

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough

Case No. 2017-CP-10-03099

Appellate Case No. 2022-001479

RECEIVED

MAY 19 2023

SC Court of Appeals

Elizabeth Heatley, Neil B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and
Mariner's Cay Marina Council of Co-Owners, Inc.,.....Respondents,

v.

Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, George A. Farmer.,
Jr., and South Atlantic Bank, Defendants,

Of which Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, and George
A. Farmer., Jr. are the.....Appellants.

APPELLANTS' DESIGNATION OF
MATTERS TO BE INCLUDED IN THE
RECORD ON APPEAL

The Appellants propose the following items to be included in the Record on Appeal:

ORDERS

1. Order Granting in Part and Denying in Part Plaintiffs' Motion for Temporary Injunction, December 6, 2017;
2. Consent Order to Amend Complaint, February 22, 2018;
3. Consent Order Relieving Counsel, April 2, 2018;
4. Consent Scheduling Order, April 30, 2018;
5. Consent Order to Fully Respond to Discovery Requests, December 21, 2018;
6. Amended Scheduling Order, December 27, 2018;
7. Consent Order to Amend Complaint, January 24, 2019;

8. Second Amended Scheduling Order, June 4, 2019;
9. Form 4 Order Denying Motion for Class Certification, June 12, 2019;
10. Form 4 Order Denying Plaintiffs' Motion to Reconsider, July 2, 2019;
11. Third Amended Scheduling Order, January 20, 2020;
12. Order Granting Plaintiffs' Motion to Amend, July 6, 2020;
13. Stipulation of Dismissal as to Third Party Defendant, October 6, 2020
14. Consent Order of Substitution of Counsel, November 10, 2020
15. Order of Reference, December 14, 2020;
16. Order Granting Defendants' Motion for Summary Judgment, May 14, 2021;
17. Form 4 Order Granting Plaintiffs' Motion to Reconsider, July 8, 2021;
18. Parties proposed Orders for Judge's consideration, May 9, 2022;
19. Order Granting Declaratory Relief, May 16, 2022; and
20. Order on Motion to Alter or Amend, September 22, 2022.

MOTIONS

1. Motion for Temporary Injunction and Affidavit of Thomas V. Bessent, September 5, 2017;
2. Memorandum in Support Memorandum in Support of Plaintiffs' Motion for Temporary Injunction, November 9, 2017;
3. Affidavit of George A. Farmer, Jr., November 13, 2017;
4. Plaintiffs' Motion to Amend, February 22, 2018;
5. Plaintiffs' Motion to Certify as Class Action with Affidavits of Dan G. Nekola and Alben D. Neighbors, June 1, 2018;
6. Plaintiffs' Motion to Compel, June 25, 2018;
7. Plaintiffs' Withdrawal of Motion to Certify Class Action, December 17, 2018;
8. Plaintiffs' Motion to Amend Complaint, January 24, 2019;
9. Plaintiffs' Motion to Certify as Class Action with Affidavit of Elizabeth Heatley, February 5, 2019;
10. Plaintiffs' Motion to Compel, March 29, 2019;
11. Plaintiffs' Motion to Amend Complaint, May 28, 2020;
12. Plaintiffs' Memo in Support Motion for Class Certification, June 6, 2019;
13. Defendants' Memo in Opposition to Motion for Class Certification, June 10, 2019;
14. Plaintiffs' Motion for Reconsideration, June 21, 2019;
15. Defendants' Motion for TRO with Affidavit of George A. Farmer, Jr., June 8, 2020;
16. Plaintiffs' Memo in Support of Motion to Amend Complaint, June 19, 2020;
17. Plaintiffs' Motion for Temporary Injunction with Affidavit of Thomas Bessent, June 22, 2020;
18. Plaintiffs' Memo in Support of Temporary Injunction, June 22, 2020;
19. Defendants' Motion for Summary Judgment, March 9, 2021;
20. Plaintiffs' Motion for Summary Judgment, March 12, 2021;
21. Letter in re: Attach Exhibits to Motion for Summary Judgment, March 12, 2021;
22. Defendants' Memo in Support of Motion for Summary Judgment, April 2, 2021;
23. Plaintiffs' Return to Defendants' Motion for Summary Judgment, April 2, 2021;
24. Plaintiffs' Motion to Alter/Amend or Reconsider, May 24, 2021;
25. Letter in re: Exhibit to Motion/Amend, May 24, 2021;

26. Defendants' Memo in Opposition to Plaintiffs' Motion to Alter/Amend, June 2, 2021;
27. Plaintiffs' Reply to Defendants' Memo in Opposition, June 4, 2021;
28. Defendants' Motion to Reconsider, May 19, 2022; and
29. Plaintiffs' Response to Motion to Reconsider, May 26, 2022.

PLEADINGS

1. Summons and Complaint, June 16, 2017;
2. Lis Pendens June 16, 2017;
3. Amended Summons and Complaint, July 21, 2017;
4. Defendants' Answer, Counterclaim and Third-Party Complaint, September 22, 2017;
5. Affidavit of Service as to Third-Party Defendant Emerald McDonough, October 27, 2017;
6. Plaintiffs' Reply to Counterclaim, November 22, 2017;
7. Notice of Appearance for Emerald McDonough Road Holdings, LLC, December 7, 2017;
8. Letter from Attorney Barr in re: money on deposit, December 20, 2017;
9. Notice of Posting Bond, December 27, 2017;
10. Notice of Appearance for Defendant Mariner's Cay Marina Condo, LLC, February 26, 2018;
11. Plaintiffs' Second Amended Complaint, February 28, 2018;
12. Defendant South Atlantic Affidavit of Service, March 13, 2018;
13. Defendant George Farmer's Answer, March 19, 2018;
14. Defendants Mariner's Cay Marina Condo LLC and Mariners Cay Fuel Dock, LLC's Amended Third Party Summons, Answer, Counterclaim and Third-Party Complaint, March 19, 2018;
15. South Atlantic's Answer, April 5, 2018;
16. Plaintiffs' Reply to Counterclaim, April 16, 2018;
17. Mariners Cary Marina Condo LLC's Amended Answer Counterclaim and Third-Party Complaint 4.23.18;
18. Plaintiffs' reply to Counterclaim, May 7, 2018;
19. Third-Party Defendant Emerald McDonough's Summons, Answer and Counterclaim, June 29, 2018;
20. Third-Party Plaintiffs Mariners Cay and Mariners Cay Fuel Dock LLC's Reply to Counterclaim, July 31, 2018;
21. Plaintiffs' Third Amended Complaint, January 31, 2019;
22. Defendants Mariners Cay and Mariners Cay Fuel Dock LLC's Summons, Answer, Counterclaim and Third-Party Complaint, February 15, 2019;
23. Defendant George Farmer's Answer February 19, 2019;
24. Plaintiffs' Reply to Counterclaim, February 22, 2019;
25. Third-Party Defendant Emerald McDonough's Summons, Answer and Counterclaim, March 6, 2019;
26. Third-Party Plaintiffs' Reply to Counterclaim, March 25, 2019;
27. Plaintiffs' Fourth Amended Complaint, July 6, 2020;
28. Defendant South Atlantic's Answer, July 17, 2020;

29. Defendants Mariners Cay and Mariners Cay Fuel Dock LLC's Summons, Answer, Counterclaim and Third-Party Complaint, July 17, 2020;
30. Plaintiffs' Reply to Counterclaim, August 5, 2020;
31. Third-Party Defendant Emerald McDonough's Summons, Answer and Counterclaim, August 14, 2020;
32. Third-Party Plaintiffs Mariners Cay and Mariners Cay Fuel Dock LLC's Reply to Counterclaim, August 21, 2020;
33. Defendants' Designation of Deposition Excerpts, March 18, 2022;
34. Defendants' Trial Brief, March 21, 2022;
35. Plaintiffs' Trial Brief, March 21, 2022;
36. Defendants' Refiled Designation of Deposition Excerpts, March 24, 2022;
37. Plaintiffs' Trial Exhibits, March 24, 2022;
38. Defendants' Trial Exhibits, March 25, 2022;
39. Plaintiffs' Designation of Deposition Excerpts, April 22, 2022;
40. Plaintiffs' Designation of Deposition Excerpts, April 23, 2022;
41. Objection to the Defendants' Designation of Deposition Excerpts, April 25, 2022;
42. Notice of Appeal, October 18, 2022; and
43. Amended Notice of Appeal, October 24, 2022.

DEPOSITIONS AND TRANSCRIPTS

1. Transcript of Hearing, November 14, 2017;
2. Deposition of Ronald McGuire, June 14, 2018;
3. 30(b)(6) Deposition of Mariner's Cay Marina Council of Co-Owners, Inc. (Thomas V. Bessent), June 15, 2018;
4. Deposition of Danny G. Nekola, August 2, 2018;
5. Deposition of Edward M. Geiger, Jr., August 6, 2018;
6. Deposition of Amanda Barnes, August 9, 2018;
7. Deposition of Jeffrey E. Heatley, August 10, 2018;
8. Deposition of Laurene A. Hull, January 30, 2019;
9. Transcript of Hearing, April 5, 2021;
10. Trial Transcript, March 22-23, 2022; and
11. Transcript of Hearing, September 7, 2022.

EXHIBITS

1. Master Deed for Mariner's Cay Racquet and Yacht Club a South Carolina Horizontal Property Regime, recorded in Book J128 at Page 300 on May 12, 1982;
2. Amendment to Master Deed for Mariner's Cay Racquet and Yacht Club a South Carolina Horizontal Property Regime, recorded in Book H131 at Page 292 on April 25, 1983;
3. Master Deed for Mariner's Cay Marina Horizontal Property Regime recorded in Book V583 at Page 584 on May 18, 2006;
4. List of Owners who purchased prior to the Master Deed Amendment;
5. Dock Unit B-1 Deed to June W. Hopkins and Jill H. Sneed recorded in Book V589 at Page 151, July 5, 2006;

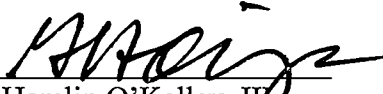
6. Dock Unit B-10 Deed to Edgar W. Hull, Jr. and Laurene A. Hull recorded in Book O590 at Page 267, July 11, 2006;
7. Dock Unit C-1 Deed to W.K. Taylor, III recorded in Book T590 at Page 110, July 12, 2006;
8. Dock Unit B-6 Deed to Randolph C. Romeo and Ann K. Romeo recorded in Book F592 at Page 885, July 25, 2006;
9. Dock Unit B-11 Deed to Kevin Roerden and Antoinette Roerden recorded in Book G592 at Page 015, July 25, 2006;
10. Dock Unit A-6 Deed to George W. Aimar, Jr. recorded in Book G592 at Page 023, July 25, 2006;
11. Dock Unit A-8 Deed to Jack Hughes and Donna Hughes recorded in Book W592 at Page 811, July 28, 2006;
12. Dock Unit B-21 Deed to Stephen V. Wynn and L. Ann Sparks-Wynn recorded in Book X 592 at Page 120, July 31, 2006;
13. Dock Unit B-5 Deed to John C. Hall and Norma T. Hall recorded in Book A593 at Page 523, August 1, 2006;
14. Dock Unit B-14 Deed to Edward A. Shields, Donna M. Shields, and Judith MacGovern Stock recorded on Book C593 at Page 582 on August 3, 2006;
15. Dock Unit B-7 Deed to David R. Schooff and Jane L. Schooff recorded in Book J593 at Page 574, August 3, 2006;
16. Dock Unit B-16 Deed to John C. Wynn recorded in Book T593 at Page 899 on August 7, 2006;
17. Dock Unit B-18 Deed to John C. Wynn recorded in Book T593 at Page 891 on August 7, 2006;
18. Dock Unit B-12 Deed to Debbie's Folly I, LLC recorded in Book C594 at Page 052 on August 9, 2006;
19. Dock Unit B-13 Deed to Debbie's Folly I, LLC recorded in Book C594 at Page 044 on August 9, 2006;
20. Dock Unit C-6 Deed to William L. Frye recorded in Book N594 at Page 733, August 11, 2006;
21. Dock Unit B-20 Deed to Mary Ann Meyers recorded in Book S594 at Page 872, August 15, 2006;
22. Dock Unit A-14 Deed to Michael K. Sutton and Shelly L. Sutton recorded in Book S594 at Page 864, August 15, 2006;
23. Dock Unit A-10 Deed to James J. Ledwith recorded in Book S594 at Page 888, August 15, 2006;
24. Dock Unit A-2 Deed to Edward M. Geiger and Sharon C. Geiger recorded in Book H595 at Page 393, August 21, 2006;
25. Dock Unit A-4 Deed to Angus W. Graham and Caroline C. Graham recorded in Book J596 at Page 240, August 29, 2006;
26. Dock Unit B-9 Deed to Ronald G. McGuire, JR. recorded in Book V596 at Page 089, September 1, 2006;
27. Dock Unit C-9 Deed to Daniel W. Painter and Alisa W. Painter recorded in Book T597 at Page 492, September 11, 2006;
28. Dock Unit C-10 Deed to Nelson H. Maier, Jr. and Jean E. Maier recorded in Book A598 at Page 886, September 13, 2006;

29. Dock Unit A-15 Deed to R. Keith McCann and Kristin L. McCann recorded in Book P594 at Page 146, September 26, 2006;
30. Dock Unit A-1 Deed to Ernest B. Vance recorded in Book Z601 at Page 574, October 16, 2006;
31. Dock Unit B-8 Deed to Neal B. McCann recorded in Book N617 at Page 404, March 6, 2007;
32. Dock Unit B-17 Deed to David Neil Monk recorded in Book C618 at Page 028 on March 12, 2007;
33. Amended and Restated Master Deed for Mariner's Cay Marina Horizontal Property Regime recorded in Book X618 at Page 603 on March 19, 2007;
34. First Amendment to Amended and Restated Master Deed for Mariner's Cay Marina Horizontal Property Regime recorded in Book Z661 at Page 509 on June 12, 2008;
35. Master's Deed recorded in Book 0510 at Page 673 on October 14, 2015;
36. Mariners Cay Marina Council of Co-Owners' Answer, April 3, 2013;
37. Master's Order of Judgment for Foreclosure and Sale, March 16, 2015;
38. Master's Report on Sale & Disbursements, July 23, 2015;
39. Minutes from Annual Meeting, May 21, 2016;
40. Purchase and Sale Agreement, March 21, 2016;
41. Board Member Notes, May 23, 2016;
42. First Amendment to Purchase and Sale Agreement April 28, 2016;
43. Deed to Mariners Cay Fuel Dock LLC, recorded in Book 0555 at Page 946 on May 24, 2016;
44. Deed to Mariners Cay Marina Condo LLC recorded in Book 0556 at Page 511 on May 25, 2016;
45. Valbridge Appraisal Report, July 5, 2016;
46. Notice of Lien for #C21, December 1, 2016;
47. Notice of Lien for #C22, December 1, 2016;
48. Satisfaction of Lien for #C21, April 3, 2017;
49. Satisfaction of Lien for #C22, April 3, 2017;
50. Re-recorded Deed to Mariners Cay Fuel Dock LLC with Bill of Sale recorded in Book 0555 at Page 946 on June 28, 2017;
51. Plaintiffs' responses to Defendants' 1st Requests to Admit, October 24, 2017
52. Email to Jeff Heatley from Capers Barr re: auction of Ship store and Fuel Dock, November 28, 2017;
53. First Amendment to Amended and Restated Master Deed, June 12, 2018;
54. Mathisen Appraisal for Unit 1A, October 29, 2019;
55. Mathisen Appraisal for Unit 1B, October 29, 2019; and
56. Expenses and Repairs.

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

Mt. Pleasant, South Carolina
May 16, 2023



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v.

Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, George A. Farmer.,
Jr., and South Atlantic Bank, Defendants,

Of which Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, and George
A. Farmer., Jr. are the.....Appellants.

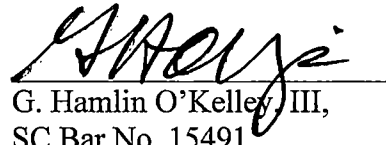
PROOF OF SERVICE

I certify that I have served the Appellants' Initial Brief and Designation of Matter by
depositing a copy of same Via Email cgb@barrungermcintosh.com,
DCleveland@clawsonandstaubes.com, and Via U.S. regular mail, postage paid, addressed
to Capers G. Barr, III, Barr, Unger & McIntosh, LLC, 11 Broad Street, PO Box 1037,
Charleston, SC 29402 and David C. Cleveland, Clawson and Staubes, LLC, 126 Seven
Farms Drive, Suite 200, Charleston, SC 29492-8144.

[SIGNATURES ON FOLLOWING PAGE]

Mt. Pleasant, South Carolina
May 16, 2023

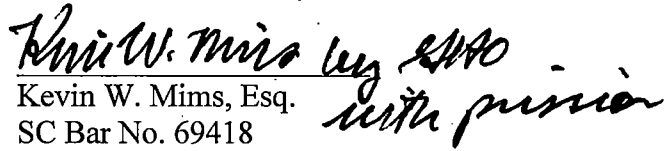
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May 16, 2023

VIA EMAIL: ctappfilings@sccourts.org
AND US MAIL
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

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SC Court of Appeals

*RE: Elizabeth Heatley v Mariners Cay Marina Condo, LLC et al.,
C/A No.: 2017-CP-10-3099 Appellate Case No. 2022-001479
Client File No.: 1219.0019*

Dear Ms. Kitchings:

Enclosed please find the following items in the above-referenced matter:

1. An original and one (1) copy of the Appellants' Initial Brief
2. An original and one (1) copy of the Appellants' Designation of Matters to be Included in the Record on Appeal; and
3. Proof of Service.

Please file the original and return the filed-stamped copies to me in the enclosed envelope. By copy of this letter, I am serving same upon all counsel.

Should you have any questions, please feel free to contact me. With kindest regards, I remain

Yours very truly,

A handwritten signature in black ink, appearing to read 'G. Hamlin O'Kelley, III'.

G. Hamlin O'Kelley, III

GHOIII/atd

Cc: w/ Encl Via Email and US Mail

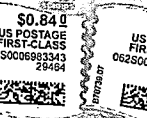
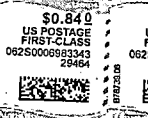
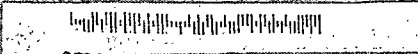
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