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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2022-001547

Turner's Marina, LLC,

Respondent-Appellant,

v.

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

Defendants,

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

**APPELLANT-RESPONDENT PAIGE N. LORBERBAUM'S MEMORANDUM OF
LAW IN OPPOSITION TO APPELLANT-RESPONDENT'S MOTION TO DISMISS**

Russell P. Patterson, Esquire
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head, South Carolina 29938
(843) 341-9300
Attorneys for the Appellant-Respondent
Paige N. Lorberbaum

The Appellant-Respondent Paige Lorberbaum (“Lorberbaum”) respectfully submits this Memorandum of Law in opposition to Respondent-Appellant Turner’s Marina, LLC (“Turner”) Motion to Dismiss the Appeal of Lorberbaum, filed January 23, 2023 (“Motion”). For the reasons discussed below, said Motion should be denied.

A. FACTUAL AND PROCEDURAL HISTORY

Lorberbaum on April 23, 2019 purchased from Respondents Jeffrey A. Klapper and Diane L. Klapper (collectively “Klapper”) for \$54,500 Lot 158 (“Lot”) in a recreational vehicle resort located in the R.V. Resort and Yacht Club on Hilton Head Island (“RV Resort”). Lorberbaum purchased a recreational vehicle and lived on the Lot as her primary residence. Turner’s asserted it held a valid right-of-repurchase on the Lot and had validly exercised same prior to Lorberbaum’s purchase. On May 13, 2020 Turner filed this action for various causes of action, including specific performance, seeking to overturn the sale from Klapper to Lorberbaum and purchase the Lot for \$54,500. A trial was conducted on June 30, 2022. The Trial Judge issued his Order on August 4, 2022 (“August 4 Order” – Ex. 1) finding the right of repurchase valid and ordering Lorberbaum to convey the Lot to Turner for \$54,500 “within ninety (90) days of the entry of this Order. . . .” (August 4 Order, § 2, p. 6 of 7). The Trial Judge rejected Lorberbaum’s various defense positions, including that the claimed right of first refusal violated the South Carolina Rule Against Perpetuities, under S.C. Code § 27-6-20 (1976) and *Webb v. Reames*, 326 S.C. 444, 485 S.E.2d 384 (Ct. App. 1997).

On August 16, 2022 Lorberbaum filed a Motion to Alter or Amend Order, under Rule 59(e) SCRPC (Ex. 2). The Trial Court on September 27, 2022 denied said Motion by Order of September 27, 2022 (Ex. 3 – “September 27 Order”). On October 27, 2022 Lorberbaum filed a Notice of Appeal to the South Carolina Court of Appeals.

A dispute thereafter arose between the parties as to the Court ordered closing date, with Turner asserting closing was required on November 2, 2022 (ie., 60 days from the August 4 Order), and Lorberbaum asserting that closing was required on December 28, 2022 (ie., 60 days from the September 27 Order denying the Rule 59(e) SCRCF Motion).

Lorberbaum on November 1, 2022 filed a Motion for Clarification of Order or in the Alternative for a Stay (Ex. 4) and Turner filed a Motion to Compel Defendant Lorberbaum to Comply with Court Order or Alternatively for an Order of Civil Contempt on November 3, 2022 (Ex. 5). Turner's Motion sought attorney fees, costs, a daily fine and an order holding Lorberbaum in civil contempt. Turner thereafter filed a Memorandum of Law in support of its Motion to Compel on December 1, 2022 (Ex. 6).

As will be discussed below in detail, Turner's counsel also sent numerous e-mails and letters demanding strict compliance as to closing November 2, 2022, and threatening sanctions, payment of attorney fees, costs and civil contempt charges if Lorberbaum did not "timely" close.

On December 14, 2022 the Trial Judge issued its Order Granting Lorberbaum's Motion for Clarification and denying Plaintiff's Motion to Compel (Ex. 7 – "December 14 Order"). The Trial Judge held the correct closing date was December 22, 2022. As specifically ordered by the Trial Judge pursuant to the August 4, Order (Ex. 1), the September 27 Order (Ex. 3) and the December 14 Order (Ex. 7), Lorberbaum tendered a general warranty deed on December 22, 2022 to Turner in exchange for \$54,500 and said Lot was thus transferred.

B. ARGUMENT AND CITATION OF AUTHORITY

Turner seeks dismissal of Lorberbaum's appeal on the grounds of mootness, asserting since she "voluntarily" sold the Lot to Turner during the pendency of the appeal, there is no remaining controversy before the Court. The law in South Carolina on the mootness of a pending

appeal is well established. “An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” *Curtis v. State*, 345 S.C. 557, 566, 549 S.E.2d 591, 596 (2001). “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, 346, 195 S.E.2d 713, 715 (1973).

Even if a case is moot under the above criteria, our appellate courts will still decide questions on appeal under three exceptions, namely: (1) if the issues raised are capable of repetition but generally will evade review; (2) if the issues are imperative and of manifest urgency to establish a rule for future conduct in matters of important public interest, and (3) the issues raised may affect future events or have collateral consequences for the parties.” *S.C. Pub. Int. Found. v. S.C. Dep’t of Transportation*, 421 S.C. 110, 120, 804 S.E.2d 854, 860 (2017); *Sloan v. Greenville Cnty.*, 356 S.C. 531, 552-54, 590 S.E.2d 338, 349-50 (Ct. App. 2003).

1. **The Case is not Moot since a Reversal of the Trial Court’s Decision Would Return Title of the Lot to Lorberbaum**

Under the above standard, this case is not moot since a reversal of the Trial Court’s decision finding Turner’s right-of-repurchase is violative of the Right Against Repurchase will result in the return of her Lot, with Turner obtaining a refund of the \$54,500 purchase price. A similar scenario was before the Court in *Skydive Myrtle Beach v. Horry County*, 428 S.C. 638, 837 S.E.2d 485 (2020), a dispute concerning an ejectment of an aircraft hangar. The tenant, Skydive, was required to vacate the premises by Court Order and thereafter appealed. *Id.* at 642-43, 837 S.E.2d at 487. The landlord, Horry County, sought to dismiss the appeal on the grounds of mootness, asserting there was no longer any justiciable controversy since Skydive had not occupied the property for three (3) years pending the appeal. *Id.* The Court rejected this argument, holding it still had the

power to return possession to Skydive if the ejectment was improper. *Id.* at 644, 837 S.E.2d at 488. The Court noted Skydive had consistently and repeatedly contested all rulings with the clear intent to retain possession and had done nothing to delay the resolution of the appeal. *Id.* at 643, 837 S.E.2d at 487. In the instant case, Lorberbaum has also continuously asserted Turner's right-of-repurchase was invalid and unenforceable and has also not taken any action to delay this appeal.

If the Court determines that Turner's right of repurchase was invalid and unenforceable, it can reverse the Order of the Trial Judge and remand the case with instructions to require the Lot be reconveyed to Lorberbaum, upon a refund of the \$54,500. The Trial Court can also provide for whatever other relief Lorberbaum may be due for the loss of use of her property pending the appeal. Turner, in forcing compliance with the sale provisions under its contested right-of-repurchase, knew full well a substantive legal challenge was pending on appeal, thus took said action knowing the risks the sale could be overturned. It had the option to simply wait on the final decision by the appellate courts as to its claimed right of repurchase, and then proceed to acquire the Lot. The fact that it did not do so should not result in Lorberbaum have her appeal dismissed. This substantive relief is still available to Lorberbaum and this existing controversy still needs to be decided by this Court.

2. The Sale of the Lot was not "Voluntary"

The entire basis of Turner's Motion is founded on the false premise that since Lorberbaum "voluntarily" sold the Lot pending her appeal, she has abandoned all rights to further dispute the transaction, and the issue of the validity of Turner's right of first refusal is now moot. In fact, Turner in its Motion and supporting Affidavit of Neil Turner disingenuously states the transfer was "voluntary" or "willingly" a total of nine (9) times.¹ In reality, Lorberbaum was forced and

¹ Turner Motion to Dismiss: (1) p. 1, line 6; (2) p. 2, line 2; Turner Memorandum of Law: (3) p. 3, line 16; (4) p. 3, line 24; (5) p. 5, line 1; (6) p. 6, line 7; (7) p. 6, line 9; Affidavit Turner: (8) p. 2, line 3; (9) p. 2, line 6.

compelled to transfer and sell her primary residence and find another place to live pursuant to the express terms of the Trial Judge's Orders, as explained above. In addition, Turner, through counsel, made repeated threats of sanctions, civil contempt and award of attorney fees and damages, as outlined below:

1. October 27, 2022 letter Thomas C. Taylor ("Taylor") to Russell P. Patterson ("Patterson"): ". . .time is of the essence in the conveyance and Turner's Marina LLC insists upon strict adherence to the timing set forth in Judge Hocker's Order of August 4, 2022". (Ex. 8)
2. October 28, 2022 E-mail Taylor to Patterson: "I trust this will go smoothly and per Judge Hocker's Order" (Ex. 9)
3. October 30, 2022 E-mail Taylor to Patterson: "I've not heard from you and would appreciate your confirming that you are still representing Ms. Lorberbaum in this matter and that you have alerted her to our letter and demand to close in a timely matter. I want to make sure where to direct correspondence to her if the deed is not received by Wednesday, November 2, 2022." (Ex. 10)
4. October 31, 2022 E-mail Taylor to Patterson: "Please let me know if we should expect the deed by Wednesday, or whether we should proceed to seek court assistance." (Ex. 11 - emphasis added)
5. October 31, 2022 Letter Taylor to Patterson: "On behalf of Turner's Marina LLC, I reiterate that the Plaintiff insists upon closing the transaction on or before November 2, 2022 and demands the tendering of a General Warranty Deed from Ms. Lorberbaum to Turner's Marina LLC by that date, along with the abandonment of the premises by midnight . . . We will seek court assistance immediately if the

Deed is not timely tendered. We will seek costs and attorney's fees incurred as a result of the failure of Ms. Lorberbaum to comply with the Court Order." (Ex. 12 - emphasis added)

6. November 2, 2022 E-mail Taylor to Patterson: "Please have the General Warranty Deed delivered to Chet Williams' office by 1:00 p.m." (Ex. 13)
7. November 2, 2022 Letter Taylor to Patterson: ". . . Turner's Marina again insists upon closing today, November 2, 2022, which is the 90th day following the filing of the August 4, 2022 Order." (Ex. 14)
8. November 3, 2022 Turner Motion to Compel (Ex. 5): Motion seeks recovery of Turner damages suffered on a daily basis, sanctions for violating Court Order, to hold Lorberbaum in civil contempt, and attorney fees and costs.
9. December 1, 2022 Turner Memorandum of Law in Support of Motion to Compel (Ex. 6): Requests sanctions for willful disobedience of Court Order, legal fees, order of contempt, and daily fine.
10. December 14 Order (Ex. 7): The Trial Judge denied Turner's request to hold Lorberbaum in contempt or to pay penalties or attorney fees to Turner. "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." P. 2
11. December 15, 2022 Taylor e-mail to Patterson: "Can you please confirm to me that Ms. Lorberbaum will be tendering a General Warranty Deed on or before December 28, 2022 and vacating the premises by that date." (Ex. 15)

12. December 18, 2022 Taylor e-mail to Patterson: “Russell, I wrote you a few days ago about this and also asked you if Ms. Lorberbaum is going to transfer the lot on December 28? Would you please let me know your and her intentions?” (Ex. 16)
13. December 27, 2022 E-mail Taylor to Patterson: “It would certainly be helpful if you’d let me know your and her intentions as soon as possible so we can make preparation for the money transfer.” (Ex. 17)

Under any type of reasonable review of the above events, it is clear the transfer of Lorberbaum’s home on December 28, 2022 was anything but voluntary. Pursuant to Court Order, and threat of serious sanctions sought by Turner, she complied with the Trial Judge’s Order, but under no circumstances did she somehow give up or lose her right to continue her appeal challenging the validity of the right of repurchase.

Turner’s argument of a “voluntarily” sale of the Lot rendering the appeal moot is the same argument made by Horry County in *Skydive*. *Skydive* at 642, 837 S.E.2d at 487. Horry County argued that since Skydive had voluntarily vacated the premises for three (3) years, it had rendered its appeal moot. *Id.* The Court concluded the move was not voluntary by any means, but occurred after ten (10) Horry County deputies arrived at the hanger to force SkyDive out. *Id.* at 643, 837 S.E.2d at 487. As can be seen above, Lorberbaum’s “voluntary” sale was result of similar pressure, and is not an indication she woke up one morning and simply decided to sell what is essentially her home and end the dispute.

3. The Validity of Turner’s Right of Repurchase Is Capable of Repetition

The appellate court will still decide issues that are moot if they are capable of repetition but evade review. *See Byrd v. Irmo High School*, 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (Contested ten day suspension of students, after suspension hearing capable of repetition but would

evade review); *Sloan* at 555, 590 S.E.2d at 351 (Court heard dispute over expedited public contract provision and projects although projects complete); *S.C. Pub. Int. Found. v. S.C. Dep't of Transportation*, 122, 804 S.E.2d at 861. There is no requirement that the issue will arise again between the same parties. *Byrd* at 432, 468 S.E.2d at 864.

In the present case Turner asserts the right to exercise its right-of-repurchase over all 200 lots in the RV Resort. There is pending in the Beaufort County Court of Common Pleas a lawsuit filed by Turner seeking to enforce said rights today (*Turner's Marina LLC v. Daniel Hyde, C.A. No. 2021-CP-07-2165* – Complaint attached as Exhibit 18). It is not only likely, but inevitable the identical issue raised by Lorberbaum in her appeal will arise again. If the lower courts in the future order or force a sale of said property, as was the case with Lorberbaum, the determination of the validity of the right-of-repurchase will never be determined. The issues raised by Lorberbaum fit squarely into this exception and the Court should not dismiss this appeal.

4. The Validity of Turner's Right-of-Repurchase may Affect Future Events or Have Collateral Consequences for the Parties

Even if the Court determines the issues raised by Lorberbaum are moot, they still can be decided under the second exception allowing for the appellate court to hear an appeal since said issues may have effect on future events or have collateral consequences for the parties. *Curtis* at 556, 549 S.E.2d at 596; *Sloan* at 554-55, 590 S.E.2d at 351, *S.C. Pub. Int. Found.* at 349-350, 590 S.E.2d at 552-553.

As discussed above, if the Court determines Turner's right-of-repurchase is invalid, and determines for whatever reason the Trial Court's forced sale of December 22, 2022 cannot be reversed, Lorberbaum still would have legal remedies for damages caused by the unlawful loss of her home and Lot, or possibly other remedies. In addition, these same issues will clearly come up

again and again as Turner seeks to enforce the purported right-of-repurchase, at all times seeking to avoid appellate review.

5. Lorberbaum was not Required Under South Carolina Law to Obtain a Stay or Supersedeas

Turner asserts Lorberbaum was required to obtain a stay pursuant to Rule 62 SCRCP and to Rule 241 SCACR in order to continue her appeal. Such a position is inconsistent with said rules and South Carolina appellate law.

Rule 62(a) and (d), SCRCP provides a judgment after an appeal is generally not stayed, but a party “may obtain a stay,” consistent with the South Carolina Appellate Court Rules. The stay is effective when a supersedeas bond is approved by the Court. Rule 241(b)(4), SCACR provides an appeal does not automatically stay an order directing the delivery of real property unless the appealing party requests and obtains a supersedeas under Rule 241(c), SCACR. As in Rule 62(a), (d), SCRCP, this rule also states any party “may move for an order imposing a supersedeas of matters decided in the order, judgment”

Turner’s interpretation of these provisions requiring Lorberbaum to obtain a stay or supersedeas upon the posting of a significant bond would require this Court to completely re-write the above rules, deleting “may” and inserting “shall” obtain a stay or supersedeas, or the party’s appeal will be dismissed. This Court simply does not have the power to make said changes.

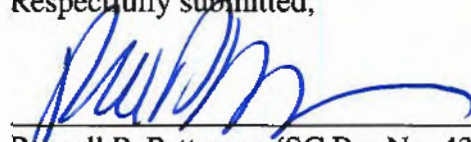
It is clear if Lorberbaum had sought a stay or supersedeas under the above rules, Turner would have sought a very significant bond to cover any of its claimed damages incurred during the pendency of the appeal. Lorberbaum is not in a financial position to post a significant bond, and the Court rules do not require her to do so in order for this Court to review the validity of Turner’s right of first refusal. Lorberbaum’s counsel has found no South Carolina case finding the

failure to seek or obtain a stay or supersedeas resulted in the dismissal of a party's appeal under these circumstances.

C. **CONCLUSION**

For the reasons set forth above, Turner's Motion to Dismiss should be denied.

Respectfully submitted,



Russell P. Patterson (SC Bar No. 4375)

Russell P. Patterson, P.A.

P.O. Box 8047

Hilton Head Island, SC 29938

(843) 341-9300

Russell@russellpattersonlaw.com

Attorney for the Appellant-Respondent,

Paige N. Lorberbaum

Hilton Head Island, South Carolina

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY
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Case No. 2022-001547

Turner's Marina, LLC,

Respondent-Appellant,

v.

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

Defendants,

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

LORBERBAUM' S EXHIBITS TO MEMORANDUM OF LAW
IN OPPOSITION TO TURNER'S MOTION TO DISMISS

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 HHCo. 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

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8/16/22

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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,

**DEFENDANT LORBERBAUM'S MOTION
TO ALTER OR AMEND ORDER**

vs.

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

The Defendant, Paige N. Lorberbaum ("Defendant"), by and through her undersigned counsel, pursuant to Rule 59(e) SCRPC, hereby requests the Court to alter or amend its findings of fact and conclusions of law set forth in its Order, dated August 3, 2022, and filed with the Beaufort County Clerk of Court on August 4, 2022 ("Order").

The Defendant received written notice of the entry of the Order when it was electronically filed on August 4, 2022 at 3:47 p.m. Defendant has timely filed the subject Motion within the required ten (10) days under Rule 59(b) SCRPC.

That the grounds for said Motion are as follows:

1. **Plaintiff's Claimed Right of Repurchase is Void Under the Rule Against Perpetuities**

The Court expressly found the right of repurchase under Paragraph 12.9 of the 1981 Covenants (P. Ex. 3 - "Right of Repurchase") did not violate the South Carolina Uniform Statutory Rule Against Perpetuities (S.C. Code § 27-6-10 et. seq. (1976) ("Perpetuities Act").

EXHIBIT 2

A review of South Carolina case law finds this conclusion to be in error. § 27-6-20 modified the common law rule against perpetuities. It reads as follows:

- (A) A nonvested property interest is invalid unless:
 - (1) when the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
 - (2) the interest either vests or terminates within ninety years after its creation.

The right of repurchase under § 12.9 in the 1981 Covenants (P. Ex. 3) states as follows:

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 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.

The South Carolina Courts have found such a right of repurchase to violate the Perpetuities Act since the 1997 decision of *Webb v. Reames*, 326 S.C 444, 485 S.E.2d 384 (1997). In *Webb*, the Court ruled a 1956 right of repurchase reserved in a deed from the grantee (Blease) to the grantor (Webb) was not valid and was void. The Court ruled said right of repurchase was a pre-emptive right that was “a contingent, non-vested interest in that the grantee or the grantee’s heirs might never choose to sell the property. It is an interest not conditioned on an event certain to occur. See: *R. Cunningham, W. Sloebuck & D. Whiting The Law of Property*, § 3.18 at 132 (2d ed. 1993”. *Webb* at p. 446.

The Court in *Webb* found that since the interest reserved by the Seller Blease, his heirs and assigns, might not vest within a life in being when it was created in 1956, or until twenty-one years¹ thereafter, the right of repurchase violated the rule against perpetuities and was void, citing numerous cases finding the same result in numerous jurisdictions. The same is true for the

¹ Perpetuities Act subsequently amended in 1987 to add ninety (90) years savings clause.

Right of Repurchase claimed by Plaintiff. If the owner, and his/her heirs, of an RV lot never decide to sell, the Right of Repurchase would never vest within the statutory twenty-one (21) or ninety-nine (99) years.

The decision in *Weber* has been subsequently cited with approval at least four (4) times in other South Carolina decisions. *Peoples Federal Savings and Loan v. Resources Planning Corporation*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) – Court did not apply *Webb* since right of first refusal not ripe for review, but cited *Webb* twice with approval as to right of refusal violating rule against perpetuities; *Queens Grant v. Greenwood Development Corporation*, 368 S.C. 342, 369, 628 S.E.2d 901, 917 (2006) – *Webb* cited with approval for holding right of first refusal was void for violating rule against perpetuities, but did not apply same since developer did not assert right of repurchase; *Page v. Page*, 2004 WL 6249122 (2004)²; *Clark v. Fine Housing*, 2020 WL 4673124 (2020)²

The law in South Carolina, at least since the *Webb* decision in 1997, is clear. A right of repurchase, such as that claimed by the Plaintiff, is void as violation of the common law rule against perpetuities and the Perpetuities Act. It is a pre-emptive right that is contingent, and non-vested, and might not vest during the lifetime of some alive in 1981, or twenty-one (21) years thereafter, or within ninety (90) years, since the owner of said property may never sell. The Court should amend its Order consistent with the law as clearly stated in *Webb*.

It should be noted that the Defendant is not asserting Plaintiff's claimed right of repurchase is unenforceable as an unreasonable restraint or alienation. Thus, the authorities where the validity of a right to repurchase is discussed as an unreasonable restraint of alienation are not applicable to Defendant's Motion (See: *Clark*; 61 AmJur.2d Perpetuities Etc., §§ 109-110 (August 2022); Restatement (Third) of Property (Servitudes), § 3.4 cmt.f (2000).

² Unreported decision. No precedential value Rule 220(a) SCACR.

2. **The Trial Court Erroneously Set Forth the Chain of Title to the Right of Repurchase and Concluded Said Right was Held by the Plaintiff**

The Trial Court determined the Plaintiff held the Right of Repurchase under Paragraph 12.9 of the June 12, 1981 Declaration of Covenants and Restrictions for Outdoor Resorts R.V. Resort and Yacht Club, recorded at Book 325 at Page 920 (P. Ex. 3). However, at trial, the Plaintiff failed to show it possessed the Right of Repurchase under the 1981 Covenants since it did not provide evidence of properly recorded assignments from the original holder of said rights, the "Developer," Outdoor Resorts, R.V. Resort and Yacht Club into the Plaintiff. The Plaintiff did not introduce a complete chain of required assignments of these rights because in fact there are numerous breaks in the chain of title that confirm in fact the Plaintiff does not currently hold said rights.

1. **Creation of 1981 Covenants.** The 1981 Covenants (P. Ex. 3) were executed and recorded by Outdoor Resorts, R.V. Resort Club, Owner's Association, Inc., a South Carolina General Partnership ("Developer"). As noted in the corrective deed dated June 8, 1981 (Ex. D L-13), the correct name of the Developer was actually "Outdoor Resorts, R.V. Resort and Yacht Club," a joint venture ("ORRV Jt. Venture") consisting of ORA of Carolina, Inc. ("ORA") and Six Ess Corporation ("Six Ess").

2. **Assignments of the Developer's Right of Repurchase.** The transfer and assignment of the Developer's Right of Repurchase, based on the evidence at trial, is set forth below.

(a) **Initial Transfer by Developer to a Third Party.** There was no transfer or assignment put into evidence at trial from the original Developer, ORRV Jt. Venture, to any third-party. **Thus, there is a gap in title at the very beginning of the chain (Gap #1).**

There is simply no document in the record whereby Outdoor Resorts, ORRV – Jt. Venture conveyed its rights to anyone.

(b) Purported Assignment of Rights by Six Ess to BillyBob's Marina, Inc. ("Billy Bob's"). The Plaintiff did not put into evidence any transfer or assignment of the Developer ORRV Jt. Venture's Right of Repurchase under the 1981 Covenants to BillyBob's Marina, Inc. ("BillyBob's"). However, the Defendant did put into evidence the August 26, 1999 Assignment of Rights from Six Ess to BillyBob's, recorded at DB 1205 P 1240 (D. Ex. L-2). This assignment legally conveyed no rights to BillyBob's for the following reasons:

- (i) The third WHEREAS provision of this assignment states that the original developer, ORRV – Jt. Venture was dissolved, and all assets were conveyed to Outdoor Resorts R.V. and Yacht Club, a South Carolina general partnership ("ORRV – Gen. Partnership"). Assuming this statement is true, there is no assignment of the Right of Repurchase from ORRV – Jt. Venture to ORRV Gen. Partnership. This is the same Gap #1 referenced in subsection 2(a) above.
- (ii) The fourth WHEREAS provision of this assignment states the two general partners of the ORRV – Gen. Partnership were Six Ess Corporation ("Six Ess") and ORA of Carolina Inc. ("ORA").
- (iii) The fifth WHEREAS provision in this assignment states Six Ess had withdrawn from the ORRV – Gen. Partnership prior to signing said assignment, leaving ORA as the sole remaining partner. Thus, on the face of the document, it is clear any assignment by Six Ess, which is no longer

a partner in the ORRV Gen. Partnership at the time, could not convey anything on behalf of said entity. (Gap #2).

(iv) In addition to the fact this Assignment of Rights by Six Ess (D. Ex. L-2) on its face is signed by an entity no longer associated with ORRV General Partnership, there is no assignment of the Right of Repurchase by ORRV Gen. Partnership into Six Ess (Gap #3). Thus, Six Ess individually had no rights to convey to BillyBob's, or anyone else.

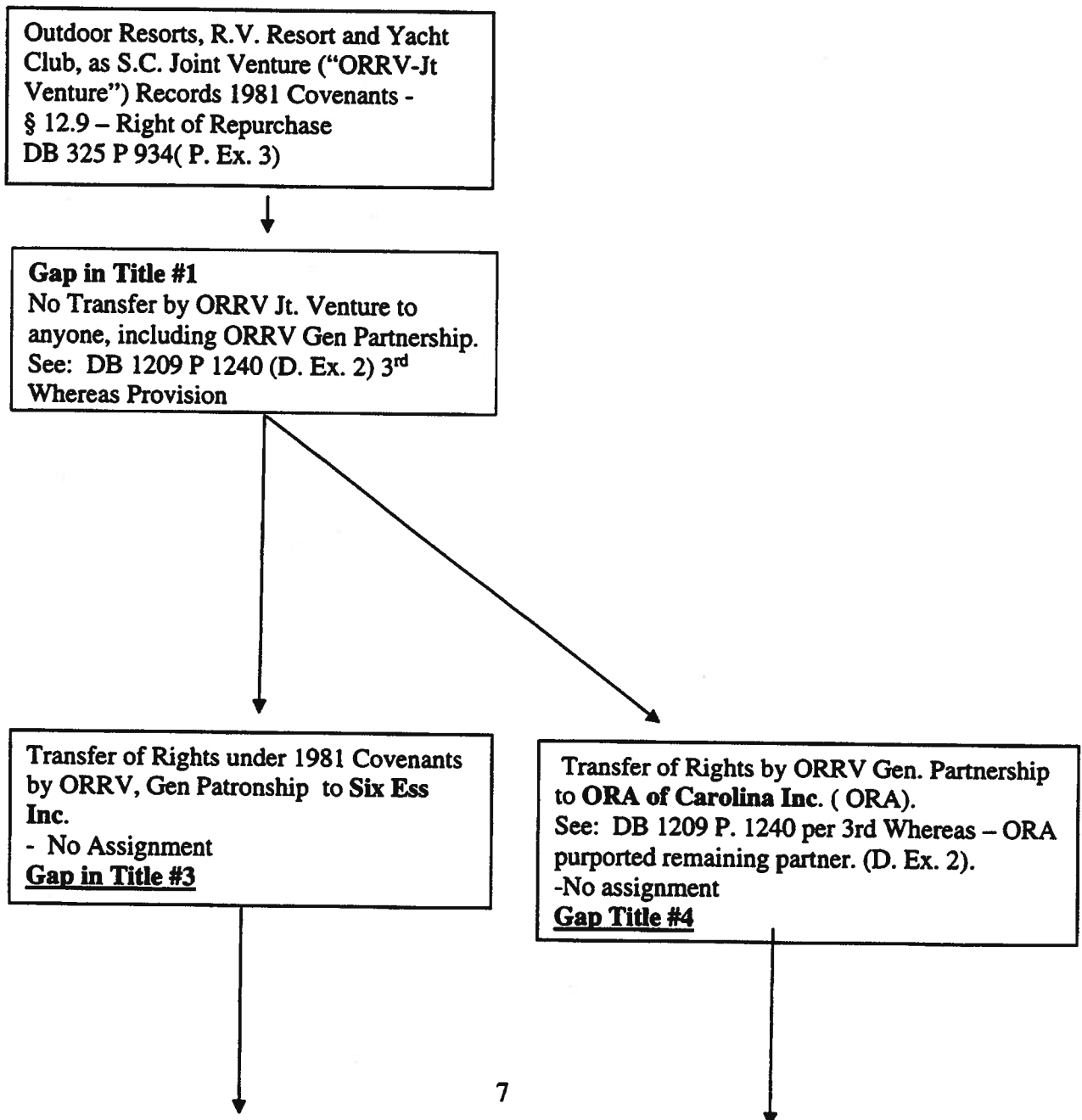
(c) No Assignment into ORA. There is also no assignment of rights of the 1981 Covenants from ORRV Jt. Venture or ORRV Gen. Partnership into ORA, the other purported remaining general partner of ORRV Gen. Partnership. (Gap #4).

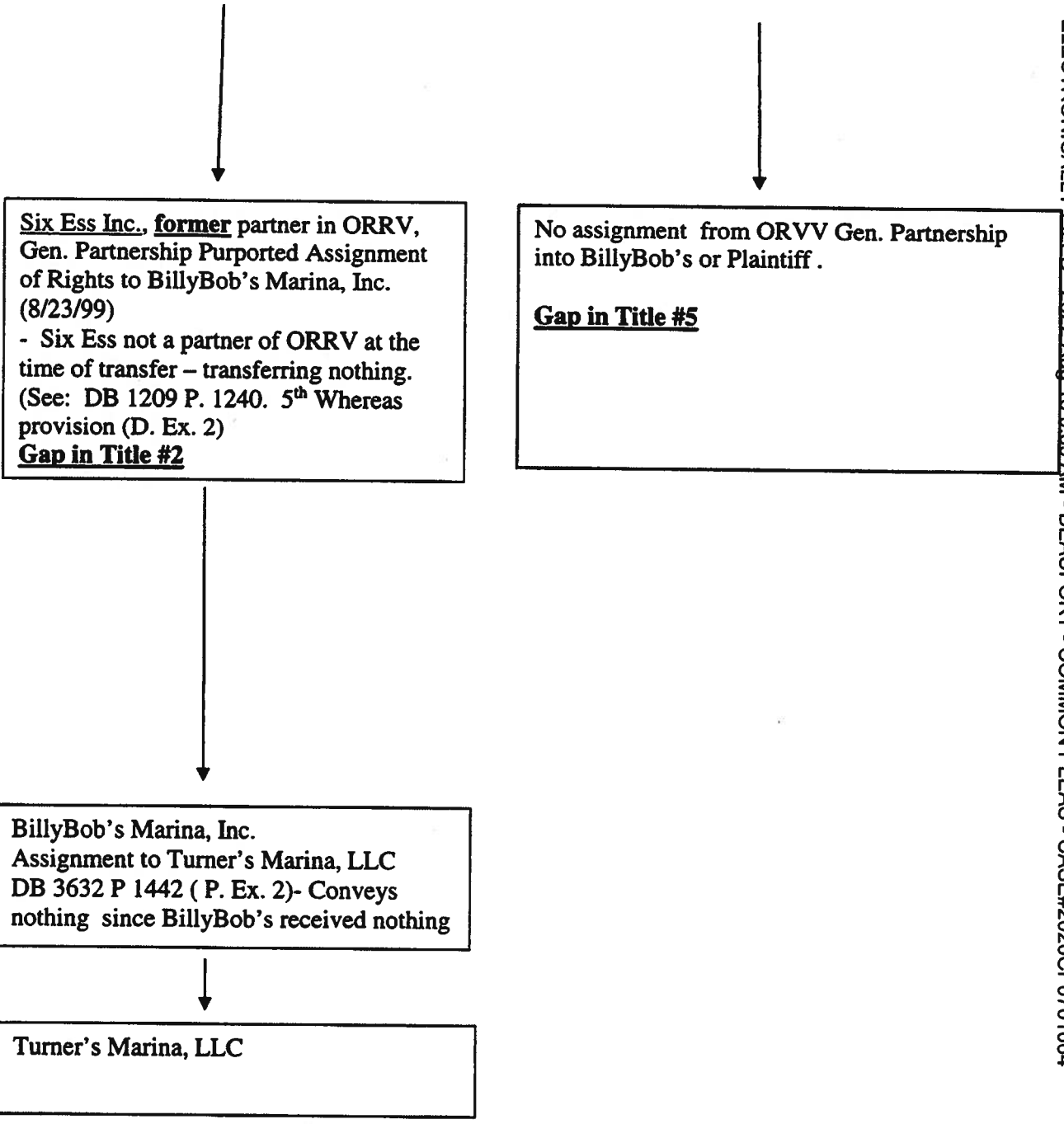
(d) No Assignment of Rights by ORA to BillyBob's. In addition to no assignment from either the ORRV Jt. Venture or ORRV Gen. Partnership into ORA, there is no assignment in the record from ORA to BillyBob's, or anyone in Plaintiff's chain of title (Gap #5). Thus, any purported assignment of rights thereafter by BillyBob's is meaningless and conveys nothing since it acquired no rights from Six Ess or ORA.

(e) Assignment from BillyBob's to Plaintiff of Developer's Rights. Plaintiff did put into evidence an Absolute Assignment, dated November 21, 2017 from BillyBob's to the Plaintiff (P. Ex. 2). However, it is clear BillyBob's could not convey what it did not own. *Rosemond v. Campbell*, 288 S.C. 516, 523, 343 S.E.2d 641, 645 (Ct.App. 1986) – “At common law, an assignee's rights can be no greater than those of his assigner.” As the chain of assignments from the original Developer into BillyBob's

has at least five (5) gaps in the chain of assignments, this last purported assignment clearly did not convey the Right of Repurchase to the Plaintiff.

Based on the proof submitted at trial by the Plaintiff, below is a graph of the Plaintiff's purported chain of ownership of the Right of Repurchase under the 1981 Covenants. (Additional copy attached as Ex. 1)





Since the Plaintiff did not hold the Right of Repurchase under the 1981 Covenants (P. Ex. 3) at the time of the sale of Lot 158 from Lorberbaum to Klapper (P Exs. 9, 10), the transfer was properly completed and the Plaintiff has no right to repurchase said property.

3. **Transfer of Rights Under Covenants Must be Completed by Assignment, Not by a Deed**

Any finding or conclusion of the Trial Court determining the Plaintiff holds the Right of Repurchase under the 1981 Covenants (P. Ex. 3) by a recorded deed (general warranty or quit claim), is erroneous. A transfer of real estate can only be accomplished by deed. 26A CJS 2d Deeds § 2; § 27-7-10 S.C. Code of Laws (1976). To transfer contract rights, such as rights under the 1981 Covenants, an assignment of rights is typically used. (6A C.J.S. Assignments, § 1).

The testimony of Plaintiff's expert title witness, Charles Hedgepath, was clearly erroneous when he opined the Right of Repurchase under the 1981 Covenants was transferred due to the use of the term "hereditaments" or "appurtenances" in one or more deeds for at least three (3) reasons.

The first reason the Plaintiff did not show the Developer's rights under the 1981 Covenants were somehow transferred by the use of the terms "hereditaments" or "appurtenances" in a deed is that the Plaintiff never put into evidence the full chain of title of the deeds from the original Developer to the Plaintiff. In fact, the Plaintiff introduced no deeds in the chain of title to the 17-acre RV Resort Property, or to the 1.42 acres it owns. There is no deed in the record where any real estate was transferred to the Plaintiff³. Even if the Court credits the testimony of Mr. Hedgepath, said testimony simply cannot support a finding a transfer of the Right of Purchase under the use of the boilerplate terms Hereditaments or Appurtenances, when the deed into the Plaintiff is not in evidence.

Second, it is well established the terms "hereditaments" and "appurtenance" relied upon by said witness, has been found to only transfer very specific, limited rights directly associated

³ Plaintiff did not obtain a deed to the entire 17 acre RV Resort, only 1.42 acres plus the wet boat slips. It does not own remaining 17 acres, including any of the RV lots..

with the property described in the deed. The term “hereditament” refers to any property that can be inherited. *Ex-Parte, Joseph Leland*, 1 Nott & McC. 460, 10 S.C.L. 460 (1819). The term “appurtenances” has been interpreted to mean “whatever is incident to it and necessary to beneficially enjoy it. . .” 26A C.J.S. Deeds § 285. Typically this would include any improvements on the property conveyed and possibly easements required for access. No South Carolina case has been found that somehow transforms such boilerplate language into an assignment of contract or covenant rights that are not even identified or referenced in the deed, and are also clearly not tied to Plaintiff’s 1.42 acre parcel. That is the purpose of recorded assignments. As noted above, Plaintiff’s chain of title as to the required assignments of the Developer’s right is wholly inadequate and incomplete in this case.

Third, if Mr. Hedgepath’s testimony was correct, why are three entirely separate assignments of the rights under the 1981 Covenants recorded in the ROD and put into evidence? (See: (1) P Exs. 2 (DB 3632 P. 144; (2) 14 (DB 1843 P. 1509); and (3) D Ex. L-2 (DB 1209 P. 1240). If these rights were conveyed by deed, all of these recorded assignments are meaningless and superfluous.

4. Conclusion

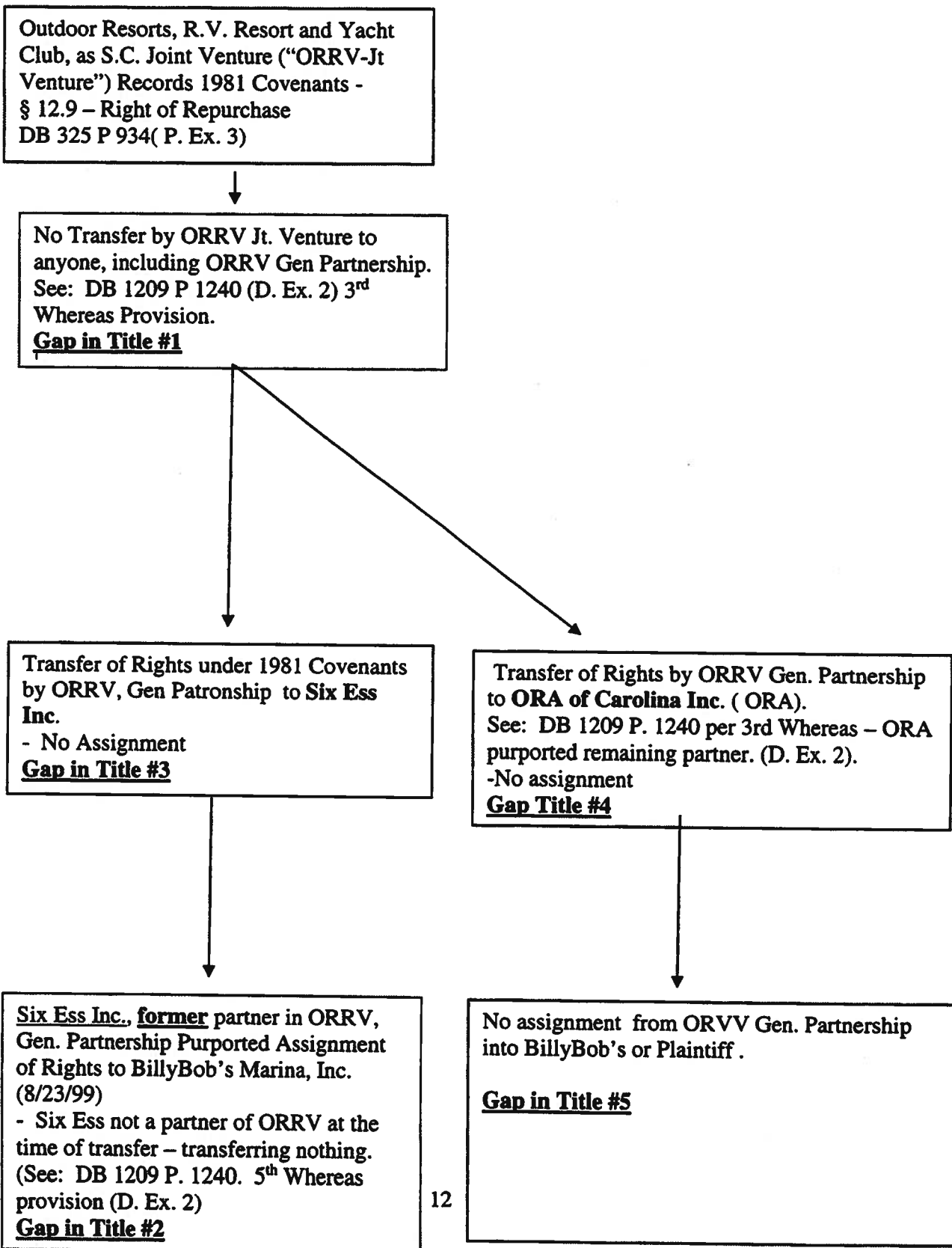
For the reasons stated above, the Defendant requests this Court alter and amend its Order accordingly, finding that the Plaintiff does not hold the Right of Repurchase under the 1981 Covenants and thus has no right to purchase Lot 158, which the Defendant lawfully purchased on April 22, 2019 (P. Exs. 9, 10).

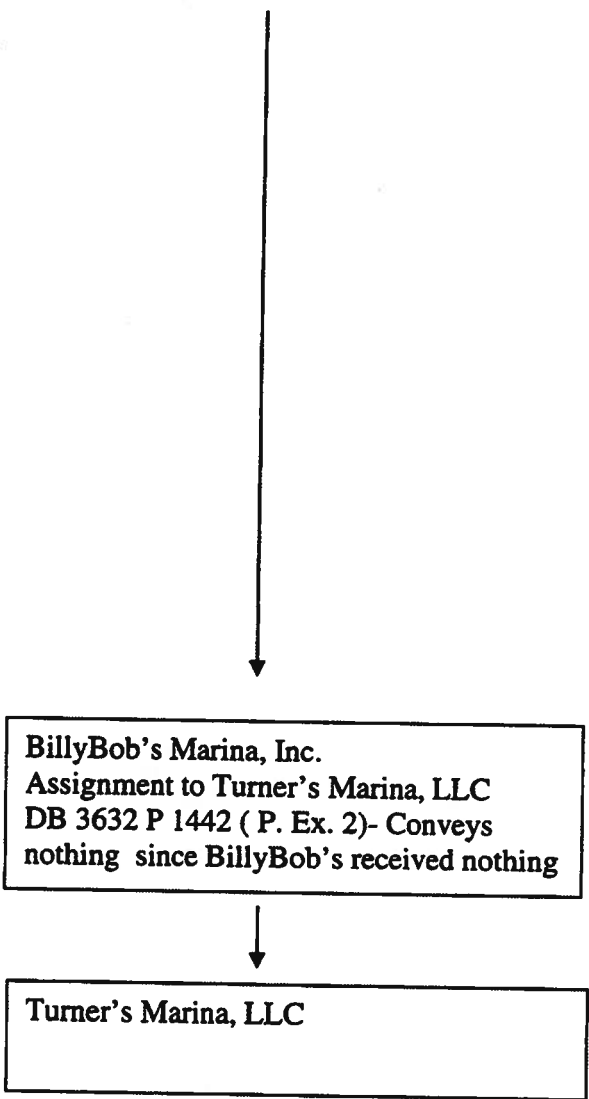
/s/ Russell P. Patterson
 Russell P. Patterson, SC Bar No. 4375
 RUSSELL P. PATTERSON, P.A.
 P.O. Box 8047
 Hilton Head Island, SC 29938

Telephone: (843) 341-9300
russell@russellpattersonlaw.com
Attorneys for the Defendant,
Paige N. Lorberbaum

August 15, 2022
Hilton Head Island, South Carolina

EXHIBIT 1 – CHAIN OF ASSIGNMENTS






9/27/22

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

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EXHIBIT 3



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

Electronically signed on 2022-09-27 09:52:00 page 2 of 2

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11/1/22

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,

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

vs.

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

Defendants.

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) SCRPC (Ex. 1).
3. That on September 27, 2022 the Court issued an Order denying Lorberbaum's Rule 59(b) SCRPC motion. (Ex. 2)

EXHIBIT 4

ELECTRONICALLY FILED - 2022 Nov 01 12:17 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

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) SCRCP Motion. Plaintiff contends the Rule 59(b) SCRCP 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) SCRCP 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 SCRPC and Rule 60 SCRPC (ex. time to file appeal stayed until post-trial motions are resolved. Rule 59(f) SCRPC.)

LORBERBAUM SO MOVES.

/s/ Russell P. Patterson
Russell P. Patterson, SC Bar No. 4375
RUSSELL P. PATTERSON, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938
Telephone: (843) 341-9300
russell@russellpattersonlaw.com
Attorneys for the Defendant,
Paige N. Lorberbaum

November 1, 2022
Hilton Head Island, South Carolina

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. 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

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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

EXHIBIT 2

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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

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Lorberbaum to convey Lot 158 to the Plaintiff Turner's Marina LLC within ninety (90) days. See Exhibit 1. On October 28, 2022, Plaintiff's counsel notified Ms. Lorberbaum's counsel of the Plaintiff's insistence on the transfer in a timely manner by November 2, 2022. See Exhibit 2. On October 30, 2022, Plaintiff's counsel again contacted Lorberbaum's counsel and reminded him of the closing date of November 2, 2022. See Exhibit 3. On October 31, 2022, Ms. Lorberbaum's counsel emailed the undersigned and stated that:

It is our position the 90 days commences to run from the date the Court Order was finalized per his ruling on the Rule 59 SCRCP. Thus, closing is not required until on or about 12/28/22. Any other construction would make no sense.

See Exhibit 4.

Later in the day October 31, 2022, the Plaintiff's counsel replied to Mr. Patterson's email and again demanded the transfer occur timely by November 2, 2022. See Exhibit 5.

On November 1, 2022, the Plaintiff received in the US Mail, a copy of a Notice of Appeal filed by Lorberbaum, and on November 2, 2022, the Plaintiff notified Lorberbaum's counsel that notwithstanding the filing of an appeal, that the conveyance of Lot 158 still had to be made by November 2, 2022, unless and until Ms. Lorberbaum sought and obtained a supersedeas. Plaintiff's counsel again called for the conveyance by the close of business on November 2, 2022 and advised that the Plaintiff was ready, willing and able to close that day. See Exhibit 6.

Defendant Lorberbaum failed and refused to convey Lot 158 by the close of business on November 2, 2022, and further failed and refused to seek and obtain a supersedeas. Thus, Defendant Lorberbaum is in violation of Judge Hocker's Final Order of August 4, 2022 requiring the conveyance within ninety (90) days, As a proximate and direct result of Lorberbaum's

refusal to convey Lot 158 by November 2, 2022, Plaintiff Turner's Marina LLC is suffering and will continue to suffer damages on a daily basis.

Wherefore, the Plaintiff Turner's Marina LLC requests this honorable Court inquire into this matter and issue its Order enforcing the terms of Judge Hocker's August 4, 2022 Order, requiring Defendant Lorberbaum to pay damages incurred by the Plaintiff from November 2, 2022 until the day of transfer, assessing sanctions against Defendant Lorberbaum for knowingly violating the terms of the August 4, 2022 Order, and awarding appropriate attorney's fees for the Plaintiff having to bring this Motion. Alternatively, the Plaintiff requests the Court hold Ms. Lorberbaum in civil contempt until such time as she transfers the property to Turner's Marina LLC.

I SO MOVE.

Law Office of Thomas C. Taylor, LLC

s/Thomas C. Taylor

Thomas C. Taylor

P.O. Box 1808

Bluffton, SC 299310

Telephone: 843-785-5050

Facsimile: 843-738-4502

Email: tom@thomastaylorlaw.com

COUNSEL FOR THE PLAINTIFF
TURNER'S MARINA LLC

November 3, 2022
Bluffton, South Carolina

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 "HHCo. 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

Electronically signed on 2022-08-03 15:04:07 page 8 of 8

From: Russell
To: Tom Taylor
Subject: RE: Lorberbaum conveyance to Turner's Marina
Date: Monday, October 31, 2022 1:56:38 PM

Tom-

1. **Representation** - I still represent Paige Lorberbaum in this matter. All communication should be directed to my office.
2. **Closing Date- Judge Hocker's Order-** The Judge advised closing was to take place in 90 days from his Order. His original Order was filed on 8/4/22, and his Order on the Rule 59 SCRPC Motion was filed on 9/27/22. It is our position the 90 days commences to run from the date the Court Order was finalized per his ruling on the Rule 59 SCRPC. Thus, closing is not required until on or about 12/28/22. Any other construction would not make any sense.

Russell P. Patterson
Russell P. Patterson P. A.
P. O. Box 8047
HHI SC 29938
Ph: 843-341-9300
Fax: 843-341-9301
E-Mail: russell@russellpattersonlaw.com
Street Address: 107 Watersedge @ Shelter Cove, HHI SC 29928

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From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Sunday, October 30, 2022 9:58 AM
To: Russell <russell@russellpattersonlaw.com>
Cc: Donna Taylor <donna@thomastaylorlaw.com>
Subject: FW: Lorberbaum conveyance to Turner's Marina

Russell—Good morning. I'm writing today to confirm that you received my letter (above) sent early Friday morning regarding the Lorberbaum deed. I've not heard from you and would appreciate your

confirming that you are still representing Ms. Lorberbaum in this matter and that you have alerted her to our letter and demand to close in a timely manner. I want to make sure I know where to direct correspondence to her if the deed is not received by Wednesday, November 2, 2022.

Thank you. Hope you have a nice day.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road
1808
Building 400
Bluffton, SC 29909
843-785-5050 (office)
843-301-6900 (cell)

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From: Tom Taylor

Sent: Friday, October 28, 2022 12:04 AM

To: 'Russell' <russell@russellpattersonlaw.com>

Cc: Neil Turner <neil@hiltonheadharbor.com>; Donna P. Taylor, Legal Assistant (<donna@thomastaylorlaw.com> <donna@thomastaylorlaw.com>

Subject: Lorberbaum conveyance to Turner's Marina

Russell—Good morning. Please see the pdf copy of my attached letter. Original in US Mail today. I trust this will go smoothly and per Judge Hocker's Order.

Thank you very much.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road
1808

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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

October 27, 2022

Via U.S. Mail and E-Mail Transmittal to: russell@russellpattersonlaw.com

Russell Patterson, Esq.
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938

**Re: Turner's Marina v. Lorberbaum and Klapper, No. 2020-CP-07-01064;
Conveyance of Property**

Dear Russell:

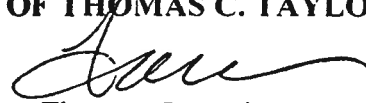
As you know, I represent the Plaintiff Turner's Marina LLC in this matter. Judge Hocker's Order of August 4, 2022, requires Ms. Lorberbaum to convey Lot 158 to Turner's Marina LLC by General Warranty Deed on or before November 2, 2022. Will you be representing Ms. Lorberbaum in the closing?

Chet Williams will be handling the closing of the conveyance for Turner's Marina, and I ask that you please coordinate with his office to arrange for the delivery of the Deed. As you know, there is a first mortgage to Coastal States that will be paid off and the remaining proceeds after expenses, delivered to you on behalf of Ms. Lorberbaum, presuming your confirmation that you represent her in this conveyance.

For the record, time is of the essence in this conveyance and Turner's Marina LLC insists upon strict adherence to the timing set forth in Judge Hocker's Order of August 4, 2022. Thank you. Please let me know if you have any questions.

Cordially yours,

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt

cc: Mr. Turner via E-mail attachment
Chet Williams, Esq., via E-mail attachment

From: Tom Taylor
To: "Russell"
Cc: Donna P. Taylor, Legal Assistant (donna@thomastaylorlaw.com)
Subject: FW: Lorberbaum conveyance to Turner's Marina
Date: Sunday, October 30, 2022 9:57:00 AM
Attachments: Taylor to Russell Patterson of 10.28.2022 with demand to close Lorberbaum by November 2, 2022.pdf

Russell—Good morning. I'm writing today to confirm that you received my letter (above) sent early Friday morning regarding the Lorberbaum deed. I've not heard from you and would appreciate your confirming that you are still representing Ms. Lorberbaum in this matter and that you have alerted her to our letter and demand to close in a timely manner. I want to make sure I know where to direct correspondence to her if the deed is not received by Wednesday, November 2, 2022.

Thank you. Hope you have a nice day.

Tom

Thomas C. Taylor

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From: Tom Taylor
Sent: Friday, October 28, 2022 12:04 AM

To: 'Russell' <russell@russellpattersonlaw.com>

Cc: Neil Turner <neil@hiltonheadharbor.com>; Donna P. Taylor, Legal Assistant (donna@thomastaylorlaw.com) <donna@thomastaylorlaw.com>

Subject: Lorberbaum conveyance to Turner's Marina

Russell—Good morning. Please see the pdf copy of my attached letter. Original in US Mail today. I trust this will go smoothly and per Judge Hocker's Order.

Thank you very much.

Tom

Thomas C. Taylor

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LAW OFFICE OF
THOMAS C. TAYLOR, LLCADMITTED TO THE UNITED STATES
SUPREME COURT BARADMITTED IN SOUTH CAROLINA,
COLORADO AND GEORGIACERTIFIED SC CIRCUIT
COURT MEDIATOR10 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

November 2, 2022

Via U.S. Mail and E-Mail Transmittal to: russell@russellpattersonlaw.com

Russell Patterson, Esq.

Russell P. Patterson, P.A.

P.O. Box 8047

Hilton Head Island, SC 29938

Re: Turner's Marina v. Lorberbaum and Klapper, No. 2020-CP-07-01064

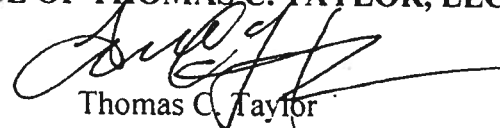
Dear Russell:

As you know, I represent the Plaintiff Turner's Marina LLC in this matter. I received a copy of your Notice of Appeal dated October 27, 2022, in yesterday's US Mail. It was served outside the thirty (30) day provision of SCRAP 203, and thus we will be filing a Motion to Dismiss the Appeal.

On a more urgent matter, your purported filing of an appeal, even if it had been timely made, does not stay Judge Hocker's Order of August 4, 2022. A Judgment directing the sale or delivery of possession of real property as provided in S.C. Code Anno. Section 18-9-170 is one of the exceptions to the general rule that the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the Order and to automatically stay the relief ordered in the appealed order. Unless and until you and Ms. Lorberbaum seek and obtain a supersedeas, the terms of Judge Hocker's Order remain in effect, and thus Turner's Marina again insists upon closing today, November 2, 2022, which is the 90th day following the filing of the August 4, 2022 Order. Turner's Marina LLC stands ready, willing and able to close today upon the presentation of the General Warranty Deed called for in the Order. Please be governed accordingly.

Thank you. Please let me know if you have any questions.

Cordially yours,

LAW OFFICE OF THOMAS C. TAYLOR, LLC
Thomas C. Taylor

TCT/dpt

cc: Mr. Turner via E-mail attachment
Chet Williams, Esq., via E-mail attachment

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

ADMITTED TO THE UNITED STATES
SUPREME COURT BAR

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

November 2, 2022

Via U.S. Mail and E-Mail Transmittal to: russell@russellpattersonlaw.com

Russell Patterson, Esq.
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938

Re: Turner's Marina v. Lorberbaum and Klapper, No. 2020-CP-07-01064

Dear Russell:

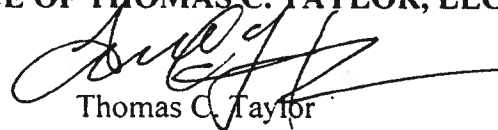
As you know, I represent the Plaintiff Turner's Marina LLC in this matter. I received a copy of your Notice of Appeal dated October 27, 2022, in yesterday's US Mail. It was served outside the thirty (30) day provision of SCRAP 203, and thus we will be filing a Motion to Dismiss the Appeal.

On a more urgent matter, your purported filing of an appeal, even if it had been timely made, does not stay Judge Hocker's Order of August 4, 2022. A Judgment directing the sale or delivery of possession of real property as provided in S.C. Code Anno. Section 18-9-170 is one of the exceptions to the general rule that the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the Order and to automatically stay the relief ordered in the appealed order. Unless and until you and Ms. Lorberbaum seek and obtain a supersedeas, the terms of Judge Hocker's Order remain in effect, and thus Turner's Marina again insists upon closing today, November 2, 2022, which is the 90th day following the filing of the August 4, 2022 Order. Turner's Marina LLC stands ready, willing and able to close today upon the presentation of the General Warranty Deed called for in the Order. Please be governed accordingly.

Thank you. Please let me know if you have any questions.

Cordially yours,

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt

cc: Mr. Turner via E-mail attachment
Chet Williams, Esq., via E-mail attachment

If Ms. Lorberbaum continues to fail and refuse to comply with the Court's Order, the Plaintiff requests that Ms. Lorberbaum be held in contempt and that a daily fine be levied beginning December 10, 2022 to continue until she complies with the Order or obtains a supersedeas. She has willfully disobeyed this Court's Order. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. Taylor v. Taylor, 434 S.C. 307, 863 S.E.2d 335 (Ct. App. 2021), *citing* Widman v. Widman, 348 S.C. 97, 119, 557 S.E.2d 693,705 (Ct. App. 2001). An adult who wil[]fully violates, neglects, or refuses to obey or perform a lawful order of the court, ..., may be proceeded against for contempt of court. Taylor, id., citing S.C. Code Annot. Section 63-3-620.

A willful act is one which is "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done." Widman, id. at 119-20. Civil contempt has a remedial purpose and serves to coerce the contemnor to comply with the court order. Poston v. Poston, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998). Its sanctions can include a fee paid to the complainant or a prison sentence that may be purged upon compliance with a court order. See id. at 111-12, 502 S.E.2d at 89.

It is clear (and admitted) that the Defendant Lorberbaum intentionally declined to comply with this Court's Order and convey the property by November 2, 2022. She and her counsel knew the deadline and knew the Plaintiff was ready, willing and able to close the transaction on or before November 2, 2022. To allow the knowing and intentional disregard of the Order to go unpunished will only encourage future similar conduct. The Plaintiff requests an Order of Civil Contempt to encourage the Defendant Lorberbaum's compliance with the valid and existing Order.

[Signature block continued to next page.]

Law Office of Thomas C. Taylor, LLC

s/Thomas C. Taylor

Thomas C. Taylor (S.C. Bar 5499)

P.O. Box 1808

Bluffton, SC 29910-1808

Phone: (843)785-5050

Fax: (843)738-4502

Email: tom@thomastaylorlaw.com

ATTORNEY FOR THE PLAINTIFF
TURNER'S MARINA LLC

Bluffton, South Carolina
December 1, 2022

12/14/22

ELECTRONICALLY FILED - 2022 Dec 14 8:24 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

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,

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

vs.

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

Defendants.

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

EXHIBIT 7

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

Electronically signed on 2022-12-13 17:14:18 page 4 of 4

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

10/27/22

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SUPREME COURT BAR

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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

October 27, 2022

Via U.S. Mail and E-Mail Transmittal to: russell@russellpattersonlaw.com

Russell Patterson, Esq.
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938

**Re: Turner's Marina v. Lorberbaum and Klapper, No. 2020-CP-07-01064;
Conveyance of Property**

Dear Russell:


As you know, I represent the Plaintiff Turner's Marina LLC in this matter. Judge Hocker's Order of August 4, 2022, requires Ms. Lorberbaum to convey Lot 158 to Turner's Marina LLC by General Warranty Deed on or before November 2, 2022. Will you be representing Ms. Lorberbaum in the closing?

Chet Williams will be handling the closing of the conveyance for Turner's Marina, and I ask that you please coordinate with his office to arrange for the delivery of the Deed. As you know, there is a first mortgage to Coastal States that will be paid off and the remaining proceeds after expenses, delivered to you on behalf of Ms. Lorberbaum, presuming your confirmation that you represent her in this conveyance.

For the record, time is of the essence in this conveyance and Turner's Marina LLC insists upon strict adherence to the timing set forth in Judge Hocker's Order of August 4, 2022. Thank you. Please let me know if you have any questions.

Cordially yours,

LAW OFFICE OF THOMAS C. TAYLOR, LLC


Thomas C. Taylor

TCT/dpt

cc: Mr. Turner via E-mail attachment
Chet Williams, Esq., via E-mail attachment

EXHIBIT 8

From: Tom Taylor

Sent: Friday, October 28, 2022 12:04 AM

To: 'Russell' <russell@russellpattersonlaw.com>

Cc: Neil Turner <neil@hiltonheadharbor.com>; Donna P. Taylor, Legal Assistant (donna@thomastaylorlaw.com)
<donna@thomastaylorlaw.com>

Subject: Lorberbaum conveyance to Turner's Marina

10/28/22
12:54 am

Russell—Good morning. Please see the pdf copy of my attached letter. Original in US Mail today. I trust this will go smoothly and per Judge Hocker's Order.

Thank you very much.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road
1808

PLEASE NOTE OUR NEW MAILING ADDRESS:
P.O. Box 1808, Bluffton, SC 29910-

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Sunday, October 30, 2022 9:58 AM
To: Russell <russell@russellpattersonlaw.com>
Cc: Donna Taylor <donna@thomastaylorlaw.com>
Subject: FW: Lorberbaum conveyance to Turner's Marina

10/30/22
9:58 AM

Russell—Good morning. I'm writing today to confirm that you received my letter (above) sent early Friday morning regarding the Lorberbaum deed. I've not heard from you and would appreciate your confirming that you are still representing Ms. Lorberbaum in this matter and that you have alerted her to our letter and demand to close in a timely manner. I want to make sure I know where to direct correspondence to her if the deed is not received by Wednesday, November 2, 2022.

Thank you. Hope you have a nice day.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road
1808
Building 400
Bluffton, SC 29909
843-785-5050 (office)
843-301-6900 (cell)

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EXHIBIT 10

Russell

10/31/22 4:27
f~

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Monday, October 31, 2022 4:27 PM
To: Russell
Cc: Donna Taylor
Subject: Lorberbaum
Attachments: Taylor to Patterson of October 31, 2022 re Lorberbaum conveyance.pdf

Russell—Good afternoon. Please see my attached pdf letter regarding your earlier email of this date. Please let me know if we should expect the deed by Wednesday or whether we should proceed to seek court assistance. Thank you.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road
1808
Building 400
Bluffton, SC 29909
843-785-5050 (office)
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EXHIBIT 11

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

10/31/22

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ADMITTED IN SOUTH CAROLINA,
COLORADO AND GEORGIA

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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

October 31, 2022

Via U.S. Mail and E-Mail Transmittal to: russell@russellpattersonlaw.com

Russell Patterson, Esq.
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938

**Re: Turner's Marina v. Lorberbaum and Klapper, No. 2020-CP-07-01064;
Conveyance of Property**

Dear Russell:

As you know, I represent the Plaintiff Turner's Marina LLC in this matter. I write today in response to your email of earlier today wherein you asserted that your Motion to Alter or Amend the August 4, 2022 Order in this case somehow stayed or delayed the 90-day conveyance required by Judge Hocker's Order. It did not.

The Rules of Civil Procedure provide that a Rule 59 Motion To Alter or Amend stays the time to appeal, because obviously the rigorous 30-day appeal window must be extended when a Motion to Alter or Amend is pending. But it stays nothing else. The specific provisions of an Order of Judgment are not affected by either the filing of, or denial of, a Motion to Alter or Amend except the appeal time. For example, the interest that begins to run on a typical monetary Order of Judgment is never affected by a party filing and losing a motion to Alter or Amend. That interest runs from the day the Judgment is filed and enrolled notwithstanding however long a Motion to Alter or Amend may take to work its way through the system before being denied. In other words, Judge Hocker's Order of August 4, 2022 was not "finalized per his ruling on the Rule 59 SCRCPP" on September 27, 2022; it was finalized upon filing on August 4, 2022. His denial of your Motion to Alter or Amend affected no part of that Order nor its required timetable for the conveyance.

On behalf of Turner's Marina LLC, I reiterate that the Plaintiff insists upon closing the transaction on or before November 2, 2022 and demands the tendering of a General Warranty Deed from Ms. Lorberbaum to Turner's Marina LLC by that date, along with her abandonment of the premises by midnight. Chet's office has ordered a payoff amount from Coastal States Bank, and we will send you a copy of the proposed Closing Statement once the payoff amount is received from CSB. Time is of the essence.

EXHIBIT 12

Russell Patterson, Esq.

Re: Turner's Marina v. Lorberbaum and Klapper, No. 2020-CP-07-01064;
Conveyance of Property

October 31, 2022

Page 2

Please understand that Turner's Marina LLC will be losing money every day past November 2, 2022 that it does not have ownership and possession of Lot 158, and we will seek court assistance immediately if the Deed is not timely tendered. We will also seek costs and attorney's fees incurred as a result of the failure of Ms. Lorberbaum to comply with the Order.

Thank you. Please let me know if you have any questions.

Cordially yours,

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt

cc: Mr. Turner via E-mail attachment
Chet Williams, Esq., via E-mail attachment

11/2/22
10:50 a-

Russell

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Wednesday, November 2, 2022 10:50 AM
To: Russell
Cc: Neil Turner; Donna Taylor
Subject: Lorberbaum transfer to Turner's Marina LLC of Lot 158
Attachments: Taylor to Patterson of 11.2.2022 in Lorberbaum again insisting on timely closing.pdf

Russell—Good morning. Please see the attached pdf of my letter of this morning. Original is in US Mail today.

Turner's Marina LLC stands ready, willing and able to close today. Please have the General Warranty Deed delivered to Chet Williams' office by 1 p.m. Thank you.

Tom Taylor

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road
1808
Building 400
Bluffton, SC 29909
843-785-5050 (office)
843-301-6900 (cell)

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EXHIBIT 13

11/2/22

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

ADMITTED TO THE UNITED STATES
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ADMITTED IN SOUTH CAROLINA,
COLORADO AND GEORGIA

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10 PINCKNEY COLONY ROAD
BUILDING 400
BLUFFTON, SC 29909

TELEPHONE 843-785-5050
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MAILING ADDRESS
P.O. BOX 1808
BLUFFTON, SC
29910-1808

November 2, 2022

Via U.S. Mail and E-Mail Transmittal to: russell@russellpattersonlaw.com

Russell Patterson, Esq.
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938

Re: Turner's Marina v. Lorberbaum and Klapper, No. 2020-CP-07-01064

Dear Russell:

As you know, I represent the Plaintiff Turner's Marina LLC in this matter. I received a copy of your Notice of Appeal dated October 27, 2022, in yesterday's US Mail. It was served outside the thirty (30) day provision of SCRAP 203, and thus we will be filing a Motion to Dismiss the Appeal.

On a more urgent matter, your purported filing of an appeal, even if it had been timely made, does not stay Judge Hocker's Order of August 4, 2022. A Judgment directing the sale or delivery of possession of real property as provided in S.C. Code Anno. Section 18-9-170 is one of the exceptions to the general rule that the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the Order and to automatically stay the relief ordered in the appealed order. Unless and until you and Ms. Lorberbaum seek and obtain a supersedeas, the terms of Judge Hocker's Order remain in effect, and thus Turner's Marina again insists upon closing today, November 2, 2022, which is the 90th day following the filing of the August 4, 2022 Order. Turner's Marina LLC stands ready, willing and able to close today upon the presentation of the General Warranty Deed called for in the Order. Please be governed accordingly.

Thank you. Please let me know if you have any questions.

Cordially yours,

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt

cc: Mr. Turner via E-mail attachment
Chet Williams, Esq., via E-mail attachment

EXHIBIT 14

12/15/22
11:10

Russell

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Thursday, December 15, 2022 10:10 AM
To: Russell
Cc: Donna Taylor
Subject: Lorberbaum issues

Russell--Good morning. Two things in the Lorberbaum case.

First, Judge Hocker signed and filed your proposed Order yesterday morning clarifying his intentions on the Lorberbaum conveyance, and setting December 28, 2022 as the conveyance date. I am going to be out of state that week on vacation and want to make arrangements for the closing before I leave. Can you please confirm to me that Ms. Lorberbaum will be tendering a General Warranty Deed on or before December 28, 2022 and vacating the premises by that date? Will you be preparing the Deed? Shall i advise Chet's office to go ahead and get a new payoff figure from CSB as of December 28, 2022? Thank you for your anticipated response so that we can hopefully move forward without issues.

Second, because I am going to be out of town for the holidays, I would like a 30-day extension of time to respond to your initial brief in Lorberbaum, until January 27, 2023. Will you please consent to that so that I may tell the Clerk or do you object? Of course, i'm glad to agree to an extension for your initial respondent's brief if you'd like the extra time.

Thank you. I look forward to your reply.

Tom Taylor

EXHIBIT 15

12/18/22

Russell

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Sunday, December 18, 2022 1:02 PM
To: Russell; jmurray@turnerpadget.com
Cc: Donna Taylor
Subject: Lorberbaum appeal 2022-001547; request by Taylor for 30 day extension for filing of Respondent's initial brief

Gentlemen--Good Sunday to you both. I have long-standing plans to be out-of-state from this Tuesday through New Years Day and am going to write the Clerk tomorrow and request a 30-day extension of time to file the Respondent's initial brief in this matter, which is currently due for filing on December 28, 2022. I intend to write the Clerk by noon tomorrow and would appreciate it if you would both tell me if you object by that time, so i may so advise her. Thank you.

Russell, I wrote you a few days ago about this and also asked you if Ms. Lorberbaum is going to transfer the lot on December 28? If so, i need to get Chet working on a payoff of the CSB mortgage. Would you please let me know your and her intentions? Thank you.

I wish both of you and your families a very Merry Christmas.

Tom Taylor

EXHIBIT 1b

12/27/22

Russell

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Tuesday, December 27, 2022 10:10 AM
To: Russell
Cc: Chet Williams (firm@ccwlaw.net); Donna Taylor
Subject: Closing of Lot 158 from Lorberbaum to Turner's Marina LLC

Russell--Good morning. I wrote you twice before Christmas inquiring as to your and Ms. Lorberbaum's intentions on the tendering of a deed on Lot 158 by December 28, 2022, and your responses must have been lost in my email because i never heard from you. But, Chet's assistant Robin tells me that someone from your office has communicated with them and indicated that Ms. Lorberbaum does intend to follow the court's order and tender the deed by tomorrow. It would certainly be helpful if you'd let me know your and her intentions as soon as possible so that we can make preparations for the money transfer. Assuming we are moving forward, i believe Robin will have a proposed closing statement ready today and please let me know where she should send that.

Thank you for your professionalism in this matter.

Tom

EXHIBIT 17

4. That this Court has jurisdiction over all the parties under the South Carolina Rules of Civil Procedure, the South Carolina Code Annotated, and the common law.

5. That venue for all causes of action stated herein lies in Beaufort County.

FACTS

6. That 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 “Covenants”) was executed and subsequently recorded in the Office of the Beaufort County Register of Mesne Conveyances at Book 325, Page 920.

7. That the aforementioned Covenants are applicable to certain property on Hilton Head Island, South Carolina, commonly known as the “Outdoor Resorts Marina,” consisting 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 Covenants contain restrictions, easements, affirmative obligations, charges, liens, leases, and a Right of First Refusal affecting the Property. One of the individually owned lots located in the Property is legally described as Lot 25 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.

8. That the Covenants at page 18, specifically Paragraph 12.9, contain a Right of First Refusal 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.

9. That the Covenants also contain provisions setting forth the rights and obligations of owners and members to enforce the Covenants and recover attorneys' fees and expenses incurred in doing so if they prevail.

10. That the original Developer of the Property was O.R.A. of Carolina, Inc.

11. That the entity known as Billybob's Marinas, Inc., a South Carolina corporation, validly acquired that certain real property and all improvements thereon referred to above as the "Outdoor Resorts Marina," consisting of 1.41 acres, more or less. That in addition Billybob's Marinas, Inc. validly acquired that certain dock extending from the 1.41 acres into and on the marshes and waters of Skull Creek subject to certain permits including OCRM permits numbered 91-3D-324-P, 97-IT-0280P-C, and 2009-1417-1IQ. That in addition, Billybob's Marinas, Inc. validly acquired that certain marina and dock extending from the 1.41 acres into the waters of Blue Heron Creek and that certain harbor located to the east of the 1.41 acres, as is subject to OCRM permits numbered 83-3C-062 and 91-3D-324-P.

12. That in addition, Billybob's Marina, Inc. validly acquired certain tangible personal property located in, on and about the 1.41 acres and certain intangible property, including, without limitation, contract rights and rights under the Covenants.

13. That in addition, Billybob's Marina, Inc. validly acquired all of the "Declarant" or "Developer" rights under the Covenants, including specifically the aforementioned Right of First Refusal articulated at Article 12.9 of the Covenants.

14. That 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 first refusal" as to any lots or parcels located at the Property emanating from the Covenants.

15. That since December 21, 2017, the Plaintiff Turner's Marina has been and is the valid owner of all currently existing "Developer" rights as are set forth in the Covenants and that Turner's Marina has been and is the valid owner of all currently existing recorded rights of first refusal emanating from the Covenants as to any lots or parcels located at the Property, including Lot 25.

16. That on or about September 11, 2014, Defendant Caput and Holly Elaine Curtis purchased Lot 25.

17. That on or about February 23, 2016, Holly Elaine Curtis, for consideration, transferred all of her right, title and interest in Lot 25 to Defendant Caput.

18. That at all times Caput and Holly Elaine Curtis owned Lot 25, it remained subject to the recorded Covenants, including the Developer's Right of First Refusal identified above.

19. That in or around late October 2018 or early November 2018, Caput, on information and belief, entered into a contract with the Hydes to convey Lot 25 to the Hydes for \$69,500.

20. That at the time and date Caput and the Hydes entered into the contract of purchase and sale of Lot 25, Turner's Marina had the Right of First Refusal identified above.

21. That notwithstanding the Defendants' actual or constructive knowledge of the Plaintiff Turner's Marina's Right of First Refusal on any proposed conveyance of Lot 25, the Defendants moved forward with the sale and closing of the conveyance of Lot 25 from Caput to the Hydes on November 30, 2018 without advising the Plaintiff of the proposed sale and without allowing the Plaintiff to exercise its option to purchase Lot 25 for \$69,000, or waive same.

22. That at all times between the date Caput and the Hydes entered into an agreement to sell Lot 25, and the date of the closing, the Plaintiff Turner's Marina was ready, willing and able to exercise its Right of First Refusal to purchase Lot 25 and desired to do so.

23. That on or about December 6, 2018, Defendant Caput moved forward with the sale of Lot 25 to the Hyde Defendants.

24. That at no time between the date of the contract of sale and December 6, 2018, did any representative of Turner's Marina waive its Right of First Refusal to purchase Lot 25.

25. That the lots at the Outdoor Resorts Marina, including Lot 25, at all times since December 6, 2018, have been in high demand for short term rental.

26. That if the Defendant Caput had conveyed Lot 25 to the Plaintiff Turner's Marina pursuant to the First Right of Refusal, then Turner's Marina would have rented out Lot 25 for short term rental, and would have continued to do so for at least fifty (50) years into the future.

27. That the failure of Defendant Caput to convey Lot 25 to the Plaintiff Turner's Marina was a breach of contract under South Carolina law, because Defendant Caput conveyed Lot 25 to the Hyde Defendants without securing a waiver of Turner's Marina's Right of First Refusal, as he was contractually obligated to do.

28. That the conveyance of Lot 25 by Defendant Caput to the Hydes directly and proximately caused the Plaintiff damage in the form of lost profits from rentals of Lot 25 from December 6, 2018, forward for at least fifty (50) years.

29. That pursuant to Article 8.10 of the Covenants, the Plaintiff is entitled to recover its reasonable attorney's fees and costs of this suit.

FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT

30. That the allegations contained in Paragraphs 1 through 29 are re-alleged as fully as if repeated verbatim herein.

31. That the Covenants identified above and recorded as noted, amount to a contract under South Carolina law, binding all lot owners at the Outdoor Resorts Marina to their explicit terms and conditions.

32. That the Defendant Caput breached his contractual obligations under the Covenants by failing and refusing to honor the Plaintiff's Right of First Refusal to purchase Lot 25.

33. That the Hyde Defendants have placed upon Lot 25 a recreational vehicle, and claim exclusive ownership of Lot 25, thereby denying the Plaintiff the right to rent the lot and earn profits as it does from another comparable lot it owns at the Outdoor Resorts Marina property.

34. That the breach of contract by these Defendants has directly and proximately damaged the Plaintiff in an amount to be proven at trial, but which the Plaintiff verily believes to exceed \$100,000.

FOR A SECOND CAUSE OF ACTION (IN THE ALTERNATIVE)
SPECIFIC PERFORMANCE

35. That the allegations contained in Paragraphs 1 through 34 are re-alleged as fully as if repeated verbatim herein.

36. That the Defendants breached the Covenants by failing to allow the Plaintiff the opportunity to exercise its Right of First Refusal to purchase Lot 25.

37. That the Plaintiff seeks specific performance of its rights under the Covenants to purchase Lot 25 from the Defendant Caput, and stands ready, willing, and able to tender the purchase price of \$69,500, less an appropriate set-off as described below.

38. That the Plaintiff is entitled to an Order of this Court compelling the Defendants to execute deeds conveying all of their interests in Lot 25 to the Plaintiff Turner's Marina LLC in exchange for payment by Turner's Marina of \$69,500, less an appropriate amount to be determined by the Court, representing the lost profits the Plaintiff would have made from the rental of Lot 25 from December 6, 2018 until the date of Judgment.

39. That if the Defendants refuse to execute such deeds, for an Order of this Court authorizing the Clerk of Court to execute such deeds in their stead in exchange for the purchase price of \$69,500 less the amount to be set by the Court representing the Plaintiff's lost profits since December 6, 2018.

WHEREFORE, the Plaintiff Turner's Marina LLC prays that this Honorable Court inquire into the matters set forth herein, and issue its Order:

- a. Granting the Plaintiff a monetary judgment against the Defendants John William Caput, Daniel T. Hyde and Laura Hyde jointly and severally, in an amount to be proven at trial, but which the Plaintiff verily believes to exceed \$100,000;
- b. Or, in the alternative if the Court does not enter an Order of monetary damages against those Defendants, for an Order of this Court compelling the Defendants John William Caput, Daniel T. Hyde and Laura Hyde, to execute deeds conveying all of their interests in Lot 25 to the Plaintiff Turner's Marina, LLC in exchange for payment by Turner's Marina of \$69,500 less an appropriate amount to be determined by the Court, representing the lost profits the Plaintiff would have made from the rental of Lot 25 from December 6, 2018 until the date of Judgment. Further, that if these Defendants refuse to execute such deeds, for an Order of this Court authorizing the Clerk of Court to execute such deeds in the Defendants' stead in exchange for the purchase price of \$69,500, less the amount to be determined by the Court representing the Plaintiff's lost profits since December 6, 2018;
- c. For costs of this action and attorneys' fees; and,
- d. For any and all further relief as this Court deems just and proper.

Law Office of Thomas C. Taylor, LLC

s/ Thomas C. Taylor, Esq.

Thomas C. Taylor (S.C. Bar 5499)

P.O. Box 5550, Hilton Head Isl., SC 29938

Telephone:(843)785-5050-Fax:(843)785-5030

Email: tom@thomastaylorlaw.com

Attorney For Plaintiff Turner's Marina LLC

Plaintiff requests trial by a jury.

s/ Thomas C. Taylor, Esq./

Thomas C. Taylor

Hilton Head Island, South Carolina

November 29, 2021

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Feb 02 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2022-001547

Turner's Marina, LLC,

Respondent-Appellant,

v.

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

Defendants,

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, counsel for Respondent-Appellant was served with a copy of the Appellant-Respondent Paige N. Lorberbaum's Memorandum of Law in Opposition to Appellant-Respondent's Motion to Dismiss by U.S. Mail on the date set forth below.

Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
P.O. Box 1808
Bluffton, SC 29910-1808

James S. Murry
Turner Padgett Graham & Laney, PA
P.O. Box 1495
Augusta, GA 20903-1495


RUSSELL P. PATTERSON, P.A.

Russell P. Patterson, Esq. (SC Bar No.: 4375)

Russell P. Patterson, P.A.

P.O. Box 8047

Hilton Head Island, SC 29938

(843) 341-9300

Russell@russellpattersonlaw.com

lauren@russellpattersonlaw.com

Attorneys for the Appellant-Respondent,

Paige N. Lorberbaum

Hilton Head Island, South Carolina
February 2, 2023

Russell P. Patterson, P.A.



Serving the Lowcountry for over 35 years

Physical Address

19 Shelter Cove Ln., Ste. 107
Hilton Head, SC 29928

Russell P. Patterson
russell@russellpattersonlaw.com

Lauren P. Williams
lauren@russellpattersonlaw.com

Mailing Address:

P.O. Box 8047
Hilton Head, SC 29938
(843) 341-9300
(843) 341-9301 fax

February 2, 2023

RECEIVED

Feb 02 2023

SC Court of Appeals

The Hon. Jenny Abbott Kitchings
Clerk of Court
Via E-Mail

Re: Paige N. Lorberbaum, Appellant v. Turner's Marina LLC, Jeffrey A. Klapper,
Diane L. Klapper, Respondents
Case No.: 2022-001547

Dear Ms. Kitchings:

Please find enclosed Appellant-Respondent Paige N. Lorberbaum's Memorandum of Law in Opposition to Appellant-Respondent's Motion to Dismiss for filing in the above referenced matter.

Thank you for your assistance in this matter. Please do not hesitate to contact me with any questions.

Sincerely,
RUSSELL P. PATTERSON, P.A.

Russell P. Patterson

RPP:djd
Enclosures
cc: Counsel of Record (w/encl.)