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**Jan 23 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM BEAUFORT COUNTY  
The Honorable Donald B. Hocker, Circuit Court Judge  
Beaufort County  
Trial Court Case No. 2020-CP-07-1064

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APPELLATE CASE NO. 2022-001547

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Turner's Marina LLC,

Respondent-Appellant,

vs.

Paige Lorberbaum, Jeffrey Klapper, and Diane L. Klapper,

Defendants,

Of whom Paige Lorberbaum is the Appellant-Respondent and Jeffrey A. Klapper and Diane L. Klapper are Respondents.

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**RESPONDENT-APPELLANT TURNER'S MARINA, LLC'S MOTION TO DISMISS  
THE APPEAL OF APPELLANT-RESPONDENT PAIGE LORBERBAUM AS MOOT**

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The Respondent-Appellant Turner's Marina, LLC hereby moves this Court to dismiss the appeal of Appellant-Respondent Paige Lorberbaum as filed on October 27, 2022, because same is now moot.

As the basis for this Motion, the Respondent-Appellant Turner's Marina, LLC shows unto this honorable Court that on December 28, 2022, the Appellant-Respondent Lorberbaum voluntarily transferred ownership of Lot 158 at the R.V. Resort and Yacht Club to Respondent-Appellant Turner's Marina, LLC via General Warranty Deed, in compliance with the Orders of

August 4, 2022 and December 14, 2022, issued in this case by the Honorable Donald B. Hocker. See Affidavit of Neil Turner filed contemporaneously with this Motion. That voluntary transfer of the property rendered the appeal filed by the Appellant-Respondent Lorberbaum on October 27, 2022, moot, because any action by this Court on Ms. Lorberbaum's appeal will have no practical legal effect on the controversy over whether Turner's Marina LLC held a valid right of repurchase to the property when Ms. Lorberbaum bought it from Respondents Jeffrey A. Klapper and Diane L. Klapper.

WHEREFORE, the Respondent-Appellant Turner's Marina, LLC moves this Court to dismiss the appeal of Appellant-Respondent Paige Lorberbaum as moot, while allowing the cross appeal of Respondent-Appellant Turner's Marina, LLC to continue.

*s/Thomas C. Taylor* \_\_\_\_\_

Thomas C. Taylor, Esq.

South Carolina Bar Number: 5499

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ATTORNEY FOR RESPONDENT-APPELLANT  
TURNER'S MARINA LLC

Bluffton, South Carolina  
January 23, 2023

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THE STATE OF SOUTH CAROLINA  
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Turner's Marina LLC,

Respondent-Appellant,

vs.

Paige Lorberbaum, Jeffrey Klapper, and Diane L. Klapper,

Defendants,

Of whom Paige Lorberbaum is the Appellant-Respondent and Jeffrey A. Klapper and Diane L. Klapper are Respondents.

---

**MEMO IN SUPPORT OF RESPONDENT-APPELLANT TURNER'S MARINA LLC'S  
MOTION TO DISMISS THE APPEAL OF APPELLANT-RESPONDENT PAIGE  
LORBERBAUM AS MOOT**

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INTRODUCTION

The initial appeal in this matter was filed by Paige N. Lorberbaum, the former owner of Lot 158 in the R.V. Resort and Yacht Club development on Hilton Head Island, from the trial court's decision to enforce a right of repurchase held by Respondent-Appellant Turner's Marina, LLC. In early 2019, Respondents Diane L. Klapper and Jeffrey A. Klapper, Lorberbaum's predecessors in title, agreed to sell Lot 158 to Lorberbaum for \$54,500. Turner's Marina, LLC timely sought to exercise its right of repurchase. Despite those efforts, on April 22, 2019, the

Klappers closed the sale of the lot to Lorberbaum. Turners Marina filed suit against all three defendants for breach of contract.

On August 3, 2022, following a bench trial on June 3, 2022, the Honorable Donald B. Hocker signed and entered his final Order in this matter holding that the Plaintiff Turner's Marina LLC owned a right of repurchase on Lot 158, and having been denied that right, "is entitled to the equitable remedy of an Order of Specific Performance requiring Lot 158 be conveyed by Defendant Lorberbaum to Plaintiff Turner's Marina within ninety (90) days of the entry of this Order by General Warranty Deed, for the consideration of Fifty four thousand Five Hundred (\$54,500) dollars." See Exhibit 1, Order of Judge Hocker, p. 6. Following the denial of Lorberbaum's Motion to Alter or Amend that Judgment on September 27, 2022 (See Exhibit 2), Defendant Lorberbaum filed her Notice of Appeal to this Court on October 27, 2022.

On November 1, 2022, Defendant Lorberbaum filed a Motion in Circuit Court entitled "Motion for Clarification of Order or in the Alternative For A Stay" seeking to extend the time until Defendant Lorberbaum "would eventually be required to move." See Exhibit 3, paragraph 6. Defendant Lorberbaum therein argued "It is clear it was the Court's original intent to give Lorberbaum sufficient time to make said transition when it originally set forth the time period of ninety (90) days. Now that a 'final' decision has been rendered, Lorberbaum is entitled to the full ninety (90) days to make arrangements to find another suitable location for her RV, or make other living arrangements." *Id.*

On November 28, 2022, Appellant Lorberbaum filed her Initial Brief alleging that Judge Hocker committed an error of law by failing to find that Turner's Marina's right of first repurchase "violated the Uniform Statutory Rule Against Perpetuities." See Appellant's Initial Brief, p. 4. Appellant Lorberbam argues that "the Trial Court's decision requiring Lorberbaum to convey the

RV Lot to Turner for \$54,500 should be reversed.” Appellant’s Initial Brief Conclusion, p. 10. At no time did Defendant Appellant Lorberbaum seek a stay pursuant to SCRPC 62 nor SCACR 241, nor did Lorberbaum seek a supersedeas.

On December 14, 2022, Judge Hocker issued another Order clarifying his original intent as to the timing of the conveyance of Lot 158 by Lorberbaum to Turner’s Marina, holding:

It was the Court’s intention to provide Lorberbaum a full ninety (90) days to move her recreation vehicle (used as her full time residence) and to convey the Subject Property once the Court’s decision became final. The decision did not become final until the issuance of the September Order. Lorberbaum is entitled to the full ninety (90) days from the issuance of the September Order, and must complete the sale and vacate the Subject Property no later than December 28, 2022.

See Exhibit 4, p. 2.

On December 28, 2022, Plaintiff Turner’s Marina LLC tendered its \$54,500 as per Judge Hocker’s Orders, and Appellant Lorberbaum accepted same and transferred the property to Turner’s Marina by General Warranty Deed. See Exhibit 5, Affidavit of Neil Turner. This voluntary conveyance of Lot 158 by Appellant Lorberbaum renders her portion of this appeal moot as to the issue of Turner’s Marina’s right of repurchase and same must be dismissed.

#### ARGUMENT AND CITATION OF AUTHORITY

By her appeal, Lorberbaum seeks the reversal of Judge Hocker’s orders holding that Turner’s Marina LLC held a valid right of repurchase of the Lot when Ms. Lorberbaum bought it, and was denied it’s right of repurchase. Judge Hocker’s several orders affirmed that right of repurchase and granted Turner’s Marina the specific performance remedy of purchasing the lot from Ms. Lorberbaum for \$54,500. Instead of seeking a stay or supersedeas as both the Rules of Civil Procedure and the South Carolina Appellate Court Rules allow, Ms. Lorberbaum voluntarily complied with Judge Hocker’s orders on December 28, 2022, by conveying Lot 158 to Turner’s Marina by General Warranty Deed in exchange for \$54,500, and by that action, rendered her appeal

moot. No actual controversy now exists as to the right of repurchase because the lot has been sold by Ms. Lorberbaum and full payment accepted.

“A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” Mathis v. S.C. State Highway Dep’t., 260 S.C. 344, 195 S.E.2d 713 (1973). *See also* Appellate Practice in South Carolina, Third Edition, Toal, Walker and Baker, 2016, “Mootness,” p. 134 et. seq. “The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation. Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review.” Sloan v. Greenville Cnty., 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003).

More than 70 years ago, the Supreme Court in Berry v. Zahler, 220 S.C. 86, 6 S.E.2d 459 (1951), set forth in detail numerous circumstances where actions subsequent to the notice of appeal rendered an appeal moot. The Berry case is instructive in these circumstances. Specifically in Berry, the Court dismissed as moot an appeal brought by parties against whom an order of ejectment had issued, when the appellants advised the Court that after filing the appeal, they had moved out and delivered possession of the premises to the Landlord. “Under these circumstances, the issue, which was the right to possession of the premises, has become moot, and the appeal will not be considered.” Berry, 220 S.C. at 87. In 2020, the Supreme Court in Skydive Myrtle Beach, Inc. v. Horry County, 428 S.C. 638, 837 S.E.2d 485 (2020), differentiated such a voluntary act triggering the application of the mootness doctrine, from the situation in Skydive where “ten Horry County sheriff’s deputies arrived at the hanger to ensure Skydive vacated the premises by the court-ordered deadline.” Here, not only did Lorberbaum voluntarily choose to accept the court’s

orders, but she also accepted the \$54,500, has kept it, and willingly conveyed the lot by General Warranty Deed instead of seeking an easily available supersedeas. The issue as to whether Turner's Marina held a valid right of repurchase is moot as to the Lorberbaum appeal.

There are three general exceptions in which a court will review an issue despite its mootness. *See Sloan v. Greenville County, id.* First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001).

None of the generally recognized exceptions to the mootness doctrine is applicable in these facts. While Appellant Lorberbaum may argue that there are 199 other Lots at the RV Resort that are subject to the Turner's Marina Right of Repurchase, and thus argue the issue is capable of repetition, it is not a situation where the issue will truly evade review in other cases. *See Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The issue may be reviewed in any later case where the lot owner asserts the same defense and then simply follows the Appellate Court rules and seeks a stay or supersedeas during the pendency of the appeal, in lieu of taking \$54,500 from Turner's Marina and conveying their lot.

Likewise, the second general exception, an imperative and manifest urgency in matters of important public interest, simply does not apply. Under this exception, the issue is moot unless it is both (1) of public importance, and (2) of imperative and manifest urgency. *Sloan, id.* This is

simply a private controversy between individuals and does not warrant consideration under this exception. *Cf. Ashmore v. Greater Greenville Sewer District*, 211 S.C. 77, 44 S.E.2d 88 (1947).

Finally, nor do the circumstances of this case bring it under the third exception where a decision in the case may affect future events or have collateral consequences for the parties. Here, Ms. Lorberbaum is, in reality, no longer a party to her appeal alleging a violation of the Rule Against Perpetuities now that she has accepted the \$54,500 payment and tendered the deed. Lorberbaum's voluntary sale of the lot renders any further judicial consideration of whether Judge Hocker's order mandating the sale was legally erroneous, pointless. See *Sloan, id.* Ms. Lorberbaum made her voluntary decision to accept Turner's Marina's money and tender the deed. An action by this Court will have no practical legal effect upon the controversy. Ms. Lorberbaum's appeal is moot.

#### CONCLUSION

For the foregoing reasons, Turner's Marina LLC moves this Court to dismiss the Appellant-Respondent's Paige N. Lorberbaum's appeal as moot, while allowing the cross appeal of current Respondent-Appellant Turner's Marina, LLC to continue.

*s/Thomas C. Taylor*

Thomas C. Taylor, Esq.

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TURNER'S MARINA LLC

Bluffton, South Carolina  
January 23, 2023

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	<b>FOURTEENTH JUDICIAL CIRCUIT</b>
<b>COUNTY OF BEAUFORT</b>	)	
	)	<b>Case No. 2020-CP-07-1064</b>
<b>TURNER’S MARINA LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>PAIGE N. LORBERBAUM,</b>	)	<b>ORDER</b>
<b>JEFFREY A. KLAPPER and</b>	)	
<b>DIANE L. KLAPPER,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

This case was initiated by the Plaintiff on May 13, 2020, seeking damages for breach of contract or specific performance over the Defendants’ alleged failure to honor the Plaintiff’s Right of Repurchase found in the Declaration of Covenants of the R.V. Resort and Yacht Club on Hilton Head Island, South Carolina, as originally recorded on June 18, 1981.

Answers were filed by all Defendants in a timely manner, and on April 26, 2022, a Consent Order was entered providing that, to the extend the Court were to award the Plaintiff specific performance, the Plaintiff shall pay off and satisfy the mortgage held by Defendant Coastal States Bank from the purchase proceeds. The case was called for trial before the undersigned on June 30, 2022 and the Plaintiff’s earlier request for a jury trial waived.

Based upon the evidence adduced at trial, the testimony given, the pleadings of record and the argument of counsel, I hereby make and enter the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The property commonly known as the Hilton Head RV Resort consists of approximately 17 acres that was originally sold by the Hilton Head Company, Inc. to Roger D. Shay in 1977 by deed recorded in Deed Book 245 at Page 1052, which deed included a set of Protective Covenants under which the Hilton Head Company reserved a right of repurchase (sometimes known as the “HHC Co. Right of Repurchase”).
2. The 17 acres were then sold several times, culminating with a conveyance to the Outdoor Resorts, R.V. Resort and Yacht Club by way of deed recorded at Deed Book 325 at Page 915.
3. On June 12, 1981, a Declaration of Condominium entitled “Declaration of Covenants and Restrictions for Outdoor Resorts RV Resort and Yacht Club and Provisions for the RV Resort and Yacht Club Owner’s Association, Inc.” (hereinafter sometimes referred to as the “R.V. Resort Covenants”) was executed by the Outdoor Resorts, R.V. Resort and Yacht Club and was subsequently recorded in the Office of the Beaufort County Register of Mesne Conveyances at Book 325, Page 920 on June 18, 1981.
4. The R.V. Resort Covenants are also applicable to the property, which as of 1981 consisted of approximately 200 individually owned lots and certain common areas and amenities as are more fully described in Deed Book 325 at Page 939 in the Office of the Clerk of Court for Beaufort County (hereinafter sometimes referred to as the “Property”). The R.V. Resort Covenants

contain restrictions, easements, affirmative obligations, charges, liens, leases, and a Right of Repurchase (the “R.V. Resort Covenants Right Of Repurchase”) affecting the Property. One of the individually owned lots located in the Property is legally described as Lot 158 Outdoor Resorts, R.V. Resorts & Yacht Club, as described on a plat entitled “R.V. Resorts and Yacht Club” dated September 7, 1981 and prepared by Forrest F. Baughman, South Carolina Registered Land Surveyor (S.C. Reg. No. 4922), said plat being recorded in the Office of the ROD of Beaufort County, South Carolina in Plat Book 29 at Page 184.

5. The R.V. Resort Covenants at page 18, specifically Paragraph 12.9, contain a Right of Repurchase to the Developer, which specifically provides:

12.9 In the event the Unit Owner desires to sell his Lot, then said Lot shall be offered for sale to the Developer at the same price at which the property is about to be sold, and the said Developer shall have thirty (30) days within which to exercise its option to purchase said property; and should the Developer fail or refuse (within thirty (30) days after the receipt of notice of the price and terms) to exercise its option to purchase said property at the price at which it is about to be sold, then the Owner of said property shall have the right to sell said property subject to all covenants and limitations herein contained.

As noted above, this right of repurchase is sometimes known as the “R.V. Resort Covenants Right Of Repurchase.”

6. The original Developer of the Property was O.R.A. of Carolina, Inc.
7. The entity known as Billybob’s Marinas, Inc., a South Carolina corporation, validly acquired all of the “Declarant” or “Developer” rights under the R.V. Resort Covenants, including specifically the aforementioned R.V. Resort Covenants Right of Repurchase set forth at Article 12.9 of the Covenants.

8. On or about December 21, 2017, Billybob's Marinas, Inc., for the consideration of \$4,600,000, conveyed to the Plaintiff Turner's Marina, all of its right, title, and interest to the afore-described tangible and intangible property. Said conveyance also included the conveyance by Billybob's Marinas, Inc. to Turner's Marina, of all of Billybob's Marinas, Inc.'s right and interest in all documents recorded in the Office of the Register of Deeds for Beaufort County, South Carolina providing for a "right of repurchase" as to any lots or parcels located at the Property emanating from the Covenants.
9. Since December 21, 2017, the Plaintiff Turner's Marina has been and is the valid owner of all currently existing "Developer" or "Declarant" rights as are set forth in the R.V. Resort Covenants and Turner's Marina has been and is the valid owner of all currently existing recorded rights of first repurchase emanating from the R.V. Resort Covenants as to any lots or parcels located at the Property, including Lot 158.
10. By virtue of the Absolute Assignment executed between Billybob's Marina's Inc. and Turner's Marina LLC on December 21, 2017, Turner's Marina came to own both the R.V. Resort Covenants Right of Repurchase and the HHCo. Right of Repurchase. However, Billybob's Marina's Inc. retained the right to exercise the HHCo. Right of Repurchase under the Seller financing agreement, until that loan is repaid.
11. On or about May 18, 2007, the Defendant Klappers purchased Lot 158.
12. At all times the Klappers owned Lot 158, it remained subject to the recorded covenants, including both rights of repurchase identified above.

13. On or about April 2, 2019, Darrell Thomas Johnson, the Klappers' and Defendant Lorberbaum's attorney, notified an authorized representative of Plaintiff Turner's Marina of a proposed sale of Lot 158 to Defendant Lorberbaum for \$54,500, thereby triggering the Plaintiff's R.V. Resort Covenants Right of Repurchase period, to be exercised anytime within the thirty (30) period between April 2, 2019 and May 1, 2019.
14. Mr. Johnson, operating as the attorney for the Klappers and Defendant Lorberbaum, sought and secured a Waiver of the HHCo. Right of Repurchase from Billybob's Marinas, Inc. prior to April 22, 2019, and recorded same, thereby satisfying the HHCo. Right of Repurchase regarding the sale of Lot 158, but that Waiver from Billybob's did not satisfy the R.V. Resort Covenants Right of Repurchase owned by Turner's Marina.
15. On or about April 19, 2019, Chester C. Williams, legal counsel for Turner's Marina, notified Mr. Johnson, as legal counsel for the Klappers and Defendant Lorberbaum, that Turner's Marina had elected to exercise its Right of Repurchase to purchase Lot 158 from the Klappers for \$54,500.
16. Prior to April 19, 2022, Defendants Lorberbaum and the Klappers had actual and constructive knowledge of the existence of the R.V. Resort Covenants' Right of Repurchase, of Turner's Marina's ownership of that Right of Repurchase, and of Turner's Marina's notice to them of Turner's Marina's intent to exercise that Right of Repurchase.
17. Despite actual knowledge of the Plaintiff Turner's Marina's exercise of its R.V. Resort Covenants Right of Repurchase on April 19, 2019, the Klapper Defendants moved forward with the sale of Lot 158 to Defendant Lorberbaum on or about April 22, 2019.

18. From April 19, 2019 through May 1, 2019, the Plaintiff Turner's Marina stood ready, willing, and able to tender the \$54,500 to purchase Lot 158 from the Klappers pursuant to the Right Of Repurchase.

19. At no time between April 2, 2019 and May 1, 2019, did any representative of Turner's Marina waive its R.V. Resort Covenants Right of Repurchase to purchase Lot 158.

### **CONCLUSIONS OF LAW**

1. The failure of the Klappers and Defendant Lorberbaum to allow Turner's Marina to purchase Lot 158 was a material breach of R.V. Resort Covenants, specifically paragraph 12.9.
2. Given the Findings of Fact as set forth above, Turner's Marina is entitled to the equitable remedy of an Order of Specific Performance requiring that Lot 158 be conveyed by Defendant Lorberbaum to Plaintiff Turner's Marina within ninety (90) days of the entry of this Order by General Warranty Deed, for the consideration of Fifty-four thousand Five Hundred (\$54,500) dollars.
3. There shall be no reduction in the \$54,500 price to be paid by the Plaintiff based upon a claimed loss of rental revenues over the period since the conveyance to Defendant Lorberbaum, because the Plaintiff failed to prove those damages with specificity.
4. Because Billybob's Marinas, Inc. earlier waived its HHC Co. Right of Repurchase as to Lot 158, no further waiver from Billybob's is necessary nor required at the conveyance to Turner's Marina.

5. From the consideration to be paid by Turner's Marina for the conveyance of Lot 158, the existing mortgage of Defendant Lorberbaum to former Defendant Coastal States Bank shall be paid off, with the balance of the proceeds after normal closing expenses allocated to the purchaser and seller, paid over to Defendant Lorberbaum.
6. Although there is a provision within the R.V. Resort Covenants providing for attorney's fees in certain situations to prevailing litigants, there was no specific proof offered during trial as to the amount of attorney's fees expended by the Plaintiff, and thus I award no attorney's fees to the Plaintiff.
7. I have carefully considered and rejected Defendant Lorberbaum's arguments relative to the Rule Against Perpetuities, the wording of the various deeds, Jus Tertii, Developer's lack on an interest, and efficiency of a corrective deed in the chain of title. I do not believe sufficient evidence was presented.

AND IT IS SO ORDERED this \_\_\_\_ day of August, 2022.

s/\_\_\_\_\_  
Donald B. Hocker  
Circuit Court Judge



Beaufort Common Pleas

**Case Caption:** Turners Marina Llc VS Paige N Lorberbaum , defendant, et al

**Case Number:** 2020CP0701064

**Type:** Order/Damages

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

EXHIBIT 2 TO MOTION TO DISMISS

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )  
 )  
TURNER'S MARINA LLC, )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PAIGE N. LOBERBAUM, JEFFREY A. )  
KLAPPER, and DIANE L. KLAPPER, )  
 )  
 )  
Defendants )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

ORDER  
Case No.: 2020-CP-07-1064

Plaintiff filed a Motion to Alter and Amend. Defendant Loberbaum filed a Motion to Alter and Amend and also filed a Motion to Allow Late Filing of their Motion to Alter and Amend. After careful consideration, both the Plaintiff's Motion to Alter and Amend and Defendant Loberbaum's Motion to Alter and Amend are respectfully denied. Defendant Loberbaum's Motion to Allow Late filing is hereby granted.



\_\_\_\_\_  
DONALD B. HOCKER  
PRESIDING CIRCUIT COURT JUDGE

Laurens, South Carolina  
Date: 9-26-22

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TURNER'S MARINA LLC,

Plaintiff,

vs.

PAIGE N. LORBERBAUM,  
JEFFREY A. KLAPPER, DIANE L.  
KLAPPER,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2020-CP-07-1064

**DEFENDANT LORBERBAUM'S MOTION  
FOR CLARIFICATION OF ORDER OR IN THE  
ALTERNATIVE FOR A STAY**

**TO: THE PLAINTIFF ABOVE NAMED AND ITS COUNSEL, THOMAS C. TAYLOR:**

YOU WILL PLEASE TAKE NOTICE that the Defendant, Paige N. Lorberbaum ("Lorberbaum"), will move before the Honorable Donald B. Hocker, South Carolina Circuit Court Judge, for an Order clarifying and confirming the date that Lorberbaum is obligated to convey to the Plaintiff Lot 158 ("Subject Property"). The grounds of said Motion are as follows:

1. That on August 4, 2022 the Court issued an Order which provided that in ninety (90) days Lorberbaum was obligated to convey the Subject Property to the Plaintiff pursuant to its claimed right of repurchase.
2. That on or about August 16, 2022 Lorberbaum filed a Motion to Alter or Amend Order under Rule 59(b) SCRCP ( Ex. 1).
3. That on September 27, 2022 the Court issued an Order denying Lorberbaum's Rule 59(b) SCRCP motion. ( Ex. 2)

4. That it is Lorberbaum's position that the ninety (90) day time period to convey the Subject Property is on or about December 28, 2022, ninety (90) days from when the Court's decision was final upon the denial of the Rule 59(b) SCRCF Motion. Plaintiff contends the Rule 59(b) SCRCF motion had no impact on the ninety (90) day time period, which would end under the original Order on or about November 2, 2022.

5. That Lorberbaum's full time residence is the recreation vehicle ("RV") situated on the Subject Property. She has lived in said RV approximately five (5) years.

6. That until the Court's Order was deemed a "final" decision upon the resolution of the Rule 59(b) SCRCF motion, it was unknown whether Lorberbaum would eventually be required to move. It is clear it was the Court's original intent to give Lorberbaum sufficient time to make said transition when it originally set forth the time period of ninety (90) days. Now that a "final" decision has been rendered, Lorberbaum is entitled to the full ninety (90) days to make arrangements to find another suitable location for her RV, or make other living arrangements.

7. Under Plaintiff's interpretation of the deadline, if the hearing and issuance of an order on Lorberbaum's post-trial Motions were delayed, she would be obligated to move out the day an Order was issued in said post trial motions. For example, if for whatever reason the Court did not issue its Order in the post-trial motions until November 15, 2022, this would be past the ninety (90) days set forth in the original Order, and Lorberbaum would have to move out on that day. Such an interpretation is illogical and unreasonable.

8. Further, South Carolina law provides for similar time periods to run from the date post-trial Orders are issued under Rule 59 SCRCP and Rule 60 SCRCP (ex. time to file appeal stayed until post-trial motions are resolved. Rule 59(f) SCRCP.)

LORBERBAUM SO MOVES.

/s/ Russell P. Patterson  
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*Attorneys for the Defendant,*  
*Paige N. Lorberbaum*

November 1, 2022  
Hilton Head Island, South Carolina

EXHIBIT 4 TO MOTION TO DISMISS

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT  
CASE NUMBER 2020-CP-07-1064

TURNER'S MARINA LLC,  
Plaintiff,

vs.

PAIGE N. LORBERBAUM,  
JEFFREY A. KLAPPER, DIANE L.  
KLAPPER,

Defendants.

**ORDER GRANTING LORBERBAUM'S  
MOTION FOR CLARIFICATION AND  
DENYING PLAINTIFF'S MOTION  
TO COMPEL**

This matter comes before me upon the Defendant, Paige N. Lorberbaum's ("Lorberbaum"), Motion for Clarification of Order, dated November 1, 2022 and Plaintiff, Turner's Marina, LLC's ("Turner"), Motion to Compel, dated November 3, 2022. A virtual hearing was held on Monday, December 5, 2022 at 9:00 a.m. where Thomas C. Taylor appeared for Turner, Russell P. Patterson appeared for Lorberbaum, and James S. Murray appeared on behalf of the Defendants, Jeffrey A. Klapper and Diane L. Klapper (collectively "Klapper").

After carefully reviewing the legal memoranda of Lorberbaum and Turner, and consideration of oral arguments by all counsel, it is the decision of this Court to grant the motion of Lorberbaum and deny the motion of Turner for the reasons explained below.

The procedural history, which is the genesis of the motions before the Court, is not in dispute. On August 4, 2022 the Court issued an Order which provided that in ninety (90) days, on or before November 2, 2021, Lorberbaum was obligated to convey Lot 158 ("Subject

Property”) to the Plaintiff pursuant to its right of repurchase (“August Order”). On or about August 16, 2022, Lorberbaum filed a Motion to Alter or Amend Order under Rule 59(b) SCRCP. On September 27, 2022 the Court issued an Order denying Lorberbaum’s Rule 59(b) SCRCP motion (“September Order”).

The parties thereafter disagreed on the required closing date under the two Orders. Turner took the position closing was required to be completed on November 2, 2022, while Lorberbaum asserted the ninety (90) days commenced from the date of the September Order, which results in a closing date of December 28, 2022.

It was the Court’s intention to provide Lorberbaum a full ninety (90) days to move her recreation vehicle (used as her full time residence) and to convey the Subject Property once the Court’s decision became final. The decision did not become final until the issuance of the September Order. Lorberbaum is entitled to the full ninety (90) days from the issuance of the September Order, and must complete the sale and vacate the Subject Property no later than December 28, 2022.

Based upon the Court’s decision above, Turner’s Motion to Compel, seeking sanctions and attorney fees for not closing on November 2, 2022, becomes moot. Further, upon a careful review of the action of Lorberbaum in seeking an expedited decision on the disputed closing date, this Court cannot find any actions on her part that would justify the relief requested by Plaintiff.

AND IT IS SO ORDERED.

---

Donald B. Hocker  
S.C. Circuit Court Judge

Beaufort, South Carolina  
December \_\_\_\_\_, 2022



Beaufort Common Pleas

**Case Caption:** Turners Marina Llc VS Paige N Lorberbaum , defendant, et al

**Case Number:** 2020CP0701064

**Type:** Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

EXHIBIT 5 TO MOTION TO DISMISS

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM BEAUFORT COUNTY  
The Honorable Donald B. Hocker, Circuit Court Judge  
Beaufort County  
Trial Court Case No. 2020-CP-07-1064

---

APPELLATE CASE NO. 2022-001547

---

Turner's Marina LLC,

Respondent-Appellant,

vs.

Paige Lorberbaum, Jeffrey Klapper, and Diane L. Klapper,

Defendants,

Of whom Paige Lorberbaum is the Appellant-Respondent and Jeffrey A. Klapper and Diane L. Klapper are Respondents.

---

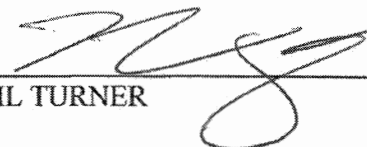
**AFFIDAVIT OF NEIL TURNER**

---

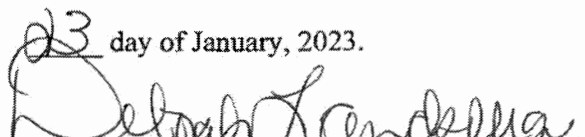
1. My name is Neil Turner. I am above the age of majority, and I give this Affidavit based upon my personal knowledge and in support of the Appellant-Respondent's Motion to Dismiss Paige N. Lorberbaum's Appeal in this matter.
2. I am the President of Turner's Marina LLC, which owns and operates the Hilton Head Harbor Marina, located off Jenkins Island Road, on the northern end of Hilton Head. Turner's Marina LLC is the Appellant-Respondent herein and was the original Plaintiff in the circuit court.

3. On December 28, 20~~23~~<sup>22 NT</sup>, pursuant to the Orders of the Hon. Donald Hocker in this case, Turner's Marina LLC tendered \$54,500 in cash for the purchase of Lot 158 from Paige N. Lorberbaum. As the Buyer's Settlement Statement (attached Exhibit A) shows, the voluntary transaction was closed when Ms. Lorberbaum accepted the cash and transferred the Deed for Lot 158 to Turner's Marina LLC.
4. On December 28, 20~~23~~<sup>22 NT</sup>, Paige N. Lorberbaum voluntarily tendered a General Warranty Deed in exchange for the consideration of \$54,500 tendered by Turner's Marina LLC. A true and correct copy of the Deed is attached hereto as Exhibit B.
5. As of the date of the signing of this Affidavit, Paige N. Lorberbaum has kept the \$54,500 in consideration and the General Warranty Deed she issued to Turner's Marina LLC has been recorded.

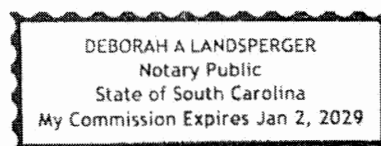
FURTHER AFFIANT SAYETH NOT.

  
NEIL TURNER

Sworn to before me this

23 day of January, 2023.  
  
Notary Public for the State of South Carolina

My commission expires: Jan 2, 2029



**BUYER'S STATEMENT**

**Buyer:** Turner's Marina, LLC  
**Seller:** Paige N. Lorberbaum  
**Settlement Agent:** Law Office of Chester C. Williams, LLC  
 (843)842-5411  
**Place of Settlement:** Post Office Box 6028  
 Hilton Head Island, SC 29938-6028  
**Settlement Date:** December 28, 2022  
**Property Location:** 43-B Jenkins Island Road, Lot 158  
 Hilton Head Island, SC 29926  
 Beaufort County, South Carolina  
 Lot Number 158 RV Resorts  
 & Yacht Club

**DEBITS**

Purchase Price		54,500.00
County Taxes	12/29/22 to 01/01/23 Beaufort County Treasurer	7.39
Assessments	12/29/22 to 01/01/23 RV Resort & Yacht Club OA	28.66
Abstract or Title Search	Somerset Title, LLC	185.00
Final Title Search Update	Somerset Title, LLC	50.00
Reimbursement Cert of Existenc	Law Office of Chester C. Williams, LLC	14.00
Attorney's Fees	Law Office of Chester C. Williams, LLC	850.00
Title Insurance	BPA Title Services, Inc.	195.00
Phone, Copy, Express, etc.	Law Office of Chester C. Williams, LLC	27.00
Recording Fees	Beaufort County Register of Deeds	15.00
<b>Gross Amount Due From Buyer</b>	<b>TOTAL DEBITS</b>	<b>55,872.05</b>

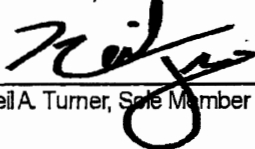
**CREDITS**

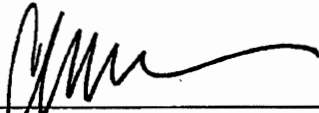
Deposit or Earnest money		
<b>Less Total Credits to Buyer</b>	<b>TOTAL CREDITS</b>	

**BALANCE**

<b>From Buyer</b>		<b>55,872.05</b>
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APPROVED:  
Turner's Marina, LLC

BY:   
Neil A. Turner, Sale Member

  
\_\_\_\_\_  
Law Office of Chester C. Williams, LLC

**SELLER'S STATEMENT**

**Buyer:** Turner's Marina, LLC  
**Seller:** Paige N. Lorberbaum  
**Settlement Agent:** Law Office of Chester C. Williams, LLC  
 (843)842-5411  
**Place of Settlement:** Post Office Box 6028  
 Hilton Head Island, SC 29938-6028  
**Settlement Date:** December 28, 2022  
**Property Location:** 43-B Jenkins Island Road, Lot 158  
 Hilton Head Island, SC 29926  
 Beaufort County, South Carolina  
 Lot Number 158 RV Resorts  
 & Yacht Club

**CREDITS**

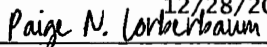
Purchase Price		54,500.00
Assessments	12/29/22 to 01/01/23 RV Resort & Yacht Club OA	28.66
<b>Less Total Credits to Seller</b>		<b>TOTAL CREDITS</b>
		<u>54,528.66</u>

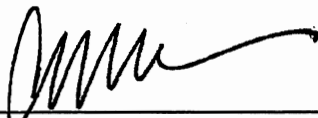
**DEBITS**

Attorneys Fees	Law Office of Russell P. Patterson, P.A.	550.00
State Tax/Stamps	Beaufort County Register of Deeds	201.65
County Taxes	01/01/22 to 12/29/22 Beaufort County Treasurer	892.31
Payoff First Mortgage	CoastalStates Bank	20,333.11
<b>Less Total Reductions to Amount Due Seller</b>		<b>TOTAL DEBITS</b>
		<u>21,977.07</u>

**BALANCE**

**To Seller** 32,551.59

APPROVED: DocuSigned by: 12/28/2022  
  
 Paige N. Lorberbaum 8B32A452...

  
 Law Office of Chester C. Williams, LLC



**SUBJECT TO** all restrictions, covenants, conditions, easements, etc. as shown in instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina

This being the same property conveyed to the within Paige N. Lorberbaum by Deed from Jeffrey A. Klapper and Diane L. Klapper, dated April 17, 2019, recorded on April 25, 2019 in the Register of Deeds Office for Beaufort County, South Carolina in Book 3754 at Page 1745.

The within Deed was prepared in the Law Office of Russell P. Patterson, P.A. by Russell P. Patterson, P.O. Box 8047, Hilton Head Island, SC 29938.

**TOGETHER** with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

**TO HAVE AND TO HOLD**, all and singular, the said Premises before mentioned unto the said Grantee, its successors and assigns, forever.

**AND** the Grantor does hereby bind the Grantor and the Grantor's heirs, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, as herein above provided, against the Grantor and the Grantor's heirs and assigns and any persons whomsoever lawfully claiming, or to claim the same or any part thereof.

(signature page to follow)



**RECEIVED**

**Jan 23 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM BEAUFORT COUNTY  
The Honorable Donald B. Hocker, Circuit Court Judge  
Beaufort County  
Trial Court Case No. 2020-CP-07-1064

---

APPELLATE CASE NO. 2022-001547

---

Turner's Marina LLC,

Respondent-Appellant,

vs.

Paige Lorberbaum, Jeffrey Klapper, and Diane L. Klapper,

Defendants,

Of whom Paige Lorberbaum is the Appellant-Respondent and Jeffrey A. Klapper and Diane L. Klapper are Respondents.

---

**PROOF OF SERVICE**

---

I hereby certify that this law firm represents the Respondent-Appellant Turner's Marina LLC in the above-captioned matter and that on the date below, in Bluffton, South Carolina, I served a copy of the forgoing on the following persons via electronic mail to their AIS E-mail address:

**Documents Served:**

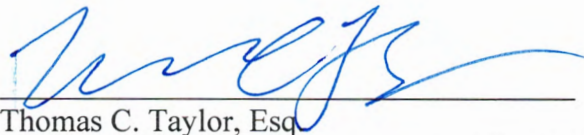
**RESPONDENT-APPELLANT TURNER'S MARINA  
LLC'S MOTION TO DISMISS THE APPEAL OF  
APPELLANT-RESPONDENT PAIGE N.  
LORBERBAUM AS MOOT**

**MEMO IN SUPPORT OF RESPONDENT-  
APPELLANT TURNER'S MARINA LLC'S MOTION  
TO DISMISS THE APPEAL OF APPELLANT-  
RESPONDENT PAIGE LORBERBAUM AS MOOT**

**Parties Served:**

**Russell P. Patterson, Esq.  
Russell P. Patterson, P.A.  
SC Bar No.: 4375  
Post Office Box 8047  
Hilton Head Island, SC 29938  
[russell@russellpattersonlaw.com](mailto:russell@russellpattersonlaw.com)  
ATTORNEY FOR APPELLANT-RESPONDENT  
PAIGE N. LORBERBAUM**

**James S. Murray, Esq.  
Turner Padget Graham & Laney, PA  
Post Office Box 1495  
Augusta, GA 30903-1495  
[JMurray@TurnerPadget.com](mailto:JMurray@TurnerPadget.com)  
ATTORNEY FOR RESPONDENTS  
JEFFREY A. KLAPPER AND DIANE L. KLAPPER**



Thomas C. Taylor, Esq.  
LAW OFFICE OF THOMAS C. TAYLOR, LLC.  
Post Office Box 1808  
Bluffton, South Carolina 29910  
South Carolina Bar Number: 5499  
Telephone: 843-785-5050  
Facsimile: 843-738-4502  
Email: [tom@thomastaylorlaw.com](mailto:tom@thomastaylorlaw.com)

**ATTORNEY FOR RESPONDENT-APPELLANT  
TURNER'S MARINA LLC**

Bluffton, South Carolina  
January 23, 2023

LAW OFFICE OF  
**THOMAS C. TAYLOR, LLC**

ADMITTED TO THE UNITED STATES  
SUPREME COURT BAR

ADMITTED IN SOUTH CAROLINA,  
COLORADO AND GEORGIA

CERTIFIED SC CIRCUIT  
COURT MEDIATOR

10 PINCKNEY COLONY ROAD  
BUILDING 400  
BLUFFTON, SC 29909

TELEPHONE 843-785-5050  
TELECOPIER 843-738-4502

www.thomastaylorlaw.com • tom@thomastaylorlaw.com

MAILING ADDRESS  
P.O. BOX 1808  
BLUFFTON, SC  
29910-1808

January 23, 2023

**RECEIVED**

**Jan 23 2023**

**SC Court of Appeals**

**Via E-Mail Attachment: ctappfilings@sccourts.org**

Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**Re: Motion To Dismiss Appeal of Paige Lorberbaum in Turner's Marina LLC, Respondent-Appellant vs. Paige Lorberbaum, Jeffrey Klapper, and Diane L. Klapper, Defendants, Of whom Paige Lorberbaum is the Appellant-Respondent and Jeffrey A. Klapper and Diane L. Klapper are Respondents;  
Case No. 2022-001547**

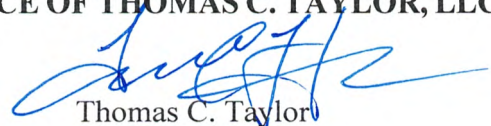
Dear Clerk Kitchings:

I represent the Respondent-Appellant Turner's Marina LLC in this matter. I am attaching hereto the Respondent-Appellant Turner's Marina LLC's Motion To Dismiss Paige Lorberbaum's appeal, which I ask you to please file. I also attach a Memo In Support and Proof of Service. I am sending a \$50.00 check as the filing fee in the U.S. Mail today.

Thank you. Please contact me at your convenience if you have any questions or need further information.

Yours very truly,

**LAW OFFICE OF THOMAS C. TAYLOR, LLC**



Thomas C. Taylor

TCT/dpt

Attachments

cc: Russell P. Patterson, Esq., and James S. Murray, Esq., via email transmittal  
Neil Turner, via e-mail transmittal