RECEIVED
Oct 06 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

---

Case No. 2021-CP-26-01512

---

Thomas Wade Long and Clyde Kiser, individually and on behalf of TNW and More, LLC, Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, Defendants,

of whom Donald Kettner and TNT and More, Inc. d/b/a Crab Catchers on the Waterfront, are Appellants.

---

# INITIAL BRIEF OF APPELLANTS

---

Michael S. Harrison, Esq.
Murray Law Group, LLC
SC Bar # 100462
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577
(843) 445-9933
Attorney for Appellants

Howell Bellamy, III
Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

---

Case No. 2021-CP-26-01512

---

Thomas Wade Long and Clyde Kiser, individually and on behalf of TNW and More, LLC, Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, Defendants,

of whom Donald Kettner and TNT and More, Inc. d/b/a Crab Catchers on the Waterfront, are Appellants.

---

# INITIAL BRIEF OF APPELLANTS

---

Pursuant to Rule 240, SCACR Appellants hereby submits this Initial Brief. For the following reasons, the Court should reverse the order of the trial court.

## Statement of Issues on Appeal

I. The trial court's order is improper as it is clearly a collateral attack on the lawful order of a magistrate seeking to dispossess the magistrate of jurisdiction over a matter exclusively and expressly reserved to the magistrate.

II. The trial court issued an Order without a finding on standing in favor of Respondents who lacked standing to bring an injunctive motion.

III. The trial court erred in granting Respondent's injunctive relief as Respondents neither met their burden of proof nor did the trial court address any of Appellants defenses to Respondents' claims.

IV. The trial court erred in issuing the June 17 Order as it conflicts with itself and the facts of the case as presented by the parties.

Background Information

This case involves a dispute between two corporations and the members of the two corporations. *See generally* Second Amended Verified Complaint. Appellants own and operate a restaurant on the Little River waterfront in Horry County. *See* Second Amended Affidavit of Robert Benoit in Opposition to Respondents Motion for a Temporary Restraining Order and/or Proposed Temporary Restraining Order at ¶4. Respondents own and operate a small marina that is adjacent to Appellant Corporation's property where they lease to a jet ski operation and multiple charter fishing captains. Id. at ¶5. The members of both corporations have known each other for several years. *See* Second Amended Verified Complaint at ¶1-4. In fact, Defendant Tim Kettner was a member of both TNT & More, Inc. and TNW & More, LLC. Id. at ¶1. Further complicating the issue, Defendant Tim Kettner and Respondent Wade Long have known each for other more than 15 years. They have helped each other out with each other's businesses and together Respondent Wade Long and Defendant Tim Kettner, as individuals, formed a joint venture called TNW & More, LLC in 2016 to further their interests in developing a jet ski and marina operation. Id. at ¶2. That joint venture was between Defendant Tim Kettner, as an individual, and Respondent Wade Long, as an individual, not as representatives of their respective corporation, as is evident by the Articles of Incorporation for TNW & More, LLC. *See generally* Answer, Counterclaims and Crossclaims of Appellant Corporation to Respondents' Second Amended Verified Complaint.

Appellants are aware of the formation of TNW & More, LLC, but Appellants had no intention to nor did they enter into any agreement with Respondents to form a joint venture. Id. In other words, the joint venture was between Defendant Tim Kettner and Respondent Wade Long, as individuals and not as agents of their respective corporations, to form TNW & More, LLC, not to form a joint venture between the corporations.

In 2016 after forming TNW & More, LLC with Defendant Tim Kettner, Respondents wanted to build up the marina by adding parking and a harbormaster's office, which is required by law. Unable to secure a loan on their own merit, Respondents approached Defendant Tim Kettner to co-sign a loan to expand the parking lot and to build a harbormasters' office for the sole benefit of Respondents' marina. *See* Second Amended Verified Complaint at ¶7-9.

Despite receiving the loan, none of Respondents' plans were ever completed. The marina has no harbormaster's office, no parking of its own, and very little buildable land. Instead of building the harbormasters office, the money secured through the loan was spent on other unidentified expenses which Respondents have yet to account for despite a request to do so. Rather than building a code compliant harbormaster's office, Respondents submitted plans for approval to Horry County Zoning and Planning but never built the structure that was permitted by the County. *See* Exhibits A, B, D, E, F, and G to Appellants' Reply and Memorandum in Opposition to Respondents' Ex Parte Motion for an Expedited Emergency Injunction. Rather, Respondents erected multiple unpermitted structures, including a fuel tank and rental hut, on Appellant Corporation's property for which Appellants received multiple warnings, violations and fines over the last few years. Id. In fact, after Horry County Code Enforcement posted a "stop work order" on the unpermitted rental hut located on Appellants' property, Respondents continued to operate their business in violation of that order using the unpermitted rental hut as a sales office. See Second Amended Affidavit of Robert Benoit in Opposition to Respondents Motion for a

Temporary Restraining Order and/or Proposed Temporary Restraining Order at ¶6-14, 16, and 18; *see also* Exhibit K to Second Amended Affidavit of Robert Benoit in Opposition to Respondents Motion for a Temporary Restraining Order and/or Proposed Temporary Restraining Order.

Despite a lack consideration between the parties, Respondents are claiming that they entered into a joint venture with Appellant Corporation which is expressly denied. *See* Second Amended Verified Complaint at ¶5-6. Respondents claim the joint venture gives them unfettered access to use Appellants' property as they see fit. Id. There is no written agreement in place. *See* Answer, Counterclaims and Crossclaims of Appellant Corporation to Respondents' Second Amended Verified Complaint ¶40-41. There has been no finding by any trial court that a joint venture exists between the parties. There is also a statute of frauds issue playing against a claim for promissory estoppel. Id.

Appellants maintain that there was no agreement to form a joint venture, and to the extent that one was formed, Appellants are seeking judicial dissolution. *See generally* Answer, Counterclaims and Crossclaims of Appellant Corporation to Respondents' Second Amended Verified Complaint. Respondents have committed unlawful acts on Appellants property on multiple occasions, including erecting unpermitted structures on Appellants property. *See* Second Amended Affidavit of Robert Benoit in Opposition to Respondents Motion for a Temporary Restraining Order and/or Proposed Temporary Restraining Order at ¶6-7. Respondents have failed to name Appellant Corporation as an additional insured, despite leasing to a jet ski business and charter fishing businesses which presents a significant liability to Appellants, as Appellants property is being used for Respondents business operations. Id. at ¶9.

Respondents have filed several motions seeking more access to Appellants property. They have also sought contempt and sanctions repeatedly in an attempt to expand the language of a Consent Order which has become the subject of much litigation including this appeal.

## Procedural History/Statement of Case

Respondents filed the original Summons and Verified Complaint in this action on March 12, 2021. Respondents then filed an Amended Summons and Verified Complaint on April 29, 2021. Appellant Corporation filed its Answer, Counterclaim, and Crossclaim to Respondents' Amended Summons and Verified Complaint on May 12, 2021. Appellant Donald Kettner filed a Motion to Dismiss in Lieu of Answer on May 12, 2021. Respondents filed a Motion for Temporary Injunction and Memorandum on June 29, 2021. On June 30, 2021, Respondents filed a Motion to Amend the Amended Verified Complaint. The trial court entered an Emergency Temporary Restraining Order Pursuant to Rule 65(b) on July 19, 2021. On July 21, 2021, Appellents filed a Notice of Motion and Memorandum in Support of Motion to Reconsider, Alter or Amend the trial court's Order Granting Respondents' Motion for Temporary Restraining Order which was denied. On July 23, 2021, Appellants filed a Reply in Opposition to Respondents' Motion for Temporary Restraining Order and Notice of Motion to Dissolve Pursuant to Rule 65(b)(4). A Consent Order resolving the TRO issues was entered by the parties on July 27, 2021 prior to a hearing on the motion for temporary relief. On September 20, 2021, Appellants filed a Motion to Consolidate and Merge.

On December 6, 2021, an order was issued by the trial court partially consolidating the instant case with a companion case for discovery purposes only. That case is captioned as TNT and More, Inc. et al. v. TnW and More, LLC et al. with case number: 2021-CP-26-4496. Also on December 6, 2021, Respondents' Motion to Amend the Amended Verified Complaint and Appellant Donald Kettner's Motion to Dismiss were heard. The judge took the two matters under advisement and issued a ruling more than six months later on June 29, 2022. On January 19, 2022, Respondents filed a Motion for Contempt and Sanctions against the Appellants.

Respondents filed a Motion for an Expedited Emergency Temporary Restraining Order on May 23, 2022. On May 24, 2022, counsel for both sides were notified of a hearing on the merits of the motion to be held May 26, 2022 before the Honorable Steven H. John in the Court of Common Pleas for Horry County, the trial court in this appeal. On May 26, 2022, Appellants filed a Reply to Respondents' Motion for Expedited Emergency Temporary Restraining Order at the hearing on Respondents' Motion.

At the hearing, Appellants' counsel filed a reply with the trial court and served Respondents' counsel simultaneously. Oral argument was heard from both sides. The trial court took the matter under advisement to review all filings and relevant material.

The trial court emailed both parties its findings stating in pertinent part:

> "The court finds that the Respondent's Motion for Temporary Restraining Order is more properly a request for the parties to comply with the Consent Order the parties entered into and Judge Keesley signed and filed on July 27, 2021. The relevant part of Judge Keesley's Order is found on page three, paragraph three, subsection J. It states in part: "During the pendency of this action, the Appellants agree that they shall undertake no further actions to remove, repair, assemble or disassemble any portion of the marina utilized by the Respondents and TnW and Moore, LLC [sic] unless necessary to comply with the law and/or any regulatory agency, in which even written consent shall be sought from the Respondents. In the event Respondents fail to respond within 7-days' notice of a request for written consent without justification provided, then Appellant may comply with any lawful order or directive from any trial court of competent jurisdiction or any regulatory agency. Written notice must be emailed to counsel for the Respondents and the Appellants simultaneously along with written notice to the Respondents." The court finds that while there is no currently existing emergency regarding the pier, it does appear that certain repairs/maintenance are necessary. In this regard, the court restrains the Appellants from blocking access to the pier pending a final hearing in this matter unless mandated by an appropriate regulatory agency or further Order of the court. In addition, to secure compliance with Judge Keesley's Order, the court is requiring the parties to consult and agree to a repair/maintenance schedule within ten (10) days of date of this Order. All terms of Judge Keesley's prior Order remain in full force and effect."

The trial court further directed Respondents' counsel as follows in that same email:

"Ms. Golding please prepare a proposed Order to this effect by tomorrow, May 27, at 10:00am."

*See* Exhibit A to Appellants Motion to Alter or Amend Order on Respondents' Motion for Temporary Order.

Respondents' counsel submitted an order on May 27, 2022. Appellants' counsel objected, in part, to the language expanding the trial court's ruling beyond its findings. No response was provided to counsel. The order drafted and submitted by Respondents' counsel was signed without revision by the trial court, adopting findings not supported by the record and failing to address all issues raised at the hearing. That order is referred to herein as the May 27 Order.

On June 3, 2022, Appellants filed a Motion to Reconsider the May 27 Order. Also on June 3, 2022, Respondents filed a Motion for Contempt and Sanctions. On June 6, 2022, Respondents filed Respondents' Ex Parte Motion for Expedited Emergency Injunction. On June 6, 2022, the trial court issued an Order denying Respondents' Motion filed on January 19, 2022. That Order shall be referred to herein as the June 6 Order. On June 13, 2022, Appellants filed replies to Respondents' Motion for Contempt and Sanctions and Respondents' Ex Parte Motion for Expedited Emergency Injunction. Supplemental filings were made thereafter prior to the hearing on both Respondents' Motions.

A hearing was held on the Respondents' Motions on June 16, 2022. On June 17, 2022, the trial court issued an Order Granting Respondents Temporary Restraining Order and an Order Denying Appellants' Motion to Reconsider. While Respondents filed two separate motions seeking two separate forms of relief, the trial court issued a singular order entitled Order Granting Respondent's Motion for Temporary Restraining Order dealing with both motions filed by Respondents on June 3, 2022 and June 6, 2022. The trial court also ruled on Appellants' Motion to Reconsider Judge John's Order dated May 27, 2022 in a separate order denying Appellants'

Motion. Again, on June 29, 2022, the trial court granted Respondents' Motion to Amend the Amended Verified Complaint filed June 30, 2021.

It is also imperative that this Court consider the procedural history of the magistrate proceedings involving the parties which bears on this appeal. On or about February 20, 2020, Horry County Planning and Zoning issued a Notice of Violation for unpermitted structures on Appellants property erected by Respondents to Appellant Corporation. *See* Exhibit E to Appellants Reply to Respondents' Motion for an Expedited Temporary Restraining Order. On September 7, 2020, Appellants received a Notice of Violation of an Unpermitted Structure on their property. *See* Exhibit A to Appellants Reply in Memorandum to Respondents' Ex Parte Motion for an Expedited Emergency Injunction. Horry County Code Enforcement issued a "stop work order" on or about March 22, 2021. Id. On January 31, 2022, Appellant Donald Kettner was issued two citations for "Failure to Obtain a Building Permit" for a fuel tank and the rental hut belonging to Respondents but existing on Appellants' property. Id. Two new "stop work orders" were issued that same day, one for the fuel tank and one for the unpermitted rental hut. Id.

On March 2, 2022, a hearing was held before Judge Mayers in the Horry County Magistrate Court. At that hearing, Respondents' counsel in the circuit court matter appeared attempting to intervene in the case against the Appellants in the magistrate case but filed no notice of appearance or any motion with the magistrate at that time. Appellants moved to have the citations dismissed, as they were issued in Appellant Donald Kettner's name and should have been issued in the property owner's name, TNT and More, LLC.

The county prosecutor for Planning and Zoning violations, who is also the department head for Horry County Planning and Zoning, agreed to dismiss the citation regarding the fuel tank and reissued the citation for the unpermitted rental hut in the name of the appropriate party, TNT and More, LLC. At that time, the magistrate set a hearing on the matter for April 6, 2022.

Prior to the hearing on April 6, 2022, six additional tickets for various other violations were issued to Appellants which were set to be heard before the magistrate on May 4, 2022. On April 6, 2022, a hearing was held on the original unpermitted rental hut violation. At that hearing, Respondents' counsel filed a Motion to Intervene and Demand for Jury Trial on behalf of Respondents, an entity not cited or named at all in the magistrate action. See Transcript of the Record, Page 10, Lines 15-24. The magistrate continued the hearing on all citations and set a hearing on Respondents' Motion to Intervene for May 4, 2022. At the hearing on May 4, 2022, Appellants plead guilty to the citation and subsequently paid a fine of $500.00. Respondents did not appear at the May 4, 2022 hearing. *See generally* Magistrate Order on Motion to Vacate Order dated June 1, 2022.

At that time, the magistrate instructed Appellants to remove the unpermitted rental hut or face additional fines. A hearing on the Appellants' additional tickets was set over for June 1, 2022.[1]

On May 16, 2022, Appellants contacted the county department head regarding removal of the unpermitted rental hut. The department head for Horry County Planning and Zoning declined to enforce the magistrate's instruction to remove the hut or to work with Appellants to remove it despite having prosecuted the tickets against Appellants. On June 1, 2022, Appellants appeared before the magistrate on the remaining tickets. At that time, the magistrate issued an order instructing Appellants to remove the unpermitted rental hut within 10 days of the signing of the order. *See* Magistrate Order dated June 1, 2022. Appellants provided a copy of the magistrate's order and their intent to comply on June 2, 2022 to Respondents. See Second Amended Affidavit

[1] It is important to note that the six additional tickets did not involve Respondents personal property, but the original tickets for the fuel tank violation and unpermitted rental hut violation did involve personal property owned by Respondents.

of Robert Benoit in Opposition to Respondents Motion for a Temporary Restraining Order and/or Proposed Temporary Restraining Order at ¶21. Respondents refused to cooperate with the order and with Appellants. Id. The unpermitted rental hut was removed from Appellants property by Appellants thereafter in compliance with the magistrate's order. Id.

Respondents then filed a Motion for Contempt and Sanctions and Respondents Ex Parte Motion for Expedited Emergency Injunction with the trial court seeking to invalidate the magistrate's order. On September 16, 2022, the magistrate issued an order denying Respondents Motions filed in the magistrate court for lack of prosecution.

A Notice of Appeal was filed with this Honorable Court on July 14, 2022 appealing both the May 27 Order on Respondents' Motion for an Expedited Emergency Temporary Restraining Order filed on May 23, 2022 and the June 17 Order Denying Appellants' Motion to Reconsider.

A Notice of Appeal was filed July 28, 2022 appealing the June 17 Order on Respondent's Ex Parte Motion for Expedited Emergency Injunction and Order on Appellant's Motion to Alter or Amend Order on Respondents' Motion for Temporary Order and Order Granting, in part, Respondent's Motion to Alter or Amend June 17, 2022 Order. On August 1, 2022, this Honorable Court did consolidate the two appeals into one.

## Argument

**I. The trial court's order is improper as it is clearly a collateral attack on the lawful order of a magistrate seeking to dispossess the magistrate of jurisdiction over a matter exclusively and expressly reserved to the magistrate.**

Standard of Review

An order for an injunction is reviewed for abuse of discretion. *See* MicroStrategy Inc. v. Motorola, Inc., 245 F.3d 335, 339 (4th Cir.2001) However, when the only question raised on appeal is a matter of law then the court should only apply the de novo standard. Commodity Futures

Trading Comm'n v. Kimberlynn Creek Ranch, Inc., 276 F.3d 187, 191 (4th Cir. 2002). Because the issues raised by Appellants on appeal are legal, the de novo standard should apply; however, even under the abuse of discretion standard, Appellants should prevail.

## Argument

Respondents' Ex Parte Motion for Expedited Emergency Injunction improperly sought to dispossess the magistrate of its exclusive jurisdiction over zoning and code enforcement issues. The motion was a thinly-veiled attempt to nullify the order of abatement and guilty plea in the magistrate's court, and the language of the trial court's June 17 Order on the motion attempts to do exactly that without justification and without jurisdiction. In S.C. Dep't of Motor Vehicles v. Holtzclaw, the court held that a party cannot use the circuit court to overrule matters exclusively in the magistrate's jurisdiction. 382 S.C. 344, 675 S.E.2d 756 (Ct. App. 2009) (The Trial court of Appeals, Hearn, C.J., held that the Department of Motor Vehicles' ("DMV") appeal of the Department of Motor Vehicles Hearings' ("DMHV") recession of Joseph Holtzclaw's suspended driver's license and designation as a habitual offender was an improper collateral attack on the municipal trial court decision to reopen a prior conviction for driving under suspension).

South Carolina law provides the magistrates with exclusive jurisdiction over all criminal offenses in which the punishment does not exceed a fine of which may be subject to penalties or a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. *See* S.C. Code Ann. §§ 22-3-540, 550.

The citations at issue here are criminal in nature and carry a fine of no more than $500.00 and no more than 30 days in jail. *See* SCBC §§ 105.1 and 114.1. In fact, the magistrate sentenced Appellants to a fine of exactly $500.00. *See* Exhibit I of Appellants' Reply in Opposition to Respondents' Motion for Contempt and Sanction filed June 13, 2022. This was presented to the trial court, but none of it was addressed by the June 17 Order. *See generally* Transcript of Record.

The trial court obviously believes it has jurisdiction over the issues, but it simply does not. *Cf.* S.C. Code Ann. §§ 22-3-540, 550.

While the circuit court may overturn a magistrate on appeal, may have concurrent jurisdiction with the magistrate, and may otherwise be considered under our judicial structure to be the superior court, its jurisdiction does not expand into matters specifically reserved for the magistrate.[2] Id. Had the legislature intended the circuit court to interfere with the magistrate's jurisdiction over such matters, it would not have conveyed exclusive jurisdiction to the magistrate over any matters.

The trial court also believes that there was some merit to Respondents' argument regarding the jurisdiction of the magistrate trial court when there was not. *See* Respondents' Ex Parte Motion for Expedited Emergency Injunction filed June 6, 2022 at ¶6; *compare* S.C. Code Ann. §§ 22-3-540, 550.

It is clear that the magistrate had jurisdiction to issue its order in this matter, as the offense falls squarely within the statute providing the magistrate with exclusive jurisdiction. See S.C. Code Ann. §§ 22-3-540, 550. Appellants acknowledge the circuit court's jurisdiction over the Consent Order at issue in this matter, but the Consent Order cannot and does not dispossess the magistrate of jurisdiction over a matter exclusively reserved to it by the law. Id. No order by any trial court can change the jurisdiction of any other court. The legislature is the only body that can alter the jurisdiction of our courts, not trial judges. Id. If the Consent Order or any terms therein are written in such a way that it cannot be reconciled with the law, then the Consent Order is

[2] It is important to note the issue raised by Respondents' Motion, which may be properly raised on appeal, was heard as a motion for an injunction rather than as an appeal amounting to procedural impropriety and constituting an unlawful collateral attack on a law order by the magistrate.

improper in and of itself and should be struck making all of the motions based thereon moot, and there have been several in this case pertaining to this Consent Order.

The trial court had no jurisdiction to make any ruling contrary to the magistrate's order of abatement or the guilty plea and certainly could not overturn either, unless on appeal which it was not and is not today. Id. However, the trial court's June 17 Order seeks to do both, as it directly contradicts the abatement order issued by the magistrate, who, again had exclusive jurisdiction over the zoning violations and the abatement of those violations.

Respondents argued in oral arguments that this trial court had concurrent jurisdiction which is patently false given the language of S.C. Code Ann. §§ 22-3-540, 550. See Transcript of Record, Page 13, Lines 16-20. The trial court's June 17 Order ignores this issue entirely without justification or explanation and issued an order signaling that the trial court believes that jurisdiction existed in the circuit trial court and not in the magistrate trial court.

The trial court would only have appellate jurisdiction over the matter, and there is no appeal pending whatsoever. *See generally* Magistrate Order on Motion to Vacate Order Dated June 1, 2022. In fact, Respondents failed to appear to prosecute both motions they filed in the magistrate court, and the matters have been dismissed for failure to prosecute. Id. Moreover, Respondents failed to file a timely motion with the magistrate for a new trial.

The circuit court has only appellate jurisdiction over a judgment from magistrate trial court. State v. Adler, 278 S.C. 66, 67, 292 S.E .2d 185, 186 (1982). Chapter 1 of Title 18 contains "General Provisions" applicable to all appeals. S.C. Code § 18-1-10 specifies that, subject to other code provisions not applicable here: "The only mode of reviewing a judgment or order in a civil or criminal action [in Magistrates' Trial court] . . . shall be as prescribed by this Title [18]." (Emphasis added). "Every person convicted before a magistrate of any offense whatever and

sentenced may appeal from the sentence to the Trial court of Common Pleas for the county." S.C. Code Ann. § 18-3-10. (Emphasis added).

All appeals from magistrates' trial courts in criminal cases shall be taken and prosecuted as prescribed in Chapter 3, Title 18 regarding Appeals. For Example, upon a criminal conviction by the Magistrate, the appellant has ten days to "serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge, stating the grounds upon which the appeal is founded." S.C. Code Ann. § 18-3-10. Moreover, S.C. Code § 22-3-1000, "a motion for a new trial may not be heard unless made within ten days from the rendering of the judgment."

Here, the Respondents' Ex Parte Motion for Expedited Emergency Injunction sought to bypass the statutory requirements of Chapter 3, Title 18 regarding Appeals by requesting the trial court issue an order requiring the Appellants to restore the hut to its prior condition before the magistrate had an opportunity to hear and rule on the Respondents' Motion to Intervene and Motion for an Amendment of the Judgment or, alternatively, for a New Trial. As such, the Respondents' Ex Parte Motion for Expedited Emergency Injunction directly violates S.C. Code §18-1-10 which specifies, "The ***only mode*** of reviewing a judgment or order in a civil or criminal action [in Magistrates' Trial court] . . . ***shall be as prescribed by this Title*** [18]."

In light of the statutory requirements of Chapters 1 and 3 of Title 18 regarding Appeals, the trial court lacks the authority and jurisdiction to review the legality or to set aside the Appellant Corporation's guilty plea and the magistrate's abatement order as implicitly requested in the Respondents' Motion for a Temporary Injunction. *See* State v. Dickert, 260 S.C. 490, 197 S.E.2d 89 (1973) (A circuit trial court has only appellate jurisdiction over a judgment from magistrate's trial court).

The guilty plea in magistrate's trial court was entered May 4, 2022, and Respondents were sentenced that day to a $500.00 fine. See Second Amended Affidavit of Robert Benoit in Opposition to Respondents Motion for a Temporary Restraining Order and/or Proposed Temporary Restraining Order at ¶20. It bears noting that the fine is up to $500.00 per day if the violation isn't abated. See SCBC §§105.1 and 114.1.

Here, Respondents are opposing an abatement order issued by a magistrate before a circuit court to deal with the very issue that Respondents created in favor of exposing Appellants to further fines. The trial court's June 17 Order not only encourages this but forces Appellants to put themselves in violation of the law again and expose themselves to further fines.

Respondents filed a Motion for an Amendment of Judgement or Alternatively for a New Trial with the magistrate's court on June 9, 2022 pursuant to Rule 19 which requires filing within 10 days of the disposition of the case. The disposition of Appellants' case was entered at the hearing on the matter on May 4, 2022. *See* Exhibit I of Appellants' Reply in Opposition to Respondents' Motion for Contempt and Sanction. So, Respondents filed their motion with the magistrate's court far in excess of the deadline and successfully employed the trial court to issue the June 17 Order which essentially is a collateral attack on the magistrate's order improperly.

Arguably, Respondents primary concern in their motion was the magistrate's abatement order that supported removal of the unpermitted rental hut from the Appellants' property. *See generally* Respondents Ex Parte Motion for an Expedited Emergency Injunction. However, the rules for appeal speak to a timeline that is measured from the disposition of the case, not any order of abatement. See Magistrate Court Rules Rule 19(b).

As stated in Appellants' briefs and in oral arguments and supported by the evidence, Respondents failed to show up for the hearing on the matter and failing to prosecute their motion to intervene. *See* Magistrate's Order on Motion to Vacate Order dated June 1 at Page 2. That

motion to intervene was frivolous to begin with, as Respondents had no interest in the real property which is the basis for the issuance of the fines to Appellants. In other words, Appellants are the owners of the real property. *See* Exhibit 1 of Appellants' Reply to Respondents' Motion for an Expedited Temporary Restraining Order. The citations for violations of this kind are properly entered against the real property owner. Even if Respondents had some interest in the personal property, that would not substantiate a right to intervene as they have no interest in the real property. Even if they had such a right to intervene, their only options before the magistrate would be to plead guilty or plead not guilty and request a jury trial. They could not change or prevent Appellants' guilty plea which lead to Appellants application to the magistrate for an abatement order.

Respondent failed to meet the deadlines, and then tried to correct the problem by filing a motion in the trial court to attack the magistrate's rulings, rulings that were exclusively under the magistrate's jurisdiction.

It bears noting that there is no obligation under the law to even seek an order of abatement. Certainly, a person who has been convicted and sentenced for a violation has an inherent duty to abate that violation. It is not as if a person who commits a criminal act can pay his fine and simply go back to committing that same crime. To rule in such a way would be contrary to the very foundation of the law.

The petition for the order of abatement before the magistrate was done in the spirit of the Consent Order, but it is not required at all under the law. In fact, the Consent Order provides that one cannot act without first seeking consent from Respondents. See *Consent Order* dated July 21, 2021 at ¶7, Sec. J. Notice of intent to comply with the magistrate's abatement order was sent to Respondents seeking to induce consent. See Second Amended Affidavit of Robert Benoit in Opposition to Respondents Motion for a Temporary Restraining Order and/or Proposed

Temporary Restraining Order at ¶21. However, it was made clear that Respondents had no intention of cooperating, although neither consent nor cooperation was required in this matter. Id.

Certainly, the trial court did not intend Section J of the Consent Order to mean that Appellants cannot comply with a lawful order. Under the Consent Order, Respondents are required to provide justification when they object to Appellants actions. See *Consent Order* dated July 21, 2021 at ¶7, Sec. J. However, the Consent Order does not allow Respondents to unilaterally decide that the magistrate didn't have jurisdiction and use that as justification for bringing the motion before the trial court to enjoin Appellants from complying with a lawful order that was not subject to the trial court's review unless on appeal. *Cf. Consent Order* dated July 21, 2021 at ¶7, Sec. J. So, with no right of relief, no standing, and having failed to meet the appropriate deadline, Respondents attempted to have the trial court improperly review the order of a lower trial court which is only appropriate where the trial court has appellate jurisdiction.

Given the foregoing, the trial court exceeded its jurisdiction regarding the subject matter in the motion, as Respondents' Ex Parte Motion for Expedited Emergency Injunction is essentially a collateral attack on the magistrate court's guilty plea and abatement order.

**II. The trial court issued an Order without a finding on standing in favor of Respondents who lacked standing to bring an injunctive motion.**

Standard of Review

Where the trial court fails to rule on a matter of law, it is subject to review de novo. S.C. Dep't. of Soc. Serv. v. Boulware, 422 S.C. 1, 6, 809 S.E. 2d 223, 226 (2018). Here the trial court failed to issue any finding in its order regarding the issue of standing raised by Appellants, and is therefore, subject to review by the appellate court de novo, as there is no ruling on the issue in the record. Id. While the order on appeal in this case is for an injunction, Appellants argument regarding standing is a put forth as a matter of law. See Commodity Futures Trading Comm'n.,

276 F.3d 187, 191 (4th Cir. 2002). Because the issues raised by Appellants on appeal are legal, the de novo standard should apply; however, even under the abuse of discretion standard, Appellants should prevail.

Argument

A party must have an estate in land to have standing to seek injunctive relief in connection with the land. *See* 27 S.C. Jur. Injunctions § 13 (citing case of Byerly v. S.C. Nat. Bank Corp., 313 S.C. 385, 438 S.E.2d 233 (1993)). Again, Appellant Corporation owns the land on which the unpermitted rental hut and fuel tanks at issue are located. *See* Exhibit 1 to Appellants Reply to Respondents' Motion for an Expedited Restraining Order. There is no cause of action challenging that ownership. *See generally* Respondent's Second Amended Verified Complaint.[3]

"A party seeking to establish standing bears the burden of proving it." S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). There is nothing in the record showing support for Respondents' standing to even bring the motion, much less to win on it. The burden of proof for standing resides with Respondents, as they filed the motion for injunctive relief. Id. The lack of standing was raised by Appellants but was never addressed by the trial court. *See* Transcript of Record dated June 16, 2022 at Page 15, Lines 9-24. The trial court failed to address the standing issue despite being clearly raised by Appellant, and in doing so, issued an order in favor of a party without standing to bring their motions.

Here the Respondents were not entitled to a temporary injunction because they do not possess any ownership interest in the subject matter real property where the unpermitted rental hut was previously located and used to operate the Respondents' commercial businesses. The warranty deed from Defendant Timothy Kettner to Appellant Corporation TNT and More, Inc., where the

[3] It bears noting that no iteration of Respondent's three complaints in this matter contain any cause of action challenging ownership, and there exists no companion case dealing with issues of title.

unpermitted rental hut was originally located, clearly shows the Appellant Corporation is the sole property owner and does not include the Respondents. *See* Appellants' Reply to Respondents Motion for an Expedited Temporary Restraining Order at Exhibit A1 Affidavit of Robert Benoit dated May 15, 2022.

It is irrelevant that the Respondents had an interest in the personal property situated on Appellants land as the party seeking injunctive relief must have an interest in real property. S.C. Pub. Int. Found., 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). As there is no dispute over ownership of the land in this case, it logically follows that Appellants own the land, Respondents do not; and therefore' the Respondents didn't have standing to seek injunctive relief whatsoever.

Given the above, the Respondents' lack standing to bring an injunctive motion in the trial court to object to the Appellant's guilty plea and the magistrate's abatement order as allegedly being invalid and unenforceable since the Respondents are unable to prove that they have an ownership interest in the subject real property. Moreover, they made no showing of standing or even plead such in their motion or during oral argument which would provide a basis for the trial court to issue an Order. Accordingly, the Order on Respondents' Motion seeking injunctive relief should be reversed as a matter of law due to the Respondents' failure to prove an ownership interest in the subject real property or provide any other basis for standing for which an injunction can be granted.

**III. The trial court erred in granting Respondent's injunctive relief as Respondents neither met their burden of proof nor did the trial court address any of Appellants defenses to Respondents' claims.**

Standard of Review

Where the trial court decision is controlled by an error of law or without evidentiary support the decision is reviewable by the appellate court for an abuse of discretion. Mictronics, Inc. v.

S.C. Dep't. of Revenue, 345 S. C. 506, 510, 548 S.E. 2d 223, 225 (Ct. App. 2001). The decision whether to grant or deny an injunction is ordinarily left to the sound discretion of the trial court. Metts v. Wenberg, 158 S.C. 411, 417, 155 S.E. 734, 736 (1930). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. Ledford v. Pennsylvania Life Ins. Co., 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976). Here, the court was presented with the facts and the law and issued an order in opposition to both.

Argument

"An injunction is a drastic remedy issued by the trial court in its discretion to prevent irreparable harm suffered by the Respondent." Richland Cty. v. S.C. Dep't of Revenue, 422 S.C. 292, 310, 811 S.E. 2d 758, 767 (2016) (citing Scratch Golf Co. v. Dunes W. Residential Golf Props. Inc., 361 S.C 117, 121, 603 S.E. 2d 905, 907 (2004)). Therefore, it should be "applied with caution." Strategic Resources Co., 367 S.C. 540, 544, 627 S.E. 2d 687, 689 (2006).

For the trial court to grant such an extraordinary form of relief the moving party bears the burden of proving that 1) there is irreparable harm 2) no adequate remedy at law 3) a likelihood of success of the merits of its claims 4) and the injunction is necessary to protect its legal rights in the pending litigation. Scratch Golf Co., 361 S.C. at 121, 603 S.E. 2d at 908 (2004); AJG Holdings, LLC v. Dunn, 382 S.C. 43, 50-51, 674 S.E. 2d 505, 508 (Ct. App. 2009), modified on other grounds by Poynter Invs. V. Century Builders of Piedmont, Inc. 386 S.C. 583, 587, 694 S.E. 2d 15, 17 (2010).

The title of the June 17 Order belies the fact that the trial court granted relief to Respondents on a motion they did not file. This is apparent when comparing the June 17 Order with Respondents Ex Parte for Expedited Emergency Injunction. Yet the trial court order grants the motion for injunctive relief with no regard to the well-settled principles that the party bringing a motion seeking relief bears the burden of proof to obtain an extraordinary form of relief. See generally

June 17 Order. No justification for this is given in the trial court's June 17 Order. It doesn't even address the elements necessary to grant such relief. Given the foregoing, it can hardly be said that the trial court acted with "caution," as contemplated by our common law. Strategic Resources Co., 367 S.C. at 544, 627 S.E. 2d at 689 (2006).

Respondents failed to sufficiently plead the elements for the relief they are seeking. While there is some discussion about the alleged harm suffered by Respondents, it is not sufficient to sustain the burden for injunctive relief. The trial court's June 17 Order ignores this issue entirely. Respondents motion was devoid of any support for their allegation that they were entitled to injunctive relief, and the trial court's June 17 Order completely fails to address this concern granting extraordinary relief as if Respondents application for relief was enough. It is not. Strategic Resources Co., 367 S.C. at 544, 627 S.E. 2d at 689 (2006); *see also* Scratch Golf Co., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

**A. The trial court erred in granting injunctive relief because Respondents presented no credible evidence of irreparable harm.**

There is absolutely no credible evidence of irreparable harm, as Respondents were operating their business the day of the hearing on the motion. Appellants provided evidence that Respondents were able to operate without the use of the unpermitted rental hut. *See* Affidavit of Kirk Hanna filed June 16, 2022. In fact, Respondents were operating their business while the trial court held oral arguments and allowed Respondents to claim irreparable harm due to actions of Appellants designed to "shutter their business." Respondents made a mockery of the trial court by claiming that they suffered irreparable harm in the form of their business being shut down while operating their business at the very moment they argued they were unable to operate in trial court.

Yet, the trial court accepted the argument of Respondents that the removal of the unpermitted rental hut would prevent them from operating while operating without it.

Respondents cannot claim irreparable harm due to the removal of the unpermitted rental hut when the harm in fact didn't exist. It may be argued that the removal of the unpermitted rental hut created an inconvenience. However, injunctive relief is not appropriate where a party is simply inconvenienced. Irreparable harm is harm that cannot be abated without an injunction. Irreparable harm is, by its very nature, harm that is difficult, if not impossible to quantify. See, e.g., Columbia Broad. Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 477-78, 189 S.E.2d 305, 311 (1972) (holding that the mere uncertainty of fixing the measure of damage may be sufficient to justify equitable jurisdiction); Peek v. Spartanburg Reg. Healthcare Sys., 367 S.C. 450, 456 n.2, 626 S.E.2d 34, 37 n.2 (Ct. App. 2005) (citations omitted). Clearly, no injunction was necessary for Respondents to continue to operate their business. The trial court also ignores the fact that monetary damages would be appropriate for a business that could not operate, as businesses exists for sole purpose of making money. The availability of monetary damages is adequate relief for a business that cannot operate, and where adequate relief exists there can be no irreparable harm.

While there are several cases on the books that provide us with the concept that interest in real property may give rise to an argument for irreparable harm, this lawsuit does not involve any cause of action that disputes Appellants interest in real property. *E.g.* S.C. Pub. Int. Found., 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). Respondents have made no claims of ownership in Appellants real property because they cannot. As presented to the trial court, Appellants are the undisputed property owners of the subject matter property. *See* Exhibit A to Appellants' Reply in Opposition to Respondents' Motion for Contempt and Sanctions. Respondents' argument that a plat gives them some property rights in Appellants' property is without merit, as plats simply do not convey property rights no matter how many times Respondents repeat that claim and put up that evidence in support of their case. So, Respondents have shown no interest in Appellants real property whatsoever.

Furthermore, "legal title always prevails over an equitable title unless the equity is so complete as to entitle the equitable claimant to a conveyance paramount to the opposing legal title." Jones v. Cathcart Co., 17 S.C. 592, 593 (1882). So, even if the trial court wishes to believe that there is some allegation somewhere lurking beneath the plain language of the Respondents' claims, the legal title belonging to Appellants should have prevailed over any equitable claims by Respondents.

**B. The trial court erred in granting injunctive relief because Respondents presented no argument that Respondents are likely to succeed on the merits.**

Appellants also raised the issue that Respondents are unlikely to succeed on the merits of their case. *See* Appellants' Reply to Respondents' Motion for an Expedited Temporary Restraining Order at Page 4. The trial court's June 17 Order doesn't address this issue either. Again, the burden is on Respondents to prove this element of injunctive relief. Scratch Golf Co., 361 S.C. at 121, 603 S.E. 2d at 908 (2004). They did not.

Again, Respondents referenced a plat signed by some of the individual parties as evidence of their joint venture argument, their central argument in this case. See Transcript of Record at Page 4, Lines 6-16. They also made reference to the existence of a joint loan between the parties. See Transcript of Record at Page 4, Lines 16-20. Again, Appellants argued that a plat doesn't give Respondents property rights. Appellants further argued that Respondents are in violation of the terms of the loan agreement. See Transcript of Record at Page 17, Lines 23-25. The trial court ignored this issue entirely in its order providing no finding on the issue or justification for not making any findings as to these arguments.

**C. The trial court erred in granting injunctive relief because Respondents presented no colorable argument that they had no remedy at law.**

Respondents provided no evidence of an inadequate remedy at law. In fact, Respondents Second Amended Verified Complaint asked the trial court for monetary damages, so clearly, they believe that there is an adequate remedy at law, i.e., monetary damages. *See* Second Amended Verified Complaint at Page 9.

**D. The trial court erred in granting injunctive relief because the trial court failed to address the issue of unclean hands and the balance of equities issues raised by Appellants.**

Additionally, Appellants raised the issue of unclean hands of Respondents seeking injunctive relief. *See* Appellants' Reply in Opposition to Respondents' Motion for Contempt and Sanctions at Page 14-15. In Precision Instrument Mfg. Co. v. Automotive Co., the Court said, "He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the trial court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief. 324 U.S. 806, 814 (1945); *see also* Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984) (The doctrine of unclean hands precludes a Respondent from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the Appellant.) (quotations and citations omitted). To get equity one must provide equity. Id. That is impossible when a party seeks injunctive relief with unclean hands. The trial court's order rewards Respondents' bad behavior without justification. The trial court cannot ignore this issue, and yet the trial court's June 17 Order is completely devoid of any reasoning for or even a mention of this pivotal issue.

The trial court makes no attempt to balance the equities as required by law. *Cf.* June 17 Order. The trial court ruling also ignored the fact that Appellants were subject to daily fines of up to $500.00 per day. Id. The trial court's order ignores this fact and makes no attempt to reconcile

it in its Order. Id. In fact, the trial court's order forces Appellants to return to a posture that would necessarily entail Appellants violating the law. *See* June 17 Order, Pages 1-2.

The trial court further failed to address the equitable principles underlying a request for injunctive relief. Here, Respondents knew as early as February 20, 2020 that the unpermitted rental hut and fuel tank were in violation of the law. *See* Exhibit C to Appellants' Reply in Opposition to Respondents' Motion for Contempt and Sanctions. Respondents made no attempt to remove those unpermitted structures or remedy the situation in anyway. In fact, they haven't done so at all at any time including up to the present day.

Equity aids those that exercise due diligence, not those who slumber on their rights, if any. Hemingway v. Mention, 228 S.C. 211, 89 S.E. 2d 369 (1955); see also Provident Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E. 2d 924, 929 (Ct. App. 1994) (under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay suffers his adversary to incur expenses or otherwise detrimentally changes his position, then equity will ordinarily refuse to enforce these rights). Here Respondents slept on their claimed rights, which Appellants contend do not exist, caused Appellants to incur a fine for a violation Respondents created on Appellants property and then waltzed into the trial court demanding their non-existent right be upheld by the trial court pursuant to a motion seeking injunctive relief, and the trial court wrongly rewarded that behavior by granting their motion.

Furthermore, equity must follow the law. In exercising discretion to provide an equitable remedy, the trial court may not violate statutes, rules of law, or precedent to provide equitable relief. Johnson v. Lloyd, 399 S.C. 470, 476, 732 S.E. 2d 198, 201 (Ct. App. 20212) (citing Lonchar v. Thomas, 517 U.S. 314 (1996)), rev'd on other grounds, 407 S.C. 610, 757 S.E. 2d 705 (2014). The trial court's June 17 Order does all three. It violates the statutes regarding permitting and commercial use. It violates the common law preventing a trial court from ordering unlawful acts.

It also attempts to overturn a precedential ruling by a magistrate court. As mentioned above, the trial court's June 17 Order demands Appellants commit an illegal act, i.e. placing the unpermitted rental hut and fuel tank back on the property in their illegal states. *See* June 17 Order at Pages 1-2. While the June 17 Order seeks to remedy this by ordering the parties to comply with the law, it goes on to contradict itself demanding Appellants return the unpermitted rental hut and fuel tank to their illegal conditions before permitting and compliance are reached. *See* June 17 Order at Pages 1-2.

Furthermore, the Order flies in the face of public policy. It is important to note here that we are talking about a private interest, the pecuniary gain of Respondents, where there is a competing public interest, the public safety and security, and it has long been recognized that the "law will never, by any construction advance a private interest to the destruction of a public interest." Richards v. City of Columbia, 227 S. C. 538, 547, 88 S.E. 2d 683, 687 (1955) In fact, "it will advance the public interest, so far as it is possible, though it be to the prejudice of a private one." Id.

The trial court was made aware of the violations of the counties' ordinances, ordinances in place to protect the public. Yet, the trial court's June 17 Order completely flouts this well-established principle of law ignoring the issue raised by Appellants.

Given Respondents abject failure to address and/or provide evidentiary support for its own motion and the trial court's endorsement of that failure through its June 17 Order, the June 17 Order should, at least, be amended to address these issues if not rescinded as it is improper, forcing a party to break the law, and makes a mockery of the traditions of the trial court to limit injunctive relief only in extraordinary circumstances.

Furthermore, the law requires that the court granting injunctive relief return the parties to the status quo, which the June 17 Order fails to do. The law is clear: the sole purpose of issuing a

preliminary injunction is to maintain the status quo. Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973)); Poynter, 387 S.C. at 586-87, 694 S.E.2d at 17 ("A preliminary injunction should issue only if necessary to preserve the status quo ante...."). Stated differently, "[t]he Fourth Circuit has defined status quo in this context as the last uncontested status between the parties which preceded the controversy." George Sink, P.A. Inj. Laws. v. George Sink II L. Firm LLC, 407 F. Supp. 3d 539, 549–50 (D.S.C. 2019), modified sub nom. George Sink PA Inj. Laws. v. George Sink II L. Firm LLC, No. 2:19-CV-01206-DCN, 2019 WL 6318778 (D.S.C. Nov. 26, 2019) (internal quotation marks and citation omitted). "The status quo to be preserved by a preliminary injunction, however, is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the last uncontested status between the parties which preceded the controversy." Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 378 (4th Cir. 2012) (citing Stemple v. Bd. of Ed. of Prince George's Cnty., 623 F.2d 893, 898 (4th Cir. 1980)). "To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions," but "[s]uch an injunction restores, rather than disturbs, the status quo ante." Id. (citing O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973, 1013 (10th Cir. 2004) and United Steelworkers of Am., AFL–CIO v. Textron, Inc., 836 F.2d 6, 10, (1st Cir. 1987). 43A C.J.S. INJUNCTIONS § 27 ("The status quo that will be preserved by a preliminary injunction is the last, actual, peaceable, non-contested status that preceded the pending controversy, as it presently or formerly existed. This is the last uncontested set of facts preceding the pending controversy.").

In the instant case, Respondents sought, and the June 17 Order granted, a directive to return the rental hut back on the Appellants property which would violate the law. It is clear that the last uncontested status between the parties was prior the Respondents creating an unlawful condition on the property which goes back to 2020 prior to issuance of the above-referenced citations and

before the lawsuit was even filed. Respondents' argument would have the court believe that the status quo existed the day they filed their motion. Given the court's ruling in Aggarao, this proposition is incongruent with the laws of this State. 675 F.3d 355, 378 (4th Cir. 2012)

Given the foregoing it is clear that the trial court committed an abuse of discretion and its order should be reversed.

**IV. The trial court erred in issuing the June 17 Order as it conflicts with itself and the facts of the case as presented by the parties.**

Standard of Review

A trial court's factual rulings are reviewed under the "clear error" standard, like any other factual finding. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 66, 666 (2000). The appellate court will affirm if any evidence supports the ruling and reverse only if there is clear error. Id. Under the "clear error" standard, an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently. State v. Pichardo, 367 S.C. 84, 95-96, 623 S.E.2d 840, 846 (Ct. App. 2005). Here there are clear errors in the trial court's order and the clear error standard should be applied.

Argument

In Strategic Resources Co., the court stated that one must apply caution when reviewing a motion for injunctive relief. 367 S.C. 540, 544, 627 S.E. 2d 687, 689 (2006). The June 17 Order is careless as it misstates facts, contains errors, and it conflicts with itself.

The June 17 Order wrongfully identifies the subject matter fuel tank as a "fuel pump." *See* June 17 Order at Page 2. While this may be a scrivener's error when taken by itself, it is more prejudicial upon examination of the other errors of the trial court suggesting a misunderstanding of the facts in this case.

Setting aside the scrivener's error, one need only look at the factual inconsistency of the trial court's June 17 Order with regards to the state of the fuel tank. It ordered the "fuel tank/fuel pump[sic]" be placed back on Appellants' property. Id. This was a factual impossibility at the time of the issuance of the Order, as the fuel tank/fuel pump[sic] remained on the property in violation of the County's rules, regulations, and/or ordinances. *See* Appellants' Reply in Opposition to Respondents' Motion for Contempt and Sanctions at Page 6. One cannot put something back on a property that is already on that property. This fallacy belies the fact that the trial court committed clear error in issuing an order inconsistent with facts, arguments, evidence, and briefs.

The Order refers to "the property." *See* June 17 Order, Pages 1-2. Respondents argued that the properties were combined submitting evidence of a plat map. *See* Transcript of Record at Page 4, Lines 6-16. Appellant argued that the properties were not combined pointing to the deeds showing Appellants as owners of the property. *See* Transcript of Record at Page 17, Lines 15-22.

The trial court made no findings as to this key issue. The properties were not combined, and that goes to the heart of the case. The trial court's failure to address this issue creates confusion and prejudices the Appellants' case. It also goes to the heart of the argument for injunctive relief as to the element of a likelihood of success on the merits.

Respondents' case rests on the idea that a joint venture existed between the corporations. *See generally* Second Amended Verified Complaint. In support of this allegation, they argue that the properties of both Respondents and Appellants were combined by a plat filed in Horry County with the Register of Deeds. *See* Transcript of Record at Page 4, Lines 6-16. However, there is no deed history conferring any property rights on Respondents over Appellants property, and plats do not convey any property interests at all. See Exhibit A to Appellants' Reply in Opposition to Respondents' Motion for Contempt and Sanctions. It follows naturally that there can be no

disagreement that Appellants own the property. The only question left is what level of access did the alleged joint venture agreement grant, if any. The answer is none as no joint venture agreement exists.

All references to "the Property" in the June 17 Order are confusing at best. The trial court makes no distinction in the June 17 Order as to the two separate properties owned by the parties separately. If one assumes that the trial court is referring to the property of Appellants, then one can only conclude that the order improperly strips Appellants of their property rights. If one assumes that the order accepts the argument of Respondent that the two properties were combined, then the order contains a flagrant error of law, as Respondents argument that a plat conveys property rights has no basis in our laws.

Additionally, the order demands Appellants comply with the law but orders Appellants to put an unpermitted structure back on the property without permits by July 1, 2022. *See* June 17 Order at Page 1-2. It then goes on to state that the parties shall comply with all permitting by July 31, 2022. Id. at Page 2.

Setting aside the logistical impossibility of the deadlines, the trial court on the one hand says the parties must comply with the law, but then orders an unlawful act. Id. at Page 1-2. No judge can issue an order that forces the parties to act illegally. Johnson v. Lloyd, 399 S.C. 470, 476, 732 S.E. 2d 198, 201 (Ct. App. 20212) (citing Lonchar v. Thomas, 517 U.S. 314 (1996)), rev'd on other grounds, 407 S.C. 610, 757 S.E. 2d 705 (2014). Yet, that is exactly what the language of the June 17 Order contemplates.

Furthermore, the June 17 Order is based on a Consent Order dated July 21, 2021 which Respondents argued trumps the actual law. There is an inherent conflict in the trial court's use of the Consent Order as justification for the issuance of injunctive relief in that if one believes, as the trial court's order suggests, that the Consent Order requires Appellants to restore the unpermitted

rental hut to its original condition, then the Consent Order itself is unlawful, as it requires Appellants to violate the law by replacing the unpermitted rental hut in a state that is unlawful. If this is so, then as Appellants argued, the Consent Order should be struck and/or rescinded.

These errors and conflicts make it clear that the trial court failed to understand the facts and use the necessary caution when entering its order, and therefore, the June 17 Order should be reversed.

## Conclusion

For the foregoing reasons, Appellants respectfully request this Honorable Court reverse the decision of the lower trial court and declare:

1) That the Appellants' standards of review are appropriate for issues as raised in this brief;

2) That the trial court's order is improper as it is clearly a collateral attack on a lawful order seeking to dispossess a court of its exclusive jurisdiction;

3) That the Respondents lacked standing to bring the motion on appeal;

4) That Respondents failed to meet their burden of proof for injunctive relief;

5) The Consent Order is hereby reversed and struck as it conflicts with the law;

6) That the trial court's order contains clear errors; and

7) And for any other such relief as this court may deem proper.

For these reasons the trial court's order is hereby reversed.

Respectfully Submitted:

s/Michael S. Harrison
Michael S. Harrison, Esq.
Murray Law Group, LLC
SC Bar # 100462
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577
(843) 445-9933
Attorney for Appellants

s/Howell Bellamy, III
Howell Bellamy, III, Esq.
Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorney for Appellants

October 6, 2022
Myrtle Beach, SC

RECEIVED
Oct 06 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

---

Case No. 2021-CP-26-01512

---

Thomas Wade Long and Clyde Kiser
Individually and on behalf of TNW
and More, LLC, Respondents,

v.

Timothy D. Kettner, Donald Kettner,
and TNT and More, Inc., d/b/a Crab
Catchers on the Waterfront, Appellants.

---

PROOF OF SERVICE

---

I certify that I have served the Initial Brief of Appellants and Designation of Matter on the Respondents, by depositing a copy of it in the United States Mail, Postage Prepaid, on October 6, 2022, addressed to their attorney of record, Tucker S. Player, Player Law Firm, 512 Village Church Drive, Chapin, SC 29036.

October 6, 2022

s/Michael S. Harrison
Michael S. Harrison, Esq.
SC Bar #100462
Murray Law Group, LLC
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577
(843) 445-9933
Attorney for Appellants