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**Nov 03 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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**RETURN OF STATE TO MOTION  
TO REMAND TO SETTLE THE RECORD**

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The State opposes Appellant’s Motion to Remand this case to the lower court to settle the record in this case. The State has earlier moved to strike Appellant’s designated matters 18-27, 33 and 36-38 contending that they were not presented to the lower court. In its return to that motion, Appellant suggested that the State move to remand. This Court’s Order of September 29 regarding the motion to strike said nothing about remand and instead directed that counsel for Appellant present proof that had he had presented the above designated matters to the lower court. In his Motion to Remand, counsel for Appellant says that he knows of no means of providing proof other than by remand. This request for remand is unnecessary and inappropriate under the circumstances of this case.

Although Appellant's counsel contends that he did present the designated matters to the lower court, he is mistaken. The Record index shows that he made no filing regarding the State's Motion for Summary Judgment prior to the lower court's WebEx hearing on December 22, 2021. (Attached to Motion to Strike). After that hearing, Appellant did file a Response to the Court's Question Re Applicability of §48-39-220 to beaches. While that Response does speak to several deeds, it does not state that they are attached and none are showing on the lower court's filing list, *supra*. That Response does not reference any of the discovery listed in its Designations 18-27. Appellant's counsel has provided no email showing that he sent any of the designated documents to the Court. Given that the proceedings in the lower court were by WebEx or telephone conference, the documents were not physically "handed up" during such a proceeding.

In his Motion to Remand, Appellant's counsel says that his communicating *ex parte* with the lower court would be improper, but he does not suggest that he could email the lower court and copy opposing counsel and other parties as to whether that court received any of the documents. The State would not oppose such an email, but the State does oppose a remand. Given the absence of filings of record of the documents or a reference to them as exhibits, the absence of an email to the court attaching the documents and copying counsel and the impossibility of physically handing up the documents during the telephone and video proceedings, no basis exists for the lower court to resolve the dispute over the Designation.

The State respectfully requests that this Motion be denied. The State will not object to counsel's being permitted a limited amount of time to email the lower court as to whether it ever received the referenced documents provided that the email does not request that the lower court hold a hearing or telephone conference regarding the matter.

Respectfully submitted,

ALAN WILSON  
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s/ J. EMORY SMITH, JR.  
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November 2, 2022

ATTORNEYS FOR THE STATE

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served the State's Return to Appellant's Motion for Remand 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 November 3, 2022 through the United States mail.

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Counsel for the State of South Carolina

November 3, 2022

## Emory Smith

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**From:** Emory Smith  
**Sent:** Thursday, November 3, 2022 3:20 PM  
**To:** 'Fred Kuhn'; Ralph V. Baldwin, Jr  
**Cc:** Colwell, Angelica M.; Shahid, Mary D.  
**Subject:** RE: Coffin Point v. State et al  
**Attachments:** Return to Motion to Remand (03145146xD2C78).PDF

Good afternoon.

Attached is the State's Return to the Motion to Remand.

Emory

J. Emory Smith, Jr.  
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