

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2011-CP-46-01383

RECEIVED  
MAY 07 2013  
S.C. SUPREME COURT

Carolyn Torman,

Respondent,

v.

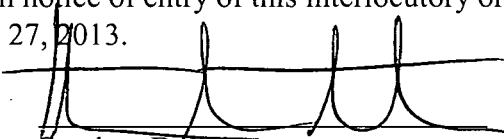
The Handyman Co., LLC,  
SEEE Properties, Inc, Stacey  
M. Pinson, Marcus E Pinson  
and Edith H. Pinson

Appellants.

NOTICE OF APPEAL

The Handyman Co., LLC, SEEE Properties, Inc., Stacey M. Pinson, Marcus E. Pinson and Edith H. Pinson appeal the interlocutory order of the Honorable John C. Hayes, III dated April 25, 2013. Appellant received written notice of entry of this interlocutory order via email on April 25, 2013 and via U.S. Mail on April 27, 2013.

May 2, 2013

  
Stephen D. Schusterman  
SCHUSTERMAN LAW FIRM, PA  
PO Box 4211  
Rock Hill, South Carolina 29732  
(803)325-7788  
Attorney for Appellants

Other Counsel of Record:  
Seth Hudson, Esquire  
CLEMENTS BERNARD PLLC  
1901 Roxborough Road, Suite 250  
Charlotte, North Carolina 28211  
(704) 790-3600  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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The Handyman Co., LLC,  
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Appellants.

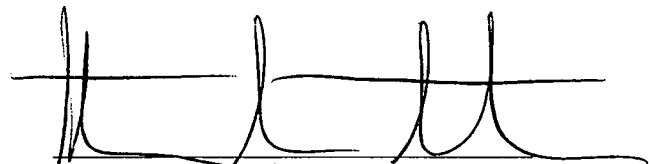
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CERTIFICATE OF SERVICE

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I certify that I have served the Notice of Appeal on the Respondent by depositing one (1) copy of it in the United States Mail, postage prepaid, on May 2, 2013 addressed as follows: Seth Hudson, Esq. CLEMENTS BERNARD PLLC, 1901 Roxborough Road, Suite 250, Charlotte, NC 28211 and the York County Clerk of Court, Common Pleas, Post Office Box 649, York, South Carolina 29745.

May 2, 2013



Stephen D. Schusterman  
SCHUSTERMAN LAW FIRM, PA  
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Telephone: 803-325-7788  
ATTORNEY FOR APPELLANT

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP4601383

Carolyn Torman	Handymans Co LLC Stacey M Pinson Edith Harper Pinson	SEEE Properties Inc Marcus E Pinson
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: Stephen Schusterman	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- 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: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk:

DISPOSITION OF THE CASE TO BE DECIDED BY COURT OR BY TRIAL BY JURY AND BY WHAT METHOD:

COMMON LAW TRIAL BY JURY:  Jury  Bench

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

*S. John C. Hayes 999*

2049

4/25/2013

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on April 25, 2013, and a copy mailed first class or placed in the appropriate attorney's box on April 25, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Seth Lee Hudson  
1901 Roxborough Rd., Ste 250  
Charlotte, NC 28211

Stephen D. Schusterman  
PO Box 4211  
Rock Hill, SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*David Hamilton*

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Carolyn Torman )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 The Handyman Co., LLC, SEEE )  
 Properties, Inc., Stacey M. Pinson; )  
 and Marcus E. Pinson, Edith H. )  
 Pinson )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT

Case No: 2011-CP-46-1383

ORDER

FILED  
 2013 APR 25 PM 2:10  
 CLERK OF COURT  
 YORK COUNTY, SC

Defendants have moved the Court to stay further proceedings in this matter pursuant to Section 40-59-830, South Carolina Code of Laws, 1976, as amended. The Court heard arguments on the motion on April 23, 2013. Defendants were represented by Steve Schusterman, Esq., Plaintiff by Seth Hudson, Esq.

Defendants' motion is denied. Defendants' motion was filed on March 22, 2013. This case was filed April 14, 2011. Defendants timely filed answers. A status conference was held in this matter in September 2012. The case was set for trial in February 2013 and by written consent of the parties continued to the May term of common pleas/jury.

By their course of conduct, I find the Defendants have waived their rights to stay as requested. Waiver is the intentional relinquishment of a known right. Provident Life and Acc. Ins. Co. v. Driver, 317 S.C. 471, 451 S.E.2d 924 (Ct.App. 1994). Acts that are inconsistent with the continued assertion of a right may give rise to a waiver. Provident Life, supra at 478. Waiver can occur in almost any legal setting. 7 S.C. Jur. Estoppel and Waiver §16.

*JEH*

Defendants were aware of their rights under the Notice to Cure Act, §40-59-10, et seq., S.C. Code of Laws 1976, as amended ("The Act"). The Act was referenced in Attorney Brian Wilson's December 18, 2009 letter to the Pinsons. Marcus Edward Pinson referenced The Act in his December 20, 2009 letter which is HMC's<sup>1</sup> response to Brian Wilson's December 18, 2009 letter. In his letter of December 20, 2009, Marcus Edward Pinson asserts his right for clarification pursuant to §40-59-840. Mr. Pinson again referenced §40-59-840 in his undated response to a letter from Plaintiff dated February 16, 2010.

The following is stated, without reference or citation, in the online dictionary "The Free Dictionary by Farlex" under the definition of waiver:

WAIVER., The relinquishment or refusal to accept of a right  
2. In practice, it is required of everyone to take advantage of his right at the proper time and, neglecting to do so will be considered as a waiver.

One may waive their statutory rights absent public policy concerns. 28 Am. Jur.2d Estoppel and Waiver §200.

Generally, waiver is an affirmative issue which must be plead and proven by the one asserting a waiver. However, courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. See Ex Parte Dibble, 279 S.C. 592, 310 S.E.2d 440 (Ct.App. 1983). I think this inherent power clothes the court with the right to *sua sponte* raise, consider and rule on the issue of whether or not conduct of a party results in a waiver by the party of certain rights they possess, including those created by statute.

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<sup>1</sup> HMC is not specifically identified, but Brian Wilson's letter refers to the Pinsons' business as "HMC Contracting."

*ACHAZ*

While not directly on point, our Court of Appeals has held that, in the absence of a specific time in a contract, the law implies that an act is to be done within a reasonable time. Madren v. Bradford, 378 S.C. 187, 661 S.E.2d 390 (Ct.App. 2008).

Whether Brian Wilson's letter complied with the Notice of Right to Cure Act or not, the Pinson Defendants were on notice in December 2009 that Plaintiff was asserting rights pursuant to the Act. Defendants' right to seek a stay ripened in April 2011. The Defendants seek to invoke their rights under §40-59-830 almost two years after institution of their suit and a month after Defendants agreed to the case being tried in this Court's May term. (See Consent Motion for Continuance). Defendants' invocation of their right to a stay was not within a reasonable time.

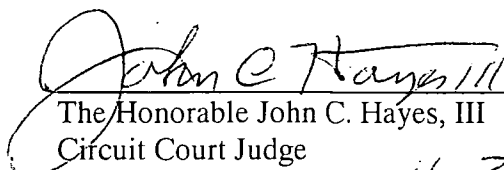
Additionally, and perhaps most significantly, by entering into the Consent Motion for Continuance, Defendants have affirmatively consented to trial of this case at the Court's May term.

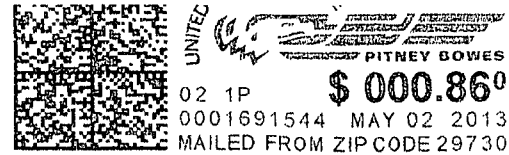
Finally, with Defendants' consent, this Court has, prior to the Motion for a Stay, set the case for trial at the Court's May term.

Therefore, Defendants' Motion to Stay is DENIED.

IT IS SO ORDERED.

April 25, 2013.

  
The Honorable John C. Hayes, III  
Circuit Court Judge  
#3



**SCHUSTERMAN LAW FIRM, P.A.**

*Attorney at Law*

541 EAST MAIN STREET · POST OFFICE BOX 4211  
ROCK HILL, SOUTH CAROLINA 29732



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