

GLENN BOWENS

RECEIVED

ATTORNEY AT LAW

MAY 7 2012

1111111111
(803) 714 7766

POST OFFICE BOX 424
WINNSBORO SOUTH CAROLINA 29180

SC SUPREME COURT

pm 5-3-12

1 FACSIMILE
(803) 714 0775

gbowens@bowenslawsc.com

May 3, 2012

The Honorable Daniel E Shearhouse
Clerk of Court
The South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re Dutch Fork Development Group II, LLC v SEL Properties, LLC
05-CP-40-0749

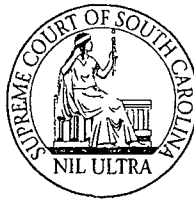
Dear Mr Shearhouse

I would like to request a copy of the recording of the oral argument in the above referenced case that was held on May 2, 2012. Enclosed is a check for \$20.00 to cover the cost of this request.

Very Respectfully,



Glenn Bowens



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

April 23, 2012

A Camden Lewis, Esquire
Keith M. Babcock, Esquire
Lewis, Babcock & Griffin LLP
P O Box 11208
Columbia, SC 29211

Carmen Vaughn Ganjehsani, Esquire
Charles E. Carpenter, Jr, Esquire
Carpenter Appeals & Trial Support, LLC
and Trial Support, LLC
1201 Main St., Ste. 980
Columbia, SC 29201

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
Pope & Bowens, P.A.
P O Box 665
Blythewood, SC 29016

Re Dutch Fork Dev. v. SEL Properties

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant 10 minutes

Respondent 10 minutes

Appellant in Reply 5 minutes

This case is scheduled for hearing on Wednesday May 2, 2012 at 10 00 a m

Very truly yours,

Daniel E Shearouse, Clerk

By Debbie M Hopkins
Administrative Assistant

DES/dmh

GLENN BOWENS

ATTORNEY AT LAW

POST OFFICE BOX 424
WINNSBORO SOUTH CAROLINA 29180

gbowens@bowenslawsc.com

TELEPHONE
(803) 714 7766

FACSIMILE
(803) 714 0775

March 26, 2012

The Honorable Daniel E Shearhouse
Clerk of Court
The South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re Dutch Fork Development Group II, LLC v SEL Properties, LLC May
Preliminary List

Dear Mr Shearhouse

I have no conflicts for the dates listed in the May Preliminary List notice Please let me know if you need anything further from me

Very Respectfully,



Glenn Bowens

CC A Camden Lewis, Esq
PO Box 11208
Columbia, SC 29201

RECEIVED

MAR 29 2012

S.C. SUPREME COURT

pm 3-27-12



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To: Glenn E. Bowens Esq.
Anthony S. H. Catone Esq.
From: Daniel E. Shearouse
Date: March 21, 2012
RE: May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of May 1, 2, 3, 22, and 23. Please notify this office in writing prior to March 28, 2012, as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Dutch Fork Dev. v. SEL Properties



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Charles E. Carpenter Jr. Esquire
From Daniel E. Shearouse
Date March 21, 2012
RE May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Dutch Fork Dev. v. SEL Properties



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To: Carmen Vaughn Ganjehsani Esquire
From: Daniel E. Shearouse
Date: March 21, 2012
RE: May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Dutch Fork Dev. v. SEL Properties



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: A. Camden Lewis Esquire
Keith M. Babcock Esquire
From: Daniel E. Shearouse
Date: March 21, 2012
RE: May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of May 1, 2, 3, 22, and 23. Please notify this office in writing prior to March 28, 2012, as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Dutch Fork Dev. v. SEL Properties

CARPENTER APPEALS & TRIAL SUPPORT, LLC



Charles E. Carpenter Jr. *~

* Member of South Carolina Bar
~ Member of Virginia Bar
Appellate Counsel

charlie@carpenterappeals.com

Carmen Vaughn Ganjehsam*^

* Member of South Carolina Bar
^ Member of Georgia Bar
Appellate Counsel

carmen@carpenterappeals.com

www.carpenterappeals.com

1201 Main St Suite 980
Columbia SC 29201
Fax 1 803 758 2887
Tel 1 803 758 2886

March 13, 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED
MAR 13 2012
S.C. SUPREME COURT

The Honorable Tanva A. Gee
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

*Re Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC v. SEL Properties, LLC and
Stephen E. Lipscomb
C/A No. 2005 CP 40 00749
Our File No. 10 0078*

*Wyndham Enterprises, LLC and Rodney Wyndham,
Individually v. The City of North Augusta and The City of
North Augusta Board of Zoning Appeals
C/A No. 2009 CP 02 02823
Tracking No. 2010 167368
Our File No. 10 0076*

Dear Mr. Shearouse and Ms. Gee

We have received notice from the S.C. Supreme Court that the *Dutch Fork* appeal has been preliminarily placed on the May 2012 roster which includes May 22 and 23, as well as May 13.

The S.C. Court of Appeals is also having a term of court on May 22 and 23, and the *Wyndham* appeal in which I am also involved has been preliminarily placed on that term of court. Other dates for that term are May 7-9 and May 24.

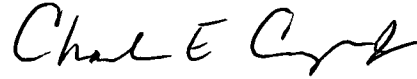
March 13, 2012

Neither court has scheduled a date certain for the oral argument in either case

We would certainly appreciate it if both cases would not be set for the May 22 23 term of court

If you have any questions, please let me know

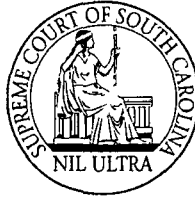
Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Carpenter, Jr.", with a stylized, cursive script.

Charles E Carpenter, Jr

CEC Jr/cvg

cc, A Camden Lewis
 Keith M Babcock
 Glenn E Bowens
 Stevens B Elliott
 Stephen P Groves, Sr
 Kelly F Zier



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

March 7, 2012

A Camden Lewis, Esquire
Keith M. Babcock, Esquire
Lewis, Babcock & Griffin LLP
P O Box 11208
Columbia, SC 29211

Carmen Vaughn Ganjehsani, Esquire
Carpenter Appeals & Trial Support, LLC
1201 Main St., Ste. 980
Columbia, SC 29201

Charles E. Carpenter, Jr., Esquire
Carpenter Appeals & Trial Support, LLC
1201 Main St., Ste. 980
Columbia, SC 29201

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
Pope & Bowens, P.A.
P O Box 665
Blythewood, SC 29016

Re Dutch Fork Dev. v. SEL Properties

Dear Counsel:

When the roster for the April 2012 term of Court was prepared, the above referenced case was not scheduled. Our records indicate that you are counsel of record in this case.

Dutch Fork Dev v SEL Properties

Page Two

March 7, 2012

This case will be placed on the May 2012 Preliminary List of Cases Court will meet the days of May 1, 2, 3, 22 and 23

Very truly yours,

Daniel A. Shearouse
25

CLERK

DES/dmh

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
JAMES M GRIFFIN
ARIAIL E KING
MARGARET N FOX*

LB&G

LEWIS, BABCOCK & GRIFFIN LLP

EMAIL ACL@LBGLEGAL.COM

1513 HAMPTON STREET
P O BOX 11208 (29211)
COLUMBIA S C 29201
FACSIMILE 803 733 3534
TELEPHONE 803 771 8000
WEBSITE WWW.LBGLEGAL.COM

* ALSO ADMITTED IN N C

February 20, 2012

The Hon Daniel E Shearouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE Dutch Fork Dev v SEL Properties - April Preliminary list

Dear Mr Shearouse

In response to your notice of February 17, 2012, please be advised that, as the attorney who will be arguing the above matter, I have a date-certain trial scheduled for the week of April 16, 2012

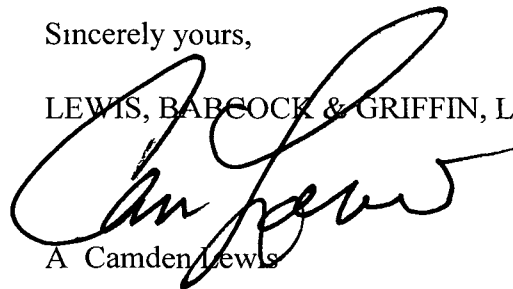
In addition, please note that Brady R Thomas is no longer associated with our firm and is no longer an attorney of record in this matter

Should you require any additional information or have any questions, please do not hesitate to call

RECEIVED
FEB 22 2012
S C SUPREME COURT

Sincerely yours,

LEWIS, BABCOCK & GRIFFIN, L L P



A Camden Lewis

ACL/kc

cc Glenn E Bowens, Esq
Carmen Vaughn Ganjehsani, Esq
Charles E Carpenter, Jr, Esq
Anthony S H Catone, Esq

GLENN BOWENS

ATTORNEY AT LAW

TELEPHONE
(803) 714 7766

POST OFFICE BOX 424
WINNSBORO SOUTH CAROLINA 29180

FACSIMILE
(803) 714 0775

gbowens@bowenslawsc.com

February 22, 2012

The Honorable Daniel E. Shearhouse
Clerk of Court
The South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re Dutch Fork Development Group II, LLC v. SEL Properties, LLC April
Preliminary List

Dear Mr. Shearhouse:

I have no conflicts for the dates listed in the notice. Please let me know if you need anything further from me.

Very Respectfully,



Glenn Bowens

CC: A. Camden Lewis, Esq.
PO Box 11208
Columbia, SC 29201

RECEIVED
FEB 23 2012
SC SUPREME COURT



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To: Glenn E. Bowens Esq.
Anthony S. H. Catone Esq.
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17, and 18. Please notify this office in writing prior to February 24, 2012, as to any scheduling conflicts for the April term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Dutch Fork Dev. v. SEL Properties



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Charles E. Carpenter Jr. Esquire
From Daniel E. Shearouse
Date February 17, 2012
RE April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Dutch Fork Dev. v. SEL Properties



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To: Carmen Vaughn Ganjehsani Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

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Dutch Fork Dev. v. SEL Properties



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To: A Camden Lewis Esquire
Keith M. Babcock Esquire
R. Brady Thomas Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Dutch Fork Dev. v. SEL Properties

The Supreme Court of South Carolina

Dutch Fork Development
Group II, LLC and Dutch Fork
Realty, LLC, Respondent,

v

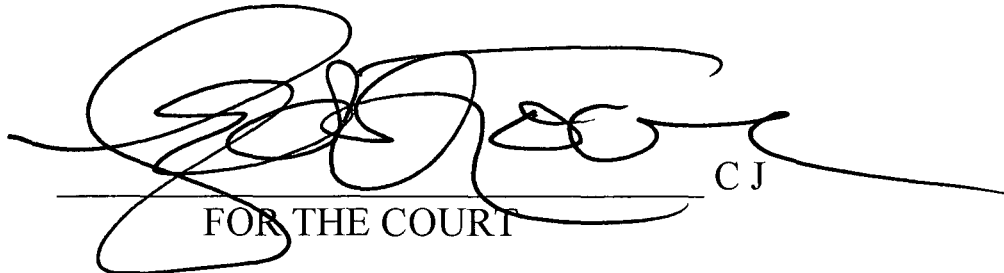
SEL Properties, LLC and
Stephen E Lipscomb,
Defendants, of whom Stephen
E Lipscomb is the, Appellant

The Honorable Alison Renee Lee
Richland County
Trial Court Case No 2005-CP-40-00749

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court

IT IS SO ORDERED



FOR THE COURT CJ

Columbia, South Carolina

January 24, 2012

cc Keith M Babcock, Esquire
Brady R Thomas, Esquire
Carmen Vaughn Ganjehsani, Esquire
Charles E Carpenter, Jr, Esquire
Glenn E Bowens, Esquire
Anthony S H Catone, Esquire
The Honorable Tanya Gee

Glenn E Bowens, Esquire
POPE & BOWLNS, PA
158 Langford Rd
Post Office Box 665
Blythewood, SC 29016
(803) 714 7766
(803) 714 0775 fax

RECEIVED

OCT 04 2010

SC Court of Appeals

October 4, 2010

VIA FACSIMILE 803 734 1839

The Honorable Tanya A Gee
Clerk, S C Court of Appeals
1015 Senate Street
Columbia, SC 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty,
LLC v SEL Properties, LLC and Stephen E Lapscomb*
C/A No 2005 CP 10 0749
Our File No 10 0078

Dear Ms Gee

I am writing to confirm that I will be presenting the oral argument on behalf of Dutch Fork Development Group II, LLC on Wednesday, October 6, 2010 at 3 30 p m

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

Sincerely,


Glenn E Bowens

GEB

CARPENTER APPEALS & TRIAL SUPPORT, LLC

Charles E Carpenter Jr *~

* Member of South Carolina Bar
~ Member of Virginia Bar
Appellate Counsel

charlie@carpenterappeals.com



www.carpenterappeals.com

1201 Main St Suite 980
Columbia SC 29201
Fax 1 803 758 2887
Tel 1 803 758 2886

September 21, 2010

VIA HAND DELIVERY

The Honorable Tanya A Gee
Clerk, S C Court of Appeals
1015 Senate Street
Columbia, SC 29201

Re *Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC v SEL Properties, LLC and Stephen E Lipscomb*
C/A No 2005 CP 40 0749
Our File No 10 0078

Dear Ms Gee

I am writing to advise the Court that Carmen V Ganjehsani and I are appearing as additional counsel of record for the Respondents Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC I would request that my name and Carmen V Ganjehsani's be added along with Glenn E Bowens as counsel for the Respondents, and that future documents and correspondence regarding this appeal be directed to my attention

By copy of this letter, I am also requesting that counsel for the Appellant direct future documents and correspondence to my attention

Please also find enclosed forty two labels to affix to the Final Briefs of Respondent and to the eight volume Record on Appeal These corrective labels reflect the addition of Carpenter Appeals & Trial Support, LLC as counsel of record for the Respondents

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

Sincerely,

Charles E Carpenter, Jr
Charles E Carpenter, Jr *ckm*

CEC,JR/cvg

Carmen Vaughn Ganjehsani*^

* Member of South Carolina Bar
^ Member of Georgia Bar
Appellate Counsel

carmen@carpenterappeals.com

RECEIVED
SEP 21 2010
SC Court of Appeals

The Honorable Tanya A Gee
September 21, 2010
Page 2

cc A Camden Lewis
 Keith M Babcock
 Brady R Thomas
 Glenn E Bowens

GLENN BOWENS

ATTORNEY AT LAW

POST OFFICE BOX 424
WINNSBORO SOUTH CAROLINA 29180

gbowens@popebowens.com

TELEPHONE
(803) 714-7766

FACSIMILE
(803) 714-0775

September 3, 2010

The South Carolina Court of Appeals
V. Clare Allen
Deputy Clerk of Court
PO Box 11629
Columbia, SC 29211
FAX 803-734-1839

RECEIVED
SEP 03 2010
SC Court of Appeals

Re Dutch Fork Dev. V. SEL Properties

Dear Ms. Allen

I have no conflicts with oral argument in the above referenced matter on October 5, 6 or 7 2010

Very Respectfully


Glenn Bowens

GLENN BOWENS

ATTORNEY AT LAW

TELEPHONE
(803) 714 7766POST OFFICE BOX 424
WINNSBORO SOUTH CAROLINA 29180FACSIMILE
(803) 714 0775

gbowens@popcbowens.com

FACSIMILE COVER SHEET**RECEIVED**

SEP 03 2010

SC Court of Appeals 11

Date September 3, 2010

To V Claire Allen
(803) 734-1839

From Glenn E Bowens

File No Dutch Fork Dev v SEL Properties

Phone 803-714-7766

Fax 803-714-0775

Pages including cover 3

Re No conflict with oral argument on October 5 6 or 7 2010

***** CONFIDENTIALITY NOTE *****

The information contained in this facsimile message is attorney privileged and confidential. It is intended only for the use of the individual or entity named above and any other dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by phone (803) 714-7766 (collect) and return the original message to us at the above address via the U S Postal Service. You will be reimbursed for the required postage. Thank you.

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

RECEIVED

SEP 03 2009

SC Court of Appeals

Dutch Fork Development Group II, LLC and
Dutch Fork Realty,

Respondents,

v

SEL Properties, LLC and Stephen E Lipscomb
of whom Stephen E Lipscomb is the

Appellant

CERTIFICATE

I certify the Appellant's Final Brief complies with the August 13, 2007 Order of the
Supreme Court regarding personal data identifiers



Glenn E Bowens, Esq
P O Box 665
Blythewood, South Carolina 29016
Phone (803) 714-7766
Attorney for Respondents

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

RECEIVED

SEP 03 2009

SC Court of Appeals

Dutch Fork Development Group II, LLC and
Dutch Fork Realty,

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb
of whom Stephen E. Lipscomb is the

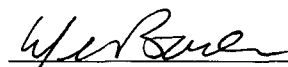
Appellant

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents' Final Brief was served upon

Brady R. Thomas
LEWIS, BABCOCK & HAWKINS
PO Box 11208
1513 Hampton Street
Columbia, SC 29202

By depositing the same in the United States Mail, postage prepaid, this the 27th Day of May, 2009


Glenn Bowens

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET BRT@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

September 1, 2009

RECEIVED
SEP 01 2009
SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

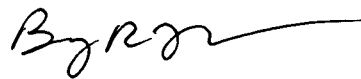
Enclosed for filing please find original Certificate of Compliance the Final Reply Brief of Appellant in the above-referenced matter, along with Proof of Service. An additional copy of each is included. Please check the additional copies and return them to our office via our courier.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P


Brady R Thomas

BRT mas
Enclosures

cc Glenn E Bowens, Esquire (via mail)



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 9 11
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 9701
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

August 31 2007

Keith M Babcock Esq
Brady R Thomas Esq
Lewis & Babcock LLP
P O Box 11208
Columbia SC 29211

Re Dutch Fork Dev v SEL Properties
Case Tracking # 200887486

Dear Counsel

The following Order has been endorsed on the "Appellant's Motion for the Court to Accept Record on Appeal"
in the above entitled case on appeal

"Granted

Kaye G Hearn C J
For the Court

By s/ Jeanette F Barber
Clerk

August 31 2009 '

Please be advised the Record on Appeal has been received in this office with corrections and is accepted as
filed **You are requested to provide** certification for the Appellant's Final Reply Brief with proof of service
stating that the Reply Brief is in compliance with the South Carolina Supreme Court Order of August 13 2007
regarding personal data identifiers

Counsel for the Respondent is advised that we are in receipt of a copy of the proof of service for the
Respondent's Final Brief however the proof of service shows service of the 'initial' brief Please provide a
Corrected Proof of Service for the Respondent's Final Brief with original signature showing the date the brief
was served on opposing counsel **and** certification that the Respondent's Final Brief is in compliance with the
South Carolina Supreme Court Order of August 13 2007 regarding personal data identifiers

Please provide the above information within ten (10) days of the date of this letter

Very truly yours

A handwritten signature in cursive script, appearing to read "E. Carter".

Elizabeth A Carter
Docketing Specialist

Handwritten initials "JFB/ec" in cursive script.

JFB/ec
cc

Glenn E Bowens Esq
Anthony S H Catone Esq

LAW OFFICES
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POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M BABCOCK
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STREET ADDRESS
1513 HAMPTON STREET
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July 6, 2009

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia South Carolina 29201

RECEIVED

JUL 06 2009

SC Court of Appeals

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

Enclosed for filing please find original Certificates of Compliance for both the Record on Appeal and the Final Brief of Appellant in the above-referenced matter, along with Proof of Service. An additional copy of each is included. Please check the additional copies and return them to our office via our courier.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R Thomas

BRT mas
Enclosures

cc Glenn E Bowens, Esquire (via mail)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

JUL 01 2009

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb,
Defendants, of whom Stephen E. Lipscomb is the,

Appellant

**APPELLANT'S MOTION FOR THE COURT
TO ACCEPT RECORD ON APPEAL**

A Camden Lewis
Keith M. Babcock
Brady R. Thomas
LEWIS & BABCOCK, L L P
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
Telephone (803) 771-8000
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ATTORNEYS FOR THE APPELLANT

Appellant Stephen E Lipscomb hereby moves the Court for an Order accepting the Record on Appeal

The Record was due to be served in this case on May 11, 2009. On May 11, 2009, Appellant's counsel attempted to hand deliver the Record to Respondents' counsel. Respondents' counsel then requested that Appellant's counsel hold the Record so that Respondents' counsel could pick it up. Appellant's counsel agreed. On May 12, 2009, Respondents' counsel picked up the Record. Attached as Exhibit 1 is a letter showing the parties' agreement and that Respondents' counsel picked up the Record on May 12, 2009.

Subsequent to May 12, 2009, Respondents' counsel contacted Appellant's counsel and pointed out that a trial exhibit had been mistakenly omitted from the Record.¹

Appellant's counsel recognized the mistake and added the additional Exhibit. On June 1, 2009, Appellant's counsel re-served the Record on Appeal with the additional exhibit.

On June 1, 2009, Appellant's counsel timely filed the Record on Appeal with the Court.

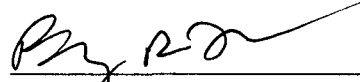
Appellant respectfully requests that the Court accept the Record on Appeal. Respondents' counsel, Glenn E. Bowens, Esq., consents to this motion.

[signature block located on following page]

¹Respondents' counsel had designated all trial exhibits.

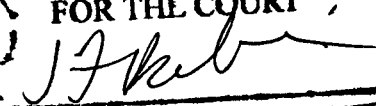
Respectfully submitted,

LEWIS & BABCOCK, L L P



A Camden Lewis
Keith M Babcock
Brady R Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
Telephone (803) 771-8000
Facsimile (803) 733-3534
Attorneys for the Appellants

July 1, 2009

GRANTED
KAYE G. HEARN, C.J.
FOR THE COURT
By 
(Clerk) (Deputy Clerk)
August 31, 2009

FILED
8/3/09 

LAW OFFICES
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STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

May 12, 2009

VIA PICK UP

Glenn E Bowens, Esquire

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty, LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749, Our File No 03-358

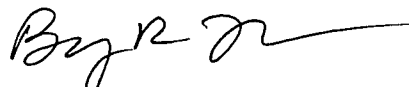
Dear Glenn

Enclosed is the Record on the Appeal in the above-referenced matter Pursuant to our conversation yesterday, we agreed to keep the Record on Appeal at our office for you to pick up at your convenience

With highest regards, I remain

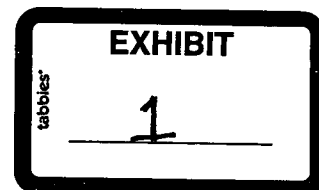
Sincerely,

LEWIS & BABCOCK, L L P


Brady R Thomas

BRT mas
Enclosures


5/12/09



THE STATE OF SOUTH CAROL
In the Court of Appeals

RECEIVED
JUL 01 2009
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

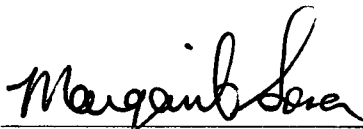
SEL Properties, LLC and Stephen E Lipscomb,
Defendants, of whom Stephen E Lipscomb is the,

Appellant

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L L P , hereby
certify that I have served the foregoing **Appellant's Motion for the Court to Accept
Record on Appeal** upon opposing counsel, by mailing a copy thereof, postage prepaid and
return address clearly indicated on said envelope, to said opposing counsel at the following
address, this the 1st day of July, 2009

Glenn E Bowens, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016


Margarita Sosa

July 1, 2009

LAW OFFICES
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A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R. THOMAS
W JONATHAN HARLING

July 1, 2009

RECEIVED

JUL 01 2009

SC Court of Appeals

64058 25

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

Enclosed for filing please find the original and six copies of Appellant's Motion for the Court to Accept Record on Appeal in the above-referenced matter, along with Proof of Service. An additional copy of each is included. Please clock the additional copies and return them to our office via our courier. Also, enclosed is a check in the amount of \$25.00 representing filing fees.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R. Thomas

BRT mas
Enclosures

cc Glenn E. Bowens, Esquire (via mail)



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 9211
1015 SUMTER STREET
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June 25 2009

Keith M Babcock, Esq
Brady R Thomas, Esq
Lewis & Babcock, LLP
P O Box 11208
Columbia SC 29211

Re Dutch Fork Dev v SEL Properties
Case Tracking Number 2008-87486

Dear Counsel

According to our records, the Record on Appeal was due to be served no later than May 11, 2009. The Proof of Service for the Record certifies hand delivery the 1st day of June 2009.

If you would like the Court to accept the Record on Appeal out of time, it will be necessary for you to serve and file a motion requesting the appropriate relief. Any motions or petitions presented to this Court must be in compliance with Rule 240 of SCACR.

Also be advised that the Record on Appeal requires a Certificate of Counsel and Certification of Compliance stating the Record on Appeal is in compliance with The Supreme Court Order dated August 13, 2007 (with appropriate proof of service).

The Appellant's Final Brief and Final Reply Brief both require Certification of Compliance stating the briefs are in compliance with The Supreme Court Order dated August 13, 2007 (with appropriate proof of service).

The Respondents' Final Brief requires a dated Proof of Service and a Certificate of Counsel with appropriate proof of service.

It is requested that these items are filed within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Barber", is written over the typed name "JEANETTE F BARBER".

JEANETTE F BARBER
CLERK

JFB/pd

cc Glenn E Bowens, Esq
Anthony S H Catone, Esq

The South Carolina Court of Appeals

Dutch Fork Development Group II,
LLC and Dutch Fork Realty, LLC, Respondent,

v

SEL Properties, LLC and Stephen E
Lipscomb, Defendants, of whom
Stephen E Lipscomb is the, Appellant

The Honorable Alison Renee Lee
Richland County
Trial Court Case No 2005-CP-40-00749

ORDER

The Clerk of Court is requested to release the following exhibits filed in the above referenced case to Brady R Thomas, Esquire, or his designee, for consideration by the Court of Appeals

Plaintiffs' Exhibit 141 Cost Analysis Chart

Plaintiffs' Exhibit 142 DFR Commissions Chart

Plaintiffs' Exhibit 143 Schedule of Money Due

Plaintiffs' Exhibit 144 Development Chart

Plaintiffs' Exhibit 147 Lost Sales Chart

Plaintiffs' Exhibit 151 Photo of Entrance to Courtyards

Plaintiffs' Exhibit 152 Photo of Team Builder Sign

Plaintiffs' Exhibit 155 Photos of Home

IT IS SO ORDERED

KAYE G HEARN, CHIEF JUDGE

BY 
Clerk

Columbia, South Carolina

June 25, 2009

Original to The Honorable Jeanette W McBride

cc Keith M Babcock, Esq
Brady R Thomas, Esq
Glenn E Bowens, Esq
Anthony S H Catone, Esq

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1513 HAMPTON STREET
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June 1, 2009

RECEIVED
JUN 01 2009
SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

We represent the Appellant in the above-referenced matter. This matter was heard before the Honorable Alison R Lee, Circuit Court Judge for Richland County, in November 2007. We have served and filed the Record on Appeal in this matter, however, there are several oversized exhibits that are still in the possession of the Richland County Circuit Court. In that regard, we respectfully request this Court issue an Order to the Richland County Circuit Court releasing the oversized exhibits to us so that we may provide them to this Court. The following list describes each of the exhibits:

Plaintiffs' Exhibit 141	Cost Analysis Chart
Plaintiffs' Exhibit 142	DFR Commissions Chart
Plaintiffs' Exhibit 143	Schedule of Money Due
Plaintiffs' Exhibit 144	Development Chart
Plaintiffs' Exhibit 147	Lost Sales Chart
Plaintiffs' Exhibit 151	Photo of Entrance to Courtyards
Plaintiffs' Exhibit 152	Photo of Team Builder Sign
Plaintiffs' Exhibit 155	Photos of Home

We respectfully request that these oversized exhibits be released to me so that I may provide them to this Court.

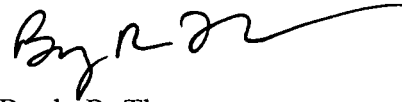
By copy of this letter, we are hereby notifying opposing counsel of this communication.

If any additional information is needed, please do not hesitate to contact me.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P

A handwritten signature in black ink, appearing to read "Brady R. Thomas", with a long horizontal flourish extending to the right.

Brady R Thomas

BRT mas
Enclosures

cc Glenn E Bowens, Esquire (*via mail*)

LAW OFFICES
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KEITH M BABCOCK
MARY G LEWIS
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RECEIVED

JUN 01 2009

SC Court of Appeals

June 1, 2009

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

Enclosed for filing please find fifteen bound copies and one unbound copy of the Record on Appeal, the original and fifteen copies of Final Brief of Appellant, the original and fifteen copies of Final Reply Brief of Appellant, along with Proof of Service for each. An additional copy of each is included. Please check the additional copies and return them to our office via our courier.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R. Thomas

BRT mas
Enclosures

cc Glenn E Bowens, Esquire

RECEIVED

APR 10 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb,
Defendants, of whom Stephen E. Lipscomb is the,

Appellant

REPLY BRIEF OF APPELLANT

A Camden Lewis
Keith M. Babcock
Brady R. Thomas
LEWIS & BABCOCK, L L P
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
Telephone (803) 771-8000
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ATTORNEYS FOR THE APPELLANT

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1
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INTRODUCTION

At its core, this case is a breach of contract action over a failed real estate development. SEL Properties, LLC (“Landowner, LLC”) is a family company that owned land near Ballentine, South Carolina, which was to be developed and sold by Respondents.¹ Appellant Stephen E. Lipscomb (“Manager Lipscomb”) is an owner and operator of Landowner, LLC.²

Respondent Dutch Fork Development Group, II, LLC (“Developer”) was hired by Landowner, LLC to oversee the development.³ Respondent Dutch Fork Realty, LLC (“Broker”) was hired by Landowner, LLC to serve as the real estate broker for certain sales in the development.⁴ There were two contracts between Landowner, LLC and Broker / Developer.⁵ One contract related to Phases I, II and III of the development.⁶ The second contract applied to Phase IV of the development.⁷

¹Trial Transcript, p. 773, l. 25 to p. 774, l. 17, p. 775, ll. 81-0

²Trial Transcript, p. 773, l. 25 to p. 774, l. 17 and p. 777, ll. 10-12

³Plaintiff’s Exhibits, 1 and 4

⁴Id.

⁵Id.

⁶Plaintiff’s Exhibit 1

⁷Plaintiff’s Exhibit 4

Admittedly, Landowner, LLC breached both contracts with Developer and Broker⁸ The jury found that these contract breaches caused a total of \$299,144 00 in damages⁹ The jury also found that the contracts were breached with fraudulent intent and awarded \$1 million in punitive damages to Developer and Broker against Landowner, LLC¹⁰ After the trial, Landowner, LLC settled the breach of contract and breach of contract accompanied by a fraudulent act claims by agreeing to pay \$1 5 million to Broker and Developer¹¹

The only claim at issue in this appeal is the cause of action for tortious interference with a contract against Manager Lipscomb Broker and Developer alleged that Manager Lipscomb caused Landowner, LLC to breach the contracts with Broker and Developer On this cause of action, the jury awarded Broker and Developer \$3 million in actual damages and \$1 million in punitive damages¹²

This appeal followed because (1) Manager Lipscomb, when acting within the scope of his authority, cannot be held individually liable for Landowner, LLC's breach of contract, (2) contract damages arising from the tortious interference with a contract cause of action are the same as the contract damages found attributable to Landowner, LLC on the breach of contract cause of action,¹³ (3) Developer and Broker cannot receive a double

⁸Manager Lipscomb admitted at trial that Landowner, LLC breached the contracts Trial Transcript, p 847, l 20 to p 849, l 14

⁹Verdict Form

¹⁰Id

¹¹The jury returned a verdict of \$299,144 00 on the breach of contract cause of action and \$1 million on the breach of contract accompanied by a fraudulent act cause of action Broker and Developer, at the time of the settlement, also had outstanding motions for attorneys fees and costs under the contracts and claims for post judgment interest

¹²Id

¹³Both of these causes of action are based on the same facts

recovery of contract damages, and (4) there was no evidence or testimony of lost customers or lost good will

ARGUMENT

I MANAGER LIPSCOMB, WHEN ACTING WITHIN THE SCOPE OF HIS LLC AUTHORITY, CANNOT BE HELD INDIVIDUALLY LIABLE FOR HIS COMPANY'S BREACH OF CONTRACT

a All of Manager Lipscomb's Actions Were Within the Scope of His Authority

Manager Lipscomb's actions on behalf of his family company, Landowner, LLC, are within the scope of his authority and cannot be the basis for a cause of action for tortious interference with a contract "[W]hen a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable " Bradburn v Colonial Stores, Inc., 273 S C 186, 188, 255 S E 2d 453, 455 (1979)

In this case, the only evidence was that Manager Lipscomb's actions were within the scope of his authority for Landowner, LLC His testimony was as follows

- Q We'll talk about that a little more specifically in a minute but again the Courtyards at Rolling Creek project, SEL Properties was acting Isn't that right?
- A Yes, sir SEL Properties was the entity involved there
- Q All right And who was the managing member?
- A I was the managing member of SEL Properties I've always been the managing member
- Q When you acted on behalf of SEL Properties, were you active in regard to this project? Who were you acting on behalf of? SEL Properties or yourself?
- A SEL Properties
- Q Were you ever acting individually for yourself?
- A No, sir Not acting individually for myself¹⁴

¹⁴Trial Transcript, p 777, ll 1-20

There was no evidence of any limitation on Manager Lipscomb's authority to act for Landowner, LLC. This is because Landowner, LLC is a family company that Manager Lipscomb runs for his wife and children.¹⁵

Because the only evidence presented was that Manager Lipscomb's actions were within the scope of his authority for Landowner, LLC, the trial court erred in denying the directed verdict motion, denying the jnov motion, and overruling objections to the charge on the cause of action for tortious interference with a contract.

b A Personal Guarantee to a Bank Does Not Create Personal Liability to Anyone Other than the Bank

Broker and Developer incorrectly argue that individual liability is appropriate on the cause of action for tortious interference with a contract because Manager Lipscomb gave the bank a personal guarantee on the construction loan. The only individual liability resulting from the personal guarantee is to the bank. Manager Lipscomb did not personally guarantee Broker and Developer that Landowner, LLC would comply with the contracts. Additionally, Manager Lipscomb is not a party to the contracts between Landowner, LLC and Broker / Developer.¹⁶ The responsible party under the contracts is Landowner, LLC.

Personal guarantees are routinely required by banks when banks issue loans to small companies. The result suggested by Broker and Developer would discourage people from borrowing money in fear that by giving a bank a personal guarantee, the agent would somehow surrender the corporate shield when dealing with third parties.

¹⁵Trial Transcript, p. 773, l. 25 to p. 774, l. 17, p. 777, ll. 10-12

¹⁶Plaintiffs' Exhibits 1 and 4

Additionally, the argument based on the personal guarantee fails when applied to the evidence introduced at trial. Broker and Developer argue that because Manager Lipscomb had a personal guarantee on the loan, he somehow had an individual incentive for the project to fail. If anything, the personal guarantee gave Manager Lipscomb more incentive for the project to succeed and more incentive for the project to be on schedule. If the project fails, the bank may call the personal guarantee. If the project succeeds, Manager Lipscomb would not be individually responsible for the personal guarantee. The existence of the personal guarantee to the bank simply does not create some sort of individual incentive warranting the imposition of personal liability.

c This Is Not a Negligence Case

The discussion by Broker and Developer of a truck driver's individual liability for wrecking a company truck is not applicable.¹⁷ In that scenario, the truck driver's liability is for negligence. The trucker's liability arises from the trucker's individual duty of care owed as a driver on the road to people in other cars. The trucker's individual liability does not arise from his company's contractual obligation to a third party. The truck driver is liable because he owes the other drivers an individual duty of care, independent of any contractual obligation owed by his company. The truck driver scenario is not analogous because the tort at issue in this case is tortious interference with a contract, not negligence.¹⁸

¹⁷Respondents' Initial Brief, pp. 31-32.

¹⁸The elements of a cause of action for tortious interference with a contract are: (1) a contract, (2) knowledge of the contract by the tortfeasor, (3) intentional procurement of the contract's breach, (4) absence of justification, and (5) damages. DeBerry v. McCain, 275 S. C.

Unlike negligence, the case law on tortious interference with a contract creates an exception to liability for agents acting within the scope of their authority “[W]hen a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable” Bradburn v Colonial Stores, Inc., 273 S C 186, 188, 255 S E 2d 453, 455 (1979) The liability when an agent, acting within the scope of his authority, causes a breach of contract lies with the company The company is liable for the breach of contract No such exception exists for negligence¹⁹

Similarly, the reliance by Broker and Developer on Olin Mathieson Chemical Corporation v Planters Corporation, 236 S C 318, 114, S E 2d 321 (1960) and Peruvian Guano Corporation v Thompson, 112 S C 377, 377, 99 S E 808, 809 (1919) is misplaced because these cases involve negligence causes of action based on the duty of an

569, 274 S E 2d 293 (1981) By contrast the elements of a cause of action for negligence are “duty, breach, proximate cause and injury” Bullard v Ehrhardt, 283 S C 557, 558, 324 S E 2d 61, 62 (S C ,1984) They are different torts The cause of action for tortious interference arises from an intentional procurement of a breach and the cause of action for negligence arises from the breach of a duty owed by the tortfeasor

¹⁹Broker and Developer also cite BPS v Worthy, 362 S C 319, 608 S E 2d 155 (Ct App 2005) Worthy is distinguishable from the facts at hand for two reasons First, the Worthy court did not address or overrule the Supreme Court’s holding in Bradburn that an agent or officer when acting within the scope of authority, cannot be liable for tortious interference with a contract Second, the holding in Worthy was that the trial judge erred in granting summary judgment without giving the Plaintiff an opportunity for more discovery and to submit affidavits Worthy, in fact, is consistent with Bradburn because after discovery the defendant in Worthy could have reapplied for summary judgment on the cause of action for tortious interference with a contract

officer/treasurer when holding money in trust for a third party The Court in Olin

Mathieson, relying on Peruvian Guano²⁰, described this duty as follows

The treasurer of a corporation holds the corporate funds in trust for the benefit of the corporation, and for such others as the corporation has obligated itself to act in a trust relationship If funds belonging to the respondent were paid into the treasury of the corporation, in trust, it was the duty of the treasurer of such corporation to pay such out to the respondent

Olin Mathieson Chemical Corporation v Planters Corporation, 236 S C 318, 326, 114

S E 2d 321 at 325-26 The duty described above is an independent duty owed by the officer/treasurer when holding monies belonging to third parties The officer/treasurer's breach of the independent duty creates a cause of action for negligence Peruvian Guano and Olin Mathieson are distinguishable from the case at issue because the cause of action at issue in this case is tortious interference with a contract

If the law of negligence and tortious interference with a contract were the same, every officer or director that made a poor business decision resulting in a breach of contract would be personally liable for their company's breach This result is contrary to the law establishing corporations, which is designed to promote business risk It is axiomatic that if a company breaches a contract through an act of an officer or director whose action is within the scope of his authority, the company is liable for the breach and not the officer or director Bradburn v Colonial Stores, Inc., 273 S C 186, 188, 255 S E 2d 453, 455 (1979)

²⁰The Olin Mathieson Court cited the Peruvian Guano case for the same proposition Olin Mathieson, 236 S C at 328, 114 S E 2d at 326-27, 326-27

d Broker and Developer Have Admitted That Many of the Actions They Attribute to Manager Lipscomb Individually Were Done on Behalf of Landowner, LLC

Broker and Developer list various acts they claim were done in Manager Lipscomb's individual capacity and not on behalf of Landowner, LLC or within the scope of his authority for the company. These arguments are inconsistent with the positions taken by Broker and Developer before the trial court. The very acts Broker and Developer now claim were done by Manager Lipscomb individually were cited to the trial court by Broker and Developer as acts by Landowner, LLC to justify the punitive damages award against Landowner, LLC. Broker and Developer cannot also rely on the same acts for the cause of action for tortious interference with a contract. If the actions were done within the scope of Manager Lipscomb's authority and on behalf of Landowner, LLC, the actions cannot be the basis for individual liability on the cause of action for tortious interference with a contract. Bradburn v. Colonial Stores, Inc., 273 S.C. 186, 188, 255 S.E.2d 453, 455 (S.C. 1979).

Included below is a chart showing Broker's and Developer's current position that certain actions were done by Manager Lipscomb individually and contrasting it with the position taken before the trial court below that the same actions were done by Landowner, LLC.

ACTS NOW CITED BY BROKER AND DEVELOPER AS SOLELY INDIVIDUAL ACTIONS OF MANAGER LIPSCOMB	ACTS BROKER AND DEVELOPER PREVIOUSLY CLAIMED WERE DONE BY LANDOWNER, LLC
“the timing of the termination letter” Respondent’s Initial Brief, p 24	“Clearly <u>the timing of the termination letter shows the Defendant [Landowner, LLC] wanted the Plaintiffs gone</u> before Phase 2 ” Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Reconsideration of Punitive Damages or in the Alternative for a New Trial Absolute Because of the Impropriety of Punitive Damages, pp 5-6 (emphasis added)
“failure to make sure he was correct in terminating the contract after the Respondents objected” Respondent’s Initial Brief, p 24	“<u>Defendant [Landowner, LLC] was unable to give a satisfactory explanation as to how the mistake was made or what was done to correct the mistake after the Plaintiffs objected</u> ” Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Reconsideration of Punitive Damages or in the Alternative for a New Trial Absolute Because of the Impropriety of Punitive Damages, p 4 (emphasis added)
“going back to his attorney to find out how to fire the Respondents” Respondent’s Initial Brief, p 24	“Rather than correct its "mistake" the <u>Defendant [Landowner, LLC] went back to its attorney Camden Lewis and asked ‘well how do you fire anybody?’</u>” Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Reconsideration of Punitive Damages or in the Alternative for a New Trial Absolute Because of the Impropriety of Punitive Damages, p 4 (emphasis added)

“the unconvincing excuse of being mistaken about the lot sales requirement” Respondent’s Initial Brief, p 24	<u>“SEL contends that it simply made a mistake in terminating the Plaintiffs on May 28, 2004 This argument was made to the jury and soundly rejected Under cross-examination the Defendant was unable to give a satisfactory explanation as to how the mistake was made or what was done to correct the mistake ”</u> Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Reconsideration of Punitive Damages or in the Alternative for a New Trial Absolute Because of the Impropriety of Punitive Damages, p 4 (emphasis added)
“Lipscomb's misrepresentation that there were no profits in Phase 1 and the inability to pay the Phase 1 development fee” Respondent’s Initial Brief, p 24	<u>“SEL made misrepresentations about its ability to pay the development fees, misrepresented the cost allocations across the three (3) phases of the project and misrepresented that there were no profits in Phase I ”</u> Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Reconsideration of Punitive Damages or in the Alternative for a New Trial Absolute Because of the Impropriety of Punitive Damages, p 6 (emphasis added)
“the misallocation of costs which made it appear as if there were no profits in Phase 1” Respondent’s Initial Brief, p 24	<u>“SEL made misrepresentations about its ability to pay the development fees, misrepresented the cost allocations across the three (3) phases of the project and misrepresented that there were no profits in Phase I ”</u> Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Reconsideration of Punitive Damages or in the Alternative for a New Trial Absolute Because of the Impropriety of Punitive Damages, p 6 (emphasis added)

‘the misuse of Courtyard funds’ Respondent’s Initial Brief, p 33	“ [I]t was discovered that the Defendant [Landowner, LLC] had misallocated the costs of the project and had misused funds The books revealed that the Defendant made every effort to recover every dollar invested in the project, everything from the gas for the lawn mowers to the bookkeeper's mileage However, the Defendant made virtually no efforts to pay the key vendors and contractors providing key services to the project, including the Plaintiffs ” Plaintiffs’ Memorandum in Opposition to Defendant SEL Properties, LLC’s Motion for Judgment Notwithstanding the Verdict Or in the Alternative for a New Trial Absolute, p 4 (emphasis added)
--	---

As shown above, the acts now cited as individual acts of Manager Lipscomb were relied upon successfully by Broker and Developer as actions of Landowner, LLC in justifying the \$1 million in punitive damages Broker and Developer cannot now, after they have settled and received money from Landowner, LLC, change their position and cite the very actions they previously claimed were done on behalf of Landowner, LLC as solely actions of Manager Lipscomb individually See Commerce Center of Greenville, Inc v W Powers McElveen & Associates, Inc., 347 S C 545, 554, 556 S E 2d 718, 723 (Ct App 2001) *citing Quinn v The Sharon Corporation*, 343 S C 411, 416, 540 S E 2d, 474, 476 (Ct App 2000)(“[A] litigant cannot ‘blow both hot and cold ’”) These hopelessly inconsistent arguments should be rejected by this Court, as the evidence shows that all of Manager Lipscomb’s actions with regard to the project were done on behalf of Landowner, LLC²¹

²¹Trial Transcript, p 777, ll 1-20

e “Absolute Immunity” Is Not the Issue

Broker and Developer incorrectly argue that Manager Lipscomb seeks an absolute immunity from all torts simply because he was the manager of a limited liability company. He does not. Instead, as Bradburn makes clear, immunity from a cause of action for tortious interference with a contract attaches to any action by the agent which is within the scope and course of his authority. Bradburn, 273 S. C. at 188, 255 S. E. 2d at 455. This limitation on individual liability is applicable in this case because the only evidence was that every action that Manager Lipscomb took was within the course and scope of his authority for Landowner, LLC.

f A Bad Business Decision Does Not Mean An Act Was Outside the Scope of Authority

The attempt by Broker and Developer to analyze whether there was a “legitimate business justification” to a variety of Manager Lipscomb’s actions misses the point. A bad business decision does not mean that the action was outside the scope of authority. There is no need for the Court to second guess the wisdom of every business decision made by corporate managers. Instead, the test is whether the decision was within the manager’s scope of authority for the company. See Bradburn v. Colonial Stores, Inc., 273 S. C. 186, 188, 255 S. E. 2d 453, 455 (1979). In this case, the only evidence or testimony was that the decision was within the scope of Manager Lipscomb’s authority.

g Landowner’s Contractual Obligations Do Not Limit Manager Lipscomb’s Scope of Authority

In their brief, Broker and Developer argue that “Lipscomb’s authority to act on behalf of SEL [Landowner, LLC] with regard to the Courtyards project was limited to

providing financing ” Respondents’ Initial Brief, p 2 In support of this argument, Developer and Broker cite Landowner, LLC’s contractual obligation to finance the development ²² Manager Lipscomb’s powers as manager of a limited liability company are not defined or limited by a contract with a third party If that were the case, every decision that results in a breach of contract would be outside the scope of the manager’s authority for the company and all managers would be personally liable for making any decision that results in a breach of contract This would defeat the rule in Bradburn v Colonial Stores, Inc., 273 S C 186, 188, 255 S E 2d 453, 455 (1979) that “when a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable ” Bradburn v Colonial Stores, Inc., 273 S C 186, 188, 255 S E 2d 453, 455 (S C 1979) Quite simply, a contractual obligation to a third party is irrelevant to the manager’s scope of authority ²³

²²Broker and Developer cite the following p 83, ll 8-18 (defendants’ opening statement explaining contract), p 776, l 7 to p 777, l 3 (Manager Lipscomb’s direct examination explaining that under contracts Landowner, LLC’s role was to obtain financing), p 919, ll 4-10 (cross examination of Manager Lipscomb stating that Landowner, LLC was to buy the land), and Exhibit 1 (contract for phases I, II, and III)

²³The proffered limitation by Developer and Broker that Manager Lipscomb’s authority was limited to only providing financing is nonsensical when applied to the facts presented at trial For example, someone from Landowner, LLC had to buy the land, monitor the project, sign off on the construction draws and maintain the property Certainly, the manager of Landowner, LLC had authority to take these actions

h Arguments by Broker and Developer as to K&L Contracting, LLC Should Be Rejected

K&L Contracting, LLC (“K&L”) is a residential home building company owned in part and managed by Manager Lipscomb²⁴ Because early sales in the development were slow, K&L purchased several lots at discounted prices²⁵ K&L also received reimbursement for certain expenses (for example, K&L purchased bricks on its account for the development’s brick entranceway and walls)²⁶ and was permitted to start construction early on some lots In their brief, Broker and Developer argue that these actions were tortious interference with a contract by Manager Lipscomb because he was simultaneously acting as manager of K&L Contracting, LLC and manager of Landowner, LLC

The actions by Manager Lipscomb for K&L do not constitute tortious interference with a contract To create a cause of action for tortious interference with a contract, the following elements must be met (1) a contract, (2) knowledge of the contract by the tortfeasor, (3) intentional procurement of the contract’s breach, (4) absence of justification, and (5) damages DeBerry v McCain, 275 S C 569, 274 S E 2d 293 (1981) Interference is justified when it is motivated by a legitimate business purpose Galliard v Fleet Mortgage Corp., 880 F Supp 1085 (D S C 1995)

There was no evidence that any action taken by K&L was without a legitimate business justification The actions complained of were in furtherance of K&L’s own business interests For example, K&L accepted Landowner, LLC’s offer to sell it lots at the

²⁴Trial Transcript, p 724, ll 91-7

²⁵Trial Transcript, p 810, l 22 to p 818, l 8

²⁶Trial Transcript, p 727, l 18 to p 730, l 18

lot release amount of \$32,000.00 instead of what Broker and Developer contend was the agreed upon value of \$40,000.00.²⁷ Broker and Developer also argue that K&L accepted the opportunity to begin construction on homes on other lots, even though lot releases had not been obtained²⁸ and that K&L was reimbursed for expenses. Manager Lipscomb's actions on behalf of K&L were simply fulfilling K&L's legitimate business objectives in developing and selling residential property, thus, Manager Lipscomb had legitimate business justifications for K&L's actions and they are not tortious interference with a contract as a matter of law. Broker and Developer obviously recognized that the actions were in furtherance of K&L's legitimate business objectives because Broker and Developer did not bring a claim against K&L for tortious interference with a contract.

Additionally, Manager Lipscomb's simultaneous acts on behalf of Landowner, LLC and K&L do not constitute tortious interference with a contract. Manager Lipscomb, as an agent acting within the scope of his authority for Landowner, LLC, cannot be liable for Landowner, LLC's breach. See Bradburn v. Colonial Stores, Inc., 273 S.C. 186, 188, 255 S.E.2d 453, 455 (1979). Manager Lipscomb cannot be personally liable just because he was simultaneously acting on behalf of K&L. See pages 11-14 of Appellant's Initial Brief.

Regardless, if there was a K&L interference via Manager Lipscomb, which is denied, there is no evidence supporting a \$3 million damages award arising from the alleged interference. Broker and Developer argue that Manager Lipscomb on behalf of K&L tortiously interfered with Landowner, LLC's contract with Broker and Developer by

²⁷Trial Transcript, p. 548, l. 17 to p. 552, l. 4 and Plaintiffs' Exhibit 46, 47, and 48.

²⁸There was no evidence establishing or quantifying any damages from the alleged early construction.

purchasing three lots for below the fair market value. These alleged purchases could have only caused \$30,000.00 in damages.²⁹ Similarly, the alleged damages from the improper reimbursements is only \$11,362.97.³⁰ Loss of this \$41,362.97 does not support a \$3 million damages award. If there was a K&L interference, which is denied, the Court erred by failing to reduce the damages to the amount of damages from the K&L interference, which is at most \$41,362.97.

Additionally, the punitive damages award should be reduced because \$1 million in punitive damages for \$41,362.97 in actual damages violates Manager Lipscomb's due process rights because it is in excess of a "single digit ratio." Atkinson v. Orkin Exterminating Co., Inc., 361 S.C. 156, 604 S.E.2d 385 (2004).

II CONTRACT DAMAGES FROM THE TORTIOUS INTERFERENCE WITH A CONTRACT CAUSE OF ACTION AND THE BREACH OF CONTRACT CAUSE OF ACTION ARE THE SAME

At trial, Broker and Developer argued that Landowner, LLC breached its contracts with them on multiple occasions. Broker and Developer also argued that these same breaches were caused by Manager Lipscomb.³¹ The jury found that Landowner, LLC did

²⁹Broker and Developer asserted that the lots were purchased for below the fair market value of \$120,000.00 for all three lots and that they were entitled to twenty-five percent of the profits from these lots. Twenty-five percent of \$120,000.00 is \$30,000.00.

³⁰In their brief, Broker and Developer cite p. 152, l. 2 to p. 172, l. 11 as testimony concerning allegedly improper reimbursements to K&L. This testimony cites exhibits 127, 128, 131, and 129 as improper K&L payments. An examination of these exhibits and tally of the payments shows that \$45,451.88 was at issue. Broker and Developer claim to be entitled to 25% of this amount or \$11,362.97.

³¹Under the facts, Broker and Developer had two theories of recovery: (1) breach of contract as to Landowner, LLC and (2) tortious interference with a contract. As discussed in Section III below, it is permissible to plead two alternative theories of recovery on the same facts.

breach the contracts and found the total contract damages to be \$299,144 00 This finding absolutely establishes the contract damages attributable to any and all of Landowner, LLC's breaches of contract The jury's finding on the amount of breach of contract damages established the total recoverable contract damages in the case There can be no double recovery of the contract damages

Contract damages for a cause of action for breach of contract and a cause of action for tortious interference with a contract based on the same allegations are the same "The actual damages under the contract claim and tort claim [cause of action for tortious interference with a contract] will be coextensive with respect to the lost benefits of the contract " Collins Music Co , Inc v Smith, 332 S C 145, 147-148, 503 S E 2d 481, 482 (Ct App 1998)(emphasis added) Stated another way, the damages resulting from a breach of contract and from tortious interference with the same contract are the same damages

Broker and Developer try to avoid this black letter rule by arguing that Landowner, LLC committed multiple breaches of contract which resulted in different damages Even when there are multiple acts that breach a contract, the plaintiff can only recover one set of damages on the breach of contract cause of action There is only one recovery on one set of facts, and the recovery is for all of the breaches Accordingly, the jury's finding as to damages on a breach of contract cause of action as to Landowner, LLC, which included allegations on all the breaches of contract, necessarily establishes the total contract damages arising from all of Landowner, LLC's breaches

Moreover, Manager Lipscomb cannot be liable for more of Landowner, LLC's

However, you cannot recover the same damages twice

contract damages than the jury found existed. If Landowner, LLC is not liable for any alleged breach of contract damages, by definition Manager Lipscomb could not be liable for causing the same alleged damages.

Accordingly, the trial court erred in overruling Manager Lipscomb's objection to the jury charge on this issue and in denying Manager Lipscomb's post-trial motions request to reduce the damages award. There can be no double recovery.

III DEVELOPER AND BROKER CANNOT RECOVER CONTRACT DAMAGES TWICE

Broker and Developer cannot double-dip and recover Landowner, LLC's breach of contract damages on two separate causes of action. While the South Carolina Rules of Procedure allow a party to plead alternative theories of recovery, the law does not allow a party to recover damages twice. *See Taylor v. Hoppin' Johns, Inc.*, 304 S.C. 471, 405 S.E.2d 410 (Ct. App. 1991). In this case, Broker and Developer allege a cause of action against Landowner, LLC for breach of contract and a cause of action against Manager Lipscomb for tortiously causing Landowner, LLC's breach of contract. These causes of action share a common factual basis, which is Landowner, LLC's breach of contract. The causes of action for breach of contract and tortious interference with a contract are alternative theories for recovering the same contract damages. *See Collins Music Co., Inc. v. Smith*, 332 S.C. 145, 147-148, 503 S.E.2d 481, 482 (Ct. App. 1998). There is no dispute that Broker and Developer are allowed to plead these alternative theories of recovery. Broker and Developer, however, are not allowed to recover the contract damages twice.

Broker and Developer have already settled the breach of contract and breach of contract accompanied by a fraudulent act claims against Landowner, LLC for \$1.5 million.

Broker and Developer simply cannot double-dip and again recover for a second time the contract damages from Landowner, LLC's breaches of contract a second time

IV THERE WAS NO EVIDENCE PRESENTED AT TRIAL OF ANY LOST GOODWILL OR LOST CUSTOMERS

In an effort to avoid the prohibition of recovering contract damages on both the cause of actions for tortious interference and for breach of contract, Broker and Developer attempt to cast the \$3 million damages award as lost good will and lost customers. This incorrect argument is based on the erroneous jury charge that recoverable damages in this case for this cause of action include lost goodwill and lost customers. Manager Lipscomb objected to the jury charge. Lost goodwill and lost customers were not recoverable in this case because there was no evidence that Broker and Developer lost any good will or customers.

Respondents' Brief did not (and could not) cite a single page of testimony or a single exhibit establishing that Broker and Developer lost any goodwill or customers. This is because neither lost goodwill nor lost customers was not part of this case. This issue was raised for the first time in this case at the jury charge conference. More importantly, Broker and Developer did not present any evidence at trial of lost goodwill or lost customers. As such, Broker and Developer cannot recover damages for either lost goodwill nor customers in this case.

The portions of the transcript cited by Broker and Developer demonstrate that there was no evidence of lost good will or customers. The majority of Respondents' citations state positive attributes of the development, the community, and the adjoining

development³² This positive testimony does not show that Broker and Developer suffered any damages

Furthermore, there was no testimony that Broker's and Developer's reputations were harmed or that Broker and Developer actually lost customers Because Broker and Developer did not introduce any testimony that they lost good will, customers, or that their reputations were damaged, Broker and Developer cannot recover damages for these items Quite simply, if a plaintiff was not damaged or does not introduce any evidence that it suffered damages, the plaintiff cannot recover damages Because there was no evidence of lost goodwill or lost customers presented at trial, the trial court erred in charging the jury that lost customers and lost goodwill were recoverable in this case and erred in failing to reduce the damages to contract damages only

CONCLUSION

At its core, this case involves a breach of contract Broker and Developer have settled their claims for breach of contract and breach of contract accompanied by a fraudulent act for \$1.5 million (more than 5 times the contract damages of \$299,144.00 established by the jury verdict)³³ Thus, Broker and Developer have recovered the contract

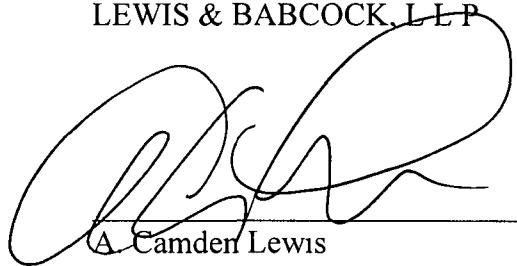
³²Broker and Developer cite the following positive testimony Colson, p. 70, ll. 15-21 (the "adjoining development was a premier development", p. 357, ll. 23-25 ("It had a good reputation"), p. 182, ll. 13-28 ("it was a great area"), Colson, p. 70, l. 11 (It was booming in that market"), p. 192, l. 16 to p. 193, l. 5 ("we had a lot of customer building going on and selling to builders"), p. 363, l. 21 to p. 364, l. 9 ("phase one which was really a model community"), p. 94, l. 4 to p. 97, l. 3 (homes were a "high quality product"), Exhibits 151 and 152 (pictures of entranceway and team builder sign)

³³The jury returned a verdict of \$299,144.00 on the breach of contract cause of action and \$1 million on the breach of contract accompanied by a fraudulent act cause of action Broker and Developer, at the time of the settlement, also had outstanding motions for attorneys fees and

damages from the party that breached the contract Broker and Developer should not also be permitted to double-dip and recover the same contract damages from Manager Lipscomb for actions within the scope of his authority which caused the breach of contract

Respectfully submitted,

LEWIS & BABCOCK, LLP

A handwritten signature in black ink, appearing to read 'A. Camden Lewis', is written over a horizontal line.

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Attorneys for the Appellants

April 10, 2009

costs under the contracts and claims for post judgment interest

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 10 2009

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb,
Defendants, of whom Stephen E. Lipscomb is the,

Appellant

**APPELLANT'S REPLY BRIEF DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

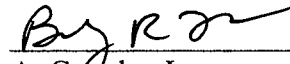
Appellant proposes the following be included in the Record on Appeal

- 1 Trial Transcript, pp. 78, 83, 95-97, 152-172, 182, 189, 192-193, 357, 363-364, 365-367, 497, 548-552, 722, 727-730, 766, 770, 773-777, 811-816, 919, and 1036,
- 2 August 24, 2007 Deposition of Ronnie O. Colson, p. 1 and p. 70,
- 3 Plaintiffs' Exhibit 46,
- 4 Plaintiffs' Exhibit 47,
- 5 Plaintiffs' Exhibit 48,
- 6 Plaintiffs' Exhibit 127,

- 7 Plaintiffs' Exhibit 128,
- 8 Plaintiffs' Exhibit 129,
- 9 Plaintiffs' Exhibit 131,
- 10 Plaintiffs' Exhibit 151,
- 11 Plaintiffs' Exhibit 152,
- 12 Plaintiffs' Memorandum in Opposition to Motion for
Reconsideration of Punitive Damages or, in the Alternative, for a
New Trial Absolute, and
- 13 Plaintiffs' Memorandum in Opposition to Defendant SEL Properties,
LLC's Motion for Judgment Notwithstanding the Verdict Or in the
Alternative for a New Trial Absolute

I certify that this designation contains no matter which is irrelevant to this appeal

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Columbia, South Carolina

April 10, 2009

THE STATE OF SOUTH CAROLINA
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SC Court of Appeals

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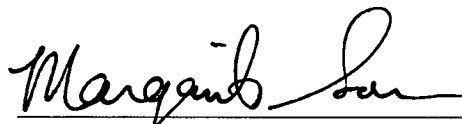
SEL Properties, LLC and Stephen E Lipscomb,
Defendants, of whom Stephen E Lipscomb is the,

Appellant

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L L P , hereby
certify that I have served **Reply Brief of Appellant** and **Appellant's Reply Brief**
Designation of Matter To Be Included in the Record on Appeal upon opposing
counsel, by mailing a copy thereof, postage prepaid and return address clearly indicated on
said envelope, to said opposing counsel at the following address, this the 10th day of April,
2009

Glenn E Bowens, Esquire
Anthony S H Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016


Margarita Sosa

April 10, 2009

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April 10, 2009

RECEIVED

APR 10 2009

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

Enclosed for filing please find the original and one copy of Reply Brief of Appellant and Appellant's Reply Brief Designation of Matter To Be Included in the Record on Appeal in the above-referenced matter, along with Proof of Service. An additional copy of each is included. Please check the additional copies and return them to our office via our courier.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R Thomas

BRT mas
Enclosures

cc Glenn E Bowens, Esquire (via mail)

The South Carolina Court of Appeals

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC

Respondent,

v

SEL Properties, LLC and Stephen E
Lipscomb, Defendants, of whom Stephen E
Lipscomb is the,

Appellant

The Honorable Alison Renee Lee
Richland County
Trial Court Case No 2005 CP-40-00749

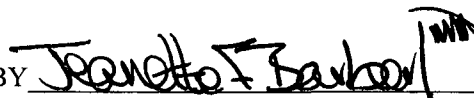
ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Reply Brief and Designation of Matter in the above entitled matter is hereby extended until April 13, 2009

IT IS SO ORDERED

KAYE G HEARN CHIEF JUDGE
For the Court

BY


CLERK

Columbia South Carolina

04 10-2009

cc Keith M Babcock Esq
Brady R Thomas Esq
Glenn E Bowens Esq
Anthony S H Catone, Esq

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 01 2009

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Alison R Lee, Circuit Court Judge

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v

SEL Properties, LLC and Stephen E Lipscomb,
Defendants, of whom Stephen E Lipscomb is the,

Appellant

**APPELLANT'S MOTION FOR EXTENSION
OF TIME TO FILE REPLY BRIEF**

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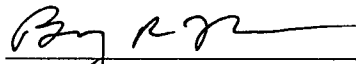
ATTORNEYS FOR THE APPELLANT

4-20-09 15
4-20-09

Appellant Stephen E Lipscomb hereby moves the Court for an Order granting a ten (10) day extension of time to file Appellant's Reply Brief in this matter This is Appellant's first request for an extension of time on the Reply Brief The undersigned has consulted with counsel for Respondents and they consent to Appellant's request Accordingly, Appellant respectfully requests that the Court grant the ten (10) day extension

Respectfully submitted,

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April 1, 2009

THE STATE OF SOUTH CARO. A
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

APR 01 2009

Alison R. Lee, Circuit Court Judge

SC Court of Appeals

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

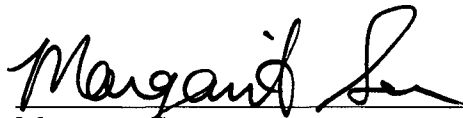
SEL Properties, LLC and Stephen E. Lipscomb,
Defendants, of whom Stephen E. Lipscomb is the,

Appellant

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L L P, hereby
certify that I have served **Appellant's Motion for Extension of Time to File Reply Brief**
upon opposing counsel, by mailing a copy thereof, postage prepaid and return address
clearly indicated on said envelope, to said opposing counsel at the following address, this
the 1st day of April, 2009

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April 1, 2009

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APR 01 2009

SC Court of Appeals
63399 25

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

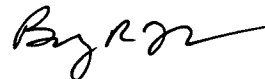
Enclosed for filing please find the original and six copies of Appellant's Motion for Extension of Time to File Reply Brief in the above-referenced matter, along with Proof of Service. An additional copy of each is included to be clocked and returned to our office via our courier.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R Thomas

BRT mas
Enclosures

cc Glenn E Bowens, Esquire (via mail)

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

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MAR 23 2009

SC Court of Appeals

Dutch Fork Development Group II, LLC and
Dutch Fork Realty,

Respondents,

v

SEL Properties, LLC and Stephen E Lipscomb
of whom Stephen E Lipscomb is the

Appellant

RESPONDENTS' INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- 1 WHETHER THE TRIAL COURT ERRED IN ITS CHARGE TO THE JURY ON THE SUBSTANTIVE LAW OF TORTIOUS INTERFERNECE WITH A CONTRACT BY A CORPORATE OFFICER?
- 2 WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION FOR DIRECTED VERDICT AND JUDGMENT NOTWITHSTANDING THE VERDICT?
- 3 WHEHTER A CORPORATE OFFICERS AND EMPLOYEES HAVE ABSOLUTE IMMUNITY FROM PERSONAL LIABILITY FOR TORTIOUS INTERFERENCE WITH A CORPORATE CONTRACT?
- 4 WHETHER THE TRIAL COURT ERRED IN REFUSING TO REDUCE THE DAMAGES IN THE TORTIOUS INTERFERENCE CAUSE OF ACTION?
- 5 THE TRIAL COURT ERRED IN ITS CHARGE TO THE JURY WITH REGARD TO DAMAGES FOR LOSS OF CUSTOMERS AND GOODWILL IN THE TORTIOUS INTERFERENCE WITH CONTRACT CAUSE OF ACTION?

STATEMENT OF THE CASE

This litigation was initiated on February 17, 2005 by Dutch Fork Development Group II, LLC (“DFDG”) and Dutch Fork Realty, LLC (“DFR”) against SEL Properties, LLC (“SEL”) and Stephen E Lipscomb (“Lipscomb”) The causes of action involved breach of contract accompanied by a fraudulent act and tortious interference with contract SEL and Lipscomb answered denying liability for all causes of action

The case was tried by jury on October 29, 2007 – November 7, 2007 The trial court denied Lipscomb’s motion for directed verdict The jury found for DFDG and DFR awarding \$299,144 00 in actual damages and \$1,000,000 00 punitive damages against SEL and \$3,000,000 00 actual damages and \$1,000,000 00 punitive damages against Lipscomb The trial court denied the post trial motions filed by SEL and Lipscomb including the motion for judgment notwithstanding the verdict (“JNOV”) on April 8, 2008 Notice of Appeal was filed on April 11, 2008 The appeal by SEL was voluntarily dismissed on June 9, 2008

FACTS

The Respondent, DFDG is a development company engaged in the business of developing residential sub-divisions, DFR is a real estate sales/brokerage company SEL is an investment holding company Appellant Lipscomb is the managing member of SEL K&L Contracting, LLC (“K&L”) is a residential home construction company engaged in the business of purchasing lots and constructing houses in residential developments Lipscomb is the managing member of K&L (p 89 line 15 – p 91 line 1) There were two contracts in this litigation involving the development of two neighboring but separate residential subdivisions, one known as the Courtyards at Rolling Creek (“Courtyards”)

and the second known as Rolling Creek. The parties to the contracts were DFDG, DFR and SEL. Lipscomb conceded at trial that he was not a party to the contracts. (Exhibits 1 and 2, p 490, lines 8-12, p 777, line 21 – p 778, line 5)

On November 14, 2000 the parties entered into a contract for the purpose of developing and marketing of the Courtyards (Exhibit 1). The Courtyards was to be developed in three phases over the five year term of the contract. The contract assigned DFDG responsibility and authority for the development of the Courtyards, DFR was responsible for marketing and sales, DFR was also granted the exclusive right to sell both lots and houses in all three phases of the development.

SEL's sole responsibility was to provide financing for the project to purchase the land and to pay of the costs of development. Lipscomb's authority to act for SEL with regard to the Courtyard's project was limited to providing financing (p 83, lines 8- 18, p 776, line 7 - p 777, line 3, p 919, lines 4-10, Exhibit 1). The contract provided for DFDG to receive a \$54,000.00 development fee for each phase of the development as well as twenty five percent of the profits from the sale of the lots. On October 17, 2002, the parties entered into a second contract, containing substantially identical terms, for the development and marketing of Phase 4 of the Rolling Creek subdivision (Exhibit 2).

The property, consisting of 122 acres comprising the land for all three phases, cost \$800,000.00 and was purchased by SEL using its own funds (Exhibits 3 and 4). Subsequently SEL obtained a development loan from the National Bank of South Carolina ("NBSC") (Exhibits 69 and 70). SEL reimbursed itself the \$800,000.00 from the proceeds of the development loan (p 99, line 10- p 101, line 13). The purpose of the loan was to pay the expenses for the development of Phase 1 (e.g. engineering costs,

construction of roads and utilities) not to reimburse SEL for the purchase price of the land for all three phases SEL was to be reimbursed for the cost of the land purchase as each lot was sold over the course of all three phases of the project not all at once in Phase 1 (p 110, line 11- p 111, line 6, p 240, lines 3-9, p 278, lines 4-13)

The original budget for Phase 1 did not include paying for land acquisition as the land had already been acquired by SEL (p 278, lines 4-13) SEL's action left insufficient funds to complete the development (p 360, line 15 – p 362, line 9) Lipscomb **personally** guaranteed the development loan would be repaid and personally guaranteed he would cover any expenses not covered by the development loan ("shortfalls") caused by taking the \$800,000 00 out up front (p 87 lines 11 -18, p 109, line 20 – p 112, line 5, p 540, lines 13-14, p 798, lines 2-13, p 970, line 2 – p 971, line 1) Lipscomb did not comply with his personal guarantee as there was evidence that expenses for the development to various contractors were not timely made and the contractors placed liens on the property, refused to work or slowed down on their work Lipscomb's unjustified withholding of funds prevented performance of the contract (p 148, line 13 – p 149, line 24, p 362 lines 10-23, p 391 lines 2-21)

The development loan was to be repaid through a lot-release fee as each lot was sold (p 117, lines 2-6) However, lots in a subdivision may not be sold until either the infrastructure is completed or a bonded plat is obtained (p 334, line 17 – p 335, line 2, p 350, lines 19-25) The bonded plat ensures the infrastructure will be completed if lots are sold to the public before completion of the infrastructure Lipscomb, without justification, refused to provide funds for a bonded plat, until the infrastructure was substantially completed, which prevented DFR from beginning sales of lots for nearly a

year (p 174, line 21 – p 176, line 12) After the infrastructure was installed the roads began to experience isolated pavement failures Lipscomb, without justification, refused to provide funds to pay for the repairs which resulted in significant deterioration of the roads (p 134, line 18 – p 135, line 19, p 140, lines 5 – 25)

The development plans for all three phases had been pre-approved by the appropriate governmental agencies (p 331, lines 11-19, p 350, lines 4-12, p 369 lines 2-7) Shortly after Phase 1 began Lipscomb secretly went to the project engineer, without the knowledge or consent of DFDG, abandoned the pre-approved development plans for Phase 2 and 3 and began re-designing those phases (p 146, line 3 – p 147, line 8, p 331, lines 11-13, p 350, lines 4-12) The engineering firm working on the re-design of Phase 2 and 3 was not paid The re-design was not part of the development budget and Lipscomb did not provide funds to pay the engineering firm Without being paid the engineering firm did not work on the re-design and completion and final approval of the re-designed plans was delayed until March 1, 2007 Without approved development plans construction of the infrastructure for Phase 2 and 3 could not begin nor could they be effectively marketed (p 188, lines 1-22, p 332 line 13 – p 333, line 8, p 148, lines 6-12)

The design and preparation of the development plans for the Courtyards is a development function and solely the responsibility of DFDG (p 368, lines 21-25) Lipscomb had no authority to abandon the pre-approved plans and re-design the development plans for Phase 2 and 3 (p 189, lines 5-8, p 369, lines 2-5) Lipscomb's actions had a "catastrophic" impact on the project, he prevented DFDG and DFR from being able to perform the contract and derailed the project (p 146, line 3 – p 147 line 8)

There was no legitimate business justification for changing the development plans when doing so prevented the contract from being performed

There was evidence Lipscomb engaged in secret negotiations with buyers for lots in Phase 2 and 3 (p 195, line 21 – p 196, line 23, p 248, lines 10-14) The negotiations were secret because Lipscomb did not intend to share the profits with DFDG or pay commissions to DFR During the trial Lipscomb repeatedly denied having engaged in secret negotiations, however when presented with documentary evidence he admitted that he had secretly negotiated with buyers (Lipscomb Excerpt p 16, lines 14-22) DFR had the exclusive right to sell lots and houses in the Courtyards Lipscomb had no authority to engage in secret negotiations with potential buyers (p 367, line 16 – p 368, line 9) Lipscomb's secret negotiations ultimately led to a contract to purchase all of the lots in Phase 2 and 3 by Essex Homes for a purchase price of \$7,663,000 00 (Exhibit 123)

Lipscomb repeatedly misrepresented to DFDG that there were no profits in Phase 1 and that SEL had no funds to pay the development fee (p 108, lines 13-22, p 113, line 12 – p 114, line 4) However, accountants on both sides confirmed that there were profits that should have been split with DFDG and that SEL in fact had the ability to pay the Phase 1 development fee (p 417, lines 12-20, p 1015, line 12 – p 1016, line 4) There was evidence at trial that the costs for the project had been misallocated on the books to make it appear as if there were no profits in Phase 1 (p 410, line 20 – p 416, line 2, p 1017, lines 3-11)

Lipscomb engaged in improper self-dealing and charged illegitimate expenses (p 446, lines 9-11) Lipscomb used Courtyard funds to pay personal expenses and to pay K&L's construction expenses (p 152, line 2- p 172, line 11) There was evidence that

Lipscomb allowed K&L to receive lots without paying the fair market value price, which had been set at \$40,000 00 per lot by agreement between SEL and DFDG, thereby depriving DFDG of its profit share (p 104, lines 8-14, p 150, line 4 - p 152, line 14) Lipscomb allowed K&L to begin building on lots without closing and to delay closing on lots (p 210, lines 4-14, p 234, lines 2-8) The decrease in cash flow resulting from Lipscomb's self-dealing and improper use of Courtyard funds delayed completion of the project and prevented the parties from performing the contract

Lipscomb terminated the development contract via letter on May 28, 2004 He claimed the reason for termination was the failure by DFR to meet the contract's lot sales requirement However, during the trial Lipscomb admitted that the lot sales requirement in fact had been met and that he was wrong to have terminated the contract (p 833, lines 8-11) Lipscomb claimed he was mistaken about the lot sales requirement when he terminated the contract Lipscomb claimed he thought the lot sales requirement was two lots per month, however, the letter terminating the contract accurately quoted the contract requirement of twenty percent of the available lots per year (p 25, lines 9-10, p 85, line 20 – p 86, line 4, p 835, lines 19-23) The termination letter made no reference to the claimed two lots per month requirement (Exhibit 17)

There was evidence Lipscomb had no legitimate basis for terminating the contract and that his motive was to improperly deprive DFDG and DFR of the development fees, commissions and profit sharing from Phase 2 and 3 in order to prevent NBSC from calling in his personal guarantees When the Respondents objected to being terminated rather than verify the sales requirement had been met, Lipscomb went back to his attorney to ask "well how you fire anybody?" (p 890, lines 16-24)

ARGUMENT

I The jury was properly charged and the trial court properly denied Appellant's post trial motions for directed verdict and JNOV

The Appellant's argument is based on the erroneous assumption that he is absolutely immune from liability for tortious interference with a corporate contract solely because of his status as a corporate officer. The Appellant's argument also fails to distinguish between the contract liability of a corporation and the tort liability of an individual corporate officer. Under South Carolina law, corporate officers are not absolutely immune from personal liability for tortious interference with a corporate contract just as they are not immune from personal liability for other torts they commit. The jury was charged by the trial court:

Generally, a corporate officer or employee is not liable for interfering with a corporate contract because he's considered a party to the contract, as long as he's acting to serve the corporate interest or -- or unless his activity involves individual, separate tortious acts. However, a corporate officer or employee may be liable for tortiously interfering with a corporate contract if he's acted outside the scope of his authority or he's acting with malice, that is evil intent, or acting to serve his own interest (Charging p. 25 line 23 – p. 26, line 7)

The trial court's charge to the jury was based on the model charge developed by Judge Ralph King Anderson, Jr. in South Carolina Request to Charge – Civil (2002) and is a correct statement of the law. A corporate officer's interference, inducement or procurement of a breach of contract is tortious and actionable when the corporate officer is either (1) not acting to serve the corporate interest, (2) commits a tortious act, (3) acts outside the scope of his authority, (4) acts with malice, or (5) acts to serve his own personal interest. The trial court found there was sufficient evidence presented on the tortious interference cause of action to warrant charging the jury.

The trial court also charged the jury

In deciding whether the defendant Lipscomb's conduct in intentionally interfering with a contract is improper you should consider the following factors The nature of the defendant's conduct, the defendant's motive, the interest of the other party with which the defendant's conduct interferes, the interest sought to be advanced by the defendant The plaintiff must prove the absence of justification The absence of justification can be inferred Interference with a contract is justified, however, when it is motivated by a legitimate business purpose (Charging p 24, lines 9-23)

There was evidence from which the jury could conclude that Lipscomb had no legitimate business justification for his actions and that his motive was to avoid having NBSC call in his personal guarantees by improperly depriving DFDG and DFR of the profits, fees and commission they would have earned in Phase 2 and 3 Their award of punitive damages indicates the jury also found Lipscomb was acting maliciously

Lipscomb's appeal is not based on an error of law at trial, rather he disagrees with the jury's determination of the facts During his motion for directed verdict, Lipscomb agreed with the rule of law charged to the jury Lipscomb argued

And a tortious interference with contract takes something where the person doing the act is acting outside the scope of his authority and doing something for improper personal means There is no evidence in this case that the actions taken by Mr Lipscomb in this matter were anything other than in his authority as a managing member of SEL (p 654 lines 11-18)

Lipscomb agreed that the law allowed for him to be found liable for tortious interference as a corporate officer if he was acting outside the scope of his authority or if he was doing something for improper personal means Lipscomb did not argue at trial that he could not legally be found liable for tortious interference, instead he argued that the evidence did not show he was liable Contrary to Lipscomb's argument there was substantial evidence

that he acted outside the scope of his authority and was acting to serve his personal interests rather than the corporate interest

The question of the scope of Lipscomb's authority and whether he acted in his personal capacity to serve his own self-interest or in a corporate capacity to serve the corporate interest, whether he acted tortiously, with malice, or with a legitimate business purpose are all questions of fact for the jury "A jury issue exists where the evidence is susceptible of more than one reasonable inference" Jones v Ridgely Communications, Inc., 304 S C 452 (1991) The trial court found there was sufficient evidence that Lipscomb acted outside the scope of his authority, acted with malice, without justification, committed tortious acts and acted to serve his own personal interest to warrant submitting the issues to the jury

Lipscomb did not object to the substantive law contained in the trial court's charge to the jury, thus any alleged error with the substantive charge on the law of tortious interference is not preserved for appellate review The trial court's jury charge is not reversible error unless there has been an abuse of discretion based on an error of law or the charge is without evidentiary support Clark v Cantrell, 339 S C 369 (2000) The jury charge was a correct statement of the law and there was substantial evidentiary support for the charge

On appeal Lipscomb claims absolute immunity for his acts by arguing that because a corporation can only act through its individual officers and employees the corporation alone is responsible for its employees tortious conduct Lipscomb claims that he was always acting for SEL and so he cannot be liable for tortious interference

Lipscomb is not correct. There is no absolute immunity for corporate employees. BPS, Inc v Worthy, 362 S C 319 (Ct App 2005)

It is axiomatic that a corporation can only act through its individual officers, agents and employees. However, not every act of a corporate officer is on behalf of the corporation, in furtherance of the corporate interest or within the scope of authority of the corporate officer. Sometimes, corporate officers act outside the scope of their authority, they act in their own self-interest, they act in bad faith, they engage in self-dealing, insider trading and corporate espionage, corporate officers can act maliciously, tortiously, negligently and sometimes even criminally. Corporate officers have always been held personally liable for this type of conduct.

Because a corporation can only act through its individual officers, agents and employees, a corporation has liability under both tort law and contract law. The corporation's liability under the tort law doctrine of *respondeat superior* to pay damages to a third party injured by a corporate employee **does not relieve the individual tortfeasor employee from personal liability to the injured third party**. For example, a corporate employee is clearly acting for the corporation when he is driving a corporate vehicle on company business, however, there is no question that he is personally liable to third parties injured by his negligent / tortious driving. Likewise, a corporation's liability under contract law, to pay damages for the breach of contract caused by the tortious interference of a corporate employee, does not relieve the individual employee of personal liability under tort law for maliciously procuring / inducing the breach. In either case the injured party may bring an action against the corporation, the employee, or both.

Every tortious interference with contract case involves a tort and a breach of contract, they are essential elements of the cause of action. When the tortfeasor is a corporate officer the tortious and unjustified act procures or induces the breach. Because the tortfeasor is a corporate officer it may appear on the surface as if only a breach of contract were involved. The difference between a simple breach which is not actionable against the individual corporate officer and tortious interference, which is actionable against the individual corporate officer, is the absence of a legitimate business justification for the corporate officer's act that resulted in the breach. There is no legitimate business justification for a corporate officer acting outside the scope of his authority. Acts that are not in furtherance of the corporate interest, acts taken out of malice or in furtherance of the corporate officer's personal interest do not have a legitimate business justification. If the act were "justified" the act would be legitimate and would not be tortious and not actionable. Lipscomb had no legitimate business justification for his actions. There is no legitimate business justification and no corporate interest served by preventing the parties from performing the contract and derailing the project.

The trial court found the jury could conclude from the evidence that Lipscomb was not acting within the scope of his authority but was acting in his personal capacity to further his own personal interest. Based on these findings the trial court properly denied the Appellant's motions for directed verdict and JNOV. The trial court's denial of directed verdict and JNOV motions can only be reversed when there is no evidence to support the trial court's decision. Creech v. South Carolina Wildlife & Marine Resources Dep't, 328 S.C. 24 (1997). When reviewing the denial of a motion for directed verdict or

JNOV the appellate court reviews the evidence and all reasonable inferences in the light most favorable to the non-moving party Wright v Craft, 372 S C 1 (Ct App 2006) When there is any evidence from which the jury could reach its verdict the jury's verdict must be affirmed Id

Evidence Lipscomb acted outside the scope of his authority

The contract defined the scope of authority for each party involved in the Courtyard's project SEL, DFDG and DFR were each assigned a specific area of responsibility under the contract The responsibility for development of the Courtyards was assigned to DFDG in paragraph 4, responsibility for marketing and the exclusive right to sell lots and houses was assigned to DFR in paragraph 6, and responsibility for financing the project was assigned to SEL in paragraph 2 Lipscomb's authority to act for SEL with regard to the Courtyard's project was limited to providing financing He had no authority to act in any other area related to the Courtyards

There was no dispute at trial that the scope of Lipscomb's authority was limited to providing financing for the project According to the testimony at trial, including testimony by Lipscomb, SEL is an investment holding company that finances real estate projects, it never acts as a developer, SEL's role and the role of its corporate officers is limited to financing the project (p 90, lines 5-14, p 97, lines 4-23, p 776, line 7 - p 777, line 3) Lipscomb acknowledged his limited scope of authority when he testified "I'm a finance person I had to try to get finance for this thing I was not a developer" (p 934 lines 4-10) Lipscomb's counsel conceded in both his opening statement and closing argument that Lipscomb was only responsible for providing financing (p 80, lines 15-22, p 83, lines 11-16, p 1152, lines 19-25)

Lipscomb acted outside the scope of his authority by interfering with the development plans, a function for which DFDG alone was responsible. There was testimony that Lipscomb secretly went to the project engineer, abandoned the development plans for Phase 2 and 3 that had been pre-approved by the necessary government regulatory agencies, and began redesigning the plans for those phases (p 146, lines 3-13, p 195, line 21– p 196, line 23, p 350, lines 13-18). There was testimony that Lipscomb went to the project engineer “behind our backs” and that Lipscomb had no right to make changes to the development plans (p 188 lines 11-17 p 189 lines 5-8). Rick Maxheimer, the project engineer, testified that he was the one who ultimately told DFDG that Lipscomb had changed the plans for Phase 2 and 3 (Page 350, lines 13-15). Lipscomb claimed he did not act secretly and that DFDG went along with the changes, however, the jury believed the testimony from DFDG that Lipscomb acted “behind our backs ” (p 844, lines 4-8).

The engineering firm working on the re-design of Phase 2 and 3 was not paid and completion and final governmental approval of the re-designed plans was delayed until March 1, 2007. Lipscomb cannot change the development plans in a five year three phase real estate development project, not pay the engineering firm and then expect the developer to complete the project on time. There was no legitimate business justification for preventing performance of the contract and derailing the project. There was no legitimate reason for Lipscomb to misrepresent to the jury that DFDG knew about and consented to the re-design of Phase 2 and 3. There was no legitimate basis for Lipscomb to perform acts he was not authorized to perform. Based on the evidence the jury could conclude Lipscomb was acting outside the scope of his authority.

There was also evidence that Lipscomb acted outside his authority by engaging in secret negotiations with buyers, a function for which DFR was exclusively responsible. After repeated denials on the witness stand, Lipscomb finally admitted he engaged in secret negotiations with buyers to sell lots. Lipscomb testified:

Q The buyer –that’s one of those buyers who you had negotiated with behind our backs, backed out on you. And that’s why that contract fell through. Is that right?

A I guess it is, yes sir. (Lipscomb Excerpt p. 16, lines 14-22)

When Lipscomb admitted that he had gone behind the back of DFR and tried to sell the property, after having denied doing so, the jury could reasonably conclude that he was acting outside the scope of his authority. Lipscomb had no reason or legitimate business justification for acting secretly and then lying in court about attempting to sell the property if he were authorized to take these actions.

Because SEL did not have the authority to revise the development plans and secretly negotiate with buyers, Lipscomb could not possibly have had the authority. Based on the evidence and Lipscomb’s own concessions at trial, the jury was able to conclude that Lipscomb acted outside the scope of his authority. The jury’s conclusion is underscored by the evidence that Lipscomb acted secretly and then lied about his actions at trial. Lipscomb’s repeated denials that he had negotiated with buyers and then ultimately admitting the negotiations when confronted with documentary evidence supports the jury’s finding that he acted outside the scope of his authority. The jury could easily infer that Lipscomb lied and acted secretly because he was concerned about personal liability for having acted outside the scope of his authority.

Lipscomb admitted that he was not a developer and that his only job was to provide financing. Lipscomb admitted secretly negotiating with buyers and changing the development plans. There is no legitimate business justification for changing the plans when doing so prevents performance of the contract and derails the project. Lipscomb cannot legitimately perform acts that are illegitimate for him to perform. There is no legitimate business justification for a corporate officer performing acts that are outside the scope of his authority.

The **only evidence** that Lipscomb was acting within the scope of his authority came from his own testimony (p. 777, lines 1-20). The jury did not believe Lipscomb's claim in light of the contrary documentary evidence and testimony from other witnesses. Lipscomb cannot be acting within the scope of his authority when he is performing acts that neither he nor SEL were authorized to perform. Moreover, Lipscomb called no witnesses from SEL to testify and introduced no corporate resolutions or minutes of meetings to show that his acts were authorized or served the company's interests. The logical inference is that he had no such evidence or witnesses, the lack of any corroborating evidence that Lipscomb had authority to take these actions or that they served the corporate interest serves to reinforce the jury's verdict.

Evidence Lipscomb acted in his personal capacity to serve his personal interest

There was evidence Lipscomb acted in his personal capacity because he had personal financial interests at stake in the form of a personal guarantee to NBSC for the development loan obtained by SEL for Phase 1 of the Courtyards and a personal guarantee to cover any shortfalls. There was evidence Lipscomb acted to serve his own

personal financial interest (to avoid having his personal guarantees called in by NBSC) when he refused to provide funds to cover the shortfalls and terminated the contract

There was evidence that Lipscomb failed to provide funds, as required by his personal guarantee, to cover the shortfalls including funds to repair the road problems. The failure to timely provide funds to make repairs caused the road problems to become increasingly more serious and more costly to repair. The cost of repair rose to \$172,656.00 and with the roads in disrepair the lot sales slowed (p. 1007, lines 5-14, p. 275 line 7- p. 276, line 12, p. 979, line 25 – 980 line 4). Lipscomb also refused to provide funds to pay the construction company and the engineer (p. 149, lines 1-24, p. 392, lines 10-22). When Lipscomb terminated the contract he was already personally obligated to provide the funds needed to repair the roads. Lipscomb's unjustified withholding of funds prevented performance of the contract.

There can be no dispute that Lipscomb was acting personally when he failed to provide the funds to cover the shortfall for the road repairs, to pay the construction company and the engineer, he could only be acting personally as it was his personal guarantee that he would provide his personal funds to cover the shortfalls. By terminating the contract Lipscomb sought to avoid paying DFDG and DFR the development fees, profit share and commissions they were due in Phase 2 and 3 and by doing so decrease the likelihood that NBSC would need to call in his personal guarantees. Lipscomb testified

We're the ones that are liable ultimately for SEL Properties, myself personally, ultimately liable to the bank if we don't pay it we're up the creek. I mean, they would come after us (p. 828, lines 21-25).

When I say that SEL Property and I am personally guaranteed and I'm the only one stuck with it When I say I, legally I should say SEL Properties and my personal guarantee But I'm basically paying (p 844 lines 24 – p 845 line3)

Because of Lipscomb's personal guarantees the jury was required to make a factual determination as to whether Lipscomb's actions were actually taken on behalf of SEL to "serve the corporate interest" and within the scope of his employment or if he was acting to further or protect his own personal (financial) self-interest

There was also evidence that Lipscomb acted to serve his own personal interest and engaged in self-dealing by giving very preferential treatment to K&L which was not extended to other builders (pp 152-172) Lipscomb claimed K&L was formed as a "seed company" in order to get the Courtyards project going (p 905, lines 8-12) However, there was evidence Lipscomb's claim was not true as K&L was engaged in building projects in other developments (p 610, lines 3-7) Lipscomb transferred Courtyard lots 14, 15 and 57 to K&L without requiring the full purchase price to be paid and without the knowledge of the Respondents (p 220, lines 8-18, Exhibits 147-148) K&L only paid the lot release fee required by NBSC in order to release their mortgage on the lot (Exhibit 147) SEL had the right to approve the sale price, which SEL did when it agreed with DFDG and DFR to set the price at \$40,000 00 per lot (p 218, lines 2-8)

Lipscomb was not authorized to transfer lots for just the amount of the lot release fee (p 274, lines 11-22) DFDG was entitled to 25% of the profits from the sale of the lots, however, when Lipscomb allowed K&L to only pay the lot release fee there were no profits for those lots Lipscomb also allowed K&L to begin building homes on lots without closing and allowed K&L to delay closing on lots (p 234, lines 2-8) This prevented the development loan from being repaid timely and increased interest costs

Lipscomb also improperly used Courtyard funds to pay the business expenses of K&L, make loans to K&L, to pay his personal expenses and normal overhead of SEL (p 152, line 10 – p 171 line 12)

The preferential treatment given to K&L only benefitted Lipscomb personally and amounts to self-dealing, which has long been the source of personal liability for corporate officers. There was no benefit to the Courtyards or to SEL, in fact everyone but Lipscomb was harmed by the decreased income due to the preferential treatment given to K&L. Lipscomb's actions took needed cash out of the project and prevented both SEL and DFDG from performing under the contract. John Quinn, the certified public accountant for SEL, testified that if the lots had been sold for \$40,000.00, the price established for all the lots, then cash flow to the project would have been increased (p 588, line 18 – p 589, line 1)

Because of the self-dealing and preferential treatment given to K&L the jury was required to make a factual determination of whether, under these circumstances, Lipscomb was acting on behalf of SEL to "serve the corporate interest" and within the scope of his authority or if he was acting in his personal capacity in furtherance of his own self-interest and on behalf of his personal interest in K&L. The jury concluded that Lipscomb was not acting to "serve the corporate interest" of SEL but rather was acting in his own self-interest.

Evidence Lipscomb acted with malice

There was evidence that Lipscomb acted with malice and outside the scope of his authority in wrongfully terminating the contract to improperly deprive Respondents of the development fees, profit sharing and commissions due to them in Phase 2 and 3 in

order to avoid NBSC calling in his personal guarantee on the development loan. First, Lipscomb claimed that he terminated the contract because he was under the mistaken belief that DFR had not met the lot sales requirement. Lipscomb claimed that he believed DFR was required to sell two lots per month rather than twenty percent of the lots per year as set forth in paragraph 8 of the contract (p. 835, lines 19-25, 855, lines 11-12, 886, lines 7-1, p. 907 lines 18-19, Exhibit 1 ¶8).

There was a glaring inconsistency in Lipscomb's excuse, his termination letter accurately quoted the twenty percent per year language from paragraph 8 of the contract, however, the termination letter made no reference to the requirement being two lots per month (Exhibit 17). Lipscomb has a business finance degree from the University of South Carolina and a two year degree from Notre Dame, it was very likely the jury did not believe that he was mistaken about the lot sales requirement (771 lines 1-8, p. 869, lines 8-9).

Second, the timing of the termination of the contract was very suspicious and led the jury to reject Lipscomb's excuse for termination. When the contract was terminated DFR was at the height of lot sales and only three (3) lots away from having sold sixty percent of the lots in Phase 1, which was the trigger-point to begin selling lots in Phase 2 (p. 209, lines 15-25, Exhibit 1 ¶¶ 3, 5). Once Phase 2 began DFDG was due another \$54,000.00 development fee and profit sharing. Since the Phase 1 development fee had not yet been paid the total due was \$108,000.00, plus profit sharing.

Third, it is not disputed that there was no legitimate basis or business justification for terminating the contract. The witness testimony and the documentary evidence from lot sales established that the sales requirement had been satisfied. Lipscomb admitted at

trial that DFR had met the contract sales requirement (p 833, lines 2-11) Fourth, Lipscomb admitted at trial that the contract was improperly terminated (p 833, lines 8-11, p 835, lines 22-25, p 854, lines 8-12) Lipscomb testified he knew he was “wrong” for terminating the contract (p 887, lines 3-5)

Fifth, Respondents wrote to Lipscomb objecting to the termination letter and informed him that he was not correct and they had complied with the contract sales requirement (p 883, lines 8-21) After receiving the Respondent’s letter, rather than make sure he was correct in his belief Lipscomb went to his attorney to ask “Well, how do you fire anybody?” (p 890, line 1 – p 891, line 10) The jury can reasonably infer from Lipscomb’s question to his attorney that Lipscomb intended to get cut the Respondents out of the project whether he had a legitimate reason or not In the same time frame Lipscomb was in secret negotiations with potential buyers Those secret negotiations continued after the wrongful termination of the contract and ultimately led to a contract to purchase all of the lots in Phase 2 and 3 by Essex Homes for a purchase price of \$7,663,000 00 (Exhibit 123) Sixth, there was evidence Lipscomb did not deposit the full proceeds from the sale of lots into the Courtyard account (p 580, line 20 – p 581, line 2, p 1020, lines 17-21)

Based on the evidence the jury can reasonably infer from the lack of any legitimate business reason for termination and the unconvincing excuse of being mistaken that the contract was terminated for illegitimate or malicious reasons The award of punitive damages shows the jury believed Lipscomb was acting maliciously and intentionally – not mistakenly or accidentally The trial court charged the jury that in order to impose punitive damages against Lipscomb personally for tortious interference

they must find “aggravated unjustified interference with contractual rights that’s in reckless disregard of the rights of the contracting party” and that the purpose of punitive damages was to “punish the wrongdoer for conduct that’s extraordinary or outrageous” and to “vindicate the rights of the plaintiff when the conduct is “willful, wanton, or reckless” The trial court also charged the jury that “conduct is willful, wanton, or reckless when it is committed with a deliberate intention under such circumstances that a person of ordinary reason and prudence would be conscious of it as an invasion of another’s rights ” (Charging p 26, line 8 – p 27, line 16)

Lipscomb offered no legitimate business justification for his conduct while there was substantial evidence of self-dealing, corrupt motives and other unconscionable, unjustified and outrageous conduct The jury could reasonably infer from the evidence that having a legitimate business justification for terminating the contract was not of concern for Lipscomb and he just wanted to get rid of the Respondents The jury could readily infer from the evidence, including the timing of the termination of the contract, just before Phase 2 was to begin, that Lipscomb’s motive in terminating the contract was to improperly deprive the Respondents of their development fees, commissions and profit sharing from Phase 2 and 3 in order to avoid having to honor his personal guarantees Viewing the evidence in the light most favorable to DFDG and DFR as the non-moving parties there was sufficient evidence from which the jury could conclude that Lipscomb acted with malice, acted outside the scope of his authority and acted in his personal capacity to serve his own personal interests The jury’s verdict must be affirmed

Lipscomb's Credibility

Lipscomb's credibility was seriously damaged because of his demeanor, evasiveness in answering questions and misrepresentations from the witness stand. He was repeatedly impeached by his deposition testimony and other documentary evidence. Lipscomb offered unconvincing excuses with regard to his reason for terminating the contract, the improper allocation of costs, and secret changing of the development plans. Lipscomb's lack of credibility gave the jury a basis to conclude he was not being truthful and that he acted with malice, outside the scope of his authority and in his own personal self-interest. The jury alone has the authority to decide the credibility of witnesses and resolve conflicts in evidence, neither the trial nor appellate courts have this authority. Curcio v. Caterpillar, Inc., 355 S.C. 316 (2003)

First, Lipscomb testified that he terminated the contract because he was mistaken about the lot sales requirement, however, the correct sales requirement was quoted in his termination letter. Second, Lipscomb repeatedly denied having engaged in secret negotiations with buyers, however, after being confronted with documentary evidence he admitted engaging in secret negotiations. Third, Lipscomb testified that no lots had been sold in Phase 2 or 3, however a contract was produced proving that all of the lots in Phase 2 and 3 had been sold to Essex Homes. (p. 779, lines 1-6, 18-19, Exhibit 123)

Fourth, Lipscomb testified there were no profits in Phase 1, however, accountants from both sides agreed the costs had been misallocated and confirmed there were profits in Phase 1 that should have been split with DFDG. (p. 410, line 20-25, p. 1001, line 24 – p. 1002, line 6, p. 1004, lines 10-19, p. 1011, lines 7-9, p. 1015, line 12 – p. 1016, line 4) Lipscomb improperly allocated costs, including the costs of the land for all three phases,

\$800,000 00, to Phase 1 The misallocation of costs made it appear there were no profits in Phase 1 Lyn Richards testified that had the costs remained misallocated the profits would have been “severely diminished to say the least, if not completely eliminated ” (p 413, lines 7-11) Fifth, in response to evidence that costs had been misallocated to make it appear on the books that there were no profits in Phase 1 the Appellant argued that the Respondents were responsible for allocating the costs (p 1157, lines 3-10) However, Lipscomb’s own accountant testified it was the responsibility of the CFO and CPA for SEL to make sure costs were properly allocated (p 1047, line25–p 1048, line 3)

Sixth, Lipscomb testified SEL was not financially able to pay the development fee and shortfalls, however, there was evidence Lipscomb and SEL did have the ability to pay John Quin testified there was “no reason” why SEL could not pay (p 505, lines 9-13, p 519, line 19 – p 521 line 12) Seventh, Lipscomb testified at trial that he was not personally required to cover the shortfalls, however, in his deposition he testified that he was required to cover the shortfalls (p 969, line 14– p 971 line 8) Additionally, the loan documents established he was required to cover the shortfalls (Colson Dep p 60, line 15 – p 61, line 3, Exhibit 101)

Eighth, Lipscomb testified K&L was not profitable, however, there was evidence it was profitable and generated \$5,764,775 63 from its work at the Courtyards (p 177, line 23 – p 178, line 5) Exhibit 66 K&L Profitability Chart) Ninth, Lipscomb testified that he did not secretly change the plans for Phase 2 and 3 and that Respondents knew about the changes and went along with them However, the evidence proved the plans were changed secretly without Respondents’ knowledge

The jury was required to make a factual determination of whether, under all the circumstances, Lipscomb was acting in his corporate capacity within the scope of his authority or in his personal capacity. The jury concluded that Lipscomb was acting in his personal capacity. There was no reason for Lipscomb to make misrepresentations at trial regarding his actions if he were authorized to perform them. Why would Lipscomb lie to the jury about his actions if he were authorized to take the actions? Why would Lipscomb act secretly if his actions were authorized? Lipscomb's misrepresentations and excuses convinced the jury that Lipscomb did not tell the truth because he was concerned about personal liability for tortious interference. The jury can reasonably infer from the evidence that when Lipscomb abandoned the original plans, began re-designing the project and wrongfully terminated the contract he was acting outside the scope of his authority.

Viewing the evidence in the light most favorable to DFDG and DFR as the non-moving party there was more than enough evidence for the jury to conclude Lipscomb was acting outside the scope of his employment, acting to serve his own personal interest. The following supports the jury's verdict: (1) Lipscomb's personal financial guarantee, (2) the timing of the termination letter, (3) failure to make sure he was correct in terminating the contract after the Respondents objected, (4) going back to his attorney to find out how to fire the Respondents, (5) the unconvincing excuse of being mistaken about the lot sales requirement, (6) Lipscomb's repeated denials then ultimate admission of his secret sales negotiations, (7) Lipscomb's misrepresentation that there were no profits in Phase 1 and the inability to pay the Phase 1 development fee, (8) the absence of legitimate business justification for his actions, (8) the preferential treatment to K&L, (9)

the misallocation of costs which made it appear as if there were no profits in Phase 1, (10) the misuse of Courtyard funds, (11) Lipscomb's numerous misrepresentations at trial, and (12) abandoning the pre-approved development plans for Phase 2 and 3 and redesigning those phases. Clearly there is sufficient evidence to justify the jury's verdict that Lipscomb was not acting within the scope of his authority and was acting in his personal capacity to serve his personal interest. When there is evidence to support the jury's verdict the verdict must be affirmed.

II Corporate officers and employees do not have absolute immunity from personal liability for tortious interference with a corporate contract

Lipscomb attempted but failed to convince the jury that his actions were within the scope of his authority, were not malicious and were undertaken to serve the corporate interest and not his own personal self-interest. The jury heard Lipscomb's evidence and rejected it. Having lost the argument at trial, Lipscomb now argues that he has absolute immunity and only SEL may be held liable for his actions.

Manager Lipscomb's actions on behalf of his family company, Landowner, LLC, regardless of their business ramifications, cannot be the basis for a cause of action for tortious interference. If Manager Lipscomb performed an act on behalf of Landowner, LLC that caused a breach of contract, the Developer's and Broker's remedy is against Landowner, LLC for breach of contract. (Appellant's Brief p. 7)

Lipscomb is not correct if his actions are tortious. Whether Lipscomb's act was on behalf of the company is a question of fact for the jury. The Supreme Court has held the relation of the tortfeasor employee to the company does not provide a defense for the employee. Lawlor v. Scheper, 232 S.C. 94 (1957). The personal liability of a manager of a company for his own tortious acts "is unaffected by the fact that he acted in his representative capacity." Gilbert v. Mid-South Machinery Company, Inc., 267 S.C. 211 (1976).

(president of company held personally liable for fraudulent misrepresentation) An agent who deals “directly with a third party has a duty not to injure the party with his actions and may be held liable for violating that duty ” Jackson v Speed, 326 S C 289 (1997) (corporate employees liable for fraud) Lipscomb dealt directly with DFDG and DFR and they have a remedy against Lipscomb personally for tortiously depriving them of their property rights (p 90, lines 15-16) Anytime a corporate officer tortiously interferes with a corporate contract the act of the corporate officer either breaches or leads to a breach of the contract, the corporate officer procures or induces the breach without legitimate business justification When a corporate officer or employee acts outside the scope of his authority, when he acts in his personal capacity or when his acts are tortious, the individual always bears personal responsibility

Lipscomb argues that without absolute immunity “the limitation of liability which is one of the principal objects of corporations” would be undermined (Appellant’s Brief p 8) Lipscomb’s argument ignores the elements of the tort Tortious interference always combines a tortious act with a breach of contract The South Carolina Supreme Court has held that while generally the reason for the creation of a corporation is to limit liability there are instances where corporate officers may be personally liable, ordinarily when the corporate officer is shown to have participated in or directed the tortious act Hunt v Rabon, 275 S C 475 (1980) The corporate “limited liability shield” has never applied to torts committed by corporate officers and employees One cannot create a corporation, commit tortious acts and then expect to escape personal liability for those tortious acts simply by arguing that he was acting on behalf of the corporation Holding Lipscomb personally liable for his own tortious conduct does not circumvent the corporate shield

Appellant's argument is contrary to the longstanding and well settled law of this state. Individual officers, employees and agents of corporations and limited liability companies are always personally liable for their own torts, whether the tort is negligent driving, fraudulent misrepresentation, or tortious interference with a corporate contract. The Supreme Court has held that a cause of action can be maintained against a corporate employee for maliciously inducing the breach of a corporate contract when the inducement is unjustified. Bradburn v Colonial Stores, Inc. 273 S C 186 (1979). This Court has previously held that a corporate officer is not immune from personal liability for interference with a corporate contract simply by virtue of being a corporate officer. Worthy, at 328. BPS, Inc. filed a lawsuit against Worthy and his company, Carolina Benefit, alleging breach of contract accompanied by a fraudulent act and tortious interference with contract (the same two causes of action at issue in the case at bar). Worthy was sued in his individual capacity and moved to dismiss the action against him individually claiming that as a corporate officer he was immune from liability. Id., at 323, 327. The Court of Appeals, in reversing the trial court's grant of summary judgment in favor of Worthy, held

Nothing in the law shields Worthy from direct liability in tort for his own actions. Id. at 328-329.

Similarly, the corporate veil does not protect Worthy from liability for his own actions. Section 33-6-220(b) (1999) of the South Carolina Code states "Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation *except that he may become personally liable by reason of his own acts or conduct*" (Emphasis in original). Id.

Lipscomb also argues S C Code § 33-44-303(a) shields him from personal tort liability for tortious interference with a corporate contract. Lipscomb's application of this statute

is erroneous S C Code § 33-44-303(a) has the same legal effect and meaning as S C Code §33-6-220(b) The statute shields a member or manager from liability “solely by reason of being or acting as a member or manager” it does not shield a manager from liability for his own personal torts or for actions outside the manager’s scope of authority This Court has previously held

A director, officer, or agent is not liable for torts of the corporation or of other officers or agents merely because of his office He is liable for torts in which he has participated or which he has authorized or directed Id at 328

Corporate officers and directors have long been subject to personal liability for their conduct in shareholder derivative suits, when acting in bad faith, actions involving a conflict of interest and self-dealing South Carolina Code §33-8-420 provides a specific statutory cause of action against corporate officers for misconduct

A number of courts in sister states have held that corporate officers are not immune from liability for tortiously interfering with a corporate contract when the corporate officer is acting outside the scope of his authority, acting maliciously or acting to serve his own personal interest

The cases, however, make clear that, generally, if the corporate officer or employee is acting outside the scope of authority or to serve his or her own interests or with malice then the corporate officer or employee is no longer acting as the alter ego of the corporation and is personally liable *See generally* THOMAS G FISCHER, LIABILITY OF CORPORATE DIRECTOR, OFFICER OR EMPLOYEE FOR TORTIOUS INTERFERENCE WITH CORPORATION’S CONTRACT WITH ANOTHER, 72 A L R 4th 492 (1989 & 1994 Supp) Medical Mutual Liability Soc of Maryland v B Dixon Evander and Associates, Inc., 339 Md 41, 660 A 2d 433 (MD,1995)

[C]orporate officers or employees may individually commit the tort of intentional interference with business or contractual relations to which their corporation or employer is a party *See Nottingham v Wrigley*, 221 Ga 386, 144 S E 2d 749 (1965) (corporate officers in their personal

capacities held liable for procuring the termination of plaintiff's employment with their corporation) However, courts have held that this tort cannot be maintained against officers or employees of a corporation unless those persons were acting outside their scope of employment and were acting with actual malice Swager v Court, 77 Ill 2d 173, 32 Ill Dec 540, 395 N E 2d 921 (1979), Martin v Platt [179 Ind App 688, 386 N E 2d 1026 (1979)], Gram v Liberty Mut Ins Co, [384 Mass 659, 429 N E 2d 21 (1981)], Nola v Marollis Chevrolet Kansas City Inc 537 S W 2d 627 (Mo Ct App 1976) As the Supreme Court of Illinois put it, '[T]o be tortious, a corporate officer's inducement of his corporation's breach of contract must be done "without justification or maliciously" ' Swager, 77 Ill 2d at 190, 32 Ill Dec at 546, 395 N E 2d at 927 Perlman v Shurett, 567 So 2d 1296 (Ala ,1990)

Even the business judgment rule which protects officers and directors from liability for their decisions is not absolute "The business judgment rule requires directors to act reasonably and in good faith It does not expect perfection However, the rule will not apply if the directors have engaged in self-dealing, fraud, or other unconscionable conduct" Kuznik v Bees Ferry Associates, 342 S C 579 (Ct App 2000), Baumann v Long Cove Club Owners Association, Inc., 380 S C 131 (Ct App 2008) (business judgment rule not applicable upon showing of bad faith, dishonesty, incompetence, acts outside authority and acts with corrupt motives) Under the circumstances of this case the business judgment rule would not have afforded Lipscomb any protection

The policy underlying the law in this area prevents abuses by corporate officers Allowing absolute immunity for corporate officers who tortiously interfere with a corporate contract puts the public at extreme risk Current events involving the behavior of corporate officers damaging their companies only reinforces the need and wisdom of the legal principles that do not grant corporate officers absolute immunity The Supreme

Court has consistently held that corporate officers are personally liable for the torts they commit or cause to be committed

If a corporate officer commits or participates in the commission of a tort, whether or not it is also by or for the corporation, he is liable to third persons injured thereby, and it does not matter what liability attaches to the corporation for the tort Id at 477

To incur liability, the officer, director, or controlling person must ordinarily be shown to have in some way participated in or directed the tortious act Rowe v Hyatt, 321 S C 366 (1996)

Corporate officers are always personally liable for their own torts Tortious interference with a contract is a tort, it arises in tort law not contract law If the tortious acts of the employee procure the breach of a corporate contract, without legitimate business justification, and thereby damage the property rights of a third party, the individual employee is liable under tort law for those damages

Lipscomb argues that one act cannot be both a breach of contract and a tortious interference with the contract Lipscomb is simply not correct Lipscomb's argument does not take into account the facts of this case or the elements of tortious interference with contract, one of the elements of the tort is that a breach of contract must have occurred Moreover, Lipscomb did not just commit one act, he committed a number of acts The end result of his action was to prevent SEL, DFDG and DFR from performing the contract because Phase 2 and 3 were delayed because the plans were not completed due to Lipscomb's failure to provide funds, pursuant to his personal guarantee, to cover the engineering costs The jury certainly did not find Lipscomb's acts to be innocent or have legitimate business justification The jury found that Lipscomb had no legitimate business justification for his interference with the contract between SEL and the

Respondents and caused damage to the Respondents' property rights which the jury valued at \$3,000,000 00

There are situations where, for legitimate business reasons, a corporate employee may take non-tortious action within the scope of their authority that results in the breach of a corporate contract. When the non-tortious acts of a corporate employee result in the breach of a contract there is no tort and therefore no personal liability for tortious interference with the corporate contract. The corporation alone is liable for breach of contract. A corporation can breach a contract, for a legitimate business reason, without an individual employee committing a tort, however, whenever an employee commits the tort of "tortious interference" there will always be both a tortious act and a breach of contract. The corporation is liable to the injured party under contract law for the breach of contract and the corporate employee is liable to the injured party under tort law for tortiously damaging the party's property rights by inducing or procuring the breach without legitimate business justification. The standard Appellant seeks to apply would give a free pass to corporate officers and employees to injure third parties in a wide range of cases.

Clearly when a corporation sends an employee to deliver its product to a buyer the company is acting through its employee. However, when that corporate employee drives negligently on his way to deliver the product and causes injury both the individual employee and the company are liable to the injured third party. The employee cannot simply say "my act of driving was on behalf of my company, your remedy is against my company." Lipscomb would argue that since the company can only deliver its product through an individual employee the driver was acting for the company so only the

company is liable, a clearly erroneous conclusion. The Supreme Court has consistently rejected this argument in its decisions over the last ninety years by holding that corporate officers are personally liable for their tortious conduct which results in harm to third parties doing business with the corporation. Olin Mathieson Chemical Corporation v. Planters Corporation, 236 S. C. 318 (1960), Peruvian Guano Corporation v. Thompson, 112 S. C. 377 (1919).

The Olin Mathieson Chemical Corp. had a contract with Planters Corp. which required Planters hold in trust the proceeds from the sale of machinery and to pay those proceeds to Olin Mathieson, the proceeds were never paid. Planter's corporate treasurer was responsible for the receipt and disbursement of corporate funds. The treasurer, in violation of the company's contract, did not hold the funds in trust; he intermingled the funds with Planters' general funds and spent them. The court found the funds were "disbursed by, and in behalf of, Planters Corporation" by the treasurer. The court, in addressing the personal liability of the treasurer, held:

the appellant was actively engaged in the management of the Planters Corporation and was personally responsible for the intermingling of the trust funds belonging to the respondent with the general funds of Planters Corporation, so as to **impose personal liability** upon the appellant. Olin Mathieson, at 327 (emphasis added).

The treasurer clearly interfered with the corporation's contract and caused a breach when he intermingled and then spent the sales proceeds. Even though the treasurer was the corporate officer responsible for the receipt and disbursement of funds, he had no authority to intermingle the funds or spend them on other corporate expenses. The Supreme Court held him personally liable for his tortious conduct that procured a breach of the corporate contract.

In Peruvian, the Peruvian Guano Corporation entered into a contract with the J S Thompson Company whereby Thompson agreed to hold sales proceeds in trust and then pay the proceeds to Peruvian. The contract also required that all transactions be kept separate. Thompson did not comply with the contract and used the sales proceeds as if they belonged to the corporation. Thompson became insolvent and never paid Peruvian the money it was owed under the contract. The Supreme Court held the managing officers of the corporation could be held personally liable for their careless and negligent management of the corporation's affairs "particularly with reference to the alleged violation of the contract" with Peruvian. Peruvian, at 377.

The Olin Mathison and Peruvian cases are virtually identical to the present case before the Court, Lipscomb is no different than the corporate officers in these cases. Lipscomb admitted at trial that his conduct was tortious when he testified that he was "wrong" to terminate the contract. Counsel for Lipscomb conceded in his opening statement and closing argument that Lipscomb was wrong. (p. 86, line 1, p. 292, lines 3-4, 23-25, p. 1172, lines 2-7). Moreover, the unconvincing excuse Lipscomb offered only served to reinforce the belief that he was acting intentionally and maliciously. Some of Lipscomb's acts are very similar to those in Olin Mathison and Peruvian: failing to deposit proceeds from sales of lots into the Courtyard's account, failure to do proper accounting for the funds, misallocation of costs and self-dealing.

The law with regard to tort liability of corporate officers and employees applies with equal force to all corporate organizations regardless of whether the corporate officer doing the interfering is the manager of a "family" limited liability company or the president of a large corporation. The standard Lipscomb seeks to apply would remove all

personal responsibility from corporate officers. The Supreme Court has consistently ruled against the position advanced by Lipscomb. Moreover, the cases cited in the Appellant's brief do not stand for the proposition that corporate officers have absolute immunity from personal liability for tortious interference with a corporate contract. Rather the cases cited by the Appellant actually support the trial court's charge.

Lipscomb relies heavily on Bradburn v Colonial Stores, Inc. 273 S.C. 186 (1979). The Appellant's brief blatantly mis-states the Supreme Court's holding in Bradburn. The court did not hold that "an agent for a company cannot be liable for tortious interference with his company's contract." The Supreme Court actually held

Although **an action will lie for maliciously inducing** the breach of an employment contract, the inducement will not be actionable unless it is **unjustified**. It is generally recognized that when a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation **acting on behalf of the corporation and within the scope of his employment**, the inducement is privileged and is not actionable. Id. at 188 (emphasis added).

Clearly a cause of action does exist for maliciously inducing a breach of a corporate contract by a corporate employee. The term "maliciously inducing" is simply another way of saying tortious interference. According to Bradburn, in order for Lipscomb's actions to be "privileged" and "not actionable" he must be (1) acting on behalf of the corporation, (2) within the scope of his employment and (3) justified in causing the breach, all of which are questions of fact for the jury.

In the cases cited in the Appellant's brief the court did not hold that the corporate officer could not legally be held liable for tortious interference. The court held that under the factual circumstances of the particular case the corporate officer had not tortiously interfered with the corporate contract. In other words, the court's ultimate holding was

based upon a lack of evidence meeting the elements of the tort. The court consistently recognized the applicability of the tort to corporate officers and employees. Corporate officers are only shielded from liability when their acts are not tortious, when their acts are justified, when they are in fact acting on behalf of the corporate interest and within the scope of their employment.

In Bradburn the corporation had an oral at-will employment contract with Bradburn. The court found

The complaint alleges that the individual defendants acted at all times in their capacities as agents, servants and employees of Colonial Stores, Inc. There is no allegation that any of the individual defendants acted outside his corporate capacity. Id. at 189.

Bradburn did not allege facts sufficient to constitute tortious interference with a corporate contract. Bradburn specifically alleged the corporate employees were acting within the course and scope of their employment. Bradburn produced no evidence showing that the corporate employees acted outside their corporate capacity. The court held

Thus, no evidence was introduced from which a jury could have determined that any of the individual defendants acted outside his corporate capacity in inducing Colonial Stores, Inc. to break its employment contract with Bradburn. Id.

Clearly if there had actually been evidence that the individual defendants acted outside their corporate capacity then the individual defendants would be liable for tortious interference.

The Appellant also relies on Threlkeld v. Christoph, 280 S.C. 225 (Ct. App. 1984). The Appellant again incorrectly states the court's holding. The court in Threlkeld did not hold that agents of a company "could not be held liable for tortious interference of a contract to which the company was a party." The court in Threlkeld held that the

corporate “employer” could not be liable for tortious interference with its own employment contract because it was an actual party to the contract, the court did not hold a cause of action could not be maintained against the individual employees who were not actual parties Id at 226-227 When the court in Threlkeld addressed the liability of the individual employees it held

we find that there is no genuine issue of fact presented on which a court could find that Christoph and Davis acted otherwise than as agents of Bigelow-Sanford, or that their conduct in any way induced Bigelow-Sanford to breach its contract with Threlkeld Id at 227

Clearly if there had actually been evidence that corporate employees Christoph and Davis were not acting as agents of Bigelow-Sanford, if there was evidence they were not acting on behalf of the corporate interest, if they acted outside the scope of their employment, if they acted tortiously, if their acts were unjustified, if they acted with malice or in their own personal self-interest, then they would certainly be individually liable for tortious interference with a corporate contract just like the corporate employee in Bradburn Moreover the court found there was no evidence that Christoph and Davis took any action that induced the company to breach its contract with Threlkeld and, even more importantly, the court actually held there was no breach of the contract, which is a necessary element of tortious interference with contract Id at 226 Again the court’s holding was based upon a lack of evidence, not a per se bar on liability of individual corporate officers for tortious interference with a corporate contract

In both Bradburn and Threlkeld the court refused to rule that a corporate employee could not be held liable for tortious interference with a corporate contract Perhaps an actual corporate party to a contract cannot tortiously “interfere” with its own contract (and hence cannot be liable “in tort”), however, the law is clear that an agent,

servant, employee, officer or director of a contracting party is not an actual party to the contract and is individually liable “in tort” for tortious interference with the contract between the actual contracting parties when he (1) is not acting to serve the corporate interest, (2) commits a tortious act, (3) acts outside the scope of his authority, (4) acts with malice, or (5) acts to serve his own personal interest

There is no dispute that Lipscomb is not an actual party to the contract SEL is the actual contracting party Lipscomb testified that SEL was the actual contracting party rather than himself “Because I didn’t want to deal in real estate transactions That’s what we set it up for” (p 778, lines 2-5) Moreover, Lipscomb’s counsel conceded that Lipscomb was not the actual contracting party

Mr Babcock Your Honor, Mr Lipscomb’s net worth is not relevant at this point to those issues because he was not a party to the contract SEL Properties, LLC, is the entity in that regard, and not Mr Lipscomb, personally (p 490, lines 8-12)

In this case Lipscomb’s interference prevented both SEL and the Respondents from performing the contract For example, when Lipscomb abandoned the development plans for Phase 2 and 3 and began redesigning the plans for those phases it caused a breach the contract because it prevented SEL, DFDG and DFR from performing the contract by preventing Phase 2 and 3 from starting on time and preventing the marketing of lots in Phase 2 and 3 (p 188, lines 1-22) Lipscomb’s wrongful termination of the contract was also without any legitimate business justification and prevented DFDG and DFR from performing the contract Lipscomb’s actions constituted tortious interference because he acted outside the scope of his authority and without a legitimate business justification for his actions

There was substantial evidence that Lipscomb interfered and prevented the parties' performance of the contract and when doing so he was not acting to serve the corporate interest but acting in his personal capacity in his own self-interest, he was acting outside the scope of his authority, his actions were tortious and unjustified. Lipscomb is not acting to serve SEL's corporate interest when he prevents performance of a contract that is beneficial to the corporation without having any legitimate business justification for his actions.

A corporate officer is not liable for bad business decisions if he had a legitimate business justification for making the decision. There is a significant distinction between a decision that simply turns out to be a bad decision and an act that is not in the best interest of the corporation because it is taken out of corrupt motives, has no legitimate business justification, is tortious, performed out of malice and in the pursuit of personal financial self-interest without regard to the interests of the company. Contrary to Appellant's assertion, the Respondents do not seek to hold Lipscomb liable for non-tortious "business decisions" made on behalf of SEL or for non-tortious acts performed in the ordinary course of his employment as manager.

For example, SEL had an obligation under the contract to pay a \$54,000.00 development fee for Phase 1 to DFDG in \$9,000.00 monthly installments beginning in November 2001 as well as a \$54,000.00 development fee for Phase 2. It was undisputed at trial that SEL failed to make those payments and by its failure breached the contract. Counsel for SEL conceded in his opening statement that SEL owed money to the Respondent (p. 79, lines 4-13, p. 106, ll. 14-25 – p. 108 line 9). Appellant also concedes in his brief that SEL breached the contract.

Manager Lipscomb admitted at trial that Landowner, LLC breached the November 14, 200 contract and that Landowner, LLC owed money to the Developer and Broker” (Appellant’s Brief p 6)

Moreover, the trial court directed a verdict against SEL on this issue without objection (p 1073, lines 12-14, p 1074, lines 5-6, p 1077 lines 23-24 – p 1078 lines 1-5)

SEL was also required to pay twenty-five percent of the profits to DFDG in each phase in accordance with contracts (Exhibits 1 and 2) SEL claimed that there were no profits in Phase 1 or Phase 4 The evidence at trial established there were in fact profits The failure of SEL to pay DFDG its share of the profits was a breach of the contract The jury found that SEL’s breach of the contract in these two instances did not result from Lipscomb’s tortious interference Lipscomb was the corporate officer responsible for Courtyard finances which included paying the bills on behalf of SEL in the ordinary course of business (p 914 lines 14 – 18, p 934, lines 4-10) The jury assigned the liability and damages resulting from these breaches to SEL not to Lipscomb personally

III The trial court properly denied the Appellant’s motion to reduce the damages awarded for the tortious interference cause of action

The trial court properly denied the Lipscomb’s motion to reduce the damages awarded by the jury for the tortious interference cause of action Lipscomb’s argument for a reduction is based on the erroneous assumption that there was one single breach of contract from which all damages flow The evidence clearly proves there were multiple breaches of the contract, involving two different parties, occurring at different times, caused by different conduct Some breaches resulted from Lipscomb’s tortious interference, for which he bears personal liability, some breaches were not the result of tortious interference for which SEL alone is responsible

Because Lipscomb cannot be held personally liable for damages that did not result from his tortious interference the jury was required to separate out those breaches that were not caused by Lipscomb's tortious interference so that he was only held liable for damages that flowed from breaches he tortiously procured. Damages flowing from breaches of contract that were not procured by Lipscomb's tortious interference may only be awarded against SEL. The result being the award of damages against SEL and Lipscomb cannot be the same amount or co-extensive.

Contrary to Appellant's argument the damages for tortious interference with contract and breach of contract cannot be co-extensive, particularly when there are multiple breaches involving two separate contracts, different parties, occurring at different times, where different provisions of the contracts were breached, based on different acts, involving multiple phases of two real estate development projects. For example, SEL's failure to pay the \$54,000.00 development fee for Phase 1 did not result in \$3,000,000.00 in damages. However, when Lipscomb abandoned the Phase 2 and 3 development plans and wrongfully terminated the contract DFDG and DFR were prevented from performing the remainder of the contract which did produce \$3,000,000.00 in damages. Termination of the contract caused DFR to lose customers and prevented DFR from earning the commissions on lots and homes in Phase 2 and 3 of the project. DFDG was prevented from earning the development fees and profit sharing.

Lipscomb also argues that damages awarded in the tortious interference cause of action cannot exceed the damages awarded in the breach of contract cause of action against SEL. This argument is based on the erroneous assumption that the jury awarded all of the damages flowing from all of the breaches of contract in the cause of action.

against SEL, which the jury clearly did not do. According to the jury's answer to the special interrogatory the only damages awarded by the jury against SEL, related to the subsequent phases, was \$54,000.00 representing the development fee for Phase 2 which SEL conceded it owed (Verdict p. 43, lines 11-16, p. 1162, lines 10-13).

Damages resulting from tortious interference can exceed the damages resulting from the breach of contract. Lipscomb's argument on this basis is without merit for several reasons. First, in cases where there are multiple breaches, some caused by tortious interference and some that were not, the damages resulting from breaches caused by tortious interference can be greater. Second, damages for tortious interference encompass more elements of damage than breach of contract. The plaintiff in a tortious interference case can recover damages for loss of customers, loss of goodwill, damage to reputation, loss of goodwill, unforeseen expenses and loss of employees. (Charging p. 25, lines 3-8)

Lipscomb relies on Collins Music Co., Inc. v. Smith, 332 S.C. 145 (Ct. App. 1998). The facts of Collins are substantially different from those of the case at bar. This court explicitly addressed the legal issue and held

This does not mean, however, that the measure of actual damages on both causes of action are coextensive. Id. at 147.

There was but one single breach of contract in Collins which produced the \$10,000.00 in damages and the tortfeasor procured the only breach of contract. The plaintiff in Collins only produced evidence of damages in the amount of \$10,000.00. The court held that the plaintiff could only recover the damages that were proved, the plaintiff could not recover the same damages from the same breach of contract under two different causes of action.

DFDG and DFR produced evidence in the form of documentary evidence and expert witness testimony proving the \$299,144 00 in damages caused by SEL alone and the \$3,000,000 00 in damages caused by Lipscomb's tortious interference. There is no double recovery for a single wrong in this case. The Respondents are not recovering the same identical damages twice. There was no "single wrong" there were multiple wrongs in this case, some committed by SEL and some committed personally by Lipscomb. In a case involving multiple breaches of contract the damages flowing from breaches procured by Lipscomb's tortious interference can properly be awarded in the tortious interference cause of action without also awarding them in the breach of contract cause of action. This would be the result if the Respondents had sued Lipscomb alone for tortious interference (without ever suing SEL), the jury could have properly awarded \$3,000,000 00 against Lipscomb.

The trial court, without objection, granted a directed verdict with regard to the wrongful termination of the contract and the failure to pay the Phase 1 development fee. The court left it up to the jury to determine if there were any other breaches and the resulting damages (p 1071, line 10 – p 1078, line 2, Charging p 10, lines 9-18). The jury found other breaches occurred and determined the damages for breaches that were not the result of Lipscomb's tortious interference to be \$299,144 00 and held SEL solely liable for those damages. The jury determined the damages for breaches that resulted from Lipscomb's tortious interference to be \$3,000,000 00. Elements of damage for tortious interference include loss of customers and loss of goodwill.

The jury essentially held SEL liable for the breaches of contract for which SEL admitted liability in open court. SEL admitted at trial that it owed \$242,717 00 in

damages for breaches of contract in Phases 1, 2 and 4 (p 1162, lines 5-20) These damages were caused by four different breaches, occurring at different times and in different phases of the project from two different contracts (1) Phase 1 profit sharing (2) Phase 1 development fees, (3) Phase 2 Development fees, (4) Phase 4 profit sharing If the jury had believed Lipscomb's tortious interference resulted in these damages then the award against Lipscomb would have been \$3,299,144 00 Because the jury found Lipscomb's tortious interference did not cause the \$299,144 00 in damages he cannot be held personally liable for or credited with those damages The jury determined the failure to pay the development fees and the profit sharing in Phase 1, 2 and 4 were not due to tortious interference and held SEL liable for those damages

SEL did not admit to liability for breaches of contract relating to lost profits and commissions in Phase 2 and 3 After hearing all the evidence the jury found that Lipscomb's tortious interference prevented performance of the contract in Phase 2 and 3 and procured breaches of the contract and awarded damages according to their view of the evidence The jury determined the damages caused by Lipscomb's interference with the contract with regard to Phase 2 and 3 to be \$3,000,000 00 The testimony from the witnesses, including accountants from both sides as well as the documentary evidence of lost profits and lost commissions on both lots and houses in Phase 2 and 3 supports the jury's verdict If the jury had rejected Respondents' claim for lost profits and commissions in Phase 2 and 3 the jury would not have awarded \$3,000,000 00 in damages for tortious interference

Unlike Collins, the jury in the present case was presented with multiple breaches involving two different contracts and was required to distinguish between breaches that

were the result of tortious interference by Lipscomb and those breaches that were not the result of tortious interference. The damages against Lipscomb can only relate to breaches of contract which resulted from his tortious interference. Because of the multiple breaches involved, the breach(es) of contract the jury determined occurred when it decided Lipscomb had tortiously interfered does not have to be the same breach(es) of contract upon which the jury found SEL liable in the breach of contract cause of action. The jury obviously concluded the breaches of contract that were procured by Lipscomb's unjustified interference caused more damage than the breaches he did not tortiously procure. The jury awarded damages against Lipscomb in accordance with their view of the evidence under the tortious interference cause of action, the only cause of action in which Lipscomb was a defendant.

IV The trial court properly charged the jury with regard to damages for loss of customers and goodwill

It is abundantly clear from the evidence at trial that the Respondents lost customers and goodwill. This court has previously defined good will as

the advantage or benefit which is acquired by an establishment beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.

Other business assets to which good will may adhere include (1) the business' trade name, (2) the business' location, and (3) the business' fixtures, inventory and other tangible assets.

Good will includes every positive advantage acquired, arising out of the business of the old firm, whether connected with the premises where it was carried on, with the name of the old firm, or with any other matter carrying with it the benefit of the business of the old firm. Weinberg v. Wallace, 314 S.C. 183, 442 S.E.2d 211 (Ct. App. 1994).

The evidence at trial established DFDG and DFR had a loyal following of builders who purchased lots and built homes in their developments which DFR subsequently sold to individual home buyers. The evidence showed DFDG and DFR had developed an award winning real estate development and sales team with an excellent track record from the neighboring subdivision "Rolling Creek." Ronnie Colson of NBSC testified that his decision to extend the development loan for Phase 1 was based on the success of the DFDG and DFR at Rolling Creek which he described as a "premier development" (Colson p 70, lines 15-21). Rolling Creek had a good reputation (p 357, lines 23-25). The development was in an excellent location. There was testimony that it was a "great area" and "a well sought after area that's up and growing" (p 182, lines 13-18). Mr. Colson described the area as a "booming market" (Colson p 70, line 11).

The loss of customers and goodwill was not too speculative to be recovered. The "credibility" of the Courtyards at Rolling Creek was established in Phase 1, in turn the subsequent phases could be marketed to larger builders who would purchase large sections of lots (p 192, line 16 – p 193, line 5). DFDG put a significant amount of work into Phase 1 of the Courtyards to make it a "model community" in order to help sell Phases 2 and 3 (p 363, lines 21- p 364, line 9). SEL continued to use the Respondents' trade name, symbols and logos, reputation, popularity and credibility in connection with the Courtyards after terminating the contract. DFR had the "exclusive right to sell" the lots in Phase 2 and 3, Lipscomb's admitted secret negotiations with buyers that ultimately led to the \$7,600,000.00 sale to Essex of all the lots in Phase 2 and 3. The purchase by Essex conclusively established the value of the Respondents' lost customers and goodwill. Lipscomb essentially sold Plaintiffs' project, concept, the "Rolling Creek"

brand name, reputation and goodwill to Essex for \$7,600,000.00. There was substantial evidence from which the jury could determine damages for lost customers and lost goodwill.

The Respondents spent years building the Rolling Creek development into a “premier” “well known” and “successful” development. The Respondents spent “over a million dollars” to bring water and sewer to the Rolling Creek development which the Courtyards was able to utilize. The price of lots in Rolling Creek nearly doubled over time. The Courtyards at Rolling Creek was an effort to capitalize on the success of Rolling Creek by incorporating the name “Rolling Creek” and symbols of “Rolling Creek” into the name “Courtyards at Rolling Creek.” In this manner the Respondents were able to associate or link the new “Courtyards at Rolling Creek” with the “Rolling Creek” name, location, including the new school located nearby and the “booming market” in the area, the affluence and reputation associated with the “Rolling Creek” name based on its position in the community as an upscale secure family oriented development (Colson p. 70, lines 15-21, Transcript p. 94, line 4 – p. 97, line 3, Exhibit 151 and 152).

Lipscomb’s abandoning the pre-approved plans for Phase 2 and 3 followed by his failure to pay the engineering firm to prepare new plans prevented construction on Phase 2 from beginning on time and stalled the project (p. 187, line 20 – p. 188, line 22). There was testimony that failure to start construction of Phase 2 infrastructure on time in order to prevent “lag time” between phases, would result in the loss of customers, builders and momentum (p. 365, line 16 – p. 367, line 15). The danger is that builders who were on site purchasing lots and building houses in Phase 1 would demobilize and go elsewhere if

the subsequent phases did not start on time Builders cannot simply wait until March 2007 for Lipscomb to finish his re-design of Phase 2 and 3 and get governmental approval

Conclusion

The trial court properly charged the jury based on the evidence presented during the course of the trial The jury's verdict is supported by the evidence There was substantial evidence that Lipscomb acted outside the scope of his authority and acted in his personal capacity to serve his own personal interests rather than SEL's corporate interest The trial court properly denied the Appellant's post trial motions for directed verdict and JNOV There is no legal basis to reverse the trial court Respondents request the court affirm the verdict based upon any ground appearing in the record in accordance with Appellate Rule 220(c)

Respectfully submitted,

By



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Attorney for Appellants



The South Carolina Court of Appeals

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April 2, 2009

Glenn E Bowens, Esq
Anthony S H Catone, Esq
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Re Dutch Fork Dev v SEL Properties
Case Tracking # 200887486

Dear Counsel

This will acknowledge receipt of the Respondents' Initial Brief and Designation of Matter in the above mentioned case on appeal

Please be advised that the identifying information for only the party filing the brief may appear on the cover of the brief, pursuant to Rule 238 of the South Carolina Appellate Court Rules. Please be sure to make the necessary corrections when serving and filing the brief in its final form.

Very truly yours,

A handwritten signature in black ink, appearing to read "JF Barber", written over a horizontal line.

CLERK

JFB/ec

cc Keith M Babcock, Esq
Brady R Thomas, Esq

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

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MAR 23 2009

SC Court of Appeals

Dutch Fork Development Group II, LLC and
Dutch Fork Realty,

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb
of whom Stephen E. Lipscomb is the

Appellant

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

March 23, 2009

Glenn E. Bowens, Esq.
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Attorney for Respondents

Respondents propose the following be included in the Record on Appeal

- 1 Complaint
- 2 Amended Complaint
- 3 Answer
- 4 Amended Answer
- 5 Transcript of Trial with Exhibits
- 6 Verdict Form with Special Interrogatory
- 7 Plaintiff's Memorandum in Opposition to Defendant's Motion for Judgment
Notwithstanding the Verdict, for Nisi Remittur or in the Alternative a New Trial, or a
New Trial upon the Facts
- 8 Order(s) by Judge Lee denying all of the Defendant's post trial motions

I certify that this designation contains no matter which is irrelevant to this appeal

Respectfully submitted,

March 23 2009

By



Glenn E Bowens, Esq
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Attorney for the Respondents

IN THE STATE OF SOUTH CAROLINA

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of whom Stephen E. Lipscomb is the

Appellant

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents' Designation of Matter was served upon

Brady R. Thomas
LEWIS, BABCOCK & HAWKINS
PO Box 11208
1513 Hampton Street
Columbia, SC 29202

By depositing the same in the United States Mail, postage prepaid, this 23rd Day of March, 2009



Glenn Bowens

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Columbia, SC 29202

By depositing the same in the United States Mail, postage prepaid, this the 23rd Day of March, 2009



Glenn Bowens



The South Carolina Court of Appeals

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February 19, 2009

Glenn E Bowens, Esq
Anthony S H Catone, Esq
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Blythewood, SC 29016

Re Dutch Fork Dev v SEL Properties
Case Tracking # 200887486

Dear Counsel

The following Order has been endorsed on your Respondent's Initial Brief and Designation of Matter in the above entitled case on appeal

Granted

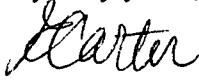
Kaye G Hearn C J
For the Court

By s/ Jeanette F Barber
Clerk

February 19, 2009 '

Please be advised the Respondent's Initial Brief and Designation of Matter must be served and filed on or before March 23, 2009

Very truly yours,


Elizabeth A Carter
Docketing Specialist


JFB/ec

cc Keith M Babcock, Esq
Brady R Thomas, Esq

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FAX COVER SHEET

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To The Honorable Kenneth A Richstad
Of South Carolina Court of Appeals, Clerk of Court
From Brady R Thomas
Client/Matter *Dutch Fork Development Group II, LLC, et al v Stephen E Lipscomb*
Civil Action No 05-CP-40-0749
Our File No 03-358
Date February 18, 2009

DOCUMENTS	NUMBER OF PAGES*
Correspondence	1

COMMENTS

cc Glenn E Bowens, Esq - (803) 714-0775
Anthony S H Catone, Esq - (803) 714-0775

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February 18, 2009

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FEB 18 2009

SC Court of Appeals

**VIA FACSIMILE - (803) 734-1496
The Honorable Kenneth A. Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201**

Re *Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC
v SEL Properties, LLC and Stephen E. Lipscomb*
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr. Richstad:

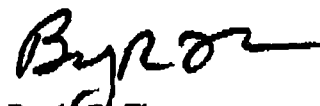
Keith Babcock and I represent the Appellant, Stephen E. Lipscomb in the above-referenced matter. In that regard, Glen Bowens, attorney for the Respondent, has requested that we consent to his request for an extension for filing his brief. We consent to the request.

Please let me know if you need anything further from me.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R. Thomas

BRT mas

cc Glenn E. Bowens, Esq.
Anthony S. H. Catone, Esq.

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty,

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb
of whom Stephen E. Lipscomb is the

Appellant

MOTION FOR EXTENSION OF TIME

Respondents hereby move the Court for a 30 day extension of time in which to file its Initial Brief. The Respondents Initial Brief is due to be filed on February 19, 2009. Respondents received the completed transcript on January 13, 2009. The transcript is over 1200 pages in length and is taking longer than anticipated to review and identify the portions needed to be included in the record on appeal. Respondent's counsel also has two other appellate matters due in February 2009. This extension is requested in order to give Respondents' counsel sufficient time to prepare the Respondents Initial Brief. If the extension is granted Respondents' Initial Brief will be due March 19, 2009. This is Respondents' second request for an extension.

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SC Court of Appeals

GRANTED

February 9, 2009

KAVE G. HEARN, C.J.
FOR THE COURT
Attorney for Appellants

By

(Clerk) (Deputy Clerk)

Feb 19, 2009

Glenn E. Bowens

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2-19-09
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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
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Case No 05-CP-40-0749

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SC Court of Appeals

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of whom Stephen E Lipscomb is the

Appellant

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents' Motion for Extension of Time was served upon

Brady R. Thomas
LEWIS, BABCOCK & HAWKINS
PO Box 11208
1513 Hampton Street
Columbia, SC 29202

By depositing the same in the United States Mail, postage prepaid, this the 9th Day of February, 2009

February 9, 2009



GLENN BOWENS

ATTORNEY AT LAW

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BLYTHEWOOD SOUTH CAROLINA 29016

gbowens@popebowens.com

TELEPHONE
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February 9, 2009

Jeanette Barber
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Dutch Fork Development Group II, LLC & Dutch Fork Realty, LLC v. SEL Properties, LLC & Stephen E Lipscomb

Dear Ms Barber

Enclosed please find the original Motion for Extension of Time to file Respondents' Initial Brief along with the Proof of Service and \$25.00 filing fee in the above referenced matter.

Thank you in advance for your assistance in this matter.

Very Respectfully,



Glenn Bowens

cc

Brady R. Thomas
LEWIS, BABCOCK & HAWKINS
PO Box 11208
1513 Hampton Street
Columbia, SC 29202

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FEB 11 2009

SC Court of Appeals
3752 25

The South Carolina Court of Appeals

Dutch Fork Development Group II,
LLC and Dutch Fork Realty, LLC, Respondent,

v

SEL Properties, LLC and Stephen E
Lipscomb, Defendants, of whom
Stephen E Lipscomb is the, Appellant

The Honorable Alison Renee Lee
Richland County
Trial Court Case No 2005-CP-40-00749

ORDER

For good cause having been shown, the time for serving and filing the Respondent's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until February 19, 2009

IT IS SO ORDERED

KAYE G HEARN, CHIEF JUDGE
For the Court

BY 
CLERK

Columbia, South Carolina

1/21/2009

cc Keith M Babcock, Esq
Brady R Thomas, Esq
Glenn E Bowens, Esq
Anthony S H Catone, Esq

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James W Johnson, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty,

Respondents,

v

SEL Properties, LLC and Stephen E Lipscomb
of whom Stephen E Lipscomb is the

Appellant

MOTION FOR EXTENSION OF TIME

Respondents hereby move the Court for a 30 day extension of time in which to file its Initial Brief. The Respondents Initial Brief was originally due to be filed on January 23, 2009. Respondents received the completed transcript on January 13, 2009. Respondent's counsel also had two other matters pending before the Court with briefs due in January 2009. This extension is requested in order to give Respondents' counsel sufficient time to prepare the Respondents' Initial Brief. If the extension is granted Respondents' Initial Brief will be due February 23, 2009.

This is Respondents' first request for an extension.

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JAN 14 2009

SC Court of Appeals

January 13, 2009

Glenn E Bowens

Glenn E Bowens, Esq
P O Box 665
Blythewood, South Carolina 29016
(803) 714-7766
(803) 714-0775
Attorney for Appellants

1-20-09
2-19-09/8

N THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James W Johnson, Circuit Court Judge

Case No 05-CP-40-0749

at Group II, LLC and

Respondents,

v

Stephen E Lipscomb
omb is the

Appellant

PROOF OF SERVICE

at
correct copy of Respondents' Motion for Extension of

prepaid, this the 13th Day of January,

GLENN BOWENS

ATTORNEY AT LAW

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January 13, 2009

Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Dutch Fork Development Group II, LLC & Dutch Fork Realty, LLC v. SEL Properties, LLC & Stephen E. Lipscomb

Dear Mr. Richstad:

Enclosed please find the original Motion for Extension of Time to file Respondents' Initial Brief along with the Proof of Service and \$25.00 filing fee in the above referenced matter.

Thank you in advance for your assistance in this matter.

Very Respectfully,


Glenn Bowens

cc

Brady R. Thomas
LEWIS, BABCOCK & HAWKINS
PO Box 11208
1513 Hampton Street
Columbia, SC 29202

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JAN 14 2009
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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JAN 14 2009

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James W. Johnson, Circuit Court Judge

Case No. 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb
of whom Stephen E. Lipscomb is the

Appellant

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents' Motion for Extension of Time was served upon

Brady R. Thomas
LEWIS, BABCOCK & HAWKINS
PO Box 11208
1513 Hampton Street
Columbia, SC 29202

By depositing the same in the United States Mail, postage prepaid, this the 13th Day of January, 2009

January 13, 2009

W. E. Bower

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

SEL Properties, LLC and Stephen E Lipscomb,
Defendants, of whom Stephen E Lipscomb is the,

Appellant

INITIAL BRIEF OF APPELLANT

Keith M Babcock
Brady R Thomas
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Post Office Box 11208
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Telephone (803) 771-8000
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ATTORNEYS FOR THE APPELLANT

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Sheet

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

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SC Court of Appeals

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

SEL Properties, LLC and Stephen E Lipscomb,
Defendants, of whom Stephen E Lipscomb is the,

Appellant

**APPELLANT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following to be include in the Record on Appeal

- 1 April 8, 2008 Orders denying Post Trial Motions,
- 2 Complaint,
- 3 Answer and Counterclaims,
- 4 Amended Complaint,
- 5 Amended Answer and Counterclaims,
- 6 Trial Transcript, pp 89-90, 93-94, 133-135, 140-141, 150, 197, 405-408, 426, 616-682, 723-726, 778, 810, 817-818, 831-834, 847-849, 851-852, 854, 992-993, 1015-1016, 1034, 1038, 1071-1103, 1104-1109, 1112, 1120, 1146, and 1162,

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

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SC Court of Appeals

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb,
Defendants, of whom Stephen E. Lipscomb is the,

Appellant

PROOF OF SERVICE

I, V. Marian Nettles, paralegal for the law firm of Lewis & Babcock, L.L.P., hereby
certify that I have served **Amended Cover Sheets** for the Initial Brief of Appellant and
Designation of Matter to Be Included in Record on Appeal upon opposing counsel, by
mailing a copy thereof, postage prepaid and return address clearly indicated on said
envelope, to said opposing counsel at the following address, this the 29th day of December,
2008

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
POPE & BOWENS, P.A.
Post Office Box 665
Blythewood, South Carolina 29016


V. Marian Nettles

December 29, 2008

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A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

December 30, 2008

RECEIVED

DEC 30 2008

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties, LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

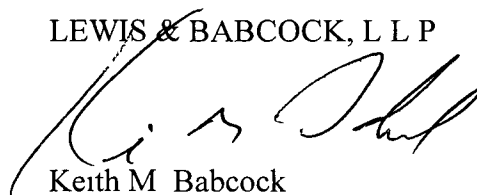
We are in receipt of your letter of December 29, 2008 regarding amended cover sheets to correct the case caption of the Initial Brief of Appellant and Designation of Matter filed December 19, 2008 in above-referenced matter. Enclosed please find amended cover sheets for the Initial Brief of Appellant and Appellant's Designation of Matter to Be Included in the Record on Appeal, along with Proof of Service.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Keith M Babcock

KMB vmn
Enclosure

cc Glenn E Bowens, Esq
Anthony S H Catone, Esq



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
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TELEPHONE (803) 734-1890
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December 29, 2008

Keith M. Babcock, Esq.
Brady R. Thomas, Esq.
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Dutch Fork Dev. v. SEL Properties

Dear Counsel:

We are in receipt of your Initial Brief of Appellant and Designation of Matter for the above appeal. Be advised it will be necessary for you to provide this office with an amended cover sheet to correct the case caption within seven (7) days of the date of this letter. The caption should be listed as follows:

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC,

Respondent,

v.

SEL Properties, LLC and Stephen E.
Lipscomb, Defendants, of whom Stephen E.
Lipscomb is the,

Appellant

If you have any questions, please feel free to contact this office.

Very truly yours,

Kenneth A. Richstad
CLERK *HB*

KAR/ab

cc: Glenn E. Bowens, Esq.
Anthony S. H. Catone, Esq.

LAW OFFICES
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December 19, 2008

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II, LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

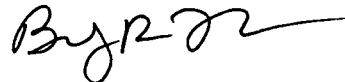
Enclosed for filing please find the original and one copy of the Initial Brief of Appellant and Appellant's Designation of Matter to Be Included in the Record on Appeal in the above-referenced matter, along with Proof of Service. An additional copy of each is included to be clocked and returned to our office via our courier.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With highest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R Thomas

BRT mas
Enclosure

cc Glenn E Bowens, Esquire (*via mail*)

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DEC 19 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

Stephen E Lipscomb,

Appellant

INITIAL BRIEF OF APPELLANT

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ATTORNEYS FOR THE APPELLANTS

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<u>Tom's Amusement Co., Inc v Total Vending Services</u> , 243 Ga App 294, 533 S E 2d 413 (2000)	8, 13
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STATUTES

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STATEMENT OF ISSUES ON APPEAL

- I CAN A MANAGER OF A LIMITED LIABILITY COMPANY BE HELD INDIVIDUALLY LIABLE FOR TORTIOUS INTERFERENCE WITH A CONTRACT BREACHED BY THE COMPANY?
- II ARE THE CONTRACT DAMAGES FOR TORTIOUSLY CAUSING A BREACH OF CONTRACT COEXTENSIVE WITH THE TOTAL CONTRACT DAMAGES ARISING FROM BREACH OF THE SAME CONTRACT?
- III DID THE TRIAL COURT ERR IN CHARGING THE JURY THAT LOST CUSTOMERS AND LOST GOODWILL WERE RECOVERABLE WHEN THERE WAS NO EVIDENCE PRESENTED REGARDING LOST CUSTOMERS OR GOODWILL?

STATEMENT OF THE CASE

This case was filed on February 17, 2005. The plaintiffs in this case are Dutch Fork Development Group, II, LLC and Dutch Fork Realty. Dutch Fork Development Group, II, LLC (“Developer”) is a real estate development company.¹ Dutch Fork Realty, LLC (“Broker”) is real estate sales company.²

Originally, the defendants in this case were SEL Properties, LLC and Stephen E Lipscomb. SEL Properties, LLC (“Landowner, LLC”) is a family company that handles real estate investments and owns the land involved in this case.³ Appellant Stephen E Lipscomb (“Manager Lipscomb”) is the managing member of Landowner, LLC.⁴ Mr Lipscomb’s wife and sons are the other members of Landowner, LLC.⁵

In the Complaint, the Developer and Broker alleged three causes of action: (1) breach of contract as to Landowner, LLC, (2) tortious interference with a contract as to Manager Lipscomb, individually, and (3) conversion as to Manager Lipscomb, individually.⁶ An Amended Complaint was filed on September 14, 2007 adding a cause of action against Landowner, LLC for breach of contract accompanied by a fraudulent act.⁷

¹Trial Transcript, p. 89, ll. 15-22

²Trial Transcript, p. 89, 23-25

³Trial Transcript, p. 773, l. 25 to p. 774, l. 17, p. 775, ll. 8-10

⁴Trial Transcript, p. 777, ll. 10-12

⁵Trial Transcript, p. 773, l. 25 to p. 774, l. 17

⁶Complaint

⁷Amended Complaint

This case was tried from October 30, 2007 to November 7, 2007. The trial court directed a verdict against the Developer and Broker on the cause of action for conversion against Manager Lipscomb, individually.⁸ The remaining causes of action were submitted to the jury.

The jury awarded the Developer and Broker \$299,144.00 in actual damages on the breach of contract cause of action against Landowner, LLC.⁹ The jury also awarded \$1 million in punitive damages for the breach of contract accompanied by a fraudulent act cause of action against Landowner, LLC.¹⁰

In addition, the jury found that Manager Lipscomb, individually, had tortiously caused Landowner, LLC, his family company, to breach its contract with the Developer and Broker.¹¹ The jury found that actual damages arising from Manager Lipscomb causing his own company to breach the contract were \$3 million.¹² This verdict is irreconcilable with the breach of contract verdict which found the total damages due to Landowner, LLC's breach of contract to be \$299,144.00.¹³ The jury also awarded \$1 million in punitive

⁸Trial Transcript, p. 643, l. 8 - p. 644, l. 12, p. 649, ll. 6-7

⁹Verdict Form

¹⁰Verdict Form

¹¹Manager Lipscomb timely objected to the jury charge on the cause of action for tortious interference with a contract. Trial Transcript (Jury Charge Conference), p. 3, ll. 8-14

¹²Verdict Form

¹³Verdict Form

damages against Manager Lipscomb, individually, on the cause of action for tortious interference with a contract ¹⁴

After the verdict, Manager Lipscomb filed motions for Judgment Notwithstanding the Verdict, for Nisi Remittur or in the Alternative a New Trial Absolute, or a New Trial upon the Facts as to the Cause of Action for Tortious Interference with a Contract ¹⁵

Landowner, LLC filed a Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial Absolute as to the Cause of Action for Breach of Contract Accompanied by a Fraudulent Act These motions were denied on April 8, 2008 ¹⁶

On April 11, 2008, Manager Lipscomb and Landowner, LLC timely filed notices of appeal

On June 3, 2008, Landowner, LLC agreed to settle the breach of contract and breach of contract accompanied by a fraudulent act claims against Developer and Broker by paying \$1 5 million to them As a result, on June 9, 2008, Landowner, LLC dismissed its appeal

The only appeal remaining is the appeal by Manager Lipscomb, individually, on the cause of action for tortious interference with a contract

¹⁴Verdict Form

¹⁵As to The Cause of Action for Tortious Interference with a Contract Defendant Stephen E Lipscomb's Motion for Judgment Notwithstanding the Verdict, for Nisi Remittur or in the Alternative a New Trial Absolute, or a New Trial upon the Facts

¹⁶April 8, 2008 Orders denying Post Trial Motions

FACTS

This action is primarily a breach of contract case relating to the development of the Courtyards at Rolling Creek and a portion of the Rolling Creek subdivision in Ballentine, South Carolina.¹⁷ Two contracts between Developer, Broker, and Landowner, LLC were at issue: (1) a contract as to Phase I, II, and III of the Courtyards at Rolling Creek,¹⁸ and (2) a contract as to Rolling Creek, Phase IV.¹⁹

Under the contracts, the Developer could receive development fees for each phase of the development that was started plus twenty-five percent of the net profits from each phase.²⁰ Broker received an exclusive right to sell in all phases and could receive commissions on the sale of lots to non-builders and the sale of houses by builders.²¹

Phase I of the development experienced a number of problems. The project had expensive road failures that resulted in slow sales.²² The slow sales resulted in the development lender pressuring Landowner, LLC to use a construction company, K&L Contracting, LLC (a company owned in part and also managed by Manager Lipscomb²³) to purchase a substantial number of lots in Phase I.²⁴

¹⁷Trial Transcript, p. 93, l. 10 to p. 94, l. 3, p. 778, ll. 16-21

¹⁸Plaintiffs' Exhibit 1, November 14, 2000 Development and Marketing Agreement

¹⁹Plaintiffs' Exhibit 4, October 17, 2002 Development and Marketing Agreement

²⁰Plaintiff's Exhibits 1 and 4

²¹Id.

²²Trial Transcript, p. 133, l. 21 to p. 135, l. 19, p. 140, l. 18 to p. 141, l. 9

²³Trial Transcript, p. 724, ll. 9-17

²⁴Trial Transcript, p. 810, ll. 14-25, p. 817, l. 22 to p. 818, l. 8

On May 28, 2004, three and a half years into the contract, Manager Lipscomb made a business decision for Landowner, LLC to terminate the contracts with Developer and Broker²⁵ Manager Lipscomb testified at trial that this decision was based on his misunderstanding of the sales requirement in the contract and the Developer's and Broker's responsibilities under the contract²⁶ Manager Lipscomb admitted at trial that Landowner, LLC breached the November 14, 2000 contract and that Landowner, LLC owed money²⁷ to the Developer and Broker²⁸

ARGUMENT

I A MANAGER OF A LIMITED LIABILITY COMPANY CANNOT BE HELD INDIVIDUALLY LIABLE FOR TORTIOUS INTERFERENCE WITH A CONTRACT BREACHED BY THE COMPANY

The trial court erred in failing to grant Manager Lipscomb's motions for directed verdict, motion for judgment notwithstanding the verdict (jnov), and overruling Manager Lipscomb's objections to the trial court's charge on the cause of action for tortious interference with a contract A trial court's denial of a motion for directed verdict should be reversed when "there is no evidence to support the trial court's ruling, or where the ruling was controlled by an error of law" Pye v Estate of Fox, 369 S C 555, 563-564, 633

²⁵Plaintiffs' Exhibit 17, May 28, 2004 letter

²⁶Id, Trial Transcript, p 831, l 1 to p 834, l 25

²⁷Landowner, LLC, through expert testimony and in closing argument, admitted that \$129,852.50 was owed under the November 2000 contract Trial Transcript, p 1015, l 12 to p 1016, l 4, and p 1162, ll 5-20 Landowner, LLC admitted that an additional \$58,865.00 was owed under the October 2002 contract Broker and Developer adopted Landowner, LLC's damage figure for the October 17, 2002 contract Trial Transcript, p 1120, ll 3-9

²⁸Trial Transcript, p 847, l 20 to p 849, l 14

S E 2d 505, 509 (2006) As discussed in detail below, the trial court's denial of the directed verdict motion, jnov motion, and overruling objections to the charge on the cause of action for tortious interference with a contract were erroneous and should be reversed

Manager Lipscomb's actions on behalf of his family company, Landowner, LLC, regardless of their business ramifications, cannot be the basis for a cause of action for tortious interference with a contract "[W]hen a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable" Bradburn v Colonial Stores, Inc., 273 S C 186, 188, 255 S E 2d 453, 455 (S C 1979) Landowner, LLC is a limited liability company, which is a legal entity similar to a corporation Landowner, LLC as a matter of law can only act through its agents See Atlanta & C A L Ry Co v Limestone-Globe Land Co., 96 S E 188, 189 (S C 1918)("[A] corporation principal cannot act for itself Every corporate act must of necessity be done by its officers or agents") Thus, Landowner, LLC can only breach a contract via an action by Manager Lipscomb If Manager Lipscomb performed an act on behalf of Landowner, LLC that caused a breach of contract, the Developer's and Broker's remedy is against Landowner, LLC for breach of contract²⁹ Under Bradburn, Manager Lipscomb is not personally liable for his company's breach of contract

The holding in Bradburn that an agent for a company cannot be liable for tortious interference with his company's contract stems from the proposition that it is impossible to interfere with one's own contract Ross v Life Ins Co of Virginia, 273 S C 764, 259

²⁹The Dutch Fork Companies settled that claim for \$1.5 million

S E 2d 81 (1979)(tortious interference is limited to situations where an action is brought against a third party, not a party to the contract) This concept was discussed in Threlkeld v Christoph, 280 S C 225, 312 S E 2d 14 (Ct App 1984) when that court found that the two individual defendants – employees of the company who allegedly breached the contract – were agents of the company, and therefore could not be held liable for tortious interference of a contract to which the company was a party The Threlkeld court stated

the South Carolina Supreme Court reaffirmed settled law that an action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties Therefore, it does not protect a party to a contract from actions of the other party

Id The reasoning is simple if a company cannot be liable in tort for its breach of contract, neither can its agents The remedy for the injured party is against the company for breach of contract

Courts in other jurisdictions have adopted this same rule “[O]nly strangers to the contractual relationship and to the underlying business relationship are liable for tortious interference ” Tom’s Amusement Co , Inc v Total Vending Services, 243 Ga App 294, 533 S E 2d 413 (2000), *See also* Bogle v Summit Investment Co , LLC 137 N M 80, 88, 107 P 3d 520, 528 (N M Ct App 2005), Latch v Gratty, Inc., 107 SW3d 543, 46 Tex Sup Ct J 470 (Tex 2003), Bossuyt v Osage Farmers Nat Bank, 360 N W 2d 769, 779 (Iowa 1985) *citing Bradburn* and collecting cases(“To hold otherwise would be dangerous doctrine, and would subject corporate officers and directors continually to liability on corporate contracts and go far toward undermining the limitation of liability which is one of the principal objects of corporations ”)

In this case, the rule from Bradburn and Threlkeld prevents Manager Lipscomb from being liable for tortiously interfering with Landowner, LLC's contract. Manager Lipscomb was the manager of Landowner, LLC, which was a party to the contract at issue. All of the actions alleged to be breaches of contract by Landowner, LLC were actions taken by Manager Lipscomb. If Landowner, LLC breached a contract via Manager Lipscomb's actions, Landowner, LLC is the responsible party. Manager Lipscomb, individually, acting on behalf of Landowner, LLC, cannot also be held liable in tort for Landowner, LLC's breach of contract. To hold otherwise would ignore the corporate form.

The statutes allowing for the creation of limited liability companies are designed to prevent this type of individual liability. Members and managers of limited liability companies are not subject to personal liability for business decisions made on behalf of a limited liability company. S.C. Code Ann. § 33-44-303(a) specifically limits the liability of a member or manager of a limited liability company, stating that

[T]he debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

Under this statute, a manager acting on behalf of a limited liability company is not liable for the limited liability company's breaches of contract. Thus, pursuant to §33-44-303(a), Manager Lipscomb, as a manager acting for Landowner, LLC, cannot be held liable for Landowner, LLC's breach of contract. The contractual obligations belong to Landowner, LLC.

Developer and Broker argued at trial that some of Manager Lipscomb's decisions caused a breach of contract, and, that these decisions were not in the best interest of Landowner, LLC, and that they must have been outside the scope of Manager Lipscomb's authority for Landowner, LLC. This after the fact analysis of whether a decision turned out to be a good or bad business decision is not allowed under S.C. Code Ann. § 33-44-303 or the rule set forth in Bradburn and Threlkeld. The law simply does not allow parties to circumvent the corporate shield and sue persons who control entities in tort because the entity may have breached a contract. Otherwise, every time a corporation was found to have breached a contract, all of its controlling officers and directors would be liable for tortious interference with a contract for making the business decision that resulted in the breach. This would be contrary to the intent of the General Assembly in allowing for the formation of legal entities which are intended to promote business risk without the fear of personal liability.

Furthermore, there was no testimony that Manager Lipscomb ever did anything that was outside the scope of his authority for Landowner LLC. The only testimony presented at trial was that all actions by Manager Lipscomb regarding this project were on behalf of Landowner, LLC. Manager Lipscomb testified

Q And in regard to that project, what is SEL Properties role?

A Obtaining the financing for the development

Q We'll talk about that a little more specifically in a minute but again the Courtyards at Rolling Creek project, SEL Properties was acting. Isn't that right?

A Yes, sir. SEL Properties was the entity involved there.

Q All right. And who was the managing member?

- A I was the managing member of SFI Properties I've always been the managing member
- Q When you acted on behalf of SEL Properties, were you active in regard to this project? Who were you acting on behalf of? SEL Properties or yourself?
- A SEL Properties
- Q Were you ever acting individually for yourself?
- A No, sir Not acting individually for myself³⁰

No other testimony was introduced by the Developer or the Broker to the contrary

Similarly, there was no evidence or testimony limiting the scope of Manager Lipscomb's authority to act on behalf of his family company The evidence shows that when Manager Lipscomb acted in this project he acted on behalf of Landowner, LLC These actions were taken on behalf of the company that Manager Lipscomb manages for his wife and children As discussed above, Manager Lipscomb's actions on behalf of Landowner, LLC do not warrant the imposition of individual liability Landowner, LLC is the party liable for the breach of contract

To survive directed verdict, Developer and Broker argued that Manager Lipscomb was individually liable for acting as manager of another company, K&L Contracting,³¹ and

³⁰Trial Transcript, p 777, ll 1-20

³¹K&L Contracting, LLC is a construction company owned in part and also managed by Manager Lipscomb Trial Transcript, p 724, ll 9-17

causing himself as manager of Landowner, LLC to breach the contract”³² A portion of this argument is included below

The Court Mr Bowens, where I have difficulty is that Mr Lipscomb is a part of K & L and part of SEL I understand the allegations you are making but can you point to me specifically evidence-what evidence it is that Mr Lipscomb personally allowed those things to happen?

Mr Bowens Mr Lipscomb was acting simultaneously for SEL and K & L

The Court I understand your argument about him allowing a reduced sales price and about the loans not being closed

Mr Bowens Since he was acting simultaneously, he must have allowed it”³³

Developer and Broker argued that Manager Lipscomb, while wearing two hats, can by one act not only breach a contract as manager of Landowner, LLC, but also tortiously interfere with the same contract as manager of K&L Contracting Developer’s and Broker’s counsel stated “Well, I don’t think there is any question Mr Lipscomb acts on behalf of SEL, there is no question also that he acted for K&L”³⁴

The Developer’s and Broker’s position is contrary to the rule that an agent cannot be held liable for causing his own company to breach a contract See Threlkeld v Christoph, 280 S C 225, 312 S E 2d 14 (Ct App 1984) Courts in other states have

³²In support of this position, Developer and Broker argued that an individual is liable for his own torts While this is generally an accurate concept of law, it fails to take into account the special circumstances surrounding a limited liability company or a corporation Limited liability companies, like corporations, can only act through their agents Briarcliffe Acres v Briarcliffe Realty Co , Inc 262 S C 599, 206 S E 2d 886 (1974)

³³Trial Transcript, p 656, ll 11-23

³⁴Trial Transcript, p 1082, ll 22-24

discussed the rule set forth in Threlkeld and stated that “only strangers to the contractual relationship and to the underlying business relationship are liable for tortious interference” Tom’s Amusement Co., Inc. v. Total Vending Services, 243 Ga. App. 294, 533 S.E.2d 413 (Ga. App. 2000), *See also* Atlanta Market Center Management, Co. v. McLane 269 Ga. 604, 609, 503 S.E.2d 278, 283 - 284 (Ga. 1998) (“[A]ll parties to an interwoven contractual arrangement are not liable for tortious interference with any of the contracts or business relationships.”)

In this case, Manager Lipscomb was not a stranger to the contract. Manager Lipscomb managed a party to the contract, Landowner, LLC. Additionally, when Manager Lipscomb was authorizing sales between K&L Contracting and Landowner, LLC, Manager Lipscomb, while wearing two hats, was only committing one act. If Manager Lipscomb is immune for liability in tort for an action on behalf of Landowner, LLC³⁵, it would be defeat the rule in Threlkeld to hold Manager Lipscomb liable for the same action just because he was also acting on behalf of K&L Contracting. This Court should follow courts in other jurisdictions and hold that the rule set forth in Threkheld prevents Lipscomb, when acting simultaneously as an agent for Landowner, LLC and K&L Contracting, from being liable for tortious interference with Landowner, LLC’s contract.

For the foregoing reasons, the trial court erred in failing to direct a verdict, grant a judgment notwithstanding the verdict, and charging the jury on this cause of action because

³⁵See Threlkeld v. Christoph, 280 S.C. 225, 312 S.E.2d 14 (Ct. App. 1984) and Bradburn v. Colonial Stores, Inc., 273 S.C. 186, 188, 255 S.E.2d 453, 455 (S.C. 1979).

there was “no evidence to support the trial court’s ruling” and because the rulings were “controlled by an error of law” Pye, 369 S C at 563, 633 S E 2d at 509

II THE CONTRACT DAMAGES FOR TORTIOUSLY CAUSING A BREACH OF CONTRACT ARE COEXTENSIVE WITH THE TOTAL CONTRACT DAMAGES ARISING FROM BREACH OF THE SAME CONTRACT

If this Court determines that Manager Lipscomb can commit a breach of contract on behalf of Landowner, LLC and tortiously interfere with that same contract by the same act, which is disputed, then the trial court erred because the damages award for the tortious interference cause of action should have been reduced. The Court erred in not granting Manager Lipscomb’s post trial motion request to reduce the damage award because damages attributable to Manager Lipscomb for causing the breach of contract cannot be greater than the damages arising from the very same breach of contract. As discussed below, all contract damages, including those arising under the cause of action for tortious interference with a contract, are subsumed into the damages award for breach of contract.

There can be only one set of damages for one set of facts. Thus, only one set of damages can flow from Landowner, LLC’s breaches of contract. The damages resulting from breach of contract and for tortious interference with a contract are the same damages. **“The actual damages under the contract claim and tort claim** [cause of action for tortious interference with a contract] **will be coextensive** with respect to the lost benefits of the contract.” Collins Music Co., Inc. v. Smith, 332 S C 145, 147-148, 503 S E 2d 481, 482 (S C Ct App 1998)(emphasis added). The nexus between these two causes of action is the breach of contract, which is an element of both causes of action. The breach of contract is the element from which the plaintiffs’ actual damages flow on both the contract

and the tort claims Collins Music Co., Inc. v. Smith, 332 S.C. 145, 503 S.E.2d 481 (Ct. App. 1998), see also Charles River Constr. Co. v. Kirksey, 20 Mass. App. Ct. 333, 480 N.E.2d 315 (1985) (damages suffered by builder for tortious interference with developers by second builder and real estate broker were subsumed in contract damage award in absence of an out-of-pocket loss to justify additional recovery). Thus, the contract damages for the tortious interference claim and the breach of contract claim are the same.

The only damages testified to in this case were contract damages in the form of lost profit splits, real estate commissions, and development fees. The Developer's and Broker's accountant testified that \$3,030,000.00 was owed as damages for the breach of the November 2000 contract.³⁶ The total damages number testified to by the accountant included a \$54,000.00 development fee and \$150,000.00 for profit split for Phase I, \$971,192 in profit splits and \$108,000.00 in development fees for Phases II and III, and \$1,655,806 in real estate commissions from all three phases.³⁷ Broker and Developer adopted Landowner, LLC's damage figure of \$58,865.00 in profit splits owed under the October 2002 contract.³⁸ All of these damages are indisputably contract benefits alleged to be lost as a result of the breach of contract. There was no testimony or evidence of any other damages suffered by Developer and Broker.

³⁶Plaintiffs' Exhibits 141, 142, and 143

³⁷Landowner, LLC admitted that \$129,852.50 was owed under the November 2000 contract. Trial Transcript, p. 1015, l. 12 to p. 1016, l. 4, and p. 1162, ll. 5-20. Landowner, LLC's accountant testified that no money was owed from Phases II or III because these phases were not started during the term of the five-year contract. Trial Transcript, p. 849, ll. 3-14, and p. 1036, ll. 3-11.

³⁸Trial Transcript, p. 1120, ll. 3-9

The jury determined that the total damages flowing from Landowner, LLC's breach of contract were \$299,144.00³⁹ By law, these contract damages are the same contract damages at issue in the tortious interference with a contract cause of action. Thus, the jury's finding establishes the damages for the breach of contract which also establishes the maximum damages from the breach of contract attributable to Manager Lipscomb for procuring the same breach. Accordingly, the trial court erred in failing to grant Manager Lipscomb's post trial motions seeking a reduction of the damages awarded in the intentional interference with contract award to the amount of contract damages, \$299,144.00. Collins Music Co., Inc. v. Smith, 332 S.C. 145, 147-148, 503 S.E.2d 481, 482 (S.C. Ct. App. 1998).

Moreover, Developer and Broker should be barred from recovering these very same contract damages a second time. Developer and Broker have already recovered the contract damages from Landowner, LLC. It is well settled in South Carolina that there can be no double recovery for a single wrong, and a plaintiff may only recover his actual damages only once. Taylor v. Hoppin' Johns, Inc., 304 S.C. 471, 405 S.E.2d 410 (Ct. App. 1991). Developer and Broker cannot again recover the same contract damages from Manager Lipscomb that were previously recovered from Landowner, LLC. See TSC Indus., Inc. v. Tomlin, 743 S.W.2d 169, 172 (Tenn. Ct. App. 1987) ("damages recoverable for the pecuniary loss of the contract are common to both the action for breach and the action for inducement[,] [t]herefore, any payments made by the one who breaches the contract must be credited in favor of the one who induced the breach.") Accordingly, if this Court finds

³⁹Jury Verdict Form

that Manager Lipscomb is individually liable for tortious interference with Landowner, LLC's contract, the Court should also find that the trial court erred in failing to reduce the damages and that Developer and Broker are barred from recovering an impermissible windfall double recovery of the same contract damages from Manager Lipscomb

III THE TRIAL COURT ERRED IN CHARGING THE JURY THAT LOST CUSTOMERS AND LOST GOODWILL WERE WHEN THERE WAS NO EVIDENCE PRESENTED REGARDING LOST CUSTOMERS AND GOODWILL

At the conference to discuss the Court's jury charges, the Court proposed a jury charge on the cause of action for tortious interference with a contract that included (1) unforeseen expenses, (2) damages to reputation, (3) damages for loss of employees, (4) damages for loss of customers, and (5) damages for loss of goodwill⁴⁰ Manager Lipscomb objected to the proposed charge including all of these elements because there was no evidence that the Developer or Broker had lost any of the above items⁴¹ The Court then decided not to charge the jury for unforeseen expenses, damages to reputation, or damages for loss of employees⁴² Over Defendant's objection, the Court included the charge for damages for loss of customers and damages for loss of goodwill in its charges to the jury⁴³ This portion of the charge included

⁴⁰Trial Transcript, p 1108, ll 4-12

⁴¹Trial Transcript (Jury Charge Conference), p 1, ll 5-16

⁴²Trial Transcript (Jury Charge Conference), p 3, ll 8-14

⁴³Id

Now, the plaintiff must also prove damages. The plaintiff may recover those damages that are sustained by him that are a natural proximate consequence of the interference. Those damages would include damage for loss of – loss of customers, damage for loss of good will, and damages for loss of profits⁴⁴

The trial court's charge as to good will damages and lost customers was improper. There was no evidence at trial that the Developer and Broker lost any goodwill or any identifiable customers as a result of any breach of contract caused by Manager Lipscomb. Furthermore, at no time during the course of discovery or in the pleadings⁴⁵ did the Developer or Broker disclose that they were seeking damages for loss of goodwill or loss of customers. In fact, this issue was never raised nor mentioned until it was raised by the judge in her proposed charge at the jury charge conference after all of the evidence had been presented.

The absence of any evidence as to loss of goodwill or lost customers forces the jury to speculate and, thus, makes these damages too speculative to be recovered. "[I]n order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. [N]either the existence, causation nor amount of damages can be left to conjecture, guess or speculation.

” Whisenant v. James Island Corp., 281 S E 2d 794 (S C 1981), Llewellyn v. Atlantic Greyhound Corp., 28 S E 2d 673, 678 (S C 1944). In this case, without any evidence, it would be impossible for the jury to determine the amount of damages for loss of goodwill.

⁴⁴Trial Transcript (Jury Charge), p. 25, ll. 3-14

⁴⁵The Amended Complaint sets forth the damages for intentional interference with contract: “to deprive the Plaintiffs of their contractual rights and benefits under the contract.” Amended Complaint at paragraph 36.

or lost customers with any reasonable certainty or accuracy. Accordingly, damages for loss of goodwill or lost customers are too speculative to be recovered.

Accordingly, the trial court erred in charging the jury that damages for lost customers and lost good will were recoverable.

CONCLUSION

Manager Lipscomb performed an act on behalf of Landowner, LLC that breached a contract with Developer and Broker, as a result their remedy is against Landowner, LLC for breach of contract. The Developer and Broker obtained a judgment and settled the contract claim against Landowner, LLC. Manager Lipscomb cannot also be liable in tort for his company's same breach of contract.

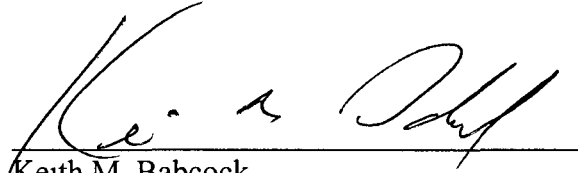
If the Court finds that Manager Lipscomb can be held individually liable for causing his own company to breach a contract then the trial court erred in failing to reduce the damages for tortious interference with a contract to the amount found to be the total contract damages arising from Landowner, LLC's breach of contract. Additionally, the trial court erred in charging the jury that damages for loss of goodwill and loss of customers were recoverable because there was no evidence of such damages.

Accordingly, the trial court's rulings on the cause of action for tortious interference with a contract were erroneous and should be reversed.

[signature block located on following page]

Respectfully submitted,

LEWIS & BABCOCK, L L P

A handwritten signature in black ink, appearing to read "Keith M. Babcock", written over a horizontal line.

Keith M Babcock

Brady R Thomas

1513 Hampton Street

Post Office Box 11208

Columbia, South Carolina 29211

Telephone (803) 771-8000

Facsimile (803) 733-3534

Attorneys for the Appellants

December 19, 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
DEC 19 2008
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

Stephen E. Lipscomb,

Appellant

**APPELLANT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

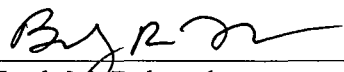
Appellant proposes the following to be included in the Record on Appeal

- 1 April 8, 2008 Orders denying Post Trial Motions,
- 2 Complaint,
- 3 Answer and Counterclaims,
- 4 Amended Complaint,
- 5 Amended Answer and Counterclaims,
- 6 Trial Transcript, pp. 89-90, 93-94, 133-135, 140-141, 150, 197, 405-408, 426, 616-682, 723-726, 778, 810, 817-818, 831-834, 847-849, 851-852, 854, 992-993, 1015-1016, 1034, 1038, 1071-1103, 1104-1109, 1112, 1120, 1146, and 1162,

- 7 Transcript (Jury Charge), pp 4-40,
- 8 Transcript (Jury Charge Conference), pp 1-12,
- 9 Plaintiffs' Exhibit 1, November 14, 2000 Development and Marketing Agreement,
- 10 Plaintiffs' Exhibit 4, October 17, 2002 Development and Marketing Agreement,
- 11 Plaintiffs' Exhibit 17, May 28, 2004 letter,
- 12 Plaintiffs' Exhibit 141,
- 13 Plaintiffs' Exhibit 142,
- 14 Plaintiffs' Exhibit 143, Richards chart,
- 15 Jury Verdict Form,
- 16 Special Interrogatory,
- 17 Defendant Stephen E Lipscomb's Motion for Judgment Notwithstanding The Verdict, for Nisi Remittur or in the Alternative a New Trial Absolute, or a New Trial upon the Facts, and
- 18 Notice of Appeal

I certify that this designation contains no matter which is irrelevant to this appeal

LEWIS & BABCOCK, L L P



Keith M Babcock
Brady R Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
Telephone (803) 771-8000
Facsimile (803) 733-3534

ATTORNEYS FOR THE APPELLANTS

Columbia, South Carolina

December 19, 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Case No. 05-CP-40-0749

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Respondents,

v

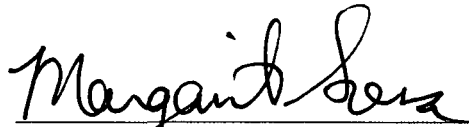
Stephen E. Lipscomb,

Appellant

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L L P, hereby certify that I have served **Initial Brief of Appellant and Designation of Matter to Be Included in Record on Appeal** upon opposing counsel, by mailing a copy thereof, postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following address, this the 19th day of December, 2008

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016


Margarita Sosa

This 19 day of December, 2008

The South Carolina Court of Appeals

Dutch Fork Development Group II,
LLC and Dutch Fork Realty, LLC, Respondent,

v

SEL Properties, LLC and Stephen E
Lipscomb, Defendants, of whom
Stephen E Lipscomb is the, Appellant



The Honorable Alison Renee Lee
Richland County
Trial Court Case No 2005-CP-40-00749

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until December 22, 2008

IT IS SO ORDERED

KAYE G HEARN, CHIEF JUDGE

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

December 12, 2008

cc Keith M Babcock, Esq
Brady R Thomas, Esq
Glenn E Bowens, Esq
Anthony S H Catone, Esq

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A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

December 11, 2008

RECEIVED

DEC 11 2008

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

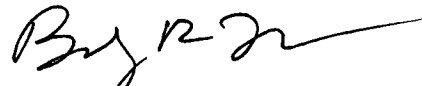
Enclosed for filing please find the original and six copies of Appellant's Motion for Extension of Time to File Initial Brief and Designation of Matter to Be Included in Record on Appeal in the above-referenced matter, along with Proof of Service and a check in the amount of \$25 00 representing filing fees. An additional copy of each is included to be clocked and returned to our office via our courier.

By copy of this letter, we are serving a copy of same upon opposing counsel.

With best regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R Thomas

BRT mas
Enclosure

cc Glenn E Bowens, Esquire (via mail)

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

Stephen E Lipscomb,

Appellant

**APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL**

Appellant Stephen E Lipscomb hereby moves the Court for an Order granting a one week (seven day) extension of time to file Appellant's Initial Brief and Designation of Matter to be Included in Record on Appeal in this matter. This is Appellant's second request for an extension of time ¹

¹The first request was due to the fact that Appellant's counsel, Brady Thomas, had a day certain trial scheduled in Richland county to begin on November 3, 2008

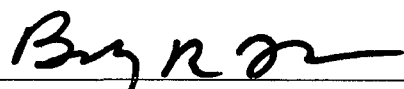
This request is necessary because Appellant's counsel, when preparing the brief, realized that the transcript was incomplete. On December 3, 2008, Appellant's counsel contacted the court reporter and requested that the missing excerpts be transcribed. The court reporter, Ms. Harriet Bennett, stated that she would provide the missing transcript excerpts within a few days. After not hearing or receiving anything from the court reporter, Appellant's counsel unsuccessfully attempted to contact and left a voice message for Ms. Bennett on December 9, 2008. Thereafter, on December 11, 2008, Appellant's counsel's paralegal spoke with Ms. Bennett and she indicated that the missing transcript excerpts would be delivered on December 12, 2008.

Appellant's counsel respectfully requests a one week (seven day) extension in order to have sufficient time to review and finalize the initial brief using the complete transcript. Counsel for Respondents, Glen Bowens, consents to Appellant's request.

Accordingly, Appellant respectfully requests that the Court grant the one week (seven day) extension from December 15, 2008 to December 22, 2008.

This 11 day of December, 2008

LEWIS & BABCOCK, L L P



Keith M. Babcock
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)
Attorneys for the Appellants

and
A/B/Dom
12/22

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DEC 11 2008

SC Court of Appeals

Alison R. Lee, Circuit Court Judge

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Respondents,

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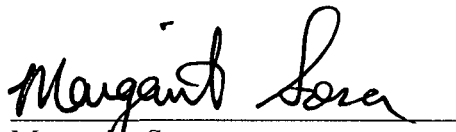
Stephen E. Lipscomb,

Appellant

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L L P, hereby certify that I have served **Appellant's Motion for Extension of Time To File Initial Brief and Designation of Matter to Be Included in Record on Appeal** upon opposing counsel, by mailing a copy thereof, postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following address, this the 11th day of December, 2008

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016


Margarita Sosa

This 11 day of December, 2008

The South Carolina Court of Appeals

Dutch Fork Development Group II,
LLC and Dutch Fork Realty, LLC, Respondent,

v

SEL Properties, LLC and Stephen E
Lipscomb, Defendants, of whom
Stephen E Lipscomb is the, Appellant

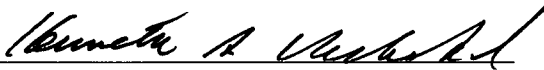
The Honorable Alison Renee Lee
Richland County
Trial Court Case No 2005-CP-40-00749

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until December 15, 2008

IT IS SO ORDERED

KAYE G HEARN, CHIEF JUDGE

BY 
CLERK

Columbia, South Carolina

November 3, 2008

cc Keith M Babcock, Esq
 Brady R Thomas, Esq
 Glenn E Bowens, Esq
 Anthony S H Catone, Esq

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STREET ADDRESS
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COLUMBIA SOUTH CAROLINA 29201

October 31, 2008

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OCT 31 2008

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties, LLC and Stephen E Lipscomb
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Our File No 03-358

Dear Mr Richstad

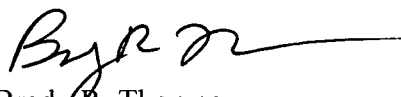
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With best regards, I am

Sincerely,

LEWIS & BABCOCK, L L P


Brady R Thomas

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Respondents,

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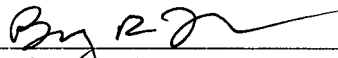
**APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL**

Appellant Stephen E Lipscomb hereby moves the Court for an Order granting a thirty (30) day extension of time to file Appellant's Initial Brief and Designation of Matter to be Included in Record on Appeal in this matter. This is Appellant's first request for an extension of time. Appellant's counsel, Brady Thomas, has a lengthy, day certain trial scheduled in Richland county to begin on November 3, 2008. Counsel for Respondents consents to Appellant's request. Accordingly, Appellant respectfully requests that the Court grant the thirty (30) day extension.

1st
AUB/Dm
12/15

This 31 day of October, 2008

LEWIS & BABCOCK, L L P



Keith M. Babcock
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)
Attorneys for the Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

OCT 31 2008

SC Court of Appeals

Alison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

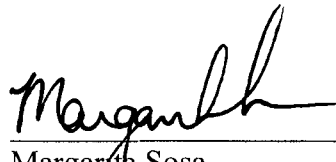
Stephen E. Lipscomb,

Appellant

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock L L P, hereby certify that I have served **Appellant's Motion for Extension of Time To File Initial Brief and Designation of Matter to Be Included in Record on Appeal** upon opposing counsel, by mailing a copy thereof, postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following address, this the 31st day of October, 2008

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016


Margarita Sosa

This 31 day of October, 2008

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET BRT@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

October 14, 2008

RECEIVED

OCT 17 2008

SC Court of Appeals

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty, LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

Please accept this letter as my notification to the Court that the Transcript of Record for the trial before the Honorable Alison R Lee in Columbia beginning on October 29, 2007 and finishing on November 7, 2007 in the above-referenced matter was received this date

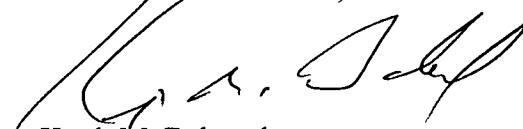
Please allow me to confirm that, pursuant to Appellate Court Rules 208 and 209, Appellant's Initial Brief, along with Designation of Matter to be included in the Record on Appeal, will be due November 13, 2008

By copy of this letter, we are notifying opposing counsel

With kindest regards, I am

Very truly yours,

LEWIS & BABCOCK, L L P



Keith M Babcock

KMB vmn
Enclosure

cc Glenn E Bowens, Esquire
Tracy Garrett, S C Court Administration

RECEIVED

SEP 12 2008

SC Court of Appeals



The Supreme Court of South Carolina

TITLE OF
CASE

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(Dutch Fork Development Group
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(v 2005CP4001749
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(SEL Properties, LLC
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NOTICE

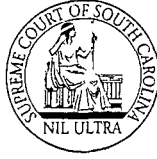
Upon request and for good cause shown, Harriet Bennett (for Bonnie Kelly), Court Reporter, is hereby granted an extension up to and including October 4, 2008 to prepare and deliver the Transcript of Record in the above case

Desiree Allen

Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
9/9/2008

cc Keith M Babcock, Esquire
Glenn E Bowens, Esquire
Harriet Bennett
Bonnie Kelly



The Supreme Court of South Carolina

TITLE OF
CASE (Dutch Fork Development Group
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(v 2005CP4001749
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(SEL Properties, LLC
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NOTICE

Upon request and for good cause shown, Harriet Bennett (for Bonnie Kelly), Court Reporter, is hereby granted an extension up to and including October 4, 2008 to prepare and deliver the Transcript of Record in the above case

Desiree Allen

Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
9/9/2008

cc Keith M Babcock, Esquire
Glenn E Bowens, Esquire
Harriet Bennett
Bonnie Kelly

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAILE KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

TELEPHONE 803/771 8000
FAX 803/733 3534
INTERNET KMB@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

September 9, 2008

RECEIVED

SEP 10 2008

SC Court of Appeals

The Honorable V Claire Allen
Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re *Dutch Fork Development Group II, LLC and Dutch Fork Realty LLC*
v SEL Properties, LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

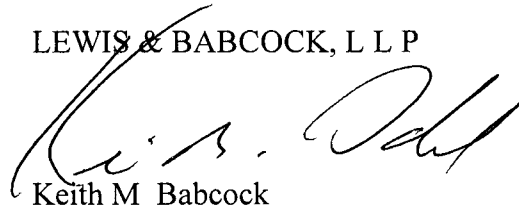
Dear Ms Allen

I am in receipt of your letter of September 8, 2008, requesting a report concerning the transcript in the above-referenced matter. In that regard, I am enclosing a notice from the South Carolina Court Administration whereby the court reporter was granted an extension up to and including September 4, 2008, to prepare and deliver the transcript of record in this case. Also enclosed is an extension until October 4, 2008, which we received today.

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

Very truly yours,

LEWIS & BABCOCK, L L P



Keith M Babcock

KMB cg
Enclosure
cc Glenn E Bowens, Esquire

03 E



The Supreme Court of South Carolina

TITLE OF
CASE

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(Dutch Fork Development Group II, LLC
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(
(v 2005CP4001749
(

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(SEL Properties, LLC
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NOTICE

Upon request and for good cause shown, Harriett Bennett (for Bonnie Kelly), Court Reporter, is hereby granted an extension up to and including September 4, 2008 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
8/4/2008

cc Keith M. Babcock, Esquire
Glenn E. Bowens, Esquire
Harriett Bennett
Bonnie Kelly



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

September 8, 2008

Keith M. Babcock, Esq.
Brady R. Thomas, Esq.
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Dutch Fork Development v. SEL Properties

Dear Counsel:

Within ten (10) days of the date of this letter, please provide this office with a written status report regarding the transcript(s). Your last update stated the court reporter had an extension until August 4, 2008.

Very truly yours,

V. Claire Allen, Deputy
CLERK

KAR/ab

cc: Glenn E. Bowens, Esq.
Anthony S. H. Catone, Esq.

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET KMB@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

July 24, 2008

RECEIVED

JUL 25 2008

SC Court of Appeals

Ms Angela Bennett
Docketing Specialist
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re *Dutch Fork Development Group II, LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

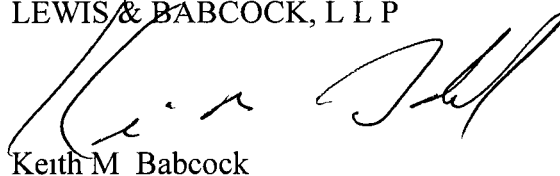
Dear Ms Bennett

I am in receipt of your letter of July 22, 2008, requesting a report concerning the transcript in the above-referenced matter. In that regard, I am enclosing a notice from the South Carolina Court Administration whereby the court reporter was granted an extension up to and including August 4, 2008, to prepare and deliver the transcript of record in this case.

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

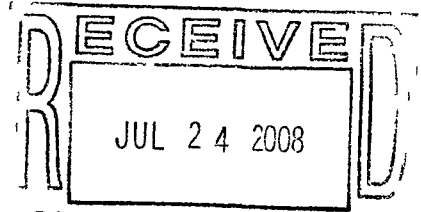
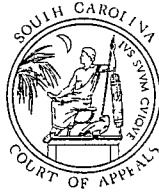
Very truly yours,

LEWIS & BABCOCK, L L P



Keith M Babcock

KMB cg
Enclosure
cc Glenn E Bowens, Esquire



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 9 11
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 9 01
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

July 22, 2008

Keith M. Babcock, Esq.
Brady R. Thomas, Esq.
Lewis & Babcock, LLP
P O Box 11208
Columbia, SC 29211

Re Dutch Fork Dev v SEL Properties

Dear Counsel

Within ten (10) days of the date of this letter, please provide this office with a written status report regarding the transcript(s).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Angela Bennett".

Angela Bennett
Docketing Specialist

Handwritten initials in cursive script, appearing to read "KAR/ab".

KAR/ab

cc Glenn E. Bowens, Esq.
Anthony S. H. Catone, Esq.



The Supreme Court of South Carolina

TITLE OF
CASE

(
(Dutch Fork Development Group II, LLC
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(
(v 2005CP4001749
(
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(SEL Properties LLC
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NOTICE

Upon request and for good cause shown, Harriett Bennett (for Bonnie Kelly), Court Reporter, is hereby granted an extension up to and including August 04 2008 to prepare and deliver the Transcript of Record in the above case

Desree Allen

Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
7/3/2008

cc Keith Babcock, Esq
Glenn Bowers, Esq
Harriett Bennett
Bonnie Kelly



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1831
WWW.SCCOURTS.ORG

July 22, 2008

Keith M. Babcock, Esq.
Brady R. Thomas, Esq.
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Dutch Fork Dev. v. SEL Properties

Dear Counsel:

Within ten (10) days of the date of this letter, please provide this office with a written status report regarding the transcript(s).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Angela Bennett".

Angela Bennett
Docketing Specialist

Handwritten initials in cursive script, appearing to read "KAR/ab".

KAR/ab

cc: Glenn E. Bowens, Esq.
Anthony S. H. Catone, Esq.



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

June 9, 2008

Keith M. Babcock, Esq.
Brady R. Thomas, Esq.
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Dutch Fork Development, LLC v. SEL Properties

Dear Counsel:

Enclosed is a copy of an Order of the Court on your Consent Motion to Withdraw Appeal by Appellant SEL Properties in the above case. Since this is a voluntary dismissal, there is no motion fee. We are herewith returning check #61396 in the amount of \$25 to you.

All parties are advised the case caption has been amended to read as follows:

Dutch Fork Development Group II, LLC and
Dutch Fork Realty, LLC

Respondent

v.

SEL Properties, LLC and Stephen E.
Lipscomb, Defendants, of whom Stephen E.
Lipscomb is the

Appellant

All future documents filed with the Court should reflect these changes.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Claire Allen".

DEPUTY CLERK

VCA/ab

cc: Glenn E. Bowens, Esq.
Anthony S. H. Catone, Esq.
The Honorable Barbara A. Scott
The Honorable Alison Renee Lee

The South Carolina Court of Appeals

Dutch Fork Development Group II, LLC
and Dutch Fork Realty, LLC, Respondent

v

SEL Properties LLC and Stephen E
Lipscomb, Defendants, of whom Stephen
E Lipscomb is the, Appellant

The Honorable Alison Renee Lee
Richland County
Trial Court Case No 2005-CP 40 00749

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It now appears that the Appellant SEL Properties LLC wishes to withdraw their appeal and moves the Court for an Order dismissing the appeal. The parties also agree that no costs will be assessed under Rule 222, SCACR. **The appeal of Stephen E Lipscomb is still pending.**

IT IS ORDERED that the appeal of SEL Properties, LLC be and hereby is dismissed.

KAYE G HEARN, CHIEF JUDGE

BY *V. Claire Allen*
DEPUTY CLERK

Columbia, South Carolina

June 9, 2008

Original to The Honorable Barbara Scott

cc Keith M Babcock, Esq
Brady R Thomas, Esq
Glenn E Bowens, Esq
Anthony S H Catone, Esq
The Honorable Alison Renee Lee

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAILE KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET BRT@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

June 6, 2008

RECEIVED

JUN 06 2008

SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Kenneth A Richstad
South Carolina Court of Appeals, Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749
Our File No 03-358

Dear Mr Richstad

Enclosed for filing is a Consent Motion to Withdraw Appeal by Appellant SEL Properties, LLC Leaving Appellant Stephen E Lipscomb as Sole Remaining Appellant

Appellant Stephen E Lipscomb is not withdrawing his appeal

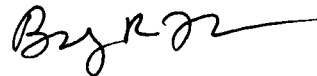
Please return clocked copies by our courier

By copy of this letter, we are serving a copy of same upon opposing

With kindest regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Brady R Thomas

BRT/vmn
Enclosures

cc Glenn E Bowens, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 06 2008

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R Lee, Circuit Court Judge

Case No 05-CP-40-0749

Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

SEL Properties LLC and Stephen E Lipscomb,

Appellants

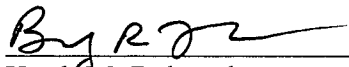
**CONSENT MOTION TO WITHDRAW APPEAL BY
APPELLANT SEL PROPERTIES, LLC LEAVING APPELLANT STEPHEN E
LIPSCOMB AS SOLE REMAINING APPELLANT**

Respondent SEL Properties LLC hereby submits this Consent Motion to Withdraw Appeal by SEL Properties, LLC Leaving Appellant Stephen E Lipscomb as Sole Remaining Appellant As evidenced by the signatures below, all parties consent to the withdrawal by Appellant SEL Properties, LLC The parties also agree that no costs will be assessed under Rule 222, SCACR

This agreement does not affect Appellant Stephen E Lipscomb Appellant Stephen E Lipscomb is not withdrawing his appeal

This 6 day of June, 2008

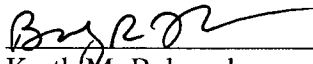
WE SO MOVE



Keith M Babcock
Brady R Thomas
LEWIS & BABCOCK, L L P
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)

Attorneys for the Appellant SEL Properties, LLC

WE SO CONSENT



Keith M Babcock
Brady R Thomas
LEWIS & BABCOCK, L L P
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)

Attorneys for the Appellant Stephen E Lipscomb

WE SO CONSENT



Glenn E Bowens, Esquire
Anthony S H Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016
(803) 714-7766
(803) 714-0775 (facsimile)

Attorneys for the Respondents

June 6, 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals



APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

RECEIVED

JUN 06 2008

SC Court of Appeals

Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

SEL Properties, LLC and Stephen F. Lipscomb,

Appellants

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L L P, hereby certify that I have served **Consent Motion to Withdraw Appeal by Appellant SEL Properties, LLC Leaving Appellant Stephen E. Lipscomb as Sole Remaining Appellant** upon opposing counsel, by mailing a copy thereof, postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following address, this the 6th day of June, 2008

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016


Margarita Sosa

This 6 day of June, 2008

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET BRT@LEWISBABCOCK.COM

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

May 7, 2008

Ms Harriet P Bennett
Reporter, S C Court Administration
Post Office Box 86
Ladson, South Carolina 29456

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749, Our File No 03-358

Dear Ms Bennett

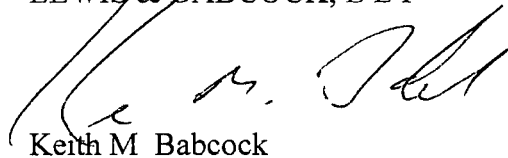
I understand that you will be assisting Bonnie Kelly in transcribing the transcript of the record of the above-referenced case, which was tried before the Honorable Alison R Lee in Columbia beginning on October 29, 2007 and finishing on November 7, 2007

Pursuant to your request, I enclose our firm check in the amount of \$2,000 00 as a deposit for the transcript of the proceedings. Thank you for your assistance in this matter

With best regards, I am

Sincerely,

LEWIS & BABCOCK, L L P



Keith M Babcock

KMB vmn

cc Glenn E Bowens, Esquire
Tony S Catone, Esquire
S C Court Administration
The Honorable Kenneth E Richstad, Clerk, S C Court of Appeals

RECEIVED

MAY 8, 2008

SC Court of Appeals

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET BRT@LEWISBABCOCK.COM

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

April 14, 2008

Ms Bonnie Kelly
Circuit Court Reporter
Post Office Box 50614
Columbia, South Carolina 29250

RECEIVED
APR 15 2008
SC Court of Appeals

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749, Our File No 03-358

Dear Ms Kelly

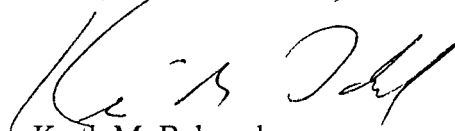
The above-referenced case was tried before the Honorable Alison R Lee in Columbia beginning on October 29, 2007 and finishing on November 7, 2007 I request that you provide me with a transcript of the proceedings Please transcribe the entire record

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR If you need any further information, please do not hesitate to contact me

With best regards, I am

Sincerely,

LEWIS & BABCOCK, L L P

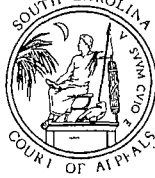


Keith M Babcock

KMB vmn

cc Glenn E Bowens, Esquire
Tony S Catone, Esquire
S C Court Administration

The Honorable Kenneth E Richstad, Clerk, S C Court of Appeals



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIR ALLIN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

April 23, 2008

Keith M. Babcock, Esq.
Brady R. Thomas, Esq.
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Dutch Fork Dev. v. SEL Properties

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 238(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

~~RECEIVED~~ If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41 33

Very truly yours,
Kenneth A Richstad
CLERK

KAR/ma

cc Glenn E Bowens, Esq
Anthony S H Catone Esq

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

APR 11 2008

SC Court of Appeals

Alison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

dlp
Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

SEL Properties, LLC and Stephen E. Lipscomb,

Appellants

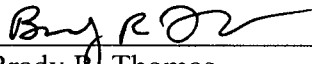
NOTICE OF APPEAL

Appellants SEL Properties, LLC and Stephen E. Lipscomb appeal the two Orders by The Honorable Alison R. Lee, dated April 1, 2008: (1) the Order denying Defendant SEL Properties, LLC's Motion for a Judgment Notwithstanding the Verdict or in the Alternative for a New Trial, and (2) the Order denying Defendant Stephen E. Lipscomb's Motion for Judgment Notwithstanding the Verdict, for Nisi Remittur or in the Alternative a New Trial Absolute, or a New Trial Upon the Facts. These Orders were filed on April 8,

2008, and Appellants received written notice of the entry of these Orders on April 9, 2008

This 11 day of April, 2008

LEWIS & BABCOCK, L L P
Keith M Babcock
Brady R Thomas

By 
Brady R Thomas

1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)
Attorneys for the Appellants

OTHER COUNSEL OF RECORD

Glenn E Bowens, Esquire
Anthony S H Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016
(803) 714-7766
(803) 714-0775 (facsimile)

Attorneys for the Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No. 05-CP-40-0749

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APR 11 2008

SC Court of Appeals

Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC

Respondents,

v

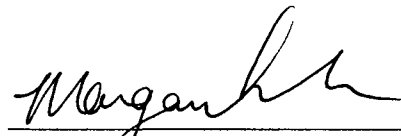
SEL Properties, LLC and Stephen E. Lipscomb,

Appellants

PROOF OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L L P, hereby certify that I have served **Notice of Appeal** upon opposing counsel, by mailing a copy thereof, postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following address, this the 11th day of April, 2008

Glenn E. Bowens, Esquire
Anthony S. H. Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016


Margarita Sosa

This 11 day of April, 2008

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE 803/771 8000
FAX 803/733 3534
INTERNET BRT@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
BRADY R THOMAS
W JONATHAN HARLING

April 11, 2008

RECEIVED

APR 11 2008

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A Richstad
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

Re *Dutch Fork Development Group II LLC and Dutch Fork Realty LLC*
v SEL Properties LLC and Stephen E Lipscomb
Civil Action No 05-CP-40-0749, Our File No 03-358

Dear Mr Richstad

Enclosed for filing please find an original Notice of Appeal and one (1) of the same Also,
enclosed are the following

- 1 Proof of Service of the Notice of Appeal on the respondent(s),
- 2 A copy of the Orders which are to be challenged on the appeal, and
- 3 A filing fee of \$100.00

Please clock the enclosed copies and return it to my office via our courier By copy of this letter,
I am serving opposing counsel with same

With best regards, I am

Sincerely,



Brady R Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
Attorneys for the Appellants

BRT mas
Enclosure

cc Glenn E Bowens, Esquire
Anthony S H Catone, Esquire
POPE & BOWENS, P A
Post Office Box 665
Blythewood, South Carolina 29016
(803) 714-7766
Attorneys for the Respondents

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

JUDGMENT IN A CIVIL CASE

CASE NO 2005-CP-40- 749

Dutch Fork Development Group II, LLC
Dutch Fork Realty, LLC
PLAINTIFF(S)

SEL Properties, LLC
Stephen E Lipscomb
DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other

IT IS ORDERED AND ADJUDGED ☐ See attached order, ☒ Statement of Judgment by the Court

As to the cause of action for Breach of Contract Accompanied by a Fraudulent Act, Defendant SEL Properties, LLC's motion for a Judgment Notwithstanding the Verdict or in the Alternative for a New Trial is DENIED

Dated at Columbia, South Carolina, this 1st day of April, 2008

W. Bruce Lee
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 8th day of April, 2008 to attorneys of record or to parties (when appearing pro se) as follows

Glen E Bowens
Tony S Catone
ATTORNEY(S) FOR THE PLAINTIFF(S)

Keith M Babcock
Brady R Thomas
ATTORNEY(S) FOR THE DEFENDANT(S)

S/CP 40-749
CLERK OF COURT

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

JUDGMENT IN A CIVIL CASE

CASE NO 2005-CP-40-0749

Dutch Fork Development Group II, LLC
Dutch Fork Realty, LLC
PLAINTIFF(S)

SEL Properties, LLC
Stephen E Lipscomb
DEFENDANT(S)

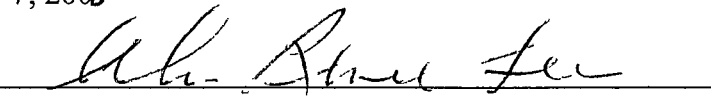
CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other

IT IS ORDERED AND ADJUDGED ☐ See attached order, ☒ Statement of Judgment by the Court

As to the Cause of Action for Tortious Interference with a Contract, Defendant Stephen E Lipscomb's Motion for Judgment Notwithstanding the Verdict, for Nisi Remittur or in the Alternative a New Trial Absolute, or a New Trial Upon the Facts is DENIED.

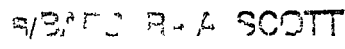
Dated at Columbia, South Carolina, this 1 day of April, 2008


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 8th day of April, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

Glen E Bowens
Tony S Catone
ATTORNEY(S) FOR THE PLAINTIFF(S)

Keith M Babcock
Brady R Thomas
ATTORNEY(S) FOR THE DEFENDANT(S)


CLERK OF COURT