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**Sep 08 2022**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court Of Common Pleas  
Circuit Court Case No. 2018CP0702109

The Honorable Master in Equity and Special Circuit Court Judge

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Appellate Case No.2022-000475

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Coffin Point Homeowners Association, Inc.....Appellant,

v.

The State of South Carolina, et al . . . . Respondents.

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**REPLY OF STATE TO RETURN TO  
STATE'S MOTION TO STRIKE**

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Appellant provides no evidence that it filed or submitted at the hearing any of the documents that are the subject of this motion to strike.<sup>1</sup> Appellant does not deny that they are not on the public records index for this case and provides no confirmation that they were ever efiled. Appellant provides no email or other evidence showing that the documents were sent to the Court and served on the parties as exhibits for the WebEx hearings as required by Rule 56, SCRCP

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<sup>1</sup> The documents that are the subject of the Motion are the Deeds at Items 36- 38 of the Designation, the Discovery documents at Items 18 – 27 and the Minutes at Item 33. Appellant's Initial Brief relies on and references these documents at Page 2 (first full paragraph - discovery), pp. 2 & 3 (Paragraph at bottom of 2 and continuing to 3 - Meeting and minutes) and p. 5 (first 4 full paragraphs - other deeds), and p. 10 (last two sentences in paragraph at top of page - other deeds and minutes). As noted in its Motion, the State has no objection to including the 1891 Grant and Plat in the Record on Appeal as those documents are referenced in the circuit court order. The other documents are not cited therein.

((“[t]he adverse party may serve opposing affidavits not later than two days before the hearing.”). None of these documents are referenced in the Orders of the Court. Therefore, because these documents have not been shown to be part of the record of this case in Circuit Court, they should not be part of the Record on Appeal in the instant case or cited in Appellant’s brief. See Rule 210(c). “The Record shall not. . . include matter which was not presented to the lower court or tribunal. . . .”

Appellant references cases regarding the Circuit Court’s settling the Record on Appeal. Those opinions were issued prior to the 1990 adoption of the Appellate Court Rules that now govern the contents of the Record, and they are neither controlling nor of guidance. No basis exists under the Appellate Court rules for remanding a case to the Circuit Court for settlement of the Record.

For the foregoing reasons, the State respectfully requests that its Motion to Strike be granted.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT D. COOK  
Solicitor General  
S.C. Bar No. 1373

s/ J. EMORY SMITH, JR.  
Deputy Solicitor General  
S.C. Bar No. 5262

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3680; Email: [esmith@scag.gov](mailto:esmith@scag.gov)

September 8, 2022

ATTORNEYS FOR THE STATE

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Coffin Point Homeowners Association, Inc.....Appellant,

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served the State's Reply to Return to its Motion to Strike upon the parties by emailing it to H. Fred Kuhn, Jr, Esquire, Mary D. Shahid, Esquire and Ralph V. Baldwin, Jr., Esquire (copy of email attached) and mailing it to the parties at the addresses below this September 8, 2022 through the United States mail.

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

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

Thomas S. Clark Family Living Trust  
13963 Sweetbriar Lane  
Novelty, Ohio 44072

Janet Embly Trustee  
151 McTeer Drive  
St. Helena Island, South Carolina 29920

CERTIFICATE OF SERVICE

September 8, 2022

Page 2

Ashley Madilon Heath  
550 Chubb Road, SW  
Lindal, Georgia 30147

Mary Hudson  
134 Burdick Hill Road  
Ithaca, New York 14850

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

Cecily Deegan McMillan  
67 McTeer Drive  
St. Helena Island, South Carolina 29920

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

Euniceteen Diggs  
3005 Muirfeld Avenue  
Fayetteville, North Carolina 28306

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

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

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

Scott Hersh  
47 Salt Wind Drive  
Saint Helena Island, SC 29920

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September 8, 2022

Page 3

Andrew Seward  
189 McTeer Drive  
Saint Helena Island, SC 29920

Beverly J. Boulware  
189 McTeer Drive  
Saint Helena Island, SC 29920

Thomas J. Walthoefer Trust  
32 Saltwind Drive  
Saint Helena Island, SC 29920

William B. Fahrner Special Trust  
48 Saltwind Drive  
Saint Helena Island, SC 29920

Janet Kathleen Reynolds Trust  
972 N. Shelm Drive  
Mt. Pleasant, SC

Jennifer Allen  
P.O. Box 16451  
Savannah, SC 31416

Scott Simons Omari Trust  
1050 Fieldwood Lane  
Winston-Salem, NC 27006

Slade Family Revocable Living Trust  
2345 Island Trail  
Chapin, SC 29036

Arnold Hollis and Lillian Hollis  
201 McTeer Drive  
Saint Helena Island, SC 29920

David Shaffer and Delora Cook  
189 McTeer Drive  
Saint Helena Island, SC 29920

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Travis Washington  
189 McTeer Drive  
Saint Helena Island, SC 29920

David Teets and Lucinda Teets  
71 McTeer Drive  
Saint Helena Island, SC 29920

Zia as Exchange, LLC qualified Intermediary for Barabra J. Bailey Limited Partnership  
705 Washington St.  
Beaufort, SC

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

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

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

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

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

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September 8, 2022

Page 5

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

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

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

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

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

/s J. EMORY SMITH, JR.  
S.C. Bar No. 5262  
Deputy Solicitor General  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3680 Email: [ESmith@scag.gov](mailto:ESmith@scag.gov)  
Counsel for the State of South Carolina

September 8, 2022

## Emory Smith

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**From:** Emory Smith  
**Sent:** Thursday, September 8, 2022 2:21 PM  
**To:** 'Fred Kuhn'; Ralph V. Baldwin, Jr  
**Cc:** Colwell, Angelica M.; Shahid, Mary D.  
**Subject:** RE: Coffin Point v. State et al  
**Attachments:** Reply to Return to State's Motion to Strike (03095522xD2C78).PDF

Good afternoon.

Attached is the State's Reply to the Response to the Motion to Strike which is hereby served upon you.

Emory

J. Emory Smith, Jr.  
Deputy Solicitor General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
803-734-3642 Direct