

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Juontonio Pinckney, et al.,
Plaintiffs,

CONSOLIDATED

Civil Action No. 2010-CP-46-2326

v.
Brock L. Fankhauser, et al.
Defendants.

STONECREST VILLAS OF TEGA CAY
CONDOMINIUM OWNERS'
MOTION FOR PARTIAL JUDGMENT
ON THE PLEADINGS AS TO THE
PLAINTIFFS' CLAIMS FOR EXTERIOR
DAMAGES.

Comes now, Stonecrest Villas of Tega Cay Condominium Owners, improperly named as Stonecrest Villas of Tega Cay Home Owners Association, Inc., and hereby moves for partial judgment on the pleadings as to the plaintiffs' claims for damages to the exterior of the condominiums at issue.

Respectfully submitted,

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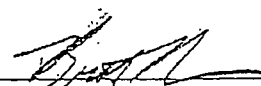
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SC Court of Appeals

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

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Attorneys for Stonecrest Villas of Tega Cay
Condominium Owners
(Cross-Claims and Third-Party Complaint)

EXHIBIT

A

CERTIFICATE OF SERVICE

The undersigned employee of Sellers, Hinshaw, Ayers, Dortch & Lyons, PA, certifies that he or she has, on the date below, served the below document(s) upon the below person(s) via first class mail.

DOCUMENT(S) SERVED:
STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNERS' MOTION
FOR PARTIAL JUDGMENT ON THE PLEADINGS AS TO THE PLAINTIFFS'
CLAIMS FOR EXTERIOR DAMAGES

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and Stonecrest Villas of Tega Cay, LLC

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Attorney for Architectural Alliance, Ltd.

Michelle Beman
MICHELLE BEMAN

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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DAVID HAMILTON
C.C.C.P.&G.S.
YORK COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CA. No.: 2010-CP-46-2326

Juontonio Pinckney, et al.,

Plaintiffs,

vs.

Brock L. Fankhauser, et al.,

Defendants.

ORDER

Re: Stonecrest Villas of Tega Cay
Condominium Owners' Motion for
Judgment on the Pleadings as to
Plaintiffs' Claim for Exterior Damages

Stonecrest Villas of Tega Cay Condominium Owners (COA) by this Motion asserts a standing issue as to Plaintiffs' claims for damages to the common elements of the Stonecrest Villas development.

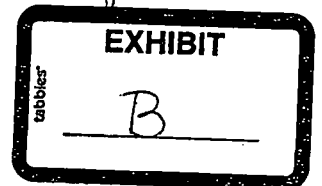
Prior to the hearing the Court shared with the parties the attached order in the case of Pulliam v. M.U.I. Carolina Corporation. Counsel for the COA, while in no way bowing to the efficacy of the attached Order, recognizes the Court's prior disposition of this issue.

Realizing that foolish consistencies (without conceding that such are here created), are the hobgoblins of little minds the Court denies COA's motion for the reasons set forth in the Pulliam Order. The Pulliam Order, attached hereto, is incorporated by reference insofar as context permits.

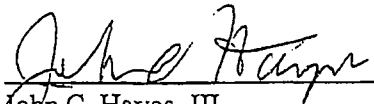
To summarize, the Court recognizes a real problem with the dichotomy that seems to exist as to who may bring suit for damages regarding the common elements of condominium development and the right to recover damages for such damage.

Wherefore, the COA's motion is dismissed.

[Handwritten signature]



IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

August 6th, 2012
York, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Brian and Deborah C. Pulliam,)
Monica Bradshaw, Helen K. Cook,)
Kala Craig, Victor E. Dirienzo,)
Cynthia Diturși, J. Scott Drexel,)
Kathleen Kramer, Robert Loebe,)
Melanie McDaniel, Don and Debbie Neff,)
David Osborne, Celeste Arrowood,)
Vincent Dionna, Mikel Marcuse,)
James P. Wheaton, Jr., Joseph Manfredini,)
Elena Manfredini, David Cox,)
Jonathan B. Dillard, and Eric Wilson,)
and Marianna Junda,)

Plaintiffs,)

vs.)

M.U.I. Carolina Corporation, and)
Kensington Place Owners')
Association, Inc., and Regent Carolina)
Corporation,)

Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2008-CP-46-²¹⁵⁸~~2158~~

ORDER
"Catch 22"
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C.E.C.P. & CS
YORK COUNTY, SC

Catch-22, A situation in which a desired outcome is impossible-because-of inherently illogical rules or conditions. American Heritage College dic-tion-ar-y., 4th Ed., 2002, page 227.

The Court heard arguments on several motions in this matter on March 24, 2011. No court reporter was present. Plaintiffs were represented by W. Jefferson Leath, Jr., Esq. and Michael S. Seekings, Esq.; MUI Corporation (MUI) and Regent Carolina Corporation (Regent) were represented by Robert T. Lyles, Jr., Esq. and Kensington Place Owners' Association, Inc. (KPOA) by Kenneth R. Raynor, Esq.

¹ Catch-22, Joseph Heller, Simon and Schuster (1961).

Back Ground

Briefly, Plaintiffs are owners of some of the condominiums in Kensington Place a Horizontal Property Regime (HPR). MUI is the developer of Kensington Place and Regent Carolina Corporation (Regent) is a subsidiary of MUI. MUI, as developer, established a property owners association (POA) and controlled same until it transferred the control of the POA to a Board comprised of the Kensington Place owners. The transfer established control and maintenance of the Kensington Place common elements in the Kensington Place POA (KPOA).

Plaintiffs claim that when MUI transferred control of the common areas to KPOA, these common areas were not in good condition, and MUI did not set aside enough funding to put the common areas in good, safe, usable order.

The Court will not elaborate on the struggle within KPOA as to the membership of the board and pursuit of claims regarding the common areas.

In an earlier Order, Judge S. Jackson Kimball, in addressing several motions, set forth this case's background succinctly, thusly²:

Plaintiffs brought this action against MUI and Kensington, asserting causes of action relating to the construction and maintenance of the condominium project in which each of them owns a unit. Kensington is made a party based on alleged breaches of duty owed by Kensington to Plaintiffs. The alleged breaches are premised upon the actions or inactions of the board of directors of Kensington, the homeowners association of the Horizontal Property Regime ("HPR"). Some of Plaintiffs are on the current board of Kensington.

² Defendant Regent Carolina Corporation was later added by amendment of the Complaint.



MUI's Motion for Summary Judgment

MUI argues it is entitled to summary judgment as to Plaintiffs' claims based on Plaintiffs' lack of standing to pursue same.

While the motions before Judge Kimball were motions to dismiss, he treated them as motions for summary judgment since the arguments and exhibits presented went beyond the pleading.

As to MUI's motion, Judge Kimball held:

It is clear that Plaintiffs may have the right to pursue their claims in their own right. Given the complexity of this litigation, I believe that the individual claims asserted by the Plaintiffs should be decided based on a full development of the facts as to each claim, and the defenses applicable to each claim, at trial. Therefore, the motion is denied.

The undersigned finds Judge Kimball's denial of summary judgment to MUI is the law of the case and may not be, in effect, reversed by the Court in ruling on MUI's instant motion.

The undersigned feels compelled to elaborate on MUI's motion as this is the eve of trial. As did Judge Kimball, MUI's motion for summary judgment is denied for the reasons set forth below in addition to Judge Kimball already denying MUI's previous motion for summary judgment. The status of Regent as a proper party is elsewhere discussed. For purposes of this Order, and this Order only, the Court treats Regent as amalgamated with MUI.

First, as observed, this is a complex case and a full record needs to be established.

Second, the undersigned finds the issue presented by MUI as to Plaintiffs' standing and their not being the real party in interest is a novel issue in South Carolina.

All parties rely on Concerned Dunes West Residents, Inc. v. Georgia Pacific Corporation, 349 S.C. 251, 562 S.E.2d 633 (Sup. Ct. 2002) to some extent. (Abbreviate CDWR herein). The

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undersigned finds CDWR is dichotomous on the instant issue. In CDWR the Plaintiff was not the Dunes West POA³, but rather an incorporated group of Dunes West owners. The owner's posture in CDWR is analogous to that here.

The dichotomy occurs because throughout the Opinion the Court discussed the rights of property owners associations and nowhere addresses the rights of an individual owner, a group of owners, or a legal entity comprised of owners to bring a suit such as that here. The Court simply accepted the parties' posture as plead. That is, the property owners brought suit in their own right. No challenge to the institution of the suit by the owners is mentioned in CDWR.

It should be noted that CDWR is a case in which the Supreme Court answered certified questions from the United States District Court. None of the certified questions raised the standing or real party in interest issue and, therefore, the Supreme Court could not, or at least would not, address questions outside those certified. The Court confined its Opinion to examining three of the five questions certified from the District Court.

The Opinion does not address the CDWR Plaintiffs standing in the body of the Opinion.

The sole holding of CDWR is:

The developer of a PUD owes a duty to the POA to turn over common areas that are not substandard and that are in good repair. Failure to do so, subjects the developer to liability for bringing the common areas up to standard. (349 S.C. at 257).

CDWR does not address who may pursue the claim against the developer.⁴ In CDWR, it was not the POA, but rather a legal entity composed of individual owners that pursued the claim

³ Dunes West is a Planned Unit Development or PUD. Kensington Place is not a PUD, but the Court finds HPRs and PUDs are similar and the holding in CDWR applicable to a HPR.

⁴ There is no question, the POA could pursue the instant claim. See Queen's Grant Villas Horizontal Property Regimes I-V. vs. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365 (Sup. Ct. 1985).

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against the developer. The Plaintiffs in CDWR do not differ significantly from Plaintiffs here other than CDWR's Plaintiffs' corporate formality.

Third, the By-Laws of KPOA (Exhibit "F" to the Master Deed of Kensington Place Horizontal Property Regime) have a section that establishes certain rights in individual members to sue the POA, its officers, or Board under certain circumstances (Article XV of By-Laws). This Article actually does not pertain to Plaintiffs' claims against the developer, MUI, but to claims against the KPOA, its officers or directors. Nothing has been cited to the Court that precludes any owner from seeking redress against the developer for a breach of its duties, as was done in CDWR. The By-Laws do not require owners to first request KPOA to act before proceeding on their own.

It seems fundamental that an individual may seek redress for any property rights they may have. That is not to say that these rights are exclusive to the individual owners. The duty owed by the developer is to the POA (*See* CDWR), and the POA could maintain the action. (*See Queen's Grand Villas Horizontal Property Regimes I-V. vs. Daniel International Corp.*, 286 S.C. 555, 335 S.E.2d 365 (Sup. Ct. 1985) and cases cited in CDWR from Florida and California).⁵

The Court should point out that the CDWR Court seems to confine the developer's liability to pay damages solely to the POA (349 S.C. at page 260). As observed by Judge Kimball, there may only be one recovery for damages pertaining to the common elements. CDWR, by implication, establishes the POA as the only entity entitled to recover damages, but the Court need not and indeed cannot make any findings or rulings as to the damages issue at this time. This will most probably require further development if Plaintiffs obtain a verdict. However, the Court would be derelict if it did not point out the CDWR language as to damages.

⁵ Counsel for MUI argues that the POA had the right, by statute and by-laws to represent all condominium owners. The Court cannot find this statutory authorize in Section 27-31-10, *et seq.*, S.C. Code of Laws, 1976, as amended.

This is one of many points of contention. The Court observes that CDWR did not address who could pursue the claim against the developer as it did not have that issue before it. However, the Supreme Court seems to have established who is the beneficiary of any recovery. The Court uses the word "seems" advisedly. Here lies the catch 22. Plaintiffs can sue, but CDWR seems to vest the right of recovery in KPOA.

The issues here are not only complex, as observed by Judge Kimball, but novel. Novel issues should be decided with a full and complete record. Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009). (See also KPOA's Memorandum of March 22, 2011).

KPOA argues Plaintiffs cannot sue it because the Plaintiffs are in effect suing themselves. MUI adopts this argument also. There is a paucity of cases dealing with the relationship and rights of property owners relative to POAs.

In Murphy v. Yacht Cove Homeowners Assoc., 289 S.C. 327, 345 S.E.2d 709 (Sup. Ct. 1986), members of an unincorporated condominium association (husband and wife) sued the POA in tort. The Supreme Court held in Murphy that members of a condominium association could, pursuant to The Horizontal Property Act, sue the Association in contract or tort.

The Murphy Court held that the below language from Queen's Grant Villas Horizontal Property Regimes I-V v. Daniel International Corporation, 286 S.C. 555, 335 S.E.2d 365 (sup. Ct. 1986), "implies that an association can be sued by the unit owners for its failure to discharge its duties," 289 S.C. 368:

We have noted that [s]hould the Regime not uphold its duty to pursue a recovery for any alleged construction defects in the common elements which it maintains it may be liable to the homeowners for its omissions. 286 S.C. at 556.

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286 S.C. at 556.

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The Supreme Court clairvoyantly foresaw the imbroglio extant here. The Murphy Court observed:

While the issues raised by appellant are a source of legitimate concern, it is the function of the Legislature and not this Court to anticipate problems such as the ones envisioned by appellant and enact legislation to deal with them. (289 S.C. at 369).

While the Horizontal Property Act has in part been amended since 1986, the Legislature has not addressed the problems foreseen by the Supreme Court in Murphy. (1999 Act. No. 25; 1999 Act No. 86; and 2006 Act No. 250).

MUI's Motion for Summary Judgment is DENIED.

Plaintiffs Motion for Partial Summary Judgment as to Liability Against POA

There exists genuine issues of material fact as to KPOA's liability, if any, and Plaintiffs are not entitled to judgment as a matter of law on this issue.

Plaintiffs have presented the affidavit of Michael R. Parades, PCAM, in support of their motion for partial summary judgment. This affidavit is insufficient to support Plaintiffs' motion. The affidavit relies on a survey of Gary Freeman, AIA, and Repair Estimates by Procon⁶. Such reliance is appropriate under SCREvid 703. However, a witness's reliance on the reports of others does not, per se, establish the correctness or general reliability of the reports. That is to say the expert, Mr. Parades, relies on the accuracy of third party reports. The reports are not presented as sworn affidavits nor have they been subject to scrutiny by cross-examination.

⁶ Plaintiffs' brief also references a Miller Dodson report which was not attached nor mentioned in Mr. Parades affidavit. Of course, a report is just that, nothing else.

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Plaintiffs Motion to Substitute Real Party in Interest Defendants

MUI is, based on a corporate structure chart provided the Court⁷, a subsidiary of one or more other corporate entities. Plaintiffs have moved to add two legal entities they argue are so interrelated with MUI as to be necessary defendants. Plaintiffs argue these two entities are additional real parties in interest based on the theory of amalgamation pursuant to Kincaid v. The Landing Development, 289 SC 89, 344 S.E.2d 869 (Ct. App. 1986). Defendant Regent is one of many entities on the chart and, by earlier Order, has been added since Plaintiffs filed and served the original Complaint.

Plaintiffs' Motion is denied. Without giving the matter short shrift, the Court finds adding additional parties is not necessary for the resolution of Plaintiffs' claims, would delay trial scheduled within two months of this date, would prejudice the current parties as new claims or cross-claims may arise through the addition of parties, extensive and expensive discovery would have to be retreaded, and repairs would be pushed farther in the future, perhaps allowing more deterioration of the common elements and a greater cost to repair.

Plaintiffs' Motion to Dismiss Cross-Claim of KPOA

Plaintiffs argue that KPOA lacks standing to pursue the cross-claim. The basis for Plaintiffs' argument is that KPOA does not own the common elements or any part thereof, that KPOA has not obtained the necessary votes to pursue the cross-claim, and that Article XV, as noted above, gives the Plaintiffs the right to pursue this claim as do the laws of this State.

Donald Triplett, President of KPOA, has admitted, under oath, that KPOA has not been authorized to commence or prosecute any action against MUI. (Triplett's deposition, page 65,

⁷ Exhibit "C" to Plaintiffs' Memorandum in Support of their motion to add a statutory cause of action and to add a real party in interest.

line 12 through page 66, line 6).⁸ There is no evidence in any of the record before the Court that KPOA has properly voted to institute the cross-claim or ratified its institution. For this reason, KPOA may not maintain its cross-claim against MUI.

It might be argued that MUI would be the party to challenge the cross-claim⁹. However, Plaintiffs instituted this action and are entitled to have it litigated and resolved with only proper parties at the table. Also, as members of KPOA, Plaintiffs have a right to protect their interests as such and insist that KPOA function according to its by-laws.

The complexity of this case is highlighted by this instant motion. As noted, Judge Kimball, without additional comment, denied MUI's Motion to Dismiss KPOA's cross-claim. This is the law of the case as to MUI and KPOA. In spite of this, Plaintiffs have an independent right to move to dismiss the cross-claim as members of the POA. The Plaintiffs have exercised their independent rights and are entitled to the relief they seek, i.e., dismissal of the cross-claim. This creates a conundrum. KPOA's By-Laws do not address cross-claims in Article XI of the by-laws but does allow counterclaims in proceedings instituted against it. (Article XI(d)). The reason and wisdom in such distinction is not for the Court.

— This conundrum is resolved by the undersigned finding (without any real authority to so do) that a subsequent, successful motion by Plaintiffs trumps the denial of MUI's motion by Judge Kimball and KPOA's cross-claim against MUI is dismissed.

As noted, Plaintiffs have a separate and distinct interest in the actions of KPOA. I find Plaintiffs' rights are direct, not tangential as MUI's are.

⁸ The deposition was taken November 11, 2009.

⁹ Judge Kimball has denied MUI's Motion to Dismiss KPOA's cross-claim.

Plaintiffs Motion to add a cause of action pursuant to
Section 27-31-430, S.C. Code of Laws, as amended

Section 27-31-430, South Carolina Code of Laws, 1976, as amended, relates to the conversion of rental units to condominium ownership. This Section requires certain disclosures to be reported to a purchaser. Plaintiffs assert that some Kensington units were rental units prior to their sale as condominium units.

The Plaintiffs' motion to add this cause of action is denied. There is no evidence any of the Plaintiffs purchased any rental unit. The nature of the rental of any units is unclear. Any cause of action under The Unfair Trade Practices Act under Section 27-31-140 would inure only to the purchaser of a particular unit which was a "rental unit."

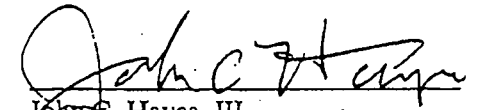
Also, for the reason set forth as to Plaintiffs' Motion to Substitute Real Party in Interest, addition of a new cause of action would work to the prejudice of Defendants. Specifically, the trial of this case would necessarily be pushed into the future.

Plaintiffs' motion to add a cause of action pursuant to Section 27-31-430, S.C. Code of Laws, 1976, as amended is denied.

Wherefore:

1. MUI's Motion for Summary Judgment is DENIED, and
2. Plaintiffs Motion for Partial Summary Judgment as to Liability Against KPOA is DENIED, and
3. Plaintiffs' Motion to Substitute Real Party Interest is DENIED, and
4. Plaintiffs' Motion to Dismiss Cross-Claim of KPOA is GRANTED, and
5. Plaintiffs' Motion to Add a Cause of Action (§ 27-31-430) is DENIED.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #10

April 1, 2011
York, South Carolina

ADDENDUM ATTACHED

ADDENDUM

The court has gone through the morass of paperwork in this file in order to determine which pleadings are the operative pleadings and what issues are for trial. The Court begs correction, promptly, if the Court's grasp of the posture of this case as set forth below, is incorrect in any manner.

Fifth Amended Complaint

1. Defendants:

- A. MUI
- B. KPOA
- C. Regent

2. Causes of Action

- A. First; Breach of Fiduciary Duty as to all Defendants.
- B. Second; Breach of Implied Warranty of Habitability as to MUI and Regent.
- C. Third; Negligence as to all Defendants

Answers

1. Regent and MUI

- A. Qualified General Denial
- B. 12(b)(6) (handled through summary judgment motions)
- C. Statute of Limitations
- D. Statute of Repose
- E. Laches
- F. Waiver
- G. Accord and Satisfaction
- H. Settlement and Release
- I. Lack of Standing (ruled on)
- J. Set Off
- K. Conditions Precedent
- L. Joinder (out?)
- M. Real party in Interest (ruled on)
- N. Implied Warranties Disclaimed
- O. Failure to Mitigate
- P. Intervening and Superseding Negligence
- Q. Comparative Negligence

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R. Negligence of Third Party
(unnecessary as raised by qualified General Denial);
See Funderburke v. Johnson
253 S.C. 430, 171 S.E.2d 597 (1969)
S. Acceptance
T. Economic Loss Rule
U. Open and Obvious
V. Counterclaim (MUI Only)

2. Plaintiffs' Reply to MUI's Counterclaim
3. KPOA
 - A. Qualified General Denial
 - B. Standing (ruled on)
 - C. Failure to comply with Rule 23 SCRPC (out)
 - D. Counterclaim
 1. Breach of Contract by Plaintiffs
 - E. Cross-claim against MUI and Regent (ruled on)
4. Plaintiffs Reply To KOPA's Counterclaim
5. Pending Motions
 1. To exclude Evidence
 2. To Quash Subpoena

Jc 74 #13

Exterior Expressions of North Carolina, Inc.,

Fourth-Party Plaintiff,

vs.

Marcos Gonzalez,

Fourth-Party Defendant.

Procar, Inc. and Procar II, Inc.,

Fourth Party Plaintiffs,

vs.

Marco Zertuche, David Carbajal, Victorina
Cortez, Balanos Construction Co., Balanos
Framing, Inc.; Ricardo Hernandez, and
Silverio Cortez,

Fourth Party Defendants.

Al-Mega Construction, Inc.,

Fourth Party Plaintiff,

vs.

Noe Perez, Juan Abundez Saucedo, and
Moisese Chavarra Hernandez,
Fourth Party Defendants.

The Southeastern Group, Inc.,

Fourth Party Plaintiff,

vs.

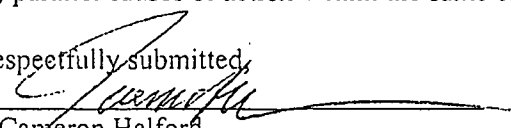
Juan De La Cruz Martinez, Cesar Florez
Lopez, Yadira Lorena Gonzalez Alverez,
Mario Rene Martinez, Cruz Karina Perez,
Gorgy's General Construction, Alfredo
Lucia Martinez and Armida Tapia,
Fourth Party Defendants.

TO: CURTIS DOWLING / BRETT DRESSLER
ATTORNEYS FOR STONECREST VILLAS OF TEGA CAY OWNERS'
ASSOCIATION, INC.

YOU WILL TAKE NOTICE that the undersigned will move before the Hon. John C. Hayes, III, within ten (10) days, or as soon thereafter as counsel may be heard before the court, for an ORDER granting Plaintiffs Summary Judgment as to standing of the COA Stonecrest Villas of Tega Cay Condominium Owners' Association, Inc. claims against FPG and Brock L. Fankhauser for common elements damages in this action 2010-CP-46-2326 as filed in the COA's October 10, 2010 Amended Answer and Crossclaims. Plaintiffs' motion is predicated upon Rule 2 and Rule 56, SCRPC 56. Plaintiffs respectfully assert the Cross Claims of the COA are permissive, derivative of Plaintiff's causes of action, filed second in time, and are barred by the legal doctrine of Laches.¹

Alternatively, Plaintiffs seek an ORDER of the court Bifurcating the claims of the COA pursuant to SCRPC 42(b) on the grounds that the COA claims are secondary, junior and inferior to Plaintiff's causes of action and the dichotomy created by the COA's cross claims seek inapposite relief from that of Plaintiffs' claims and are prejudicial to Plaintiffs' claims for relief. Plaintiffs respectfully submit that the COA claims are untimely, violate the One Form of Civil Action under Rule 2, SCRPC, impermissibly creating two (2) parallel causes of action within the same case.

Respectfully submitted,


J. Cameron Halford
238 Rockmont Drive
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803-547-6618
803-547-6638 fax

CERTIFICATE OF MAILING

¹The COA through Brock L. Fankhauser has been aware of water intrusion issues within the Stonecrest development since year 2008.

I hereby certify that on this 11th day of September, 2012, I served the foregoing PLAINTIFF MOTION FOR SUMMARY JUDGMENT AGAINST THE COA STONECREST VILLAS OF TEGA CAY OWNERS' ASSOCIATION, INC. AND MOTION IN THE ALTERNATIVE TO BIFURCATE CLAIMS by United States mail upon counsel for the above named Defendant by placing a copy of the same in a postage prepaid envelope, addressed as follows, with sufficient postage affixed to ensure delivery of the same. The remaining parties have been provided with this document via e-mail with hard copies being made available upon request from the office of the undersigned.

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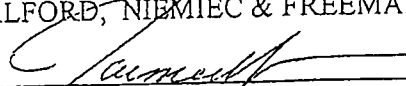
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HALFORD, NIEMIEC & FREEMAN, LLP


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September 11th, 2012
Fort Mill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Juontonio Pinckney, *et al.*,

Plaintiffs,

vs.

Epcon Communities, Inc.,
Epcon Communities Franchising, Inc.,
Brock L. Fankhauser, Fankhauser Property
Group, Inc. and Stonecrest Villas of Tega
Cay Home Owners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-46-2326

ORDER

)Re: Denial of Plaintiff's Motion for Summary
)Judgment Against Stonecrest Villas of Tega Cay
)Home Owners Association, Inc.
)

Fankhauser Prop. Group, Inc.,

Third-Party Plaintiff,

vs.

Architectural Alliance, Ltd., Exterior
Expressions of North Carolina, Inc.,
Al-Mega Construction, Inc., Procar, Inc.,
The Southeastern Group, Inc., Lucas Lawn
and Landscape, Inc., and Jose Simenez,
Individually and d/b/a M&L Roofing Co.,
LLC and/or MB Roofing Company,

Third-Party Defendants.

Stonecrest Villas of Tega Cay
Condominium Owners Association, Inc.,

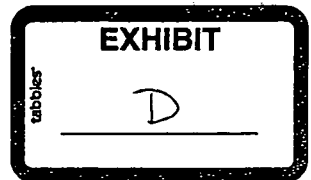
Third-Party Plaintiff,

vs.

Stonecrest Villas of Tega Cay, LLC and
Epcon Communities Franchising, Inc.

Third-Party Defendants.

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DAVID L. HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC



Exterior Expressions of North Carolina,
Inc.)

Fourth-Party Plaintiff,)

vs.)

Marcos Gonzalez,)

Fourth-Party Defendant.)

Procar, Inc. and Procar II, Inc.,)

Fourth-Party Plaintiffs,)

vs.)

Marcos Zertuche, David Carbajal,
Victorina Cortez, Balancos Construction
Co., Balanos Framing, Inc., Ricardo
Hernandez, and Silverio Cortez,)

Fourth-Party Defendants.)

Al-Mega Construction, Inc.,)

Fourth-Party Plaintiff,)

vs.)

Noe Perez, Juan Abundez Saucedo, and
Moisese Chavarra Hernandez,)

Fourth-Party Defendants.)

This matter came before the Court on the Motion of Plaintiffs for Summary Judgment against the Defendant Stonecrest Villas of Tega Cay Home Owners Association, Inc., which was filed on or about September 11, 2012. This Court conducted a hearing on Plaintiff's Motion on September 27, 2012. In addition to the oral arguments presented at the hearing, the Court has

2012/9/27

considered documents the parties submitted in connection with the Motion, including memoranda of law. Plaintiff's Motion for Summary Judgment is DENIED.

STANDARD OF REVIEW

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. Because this is a Motion for Summary Judgment, the facts are viewed in the light most favorable to the Association, the non-moving party. See Rule 56, SCRPC; see also *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990) (noting standard for summary judgment).

PROCEDURAL HISTORY

Plaintiffs filed this action on or about June 2, 2010. The Stonecrest Villas of Tega Cay Home Owners Association, Inc., ("Association") filed an "Answer, Cross-Claim and Third-Party Complaint of Defendant Stonecrest Villas of Tega Cay Homeowner's Association, Inc." on August 6, 2010. In that pleading, the Association brought a cross-claim against Brock Fankhauser, Fankhauser Property Group, Inc., and then brought third-party claims against Stonecrest Villas of Tega Cay, LLC, Exterior Expressions Of North Carolina, Inc., Al-Mega Construction, Inc., Procar, Inc., The Southeastern Group, Inc., Lucas Lawn And Landscape, Inc., Jose Jimenez, Individually and/or d/b/a M&L Roofing Co., LLC and/or MB Roofing Company and Marcos Gonzalez. The basis for the cross-claims arise out of the same transactions and/or occurrences that are the subject matter of this litigation, i.e., that there exist alleged construction defects and alleged defective workmanship in the common areas of the Condominium. The Association has not brought any claims against the Plaintiffs.

CONCLUSIONS OF LAW

The Court addresses each of the Plaintiffs' grounds for summary judgment against the Association as follows:

1. The Court holds that the doctrine of laches is an affirmative defense under Rule 8 of the South Carolina Rules of Civil Procedure and that the defense is not applicable in this instance as the Association has not made any claims or filed suit against the Plaintiffs.
2. The Court holds that the "first in time" argument advanced by the Plaintiff does not apply because there is no other action pending between the Association and the Plaintiffs, or the Association and any of the other Defendants.
3. The Court holds that in the context of pleadings and claims in this litigation, there is no issue regarding permissive claims.
4. The Court holds that the Association's claims are not derivative of the claims asserted by Plaintiffs, nor are they, to the extent such concepts exist under the law, junior or inferior.
5. The Court notes that the Plaintiffs, in their oral presentation to the Court, argued that the Association has failed to comply with S.C. Code Section 40-59-840 in exhausting its administrative remedies. The Court has construed Plaintiffs' argument to mean the Association lacks standing because it purportedly failed to comply with Section 40-59-840, even though the Court observes that Section 40-59-840 does not provide any administrative remedy. The Court notes that Section 40-59-840 must be read in conjunction with Section 40-39-830, which provides for a stay where there is a failure


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to comply with Section 40-59-840. See Grazia v. S.C. State Plastering, LLC, 390 S.C.
562, 703 S.E.2d 197 (S.C. 2010).

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment Against The
Defendant Stonecrest Villas of Tega Cay Home Owners Association, Inc.'s Claim for Damages
is DENIED.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge
#5

October 11th, 2012
York, South Carolina

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP4602326

Juontonio Pinckney Addie Smith	Joséphine Sciaacca James Barone	Brock L. Frankhauser Stonecrest Villas of Tega Cay Home Owners Association Inc Al-Mega Construction Inc Southeastern Group Inc Jose Jimenez	Frankhauser Property Group Inc Exterior Expressions of North Carolina Inc Procar Inc Lucas Lawn And Landscape Inc
Deborah Barone Valerie Gonzales Sandra Moore		Ismael Gonzales Joe Moore	
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: J. Cameron Halford Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 43(k), SCRPC (Settled);
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - 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

RECEIVED
 MAY 14 2013

ORDER

(DENIAL OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT AGAINST STONECREST VILLAS OF TEGA CAY HOMEOWNERS ASSOCIATION INC)

SC Court of Appeals

ORDER INFORMATION

Additional Information for the Clerk:

This order ends does not end the case.

INFORMATION FOR THE PUBLIC INDEX		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

s/ John C Hayes III

Circuit Court Judge
 CPF0RM4M
 SCOA SCRPC Form 40 (Revised 10/2011)

2049

Judge Code

10/15/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on October 15, 2012, and a copy mailed first class or placed in the appropriate attorney's box on October 15, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

See Attached List

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ATTORNEY(S) FOR THE DEFENDANT(S)

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David Hamilton - Clerk of Court

Court Reporter

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MAY 14 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

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2012 OCT 12 PM 3:54
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YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Juontonio Pinckney, et al.,
Plaintiffs,

CONSOLIDATED

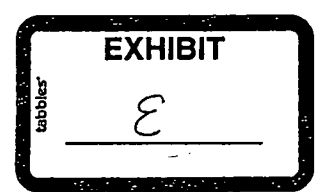
v.

Civil Action No. 2010-CP-46-2326

Brock L. Fankhauser, et al.
Defendants.

COA's Motion for Partial Summary
Judgment and Approval for Settlement as to
Exterior Damages or, in the alternative,
Motion for Dismissal pursuant to 41(a)(2)

The COA moves for partial summary judgment on the issue of exterior damages. The COA relies on the affidavit of Paulette Iadanza filed on October 12, 2012 in support of this motion and other evidence that may be presented at the hearing on this motion. As the Court is aware, the plaintiffs and the COA have both asserted the cost to repair the exteriors of the Stonecrest buildings as an element of damage in their respective lawsuits. The Court previously ruled that both sets of parties have standing to pursue this type of damage, but that only one recovery may be had. The recovery has now been had in part through a settlement with Architectural Alliance, LTD.; Exterior Expressions of North Carolina, Inc.; Al-Mega Construction, Inc.; Procar, Inc.; Procar II, Inc.; The Southeastern Group, Inc.; Lucas Lawn and Landscape, Inc.; German & Garrett, Inc.; Marcos Gonzales; Marco Zertuche; David Carbajal; Victorina Cortez; Balanos Construction Co.; Balanos Framing, Inc.; Ricardo Hernandez; Silverio Cortez; Noe Perez; Juan Saucedo; Moises Hernandez. The Plaintiffs have no claims and have never made any claims against these parties.



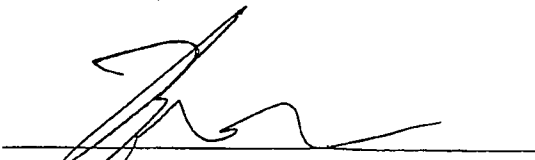
In addition, the settlement entered into with Brock L. Fankhauser, Stonecrest Villas of Tega Cay, LLC, and Fankhauser Property Group, Inc., does not affect the Plaintiffs' claims for the damages to the property they individually own. The Plaintiffs' claims for their various causes of action such as rescission, fraud, etc., remain.

The COA has entered into a conditional settlement agreement with all of the defendants (including third and fourth party) for the payment of \$2.62 million in full satisfaction of the exterior damages. The agreement is conditioned upon a ruling from the Court that the settlement extinguishes all parties' claims for exterior damages. The COA acknowledges the Court's prior ruling that Plaintiffs have standing to pursue a claim for exterior damages and that the recovery would inure to the benefit of the Association. However, now that the Association is able to settle the exterior damage claim, the plaintiffs' pursuit of the claim is moot. The COA asks the Court to enter an order holding that the proposed settlement extinguishes all parties' claims to exterior damages raised in this lawsuit.¹ In the alternative, the COA asks the Court to dismiss the exterior damage claim from the lawsuit pursuant to Rule 41(a)(2).

¹ The settlement does not include a release of claims for damages associated with subsurface soil conditions currently under investigation. Specifically, the COA requests a ruling that the settlement extinguishes all claims related to the exterior envelope of all of the buildings, including any claims related to the alleged lack of gravel under the pads, and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay except for any potential non-water intrusion structural damage to

This 12 day of October, 2012.

Respectfully submitted,



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Condominium Owners
(Cross-Claims and Third-Party Complaint)

Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

CERTIFICATE OF SERVICE

The undersigned employee of Sellers, Hinshaw, Ayers, Dortch & Lyons, PA, certifies that he or she has, on the date below, served the below document(s) upon the below person(s) via first class mail.

DOCUMENT(S) SERVED:

STONECREST VILLAS OF TEGA CAY CONDOMINIUM OWNERS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT AGAINST EPCON COMMUNITIES FRANCHISING INC.

PERSON(S) SERVED:

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MICHELLE BEMAN

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Juontonio Pinckney, et al.,

Plaintiffs,

v.

Brock L. Fankhauser, et al.

Defendants.

CONSOLIDATED

Civil Action No. 2010-CP-46-2326

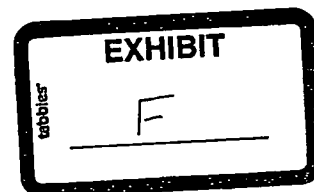
ORDER GRANTING STONECREST
VILLAS OF TEGA CAY OWNERS'
ASSOCIATION, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT AND
APPROVAL FOR SETTLEMENT AS TO
EXTERIOR DAMAGES OR IN THE
ALTERNATIVE MOTION FOR
DISMISSAL PURSUANT TO RULE 41(a)(2)
SOUTH CAROLINA RULES OF CIVIL
PROCEDURE (Motion signed October 12,
2012)

FILED-RECEIVED
2013 JAN 23 PM 3:56
DAVID THOMPSON
C.C.P. & GS
YORK COUNTY, SC

The Stoncrest Villas of Tega Cay Condominium Owners' (The COA) filed a motion for summary judgment or in the alternative an Order of Dismissal pursuant to Rule 41(a)(2) South Carolina Rules of Civil Procedure (SCRCP)¹ asking the Court to dismiss all parties' claims for damages to common-elements as a result of the COA having settled those claims with various defendants.² The Court issues this Order not in

¹ Plaintiffs argue this motion is solely one under Rule 41(a)(2) SCRCP. This argument overlooks the substance of said motion.

² The settlement did not include a release of claims for damages associated with certain subsurface soil conditions. Specifically, the COA requested a ruling that the settlement extinguishes all claims related to the exterior envelope of all of the buildings, including any claims related to the alleged lack of gravel under the pads, and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay except for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

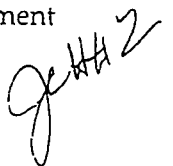


Jeffer

reliance on either rule but on the inherent power of the Court to manage litigation and approve settlements when court approval is sought. In reality, the parties hereto do not need court approval as they are all entities capable of contracting in their own right. The Court is issuing this Order and approving same as the parties have requested the Court to review the proposed settlement and, if approval is deemed appropriate, approve same. Due to the intricacies of this litigation, the Court finds the seeking of court approval for the settlement warranted and a proper matter for the Court's consideration and, as set forth herein below, its approval. The Court heard oral argument on this matter on December 19, 2012. Brett Dressler was present for the COA. Cameron Halford was present for the Plaintiffs. The Court finds that all parties were properly noticed and the matter was properly before the Court for resolution.

The COA filed an affidavit of Paulette Iadanza and a copy of the parties' settlement agreement in support of its motion. In response, the plaintiffs filed a deposition excerpt of Marshall Clarke, and relied upon the affidavits of Ms. Iadanza and a previously filed affidavit of Louis Moscovitz.

After considering the pleadings, the evidence and the arguments of counsel, the Court GRANTS the COA's motion for summary judgment and hereby dismisses all claims for damages to the common-elements, as defined in paragraph 3.1 of the Master Declaration of Covenants, Conditions and Restrictions for Stonecrest dated March 23, 2006. However, this ORDER shall not operate as a dismissal of or prejudice any parties' right to pursue damages for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development



caused by any geotechnical, fill compaction or subsurface deficiencies or defects. References to the mediating argument, hereto attached is craved for specificity of the claims included and not included in this settlement.

As has been noted by the Plaintiffs' Memorandum and oral arguments, the standing issue continues to vex the Court and the parties to this litigation. The Court has earlier ruled that Plaintiffs and Stonecrest Villas of Tega Cay Owners' Association, Inc. (COA) have standing to pursue claims regarding the alleged deficiencies in the common elements of Stonecrest Villas of Tega Cay.

The right (standing) to sue for a claim logically leads to the conclusion that the claimant can settle their claim. Admittedly, this may, and here does, create a tug of war between claimants who both have a legitimate interest in the proper resolution of the jointly held³claim or claims. At this stage of the proceedings, Plaintiffs appear to want to use this standing imbroglio as a shield claiming since they have standing to pursue these mutual claims the COA cannot settle any part of the claim with the alleged liable parties.

Were this the reverse, Plaintiffs seeking approval of a settlement, the Court would be surprised if Plaintiffs did not wield their standing as a sword. Plaintiffs would most probably assert, just as observed above, standing to sue begets standing to settle. If this latter were not true then the instant case would not be subject to settlement unless both Plaintiffs and the COA agreed to a settlement. If both could not

³ The Court is not sure this is a legally technical phrase to use to describe the instant situation, but it is the best it could do.

J. H. 3

agree to a settlement, this would place the parties at loggerhead and the case could only be concluded a trial.

In their brief, Plaintiffs note that the Court's Catch 22 analogy, in effect, gives neither the Plaintiffs nor the COA superior rights. This is true. The corollary to this position is that neither Plaintiffs nor the COA stand in an inferior position as to their asserted rights. This, as noted above, includes the right to sue and the corollary right to settle such claims as are within their province.

Plaintiffs raise several grounds they claim preclude approval of the proposed settlement. Plaintiffs claim the COA has "failed to do equity." The undersigned has been unable to understand Plaintiffs' position as to the equity argument. This is sort of an Iran and North Korea, cannot settle disputes among themselves as they are both evil.⁴

Plaintiffs claim the COA is "not first in order of time." This argument is basically "we got to the courthouse first." This argument presupposes that one must litigate to settle a claim. This is of course not a supportable argument. A party with a claim may settle any claim they may have against another party without bringing suit, during the pendency of a suit, and while not a regular occurrence, post suit.

Plaintiffs' third argument is that the COA cannot settle their claims as the COA owns no legal title in the Stonecrest Villas of Tega Cay's common areas. While this is true, Plaintiffs clearly recognize the COA has an obligation to maintain the common areas and, in fact, Plaintiffs have sued the COA for alleged failure to maintain the

⁴ President George W. bush, State of the Union address, January 29, 2002.

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SC Court of Appeals

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common areas. Implicit in Plaintiffs' position is that while the COA owns none of the common areas, it is legally obligated to and the only entity that can, maintain said common areas.

That the COA has standing to sue and, of course as earlier stated, the right to settle has been visited by the Court ad nauseam. Once again the Court cites as support for this proposition Queen's Grant Villas Horizontal Property Regimes I-V vs. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365, (S.Ct. 1985). Queen's Grant goes farther than establishing the property regime's right to pursue claims related to the common elements but also holds the regime itself may be liable to the homeowners for its failure to seek recovery in instances involving allegations of alleged construction defects in the common areas. Failure of the COA to accept a viable and well thought out settlement would subject the COA to a suit by the non-plaintiff homeowners for such failure.

Finally, to not allow the body charged with remediating problems in the common elements based on the objection of well less than half of the condominium owners' results in the few holding the remaining homeowners hostage to the few's decision. The few who cannot affect any repair to the common elements the maintenance of which is charged to the COA.

Finally, the Court has looked at the relief Plaintiffs seek in their Amended Complaint. They seek a "judgment" (paragraph 2, prayer for relief); actual and punitive damages (paragraph 3, prayer for relief); incidental and special damages (paragraph 4, prayer for relief; treble damages, attorney fees and costs (paragraph 5 and

6, prayer for relief); and general "legal or equitable" relief and a permanent injunction (paragraph 7, prayer for relief).⁵

Recovery under their First Cause of Action would be personal to Plaintiffs; recovery under their Second Cause of Action would be personal to Plaintiffs; as plead recovery under the Third Cause of Action would be personal to Plaintiffs; recovery under their Fourth Cause of Action would be personal to Plaintiffs; recovery under their Fifth Cause of Action would be personal to Plaintiffs; recovery under their Sixth Cause of Action would be personal to Plaintiffs, recovery under their Eighth Cause of Action would be personal to Plaintiffs, recovery under their Ninth Cause of Action would be personal to Plaintiffs; recovery under their Tenth Cause of Action would be personal to Plaintiffs; recovery under their Eleventh Cause of Action would be personal to Plaintiffs; recovery under their Twelfth Cause of Action would be personal to Plaintiffs; recovery under their Thirteenth Cause of Action would be personal to Plaintiffs; recovery under their Fourteenth Cause of Action would be personal to Plaintiffs; and recovery under their Fifteenth Cause of Action would be personal to Plaintiffs.⁶

Plaintiffs Seventh Cause of Action seeks an accounting. If Plaintiffs prevail on this cause of action, it could inure to the benefit of all SCVTC property owners.

A fair reading of Plaintiffs' Complaint establishes that in no instance, other than in the cause of action for accounting, do Plaintiffs seek any general relief which would

⁵ Plaintiffs do not set forth a cause of action which specifies why they are entitled to injunctive relief and exactly what injunctive relief they seek. (See South Carolina Public Service Authority v. Carolina Power and Light, 244 SC 466, 137 S.E.2d 507 (S.Ct. 1964))

⁶ Paragraph 10 of the Fifteenth Cause of Action does reference "others" but in paragraph 11 Plaintiffs allege that they alone are entitled to an award of damages.

inure to the benefit of SCVTC generally or be available to the COA or other individual homeowners to remediate the alleged defects to the common areas.

The Court finds the following support of this order:

1. The Court takes judicial notice that the "Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime," was recorded on February 12, 2007 in Book 08852 at Page 149 of the York County Registry (hereinafter "Master Deed").
2. Article I, Section 1.6 of the Master Deed defines "Common Elements" to mean and refer to "all portions of the Condominium other than the Units, as depicted on the Plans and as more particularly described in Section 5.1 of the Master Deed." Section 5.1 of the Master Deed states:

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Land.
- (b) All Improvements located on the Land outside of the Buildings, including without limitation, landscaped areas, surfaced parking areas, paved roads, sidewalks curbs and gutters.
- (c) All portions of the Buildings located outside of the Units, including without limitation the Limited Common Elements described in Section 5.2 below.
- (d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units and all other structural elements of the Building.
- (e) Any public connections and meters, vaults and manholes for utility services that are not owned by the public utility or municipal agency providing such services.
- (f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

- (g) The yards, shrubs, exterior lights, signs, mailboxes and storm drainage systems.
3. The primary construction defects contributing to water penetration of the condominium buildings at issue in this lawsuit include the stone façade, flashing, water run-off from the roofs, and poor surface water management. The hardiplank siding has also been implicated as a source of water penetration.
 4. The stone façade, flashing, roofs, hardiplank, and ground outside of the buildings all constitute common elements under the Master Deed.
 5. The Board of Directors for the COA consulted with several licensed contractors to determine the scope of work required to fix the penetration problems and the cost of same.
 6. The Board, either directly or through its counsel, consulted with Steve Gunn, Joel Whitley, Gino Colamari, and two other contractors.
 7. Based upon the information received from these sources, the Board is reasonably confident that all reasonable and necessary repairs to prevent water intrusion can be made for \$2.6 million.
 8. The bids the Board received from the contractors ranged from \$2 million to \$3.4 million, depending on the scope of work and unit estimates.
 9. The Board of Directors believes that a budget of \$2.6 million would include replacement of all stone, replacement of some or all of the hardiplank, reflashing, sealing the windows in-place, gutter modifications, surface water management

improvements, and a contingency for the replacement of any damaged sheathing or studs.

10. The Board also considered the \$6 million proposed scope of repairs and cost of same as provided by the Plaintiffs' designated experts.
11. The Board of Directors considered this estimate to be too high for the reasons detailed in Iadanza's affidavit.
12. The Board is also concerned about the likelihood of actually recovering money from the various defendants (third and fourth party included) given its ability to capture insurance coverage and the difficulty/expense of capturing such coverage.
13. The Board of Directors also considered the cost of proceeding with the litigation as opposed to settling the claims now.
14. The Court finds the Board's reasoning and its conclusion to settle this matter for \$2.6 million as opposed to pursuing further litigation to be an exercise of sound business judgment under the circumstances.
15. Having previously determined the plaintiffs and the COA have standing to pursue a claim for the cost to repair damages to the common-elements as a result of construction defects, the Court further holds that the COA also has the power to settle the claims.⁷

⁷ As observed herein above, Plaintiffs seek personal relief and not relief calculating to remediate problems with the common elements. This Order cannot and does not affect Plaintiffs' rights to continue to pursue the personal claims they assert in their Amended Complaint.

JC 7/1/09

16. The COA has, in fact, settled the claims for damages to the common-elements with the exception noted previously and subject to this Court's approval.

17. The Court hereby approves the settlement agreement tendered to and filed with the Court on December 19, 2012.

18. The Court notes that Plaintiffs have objected to the settlement but holds that they are not in a position to challenge the settlement. As noted herein above, the Plaintiffs, in their Amended Complaint, seek damages for themselves for damage to their units, based on a variety of legal theories.

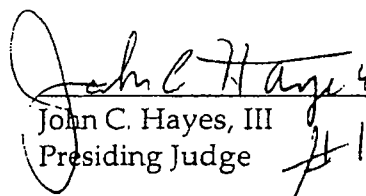
Accordingly, the Court GRANTS the COA's motion for summary judgment as there are no genuine issues of material fact regarding the COA's right to settle the COA's desire to settle and the Defendants' commitment to settle. The Court hereby dismisses all claims raised by all parties in this lawsuit for damages to the common-elements, including the cost to repair the exterior envelope of all of the buildings, including any claims related to the alleged lack of gravel under the pads, and the common elements located in the subdivision known as Stonecrest Villas of Tega Cay. However, this ORDER shall not operate as a dismissal of or prejudice any parties' right to pursue or defend against any asserted damages for any potential non-water intrusion structural damage to Buildings 1 through 9 and the adjacent retaining wall at the Stonecrest development caused by any geotechnical, fill compaction or subsurface deficiencies or defects.

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The Court approves the proposed settlement set forth in the Mediation Agreement entered into by the settling parties attached hereto and incorporated herein by reference filed December 19, 2012.

This Order does not affect the individual claims Plaintiffs have set forth in their Complaint for direct damage to themselves or their individual units.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #11

January 23rd 2013
York, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP4602326

Juontonio Pinckney Addie Smith	Josephine Sciacca James Barone	Brock L Frankhauser Stonecrest Villas of Tega Cay Home Owners Association Inc Al-Mega Construction Inc Southeastern Group Inc Jose Jimenez	Frankhauser Property Group Inc Exterior Expressions of North Carolina Inc Procar Inc Lucas Lawn And Landscape Inc
Deborah Barone Valerie Gonzales Sandra Moore	Ismael Gonzales Joe Moore		
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input 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 GRANTING STONECREST VILLAS OF TEGA CAY OWNERS' ASSOCIATION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND APPROVAL FOR SETTLEMENT AS TO EXTERIOR DAMAGES OR IN THE ALTERNATIVE MOTION FOR DISMISSAL PURSUANT TO RULE 41(a)(2) SOUTH CAROLINA RULES OF CIVIL PROCEDURE (Motion signed October 12, 2012)

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

s/ JOHN C. HAYES, III.
 Circuit Court Judge

2049
 Judge Code

1/23/2013
 Date

For Clerk of Court Office Use Only

This judgment was entered on January 23, 2013, and a copy mailed first class or placed in the appropriate attorney's box on January 23, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

J Cameron Halford Halford Niemiec & Freeman LLP 238 Rockmont Drive
Fort Mill, SC 29708

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Thomas F Dougall Attorney at Law 1700 Woodcreek Farms Road Ste 100
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SC 29731
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Everett Augustus Kendall II Sweeny Wingate & Barrow PA PO Box 12129
Columbia, SC 29211
Curtis W. Dowling Barnes Alford Stork & Johnson LLP PO Box 8448
Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

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SC Court of Appeals

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Juontonio Pinckney, et al.)
 Plaintiff)
v.)
Brock L. Fankhsuer; Fankhauser Property Group,)
Inc. And Stonecresst Villas Of Tega Cay LLC)
 Defendant.)

IN THE COURT OF COMMON PLEAS

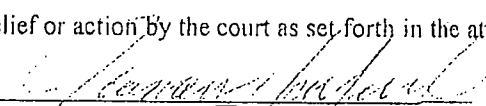
CASE NO.
2010-CP-46-2326

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: J. Cameron Halford, Bar No. 17184 Address: 238 Rockmont Drive, Fort Mill, SC 29708 phone: 803-547-6618 fax: 803-547-6638 e-mail: cam@fortmilllaw.com other:	Defendant's Attorney: Brett Dressler / Curtis Dowling, Bar No. Address: * See attached listing Page (2) phone: fax: e-mail: other:
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
 Nature of Motion: Plaintiffs' Motion to Alter or Amend Jan. 23, 2013 Order
 Estimated Time Needed: 30 Min. Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type
 Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

 Signature of Attorney for Plaintiff / Defendant

January 30, 2013

Date submitted

SECTION III: Motion Fee
 PAID - AMOUNT: \$25.00
 EXEMPT:

- Rule to Show Cause in Child or Spousal Support
- (check reason) Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

 Name of Court Reporter:
 Other:

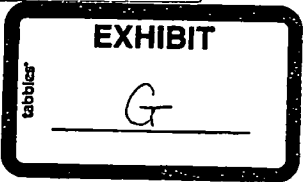
JUDGE'S SECTION
 Motion fee to be paid upon filing of the attached order.
 Other:

JUDGE: _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION
 Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: _____

2013 FEB - 29 PM 1:59
 CLERK OF COURT
 COMMON PLEAS
 YORK COUNTY
 SOUTH CAROLINA

SCCA/233 (11-03)



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Juontonio Pinckney, et al.,)
Plaintiffs,)

CONSOLIDATED
Case No. 2010-CP-46-2326

vs.)

PLAINTIFFS' MEMORANDUM IN
SUPPORT OF RECONSIDERATION
OF THE COURT'S
JANUARY 23, 2013 ORDER AND
MOTION TO ALTER OR AMEND
SCRCP 59(E)
SCRCP 60

Brock L. Fankhauser, et al.,)
Defendants.)

FILED - PROCURED
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Plaintiffs respectfully move the court pursuant to SCRCP 59(e), or in the alternative SCRCP 60, for reconsideration of the court's January 23, 2013 Order granting Stonecrest Villas of Tega Cay Owners' Association, Inc.'s motion for partial summary judgment and Dismissal of all parties' common element damage claims. For the following reasons, Plaintiffs respectfully request that the court revisit, rule upon, alter and/or amend the order as to the following:

1. Plaintiffs request that the court alter or amend the January 23, 2013 Order to correctly reflect Plaintiffs' objections based on equitable arguments.

The court order characterizes Plaintiffs' position at argument on December 19, 2013 as objectionable challenge to the proposed settlement, finding that the Plaintiffs have no standing to challenge the settlement. 1/23/2013 Order at 10, ¶18. Implicit in the court's ruling as a matter of law is that Plaintiffs have no standing to object to dismissal of common area damage claims, not simply the proposed financial recovery that was not

contested by Plaintiffs.² While the court order addresses both equity argument elements advanced by Plaintiffs, e.g. "first in order of time" and "COA owns no legal title" as true, the courts order fails to reflect that Plaintiffs argued the *combination* of the two equitable principals to object to dismissal of damage claims proposed by a Defendant party, particularly in light of previous court rulings on standing, priority of claims, and amalgamation principals. Plaintiffs request that the court alter or amend the factual findings to reflect that Plaintiffs did not argue, in fact, to challenge the settlement fund procured by the COA nor did they challenge release of third and fourth party trades Plaintiffs filed no claims against. Rather, Plaintiffs argument was that implicit in the settlement was an erroneous request to have *the court* dismiss all claims as to common-elements as an express carte blanche condition of a Defendant party (COA) or parties, given the complexities cited in footnote (2) of the 1/23/2013 order and the equitable arguments advanced by Plaintiffs, inclusive of amalgamation principals. (Plaintiffs expressly argued that Brock L. Fankhauser wore many hats, inclusive of being controlling interest of the COA executive board, prior to resignation).

The Plaintiffs likewise would request the order be altered to reflect they argued that the primary defendants allegedly responsible for the conditions, e.g., the Fankhauser parties specifically, should not be fully released from financial liability for alleged defects under the Order.¹ In its order, the court acknowledged that it is not relying on

¹ The court has to date impliedly recognized amalgamation in the case at bar, yet states that the court has failed to understand Plaintiffs' position as to the failure to do equity argument. *Id.* at 4. The Plaintiffs' argument is that an adjudication on the merits as to damages and repair scope in favor of the Defendant COA party's damage and causation theories (*Id.* at (8), par. 3; (9), ¶s 10, 11, and 15) is error as the COA failed to pursue recovery to repair common elements before and after the resignation of Brock L. Fankhauser from the COA board. Exhibit A. The court expressly cites Queens Grant Villas Horizontal Property Regimes I-V v. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365 (S.Ct. 1985).

either Rule 56 or Rule 41, but rather the court's inherent power to approve settlements and manage litigation. Id. at 2.

As argued, if dismissal is pursuant to SCRCP 41(a)(2), the court has the power under to impose the conditions deemed proper by the court unless the court is expressly adopting judgment of the board relative to damage and causation as set forth in the Iadanza affidavit. Id. at 9, ¶(10), (11), (14) and (15).² The order does not expressly rule under either rule 41 or rule 56 whether this is the case applicable to Plaintiff damage claims cited at page 9 and 11 of the Order, but rather approves dismissal and settlement under the inherent authority to manage litigation. Id. at 2. The order does not expressly recognize the amalgamation of interests.

Plaintiffs seek clarification in the court's rulings of whether the court expressly adopts (under Rule 56 or Rule 41) as proper the preservation of Plaintiff common element claims as *personal* to Plaintiffs. Id. at 7 and 11. Alternatively, Plaintiffs seek clarification of whether the court is adopting damage and causation theories under business judgment of the Defendant COA party, inclusive of the need to *extinguish* all (Plaintiffs' included) common-element damage claims as necessary and proper to granting relief. (e.g., claims involving alleged lack of gravel and claims related to the exterior envelope of Plaintiff-

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2 Request for Clarification: Is the court ruling as a matter of law that the Defendants' desire to settle the claims under SCRCP 56 precludes Plaintiffs from claiming damages to common elements that make up the building envelope of their homes? The Order states, in two sections, that the order does not affect Plaintiffs' rights to continue to pursue the "*personal claims*" they assert in their amended complaint. Id. at 9, fn 7 and 11. Plaintiffs seek clarification whether under the court's 1/23/2013 ruling the court has rendered an adjudication on the merits as to their damage claims pertinent to common elements comprising the *building envelope* of their condominium homes.

specific condominiums). Presumably, such items would include Plaintiffs' *personal* condominiums' *exterior envelope*. Master Deed Section 5.1(c) and (d). The Plaintiffs request that the court alter or amend as follows:

- a) Finding as fact that Plaintiffs objected to the dismissal of common element damage claims and full release of primary defendants responsible for alleged construction defects, and argued that any settlement should be paid over to the Hon. David Hamilton, Clerk of Court for York County.¹
- b) Plaintiffs request that the court amend its order by expressly ruling as a matter of law that that the primary personal damage claims of the Plaintiffs, preserved under the order, *necessarily include* common elements personal to their individual condominium homes, inclusive of items identified in Section 5.1 (c) and 5.1 (d) of the Master Deed.

The gravel arguments are illustrative of the point. February, 2012 COA testing of two (2) of Plaintiffs' units confirmed absence of gravel beneath concrete slabs, claims sought to be excluded by the COA party that, in fact, did the testing. Summit Testing confirms soil support failures in seven (7) of buildings 1 – 9 tested, and cited by footnote 2 of the Order. The court's order cites Rule 56 regarding no genuine issues of fact as to the desire and rights of litigant party to settle, yet does not make specific findings as to propriety of damage claim exclusions or causation designations by a Defendant party. The same claims were pleaded by Plaintiffs in their amended complaint. The order goes on to conclude as a matter of law that the COA has to power to settle the claim(s). Id at. 9.

The analysis is silent on alleged damage claims expressly cited by footnote (2) of the order as a condition, other than the settlement did not include said claims by request of the COA. Plaintiffs seek clarification of whether the court's ruling necessarily requires "extinguishment" (e.g., dismissal) as part of the court's ruling as condition deemed proper by the court. Plaintiffs seek clarification whether, in fact, the court's ruling is

expressly adopting as proper the business judgment of the COA board. The Plaintiffs would respectfully request court clarification of the issue, as follows, altering or amending its order:

- a) Finding that *extinguishment* and *dismissal* of common-element damage claims was an express condition of settlement of the COA deemed proper by the court, whether pursuant to Rule 56 or Rule 41(a)(2).
- b) Finding that Plaintiffs expressly filed claims within their suit implicating alleged damages cited by footnote (2) of the 1/23/2013 order, challenged extinguishment and/or dismissal of common-element damage claims as condition and not settlement funding to the COA.

2. Extinguishment and Dismissal of Plaintiff-Specific Common Element Claims for Damages.

The court's order dismisses *all* (sic) parties' claims for damages as to common-elements as a result of the COA party having settled those (sic) claims with various Defendants. *Id.* at 1. At the same time, the court's order expressly states that the Order *cannot* and *does not* affect Plaintiffs' rights to pursue the *personal* claims they assert in their Amended Complaint for direct damage *to themselves* or their *individual units*. *Id.* at 9, fn (7) and 11. The order does not expressly declare whether these personal damage claims specifically includes common-elements pertinent to Plaintiffs' homes. Plaintiff seek clarification by the court as to the application of the ruling specific to their homes, or whether the dismissal is an adjudication on the merits as to Plaintiffs' unit-specific common element damages.

The court directly references the Master Deed, section 5.1(a)-(g)¹ to define common elements. The list necessarily includes components which make up the building envelope of Plaintiffs' condominiums. Specifically, 5.1(c) and (d) reference structural components (*now presumably dismissed*) as to common elements inclusive of exterior walls, stone, foundations, floors and structural elements of the building noted by all experts as implicated as a source of water intrusion. The court does so while acknowledging joint tenant in common ownership and the duty of the COA to effect repairs. *Id.* at (3), fn 3. The Master Deed, in fact, cites undivided interest of *owners* in Common Elements. Section 5.3 Master Deed.

While the common elements cited by the court *literally envelope* Plaintiffs' residences, the Plaintiffs seek clarification whether the dismissal operates as an adjudication on the merits or as final judgment as to Plaintiffs' claims for unit-specific exterior common-element damage claims. Plaintiffs would request that the court revisit and alter or amend its order as follows:

- a) Finding that Plaintiffs' personal damage claims expressly include exterior structural common-element damage claims specific to their units as a condition of the granting of relief under the order.
 - b) Finding that Plaintiffs' personal claims for damage to their units expressly includes items omitted in footnote (2), Page (1) of the Order, inclusive of roof, foundation, gravel underlayment and exterior envelop claims pertinent to Plaintiffs' individual homes.
3. Restriction as to un-defined non-water intrusion structural damage at buildings (1) through (9) and omission of plaintiff residences not located within building (1) through (9).

¹ The court's order cites paragraph 3.1 (sic) of the Master Deed for definition as to common elements under which all parties' damage claims are dismissed, yet further references Section 5.1 to define precisely what the common elements are per 5.1(a)-(g), and 5.2.

The order rules that damage items are preserved relative to non-water intrusion claims of damages at building 1- 9. The order is silent on any finding that some Plaintiffs' homes are situate in locations *other than* buildings (1) through (9) and have alleged non-water intrusion structural damage. Four (4) of Plaintiffs' homes are situate upon the retaining wall perimeter of the development, wherein damage claims are *preserved* under the order as to any party. *Id.* at (1), fn 2. Summit Engineering testing performed for the COA did not test homes in areas other than buildings 1-9. Plaintiffs seek clarification by amended order of whether the court is attempting to extricate exterior common grounds (*e.g., land, landscape and retaining walls*) from unit-specific common elements defined in Section 5.1 of the Master Deed.

The order implicitly dismisses non-water intrusion structural damage claims to common-elements in Plaintiff condominium units not situate within buildings (1) through (9). Eight Plaintiff owners have residences which have exhibited damage that are not located within buildings 1 – 9. Plaintiffs would seek clarification of whether the court is ruling as a matter of law that Plaintiffs' damage claims as to common elements implicating their personal homes defined within Section 5.1 of the Master Deed is dismissed pursuant to SCRCP 56 or SCRCP 41(a)(2) and would request that the court alter or amend its order:

- a) That Plaintiffs' personal claims for damages *expressly include* common-element damages defined by Master Deed 5.1 (c) and (d) specific to their units not dismissed under order awarding settlement for cost of exterior envelope repair to *all* of the buildings covered by the order. *Id.* at 10, line 13.
- b) Alternatively, that the alleged damages preserved by way of reference to buildings 1 – 9 expressly includes alleged subsurface soil and gravel defects implicating the common elements personal to the plaintiffs' homes situated in this area of the development.

4. Joint Tenant in Common Ownership and Standing :

As to Plaintiffs' arguments in opposition to settlement condition seeking dismissal of common area damages, the court notes in *isolation* Plaintiffs' arguments as to first in time and legal estate ownership arguments. *Id* at. 3. The court acknowledges the imbroglio of claims where both have a legitimate interest in proper (emphasis supplied) resolution of jointly-held claim(s), as tug of war. *Id.* at 3. As noted above, however, Plaintiffs did not argue to challenge the COA receipt of settlement funds procured via mediated settlement which Plaintiffs respectfully assert is mischaracterized in the order.

Additionally, the court has acknowledged prior rulings of the court regarding standing and that the COA owns no common-elements. [As of 12/19/2013 this has not been disputed by the defendant COA]. While advanced separately in prior hearings before this court, at oral argument on December 19, 2012 Plaintiffs argued the combination of first in time and legal estate ownership precluded dismissal of common-element damage claims by a Defendant party that were brought first by Plaintiffs. Plaintiffs cited the case of Powers v. Fidelity & Deposit Co., S.C. 501, 186 S.E.2d (1936). [*e.g., he who has legal estate title and priority of time prevails.*]

While acknowledging that both are true, the court's order addresses separately these issues construing Plaintiff's argument as '*we were first to the courthouse*' while acknowledging the authority of Queens Grant and the recognition of COA's repair obligations. The court cites the potential liability of the Regime to non-plaintiff owners for any failure to seek recovery in instances involving alleged construction defects in common areas, yet fails to note that any such claims (other than Plaintiffs' own) have been filed to date and likewise fails to note the amalgamation of interests. Exhibit A.

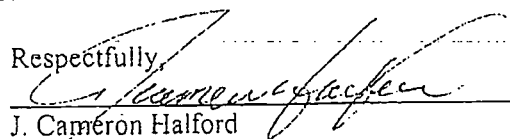
The court notes Plaintiffs' arguments that the COA has "failed to do equity" as not understood.¹ No specific findings are present within the order that the COA entity has, to date, failed to repair common-elements. Plaintiffs argued in their memorandum that subsequent to transition, and despite months of actual knowledge of wide spread water intrusion, the common elements remained unrepaired. Plaintiffs respectfully request that the court revisit the issue and alter or amend its Order:

- a) Finding that Plaintiffs' personal claims for relief are separate, apart, and inapposite to those of the COA and Plaintiffs are under no duty to pursue relief that would inure to the benefit of the SCVTC generally as they seek personal relief for damages to their homes.
- b) Finding or recognizing amalgamation existed vis-à-vis Fankhauser individually and the COA relative to the court's analysis using Queen's Grant, Exhibit A.

WHEREFORE, for the reasons set forth above Plaintiffs respectfully request that the court alter or amend its order granting partial summary judgment to the COA as to extinguishment of common-element claims as set forth above.

Dated this 4th day of February, 2013.

Respectfully,


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Attorneys for Epeon Communities, Inc. and Epeon Communities Franchising, Inc.

interests. That assertion is false. Regardless of the emotion that may get injected into our discussions, this remains my top priority.

Brock L. Fankhauser

President

Fankhauser Property Group, Inc. , an EPCON Communities Developer

300 East John Street, Suite 126

Matthews, NC 28105

704.844.8711 o

704.844.0188 f

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Juontonio Pinckney, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 Brock L. Fankhauser, et al.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-46-2326

ORDER

FILED-RECEIVED
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 YORK COUNTY, SC

The Court entered an Order on January 23, 2013, approving the Stonecrest Villas of Tega Cay Home Owners, Inc. (COA's) settlement of common-element exterior damage claims and dismissing all related claims for those elements of damages. On February 4, 2012, Plaintiffs filed a Motion for Relief from Judgment under Rule 60 and 59(e). The COA filed a response thereto.

Relief under Rule 60 is not appropriate. Rule 60 allows for relief from a final judgment when the moving party can show 1) mistake; inadvertence, excusable neglect, 2) newly discovered evidence, 3) fraud, 4) the judgment is void or 5) the judgment has been satisfied. Plaintiffs have not articulated any basis under Rule 60 to demonstrate they are entitled to relief. Plaintiffs do not argue for relief under any of the Rule 60 subsections nor have they even attempted to demonstrate how their arguments qualify for relief under Rule 60. Accordingly, Plaintiffs Rule 60 motion should be denied.

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 SC Court of Appeals

As to relief under Rule 59, a party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. Poch

EXHIBIT
 H


get all

v. Bayshore Concrete Products/South Carolina, Inc., 386 S.C. 13, 686 S.E.2d 689 (S.C. App. 2009).

Plaintiffs primarily question whether the Court's Order eliminates their claims as it relates to "common-elements pertinent to Plaintiffs' homes." The answer is the Court's Order does eliminate the Plaintiffs' ability to claim damages for the repair of the common-elements, regardless of whether the common-elements are "pertinent" to their respective units. The whole point of the settlement is to eliminate the possibility that Plaintiffs, or any other Association members for that matter, could seek to hold the Defendants responsible for the cost to repair the common-elements. The Plaintiffs are still free to pursue whatever damages they believe they have sustained to their unit or to themselves personally, but the Order precludes them from recovering the costs to repair any common-elements. Plaintiffs seem to present to the Court a hybrid consisting of what they seem to deem common elements exclusive to them. That is, Plaintiffs' position seems to be that there are common elements, limited common elements and personal common elements. The Court finds no support for this position.

Finally, as to the equity arguments Plaintiffs assert, the Court's Order addresses and disposes of those arguments. The Plaintiffs raise nothing new in their motion to amend the judgment. For these reasons, the Court denies Plaintiffs' Motion for Relief under Rule 60 SCRPC and Plaintiffs Motion to Alter or Amend. Order of January 23, 2013.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

February 22nd, 2013
York, South Carolina

#2

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Hon. John C. Hayes, III
Presiding Circuit Court Judge

Consolidated case no. 2010-CP-46-2326

Juontonio Pinckney, et al.....Appellants,

v.

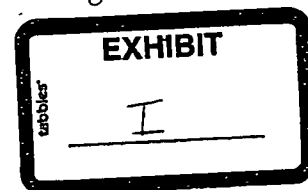
Epcon Communities, Inc.,
Epcon Communities Franchising, Inc.,
Brock L. Fankhauser, Fankhauser Property Group, Inc.,
Stonecrest Villas of Tega Cay, LLC,
And Stonecrest Villas of Tega Cay Owners'
Association, Inc.....Respondents

AFFIDAVIT OF BRETT DRESSLER

The undersigned, being first duly sworn, deposes and says:

1. My name is Brett Dressler. I am over the age of 18. I have personal knowledge of the facts contained in this affidavit. I have never been convicted of a felony or a crime of dishonesty.

2. On April 16, 2013, counsel for Appellants forwarded an email to me that included a prior communication to the Court Reporter at the Lower Court. (See Exhibit 1 attached hereto). The email contained a prior communication from the Court Reporter suggesting that Appellant's counsel received a transcript of the December 19, 2012 hearing on February 27, 2013. The December 19, 2012 is the hearing on the COA's motion for summary judgment, which is the hearing



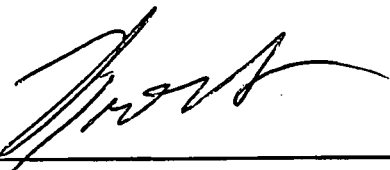
that produced the order from which Appellants have appealed.

3. On May 10, 2013, I confirmed with the Court Reporter that she hand delivered a copy of the transcript to counsel for Appellants on February 27, 2013.

4. The Court Reporter forwarded to my office by fax a copy of the order and invoice for same. (See Exhibit 2 attached to this affidavit). The hand-written notation on the request appeared on the document when it was faxed to my office. The hand-written notation is consistent with the Court Reporter's statement to me that the transcript was hand-delivered on February 27, 2013.

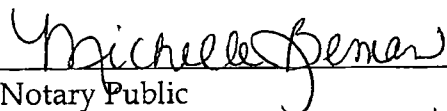
5. Mr. Halford also produced a copy of the transcript of the hearing on March 15, 2013. (See Exhibit 3 attached to this affidavit).

This the 10 day of May, 2013



Brett Dressler

Sworn to and subscribed before me,
This the 10th day of May, 2013.



Notary Public
My Commission Expires: 3/21/15

Brett Dressler

From: Cameron Halford <cam@fortmilllaw.com>
Sent: Tuesday, April 16, 2013 11:42 AM
To: 'Nelson, Wanda S.'
Cc: Brett Dressler; 'Curtis Dowling'; 'Graham P. Powell'; 'Mike Wilkes'; bcranshaw@griercoxandcranshaw.com
Subject: RE: Pinckney v. Fankhouser December 19, 2912 hearing
Attachments: transcript request.pdf

Importance: High

Mrs. Nelson:

I am requesting a transcript of the March 19 2013 hearing before Judge Hayes. Please see attached. Thank you.

J. Cameron Halford
cc: Curtis Dowling
cc: Brett Dressler
cc: Graham Powell
Cc: Mike Wilkes
Cc: Brad Cranshaw

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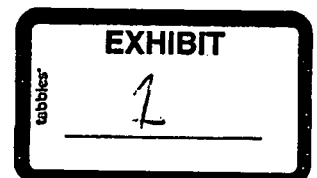
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-----Original Message-----

From: Nelson, Wanda S. [<mailto:WNelson@sccourts.org>]
Sent: Wednesday, February 27, 2013 17:32
To: cam@fortmilllaw.com
Subject: Pinckney v. Fankhouser December 19, 2912 hearing

Mr. Halford: Your transcript is finished.
Will forward via USPO ASAP.
Wanda

Wanda Nelson, CVR-M



Official Court Reporter
16th Judicial Circuit
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803-448-1362 (Cell)
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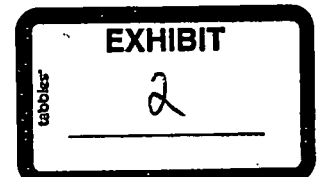
SC Court of Appeals

Of:

From: Wanda Nelson, Sixteenth Judicial Circuit Court Reporter
Client/Matter: ~~Fax ID Number~~ TRANSCRIPT Request / INVOICE
Date: May 10, 2013

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Cameron Halford, LLC ^
Matthew R. Niemiec, LLC
John Freeman, LLC

January 9, 2013

VIA EMAIL DELIVERY

Wanda Nelson, CVR-M
Official Court Reporter
6th Judicial Circuit
Post Office Box 749
York, South Carolina 29745

Re: Case No. 2010-CP-46-2326 Pinckney v. Epcon, et al.

Dear Mrs. Nelson:

Thank you for your reply email of 1/7/2013. Pursuant to that request, I am requesting a copy of the transcript of the hearing heard before Judge Hayes in the above case on December 9, 2012. I am happy to forward payment in advance if requested. Please advise. Thank you.

With kind regards, I am

Sincerely,

S/J. Cameron Halford

J. Cameron Halford

CH:krb

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 Case Number: Case No.: 2010-CP-46-02326
 Date of Hearing: 19-Dec-12

Date: 27-Feb-13

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Brett Dressler

From: Cam Halford <Cam@fortmilllaw.com>
Sent: Friday, May 10, 2013 2:36 PM
To: Brett Dressler
Subject: FW: Pinckney v Fankhauser Transcript of Record Hearing Date December 19, 2012
Attachments: Kristie Williams.vcf

In Answer to your question, we distributed it to all counsel upon receipt (including you) on 3/15/2013. If you don't have a copy I don't mind sending it, or you can download it from our FTP server. Can I ask what the purpose of your question is as to when I have received it ?

Kind regards,

Cameron

From: Kristie Williams
Sent: Friday, May 10, 2013 14:29
To: Cam Halford
Subject: FW: Pinckney v Fankhauser Transcript of Record Hearing Date December 19, 2012

From: Kristie Williams [<mailto:kwilliams@fortmilllaw.com>]
Sent: Friday, March 15, 2013 10:27 AM
To: 'Alison D. Watkins'; 'Bradford W. Cranshaw'; 'Brett Dressler'; 'Brian Edwards'; 'Christi P. Cox'; 'Christy Mahon'; 'Cranshaw Paralegal'; 'Curtis Dowling'; 'David Cleveland'; 'Derham Cole'; 'ggonzalez'; 'Graham P. Powell'; 'Leigh Eldada'; 'Lindsey Demirjian'; 'Melissa Wilkes'; 'Paul M. Newell II'; 'Payton D. Hoover'; 'Sarah Wetmore'; 'Stephanie H. Burton'; 'Thomas Chase'; 'Tom Dougall'; 'Tracy Vann'; 'Veronica Stafford (Hoover's Paralegal)'; 'Wendy Brewer'
Cc: 'DPayne@GrierCoxandCranshaw.com'
Subject: Pinckney v Fankhauser Transcript of Record Hearing Date December 19, 2012

Hello Counsel:

Per Mr. Halford, please find a copy of the Transcript of Record for the December 19, 2012 hearing on the FTP server in the Transcript folder.

FTP Server

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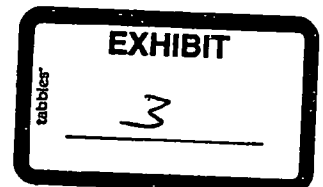
user name:stonecrest

password: responses

Sincerely,

Kristie Williams
Paralegal to J. Cameron Halford
Halford Niemiec & Freeman, L.L.P.
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