

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

**RECEIVED**

SEP 06 2022

**SC Court of Appeals**

Honorable Marvin H. Dukes, III, Master In Equity and Special Circuit Court Judge

---

APPELLATE CASE NO.: 2022-000475

---

Coffin Point Plantation Homeowners Association, Inc.

Appellants,

vs.

The State of South Carolina, Estate of Charles H. Lyman, The St. Helena Company, Its Successors or Assigns, The Estate of J.D. Cameron a/k/a J. Donald Cameron, The Estate of J.E. McTeer, Wilma Clark, Jeanine Skok, Lawrence Casler, Dean Morrissey, Carol Morrissey, Ralph Netherland, Gloria Netherland, Special Trust of William B. Fahrner, Mark Heles, Beverly Heles, David Smith, Lynn Smith, LiLi, LLC, Revocable Living Trust of Thomas Walterhoefer, Ceclily Deegan McMillan, Steven Teets, Lucinda Teets, Beverly Boulware, Russell Waldon, Nicolette Waldon, David Shaffer, Delora Cook, Gerald Hartwig, Carol Hartwig, Paulette Brown, Benjamin Couch, Thomas S. Clark Family Living Trust, Euniceteen Diggs, Janet Kathleen Reynolds Trust, Slade Family Revocable Trust, David C. Strother, Andrew Seward, Ashley Heath Madilon, Arnold Hollis, Lillian Hollis, Jennifer Allen, Zia As Exchange Company, LLC, Qualified Intermediary for Barbara J. Bailey Limited Partnership, Travis Washington, Janet Embly, Trustee and Individually, William S. Embly, Trustee and Individually, Scott Simmons Omari Trust, Mary Hudson, Rachelle Carolynne Owens Revocable Trust, Gerald Hartwig, Carol Hartwig, Gerald L. Wayne, Vivian M. Wayne, Lorrie Gaskin Germann, Grant Martin Germann, Gregory J. Giardina, Melissa Basenburg, Mark M. Hazard, Micah L. Myers, Jennifer J. Myers, John Joseph Edwards, Nancy Jean Edwards, Preston Ventures, LLC, Donald Lunardini, Kristina Barbara Moore Lunaradini, Melissa Uhlman Revocable Trust and All Other Persons Known or Unknown Having Any Interest, Title, Estate or Interest In Or Lien Upon the Real Property Described in the

Complaint Herein Through the Above Defendants or Any Other Source Being Designated Collectively As John Doe and Mary Roe Including 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.

Respondents.

---

RETURN OF THE APPELLANT COFFIN POINT HOMEOWNERS ASSOCIATION, INC.  
TO THE MOTION OF THE STATE OF SOUTH CAROLINA TO STRIKE APPELLANT'S  
INITIAL BRIEF AND DESIGNATION AND REQUEST TO STAY BRIEFING

---

The State of South Carolina has moved for this Court to strike the Appellant's Initial Brief and Designation of Matter for the Record. The State contends that the Brief and Designation violate the Appellate Court Rules by including references to documents not presented to the lower court Judge as to the Orders under appeal.

This Return is respectfully filed in opposition to said Motion.

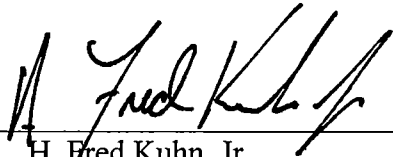
The State's motion is based upon the ground that the copy of the Circuit Court Public Index for this case, attached to the motion, does not contain a reference to the contested documents. The criteria for including a document in the Record on Appeal, however, is not whether the document is shown on the Public Index, but rather, whether the document was "presented to the lower court." Rule 210(c), SCRAP. All of the documents contested by the State in its Motion were presented to the lower court prior to its ruling. This is undeniably clear by the fact that two (2) of the contested documents which the State contends were not presented to the lower court, the 1891 Grant and the Plat listed as items 34 and 35 on the Appellant's Designation of Matter for the Record, are expressly discussed and referenced by the lower court in the Order which is the subject of this appeal, which is admitted by the State in its motion.

In short, the contested documents were obviously presented to the Trial Judge since he discusses some of them at length in his Order. It is respectfully submitted that the documents do not appear on the Public Index simply as a result of miscommunication somewhere between the desk of the Trial Judge and the desk of the Clerk responsible for posting them on the Public Index.

Additionally, if there is a dispute as to the proper contents of the Record on Appeal, and what was and what was not presented to the Trial Court, the proper motion would be a Motion to Remand to the Trial Judge for the purpose of Settling the Record on Appeal, as opposed to a Motion to Strike. *Cf. Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986); *Peoples National Bank v. Manos Brothers, Inc.*, 226 S.C. 257, 84 S.E.2d 857 (1954).

Respectfully submitted,

MOSS & KUHN, P.A.

By:   
H. Fred Kuhn, Jr.  
1501 North Street  
Post Office Drawer 507  
Beaufort, South Carolina 29901  
(843)524-3373  
(843)524-1302- FX

Beaufort, South Carolina

September 2, 2022

*Attorneys for Appellant*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master In Equity and Special Circuit Court Judge

---

APPELLATE CASE NO.: 2022-000475

---

Coffin Point Plantation Homeowners Association, Inc.,

Appellant

v.

State of South Carolina

Respondents.

---

CERTIFICATE OF SERVICE

---

The undersigned certifies that the **Return of the Appellant Coffin Point Homeowners Association, Inc. to the Motion of the State of South Carolina to Strike Appellant's Initial Brief and Designation and Request to Stay Briefing** to which this certificate is affixed, was served upon the parties to this action by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the following:

Alan Wilson, Attorney General  
Robert D. Cook, Solicitor General  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

Mary D. Shahid, Esquire  
Angelica M. Colwell, Esquire  
Nexsen Pruet, LLC  
Post Office Box 486  
Charleston, South Carolina 29402

**RECEIVED**

SEP 06 2022

SC Court of Appeals

Ralph V. Baldwin, Jr., Esquire  
Post Office Box 238  
Port Royal, South Carolina 29935

Scot F. Hersh, Pro Se  
47 Saldwind Drive  
St. Helena Island, South Carolina 29920

Ms. Wilma Clark  
10 Saltwind Drive  
St. Helena Island, South Carolina 29920

Lawrence Casler  
Jeanine Skok  
14 Saltwind Drive  
St. Helena Island, South Carolina 29920

Dean Morrissey and Carol Morrissey  
36 Saltwind Drive  
St. Helena Island, South Carolina 29920

Ralph Netherland and Gloria Netherland  
28 Saltwind Drive  
St. Helena Island, South Carolina 29920

Special Trust of William B. Fahrner  
48 Saltwind Drive  
St. Helena Island, South Carolina 29920

Mark Heles and Beverly Heles  
18 Saltwind Drive  
St. Helena Island, South Carolina 29920

David Smith and Lynn Smith  
601 Old Dibble Road  
Aiken, South Carolina 29803

Mr. Tom McDonald  
Registered Agent for LiLi, LLC  
30-C Hunter Road  
Hilton Head Island, South Carolina 29926

Revocable Living Trust of Thomas J. Walterhoefer  
32 Saltwind Drive  
St. Helena Island, South Carolina 29920

Cecily Deegan McMillan  
67 McTeer Drive  
St. Helena Island, South Carolina 29920  
Steven Teets and Lucinda Teets  
79 McTeer Drive  
St. Helena Island, South Carolina 29920

Beverly J. Boulware  
87 McTeer Drive  
St. Helena Island, South Carolina 29920

Russell Waldon and Nicolette Waldon  
814 Lullwater Road  
Atlanta, Georgia 30307

David Shaffer  
Delora Cook  
97 McTeer Drive  
St. Helena Island, South Carolina 29920

Gerald Hartwig and Carol Hartwig  
101 McTeer Drive  
St. Helena Island, South Carolina 29920

Benjamin Couch  
Paulette Brown  
103 McTeer Drive  
St. Helena Island, South Carolina 29920

Thomas S. Clark Family Living Trust  
3911 NE 34<sup>th</sup> Avenue  
Ft. Lauderdale, Florida 33308

Euniceteen Diggs  
3005 Muirfeld Avenue  
Fayetteville, North Carolina 28306

Janet Kathleen Reynolds Trust  
972 N. Shem Drive  
Mt. Pleasant, South Carolina 29464

Slade Family Revocable Trust  
2345 Island Trail  
Chapin, South Carolina 29036

David C. Strother  
147 Church Road  
Batesburg, South Carolina 29006

Andrew Seward  
189 McTeer Drive  
St. Helena Island, South Carolina 29920

Ashley Heath Madilon  
550 Chubb Road SW  
Lindale, Georgia 30147

Arnold Hollis and Lillian Hollis  
201 McTeer Drive  
St. Helena Island, South Carolina 29920

Jennifer Allen  
Post Office Box 16451  
Savannah, Georgia 31416

ZIA Exchange Company, LLC  
Qualified Intermediary for The Barbara  
J. Bailey Limited Partnership  
705 Washington Street  
Beaufort, South Carolina 29902

Travis Washington  
81 McTeer Drive  
St. Helena Island, South Carolina 29920

William S. Embly, Trustee and Individually  
Janet Embly Trustee and Individually  
151 McTeer Drive  
St. Helena Island, South Carolina 29920

Scott Simmons Omari Trust  
1050 Fieldwoon Lane  
Winston-Salem, North Carolina 27106

Mary Hudson  
134 Burdick Hill Road  
Ithaca, New York 14850

Rachelle Carolynne Owens Revocable Trust  
609 Country Club Road  
Pasadena Park, Missouri 63121

Gerald L. Wayne and Vivian M. Wayne  
62 Saltwind Drive  
St. Helena Island, South Carolina 29920

Grant M. Germann and Lorrie G. Germann  
54 Saltwind Drive  
St. Helena Island, South Carolina 29920

Gregory L. Giardina and Melissa C. Giardina  
5762 Mountain View Avenue  
Yorba Linda, California 92886

Melissa Basenburg  
5762 Mountain View Avenue  
Yorba Linda, California 92886

Mark M. Hazard and Shelley L. Hazard  
5114 Erbs Bridge Road  
Mechanicsburg, Pennsylvania 17050

Micah L. Meyers and Jennifer J. Meyers  
101 McTeer Drive  
St. Helena Island, South Carolina 29920

James J. Edwards and Nancy J. Edwards  
167 McTeer Drive  
St. Helena Island, South Carolina 29920

Preston Ventures, LLC  
1959 N. Peace Heaven Road #372  
Winston-Salem, North Carolina 27106

Donald Lunardini and Kristina Lunardini  
4 Saltwind Drive  
St. Helena Island, South Carolina 29920

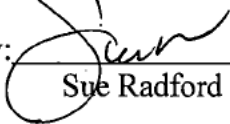
Melissa Uhlman Revocable Trust  
81 Sea Pines Drive  
St. Helena Island, South Carolina 29920

in a post office or official depository under the exclusive care and custody of the United States

Postal Service on September 2, 2022.

MOSS & KUHN, P.A.

By:

A handwritten signature in black ink, appearing to read "Sue Radford", is written over a horizontal line. The signature is cursive and somewhat stylized.

Sue Radford

**MOSS & KUHN, P.A.**  
ATTORNEYS AT LAW

JAMES H. MOSS  
jim@mossandkuhn.com

H. FRED KUHN, JR.  
fred@mossandkuhn.com

September 2, 2022

**RECEIVED**

SEP 06 2022

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Coffin Point Plantation Homeowners Association, Inc. v. The State of South Carolina, et al.  
Appellate Case No.: 2022-000475

Dear Mrs. Kitchings:

Enclosed please find the Return of the Appellant Coffin Point Homeowners Association, Inc. to the Motion of the State of South Carolina to Strike Appellant's Initial Brief and Designation and Request to Stay Briefing and Certificate of Service.

With kindest regards, I am

Very truly yours,

MOSS & KUHN, P.A.



H. Fred Kuhn, Jr.

HFKjr:sr  
Enclosures

cc: Alan Wilson, Attorney General  
Robert D. Cook, Solicitor General  
Mary D. Shahid, Esquire  
Angelica M. Colwell, Esquire  
Ralph V. Baldwin, Esquire  
Scot F. Hersh  
Wilma Clark  
Lawrence Casler  
Dean Morrissey and Carol Morrissey  
Ralph Netherland and Gloria Netherland  
Special Trust of William B. Fahrner

Mark Heles and Beverly Heles  
David Smith and Lynn Smith

1501 North Street | Post Office Drawer 507 | Beaufort, South Carolina 29901  
T: (843)524-3373 | F: (843)524-1302

H. Fred Kuhn, Jr., Esquire  
Moss & Kuhn, P.A.  
Post Office Drawer 507  
Beaufort, South Carolina 29901

**RECEIVED**

SEP 06 2022

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

