

and answered the same on 8-9-2019.

I submitted a Demand to Produce and Interrogatories returnable Jan 21, 2020.

On 11-4-2020 I submitted an answer and cross claim against Gerald and Vivian Wayne.

On 11-4-2021 I submitted a Motion for Summary Judgment and a Motion for Default against Gerald and Vivian Wayne.

After a hearing in Dec of 2021 the court granted the Wayne's Moton to Dismiss my Motion for Default Judgment based on insufficient service (January of 2022). The Wayne's appeared by Counsel, Robert Brunson, Nelson, Mullins, Riley & Scarborough, LLP, Charleston, SC.

In Feb of 2022 the court granted partial Summary Judgment and in March of 2022 denied the plaintiffs Motion for Reconsideration, the HOA appeals the ruling granting Partial Summary Judgment.

2. That the Court deny Plaintiff counsels application for a motion to be relieved as Counsel.

The Motion to be relieved as counsel was served on Vivian Wayne who is purportedly the President of the HOA.

The HOA, for lack of a better term, is defunct. I am a paid member of the "HOA". The last HOA meeting was in the fall of 2021.

At that meeting, no person or persons were nominated as an officer or as a board

member, and no person or persons have been elected as an officer or as a board member since that date, nor has any meeting been held since that last meeting.

Ms. Wayne was present at the last meeting in 2021 and volunteered to solicit persons to run for the elected officer and board member positions. The former officers and board members terms expired on January 1, 2022.

Thereafter Ms. Wayne and Ms. McTeer solicited funds from the current membership for purposes of the current appeal.

In writing, I objected and posted my objections on the HOA social media page, by letter dated April 21, 2022, a copy of which is attached, which was summarily removed by the Admin of the page, Ms. McTeer.

Ms. Wayne has no authority to act on behalf of the HOA nor is she president of the HOA. As of this date there is no President or any officers.

Moreover, Vivian Wayne is the same Wayne whose appearance I sought to compel by bringing a Cross Claim against her and her husband Gerald Wayne as to include them in the action based upon the prior court's determination that all adjacent landowners to the beach be included in the suit. Earlier in the proceeding, the Court had directed, based on my application, that all property owners adjacent to contiguous to the property the subject of this action be included in the Action, approximately 46 properties, including the Wayne's, by order dated 9-25-2020.

When I determined, prior to a court ordered conference, that Mr. and Mrs. Wayne were

not served as directed by the court I sought to include them. I corresponded with the Court as to their absence. The Court directed Mr. Kuhn to add the Waynes to the action. He failed to do so. (See letter and Order attached)

Thereafter, I submitted the aforementioned Cross Claim.

This matter should be returned to the local court to determine the legal viability of the Appellant and Ms. Waynes representative capacity, if any, (whether or not this Court grants Appellants counsels, Mr. Kuhn, Motion to be Relieved, based upon his serious medical condition. and hopefully, speedy recovery.)

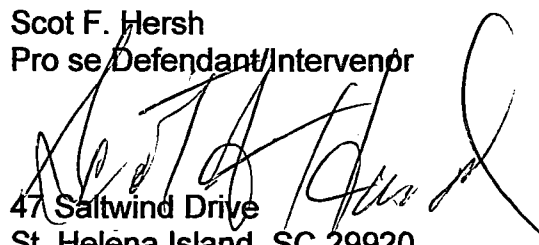
In alternative, this Court conduct a hearing as to the propriety of the Appellants Application, given there is no person with legal authority to determine the issue of whether the Appeal should be pursued, and whether Mr. Kuhn's service on Ms. Wayne is legally sufficient.

3. To be permitted to submit a Brief and a Cross Appeal as a Respondent Pro Se/Intervenor, and that I be given 30 days to complete same.

Thank you for your consideration in this matter.

Respectfully,

Scot F. Hersh  
Pro se Defendant/Intervenor

  
47 Saltwind Drive  
St. Helena Island, SC 29920  
(914) 557 2353  
sfhesq25@aol.com

CC:

HON. MARVIN H. DUKES, III  
Beaufort County Court  
102 Ribault Road  
Second Floor  
Beaufort, SC 29902

J. EMORY SMITH, JR.  
Office of Attorney General  
PO Box 11549  
Columbia, SC 29211

H. FRED KUHN, JR.  
1501 North Street  
PO Drawer 507  
Beaufort, SC29901

MARY DUNCAN SHAHID  
200 King Street, Suite 400  
Charleston, SC 29401

RALPH V. BALDWIN, JR.  
PO Box 238  
1 Professional Drive  
Port Royal, SC 29935

ROBERT H. BRUNSON  
Liberty Center  
151 Meeting Street  
Suite 600  
Charleston, SC 29401

GERALD WAYNE & VIVIAN WAYNE  
62 Saltwind Drive  
St. Helena Island, SC 29920



PROPERTY DESCRIBED IN THE COMPLAINT )  
 HEREIN THROUGH THE ABOVE )  
 DEFENDANTS OR ANY OTHER SOURCE )  
 BEING DESIGNATED COLLECTIVELY AS )  
 JOHN DOE AND MARY ROE INCLUDNG ALL )  
 PERSONS WHO MAY BE DECEASED, )  
 MINORS, PERSONS IN THE ARMED FORCES )  
 OF THE UNITED STATES OF AMERICA, )  
 INSANE OR INCOMPETENT PERSONS, AND )  
 ALL OTHER PERSONS UNDER ANY OTHER )  
 DISABILITY WHO MIGHT HAVE OR CLAIM )  
 TO HAVE ANY RIGHT TITLE OR INTEREST )  
 IN OR LIEN UPON THE REAL PROPERTY )  
 DESCRIBED IN THE COMPLAINT. )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

A conference call and hearing was convened on this matter on September 17, 2020. Present and participating in the hearing was H. Fred Kuhn, Jr., Esquire, attorney for the Plaintiff Coffin Point Plantation Property Owners Association, Inc., J. Emory Smith, Jr., Esquire, attorney for the Defendant State of South Carolina, Mary Duncan Shahid, Esquire, attorney for the Defendants Jill C. Stridebinger, Maureen Westmoreland Dodgen, Jill Urtz, Lori Van Rossem, Michelle R. Roselle, and Dianne Replogle, and Scott F. Hersh, Esquire, Defendant. The conference call was convened as a result of a letter written to the Court by the Defendant Hersch dated September 12, 2020 asserting that certain individuals who are currently not named parties to this lawsuit are indispensable parties necessary for its resolution. I have elected to treat this letter as a motion requesting the relief stated therein.

Although the non-moving parties did not agree that the subject individuals were indispensable parties and this Court makes no such finding, no party wanted to run the risk of separate future actions. Having heard arguments about the matter including the concern that the addition of new parties at this time would necessarily delay the September 28 trial of this action,

this Court believes that the wiser course is to add these additional parties and continue the case to ensure that all parties that may have an interest in this matter are brought before the Court and avoid possible separate actions in the future.

IT IS, THEREFORE, ORDERED:

a. That the Plaintiff shall within ten (10) days of the date of this Order amend its Complaint to add the additional parties requested by the Defendant Hersh, as well as any other parties deemed necessary to a final resolution of this matter;

b. Any party who has already filed an Answer to the Complaint may stand on his, her or its Answer and need not file a new Answer to the Amended Complaint if that party so chooses;

c. The trial of this matter scheduled for September 28, 2020 shall be and is hereby continued; and

d. A status conference shall be held in this matter for the purpose of scheduling a new trial date once the additional Defendants have either answered or their time to answer has elapsed.

AND IT IS SO ORDERED.

[Electronic signature of Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge,  
on last page]

Beaufort, South Carolina



**Beaufort Common Pleas**

**Case Caption:** Coffin Point Plantation Homeowners Association Inc VS South  
Carolina State Of , defendant, et al  
**Case Number:** 2018CP0702109  
**Type:** Order/Continuance

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-09-25 14:41:21 page 4 of 4

Hon. Marvin H. Dukes III  
Master and Equity for Beaufort County  
102 Ribault Rd  
Second Floor  
Beaufort SC 29902

J. Emory Smith, esq.  
Office of the Attorney General of South Carolina  
PO Box 11549  
Columbia SC 29211-1549

Mary Duncan Shahib, esq.  
200 King St. Suite 400  
Charleston SC 29401

H. Fred Kuhn, Jr esq.  
1501 North St.  
PO Drawer 507  
Beaufort SC 29901-0507

Ralph V. Baldwin, Jr esq.  
1 Professional Dr.  
Port Royal SC 29935

Gerald L Wayne and Vivian M Wayne  
62 Saltwind Dr.  
Saint Helena Island SC 29920

Lorrie Gaskin Germann and Grant Martin Germann  
54 Saltwind Dr  
Saint Helena Island SC 29920

Dear Sirs/Madam,

Re: Case #2018-CP-07-02109 Coffin Point Homeowners Inc Vs The State of South Carolina et al

It has come to my attention in reviewing the documents, including those provided by Mr. Kuhn in lieu of formal Discovery, that indispensable parties have failed to be included in the list of individuals whose property abuts and adjoins the subject property of this action.

The indispensable parties are Gerald L Wayne and Vivian M Wayne as Joint Tenants with Right of Survivorship who own and live at 62, Saltwind Drive which is delineated as tax ID #0152 on the current gis tax map and ID#152 on the 1970 revised tax map. Gerald L Wayne and Vivian M Wayne are also the owners of tax ID#000 on the current gis tax map which comprises over 120 acres of waterfront property which also abuts the subject property of this action.

Additional indispensable parties are Lorrie Gaskin Germann and Grant Martin Germann, who own tax id#0509 at 54 Saltwind Drive who purchased the property during the pendency of this action from their

**RECEIVED**

AUG 29 2022

SC Court of Appeals

predecessor the McCort's, who were not initially named in the action or the action as amended but who's property abuts and adjoins the subject property of this action.

Please advise. Absent the aforementioned parties' appearance in this action I will seek an adjournment from the court to allow for their inclusion in the matter.

Perhaps it would be in the interest of judicial economy that Mr. Kuhn's office forwards copies of the amended complaint to these individuals by certified mail return receipt requested.

Gerald Wayne was an officer on the HOA Board of Directors at the time of the institution of the action and Vivian Wayne is currently an officer on the HOA Board of Directors having succeeded Gerald and voted in favor of the HOA taking title to the subject matter of this action from the McTeer heirs.

Thank you for your consideration,  
Scot Hersh  
Defendant Pro Se

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

COFFIN POINT PLANTATION )  
HOMEOWNERS ASSOCIATION, )  
INC., )

Civil Action No. 2018-CP-07-02109

Plaintiff, )

**ORDER GRANTING  
GERALD L. WAYNE AND VIVIAN  
M. WAYNE'S MOTION TO  
DISMISS FOR INSUFFICIENT  
PROCESS AND INSUFFICIENT  
SERVICE OF PROCESS**

vs. )

THE STATE OF SOUTH CAROLINA, )  
ET AL., )

Defendants, )

**RECEIVED**

AUG 29 2022

**SC Court of Appeals**

This matter comes before the Court on the Motion to Dismiss for Insufficient Process and Insufficient Service of Process by the Defendants Gerald L. Wayne and Vivian M. Wayne ("the Waynes") filed on December 6, 2021. Having considered the motion, the parties' filings and papers, the record in this case, and the arguments of the parties at the hearing in this action on December 22, 2021, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Waynes were named as a party in this case for the first time in the Second Amended Complaint, which was filed with the Court on or around October 5, 2020.
2. There is no evidence that Plaintiff ever properly served the Waynes with the Second Amended Complaint. As a result, this action never commenced against the Waynes. *See* Rules 3(a), 4, and 5(d), SCRCP; *see also Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 850 (1996) (citing Rule 3(a), SCRCP, and recognizing that circuit court acquires personal jurisdiction over the parties only once the action is commenced by the filing and *service* of the summons and complaint). Because there exists no evidence or proof of service of the Second Amended

Complaint upon the Waynes that is proper and valid under Rule 4, SCRPC, the Court dismisses without prejudice the Second Amended Complaint as to the Waynes under Rule 12(b)(5). *See* Rule 5(d), SCRPC (“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party.”); *Unisun Ins. v. Hawkins*, 342 S.C. 537, 543, 537 S.E.2d 559, 562 (Ct. App. 2000) (stating that Rule 12(b)(5) “is the proper vehicle for challenging both “the mode of delivery or the *lack of delivery* of the summons and complaint”).

3. On or around November 4, 2020, pro se Defendant Scot F. Hersh (“Hersh”) filed his Answer to the Second Amended Complaint with Cross Claim against the Waynes (hereinafter, “Hersh’s Cross Claim”). The documents filed with the Court do not contain any proof of service or any filing indicating the Waynes were ever properly served with Hersh’s Cross Claim. Moreover, Hersh’s Cross Claim does not contain a summons as required by Rules 3 and 4, SCRPC. As a result, there is no evidence that the Waynes ever received a summons that, among other things, would have stated “the time within which these rules require the defendant to appear and defend,” and would have notified them that in case of their “failure to do so judgment by default [would] be rendered against [them] for the relief demanded in” Hersh’s Cross Claim, as required by Rule 4(b), SCRPC. Thus, the Court dismisses without prejudice Hersh’s Cross Claim as to the Waynes under Rules 12(b)(4) and 12(b)(5), SCRPC. *See Hawkins*, 342 S.C. at 543, 537 S.E.2d at 562 (Ct. App. 2000).

4. On November 5, 2021, a copy of the document filed by Hersh with the Court entitled “Affidavit in Support of Motion for Summary Judgment and Default Judgment” (hereinafter, “Hersh’s Motion”) was left by someone on the doormat in front of the Waynes’ residence. This attempt at service of Hersh’s Motion does not constitute proper and valid service

under Rule 4, SCRCP. Further, any such attempted service of Hersh's Motion does not constitute proper and valid service upon the Waynes of the Second Amended Complaint or Hersh's Cross Claim because it does not satisfy the requirements of Rule 4, SCRCP.

5. For the reasons stated above, the Court concludes that valid and sufficient service of the Second Amended Complaint and of Hersh's Cross Claim was not effected upon the Waynes, and the Court grants without prejudice the Waynes' Motion to Dismiss for Insufficient Process and Insufficient Service of Process pursuant to Rules 5(d), 12(b)(4), and 12(b)(5), SCRCP.

6. Because the Court is granting this Motion to Dismiss, Hersh's Motion is denied as moot as to the Waynes.

**AND IT IS SO ORDERED.**

---

The Honorable Marvin H. Dukes, III  
Master-in-Equity for Beaufort County

December 28, 2021  
Beaufort, South Carolina



**Beaufort Common Pleas**

**Case Caption:** Coffin Point Plantation Homeowners Association Inc VS South Carolina State Of , defendant, et al  
**Case Number:** 2018CP0702109  
**Type:** Order/Dismissal

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-01-02 13:25:52 page 4 of 4

**SCOT F. HERSH  
47 SALTWIND DRIVE  
ST. HELENA ISLAND, SC 29920  
[sfhesq25@aol.com](mailto:sfhesq25@aol.com)**

April 21, 2022

Dear Sirs/Madams/Residents/Property Owners of Coffin Point Plantation Subdivision:

It has come to my attention that members of CPPHOA are soliciting funds to appeal Judge Duke's decision that the beach abutting Coffin Point Plantation is for the benefit of the public and the HOA cannot exclude others from its use.

The Court, quoting state law 48-39-250 subdivision 8 "It is in the States best interest to protect and promote increased public access to South Carolina beaches for out of state tourists and South Carolina residents alike."

The Court's conclusion is consistent with the public trust doctrine, i.e., any use of tidelands beaches must be to the public benefit.

For an excellent overview of the concept, I encourage those so inclined to read: *Tidelands and the Public Trust: An Application for South Carolina* by Bradford W. Wyche.

The solicitation of funds for the Appeal, I believe, is misguided and improper in two regards.

1. The HOA

The HOA is, at best, in legal limbo and at worst, defunct or currently a legal nullity.

It is my understanding that the HOA currently has NO duly elected officers or board members. Therefore, the solicitation of funds on behalf of the HOA is unauthorized by its members.

Absent a governing board and officers there is no one legally authorized to act on behalf of the HOA.

Moreover, no one has been authorized to engage an

attorney to file an Appeal on behalf of the HOA.

Any person who receives funds on behalf of the HOA is not legally authorized to do so, nor are they a legally recognized signatory on the HOA account and therefore cannot endorse checks to deposit any funds received, nor are they authorized to negotiate checks on behalf of the HOA.

Neither Ms. McTeer nor Ms. Wayne are duly elected representatives of the HOA, nor are they authorized to act on behalf of the HOA in any capacity.

Ms. Wayne at the last HOA meeting was authorized by the membership to solicit individuals to volunteer to become Officers or Directors – nothing more.

## 2. THE APPEAL

Ms. McTeer in her email references an appeal to the State Supreme Court.

Subsequently Ms. Wayne declares that an Appeal has been filed and solicits funds asking, “please donate if you haven’t”.

Both representations are erroneous, the source of which begs either legal naiveté, disinformation, or worse.

By letter dated April 12, 2022, I received a copy of a Notice Of Appeal from the HOA attorney, Fred Kuhn. A Notice of Appeal is not an Appeal. No Appeal has been filed.

The first step of an Appeal is to file a Notice of Appeal within 30 days of Judge Dukes Judgment and Decision. That has been completed.

Thereafter, I believe within 30 days of its filing the Appeal must be perfected by the filing of a legal brief, and then the opposing party must file a brief, and then final briefs must be submitted by both parties.

The court, which is the Court of Appeals, not the State Supreme Court, reviews the same, and thereafter determines whether they want to hear oral argument from the parties with respect to the written submissions. Depending on whether oral argument is requested or not, oral argument is heard in Columbia and thereafter a decision is made.

The process to appeal a lower court case to the Court of Appeals is very formalistic, expensive and time consuming. Ms. McTeer is soliciting \$25,000 for the appeal alone. I assume she is speaking on behalf of the HOA with its attorney.

Given the Court in our case has not taken testimony nor has it received evidence, at best in my opinion, the best outcome for the HOA would be that the court would find error in Judge Duke's decision and return the case to his court for a trial, in essence, back to square 1.

If the court decides that Judge Dukes decision was correct, Judge Dukes decision remains the law of the case, and the case would be returned to Judge Dukes for final determination of any outstanding issues.

I urge you to determine the validity of my representation by googling "appellate process in South Carolina", if you have any doubts.

It is my fear that absent a viable HOA we are in jeopardy of losing the control over those properties/roads and private beach accesses to either the State {ie the Public} or a private entity.

I would suggest that we have an emergency meeting of the residents of Coffin Point to democratically determine the best course of action, and whether to finance an appeal and if successful, subsequent trial given the current state of the HOA.

With respect to the perfection of the Appeal the brief of the HOA is due 30 days from the filing of the Notice of Appeal. Absent that, there is no Appeal and the matter/Appeal will be dismissed unless an extension of time is granted.

On a personal note, although Ms. McTeer's solicitation indicates that Ms. Wayne is now running the HOA, she is not doing so legally. And I do not believe she is an appropriately disinterested party. Her actions are self-serving, in that she verily believes that she can and does exclude all people, including residents of Coffin Point, from that portion of the beach that abuts her house, which is in contravention of the Court's decision. declaring that all beach, the subject of the 1891 conveyance from the State to Lt. Lyman, is for the enjoyment of the public.

It is my opinion that we should agree or disagree but

do it democratically and not be subject to an autocratic fiefdom which embodies a "NIMBY" mentality. Furthermore, I would not contribute funds without reviewing a copy of the Retainer delineating your future financial obligations to the attorney.

Respectfully,

SCOT HERSH  
Your Neighbor

47 SALTWIND DR.  
ST. HELENA ISLAND, SC  
29920



U.S. POSTAGE PAID  
FORM 3849  
SURFSIDE BEACH, SC  
AUG 25 22  
AMOUNT  
**\$1.92**  
R25035100228

HON. JENNY ABBOTT KITCHENS  
CLERK, S.C. COURT OF APPEALS  
PO Box 11629  
COLUMBIA, SC

29211

**RECEIVED**  
AUG 29 2022  
SC Court of Appeals