-mail: bduffy@duffyandyoung.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 to Vacate Order of Referral to Special Referee

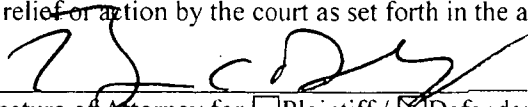
Estimated Time Needed: 15 Court Reporter Needed: ☒ YES / ☐ NO

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.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Feb 13, 2019
Date submitted

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, SCRCF)

☐ 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: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs;

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support
Services of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a
John Wieland Homes and
Neighborhoods, Inc.; Wheelock Street
Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; RP
Falcon Properties, LLC; Residential
Partners, LLC; Middlesex Holdings,
LLC; WS JWH, LLC; JWC Phoenix,
LLC; Bridgemill Land, LLC;
Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty
Associates, Inc. a/k/a Wieland Realty
Associates, Inc.; John Wieland,
individually; Sue Wieland; Lindsey
Parker; Robert Parker; Jack Wieland;
Jorge Medina; Jorge Medina a/k/a JMC
Construction, Inc. a/k/a JMC
Construction, LLC; John Does (20-50);
and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource -
Southeast Group, LLC; Muhler LLC
a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:35
JULIE J. ARMSTRONG
CLERK OF COURT

**DEFENDANT WHELOCK STREET
INVESTMENT MANAGEMENT, I, II & V
LLCS' NOTICE OF MOTION AND
MOTION TO VACATE ORDER OF
REFERRAL TO SPECIAL REFEREE**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Frankcisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR Painting,)
LLC; Jesus Mora a/k/a J. Mora Brick &)
Block Mason, LLC; Juan Luis Sanchez)
a/k/a Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina; J & R Construction, LLC)
a/k/a JJ&R Construction, LLC; Cohen's)
Drywall Company, LLC; All American)
Roofing and Construction, LLC; and Leor)
Construction LLC.)

Defendants.)

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will make a special appearance on behalf of Counsel for Wheelock Street Investment Management, I, LLC; Wheelock Street Investment Management, II, LLC; and Wheelock Street Investment Management V, LLC (herein collectively called "Wheelock Street Investment I, II and V") and move this Court to vacate the order of referral to Special Referee as set forth in the Order entered on June 4, 2018. A Motion to Set Aside and Vacate Entry of Default is being filed concurrently with this motion.

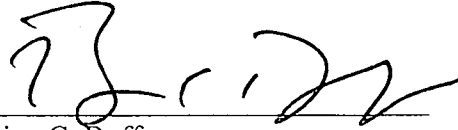
This motion is based on Rule 4(d)(8), Rule 55(c), and Rule 60(b) of the *South Carolina Rules of Civil Procedure*. The grounds for this motion include Plaintiff's failure to perfect service upon Wheelock Street Investment I, II and V in accordance with the *South Carolina Rules of Civil Procedure* and that personal jurisdiction, therefore, had not yet attached to Wheelock Street Investment I, II and V, rendering the order void. Subsequent amended pleadings and timely answers should also render the Order of Reference void, as should the fact that data relied on in the *ex parte* filings at issue were inaccurate on their face.

In addition, Wheelock Street Investment I, II and V respectfully are entitled to relief under Rule 60(b)(1) & (3) in light of discussions among counsel at the relevant time. While counsel for Plaintiff and Wheelock Street Investment I, II and V were corresponding about the efforts to effect and accept service, Plaintiff attempted to serve the client directly and then filed for entry of default and for the referral at issue – all without notice to counsel for Wheelock Street Investment I, II and V, and despite naming counsel in the filings at issue.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion. Pursuant to Rules 4(d)(8), 55(c), and 60(b)(4) of the *South Carolina Rules of Civil Procedure*, the order of reference to the special referee is void and must be vacated due to lack of jurisdiction over Wheelock Street Investment I, II and V and the additional reasons described above and to be shown in a Memorandum In Support.

Wheelock Street Investment I, II and V respectfully request that, upon vacating the Order of Reference, the Court set aside the entry of default under Rule 55(c) for the reasons described above and in the contemporaneously filed motions and the related Memoranda In Support.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.



Brian C. Duffy
Blake A. McKie
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044
Fax: (843) 720-2047
bduffy@duffyandyoung.com
bmckie@duffyandyoung.com

*Attorneys for Defendants Wheelock Street
Investment Management, I, II and V, LLCs*

February 13, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELOCK STREET INVESTMENT MANAGEMENT, I, II & V LLCs' NOTICE OF MOTION AND MOTION TO VACATE ORDER FOR REFERRAL TO SPECIAL REFEREE** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
tdargan@lmlawllp.com
Attorneys for Fine Builders, LLC

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

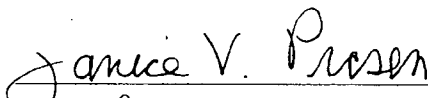
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tlim@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:35
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@ycrlaw.com
mwillis@ycrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.cm
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.


DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ONE HAMLIN PLACE TOWNHOME ASSOC.,
INC.

☐ Plaintiff

v.

JOHN WIELAND HOMES & NEIGHBORHOODS
OF THE CAROLINAS, INC, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5245

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

I. Keith Mccarty, Bar No.

Address:

1212 Wappoo Road

Charleston, SC 29407

phone: 843-793-1272 fax:

e-mail: other:

Defendant's Attorney:

Brian Duffy, Bar No. 16247

Address:

96 Broad Street

Charleston, SC 29401

phone: 843-720-2044 fax: 843-720-2047

e-mail: bduffy@duffyandyoung.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 to Set Aside Default

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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

2/13/19
Date submitted

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, 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: _____

Date Filed:

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs;

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support
Services of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a
John Wieland Homes and
Neighborhoods, Inc.; Wheelock Street
Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; RP
Falcon Properties, LLC; Residential
Partners, LLC; Middlesex Holdings,
LLC; WS JWH, LLC; JWC Phoenix,
LLC; Bridgemill Land, LLC;
Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty
Associates, Inc. a/k/a Wieland Realty
Associates, Inc.; John Wieland,
individually; Sue Wieland; Lindsey
Parker; Robert Parker; Jack Wieland;
Jorge Medina; Jorge Medina a/k/a JMC
Construction, Inc. a/k/a JMC
Construction, LLC; John Does (20-50);
and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource -
Southeast Group, LLC; Muhler LLC
a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:26
JULIE J. ARMSTRONG
CLERK OF COURT

**DEFENDANT WHEELOCK STREET
INVESTMENT MANAGEMENT, I, II & V
LLCS' NOTICE OF MOTION AND
MOTION TO SET ASIDE AND VACATE
ENTRY OF DEFAULT**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Frankcisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR Painting,)
LLC; Jesus Mora a/k/a J. Mora Brick &)
Block Mason, LLC; Juan Luis Sanchez)
a/k/a Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina; J & R Construction, LLC)
a/k/a JJ&R Construction, LLC; Cohen's)
Drywall Company, LLC; All American)
Roofing and Construction, LLC; and Leor)
Construction LLC.)

Defendants.)

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will make a special appearance on behalf of Counsel for Wheelock Street Investment Management, I, LLC; Wheelock Street Investment Management, II, LLC; and Wheelock Street Investment Management V, LLC (herein collectively called "Wheelock Street Investment I, II and V") and move this Court to set aside and vacate the entry of default. This motion will be based upon Rule 4(d)(8) and Rule 55(c) of the *South Carolina Rules of Civil Procedure*. As described herein and as will be shown more fully in a Memorandum In Support, good cause exists for setting aside the entry of default.

Wheelock Street Investment I, II and V has a meritorious defense and has long since begun defending the suit via a timely response to the only effective service of the Amended Summons and Amended Complaint. Accordingly, no undue prejudice will result for Plaintiff.

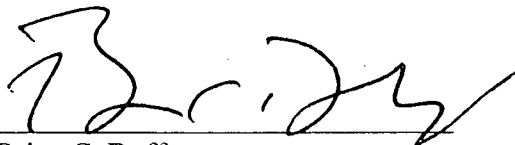
The grounds for this motion include the following:

- Plaintiff's failure to perfect service upon Wheelock Street Investment I, II and V in accordance with the *South Carolina Rules of Civil Procedure* and that personal jurisdiction, therefore, had not yet attached to Wheelock Street Investment I, II and V at the time default was entered;
- The amended pleadings and timely answers should render the default moot;
- The filings at issue were made without service on or other notice to counsel – despite the facts that counsel for Plaintiff had been discussing service with counsel for Wheelock Street Investment I, II and V and that the very filings at issue suggested inaccurately to the Court that counsel was being notified; and
- The motion for entry of default and its supporting materials are facially inaccurate.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion.

Pursuant to Rules 4(d)(8) and 55(c) of the *South Carolina Rules of Civil Procedure*, Wheelock Street Investment I, II and V respectfully submit that the entry of default must be set aside and vacated.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.



Brian C. Duffy
Blake A. McKie
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044
Fax: (843) 720-2047
bduffy@duffvandyoung.com
bmckie@duffvandyoung.com

*Attorneys for Defendants Wheelock Street
Investment Management, I, II, and V, LLCs*

February 13, 2019
Charleston, South Carolina

2017-09-10-5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELOCK STREET INVESTMENT MANAGEMENT, I, II & V LLCs' NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
tdargan@lmlawllp.com
Attorneys for Fine Builders, LLC.

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

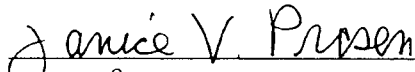
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tlm@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:26
JULIE J. ARMSTRONG
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@ycrlaw.com
mwillis@ycrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.


DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ONE HAMLIN PLACE TOWNHOME ASSOC.,
INC.

☐ Plaintiff

v.

JOHN WIELAND HOMES & NEIGHBORHOODS
OF THE CAROLINAS, INC, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5245

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

I. Keith Mccarty, Bar No.

Address:

1212 Wappoo Road

Charleston, SC 29407

phone: 843-793-1272 fax:

e-mail: other:

Defendant's Attorney:

Brian Duffy, Bar No. 16247

Address:

96 Broad Street

Charleston, SC 29401

phone: 843-720-2044 fax: 843-720-2047

e-mail: bduffy@duffyandyoung.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 to Set Aside Default

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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

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, 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: _____

Date Filed: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs;

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support
Services of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a
John Wieland Homes and
Neighborhoods, Inc.; Wheelock Street
Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; RP
Falcon Properties, LLC; Residential
Partners, LLC; Middlesex Holdings,
LLC; WS JWH, LLC; JWC Phoenix,
LLC; Bridgemill Land, LLC;
Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty
Associates, Inc. a/k/a Wieland Realty
Associates, Inc.; John Wieland,
individually; Sue Wieland; Lindsey
Parker; Robert Parker; Jack Wieland;
Jorge Medina; Jorge Medina a/k/a JMC
Construction, Inc. a/k/a JMC
Construction, LLC; John Does (20-50);
and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource -
Southeast Group, LLC; Muhler LLC
a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT

**DEFENDANT WHELOCK STREET
REAL ESTATE FUND, LP'S NOTICE OF
MOTION AND MOTION TO SET ASIDE
AND VACATE ENTRY OF DEFAULT**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Francisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR Painting,)
LLC; Jesus Mora a/k/a J. Mora Brick &)
Block Mason, LLC; Juan Luis Sanchez)
a/k/a Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina; J & R Construction, LLC)
a/k/a JJ&R Construction, LLC; Cohen's)
Drywall Company, LLC; All American)
Roofing and Construction, LLC; and Leor)
Construction LLC.)

Defendants.)

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will appear on behalf of Defendant Wheelock Street Real Estate Fund, LP ("this Defendant") and move this Court to set aside and vacate the entry of default. This motion will be based upon Rule 4(d)(8) and Rule 55(c) of the *South Carolina Rules of Civil Procedure*. As described herein and as will be shown more fully in a Memorandum In Support, good cause exists for setting aside the entry of default. This Defendant has a meritorious defense and has long since begun defending the suit via a timely

response to the only effective service of the Amended Summons and Amended Complaint. Accordingly, no undue prejudice will result for Plaintiff.

The grounds for this motion include the following:

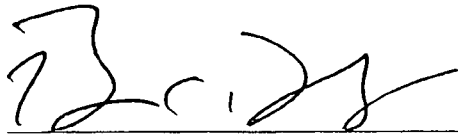
- Plaintiff's failure to perfect service upon this Defendant in accordance with the *South Carolina Rules of Civil Procedure* and that personal jurisdiction, therefore, had not yet attached to this Defendant at the time default was entered;
- The amended pleadings and timely answers should render the default moot;
- The filings at issue were made without service on or other notice to counsel – despite the facts that counsel for Plaintiff had been discussing service with counsel for this Defendant and that the very filings at issue suggested inaccurately to the Court that counsel was being notified; and
- The motion for entry of default and its supporting materials are facially inaccurate.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion.

Pursuant to Rules 4(d)(8) and 55(c) of the *South Carolina Rules of Civil Procedure*, this Defendant respectfully submits that the entry of default must be set aside and vacated.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.

Signature on following page



Brian C. Duffy
Blake A. McKie
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044
Fax: (843) 720-2047
bduffy@duffyandyoung.com
bmckie@duffyandyoung.com

*Attorneys for Defendant Wheelock Street Real
Estate Fund, LP*

February 13, 2019
Charleston, South Carolina

2017 CP.D. 5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELOCK STREET REAL ESTATE FUND, LP'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
tdargan@lmlawllp.com
Attorneys for Fine Builders, LLC

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

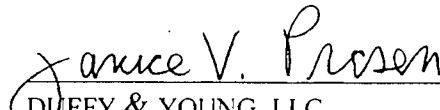
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tlm@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@vcrlaw.com
mwillis@vcrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Omduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.



DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ONE HAMLIN PLACE TOWNHOME ASSOC.,
INC.

☐ Plaintiff

v.

JOHN WIELAND HOMES & NEIGHBORHOODS
OF THE CAROLINAS, INC, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5245

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

I. Keith Mccarty, Bar No.

Address:

1212 Wappoo Road

Charleston, SC 29407

phone: 843-793-1272 fax:

e-mail: other:

Defendant's Attorney:

Brian Duffy, Bar No. 16247

Address:

96 Broad Street

Charleston, SC 29401

phone: 843-720-2044 fax: 843-720-2047

e-mail: bduffy@duffyandyoung.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 to Set Aside Default

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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

2/13/19
Date submitted

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:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs;

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support
Services of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a
John Wieland Homes and
Neighborhoods, Inc.; Wheelock Street
Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; RP
Falcon Properties, LLC; Residential
Partners, LLC; Middlesex Holdings,
LLC; WS JWH, LLC; JWC Phoenix,
LLC; Bridgemill Land, LLC;
Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty
Associates, Inc. a/k/a Wieland Realty
Associates, Inc.; John Wieland,
individually; Sue Wieland; Lindsey
Parker; Robert Parker; Jack Wieland;
Jorge Medina; Jorge Medina a/k/a JMC
Construction, Inc. a/k/a JMC
Construction, LLC; John Does (20-50);
and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource -
Southeast Group, LLC; Muhler LLC
a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:29
JULIE J. ARHISTON
CLERK OF COURT

**DEFENDANT WHEELOCK STREET
CAPITAL, LLC'S NOTICE OF MOTION
AND MOTION TO SET ASIDE AND
VACATE ENTRY OF DEFAULT**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Francisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR Painting,)
LLC; Jesus Mora a/k/a J. Mora Brick &)
Block Mason, LLC; Juan Luis Sanchez)
a/k/a Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina; J & R Construction, LLC)
a/k/a JJ&R Construction, LLC; Cohen's)
Drywall Company, LLC; All American)
Roofing and Construction, LLC; and Leor)
Construction LLC.)

Defendants.)

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will appear on behalf of Defendant Wheelock Street Capital, LLC ("this Defendant") and move this Court to set aside and vacate the entry of default. This motion will be based upon Rule 4(d)(8) and Rule 55(c) of the *South Carolina Rules of Civil Procedure*. As described herein and as will be shown more fully in a Memorandum In Support, good cause exists for setting aside the entry of default. This Defendant has a meritorious defense and has long since begun defending the suit via a timely response to the only

effective service of the Amended Summons and Amended Complaint. Accordingly, no undue prejudice will result for Plaintiff.

The grounds for this motion include the following:

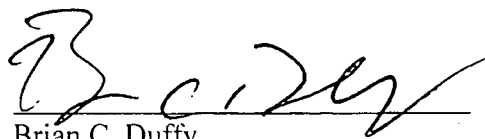
- Plaintiff's failure to perfect service upon this Defendant in accordance with the *South Carolina Rules of Civil Procedure* and that personal jurisdiction, therefore, had not yet attached to this Defendant at the time default was entered;
- The amended pleadings and timely answers should render the default moot;
- The filings at issue were made without service on or other notice to counsel – despite the facts that counsel for Plaintiff had been discussing service with counsel for this Defendant and that the very filings at issue suggested inaccurately to the Court that counsel was being notified; and
- The motion for entry of default and its supporting materials are facially inaccurate.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion.

Pursuant to Rules 4(d)(8) and 55(c) of the *South Carolina Rules of Civil Procedure*, this Defendant respectfully submits that the entry of default must be set aside and vacated.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.

Signature on following page



Brian C. Duffy

Blake A. McKie

Duffy & Young, LLC

96 Broad Street

Charleston, SC 29401

Telephone: (843) 720-2044

Fax: (843) 720-2047

bduffy@duffyandyoung.com

bmckie@duffyandyoung.com

*Attorneys for Defendant Wheelock Street Capital,
LLC*

February 13, 2019

Charleston, South Carolina

2017-CP-10-5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHELOCK STREET CAPITAL, LLC'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmllawllp.com
tdargan@lmllawllp.com
Attorneys for Fine Builders, LLC

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

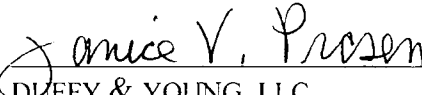
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tlm@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:30
JULIE J. ARMSTRONG
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@ycrlaw.com
mwillis@ycrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.


DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ONE HAMLIN PLACE TOWNHOME ASSOC.,
INC.

☐ Plaintiff

v.

JOHN WIELAND HOMES & NEIGHBORHOODS
OF THE CAROLINAS, INC, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5245

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: I. Keith Mccarty, Bar No. Address: 1212 Wappoo Road Charleston, SC 29407 phone: 843-793-1272 fax: e-mail: other:		Defendant's Attorney: Brian Duffy, Bar No. 16247 Address: 96 Broad Street Charleston, SC 29401 phone: 843-720-2044 fax: 843-720-2047 e-mail: bduffy@duffyandyoung.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 to Set Aside Default 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.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		2/13/19 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: _____		Date Filed: _____	

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

One Hamlin Place Townhome)
Association, Inc.,)

Plaintiff,)

vs;)

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. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support)
Services of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a)
John Wieland Homes and)
Neighborhoods, Inc.; Wheelock Street)
Real Estate Fund, LP; Wheelock Street)
Investment Management, LLC; RP)
Falcon Properties, LLC; Residential)
Partners, LLC; Middlesex Holdings,)
LLC; WS JWH, LLC; JWC Phoenix,)
LLC; Bridgemill Land, LLC;)
Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty)
Associates, Inc. a/k/a Wieland Realty)
Associates, Inc.; John Wieland,)
individually; Sue Wieland; Lindsey)
Parker; Robert Parker; Jack Wieland;)
Jorge Medina; Jorge Medina a/k/a JMC)
Construction, Inc. a/k/a JMC)
Construction, LLC; John Does (20-50);)
and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource -)
Southeast Group, LLC; Muhler LLC)
a/k/a The Muhler Company, Inc.; YKK)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:31
JULIE J. ARMSTRONG
CLERK OF COURT

**DEFENDANT WHELOCK STREET
INVESTMENT MANAGEMENT, LLC'S
NOTICE OF MOTION AND MOTION TO
SET ASIDE AND VACATE ENTRY OF
DEFAULT**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Francisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR Painting,)
LLC; Jesus Mora a/k/a J. Mora Brick &)
Block Mason, LLC; Juan Luis Sanchez)
a/k/a Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina; J & R Construction, LLC)
a/k/a JJ&R Construction, LLC; Cohen's)
Drywall Company, LLC; All American)
Roofing and Construction, LLC; and Leor)
Construction LLC.)

Defendants.)

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will appear on behalf of Defendant Wheelock Street Investment Management, LLC ("this Defendant") and move this Court to set aside and vacate the entry of default. This motion will be based upon Rule 4(d)(8) and Rule 55(c) of the *South Carolina Rules of Civil Procedure*. As described herein and as will be shown more fully in a Memorandum In Support, good cause exists for setting aside the entry of default. This Defendant has a meritorious defense and has long since begun defending the suit via a timely

response to the only effective service of the Amended Summons and Amended Complaint. Accordingly, no undue prejudice will result for Plaintiff.

The grounds for this motion include the following:

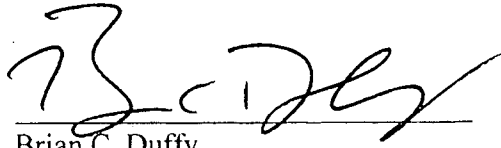
- Plaintiff's failure to perfect service upon this Defendant in accordance with the *South Carolina Rules of Civil Procedure* and that personal jurisdiction, therefore, had not yet attached to this Defendant at the time default was entered;
- The amended pleadings and timely answers should render the default moot;
- The filings at issue were made without service on or other notice to counsel – despite the facts that counsel for Plaintiff had been discussing service with counsel for this Defendant and that the very filings at issue suggested inaccurately to the Court that counsel was being notified; and
- The motion for entry of default and its supporting materials are facially inaccurate.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion.

Pursuant to Rules 4(d)(8) and 55(c) of the *South Carolina Rules of Civil Procedure*, this Defendant respectfully submits that the entry of default must be set aside and vacated.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.

Signature on following page



Brian C. Duffy

Blake A. McKie

Duffy & Young, LLC

96 Broad Street

Charleston, SC 29401

Telephone: (843) 720-2044

Fax: (843) 720-2047

bduffy@duffyandyoung.com

bmckie@duffyandyoung.com

*Attorneys for Defendant Wheelock Street Investment
Management, LLC*

February 13, 2019

Charleston, South Carolina

2017-CP-10-5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHELOCK STREET INVESTMENT MANAGEMENT, LLC'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
tdargan@lmlawllp.com
Attorneys for Fine Builders, LLC

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

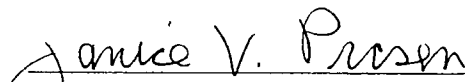
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tlm@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:31
JULIE J. ARMSTRONG
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@yclaw.com
mwillis@yclaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.



DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

ONE HAMLIN PLACE TOWNHOME ASSOC.,)
INC.)

CASE NO.

☐ Plaintiff)

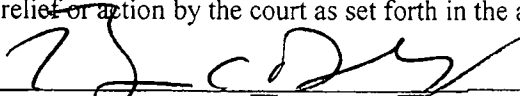
2017-CP-10-5245

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

JOHN WIELAND HOMES & NEIGHBORHOODS)
OF THE CAROLINAS, INC, Et Al.)

☒ Defendant.)

Plaintiff's Attorney: I. Keith Mccarty, Bar No. Address: 1212 Wappoo Road Charleston, SC 29407 phone: 843-793-1272 fax: e-mail: other:		Defendant's Attorney: Brian Duffy, Bar No. 16247 Address: 96 Broad Street Charleston, SC 29401 phone: 843-720-2044 fax: 843-720-2047 e-mail: bduffy@duffyandyoung.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 to Vacate Order of Referral to Special Referee 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.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Feb 13, 2019 Date submitted			
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:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____			

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

One Hamlin Place Townhome
Association, Inc.,)

Plaintiff,)

vs;)

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. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support)
Services of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a)
John Wieland Homes and)
Neighborhoods, Inc.; Wheelock Street)
Real Estate Fund, LP; Wheelock Street)
Investment Management, LLC; RP)
Falcon Properties, LLC; Residential)
Partners, LLC; Middlesex Holdings,)
LLC; WS JWH, LLC; JWC Phoenix,)
LLC; Bridgemill Land, LLC;)
Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty)
Associates, Inc. a/k/a Wieland Realty)
Associates, Inc.; John Wieland,)
individually; Sue Wieland; Lindsey)
Parker; Robert Parker; Jack Wieland;)
Jorge Medina; Jorge Medina a/k/a JMC)
Construction, Inc. a/k/a JMC)
Construction, LLC; John Does (20-50);)
and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource -)
Southeast Group, LLC; Muhler LLC)
a/k/a The Muhler Company, Inc.; YKK)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-10-5245

FILED
2019 FEB 13 AM 10:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

**DEFENDANT WHEELOCK STREET
INVESTMENT MANAGEMENT, LLC'S
NOTICE OF MOTION AND MOTION TO
VACATE ORDER OF REFERRAL TO
SPECIAL REFEREE**

(U.S.A), Inc.; Wheelock Street Real)
 Estate Fund II, LP; Wheelock Street)
 Real Estate Fund V, LP; WSREF, NRT,)
 LLC; JW Homes, LLC; JWH RPIV,)
 LLC; RP Falcon Land, LLC; Wieland)
 Realty, LLC; RP Falcon Realty, LLC;)
 Residential Partners II, LLC; Residential)
 Partners III, LLC; Residential Partners)
 IV, LLC; Paul M. Vasquez;)
 Neighborhood Management Associates,)
 Inc.; Billie and Antonio Arias d/b/a)
 Antonio Arias Framing Construction;)
 Tru-Don Contracting, Inc.; Fine)
 Builders, LLC; Jose Alfredo Sandoval;)
 Chad Larsen d/b/a Chad Larsen Co.;)
 Ivan Jose Paiz d/b/a Jose Construction;)
 William B. Angel; East Coast Wall)
 Systems, Inc.; Tracyinne Construction)
 a/k/a T&C Construction, LLC;)
 Francisco and Andrea DaCosta d/b/a)
 AAA Coastline, Inc.; Jack R. Clark d/b/a)
 Jack Clark Construction, LLC; Alex)
 Welch; Tracy McCuiston d/b/a)
 Mastercraft Interior and Exterior;)
 Universal Forest Products Eastern)
 Division, Inc. a/k/a UFP Eastern)
 Division, Inc.; Gonzalo Guerrero; A-)
 Marc, Inc.; Emmanuel Kehagis d/b/a)
 Creative Construction; Anthony)
 Kirksey; Polly S. Clark d/b/a Glenn)
 Clark Construction; Benjamin Mora)
 a/k/a Benjamin L. Mora d/b/a Mora)
 Construction f/k/a Mora's Construction)
 and Benjamin Mora Construction, LLC)
 n/k/a Mora Construction, LLC; Daniel)
 L. Rogers d/b/a Rogers Roofing Co.,)
 Inc. n/k/a Dan Rogers Roofing, LLC;)
 William C. Mulhern d/b/a Bill's)
 Painting; Mark A. McFarland d/b/a In)
 the Wind, Inc.; Harbor Master, Inc.;)
 Chad Hood; Kinco Ltd. a/k/a Kinco,)
 Inc.; Atrium Companies, Inc. d/b/a)
 Atrium Windows and Doors, Inc. a/k/a)
 HR Windows; The Contractor Yard,)
 Inc.; New Construction Drywall Hanger,)
 LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR Painting,)
LLC; Jesus Mora a/k/a J. Mora Brick &)
Block Mason, LLC; Juan Luis Sanchez)
a/k/a Sanchez Brothers Painting; Latitude)
Construction Services, LLC; Richard)
Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina; J & R Construction, LLC)
a/k/a JJ&R Construction, LLC; Cohen's)
Drywall Company, LLC; All American)
Roofing and Construction, LLC; and Leor)
Construction LLC.)

Defendants.)

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will appear on behalf of Defendant Wheelock Street Investment Management, LLC ("this Defendant") and move this Court to vacate the order of referral to Special Referee as set forth in the Order entered on June 4, 2018. A Motion to Set Aside and Vacate Entry of Default is being filed concurrently with this motion.

This motion is based on Rule 4(d)(8), Rule 55(c), and Rule 60(b) of the *South Carolina Rules of Civil Procedure*. The grounds for this motion include Plaintiff's failure to perfect service upon this Defendant in accordance with the *South Carolina Rules of Civil Procedure* and

that personal jurisdiction, therefore, had not yet attached to this Defendant, rendering the order void. Subsequent amended pleadings and timely answers should also render the Order of Reference void, as should the fact that data relied on in the *ex parte* filings at issue were inaccurate on their face.

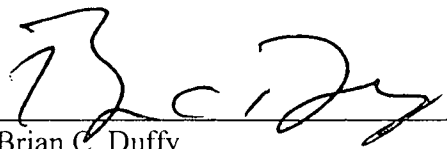
In addition, this Defendant respectfully is entitled to relief under Rule 60(b)(1) & (3) in light of discussions among counsel at the relevant time. While counsel for Plaintiff and this Defendant were corresponding about the efforts to effect and accept service, Plaintiff attempted to serve the client directly and then filed for entry of default and for the referral at issue – all without notice to counsel for this Defendant, and despite naming counsel in the filings at issue.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion. Pursuant to Rules 4(d)(8), 55(c), and 60(b)(4) of the *South Carolina Rules of Civil Procedure*, the order of reference to the special referee is void and must be vacated due to lack of jurisdiction over this Defendant and the additional reasons described above and to be shown in a Memorandum In Support.

This Defendant respectfully requests that, upon vacating the Order of Reference, the Court set aside the entry of default under Rule 55(c) for the reasons described above and in the contemporaneously filed motions and the related Memoranda In Support.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiff prior to filing this motion, but the parties were unable to resolve the matter of this motion.

Signature on following page



Brian C. Duffy
Blake A. McKie
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044
Fax: (843) 720-2047
bduffy@duffyandyoung.com
bmckie@duffyandyoung.com

*Attorneys for Defendant Wheelock Street Investment
Management, LLC*

February 13, 2019
Charleston, South Carolina

2017-CP-10-5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELOCK STREET INVESTMENT MANAGEMENT, LLC'S NOTICE OF MOTION AND MOTION TO VACATE ORDER OF REFERRAL TO SPECIAL REFEREE** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Kevin W. Mims, Esquire
Timothy C. Dargan, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
tdargan@lmlawllp.com
Attorneys for Fine Builders, LLC

Claude T. Prevost, III, Esquire
Kelsey J. Brudvig, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
cprevost@collinsandlacy.com
klbrudvig@collinsandlacy.com
Attorneys for Chad Larsen

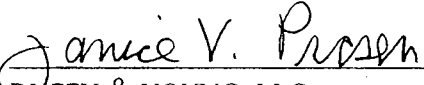
Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
tlim@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

FILED
2019 FEB 13 AM 10:32
CLERK OF COURT

Stephen L. Brown, Esquire
Mary S. Willis, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@ycrlaw.com
mwillis@ycrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.



DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

EXHIBIT D

[Email from Circuit Court,
dated February 28, 2019]

Subject: RE: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

Date: Thursday, February 28, 2019 at 11:20:04 AM Eastern Standard Time

From: Caroline Crisler. Leonard

To: Nina Meola

CC: John Hayes, Brian Duffy, Dan, keith mccarty, Jena Lingle

These matters were referred to the Special Referee by Judge Harrington. It would be appropriate for the Special Referee to hear matters in this case.

Caroline C. Leonard

Common Pleas Docket Manager
Charleston, County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401
ccleonard@charlestoncounty.org
843-958-5013 (Office)
843-958-5020 (Fax)

CourtPlus

From: Nina Meola <nmeola@hayeslaw.org>

Sent: Thursday, February 28, 2019 11:03 AM

To: Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>

Cc: John Hayes <jhayes@hayeslaw.org>; Brian Duffy <bduffy@duffyandyoung.com>; Dan <dan@slotchiverlaw.com>; keith mccarty <ikeithmccarty@gmail.com>; Jena Lingle <jlingle@hayeslaw.org>

Subject: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

One Hamlin Place Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.

Case No.: 2017-CP-10-5245

HLF File No.: 120.001

Gary Keisler, Individually and as Class Representative, et al. vs Middlesex Holdings, LLC, et al.

Case No.: 2017-CP-10-05246

HLF File No.: 120.002

Dear Caroline:

Please find the attached correspondence from John Hayes in the above-referenced cases. Thank you.

Sincerely,

Nina E. Meola | Attorney at Law | Hayes Law Firm, LLC
180 Meeting Street | Suite 330 | Charleston, SC 29401
(843) 805-7003 | nmeola@hayeslaw.org | www.hayeslaw.org

EXHIBIT E

[Letter from Appellants' Counsel to Special
Referee, dated May 2, 2019]

DUFFY & YOUNG LLC

96 BROAD STREET, CHARLESTON SC 29401

telephone 843-720-2044 facsimile 843-720-2047

ATTORNEYS AT LAW

May 2, 2019

VIA U.S. MAIL

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464

RE: One Hamlin Place Townhome Association, Inc. v. Wheelock, et al.
Case No. 2017-CP-10-5245

Gary Keisler, Individually and as Class Representative v. Wheelock, et al.
Case No. 2017-CP-10-5246

Dear Dan:

In anticipation of the hearing scheduled for Friday May 10, 2019, at 11:30 a.m. in your office, I enclose herewith the pleadings filed by the Wheelock entities which we understand are the subject of the hearing:

A. Filings in One Hamlin Matter

1. Motion to Set Aside and Vacate Entry of Default– Wheelock Street Investment Management, I, II and V LLC;
2. Motion to Vacate Order of Referral to Special Referee – Wheelock Street Investment Management, I, II and V LLC;
3. Memorandum in Support of Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee – Wheelock Street Investment Management, I, II and V LLC;
4. Motion to Set Aside and Vacate Entry of Default – Wheelock Street Capital LLC;
5. Motion to Vacate Order of Referral to Special Referee – Wheelock Street Capital LLC;
6. Memorandum in Support of Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee – Wheelock Street Capital LLC;

7. Motion to Set Aside and Vacate Entry of Default – Wheelock Street Real Estate Fund LP;

8. Motion to Vacate Order of Referral to Special Referee – Wheelock Street Real Estate Fund LP;

9. Memorandum in Support of Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee – Wheelock Street Real Estate Fund LP;

10. Motion to Set Aside and Vacate Entry of Default – Wheelock Street Investment Management LLC;

11. Motion to Vacate Order of Referral to Special Referee – Wheelock Street Investment Management LLC;

12. Memorandum in Support of Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee – Wheelock Street Investment Management LLC;

13. Motion for Recusal – Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; and Wheelock Street Investment Management I, II & V, LLC; and

14. Memorandum in Support of Motion for Recusal – Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; and Wheelock Street Investment Management I, II & V, LLC.

B. Filings in Keisler Matter

1. Motion to Set Aside and Vacate Entry of Default – Wheelock Street Capital LLC;

2. Motion to Vacate Order of Referral to Special Referee – Wheelock Street Capital LLC;

3. Memorandum in Support of Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee – Wheelock Street Capital LLC;

4. Motion to Set Aside and Vacate Entry of Default – Wheelock Street Real Estate Fund LP;

5. Motion to Vacate Order of Referral to Special Referee – Wheelock Street Real Estate Fund LP;

6. Memorandum in Support of Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee – Wheelock Street Real Estate Fund LP;

Daniel S. Slotchiver, Esquire
May 2, 2019
Page 3

7. Motion for Recusal – Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; and Wheelock Street Investment Management I, II & V, LLC; and

8. Memorandum in Support of Motion for Recusal – Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; and Wheelock Street Investment Management I, II & V, LLC.

As you know, Movants contend that the Rule 60 Motions must and should be heard by the Circuit Court. Nevertheless, we are not certain whether you intend to hear these as requested by Plaintiffs, so we included the filings herewith.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Brian C. Duffy

Enclosures

cc (via email): All Counsel of Record

EXHIBIT F

[Email from Respondent's counsel to
Special Referee, dated May 6, 2019]

----- Forwarded message -----

From: **keith mccarty** <ikeithmccarty@gmail.com>

Date: Mon, May 6, 2019 at 8:09 AM

Subject: One Hamlin

To: Dan <dan@slotchiverlaw.com>, Brian Duffy <bduffy@duffyandyoung.com>, John Hayes <jhayes@hayeslaw.org>

Dear Dan, Please allow this email to serve as formal notification to you, in your capacity as Special Referee in this case, that the parties have agreed to postpone the hearing in this matter previously scheduled to take place on Friday, May 10th. The reason for this postponement is to allow the matter to be mediated. We will be in contact with you to schedule an alternative date. Please contact me should you have questions. Keith McCarty

--

I. Keith McCarty
McCarty Law Firm, PC
1212 Wappoo Road (29407)
P.O. Box 30055
Charleston, South Carolina 29417
Phone: 843-793-1272
Fax : 843-793-1282

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately, and do not forward this message to any other person. This e-mail, along with any attachments, is covered and protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521.

--

I. Keith McCarty
McCarty Law Firm, PC
1212 Wappoo Road (29407)
P.O. Box 30055
Charleston, South Carolina 29417
Phone: 843-793-1272
Fax : 843-793-1282

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately, and do not forward this message to any other person. This e-mail, along with any attachments, is covered and protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521.

EXHIBIT G

[Appellants' Motion for Expedited Hearing]

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ONE HAMLIN PLACE TOWNHOME ASSOC.,)
INC.)

☐ Plaintiff)

v.)

John Wieland Homes & Neighborhoods Of The)
Carolinas, Inc, Et Al.)

☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5245

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

I. Keith Mccarty, Bar No.

Address:

1212 Wappoo Road

Charleston, SC 29407

phone: 843-793-1272 fax:

e-mail: other:

Defendant's Attorney:

Brian Duffy, Bar No. 16247

Address:

96 Broad Street

Charleston, SC 29401

phone: 843-720-2044 fax: 843-720-2047

e-mail: bduffy@duffyandyoung.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 Expedited Hearing

Estimated Time Needed: 15 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.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

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:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

One Hamlin Place Townhome
Association, Inc.,

Plaintiff,

vs;

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. n/k/a John
Wieland Homes and Neighborhoods of
South Carolina; Builder Support
Services of the Carolinas, Inc.;
Wheelock Street Capital, LLC d/b/a
John Wieland Homes and
Neighborhoods, Inc.; Wheelock Street
Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; RP
Falcon Properties, LLC; Residential
Partners, LLC; Middlesex Holdings,
LLC; WS JWH, LLC; JWC Phoenix,
LLC; Bridgemill Land, LLC;
Annisquam Development, LLC; JW
Land Investment, LLC; JWC Guilford,
LLC; OOTB, LLC; JW Realty
Associates, Inc. a/k/a Wieland Realty
Associates, Inc.; John Wieland,
individually; Sue Wieland; Lindsey
Parker; Robert Parker; Jack Wieland;
Jorge Medina; Jorge Medina a/k/a JMC
Construction, Inc. a/k/a JMC
Construction, LLC; John Does (20-50);
and Jane Does (41-50); AC
Construction, Inc.; Scott Parker,
individually; Builders FirstSource -
Southeast Group, LLC; Muhler LLC
a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

**DEMAND FOR JURY TRIAL AND
MOTION FOR EXPEDITED HEARING
(PRIORITY MATTER)**

2019 JUN -4 PM 2:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED

(U.S.A), Inc.; Wheelock Street Real)
Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT,)
LLC; JW Homes, LLC; JWH RPIV,)
LLC; RP Falcon Land, LLC; Wieland)
Realty, LLC; RP Falcon Realty, LLC;)
Residential Partners II, LLC; Residential)
Partners III, LLC; Residential Partners)
IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine)
Builders, LLC; Jose Alfredo Sandoval;)
Chad Larsen d/b/a Chad Larsen Co.;)
Ivan Jose Paiz d/b/a Jose Construction;)
William B. Angel; East Coast Wall)
Systems, Inc.; Tracyinne Construction)
a/k/a T&C Construction, LLC;)
Frankcisco and Andrea DaCosta d/b/a)
AAA Coastline, Inc.; Jack R. Clark d/b/a)
Jack Clark Construction, LLC; Alex)
Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony)
Kirksey; Polly S. Clark d/b/a Glenn)
Clark Construction; Benjamin Mora)
a/k/a Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel)
L. Rogers d/b/a Rogers Roofing Co.,)
Inc. n/k/a Dan Rogers Roofing, LLC;)
William C. Mulhern d/b/a Bill's)
Painting; Mark A. McFarland d/b/a In)
the Wind, Inc.; Harbor Master, Inc.;)
Chad Hood; Kinco Ltd. a/k/a Kinco,)
Inc.; Atrium Companies, Inc. d/b/a)
Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard,)
Inc.; New Construction Drywall Hanger,)
LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael)
Cassidy; DBC Construction Services, LLC;)
Gerardo Rosette Sanchez a/k/a GR)
Painting, LLC; Jesus Mora a/k/a J. Mora)
Brick & Block Mason, LLC; Juan Luis)
Sanchez a/k/a Sanchez Brothers Painting;)
Latitude Construction Services, LLC;)
Richard Ditullio a/k/a RDT Contracting,)
LLC; Valencia Medina; J & R)
Construction, LLC a/k/a JJ&R)
Construction, LLC; Cohen's Drywall)
Company, LLC; All American Roofing and)
Construction, LLC; and Leor Construction)
LLC.)

Defendants.

Builders FirstSource-Southeast Group,)
LLC,)

Third-Party Plaintiff,)

v.)

AC Construction, Corp.)

Third-Party Defendant.)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ.,
ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that Wheelock Street Real Estate Fund, LP; Wheelock Street
Investment Management, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment
Management I, LLC; Wheelock Street Investment Management II, LLC; and Wheelock Street
Investment Management V, LLC (collectively, the "Wheelock entities")¹, by and through the

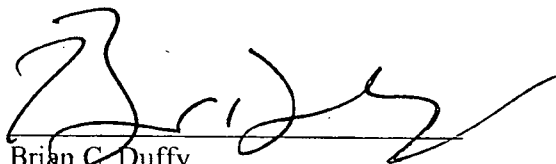
¹ The undersigned is specially appearing for Wheelock Street Investment Management I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC, which are not parties to this lawsuit but against which Plaintiff sought an entry of default.

undersigned counsel, will move before the Presiding Judge of the Charleston County Court of Common Pleas, as soon as the parties may be heard, for an Order pursuant to Rule 40(h) of the South Carolina Rules of Civil Procedure granting an expedited hearing on their Motions to Vacate Orders of Referral to Special Referee as well as their Motions to Set Aside and Vacate Entry of Default and (collectively, the "Motions").

The moving parties were properly served and timely answered an Amended Summons and Amended Complaint and are rightful parties to this action. Among other grounds for the motion, the earlier pleading and alleged default were rendered moot by the amended pleading, service, and timely answer. The Court and not the Special Referee should decide the Rule 60 motions to vacate and the Rule 55(c) motions. The Plaintiff has demanded a jury trial and these moving parties hereby confirm their demand for the same. The Wheelock entities will be deprived of their right to a jury trial if the Special Referee is allowed to decide matters in this action.

In the alternative to the request for an expedited hearing on the Motions, the Wheelock entities request that the Court grant a hearing on these Motions in due course and so advise the parties and the Special Referee that the Court will decide the Motions.

This motion is based upon the South Carolina Rules of Civil Procedure, applicable law, a memorandum of law which will be submitted before a hearing on this motion, argument of counsel, and any other matters the Court may permit to be presented at the hearing on this matter.

A handwritten signature in black ink, appearing to read 'Brian C. Duffy', is written over a horizontal line.

Brian C. Duffy
Blake A. McKie
Stephen J. Bell
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044

Fax: (843) 720-2047

bduffy@duffyandyoung.com

bmckie@duffyandyoung.com

sbell@duffyandyoung.com

Attorneys for the Wheelock Entities

June 4, 2019

Charleston, South Carolina

2017-CP-10-5245

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEMAND FOR JURY TRIAL AND MOTION FOR EXPEDITED HEARING (PRIORITY MATTER)** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

Keith McCarty, Esquire
McCarty Law Firm
1212 Wappoo Road
Charleston, SC 29407
jkeithmccarty@gmail.com

John Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street
Charleston, SC 29401
jhayes@hayeslaw.org
nmeola@hayeslaw.org
Attorneys for Plaintiff

Andrew N. Cole, Esquire
James L. Williams, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
acole@collinsandlacy.com
jwilliams@collinsandlacy.com
*Attorneys for George Medina, George Medina
a/k/a JMC Construction, Inc., a/k/a JMC
Construction, LLC and Valencia Medina*

Stephen P. Hughes, Esquire
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
Sphughes@hgghpa.com
*Attorneys for Builders FirstSource-Southeast
Group, LLC*

Jason A. Daigle, Esquire
Young Clement Rivers, LLP
O Box 993
Charleston, SC 29402
jdaigle@ycrlaw.com
*Attorneys for Daniel L. Rogers d/b/a Rogers
Roofing Co., Inc., n/k/a Dan Rogers Roofing,
LLC*

Kevin W. Mims, Esquire
W. Chase McNair, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
kmims@lmlawllp.com
cmcnair@lmlawllp.com
Attorneys for AC Construction, Inc.

Theodore L. Manos, Esquire
Robertson Hollingsworth Manos & Rahn,
LLC
550 King Street, Suite 300
Charleston, SC 29403
t1m@roblaw.net
*Attorneys for Wieland Defendants and Scott
Parker, Doug Pilcher and Michael Cassidy
and Neighborhood Management Associates,
Inc.*

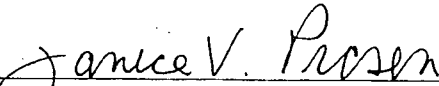
Stephen L. Brown, Esquire
Joanna B. Stroud, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29402
sbrown@ycrlaw.com
jstroud@ycrlaw.com
*Attorneys for New Construction Drywall
Hanger, LLC f/k/a New Construction Drywall
Hanger, Inc.*

FILED
CLERK OF COURT
2019 JUN -8 PM 2:25

John A. "Jay" Jones, Esquire
Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
PO Box 22768
Charleston, SC 29413
jjones@gwblawfirm.com
pcornduff@gwblawfirm.com
*Attorneys for Muhler, LLC a/k/a
The Muhler Company, Inc.*

Robert C. Calamari, Esquire
Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
PO Box 3939
Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.

Ian W. Freeman, Esquire
Walker Gressette Freeman & Linton, LLC
PO Drawer 22167
Charleston, SC 29413
freeman@wgflaw.com
Attorneys for Middlesex Holdings, LLC


DUFFY & YOUNG, LLC

JUNE 4th 2019

EXHIBIT H

[Form 4 Judgment, dated July 1, 2019,
entered July 11, 2019]

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-05245

One Hamlin Place Townhome Assoc., Inc.

John Wieland Homes & Neighborhoods of The
Carolinas, Inc., Et. Al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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: After reviewing all submissions of counsel, this Court hereby denies Defendant Wheelock's (Collectively all Wheelock Defendants) Motion for an Expedited Hearing. Defendant Wheelock's Motion for Recusal of the Special Referee shall be decided by the Special Referee. If the Special Referee shall grant such Recusal request, then the case shall be sent back to the Circuit Court for a determination of Defendant Wheelock's outstanding Motions. If the Special Referee declines to grant such recusal, then Wheelock's outstanding Motions shall be decided by the Special Referee as authorized by the Order of Reference.

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)
		\$
		\$
		\$

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.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	<u>2160</u>	<u>7-1-19</u>
Circuit Court Judge	Judge Code	Date

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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

RECEIVED

SEP 17 2019

SC Court of Appeals

One Hamlin Place Townhouse Association, Inc., Respondent,

v.

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

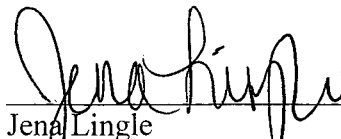
PROOF OF SERVICE

I, Jena Lingle, Paralegal at Hayes Law Firm, LLC certify that I have served Respondent's *Memorandum as to Appealability* on Appellants and all other parties on September 16, 2019 by U.S. First Class Mail to their attorneys of record as shown:

Theodore L. Manos Robertson Hollingsworth Manos & Rahn, LLC 550 King Street, Suite 300 Charleston, SC 29403 tlm@roblaw.net <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>	Brian C. Duffy Blake A. McKie Stephen Jenkins Bell Duffy & Young, LLC 96 Broad Street Charleston, SC 29401 bduffy@duffyandyoung.com bmckie@duffyandyoung.com sbell@duffyandyoung.com <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>
--	--

Jay Jones Paige C. Ornduff Gallivan, White & Boyd, P.A. 40 Calhoun Street, Suite 315 Charleston, SC 29401 jjones@gwblawfirm.com pcornduff@gwblawfirm.com Attorneys for The Muhler Company, Inc.	Ian W. Freeman Walker Gressette Freeman & Linton, LLC P.O. Drawer 22167 Charleston, SC 29413-2216 freeman@wgflaw.com Attorneys for Middlesex Holdings, LLC
Andrew N. Cole Collins & Lacy, P.C. Post Office Box 12487 Columbia, SC 29211 acole@collinsandlacy.com Attorney for George Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc.	Stephen P. Hughes Howell, Gibson & Hughes, P.A. Post Office Box 40 Beaufort, SC 29901-0040 sphughes@hgpha.com Attorney for Builders FirstSource Southeast Group, LLC
Stephen L. Brown Joanna B. Stroud Young Clement Rivers, LLP P.O. Box 993 Charleston, SC 29401 sbrown@ycrlaw.com jstroud@ycrlaw.com Attorneys for New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.	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 Attorneys for YKK (U.S.A.) Inc.
Jason A. Daigle Young Clement Rivers, LLP 25 Calhoun Street, Suite 400 Charleston, SC 29402 jdaigle@ycrlaw.com Attorney for Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC	Kevin W. Mims Chase McNair Luzuriaga Mims, LLP 50 Immigration Street, Suite 200 Charleston, SC 29403 kmims@lmlawllp.com cmcnair@lmlawllp.com Attorneys for AC Construction, Inc.

Respectfully submitted



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

September 16, 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

Nina E. Meola
Email: nmeola@hayeslaw.org

September 16, 2019

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

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

RECEIVED
SEP 17 2019
SC Court of Appeals

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

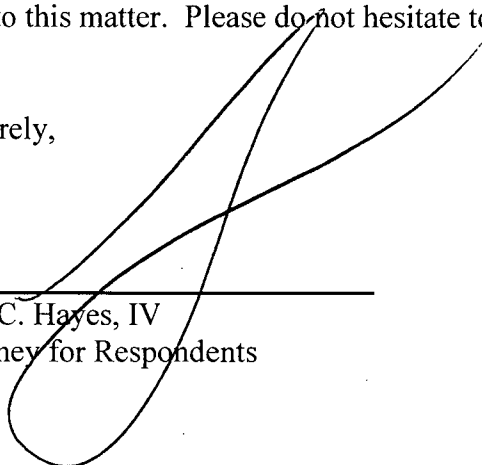
Dear Ms. Kitchings:

In response to the Court's letter dated August 20, 2019, please find the following:

- (1) One (1) original of Respondent One Hamlin Place Townhome Association, Inc.'s *Memorandum as to Appealability*, and the corresponding exhibits and proof of service.
- (2) One (1) original of Respondents Gary Keisler, et al.'s *Memorandum as to Appealability*, and the corresponding exhibits and proof of service.

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

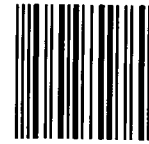
Sincerely,



John C. Hayes, IV
Attorney for Respondents



1007



29201

U.S. POSTAGE PAID
PME 1-Day
CHARLESTON, SC
29407
SEP 16, 19
AMOUNT

\$25.80

R2304H108246-03



**PRIORITY
MAIL
EXPRESS®**



EE 308 712 583 US

CUSTOMER USE ONLY

FROM: (PLEASE PRINT)

PHONE (843) 805-7003

Hayes Law Firm, LLC
180 Meeting St., Ste. 330
Charleston, SC 29401

DELIVERY OPTIONS (Customer Use Only)

☐ **SIGNATURE REQUIRED** Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

Delivery Options

- ☐ No Saturday Delivery (delivered next business day)
☐ Sunday/Holiday Delivery Required (additional fee, where available*)
☐ 10:30 AM Delivery Required (additional fee, where available*)
*Refer to USPS.com® or local Post Office® for availability.

TO: (PLEASE PRINT)

PHONE ()

The Honorable Jenny Abbott Kitchings
1220 Senate Street
Columbia, SC 29201

RECEIVED

SEP 17 2019

ZIP + 4® (U.S. ADDRESSES ONLY)

29201 - SC Court of Appeals

- For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
- \$100.00 insurance included.

PAYMENT BY ACCOUNT (if applicable)

USPS® Corporate Acct. No.

Federal Agency Acct. No. or Postal Service™ Acct. No.

ORIGIN (POSTAL SERVICE USE ONLY)

☐ 1-Day☐ 2-Day☐ Military☐ DPO

PO ZIP Code

Scheduled Delivery Date
(MM/DD/YY)

Postage

29407

9-17-19

\$ 25.80

Date Accepted (MM/DD/YY)

Scheduled Delivery Time

Insurance Fee

COD Fee

9-16-19

☐ 10:30 AM ☐ 3:00 PM
☒ 12 NOON

\$

\$

Time Accepted

10:30 AM Delivery Fee

Return Receipt Fee

Live Animal
Transportation Fee

4:59

☐ AM☒ PM

\$

\$

\$

Special Handling/Fragile

Sunday/Holiday Premium Fee

Total Postage & Fees

\$

\$

\$ 25.80

☐ Flat Rate

Acceptance Employee Initials

13.9 lbs.

CS

\$ 25.80

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YY)

Time

☐ AM☐ PM

Employee Signature

Delivery Attempt (MM/DD/YY)

Time

☐ AM☐ PM

Employee Signature

LABEL 11-B, JULY 2018

PSN 7690-02-000-9998

PEEL FROM THIS CORNER