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**May 23 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.

RECORD ON APPEAL- VOLUME 1

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4-28-20

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
Case No. 2020-CP-07-01064

Turner's Marina, LLC,  
  
Plaintiff,  
  
vs.  
  
Paige N. Lorberbaum; Jeffrey A. Klapper;  
Diane L. Klapper; and Coastal States Bank,  
  
Defendants.

**CONSENT ORDER**  
**(Making Various Findings)**  
**(Dismissal of Coastal States Bank)**  
  
**DOES NOT END CASE**

This matter comes before me on the motion of Defendant Coastal States Bank ("Coastal"), by and with the consent of Plaintiff Turner's Marina, LLC ("Plaintiff"), by and through their undersigned counsel, for an order making various findings and rulings and with those findings and rulings preserved, dismissing Coastal as a defendant in this case.

By and with the consent and stipulation of the undersigned parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. To the extent the Court awards Plaintiff specific performance as requested by Plaintiff, Plaintiff shall pay off and satisfy the mortgage held by Coastal, which mortgage is dated April 22, 2019, and was recorded April 25, 2019, in the Office of the Beaufort County Register of Deeds in Book 3754 at Page 1749 ("Coastal Mortgage") and no finding or ruling made by this Court shall affect the validity or priority of the lien of the Coastal Mortgage on the property that is the subject of this case.
2. Preserving the above ruling, Coastal is dismissed as a Defendant to this action without prejudice.
3. The case continues as to the remaining Defendants.

ELECTRONICALLY FILED - 2022 Apr 28 4:40 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

4-28-22

AND IT IS SO ORDERED.

[Judge's signature page follows]

**I SO MOVE:**

s/ Demetri K. Koutrakos  
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*Attorneys for Defendant Coastal States Bank*

**I CONSENT:**

s/ Thomas C. Taylor  
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*Attorney for Plaintiff Turner's Marina, LLC*



Beaufort Common Pleas

**Case Caption:** Turners Marina Llc VS Paige N Lorberbaum , defendant, et al  
**Case Number:** 2020CP0701064  
**Type:** Order/Consent Order

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-07-1064

**ORDER**

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

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

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

**FINDINGS OF FACT**

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

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

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

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

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

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

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

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

18. From April 19, 2019 through May 1, 2019, the Plaintiff Turner's Marina stood ready, willing, and able to tender the \$54,500 to purchase Lot 158 from the Klappers pursuant to the Right Of Repurchase.
19. At no time between April 2, 2019 and May 1, 2019, did any representative of Turner's Marina waive its R.V. Resort Covenants Right of Repurchase to purchase Lot 158.

### CONCLUSIONS OF LAW

1. The failure of the Klappers and Defendant Lorberbaum to allow Turner's Marina to purchase Lot 158 was a material breach of R.V. Resort Covenants, specifically paragraph 12.9.
2. Given the Findings of Fact as set forth above, Turner's Marina is entitled to the equitable remedy of an Order of Specific Performance requiring that Lot 158 be conveyed by Defendant Lorberbaum to Plaintiff Turner's Marina within ninety (90) days of the entry of this Order by General Warranty Deed, for the consideration of Fifty-four thousand Five Hundred (\$54,500) dollars.
3. There shall be no reduction in the \$54,500 price to be paid by the Plaintiff based upon a claimed loss of rental revenues over the period since the conveyance to Defendant Lorberbaum, because the Plaintiff failed to prove those damages with specificity.
4. Because Billybob's Marinas, Inc. earlier waived its HHC's 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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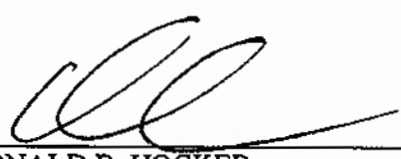
9-27-22

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
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 TURNER'S MARINA LLC, )  
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 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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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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12-11-22

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

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

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

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

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

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

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF BEAUFORT )  
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 TURNER'S MARINA LLC, )  
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 Plaintiff, )  
 )  
 vs. )  
 )  
 PAIGE N. LORBERBAUM, )  
 JEFFREY A. KLAPPER, )  
 DIANE L. KLAPPER, and, )  
 COASTAL STATES BANK, )  
 )  
 )  
 Defendants. )  
 )

**IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT**

**Case No. 20-CP-07-1064**

**Amended  
 Complaint for Breach of Contract,  
 Or In The Alternative,  
 Specific Performance**

**(Jury Trial Requested)**

Pursuant to S.C.R.Civ. P. 15(a), the Plaintiff files this Amended Complaint prior to a responsive pleading being served, and alleges as follows:

**PARTIES AND JURISDICTION**

1. That the Plaintiff Turner's Marina LLC (hereinafter sometimes referred to as "Turner's Marina") is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina. Its principal place of business is in Beaufort County, in the State of South Carolina, and it is authorized to do business in the State of South Carolina.

2. That the Defendant Paige N. Lorberbaum (hereinafter sometimes referred to as "Lorberbaum,") is a resident of Beaufort County, S.C.

3. That the Defendants Jeffrey A. Klapper and Diane L. Klapper (hereinafter sometimes referred to as the "Klappers") are residents of Aiken County, S.C.

4. That the Defendant Coastal States Bank is a South Carolina corporation organized and existing under the laws of South Carolina, with its principal place of business in Beaufort County, South Carolina.

5. 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.

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

### FACTS

7. 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.

8. 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 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.

9. 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.

10. 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.

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

12. 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-IIQ. That in addition, Billybob's Marinas, Inc. validly acquired that certain marina and dock extending from the 1.41 acres in to 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.

13. 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.

14. 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.

15. 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.

16. 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 158.

17. That on or about May 18, 2007, the Klappers purchased Lot 158.

18. That at all times the Klappers owned Lot 158, it remained subject to the recorded Covenants, including the Developer's Right of First Refusal identified above.

19. That on or about April 2, 2019, the Klappers or their agent, 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 right of first refusal period, to be exercised anytime within the thirty (30) period between April 2, 2019 through May 1, 2019.

20. That on or about April 19, 2019, legal counsel for Turner's Marina notified Darrell Thomas Johnson, Jr. as legal counsel for the Klappers, that Turner's Marina was electing to exercise its Right of First Refusal and purchase Lot 158 from the Klappers for \$54,500.

21. That despite actual knowledge of the Plaintiff Turner's Marina's exercise of its Right of First Refusal on April 19, 2019, the Klapper Defendants moved forward with the sale of Lot 158 to Defendant Lorberbaum on or about April 22, 2019.

22. That 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 First Refusal.

23. That at no time between April 2, 2019 and May 1, 2019, did any representative of Turner's Marina waive its Right of First Refusal to purchase Lot 158.

24. That on information and belief, the Defendant Coastal States Bank holds a security interest on Lot 158 pursuant to a Note and Mortgage executed by the Defendant Lorberbaum on or about April 22, 2019.

25. That the lots at the Outdoor Resorts Marina, including Lot 158, at all times since April 1, 2019 have been in high demand for short term rental.

26. That if the Defendants Klapper had conveyed Lot 158 to the Plaintiff Turner's Marina pursuant to the First Right of Refusal, then Turner's Marina would have rented out Lot 158 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 the Klappers to convey Lot 158 to the Plaintiff Turner's Marina was a breach of contract under South Carolina law, because the Klappers conveyed Lot 158 to Defendant Lorberbaum without securing a waiver of Turner's Marina's Right of First Refusal, and in fact, conveyed Lot 158 to Lorberbaum with actual knowledge of Turner's Marina's attempted exercise of its Right of First Refusal and Turner's Marina's willingness and ability to tender the contract purchase price within the 30 days provided by the Covenants..

28. That the conveyance of Lot 158 by the Klappers to Lorberbaum directly and proximately caused the Plaintiff damage in the form of lost profits from rentals of Lot 158 from April 22, 2019 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 27 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 Defendants Jeffery A. Klapper and Diane L. Klapper breached their contractual obligations under the Covenants by failing and refusing to honor the Plaintiff's Right of First Refusal to purchase Lot 158.

33. That the Defendant Lorberbaum has placed upon Lot 158 a recreational vehicle, and claims exclusive ownership of Lot 158, thereby denying the Plaintiff the right to rent the lot and earn profits as it does from other comparable lots 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 32 are re-alleged as fully as if repeated verbatim herein.

36. That the Klapper Defendants and Defendant Lorberbaum breached the Covenants by failing and refusing to convey Lot 158 to the Plaintiff.

37. That the Plaintiff seeks specific performance of its rights under the Covenants to purchase Lot 158 from the Klapper Defendants, and stands ready, willing, and able to tender the purchase price of \$54,500.

38. That the Plaintiff is entitled to an Order of this Court compelling the Defendants Jeffrey A. Klapper and Diane L. Klapper, Defendant Paige N. Lorberbaum, and Defendant Coastal

States Bank, to execute deeds conveying all of their interests in Lot 158 to the Plaintiff Turner's Marina LLC in exchange for payment by Turner's Marina of \$54,500, less an appropriate amount to be determined by the Court, representing the lost profits the Plaintiff would have made from the rental of Lot 158 from April 22, 2019 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 \$54,500 less the amount to be set by the Court representing the Plaintiff's lost profits since April 22, 2019.

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 Jeffrey A. Klapper, Diane L. Klapper and Paige N. Lorberbaum 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 Jeffrey A. Klapper and Diane L. Klapper, Defendant Paige N. Lorberbaum, and Defendant Coastal States Bank, to execute deeds conveying all of their interests in Lot 158 to the Plaintiff Turner's Marina, LLC in exchange for payment by Turner's Marina of \$54,500 less an appropriate amount to be determined by the Court, representing the lost profits the Plaintiff would have made from the rental of Lot 158 from April 22, 2019 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 \$54,500, less the amount to be determined by the Court representing the Plaintiff's lost profits since April 22, 2019;
- 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](mailto: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

May 13, 2020

5-18-22

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE 14 <sup>TH</sup> JUDICIAL CIRCUIT
TURNER'S MARINA, LLC,	)	CIVIL ACTION NO: 2020-CP-07-01064
PLAINTIFF,	)	
	)	
vs.	)	SECOND
	)	MOTION <u>IN LIMINE</u>
PAIGE N. LORBERBAUM,	)	
JEFFREY A. KLAPPER,	)	
DIANE L. KLAPPER, and	)	
COASTAL STATES BANK,	)	
DEFENDANT.	)	

TO: THOMAS C. TAYLOR, ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:

Defendant Lorberbaum moves In Limine to preclude calling her attorney as a witness. She will stipulate to the authenticity of documents and emails. She will stipulate that Plaintiff's contention was conveyed by phone calls. Calling her attorney as a witness would lead to recusal, depriving her of the attorney of her choice, and paying a stranger to start over. Our Courts have also recognized the importance of the attorney-client relationship developing over time.

An attorney should not be called as a witness unless:

1. testimony is relevant to disputed issues of fact
2. testimony is relevant to material issues of fact.
3. there is no other evidence available to prove those facts.

Respectfully Submitted:

LAW OFFICE OF  
DARRELL THOMAS JOHNSON, JR., LLC

By: s/Darrell Thomas Johnson, Jr.  
 Darrell Thomas Johnson, Jr. (3010)  
 300 Main Street  
 Post Office Box 1125  
 Hardeeville, South Carolina 29927  
 (843)784-2142  
 (843)784-5770  
 tdjohnson1@johnsonslawoffice.com  
 File No: 12-561-03-200-20  
 Attorney for Defendant Lorberbaum

May 18, 2022

ELECTRONICALLY FILED - 2022 May 18 1:48 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 TURNER'S MARINA, LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PAIGE N. LORBERBAUM, JEFFREY A. )  
 KLAPPER, DIANE L. KLAPPER, and, )  
 COASTAL STATES BANK, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO: 2020-CP-07-01064

**ANSWER AND COUNTERCLAIM OF  
 DEFENDANTS JEFFREY A. KLAPPER  
 and DIANE L. KLAPPER**

NOW COME Defendants JEFFREY A. KLAPPER and DIANE L. KLAPPER ("Defendants") and answers to Plaintiff TURNER'S MARINA, LLC's ("Plaintiff") Complaint as follows:

**FIRST DEFENSE**

Defendants raise the defense of the doctrine of estoppel. Plaintiff did not have any Right of First Refusal at all relevant times. Plaintiff has admitted such in this same court in the case of *Turner's Marina, LLC vs. R.F. Resort and Yacht Club Owners' Association, Inc.*, Civil Action Number 2020CP07000989, to wit: "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, subject only to the provision that Billybob's Marinas, Inc. retained the right of repurchase acquired from Property Research Holdings, Inc. by documents including by not limited to those recorded in Deed Book 245 at Page 1052 and Record book 1843 at Page 1509, until the latter of two (2) years from the closing of the sale (which occurred December 21, 2017), or the date the seller financing of \$1,150,000.00 is paid

off.” The sale Plaintiff complains of occurred April 22, 2019, clearly within the 2 years that Plaintiff had no Right of First Refusal. The Court can also take judicial notice of the assignment recorded in Beaufort County Register of Deeds, Deed Book 3632, Pages 1442-1446 to determine there was no Right of First Refusal at least until December of 2019.

### **SECOND DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

### **THIRD DEFENSE**

Defendants raise the defenses of unclean hands, laches, and equitable estoppel. Plaintiff has waited over one (1) year and after taking thirteen (13) monthly regime fees from Paige N. Lorberbaum before attempting to assert its rights, which it never even had.

### **FOURTH DEFENSE**

Defendants deny each and every allegation contained in the Complaint not herein specifically admitted and demands strict proof thereof.

### **ANSWER**

1. Defendants admit the allegations set forth in paragraphs 2, 3, 5, 7, 8, 9, 10 and 17 of Plaintiff's Complaint.
2. Defendants deny the allegations set forth in paragraphs 6, 15, 16, 18, 19, 20, 22, 23, 27, 28, 29, 31, 32, 34, 36, 37, 38 and 39 of Plaintiff's Complaint.
3. Defendants are without knowledge sufficient to admit or deny paragraphs 1, 4, 11, 12, 13, 14, 24, 25, 26 and 33 of Plaintiff's Complaint.
4. As to paragraph 21, Defendants admit they sold the lot on or about April 22, 2019, but deny Plaintiff had any Right of First Refusal.

**WHEREFORE**, having fully Answered, Defendants request that the Plaintiff's actions against it be dismissed with all costs taxed to the Plaintiff.

**COUNTERCLAIM**

Pursuant to the applicable Covenants and Bylaws, the prevailing party in any proceeding arising because of an alleged failure to comply with the Covenants is entitled to the costs of the proceeding, including reasonable attorney's fees. Defendants request an award of all costs and reasonable attorney's fees.

WHEREFORE, having fully answered, Defendants and Counterclaim Plaintiffs demand:

1. that the Plaintiff's action be dismissed with all costs taxed to the Plaintiff;
2. all allowable litigation costs, including attorney's fees; and
3. other relief the Court deems just and proper.

This 10<sup>th</sup> day of June, 2020

Augusta, Georgia

TURNER, PADGET, GRAHAM & LANEY, P.A.

s:/James S. Murray

James S. Murray  
Attorney for Defendants Jeffrey A. Klapper and  
Diane L. Klapper  
South Carolina Bar No. 73307  
TURNER PADGET GRAHAM & LANEY, P.A.  
Post Office Box 1495  
Augusta, Georgia 30903-1495  
Telephone: (706) 722-7543  
Email: [jmurray@turnerpadget.com](mailto:jmurray@turnerpadget.com)

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

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
  
CIVIL ACTION NO: 2020-CP-07-01064

**ANSWER AND COUNTERCLAIM OF  
DEFENDANTS JEFFREY A. KLAPPER  
and DIANE L. KLAPPER**

I hereby certify that on this day, June 10, 2020 I electronically filed the forgoing Answer and Counterclaim of Defendants Jeffrey A. Klapper and Diane L. Klapper to Plaintiff Turner's Marina, LLC's Complaint with the Beaufort County Clerk of Court using the South Carolina Courts E-Filing Portal which will automatically send email notification of such filing to the attorneys of record as follows:

Thomas C. Taylor  
LAW OFFICE OF THOMAS C. TAYLOR, LLC  
tom@thomastaylorlaw.com  
ATTORNEY FOR PLAINTIFF TURNER'S MARINA, LLC.

Demetri (Jim) K. Koutrakos  
CALLISON TIGHE  
jimkoutrakos@callisontighe.com  
ATTORNEY FOR DEFENDANT COASTAL STATES BANK

and by Email to:

Darrell T. Johnson, Jr.  
LAW OFFICE OF DARRELL THOMAS JOHNSON, JR., LLC  
tdjohnson1@Johnsonslawoffice.com  
ATTORNEY FOR DEFENDANT PAGE N. LORBERBAUM

This 10<sup>th</sup> day of June, 2020.

s:/James S. Murray \_\_\_\_\_

James S. Murray

Attorney for Defendants Jeffrey A. Klapper  
and Diane L. Klapper



**FOR A FIRST DEFENSE TO FACTUAL ALLEGATIONS**

7. Further answering the Complaint herein, Defendant Lorberbaum reiterates all of the allegations as fully as if repeated herein.
8. Defendant Lorberbaum admits only that the documents speak for themselves in response to Paragraph 7.
9. Defendant Lorberbaum admits only that the documents speak for themselves in response to Paragraphs 8, 9, 10 and 11.
10. That for lack of information on which to form a belief, Defendant Lorberbaum denies allegations in Paragraphs 12 and 13.
11. Defendant Lorberbaum denies allegations in Paragraph 14, there being two unmet contingencies by Plaintiff, at the time of Defendant's purchase.
12. Defendant Lorberbaum denies allegations in Paragraph 15, except to the extent that the documents speak for themselves.
13. Defendant Lorberbaum denies allegation in Paragraph 16.
14. Defendant Lorberbaum admits only to that the documents speak for themselves as to Paragraph 17.
15. Defendant Lorberbaum admits to Paragraphs 18 and 19, only in that the documents speak for themselves.
16. The allegation in Paragraph 20 is denied by Defendant Lorberbaum, in that Darrell Thomas Johnson, Jr. was not Klapper's Attorney.
17. As to the allegation in Paragraph 21, Defendant Lorberbaum lacks information as to Klapper's knowledge, but admits sale went forward.
18. Defendant Lorberbaum lacks information on which to form a belief to, and therefore denies the allegations in Paragraph 22.
19. As to the allegation of Paragraph 23, Defendant Lorberbaum denies such right existed in the Plaintiff at that time, the assignment reading in pertinent part "save and except any right of first refusal... "and"... such exclusion shall continue only

until the later of, a) two (2) years from the date of recording of this assignment or b) the date of which satisfaction of mortgage...”

20. Defendant Lorberbaum admits the allegations in Paragraph 24.
21. Defendant Lorberbaum lacks information with which to form a belief, and therefore denies the allegations in Paragraphs 25 and 26.
22. Defendant Lorberbaum denies the allegations in Paragraphs 27, 28 and 29.

**AS TO THE FIRST CAUSE OF ACTION**  
**BREACH OF CONTRACT**

23. Further answering the Complaint herein, Defendant Lorberbaum reiterates all of the allegations as fully as if repeated herein.
24. Defendant Lorberbaum denies the allegations of Paragraphs 30, 31 and 32.
25. Defendant Lorberbaum admits the allegations in Paragraph 33, that Defendant Lorberbaum claims title to the lot, otherwise denies Paragraph 33.
26. The allegation of Paragraph 34 is denied by Defendant Lorberbaum, who would further state that the covenants give rise only to potential *In-Rem* claims, not *In-Personnom*.

**AS TO THE SECOND CAUSE OF ACTION**  
**(IN THE ALTERNATIVE) SPECIFIC PERFORMANCE**

27. Further answering the Complaint herein, Defendant Lorberbaum reiterates all of the allegations as fully as if repeated herein.
28. Defendant Lorberbaum denies allegations of Paragraphs 35, 36, 37, 38 and 39.

**FOR A SECOND DEFENSE**  
**12(B)(6)**

29. Further answering the Complaint herein, Defendant Lorberbaum reiterates all of the allegations as fully as if repeated herein.
30. That the Complaint fails to state facts on which relief may be granted.

31. That the Complaint incorporates by reference to the document dated December 21, 2017 and entitled "Absolute Assignment".
32. That the said document provides in pertinent part that the assignment of right of first refusal did not take effect until the later of several events.
33. That the time of Defendant Lorberbaum's purchase, neither of Plaintiff's conditions precedent had occurred in that:
  - a) The Right of First Refusal had not vested under its effective date; and
  - b) The Plaintiff had not satisfied the mortgage.
34. That in the event of any ambiguity, a restriction is construed in favor of the free use and disposition of real property.
35. That the Complaint, with incorporated documents, shows, on its face, that the Plaintiff cannot state a cause of action.

**FOR A THIRD DEFENSE**

36. Further answering the Complaint herein, Defendant Lorberbaum reiterates all of the allegations as fully as if repeated herein.
37. That the Plaintiff has failed to mitigate its damages by failing to file a suit, or even a Lis Pendens, prior to now.
38. That Plaintiff made no effort to purchase the property for the year and a half it languished on the market.

**FOR A FOURTH DEFENSE**

39. Further answering the Complaint herein, Defendant Lorberbaum reiterates all of the allegations as fully as if repeated herein.
40. The Plaintiff is judicially estopped from maintaining this action in light of a contemporaneous suit, which pleads in part, that the Plaintiff did not have the Right of First Refusal until December 2019.

**FOR A FIFTH DEFENSE AND COUNTERCLAIM**

41. Further answering the Complaint herein, Defendant Lorberbaum reiterates all of the allegations as fully as if repeated herein and asserts her counterclaim.
42. Pursuant to the applicable Covenants and Bylaws, the prevailing party in any proceeding arising because of an alleged failure to comply with the Covenants is entitled to the costs of the proceeding, including reasonable attorney's fees. Defendants request an award of all costs and reasonable attorney's fees.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant Lorberbaum would pray that the Plaintiff's Complaint for judgement be dismissed, for judgement on the counterclaim, for costs and attorney fees, and such other relief as may be just and proper. Defendant Lorberbaum also prays for such other and further relief as the Court deems just and proper and also demands a trial by jury.

Respectfully Submitted,

**LAW OFFICE OF  
DARRELL THOMAS JOHNSON, JR., LLC**

s/Darrell Thomas Johnson, Jr.  
Darrell Thomas Johnson, Jr. (3010)  
300 Main Street  
Post Office Box 1125  
Hardeeville, South Carolina 29927  
(843) 784-2142  
(843) 784-5770 fax  
tdjohnson1@johnsonslawoffice.com  
File No: 12-561-03-200-20  
Attorney for Defendant Paige N. Lorberbaum

June 12, 2020

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
Case No. 2020-CP-07-01064

Turner's Marina, LLC,  
  
Plaintiff,  
  
vs.  
  
Paige N. Lorberbaum; Jeffrey A. Klapper;  
Diane L. Klapper; and Coastal States  
Bank,  
  
Defendants.

**COASTAL STATES BANK'S ANSWER  
TO AMENDED COMPLAINT**

Defendant Coastal States Bank ("Coastal") answers the Amended Complaint as follows:

**FOR A FIRST DEFENSE**

1. Coastal denies all allegations of the Amended Complaint unless otherwise admitted, qualified, or explained.
2. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1 of the Amended Complaint and, therefore, denies the same.
3. Coastal admits the allegations of paragraph 2 of the Amended Complaint.
4. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 of the Amended Complaint and, therefore, denies the same.
5. Coastal admits the allegations of paragraph 4 of the Amended Complaint.
6. Paragraphs 5 and 6 of the Amended Complaint contain legal conclusions to which no response is required.

7. As to the allegations of paragraph 7 of the Amended Complaint, Coastal admits a document entitled "Declaration of Covenants and Restrictions for Outdoor Resorts, R.V. Resort and Yacht Club and Provisions for the R.V. Resort and Yacht Club, Owner's Association, Inc." was recorded in the Beaufort County Register of Deeds in Book 325 at Page 920 ("Covenants"). Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 7 and, therefore, denies the same.

8. As to the allegations of paragraphs 8, 9, and 10 of the Amended Complaint, Coastal craves reference to the Covenants. To the extent the allegations of paragraphs 8, 9, and 10 are inconsistent with the Covenants, Coastal denies the same.

9. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 11 and 12 of the Amended Complaint and, therefore, denies the same.

10. Coastal admits the allegations of paragraphs 13 and 14 of the Amended Complaint.

11. Coastal denies the allegations of paragraphs 15 and 16 of the Amended Complaint.

12. Coastal admits the allegations of paragraph 17 of the Amended Complaint.

13. As to the allegations of paragraph 18 of the Amended Complaint, Coastal craves reference to the public records of Beaufort County. To the extent the allegations of paragraph 18 are inconsistent with the public records of Beaufort County, Coastal denies the same.

14. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 19 and 20 of the Amended Complaint and, therefore, denies the same.

15. As to the allegations of paragraph 21 of the Amended Complaint, Coastal admits the Defendants Klapper sold Lot 158 to Defendant Lorberbaum on or about April 22, 2019. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 21 and, therefore, denies the same.

16. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 22 of the Amended Complaint and, therefore, denies the same.

17. Coastal denies the allegations of paragraph 23 of the Amended Complaint and Coastal further alleges Plaintiff had no right of first refusal to waive.

18. Coastal admits the allegations of paragraph 24 of the Amended Complaint.

19. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 25 and 26 and, therefore, denies the same.

20. Coastal denies the allegations of paragraphs 27 and 28 of the Amended Complaint.

21. As to the allegations of paragraph 29 of the Amended Complaint, Coastal craves reference to the Covenants. To the extent the allegations of paragraph 29 are inconsistent with the Covenants, Coastal denies the same. Further, Coastal specifically denies Plaintiff is entitled to any relief, including attorney's fees and costs.

22. As to the reiterated allegations of paragraph 30 of the Amended Complaint, Coastal repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

23. As to the allegations of paragraph 31 of the Amended Complaint, Coastal craves reference to the Covenants. To the extent the allegations of paragraph 31 are inconsistent with the Covenants, Coastal denies the same.

24. Coastal denies the allegations of paragraph 32 of the Amended Complaint.

25. Coastal is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 33 of the Amended Complaint and, therefore, denies the same.

26. Coastal denies the allegations of paragraph 34 of the Amended Complaint.

27. As to the reiterated allegations of paragraph 35 of the Amended Complaint, Coastal repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

28. Coastal denies the allegations of paragraphs 36, 37, 38, and 39 of the Amended Complaint.

**FOR A SECOND DEFENSE**  
*(Rule 12(b)(6))*

29. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

30. The Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

**FOR A THIRD DEFENSE**  
*(Bona Fide Mortgagee for Value Without Notice)*

31. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

32. Coastal is a bona fide mortgagee for value without notice and, therefore, Coastal possesses a first mortgage lien on Lot 158.

**FOR A FOURTH DEFENSE**  
*(Estoppel)*

33. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

34. Plaintiff's claims are barred by the doctrine of estoppel.

**FOR A FIFTH DEFENSE**  
*(Laches)*

35. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

36. Plaintiff's claims are barred by the doctrine of laches.

**FOR A SIXTH DEFENSE**  
*(Waiver)*

37. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

38. Plaintiff's claims are barred by the doctrine of waiver.

**FOR A SEVENTH DEFENSE**  
*(Plaintiff has no Right of First Refusal)*

39. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

40. By Absolute Assignment dated December 21, 2017, and recorded December 27, 2017, in the Beaufort County Register of Deeds in Book 3632 at Page 1442, BillyBob's Marinas, Inc. assigned various rights to Plaintiff, subject to a critical exception that Plaintiff appears to have intentionally overlooked or ignored.

41. The Absolute Assignment specifically and unequivocally excludes the right of first refusal obtained by BillyBob's Marinas, Inc. by that certain Assignment of Rights recorded in the Beaufort County Register of Deeds in Book 1843 at Page 1509, whereby BillyBob's Marinas, Inc. was absolutely and irrevocably granted and conveyed any and all contract rights, approvals, covenants, and declarant rights set forth in Covenants, the same Covenants under which Plaintiff claims it has a right of first refusal.

42. The exclusion in the Absolute Assignment referenced above continues until the later of (a) two years from the date of the recording of the Absolute Assignment, which was recorded December 27, 2017; or (b) the date on which a satisfaction of the mortgage from Plaintiff to BillyBob's Marinas, Inc. is recorded.

43. No satisfaction of the mortgage from Plaintiff to BillyBob's Marinas, Inc. has been recorded. In addition, Lot 158 was sold and conveyed by Defendants Klapper to Defendant Lorberbaum within two years from the date of the recording of the Absolute Assignment.

44. BillyBob's Marinas, Inc. continues to hold the right to repurchase set forth in the Covenants.

45. Plaintiff does not possess a right to repurchase.

46. BillyBob's Marinas, Inc. waived its right to purchase with respect to the sale and conveyance by Defendants Klapper to Defendant Lorberbaum by way of a Waiver of Right to Repurchase recorded April 25, 2019, in the Beaufort County Register of Deeds in Book 3754 at Page 1743.

47. Plaintiff possessed no right to repurchase. Plaintiff's Amended Complaint and the claims therein are therefore without merit.

WHEREFORE, having fully answered the Amended Complaint, Defendant Coastal States Bank requests the Court issue an Order:

- A. Dismissing Plaintiff's Amended Complaint;
- B. Awarding Coastal any relief requested herein;
- C. Awarding Coastal attorney fees and the costs of this action (to the extent allowable); and
- D. Awarding any such further relief as the Court deems just and proper.

[ signature page immediately following ]

**CALLISON TIGHE & ROBINSON, LLC**

*s/ Demetri K. Koutrakos*

Demetri K. Koutrakos, SC Bar No. 11318

1812 Lincoln Street, Suite #200

P. O. Box 1390

Columbia, SC 29202-1390

Telephone: 803-404-6900

Facsimile: 803-404-6902

Email: [jimkoutrakos@callisontighe.com](mailto:jimkoutrakos@callisontighe.com)

**ATTORNEYS FOR DEFENDANT  
COASTAL STATES BANK**

June 12, 2020

1020.854\Answer

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 TURNER'S MARINA LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PAIGE N. LORBERBAUM, )  
 JEFFREY A. KLAPPER, )  
 DIANE L. KLAPPER, and, )  
 COASTAL STATES BANK, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

Case No. 20-CP-07-1064

PLAINTIFF TURNER'S MARINA LLC'S  
 REPLY TO DEFENDANT  
 PAIGE N. LORBERBAUM'S  
 COUNTERCLAIM

TO: THE DEFENDANT PAIGE N. LORBERBAUM, BY AND THROUGH HER  
 COUNSEL OF RECORD DARRELL THOMAS JOHNSON, JR., ESQ.:

The Plaintiff Turner's Marina LLC, responding to the Defendant Paige N. Lorberbaum's  
 Answer and Counterclaim filed on June 12, 2020, replies as follows:

1. Each and every allegation of the counterclaim not specifically admitted, qualified,  
 or denied, is denied.
2. Responding to the allegations of the "Fifth Defense and Counterclaim," the  
 Plaintiff admits the Covenants and Bylaws provide for recovery of attorneys' fees  
 in appropriate circumstances, but denies that the Defendant Lorberbaum is  
 entitled to the recovery of any attorneys' fees or costs.

WHEREFORE having fully replied to the counterclaim, the Plaintiff prays that this Court  
 dismiss the counterclaim with prejudice and grant the Plaintiff the relief sought in the Amended  
 Complaint.

Law Office of Thomas C. Taylor, LLC  
s/Thomas C. Taylor  
 Thomas C. Taylor  
 P.O. Box 5550, Hilton Head Isl., SC 29938  
 Phone: 843-785-5050 / Fax: 843-785-5030  
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 ATTORNEY FOR THE PLAINTIFF  
 TURNER'S MARINA LLC

June 22, 2020  
 Hilton Head Island, South Carolina



This is a case in equity, a forum of fairness and common sense. The right of repurchase is in derogation of the right of alienation and must be strictly construed against such limitation. An unreasonable restraint is against public policy, and void, Wise v Poston 281 S.C. 574, 316 SE 2d 412 (Ct. App 1982). It should be noted that ORA is not in the chain of title to the property except as a member of a partnership which owned a joint venture (joint venture of one) by a different name.

#### Jus Tertii

No South Carolina case has yet been located, but this principle would preclude Turner, a stranger to the transaction between Billy Bob's and PRH, from attacking the validity of that transaction. Jus Tertii appears to be a Latin cousin of standing.

#### Confusion on 1981 Covenants

Apparently at the time the covenants were executed, the property was titled to a partnership, not the joint venture which was the intended owner. The covenants are dated June 12, 1981, and the deed to the joint venture is recorded June 18, 1981, purporting to correct the erroneous prior Grantee. (EXHIBIT D and E).

#### Six Ess Assignment

The Six Ess assignment which supposedly is fatal to the PRC assignment contains an "Exhibit A". The Exhibit A contains a description of the relative real estate as 1.47 acres which does not encompass Loberbaum's lot. It is simply irrelevant to Miss Lorberbaum's Lot 158. (EXHIBIT B).

### Effectiveness of Reservation

By deed book 350 page 1479 Outdoor Resorts, RV Resort and Yacht Club, a Joint Venture (hereinafter ORRVR & YC) conveyed lot 158 to Lorberbaum's predecessor in title, Paulette K. Harpring, her heirs and assigns forever. (EXHIBIT F) ORRVR & YC was the owner of both the right of repurchase, and the lot. Later in document there is a reference to covenants, wherein one would find the right of repurchase. It is a rule of law that once a deed vests title in the grantee and the grantee's heirs and assigns, subsequent clauses cannot reduce the fee ownership. Shealy v S.C. Electric & Gas 278 S.C. 132, 293 SE 2d 206 (1982). Shealy states:

“Where the granting clause in a deed conveys a fee simple absolute title, subsequent provisions of the deed cannot diminish that granted, or deprive the incidents of ownership in the property.”

### Conclusion

For the foregoing the Defendant contends that she is entitled to prevail for several matters of law. She contends that she is even more entitled to prevail on matters of equity.

Respectfully submitted:

LAW OFFICE OF  
DARRELL THOMAS JOHNSON, JR., LLC  
s/Darrell Thomas Johnson, Jr.

Darrell Thomas Johnson, Jr. (3010)  
300 Main Street  
Post Office Box 1125  
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Attorney for Defendant Paige N. Lorberbaum

June 24, 2022

8-15-22

ELECTRONICALLY FILED - 2022 Aug 15 7:07 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

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

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT  
 Case No.: 2020-CP-07-1064  
 PLAINTIFF'S S.C.R.Civ.R. 59 (e)  
 NOTICE OF MOTION AND MOTION  
 TO ALTER OR AMEND ORDER  
 ENTERED ON AUGUST 4, 2022

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned counsel of record, will, ten (10) days after the filing of this Notice of Motion and Motion or at such other time that may be set by the Court, move the Hon. Donald B. Hocker to alter or amend his Order entered in this matter on August 4, 2022 pursuant to S.C.R.Civ.P. 59(e), and reconsider certain matters encompassed in the Order. Specifically, the Plaintiff moves the Court to reconsider and amend its Order as follows:

- A. Amend the Order to reduce the \$54,500 price to be paid by the Plaintiff to acquire Lot 158, to \$42,057.50, which is the \$54,500 less the \$12,442.50 that the Plaintiff testified was his lost rental revenue from not owning Lot 158 from April 19, 2019 until the time of trial. Please refer to Exhibits A and B, copies of the Plaintiff's Trial Exhibits 7 and 8.
- B. Amend the Order to award Attorney's Fees to the Plaintiff in an amount to be determined at a subsequent post trial hearing or by submission of Affidavits.

This Motion may be supported by a Memorandum in Support to be submitted at least five days prior to a hearing on the Motion.

I SO MOVE.

**Law Office of Thomas C. Taylor, LLC**

*S/Thomas C. Taylor*

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Thomas C. Taylor

SC Bar No.: 5499

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ATTORNEY FOR PLAINTIFF

TURNER'S MARINA LLC

Hilton Head Island, South Carolina  
August 15, 2022

**Damages summary as of 6.30.2022**

**Estimated lost annual rental revenue on Lot 158: \$4,147.50**

**Number of years remaining under the Covenants of the rental  
program on April 19, 2019: 61**

**Calculation: 61 years of lost annual revenue of \$4,147.50, totals  
\$252,997.50.**

EXHIBIT B TO MOTION TO ALTER OR AMEND  
(PLAINTIFF'S TRIAL EXHIBIT 8)

Type	Date	Num	Memo	Name	Qty	Sales Price	Amount	Balance
<b>158 Klapper, Jeffrey &amp; Diane (Lot 158 Rental)</b>								
Sales Receipt	01/16/2015		Lot 158 Rental	Low, Brian	2	59.00	118.00	118.00
Sales Receipt	03/20/2015		Lot 158 Rental	Bell, Maurine	3	64.00	192.00	310.00
Sales Receipt	03/28/2015		Lot 158 Rental	HOLBERT, WILLIST...	2	64.00	128.00	438.00
Sales Receipt	04/01/2015		Lot 158 Rental	Babcock, Susanne	7	54.00	378.00	816.00
Sales Receipt	04/08/2015		Lot 158 Rental...	Miller, Jessica	4	54.00	216.00	1,032.00
Sales Receipt	04/18/2015		Lot 158 Rental	Kwillinski, Mark	2	64.00	128.00	1,160.00
Sales Receipt	05/13/2015		Lot 158 Rental	TUCKER, LEE	7	54.00	378.00	1,538.00
Sales Receipt	05/23/2015		Lot 158 Rental	Abramovitz, Jason	3	64.00	192.00	1,730.00
Sales Receipt	06/13/2015		Lot 158 Rental	Thacker, Jane & Wil...	7	54.00	378.00	2,108.00
Sales Receipt	07/17/2015		Lot 158 Rental	Daugherty, Rodger	5	59.00	295.00	2,403.00
Sales Receipt	07/26/2015		Lot 158 Rental	Riggs, Marshall	5	59.00	295.00	2,698.00
Sales Receipt	08/08/2015		Lot 158 Rental	Davis, Steve (NC)	6	59.00	354.00	3,052.00
Sales Receipt	08/14/2015		Lot 158 Rental	Davis, Steve (NC)	1	54.00	54.00	3,106.00
Total 158 Klapper, Jeffrey & Diane (Lot 158 Rental)					54		3,106.00	3,106.00
<b>159 Martin (Lot 159 Rental)</b>								
Sales Receipt	02/24/2015		Lot 159 Rental	Kerr, Kevin	4	54.00	216.00	216.00
Sales Receipt	03/15/2015		Lot 159 Rental...	Thiessen, Larry	14	54.00	756.00	972.00
Sales Receipt	03/31/2015		Lot 159 Rental...	Lee, Thomas	3	59.00	177.00	1,149.00
Sales Receipt	04/02/2015		Lot 159 Rental...	Chipley, Dana & Clay	6	54.00	324.00	1,473.00
Sales Receipt	04/08/2015		Lot 159 Rental...	Dunagan, Raven	4	54.00	216.00	1,689.00
Sales Receipt	04/12/2015		Lot 159 Rental...	Devantery, Robert	1	59.00	59.00	1,748.00
Sales Receipt	04/13/2015		Lot 159 Rental	Fuller, Guy	1	64.00	64.00	1,812.00
Sales Receipt	04/14/2015		Lot 159 Rental	Filzsimmons, Linda	2	64.00	128.00	1,940.00
Sales Receipt	04/15/2015		Lot 159 Rental	Filzsimmons, Linda	1	64.00	64.00	2,004.00
Sales Receipt	04/17/2015		Lot 159 Rental	Lyford, Lon	2	64.00	128.00	2,132.00
Sales Receipt	04/24/2015		Lot 159 Rental	Ramsay, David	1	64.00	64.00	2,196.00
Sales Receipt	04/26/2015		Lot 159 Rental	Ramsay, David	1	64.00	64.00	2,260.00
Sales Receipt	05/12/2015		Lot 159 Rental...	Elliot, Frederick	3	59.00	177.00	2,437.00
Sales Receipt	05/21/2015		Lot 159 Rental	Jordan, Buddy	4	59.00	236.00	2,673.00
Sales Receipt	06/06/2015		Lot 159 Rental	Oswall, Justin	2	64.00	128.00	2,801.00
Sales Receipt	06/11/2015		Lot 159 Rental	Owen, Mac	4	59.00	236.00	3,037.00
Sales Receipt	06/15/2015		Lot 159 Rental	Donach, Rosemary	1	64.00	64.00	3,101.00
Sales Receipt	06/19/2015		Lot 159 Rental	Schmalz, Tammi & ...	5	59.00	295.00	3,396.00
Sales Receipt	06/27/2015		Lot 159 Rental	Barnes, Andy	8	54.00	432.00	3,828.00
Sales Receipt	07/09/2015		Lot 159 Rental	Rasnake, William	3	64.00	192.00	4,020.00
Sales Receipt	07/13/2015		Lot 159 Rental	Stelzelberger, J. T. (Jr)	2	64.00	128.00	4,148.00
Sales Receipt	07/17/2015		Lot 159 Rental	Bunn, Terry	7	54.00	378.00	4,526.00
Sales Receipt	08/07/2015		Lot 159 Rental	Massinghill, William	3	64.00	192.00	4,718.00
Sales Receipt	09/04/2015		Lot 159 Rental	King, Bonnie	4	59.00	236.00	4,954.00
Sales Receipt	11/05/2015		Lot 159 Rental	Mac, Owen	2	64.00	128.00	5,082.00
Sales Receipt	11/13/2015		Lot 159 Rental	Hutchins, Richard	4	59.00	236.00	5,318.00
Sales Receipt	11/27/2015		Lot 159 Rental	Horton, Jeff	10	54.00	540.00	5,858.00
Sales Receipt	11/30/2015		Lot 159 Rental...	Horton, Jeff	-6	54.00	-324.00	5,534.00

Type	Date	Numb	Memo	Name	Qty	Sales Price	Amount	Balance
159 Martin (Lot 159 Rental)								
Sales Receipt	01/01/2016		Lot 159 Rental	Ellerbe, Gayle	4	59.00	236.00	236.00
Sales Receipt	02/26/2016		Lot 159 Rental	Stanley, Hazel	1	64.00	64.00	300.00
Sales Receipt	03/04/2016		Lot 159 Rental	Forta, Joseph & Judy	4	59.00	236.00	536.00
Sales Receipt	03/10/2016		Lot 159 Rental	Disbrow, Robert	4	59.00	236.00	772.00
Sales Receipt	03/19/2016		Lot 159 Rental	Roberts, Bob (SHEL...	4	59.00	236.00	1,008.00
Sales Receipt	03/21/2016		Lot 159 Rental	Roberts, Bob (SHEL...	1	59.00	59.00	1,067.00
Sales Receipt	03/24/2016		Lot 159 Rental	Horton, Jeff	4	59.00	236.00	1,303.00
Sales Receipt	03/28/2016		Lot 159 Rental	Bourisseau, John	5	59.00	295.00	1,598.00
Sales Receipt	04/02/2016		Lot 159 Rental	Gagnom, Patrick	8	54.00	432.00	2,030.00
Sales Receipt	04/10/2016		Lot 159 Rental	Cronin, Timothy	2	64.00	128.00	2,158.00
Sales Receipt	04/12/2016		Lot 159 Rental	Cronin, Timothy	1	64.00	64.00	2,222.00
Sales Receipt	04/14/2016		Non paying F...	Moore, Jonathan	4	0.00	0.00	2,222.00
Sales Receipt	04/18/2016		Lot 159 Rental	Kaminski, Lynne	4	59.00	236.00	2,458.00
Sales Receipt	04/29/2016		Lot 159 Rental	McLendon, Bobby	2	64.00	128.00	2,586.00
Sales Receipt	05/05/2016		Lot 159 Rental	Halfeld, Donald & V...	5	59.00	295.00	2,881.00
Sales Receipt	05/11/2016		Lot 159 Rental	Richardson, Christy ...	4	59.00	236.00	3,117.00
Sales Receipt	05/15/2016		Lot 159 Rental	Richardson, Christy ...	1	59.00	59.00	3,176.00
Sales Receipt	05/28/2016		Lot 159 Rental	Chance, Thompson	3	64.00	192.00	3,368.00
Sales Receipt	05/30/2016		Lot 159 Rental	Chance, Thompson	0.5	64.00	32.00	3,400.00
Sales Receipt	06/08/2016		Lot 159 Rental	TAYLOR, DONNA &...	2	64.00	128.00	3,528.00
Sales Receipt	06/11/2016		Lot 159 Rental	Everett, Megan	2	64.00	128.00	3,656.00
Sales Receipt	06/13/2016		Lot 159 Rental	O'Sheill, Sean	2	64.00	128.00	3,784.00
Sales Receipt	06/15/2016		Lot 159 Rental	O'Sheill, Sean	0.5	64.00	32.00	3,816.00
Sales Receipt	06/19/2016		Lot 159 Rental	Hines, Angie	4	59.00	236.00	4,052.00
Sales Receipt	06/23/2016		Lot 159 Rental	Francis, Ronald	1	64.00	64.00	4,116.00
Sales Receipt	06/24/2016		Lot 159 Rental	Toler, Emily	3	64.00	192.00	4,308.00
Sales Receipt	07/01/2016		Lot 159 Rental	Turmmire, Dale & Sh...	90	54.00	4,860.00	9,168.00
Sales Receipt	10/20/2016		Lot 159 Rental	Baetz, John	7	54.00	378.00	9,546.00
Sales Receipt	11/01/2016		Lot 159 Rental	Wilson, Malcolm	3	64.00	192.00	9,738.00
Sales Receipt	11/03/2016		Lot 159 Rental	Malcolm, Wilson	1	59.00	59.00	9,797.00
Sales Receipt	11/23/2016		Lot 159 Rental	Acree, Stephen	3	69.00	207.00	10,004.00
Sales Receipt	12/08/2016		Lot 159 Rental	Fasken, Andy	3	69.00	207.00	10,211.00
Sales Receipt	12/11/2016		Lot 159 Rental	Fasken, Andy	1	64.00	64.00	10,275.00
Sales Receipt	12/29/2016		Lot 159 Rental	Futrell, Pat	3	69.00	207.00	10,482.00
Total 159 Martin (Lot 159 Rental)					187		10,482.00	10,482.00

Type	Date	Num	Memo	Name	Qty	Sales Price	Amount	Balance
Sales Receipt	11/25/2016		Lot 156 Rental	Richards, Bill	4	59.00	236.00	11,573.00
Sales Receipt	12/20/2016		Lot 156 Rental	Frusco, Leslie	14	54.00	756.00	12,329.00
<b>Total 156 Rains, Roger (Lot 156 Rental)</b>								
					216		12,329.00	12,329.00
<b>156M (Upcharge for less than 4 nights)</b>								
Sales Receipt	03/28/2016		Upcharge for l...	Hill, Will	3	10.00	30.00	30.00
<b>Total 156M (Upcharge for less than 4 nights)</b>								
					3		30.00	30.00
<b>157 Hutchinson, Stanley (Lot 157 Rental)</b>								
Sales Receipt	03/21/2016		Lot 157 Rental	Penix, Jeff	3	64.00	192.00	192.00
Sales Receipt	03/26/2016		Lot 157 Rental	Marshall, Bruce	3	64.00	192.00	384.00
Sales Receipt	04/03/2016		Lot 157 Rental	Woodall, Ray	1	64.00	64.00	448.00
Sales Receipt	04/06/2016		Lot 157 Rental	REAMES, BRENDA...	4	59.00	236.00	684.00
Sales Receipt	04/14/2016		Lot 157 Rental	Jamison, James	9	54.00	486.00	1,170.00
Credit Memo	04/20/2016	7004	Death in Faml...	Jamison, James	-3	54.00	-162.00	1,008.00
Sales Receipt	05/01/2016		Lot 157 Rental	MacMillan, Beth	1	64.00	64.00	1,072.00
Sales Receipt	05/07/2016		Lot 157 Rental	Stewart, Jameson	2	64.00	128.00	1,200.00
Sales Receipt	05/27/2016		Lot 157 Rental	Stewart, Jameson	3	64.00	192.00	1,392.00
Sales Receipt	06/11/2016		Lot 157 Rental	Billman, Michael	2	64.00	128.00	1,520.00
Sales Receipt	06/19/2016		Lot 157 Rental	Thompson, Leslie	3	64.00	192.00	1,712.00
Sales Receipt	06/19/2016		Lot 157 Rental	Thompson, Leslie	0.5	64.00	32.00	1,744.00
Sales Receipt	06/28/2016		Lot 157 Rental	Pellerito, Minty	2	64.00	128.00	1,872.00
Sales Receipt	07/02/2016		Lot 157 Rental	Vachon, Karen	4	59.00	236.00	2,108.00
Sales Receipt	07/05/2016		Lot 157 Rental	Calhoun, Robert	3	64.00	192.00	2,300.00
Sales Receipt	07/09/2016		Lot 157 Rental	Dykes, Marcia	10	54.00	540.00	2,840.00
Sales Receipt	07/09/2016		Lot 157 Rental	Dykes, Marcia	-9	54.00	-486.00	2,354.00
Sales Receipt	07/15/2016		Lot 157 Rental	Jones, Judy	11	54.00	594.00	2,948.00
Sales Receipt	08/07/2016		Lot 157 Rental	Lundberg, Lisa	2	64.00	128.00	3,076.00
Sales Receipt	10/21/2016		Lot 157 Rental	Goed, Dan	3	64.00	192.00	3,268.00
Sales Receipt	11/04/2016		Lot 157 Rental	Talley, Jerry	2	64.00	128.00	3,396.00
Sales Receipt	11/25/2016		Lot 157 Rental	Himes, Scott	3	69.00	207.00	3,603.00
Sales Receipt	12/30/2016		Lot 157 Rental	Reynolds, Kiley	20	50.00	1,000.00	4,603.00
<b>Total 157 Hutchinson, Stanley (Lot 157 Rental)</b>								
					79.5		4,603.00	4,603.00
<b>157M (Upcharge for less than 4 nights)</b>								
Credit Memo	04/20/2016	7004	Upcharge for l...	Jamison, James	6	5.00	30.00	30.00
Sales Receipt	07/09/2016		Upcharge for l...	Dykes, Marcia	1	10.00	10.00	40.00
<b>Total 157M (Upcharge for less than 4 nights)</b>								
					7		40.00	40.00
<b>159 D15 (30 DAY DISCOUNT)</b>								
Sales Receipt	07/01/2016		30 DAY DISC...	Turnmire, Dale & Sh...	-90	8.10	-729.00	-729.00
<b>Total 159 D15 (30 DAY DISCOUNT)</b>								
					-90		-729.00	-729.00

Type	Date	Num	Memo	Name	Qty	Sales Price	Amount	Balance
Sales Receipt	11/10/2017		Lot 156 Rental	Skelton, Amy	4	64.00	256.00	14,053.00
Sales Receipt	11/22/2017		Lot 156 Rental	Haskell, Terri	3	69.00	207.00	14,260.00
Total 156 Rains, Roger (Lot 156 Rental)								
Total 156 Rains, Roger (Lot 156 Rental)								
157 Hutchinsson, Stanley (Lot 157 Rental)								
Sales Receipt	01/18/2017		Lot 157 Rental	Reynolds, Kiley	20	50.00	1,000.00	1,000.00
Sales Receipt	02/07/2017		Lot 157 Rental	Reynolds, Kiley	20	50.00	1,000.00	2,000.00
Sales Receipt	02/21/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	3,500.00
Sales Receipt	03/29/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	5,000.00
Sales Receipt	04/28/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	6,500.00
Sales Receipt	05/28/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	8,000.00
Sales Receipt	06/27/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	9,500.00
Sales Receipt	07/27/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	11,000.00
Sales Receipt	08/26/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	12,500.00
Credit Memo	09/08/2017	7130	Credit for ear...	Reynolds, Kiley	-17	50.00	-850.00	11,650.00
Invoice	09/20/2017	7144	Lot 157 Renta...	Reynolds, Kiley	17	50.00	850.00	12,500.00
Sales Receipt	10/07/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	14,000.00
Sales Receipt	11/06/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	15,500.00
Sales Receipt	12/06/2017		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	17,000.00
Total 157 Hutchinsson, Stanley (Lot 157 Rental)								
Total 157 Hutchinsson, Stanley (Lot 157 Rental)								
158 Klapper, Jeffrey & Diane (Lot 158 Rental)								
Sales Receipt	10/21/2017		Lot 158 Rental	Harley, Joan	4	64.00	256.00	256.00
Sales Receipt	11/10/2017		Lot 158 Rental	Walker, Marilyn	1	69.00	69.00	325.00
Sales Receipt	11/18/2017		Lot 158 Rental	Healey, Jared	21	50.00	1,050.00	1,375.00
Total 158 Klapper, Jeffrey & Diane (Lot 158 Rental)								
Total 158 Klapper, Jeffrey & Diane (Lot 158 Rental)								
159 Connert (Lot 159 Rental)								
Sales Receipt	07/13/2017		Lot 159 Rental	Porter, Jennifer	3	69.00	207.00	207.00
Sales Receipt	07/18/2017		Lot 159 Rental	Wagner, Richard an...	1	69.00	69.00	276.00
Sales Receipt	07/19/2017		Lot 159 Rental	Wagner, Richard an...	1	69.00	69.00	345.00
Sales Receipt	07/20/2017		Lot 159 Rental	Wagner, Richard an...	1	69.00	69.00	414.00
Sales Receipt	07/22/2017		Lot 159 Rental	Trinchet, Robert	1	69.00	69.00	483.00
Sales Receipt	07/22/2017		Lot 159 Rental	Trinchet, Robert	0.5	69.00	34.50	517.50
Total 159 Connert (Lot 159 Rental)								
Total 159 Connert (Lot 159 Rental)								

**Turner's Marina - Escrow**  
**Sales by Item Detail**  
 January through December 2018

11:36 AM  
 01/18/19  
 Accrual Basis

Type	Date	Num	Memo	Name	Qty	Sales Price	Amount	Balance
<b>156M (Upcharge for less than 4 nights)</b>								
Sales Receipt	06/23/2018		Upcharge for l...	Wozniak, John	1	5.00	5.00	5.00
Total 156M (Upcharge for less than 4 nights) 1 5.00 5.00								
<b>157 Hutchinson, Stanley (Lot 157 Rental)</b>								
Sales Receipt	01/05/2018	176	Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	1,500.00
Sales Receipt	02/04/2018	346	Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	3,000.00
Sales Receipt	03/06/2018		Lot 157 Rental	Reynolds, Kiley	30	50.00	1,500.00	4,500.00
Sales Receipt	04/05/2018		Lot 157 Rental	Reynolds, Kiley	11	50.00	550.00	5,050.00
Sales Receipt	04/05/2018		Lot 157 Rental	Reynolds, Kiley	1	50.00	50.00	5,100.00
Sales Receipt	05/13/2018		Lot 157 Rental	Gray, Marsha	5	64.00	320.00	5,420.00
Sales Receipt	06/08/2018		Lot 157 Rental	Manning, William	5	74.00	370.00	5,790.00
Sales Receipt	06/30/2018		Moved to site ...	Manning, William	-4	74.00	-296.00	5,494.00
Sales Receipt	07/10/2018		Lot 157 Rental	Sanchez, Felix	2	79.00	158.00	5,652.00
Sales Receipt	07/11/2018		Lot 157 Rental	Kamenetsky, Randy	2	79.00	158.00	5,810.00
Sales Receipt	07/12/2018		Lot 157 Rental	Kamenetsky, Randy	1	79.00	79.00	5,889.00
Sales Receipt	07/15/2018		Lot 157 Rental	Kamenetsky, Randy	1	74.00	74.00	5,963.00
Sales Receipt	07/15/2018		Lot 157 Rental	Harper, Robert & Ma...	4	74.00	296.00	6,259.00
Sales Receipt	07/27/2018		moved to site ...	Harper, Robert & Ma...	-3	74.00	-222.00	6,037.00
Sales Receipt	08/04/2018		Lot 157 Rental	Owen, Mac	3	79.00	237.00	6,274.00
Sales Receipt	09/01/2018		Lot 157 Rental	Pryor, Jeannine	7	74.00	518.00	6,792.00
Sales Receipt			Lot 157 Rental	Watole, Eric	2	79.00	158.00	6,950.00
Total 157 Hutchinson, Stanley (Lot 157 Rental) 127 6,950.00 6,950.00								
<b>157M (Upcharge for less than 4 nights)</b>								
Sales Receipt	06/08/2018		Upcharge for l...	Manning, William	1	5.00	5.00	5.00
Sales Receipt	07/15/2018		Upcharge for l...	Harper, Robert & Ma...	1	5.00	5.00	10.00
Total 157M (Upcharge for less than 4 nights) 2 10.00 10.00								
<b>158 Klapper, Jeffrey &amp; Diane (Lot 158 Rental)</b>								
Sales Receipt	01/12/2018	209	Lot 158 Rental	James, Sue	3	69.00	207.00	207.00
Sales Receipt	03/16/2018		Lot 158 Rental	Reeves, John & Debra	2	79.00	158.00	365.00
Sales Receipt	03/27/2018		Lot 158 Rental	Cox, Ashley	5	64.00	320.00	685.00
Sales Receipt	04/03/2018		Lot 158 Rental	Jones, Liza	5	64.00	320.00	1,005.00
Sales Receipt	04/14/2018		Lot 158 Rental	Bredburg, Paul	6	74.00	444.00	1,449.00
Sales Receipt	04/28/2018		Lot 158 Rental	Wood, Troy	2	79.00	158.00	1,607.00
Sales Receipt	05/13/2018		Lot 158 Rental	Burge, James	5	64.00	320.00	1,927.00
Sales Receipt	05/26/2018		Lot 158 Rental	Koeing, Jeff	1.5	79.00	118.50	2,045.50
Sales Receipt	06/08/2018		Lot 158 Rental	Manning, Shammon	1	79.00	79.00	2,124.50
Sales Receipt	06/13/2018		Lot 158 Rental	Wayson, Lee	3	79.00	237.00	2,361.50
Sales Receipt	06/23/2018		Lot 158 Rental	Spradley, Jessie	2	79.00	158.00	2,519.50
Sales Receipt	06/30/2018		Lot 158 Rental	Queen, GW	8	74.00	592.00	3,111.50
Sales Receipt	07/29/2018		Lot 158 Rental	Robinson, Larry	7	74.00	518.00	3,629.50
Sales Receipt	09/01/2018		Lot 158 Rental	Barnes, Jeff	7	74.00	518.00	4,147.50
Total 158 Klapper, Jeffrey & Diane (Lot 158 Rental) 57.5 4,147.50 4,147.50								

**Lurner's Marina - Escrow**  
**Sales by Item Detail**  
**January through December 2020**

02/08/21  
 Accrual Basis

Date	Memo	Name	Qty	Sales Price	Amount	Balance
<b>157 D10 (Lot 157 10% Military Discount)</b>						
03/13/2020	10% Military Discount	Mulloy, Robert	-2.00	7.90	-15.80	-15.80
03/13/2020	10% Military Discount	Mulloy, Robert	-1.00	8.90	-8.90	-24.70
06/21/2020	10% Military Discount	Henry, George	-3.00	8.90	-26.70	-51.40
06/24/2020	10% Military Discount	Henry, George	-2.00	8.90	-17.80	-69.20
07/12/2020	10% Military Discount	Christopher, April	-7.00	8.90	-62.30	-131.50
07/13/2020	10% Military Discount	Christopher, April	-1.00	8.90	-8.90	-140.40
	Total 157 D10 (Lot 157 10% Military Discount)		-16.00		-140.40	-140.40
<b>160 Lariscy (Lot 160 Rental)</b>						
03/10/2020	Lot 160 Rental	King, Michael	4.00	79.00	316.00	316.00
03/13/2020	Lot 160 Rental	King, Michael	1.00	79.00	79.00	395.00
05/22/2020	Lot 160 Rental	Mitchell, Gloria	3.00	89.00	267.00	662.00
06/12/2020	Lot 160 Rental	Wright, Misty	9.00	89.00	801.00	1,463.00
06/21/2020	Lot 160 Rental	McKibbin, Andrea	7.00	89.00	623.00	2,086.00
07/04/2020	Lot 160 Rental	Moss, Louise	6.00	89.00	534.00	2,620.00
07/19/2020	Lot 160 Rental	Pagnani, Maria	3.00	89.00	267.00	2,887.00
10/30/2020	Lot 160 Rental	O'Neil, Kelly	2.00	79.00	158.00	3,045.00
11/27/2020	Lot 160 Rental	Narvaez, Claudia	1.00	79.00	79.00	3,124.00
	Total 160 Lariscy (Lot 160 Rental)		36.00		3,124.00	3,124.00
<b>160 D10 (Lot 160 10% Military Discount)</b>						
10/30/2020	10% Military Discount	O'Neil, Kelly	-2.00	7.90	-15.80	-15.80
	Total 160 D10 (Lot 160 10% Military Discount)		-2.00		-15.80	-15.80
<b>161 Holmes, Ralph (Lot 161 Rental)</b>						
01/02/2020	Lot 161 Rental	Oxley, James	2.00	79.00	158.00	158.00
01/18/2020	Lot 161 Rental	Eitering, Martin	7.00	79.00	553.00	711.00
02/14/2020	Lot 161 Rental	Jacobs, Jennifer	1.00	79.00	79.00	790.00
02/15/2020	Lot 161 Rental	Diplacido, Joe	2.00	79.00	158.00	948.00
02/26/2020	Lot 161 Rental	May, Robert	30.00	60.00	1,800.00	2,748.00
03/27/2020	Lot 161 Rental	May, Robert	7.00	60.00	420.00	3,168.00
05/22/2020	Lot 161 Rental	Kirch, Joel	3.00	89.00	267.00	3,435.00
05/25/2020	Lot 161 Rental	Jackson, Keisha	4.00	89.00	356.00	3,791.00
06/04/2020	Lot 161 Rental	Milton, Anna	4.00	89.00	356.00	4,147.00
06/07/2020	Lot 161 Rental	Milton, Anna	3.00	89.00	267.00	4,414.00

**Sales by Item Detail**  
January through December 2019

Accrual Basis

Date	Memo	Name	Qty	Sales Price	Amount	Balance
08/03/2019	Lot 157 Rental	Connors, Josh	4.00	74.00	296.00	2,605.00
10/12/2019	Lot 157 Rental	Hollway, Cody	3.00	79.00	237.00	2,842.00
11/27/2019	Lot 157 Rental	Unruh, Tina & Melvin	4.00	74.00	296.00	3,138.00
			42.00		3,138.00	3,138.00
<b>Total 157 Hutchinson, Stanley (Lot 157 Rental)</b>						
03/25/2019	Lot 158 Rental	Canter, Luc	1.00	79.00	79.00	79.00
04/03/2019	Lot 158 Rental	Bardlett, Charles	3.00	79.00	237.00	316.00
04/06/2019	Lot 158 Rental	Mullh, Kevin & Bonnie	7.00	74.00	518.00	834.00
04/16/2019	Lot 158 Rental	Brechtko, Rosemary	8.00	74.00	592.00	1,426.00
			19.00		1,426.00	1,426.00
<b>Total 158 Klapper, Jeffrey &amp; Diane (Lot 158 Rental)</b>						
03/17/2019	Lot 160 Rental	Moran, Randi	1.00	79.00	79.00	79.00
03/18/2019	Lot 160 Rental	Simon, Amy	2.00	79.00	158.00	237.00
03/23/2019	Lot 160 Rental	Standridge, Jason	2.00	79.00	158.00	395.00
04/02/2019	Lot 160 Rental	Lewis, April	3.00	79.00	237.00	632.00
04/17/2019	Lot 160 Rental	Bostelman, William	3.00	79.00	237.00	869.00
04/26/2019	Lot 160 Rental	Guest, Paula	3.00	79.00	237.00	1,106.00
05/25/2019	Lot 160 Rental	Robey, Reagan	3.00	79.00	237.00	1,343.00
06/14/2019	Lot 160 Rental	Irwin, Bruce	3.00	79.00	237.00	1,580.00
06/29/2019	Lot 160 Rental	Wirth, Vickie	2.00	79.00	158.00	1,738.00
07/02/2019	Lot 160 Rental	Guzman, Maria	6.00	74.00	444.00	2,182.00
07/26/2019	Lot 160 Rental	Youngblood, Geoffrey	1.00	79.00	79.00	2,261.00
09/01/2019	Lot 160 Rental	Caruso, Frank	2.00	79.00	158.00	2,419.00
10/11/2019	Lot 160 Rental	Watson, Lloyd	2.00	79.00	158.00	2,577.00
11/25/2019	Lot 160 Rental	Palasky, Carolann	4.00	74.00	296.00	2,873.00
			37.00		2,873.00	2,873.00
<b>Total 160 Lariscy (Lot 160 Rental)</b>						
<b>160 D-10 (Lot 160 10% Military Discount)</b>						
06/25/2019	10% Military Discount	Robey, Reagan	-3.00	7.90	-23.70	-23.70
10/11/2019	10% Military Discount	Watson, Lloyd	-2.00	7.90	-15.80	-39.50
			-5.00		-39.50	-39.50
<b>Total 160 D-10 (Lot 160 10% Military Discount)</b>						
01/23/2019	Lot 161 Rental	Hickey, William	2.00	79.00	158.00	158.00
02/07/2019	Lot 161 Rental	Jacobs, George	2.00	79.00	158.00	316.00

8-16-22

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  
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) SCRCP, 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) SCRCP.

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").

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 years<sup>1</sup> 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

<sup>1</sup> 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)<sup>2</sup>; *Clark v. Fine Housing*, 2020 WL 4673124 (2020)<sup>2</sup>

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).

<sup>2</sup> 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.

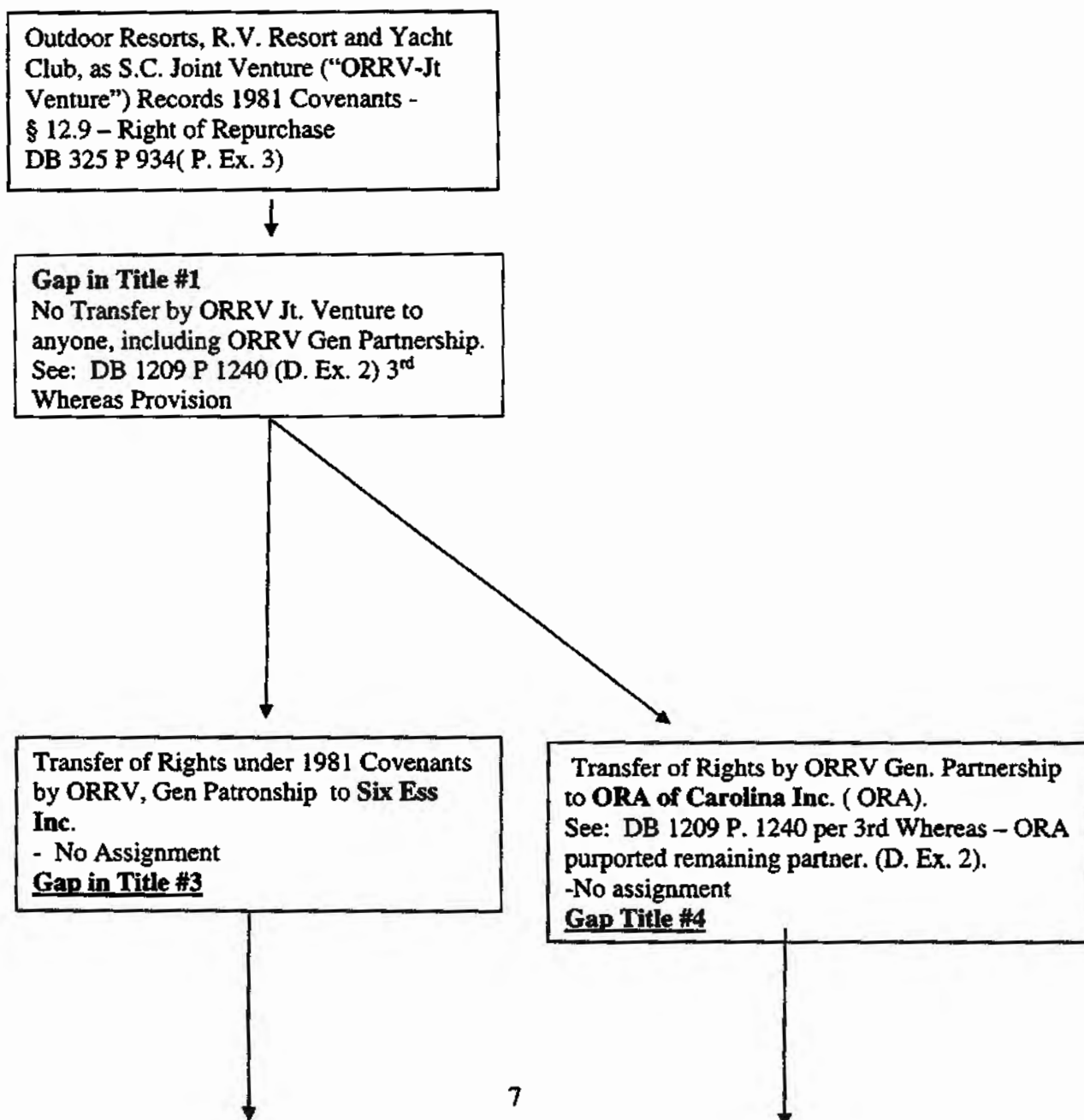
(c) No Assignment into ORA. There is also no assignment of rights of the 1981 Covenants from ORRV Jt. Venture or ORRV Gen. Partnership into ORA, the other purported remaining general partner of ORRV Gen. Partnership. (Gap #4).

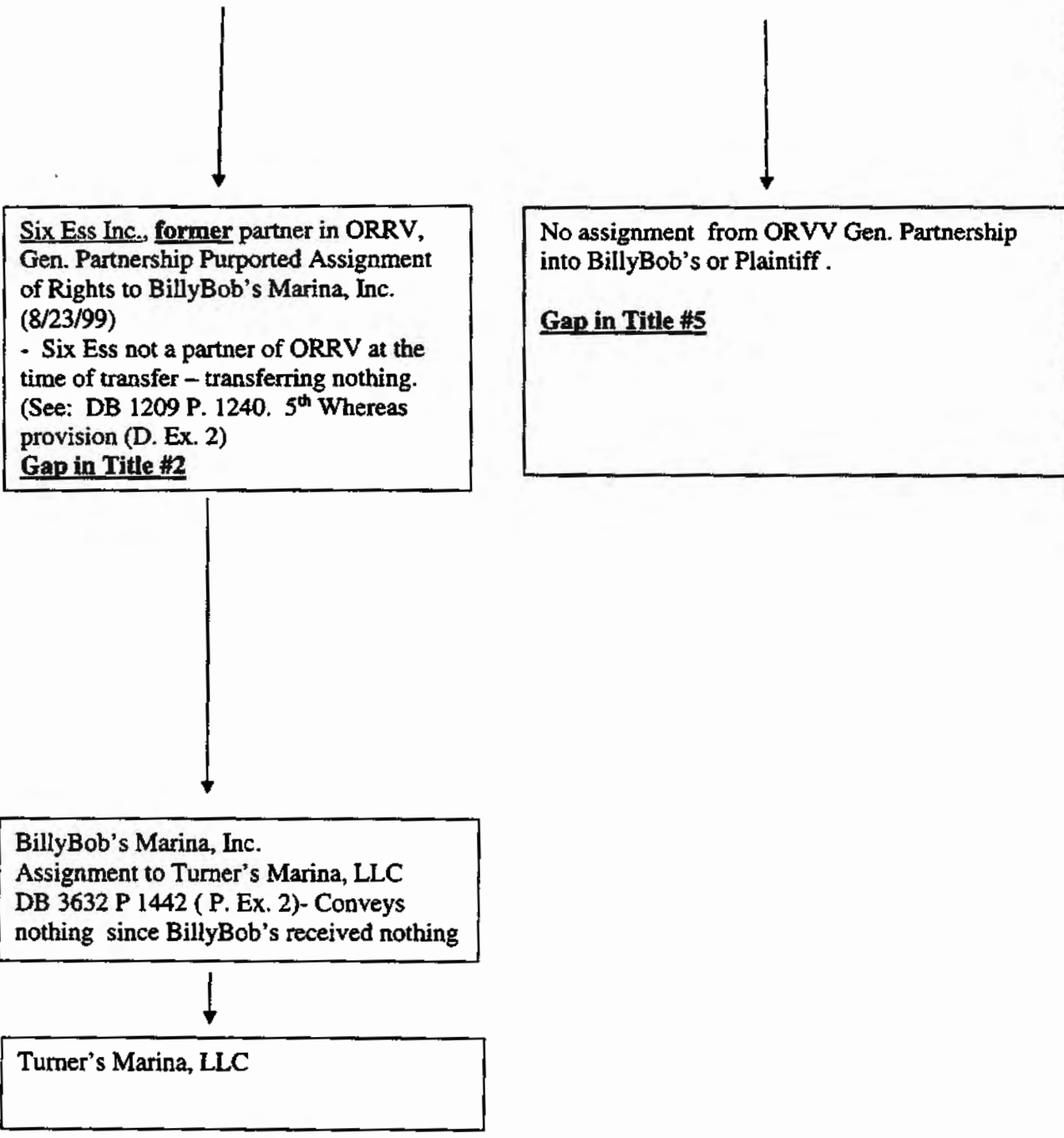
(d) No Assignment of Rights by ORA to BillyBob's. In addition to no assignment from either the ORRV Jt. Venture or ORRV Gen. Partnership into ORA, there is no assignment in the record from ORA to BillyBob's, or anyone in Plaintiff's chain of title (Gap #5). Thus, any purported assignment of rights thereafter 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 Plaintiff<sup>3</sup>. 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

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<sup>3</sup> 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](mailto:russell@russellpattersonlaw.com)  
*Attorneys for the Defendant,*  
*Paige N. Lorberbaum*

August 15, 2022  
Hilton Head Island, South Carolina

**EXHIBIT 1 – CHAIN OF ASSIGNMENTS**

Outdoor Resorts, R.V. Resort and Yacht Club, as S.C. Joint Venture (“ORRV-Jt Venture”) Records 1981 Covenants - § 12.9 – Right of Repurchase DB 325 P 934( P. Ex. 3)



No Transfer by ORRV Jt. Venture to anyone, including ORRV Gen Partnership. See: DB 1209 P 1240 (D. Ex. 2) 3<sup>rd</sup> Whereas Provision.  
**Gap in Title #1**



Transfer of Rights under 1981 Covenants by ORRV, Gen Patronship to Six Ess Inc.  
- No Assignment  
**Gap in Title #3**

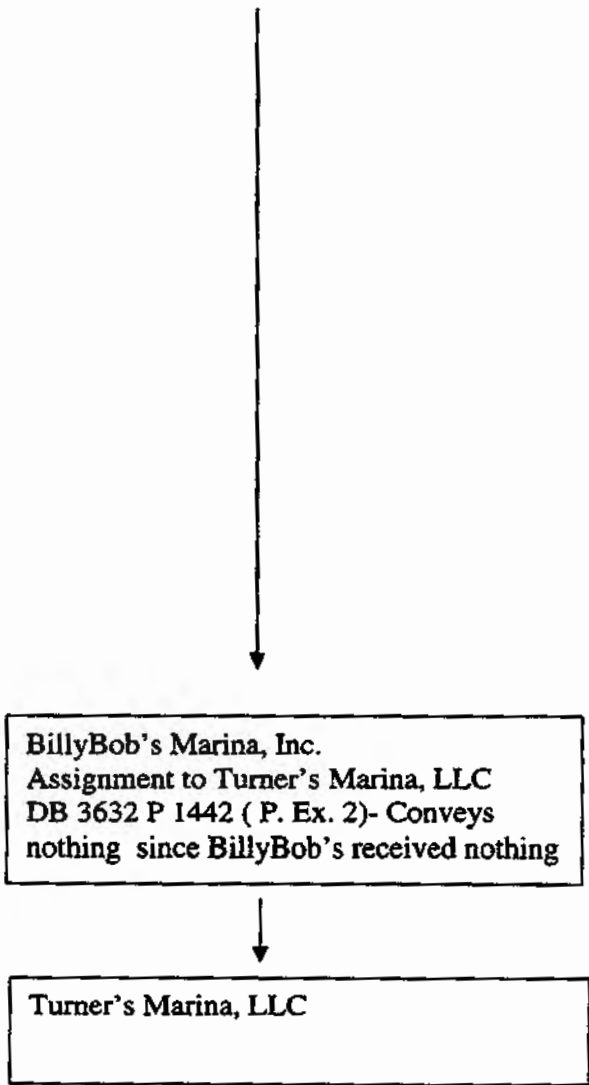


**Six Ess Inc.**, former partner in ORRV, Gen. Partnership Purported Assignment of Rights to BillyBob’s Marina, Inc. (8/23/99)  
- Six Ess not a partner of ORRV at the time of transfer – transferring nothing. (See: DB 1209 P. 1240. 5<sup>th</sup> Whereas provision (D. Ex. 2)  
**Gap in Title #2**

Transfer of Rights by ORRV Gen. Partnership to **ORA of Carolina Inc.** (ORA). See: DB 1209 P. 1240 per 3<sup>rd</sup> Whereas – ORA purported remaining partner. (D. Ex. 2).  
-No assignment  
**Gap Title #4**



No assignment from ORRV Gen. Partnership into BillyBob’s or Plaintiff .  
**Gap in Title #5**



9-2-22

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

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-07-1064

PLAINTIFF'S MEMORANDUM  
IN OPPOSITION TO DEFENDANT  
LORBERBAUM'S MOTION TO ALTER  
OR AMEND ORDER

**TO: THE ABOVE-NAMED DEFENDANTS BY AND THROUGH THEIR  
ATTORNEYS OF RECORD, JAMES S. MURRAY, ESQUIRE AND RUSSELL  
P. PATTERSON, ESQUIRE:**

Plaintiff hereby submit its Memorandum in Opposition to Defendant Lorberbaum's August 16, 2022 Motion to Alter or Amend this Court's August 4, 2022 Order.

**UNTIMELINESS**

The Defendant Lorberbaum's Motion To Alter or Amend this Court's Order filed on August 16, 2022, must be denied because it was not timely filed. Overland, Inc. v. Nance, 423 S.C. 253, 815 S.E.2d 431 (2018).

This Court's Order was filed on August 4, 2022 and electronic notice provided to all counsel on August 4, 2022 at 3:47 p.m. A Rule 59(e) Motion to Alter or Amend shall be served not later than 10 days after receipt of written notice of the entry of the order. S.C.R.C.P. 59. The Defendant Lorberbaum's Motion to Alter or Amend was filed on August 16, 2022 at 9:39 a.m., outside the 10 days as provided under Rule 59(e), as computed under S.C.R.C.P. 6(a). "In light of these authorities, we repeat that the ten-day

deadline in Rule 59(e) is an absolute deadline.... The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal." Overland, *id.* at 255.

### APPLICABLE STANDARD

Although the Defendant Lorberbaum's Motion must be denied as untimely filed, in an abundance of caution, the Plaintiff herein addresses the substantive claims of the Motion.

Defendant Lorberbaum's August 16, 2022 Motion to Alter or Amend this Court's Order of August 4, 2022, asks this Court to issue a new Order altering or amending its Order filed on August 4, 2022, so as to enter judgment "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." See Motion, p. 10.

Rule 59(e) of the South Carolina Rules of Civil Procedure is identical to Rule 59(e) of the Federal Rules of Civil Procedure, with the exception of the time limitation for filing. While neither rule expressly sets forth standards for requesting relief, "courts interpreting Rule 59(e) have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence unavailable at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4<sup>th</sup> Cir. 1993) (discussing Rule 59(e), FRCP). "In the context of a motion for reconsideration, a 'manifest injustice' is defined as an error by the court that is 'direct, obvious, and observable.'" Register v. Cameron & Barkley Company, 481 F.Supp. 2d 479, n.1 (D.S.C. 2007)(finding the fact that plaintiff incurred significant costs but had no remedy for recovery is not a "manifest injustice" warranting

relief under Rule 59(e), FRCP). *See also* 11 Wright & Miller Section 2810.1 (“The rule 59(e) motion may not be used to relitigate old matters....”). It is “an extraordinary remedy which should be used sparingly....” 11 Wright & Miller, Section 2810.1.

### DISCUSSION

The Defendant Lorberbaum argues in her Motion that the Right of Repurchase “is void” under the Rule Against Perpetuities and further argues that the “Plaintiff did not introduce a complete chain of required assignments” at trial, while arguing that the testimony of one of two expert witnesses tendered by the Plaintiff, Charles Hedgepath, “was clearly erroneous.” (Motion, p. 9). Unfortunately, the Lorberbaum motion is filed without suppling the Court with a transcript of record, and instead the Defendant seeks to impugn Mr. Hedgepath’s testimony by reference to certain exhibits that the Defendant tries to bootstrap into an argument. This overlooks what the Court will recall to have been a direct inquiry by the Court to Mr. Hedgepath during trial as to Mr. Hedgepath’s opinion as to ownership of the Declarant rights and the right of repurchase, and his responses.

Both Mr. Hedgepath and Chester C. Williams, also an expert in the field of real estate title opinions, opined at trial that Turner’s Marina LLC owned the Declarant Rights and owned the covenant based right of repurchase. Neither Defendant tendered an expert at trial to contradict Mr. Hedgepath’s and Mr. Williams’ opinions as to Turner’s Marina’s ownership of the right of repurchase and there is no evidence in the record supporting that assertion. Notwithstanding that, Ms. Lorberbaum, with new counsel, now argues that the court should have reached another legal conclusion. However, because the Court chose not to draw the same legal conclusions in its consideration of the factual evidence is not a sufficient reason to amend the order. *See BECA Social Club v. S.C. Dep’t of Revenue*, Docket No. : 04-ALJ-17-0014-CC, 2004 WL 3154763 at \*2 (S.C. Admin. Law

Judge Div.) (“Rule 59(e) provides a procedure for correcting manifest errors of law or fact or considering the import of newly discovered evidence....A motion under Rule 59(e) is not intended to be utilized to relitigate issues previously considered....”) *See also* Brown v. S.C. Dep’t of Health & Env’tl. Control, Docket No.: 07-ALJ-08-0180-AP, 2009 WL 8167885 (S.C. Admin. Law Judge Div.)(denying Appellant’s Motion because “Appellant, in his Motion attempts to re-argue the merits of the case.”).

The plain reading of the Defendant Lorberbaum’s motion makes it clear that she seeks to reargue the same points she made in Beaufort on June 30, 2022. As the Judge, it was this Court’s task “to access the credibility, persuasiveness and weight of the evidence presented.” Jones v. Leagan, 384 S.C. 1, 12, 681 S.E.2d 6, 12 (Ct. App. 2009). This Court weighted the evidence and applied the law. Bare allegations of errors of law and arbitrary and capricious application of the law are wholly insufficient for amending an Order, and Ms. Lorberbaum’s attempt to re-litigate the hearing by means of a motion to alter or amend is inappropriate and must be denied. *See, e.g.,* BECA Social Club, id., at \*2.

“Mere disagreement with how the law is applied does not support a Rule 59(e) motion.” McCall v. Williams, 59 F.Supp. 2d 556, 558 (D.S.C. 1999)(citing Hutchinson v. Staton, id. *See also* F.D.I.C. v. Cage, 810 F.Supp. 745, 747 (S.D. Miss. 1993)(When a Rule 59(e) motion “merely expresses disagreement with the findings of the Court and fails to demonstrate a ‘clear error of law’ or ‘manifest injustice,’” the motion is not “well taken” and must be denied.). Because Ms. Lorberbaum has failed to identify any clear error or manifest injustice, the motion must be denied.

Although there is no “clear error of law” in the Order and given the trial testimony, there was no “manifest injustice” to the Defendant, the Plaintiff provides the following additional input as to the Defendant’s arguments.

Ms. Lorberbaum has waived any argument that Turner's Marina did not hold a valid right of repurchase to the lot. First, Ms. Lorberbaum did not challenge in her Answer and Counterclaims, the enforceability of Turner's Marina's right of repurchase; she only asserted that a second right of repurchase (originating from the Hilton Head Company) had not fully "vested" in Turner's Marina on April 19, 2019, because of certain unfulfilled contingences, mainly a seller-financing loan that had not yet been paid off. See paragraph 33 of her Answer and Counterclaims filed June 12, 2022. Once the evidence was produced at trial showing the existence of two rights of repurchase, Ms. Lorberbaum did not challenge the Covenant-based right of repurchase that the Court bases its Order upon.

Second, the Defendant Lorberbaum offered no evidence at trial to contradict or impeach in any way, the testimony of experts Hedgepath and Williams, both of whom testified that the Covenant-based right of repurchase was valid and was owned on April 19, 2019 by Turner's Marina, LLC. The Defendant Lorberbaum cannot now relitigate the issue of the title chain without the benefit of any testimony to support the claims.

In addition, this Court may take judicial notice of fact that a Notice of Judicial Invalidation of Amendments to Declaration of Covenants relating to the RV Resort Covenants, was filed of record with the Beaufort County Register of Deeds on January 14, 2019, which contained a copy of the Hon. Tommy Kemmerlin's Order dated March 19 2004 in 2000-CP-07-1507, which affirmed that Turner's Marina's predecessor in ownership, Billybob's, was the holder of the Covenant-based right of repurchase on that January 14, 2019—which was well before Ms. Lorberbaum purchased the lot in April 2019. Thus, she took the lot with notice of the confirmation of ownership of the right of repurchase in Turner's Marina as of January 14, 2019 at the latest. A copy of that document is attached to this Memorandum as Exhibit A.

There are myriad arguments that could be made in reply to the diagrams and accusations of “gaps” in the title chain presented by Ms. Lorberbaum post trial, such as that the developer’s rights were a partnership asset and that the winding up of Outdoor Resorts’ partnership by Six Esse’ assigning to ORA, was a relinquishment of that asset out of the partnership to the remaining partner, and not a “gap” in the chain. Further, pursuant to S.C. Code Annot. Section 33-41-740, it can be argued that Six Esse’ assignment to ORA was to facilitate the winding up of the partnership, and then ORA assigns its rights to Billybobs, which in turn, assigned its rights to Turner’s Marina. But it is impossible to fairly argue these points without any evidence in the record upon which to base the arguments because the issues were not raised at trial and the chain was not challenged by a defense expert at trial.

Further, the purpose of the Recording Act is to give notice of transfers to the world, not to control the actual transfers. In the deed arena, title passes upon delivery not recording, and partnership transfers of assets do not generally require the recording of assignments. Again, all are issues that could have—and should have—been addressed at trial if Ms. Lorberbaum genuinely felt that Turner’s Marina’s ownership of the right of repurchase was in question.

As a final matter, the Plaintiff feels compelled to reply to the arguments concerning the Rule Against Perpetuities and how it allegedly has rendered all recorded rights of repurchase in South Carolina, void or voidable, since Webb v. Reames, 326 S.C. 444, 485 S.E.2d 384 (1997). The Webb case involved a unique situation where the right of repurchase was linked to the same purchase price originally paid by the Grantee. See Webb, 326 S.C. at 444. That is not the case here, as it is not the case in most Declarations of Covenants in South Carolina such as the world-famous Sea Pines Resort Covenants,

where the declarant reserves the right to repurchase the lot at the current offered price—thereby fulfilling the public-policy provision of allowing the seller to recoup the highest possible price—not constricting him to recovering what he or she paid for the lot 20 years prior. That is most likely why Webb has not been relied upon by other courts as controlling case law.

Instead, the Court of Appeals, nine years later in Queen's Grant v. Greenwood Development, 368 S.C. 342, 628 S.E.2d 902 (2006), declined to address the issue of whether or not S.C. Code Section 27-6-60(B) requires a court to reform a disposition that was created before July 1, 1987 (as here), by inserting a savings clause that preserves the transferor's plan of distribution "within the limits of the rule against perpetuities." 628 S.E.2d at 917. The Court therein noted that as opposed to the wording of Webb, there are numerous cases from other jurisdictions "upholding repurchase provisions similar to that in the 1981 Covenants," and rejecting the application of the rule against perpetuities, where the right to repurchase the property is for the same price the owner is willing to sell to a third party. Queens Grant, *id.* at 917, *citing Weber v. Texas Co.*, 83 F.2d 807, 808 (5<sup>th</sup> Cir. 1936), Cambridge Co. v. East Slope Inv. Corp. 700 P.2d 537, 542 (Colo. 1985) and Shiver v. Benton, 251 Ga. 284, 304 S.E.2d 903, 906-07 (1983). The Court of Appeals declined to address that issue.

Am.Jur. also notes that there is authority holding that a right of first refusal does not create an interest in land subject to the rule against perpetuities. "Although preemptive rights offend the basic policy of the rule against remote vesting, the offense is properly offset by their utility in modern legal transactions, that usefulness justifies excepting them from the operation of the rule. **There is also authority holding that the common law rule against perpetuities does not apply to a right of first**

**refusal, which, as a contractual right rather than a property right, should be analyzed under the rule against unreasonable restraints on alienation.”** [Emphasis added.] Citing Sanko v. Mark, 52 A.D.3d 225, 859 N.Y.S. 2d 83 (1<sup>st</sup> Dep’t 2008). Further, Am.Jur. notes, there is authority holding that a right of first refusal does not create an interest in land subject to the rule against perpetuities. Randolph v. Reisig, 272 Mich. App. 331, 727 N.W.2d 388 (2006).

The Motion to Alter or Amend must be denied because it was untimely filed. And if this Court does consider the substance of the motion, it should be denied because there has been no change in the law, no new evidence discovered and there was certainly no clear error of law nor manifest injustice considering the evidence presented at trial.

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s/Thomas C. Taylor

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ATTORNEY FOR THE PLAINTIFF  
TURNER’S MARINA LLC

Bluffton, South Carolina  
September 2, 2022

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

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-07-1064

PLAINTIFF'S MEMORANDUM  
IN SUPPORT OF PLAINTIFF'S  
MOTION TO ALTER OR  
AMEND ORDER

**TO: THE ABOVE-NAMED DEFENDANTS BY AND THROUGH THEIR  
ATTORNEYS OF RECORD, JAMES S. MURRAY, ESQUIRE AND RUSSELL  
P. PATTERSON, ESQUIRE:**

Plaintiff hereby submits its Memorandum in Support of the Plaintiff's Motion to Alter or Amend this Court's Order of August 4, 2022, as was timely filed on August 15, 2022. Plaintiff seeks this Court's revision of the August 4, 2022 Order to reduce the purchase price of the Lot to \$42,057.50 and to award attorney's fees to the Plaintiff as the prevailing party.

**APPLICABLE STANDARD**

Rule 59(e) of the South Carolina Rules of Civil Procedure is identical to Rule 59(e) of the Federal Rules of Civil Procedure, with the exception of the time limitation for filing. While neither rule expressly sets forth standards for requesting relief, "courts interpreting Rule 59(e) have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence unavailable at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4<sup>th</sup> Cir. 1993) (discussing Rule 59(e) , FRCP).

“In the context of a motion for reconsideration, a ‘manifest injustice’ is defined as an error by the court that is ‘direct, obvious, and observable.” Register v. Cameron & Barkley Company, 481 F.Supp. 2d 479, n.1 (D.S.C. 2007). The Plaintiff contends that the failure of the Court to reduce the purchase price and award attorney’s fees is a manifest injustice to the Plaintiff given the testimony at trial and evidence presented.

### DISCUSSION

At trial, Neil Turner, President of Turner’s Marina LLC, testified that Lot 158 had an annual rental history showing that, had Turner’s Marina been allowed to purchase the Lot on April 2019, that the Lot would have most probably generated an average of \$4,147.50 in rental revenue per year from April 19, 2019 until the time of trial. A summary of those damages and the rental history were proffered and admitted as Plaintiff’s exhibits 7 and 8, and copies are attached to the Motion as Exhibits A and B. The Defendants did not challenge the rental history nor the claim that Turner’s Marina had lost \$12,442.50 in rental revenue damages that it should have earned by renting Lot 158 between April 19, 2019 and the date of trial.

This Court heard the testimony and received the evidence from trial on June 29, 2022, and thereafter exercising its equitable authority, entered its Order compelling the Defendant Lorberbaum to convey Lot 158 to the Plaintiff. Historically, our South Carolina courts have adopted equitable maxims, including “Equity will not suffer a wrong without a remedy” and “Equity regards and treats that as done which in good conscience ought to be done.” Taff v. Smith, 114 S.C. 306, 103 S.E.2d 551 (1920). More recently, our Court of Appeals has noted in Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348 (Ct.App. 2011), that “[t]he notion ‘equity looks to substance rather than form’ evolved

out of judicial regard for that which ought to be done. This maxim applies by dispensing with pure formalities which would otherwise defeat the equity." *Id.* at 245.

Given this factual scenario, where Defendant Lorberbaum had the use of Lot 158 for over three years to Turner's Marina's detriment and where Turner's Marina lost the rental revenue of a Lot that should have been conveyed to it on April 19, 2019, equity demands that the lost rental profits be deducted from the purchase price to be paid by Turner's Marina to acquire Lot 158 as per this Court's Order. Otherwise, equity will be defeated. The conveyance price should be set at \$42,057.50.

Article X of the Declaration of Covenants admitted at trial as Plaintiff's Exhibit 3, provides that "In any proceeding arising because of an alleged failure of a Lot Owner to comply with the terms of this Declaration, By-Laws, rules and regulations adopted pursuant thereto, and said documents as they may be amended from time to time, **the prevailing party shall be entitled to recover the costs of the proceeding, including reasonable attorney's fees, as they may be awarded by the court, including in actions brought by the Developer to enforce such documents.**" [Emphasis added.]

At trial, Mr. Turner testified that he had incurred attorney's fees in the prosecution of this civil action, and he and his undersigned counsel anticipated that the Court would issue an Order awarding attorneys fees and costs in an amount to be determined post trial. *See Seabrook Island Property Owners' Association v. Berger*, 365 S.C. 234, 616 S.E.2d 431 (Ct.App. 2005). The Plaintiff requests that the Court take judicial notice of the fact that attorneys fees in these type cases in this locale are normally based upon post-

trial petitions and Affidavits, which are then reviewed under the Blumberg test. Blumberg v. Nealco, Inc. 301 S.C. 492, 427 S.E.2d 659 (1993). Plaintiff respectfully requests this Court amend its Order to award attorney's fees to the Plaintiff and set a date for the submission of an Affidavit of Fees for consideration post-trial.

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s/Thomas C. Taylor

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ATTORNEY FOR THE PLAINTIFF  
TURNER'S MARINA LLC

Bluffton, South Carolina  
September 2, 2022

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

IN THE COURT OF COMMON PLEAS  
 THE FOURTEENTH JUDICIAL CIRCUIT  
 CASE NO.: 2020-CP-07-1064

**DEFENDANT LORBERBAUM'S  
 REPLY BRIEF IN SUPPORT OF  
 MOTION TO ALTER OR AMEND**

The Defendant, Paige N. Lorberbaum ("Lorberbaum"), submits this Reply Brief in Support of its Motion to Alter or Amend Order ("Reply Memorandum").

The Defendant filed its Motion to Alter or Amend Order on August 15, 2022 ("Motion"). The Plaintiff thereafter filed its Memorandum in Opposition to said Motion on September 2, 2022 ("Plaintiff's Memorandum"). As allowed by the Court, the Defendant respectfully submits this Reply Memorandum.

**1. Motion was Timely Filed**

The Plaintiff initially argues the Defendant's Motion should be denied as being untimely. As seen below, the Motion was clearly timely filed.

- |    |                              |  |
|----|------------------------------|--|
| 1. | August 4, 2022<br>3:47 p.m.  | Order electronically filed with the Clerk of Court   |
| 2. | August 15, 2022              | End of ten (10) day deadline under Rule 59(e), SCRPC to file Motion for Reconsideration  |
| 3. | August 15, 2022<br>6:46 p.m. | Russell Patterson e-mails to Judge Hocker, Mary Drigger, Tom Taylor, Donna Taylor, James Murray serving said parties with Motion as required under <u>Rule 59(g), SCRPC</u> (Ex. 1). |

4. August 15, 2022  
6:54 p.m. E-Filing confirmation where Motion to Amend with attachment was filed with the Clerk of Court (Ex. 2). Filing Event for exhibit attachment of "Filing/Other" was mistakenly selected instead of Filing Event "Exhibit/Filing of Exhibits." It should be noted these two options are listed right next to each other in the E-Filing System. Payment confirmation of Motion filing fee of \$31.74 attached as Ex. 3.
5. August 16, 2022  
9:27 a.m. Clerk of Court Rejection Notice – States the Defendant should use Filing Event "Exhibit/Filing of Exhibits" for attached exhibit. (Ex. 4)
6. August 16, 2022  
9:40 a.m. The Defendant re-submits the Motion using requested Filing Event Code for exhibit. Motion accepted by Clerk of Court at that time (Ex. 5).

For a Beaufort County attorney with over thirty (30) years' experience to assert that the Motion is untimely and should be denied under these facts is frankly shocking and represents a monumental degradation in camaraderie and professionalism in the Beaufort County Bar. Notwithstanding the Plaintiff's "scorched earth" position, the Motion should be deemed timely for the following reasons.

a. Motion to Accept as Timely – Rule 4(d)(2) SCEF – The Defendant filed on September 9, 2022, a Motion to Accept E-Filing under Rule 4(d)(2) SCEF. This rule allows the Court to accept an e-filing as timely if rejected by the Clerk of Court, upon good cause shown. The simple error of clicking the wrong box for an attachment under these circumstances should not result in the complete dismissal of the Defendant's Motion.

b. Motion Rule 11(d)(1) SCEF – The Defendant also filed on September 9, 2022, a Request to Correct Data Entry Error to allow the Motion to be deemed properly filed on August 15,

2022, at 6:54 p.m. Said request is pending before the Clerk of Court, who has the authority to correct an erroneous designation of a Filing Event (ie. checking wrong box for an exhibit).

It should be noted that while the Plaintiff seeks to dismiss the Defendant's Motion as untimely, the Plaintiff itself failed to file the Plaintiff's Memorandum within the timeframes set by the Court. The Court, by e-mail of August 23, 2022 (Ex. 6) confirmed the Plaintiff's response to the Motion was due on September 1, 2022. The Plaintiff, however, did not file its Memorandum until September 2, and as of September 12, 2022, still had not e-filed the exhibit to the Memorandum. **The Defendant is not seeking to dismiss the Plaintiff's Memorandum as being untimely but is simply pointing out the hypocrisy of the Plaintiff's position.**

## **2. The Plaintiff's Right of Repurchase is Void Under Rule Against Perpetuities**

The decision of *Webb v. Reames*, 326 S.C. 444, 485 S.E.2d 384 (Ct. App. 1997), stating that a right of repurchase violate the rule against perpetuities if it does not vest within the statutory twenty-one (21) or ninety-nine (99) years is directly on point and is valid South Carolina law today. *Id.* at 446, 485 S.E.2d at 385. While the right of repurchase in *Webb* did specify a set price, that condition had no bearing on the applicability of the rule against perpetuities, because it was never mentioned by the Court in its analysis. *Id.* The four (4) cases listed in the Defendant's Memorandum, which all cited *Webb* with approval, also never reference the fixed price condition. The Plaintiff incorrectly cites *Queens Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 369, 628 S.E.2d 901, 917 (Ct. App. 2006) for the proposition numerous other jurisdictions have upheld rights of repurchase as to the rule against perpetuities. That reference by the Court **was to the arguments of the developer**, not a statement of South Carolina law. *Id.* at 369, 628 S.E.2d at 917 ("Greenwood Development cites to numerous cases from other

jurisdictions upholding repurchase provisions similar to that in the 1981 Covenants and rejecting application of the rule against perpetuities . . .”).

While other jurisdictions may well have reached different conclusions, the law in our state was clearly established in *Webb*. A right of repurchase, like the one sought to be enforced in this case by the Plaintiff, is simply void and unenforceable as violation of the rule against perpetuities. *Webb*, at 446, 485 S.E.2d at 385. See also *Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Plan. Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004); *Queens Grant* at 369-70, 628 S.E.2d at 917-18; *Page v. Page*, 2004 WL 6249122, \*2 (Ct. App. 2004)<sup>1</sup>; *Clark v. Fine Housing, Inc.*, 2020 WL 4673124, \*2-3 (Ct. App. 2020)<sup>1</sup> The impact of a fixed purchase price under a right to repurchase, such as in *Webb*, is relevant only to whether a party's right of repurchase is an unreasonable restraint of alienation. As noted in the Defendant's original Memorandum, the Defendant is not raising the issue of an unreasonable restraint of alienation – only the violation of the rule against perpetuities.

2. **Evidence at Trial Does Not Support Finding That The Plaintiff Holds Right of Repurchase**

A. **Title Issue Properly Raised and Contested at Trial**

The Plaintiff's argument that the Defendant somehow waived her right to assert the Plaintiff lawfully does not hold title to the right of repurchase and further assert there was no evidence at trial to contradict the Plaintiff's two experts is without basis.

The Defendant in her Answer, filed June 12, 2020, specifically denied Paragraph 16 of the Plaintiff's Complaint which asserted the Plaintiff held said right. Paragraph 16 of the Plaintiff's Complaint reads as follows:

“16. 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

<sup>1</sup> Unreported decision. No precedential value pursuant to Rule 220(a), SCACR.

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 158."

At trial, counsel for both the Defendant Lorberbaum and the Defendants Jeffrey A. Klapper and Diane L. Klapper (collectively "Klapper"), through cross-examination and argument, presented substantive, compelling evidence that there were gaps in the chain of title and the Plaintiff did not hold the right of repurchase. A summary of said evidence follows:

A. Neil Turner was questioned as to the missing 1993 assignment from Outdoor Resorts, R.V. Resort and Yacht Club, a S.C. Joint Venture ("ORRA") to ORA of Carolina Inc. ("ORA"), as well as the missing assignment from Six Ess to BillyBob's Marina, Inc. ("BillyBobs") (Tr. 73:20-74:109);<sup>2</sup>

B. Chet Williams, Esquire, one of the Plaintiff's title experts, admitted prior to closing he received an e-mail from Tom Johnson, the Defendant's closing and trial counsel, that he did see in the title documents where the Plaintiff held a right to repurchase. Chet Williams does not recall providing a response to Mr. Johnson to said point. (P. Ex. 15; Tr. 107:7-108:6);

C. Chet Williams admitted a party cannot assign rights it does not own. (Tr. 125:9-10; 125:21-23);

D. Chet Williams and Charles Hedgepath, the Plaintiff's second title expert, both admitted the correct instrument to convey the rights under the 1981 Covenants, including the right of repurchase, would be an assignment (Tr. 125:14-16; 133:1-4). When Chet Williams was asked

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<sup>2</sup> Copies of cited portions of Trial Transcripts are attached as Ex. 7 and Trial Exhibits are attached as separate exhibits. The Plaintiff's Memorandum at p. 3 states the Defendant filed its Motion without supplying the Court with a trial transcript. Defense counsel, retained post-trial, had ten (10) days to file its Rule 59(b) SCRPC Motion from the date of the Order. As the Court (and the Plaintiff's counsel) are aware, it is not possible to order and obtain a trial transcript in ten (10) days.

if there were actual assignments of the rights as to two (2) of the gaps in the chain that admittedly existed, he stated "I'd have to go back and check the title records." (Tr. 125:14-126:4).

E. Charles Hedgepath admitted there was no assignment of the rights for the 1981 Covenants from ORRV to Six Ess Corporation ("Six Ess") (Klapper Ex. 2; Tr. 133:25-134:15). He further testified that due to the missing assignment, the right of repurchase could still be held by ORRV (Tr. 134:25-135:12). He also admitted that in fact there was no assignment of the right to repurchase from ORRV to Six Ess and that such omission is "a very weak spot in the chain of title." (Tr. 135:21-23). Thus, he admitted the existence of at least one (1) of the five (5) title gaps detailed in the Defendant's chart of the chain of title.

F. In discussing the purported termination of ORRV, a Joint Venture, the original developer, and the transfer of its assets, including the right of repurchase, to its two partners described in the June 8, 1984 deed from Six Ess Corporation to Outdoor Resorts, R.V. Resort and Yacht Club, a joint venture (Ex. L-13), Charles Hedgepath stated "to clear up the chain, one would need then to have a transfer of the partnership name into another entity and that would be by the remaining partner (Tr. 145:1-8, Ex. L-13). He admitted no such document was found. (Tr. 145:4-20). Thus, Mr. Hedgepath admitted on cross-examination of a second gap in the chain of assignments.

As set forth in detail in the Defendant's Memorandum, and the chart of the chain of assignments based on the documents entered into evidence at trial, a close review of the chain of title confirms there are not just two (2) gaps in the chain of title, as acknowledged by Chet Williams and Charles Hedgepath, but in fact, five (5) gaps in the chain.

This Court is not bound by the conclusionary statements of the Plaintiff's expert witnesses, especially when they admitted on cross-examination there were at least two (2) gaps in the chain

of title and a review of the chain of title shows there are in fact five (5) gaps in the chain. This is especially true when the Plaintiff did not put into evidence the full chain of title of assignments of the right of repurchase. The obvious explanation is that there were many gaps in the chain of title of assignment, and the Plaintiff could not prevail if it introduced the full chain of title, as is customary in such cases.

**B. The Plaintiff's Attempt to Include Judge Kemmerlin's Order, dated March 4, 2004, Into the Record Is Improper.**

While at the same time seeking to apply overly strict, technical timing rules against the Defendant to dismiss its Motion, the Plaintiff then proceeds to attempt to introduce into the record a set of restrictive covenants, with an attached Court Order never mentioned, much less admitted into evidence, at trial. There is absolutely no basis for the Court to consider such new evidence. The Plaintiff had ample opportunity to put into evidence all documents and testimony it deemed appropriate. The Plaintiff has not filed a motion for a new trial under Rule 60(b)(2), SCRCP as to "newly discovered" evidence.

The Plaintiff's request for the Court to take "judicial notice" of the restrictive covenants and Order is also without basis. For a fact to be subject to judicial notice, it must be so notorious that the Court may properly assure its existence without proof. *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 255, 321 S.E.2d 194, 197 (Ct. App. 1984). Unless the fact is of such common or general knowledge that it is accepted by the public without contention or qualification, or its accuracy is capable of verification by readily available sources of indisputable reliability, said fact is not subject to judicial notice. *Id. See also In the Matter of Harry C.*, 280 S.C. 308, 309-10, 313 S.E.2d 287, 288 (1984). In *Masters*, the Court refused to take judicial notice of the consideration stated in a recorded deed. *Masters* at 257, 321 S.E.2d at 197.

Neither the covenants amendment, nor Judge Kemmerlin's Order, meet the requirements of a fact under the judicial notice rules set forth above. If that were the case, defense counsel would very much welcome the opportunity to "supplement" the record by actually putting into evidence the full chain of assignments and deeds recorded at the Register of Deeds as to the right of repurchase and related real properties. These documents would even more clearly evidence the five (5) gaps in the Plaintiff's chain of title of assignments of the right of repurchase. However, the Defendant has only referenced documents that were actually introduced into evidence, as required by our Court Rules.

In addition, even if somehow the Plaintiff could lawfully supplement the record, the covenant amendment and Order do not establish the Plaintiff holds the right of repurchase for several reasons. First, the issue of who holds the right of repurchase was not before Judge Kemmerlin in Civil Action Number 2000-CP-07-01507. Secondly, the Plaintiff's counsel fails to disclose to the Court this Order was subject to extensive appeals, with a Court of Appeals decision affirming in part and reversing the Order in part, *R.V. Resort and Yacht Club Owners Association, Inc. v. Billybob's Marina* (2007 WL 8400159 – unreported), and the Supreme Court reversing said decision. *R.V. Resort and Yacht Club Owners Association, Inc. v. Billybob's Marina*, 386 S.C. 313, 688 S.E.2d 555 (2010). Finally, the Defendants, Lorberbaum and Klapper, were not parties to the 2004 litigation and thus are not bound by any finding by the Trial Court in said action. Thus, the covenant amendment and Order do not establish the Plaintiff holds the subject right of repurchase.

Accordingly, for the reasons outlined above, Defendant's Motion to Alter or Amend the Courts August 3, 2022, Order should be granted.

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson  
Russell P. Patterson, Esquire  
P.O. Box 8047  
Hilton Head Island, SC 29938  
(843) 341-9300  
[russell@russellpattersonlaw.com](mailto:russell@russellpattersonlaw.com)  
SC Bar #: 4375  
*Attorneys for the Defendant,  
Paige Lorberbaum*

Hilton Head Island, South Carolina  
September 12, 2022

8/15/22  
6:54 PM

ELECTRONICALLY FILED - 2022 Sep 12 4:26 PM - BEAUFORT - COMMON PLEAS - CASE# 2020CP0701064

**Russell**

**From:** efiledonotreply@sccourts.org  
**Sent:** Monday, August 15, 2022 6:54 PM  
**To:** Russell  
**Cc:** Deb Daniello  
**Subject:** Courtesy NEF RE: 2020CP0701064

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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP0701064

**Official File Stamp:** 08-15-2022 06:53:35 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Beaufort  
**Case Caption:** Turners Marina Llc VS Paige N Lorberbaum , defendant, et al  
**Document(s) Submitted:** Motion/Alter and/or Amend  
Filing/Other  
**Filed by or on behalf of:** Russell Pierce Patterson

This notice was automatically generated by the Court's auto-notification system.

**The following people were served electronically:**  
Darrell T. Johnson, Jr. for Paige N Lorberbaum  
James Samuel Murray for Diane L Klapper, Jeffrey A Klapper  
Thomas C Taylor for Turners Marina Llc  
Russell Pierce Patterson for Paige N Lorberbaum

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EXHIBIT "2"

8/15/22

6:54 PM

**Russell**

**From:** noreply@egov.com  
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**Subject:** Beaufort County Common Pleas Court - E-Filings Receipt



### Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

#### Receipt Contact Information

**Contact Name** Beaufort County -  
Common Pleas - 07002 -  
E-Filings

#### Transaction Summary

Payment To Beaufort County - Common Pleas - 07002

| Description                                        | Amount         |
|----------------------------------------------------|----------------|
| Beaufort County - Common Pleas - 07002 - E-Filings | \$30.00        |
| ServiceFee*SC.GOV                                  | \$1.74         |
| <b>TOTAL</b>                                       | <b>\$31.74</b> |

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

#### Customer Information

**Customer Name** Russell Pierce Patterson  
**Company Name**  
**Local Reference ID** F\_4875521\_4291  
**Receipt Date** 8/15/2022  
**Receipt Time** 06:53:53 PM EDT

#### Payment Information

**Payment Type** Credit Card  
**Credit Card Type** VISA  
**Credit Card Number** \*\*\*\*\*4355  
**Order ID** 134972832  
**Billing Name** Russell Patterson

EXHIBIT 3

8/16/22

ELECTRONICALLY FILED - 2022 Sep 12 4:26 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

**Russell**

**From:** efiledonotreply@sccourts.org  
**Sent:** Tuesday, August 16, 2022 9:40 AM  
**To:** Russell  
**Cc:** Deb Daniello  
**Subject:** Courtesy NEF RE: 2020CP0701064

9:40 w.

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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP0701064

**Official File Stamp:** 08-16-2022 09:39:31 AM  
**Court:** CIRCUIT COURT  
Common Pleas  
Beaufort  
**Case Caption:** Turners Marina Llc VS Paige N Lorberbaum , defendant, et al  
**Document(s) Submitted:** Motion/Alter and/or Amend  
- Exhibit/Filing of Exhibits  
**Filed by or on behalf of:** Russell Pierce Patterson

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Darrell T. Johnson, Jr. for Paige N Lorberbaum  
James Samuel Murray for Diane L Klapper, Jeffrey A Klapper  
Thomas C Taylor for Turners Marina Llc  
Russell Pierce Patterson for Paige N Lorberbaum

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EXHIBIT 5

8/23/22 3:13 PM

**Russell**

**From:** Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>  
**Sent:** Tuesday, August 23, 2022 3:13 PM  
**To:** Tom Taylor  
**Cc:** Russell; Murray, James S. (Jeb); neil@hiltonheadharbor.com; kjohnson3@bcgov.net; Hocker, Donald B.; Hocker, Donald B. Law Clerk (Manning Cathcart)  
**Subject:** RE: 2020CP0701064 / Turners Marina -vs- Paige N. Lorerbaum, et al

Thank you.

**From:** Tom Taylor [mailto:tom@thomastaylorlaw.com]  
**Sent:** Tuesday, August 23, 2022 3:10 PM  
**To:** Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>  
**Cc:** Russell <russell@russellpattersonlaw.com>; Murray, James S. (Jeb) <JMurray@turnerpadget.com>; neil@hiltonheadharbor.com; kjohnson3@bcgov.net; Hocker, Donald B. <dhockerj@sccourts.org>; Hocker, Donald B. Law Clerk (Manning Cathcart) <dhockerlc@sccourts.org>  
**Subject:** Re: 2020CP0701064 / Turners Marina -vs- Paige N. Lorerbaum, et al

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Regan-the Plaintiff will file a response to the motion by September 1, 2022. I was awaiting the court's instruction as to how it wished to proceed. Thank you and thanks to Judge Hocker. I will send a courtesy copy of our memo in opposition as soon as it is filed by September 1. Tom Taylor

Sent from my iPhone

On Aug 23, 2022, at 1:52 PM, Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org> wrote:

Good afternoon:

Before a hearing is scheduled on the Defendant's Motion for Reconsideration, we will wait to see if Plaintiff's counsel files a Response.

Thanks,  
Regan  
Regan A. Snow  
Administrative Assistant to  
Donald B. Hocker, Circuit Court Judge  
Post Office Box 972  
100 Hillcrest Square  
Laurens, S.C. 29360  
864-984-2076  
864-984-2333-fax

EXHIBIT     b    

ELECTRONICALLY FILED - 2022 Sep 12 4:26 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064



I N D E X

(PW) - Denotes Plaintiff's Witness  
 (DW) - Denotes Defense Witness

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EXHIBITS

| <u>NO.</u>                        | <u>DESCRIPTION</u>   | <u>ID.</u> | <u>EVD.</u> |
|-----------------------------------|----------------------|------------|-------------|
| (Plaintiff's Exhibits)            |                      |            |             |
| 1                                 | Purchase Agreement   | 27         | 27          |
| 2                                 | Absolute Assignment  | 27         | 28          |
| 3                                 | Declaration          | 31         | 33          |
| 4                                 | E-mail               | 36         | 36          |
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| 6                                 | Waiver               | 45         | 46          |
| 7                                 | Damage Summary       | 48         | 49          |
| 8                                 | Quickbooks Report    | 48         | 49          |
| 9                                 | Settlement Statement | 79         | 81          |
| 10                                | Deed                 | 80         | 81          |
| 11                                | E-mail               | 102        | 104         |
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| 13                                | E-mail               | 102        | 104         |
| 14                                | E-mail               | 102        | 107         |
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| 17                                | Resume               | 128        | 130         |
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| 1                                 | Assignment of Rights | 4          |             |
| 2                                 | Assignment of Rights | 4          |             |
| 3                                 | Waiver               | 4          |             |
| 4                                 | Declaration          | 4          |             |
| 5                                 | Deed                 | 4          |             |
| 6                                 | Deed                 | 4          |             |
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| 8                                 | Assignment           | 4          |             |
| 9                                 | Authorization        |            | 87          |
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| 11                                | Declaration          | 123        |             |
| 12                                | Deed                 | 142        | 144         |
| 13                                | Deed                 | 144        | 144         |
| (Defendant Klapper's Exhibits)    |                      |            |             |
| 1                                 | Assignment           |            | 70          |
| 2                                 | Deed                 |            | 133         |
| 3                                 | Waiver               |            | 170         |
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| 1                                 | Order                |            | 9           |

All Exhibits were retained by the Clerk of Court for Beaufort County.

1 Bob's got in the property of Research Holding got assigned  
2 to Turner's Marina, LLC?

3 A So the first --

4 MR. TAYLOR: Your Honor, objection. He's certainly not  
5 qualified to answer that.

6 THE COURT: What's the question again, Mr. Murray?

7 MR. MURRAY: Everything that was assigned from Property  
8 Research Holding to Billy Bob's was then assigned to  
9 Turner's Marina.

10 THE COURT: If he knows. I'll overrule.

11 You can answer the question.

12 THE WITNESS: So, I don't know what they actually held  
13 at Property Research Holding, but I believe this document  
14 speaks about the first right of refusal.

15 BY MR. MURRAY:

16 Q If there's two first rights of refusal, which one has  
17 priority over the other?

18 A I believe the first one because it was put in place  
19 first, but that is not a legal opinion. I don't know.

20 Q Now, you said when you researched the chain of title --  
21 I'm going to refer to your answers to my discovery or,  
22 actually this was to the bank's discovery?

23 A Okay.

24 Q It was response to No. 14 states the allegation that  
25 you -- since December 21st, 2017, you've been a valid owner

1 and developer and is valid owner with rights of first  
2 refusal. And in response, your attorney probably really  
3 assisted you, you list some 12 conveyances that go back to  
4 the 70s?

5 A Uh-huh.

6 Q And you get to some 1993, ORRD conveyed the property to  
7 ORA and says by a Quit Claim deed with no specific  
8 assignment. Do you remember that?

9 A Not sitting here now. I mean, I'm sure we wrote that  
10 there, but I don't remember it sitting right now. But I'm  
11 more than happy to say yes by looking at it if you want to  
12 hand it to me.

13 Q The next assignment by Six Ess was a Quit Claim deed  
14 with no assignment?

15 A So these two companies were owned by Roger Shay and  
16 Randall Henderson. That was a joint partnership and they  
17 were trying to clean up all the paperwork before signing  
18 their rights away to the association and to the next  
19 declarant if there would be so, to my understanding.

20 Q Do you think a Quit Claim deed would convey -- don't  
21 you have bigger plans for this property than to use it as  
22 rental properties?

23 A Do I have bigger plans to use them as -- no, I'd like  
24 to rent them as much as I can.

25 MR. MURRAY: That's all, Your Honor.

1 A Yes.

2 Q And lastly, Chet, I believe at 12:59 p.m. on April  
3 19th, you said: Please let us know if you are representing  
4 the Klappers so that we may make arrangements for their  
5 conveyance of Lot 158 to Turner's Marina, LLC?

6 A Correct.

7 Q Now, Chet, did you receive a phone call to your memory  
8 or correspondence back from Johnson law office in regards to  
9 that e-mail?

10 A I don't know if I received another phone call, but I do  
11 recall that there was an e-mail where Tom had asked -- Tom  
12 said he still didn't see that there was anything in the way  
13 of that Turner's Marina held.

14 (Plaintiff's Exhibit No. 15 marked for identification.)

15 BY MR. TAYLOR:

16 Q Chet, I've handed you what I've marked for  
17 identification as 15, is that a copy of that e-mail?

18 A It is.

19 MR. TAYLOR: Move 14 and 15, Your Honor.

20 MR. JOHNSON: No objection.

21 THE COURT: 14 and 15 into evidence.

22 (Plaintiff's Exhibit Nos. 14 and 15 admitted into  
23 evidence.)

24 BY MR. TAYLOR:

25 Q Chet, did you respond to the e-mail that has been

1        marked as 15 and entered that was sent to you at 1:28, and  
2        it is from Christy Harper, but, clearly, it's from Tom  
3        Johnson that says: I still don't see a chain of conveyance  
4        to Turner, however, from what documents does Turner claim  
5        the right of Hilton Head Company?

6        A        I don't recall if I responded to that.

7        Q        Chet, what, if anything, happened the rest of the --  
8                MR. JOHNSON: Your Honor, is that document in evidence?  
9                THE COURT: 14 and 15. 14 is his e-mail to you and 15  
10        is your e-mail to him.

11        BY MR. TAYLOR:

12        Q        Chet, in your memory of April the 19th, 2019, which,  
13        again, I would suggest to you was a Friday, did anything  
14        else occur with you that day concerning Turner's Marina's  
15        attempt to exercise this right of first refusal?

16        A        I don't recall right off.

17        Q        Did Mr. Johnson ever provide you to your knowledge with  
18        any information about whether he represented the Klappers as  
19        he had been asked?

20        A        Not that I recall.

21                (Plaintiff's Exhibit No. 16 marked for identification.)

22        BY MR. TAYLOR:

23        Q        I'm handing you what I've marked for identification as  
24        16 and ask you if you can identify that?

25        A        This is an e-mail from Hilton Head Harbor, which is

1 refusal.

2 Q Where did get those rights of first refusal?

3 A By the assignment from their seller when they assigned  
4 the rights under the 1981 RV resort covenants.

5 Q Now, you say that this assignment from Property  
6 Research Holdings to Billy Bob's Marina on its face purports  
7 to transfer both rights of first refusal?

8 A It does.

9 Q But you said you can't assign something you don't have?

10 A Correct.

11 Q But --

12 A And Billy Bob's couldn't acquire something that it  
13 already owned.

14 Q Is an assignment a correct instrument to convey such an  
15 interest?

16 A Typically, what's used in this area, yes.

17 Q You say that Billy Bob's already had another right of  
18 first refusal because it had been assigned to it from the  
19 previous owner?

20 A Correct, the right under the RV resort covenants.

21 Q Again, just like in this case, if that person didn't  
22 have that right, that assignment is no good?

23 A Correct.

24 Q Are you aware that that person who assigned it received  
25 the property by way of two Quit Claim deeds with no

1 assignments?

2 A I'd have to go back and check the title records.

3 Q That would be (inaudible) title, wouldn't it?

4 A Again, I'd have to go back and check the title records.

5 MR. MURRAY: Nothing further.

6 MR. TAYLOR: Nothing further, Judge.

7 THE COURT: Let me ask you, Mr. Williams, apparently,  
8 we have two rights of first refusal. We have one that Billy  
9 Bob retained and a second one Mr. Turner had, correct?

10 THE WITNESS: Right.

11 THE COURT: Now, the assignment that deals with --  
12 doesn't go into effect for two years or when the debt is  
13 paid off, is that the same one that you say was retained by  
14 Billy Bob?

15 THE WITNESS: Yes. What that assignment says is that  
16 after the later of two years or when the secondary seller  
17 financing is paid off, then that right automatically  
18 transfers from Billy Bob's to Turner's Marina. So Turner's  
19 Marina will then hold both of the rights of first refusal.

20 THE COURT: But is it your opinion that Turner, the  
21 right of first refusal that it exercised in connection with  
22 Lot 158 was the one that was not retained by Billy Bob?

23 THE WITNESS: Correct.

24 THE COURT: Thank you.

25 Any questions in followup to the Court's questions?

1 Q And an assignment is the property instrument to convey  
2 the interest of rights of first refusal?

3 A If you're assigning the declarant's rights, that would  
4 include, you know, right of repurchase.

5 Q Are you aware in the chain of title that at one point,  
6 there was an ORRV, Outdoor Resorts RV Resort, something to  
7 that nature that was the declarant of this property?

8 A Yes.

9 Q Are you aware that ORRV conveyed this property to Six  
10 Ess and ORA?

11 A Yes. We're talking about the declarant's rights is the  
12 question? The question I understand you to be asking was  
13 concerning the declarant's rights.

14 Q Real property?

15 A This real property. I think I recall that aspect of  
16 it.

17 MR. MURRAY: Can we mark this as Exhibit 2?

18 THE COURT: Yeah, that would be 2 for you. What is the  
19 document, Mr. Murray?

20 MR. MURRAY: Quit Claim deed.

21 THE COURT: Okay.

22 (Defendant Klapper's Exhibit No. 2 admitted into  
23 evidence.)

24 BY MR. MURRAY:

25 Q Let me show you Klapper No. 2 and let you get familiar

1 with it.

2 A (Witness reviews document.)

3 Q Can you describe for the Court what you just read?

4 A This is a Quit Claim deed from Outdoor Resorts RV  
5 Resort and Yacht Club to Six Ess Corporation and ORA of  
6 Carolina, Inc., South Carolina Corporation.

7 Q Does that Quit Claim deed contain an assignment of  
8 declarant's rights?

9 A Not specifically enumerated, but it is assigning all  
10 rights, members and hereditaments.

11 Q Does it have a specific assignment of first right of  
12 refusal?

13 A No, it does not.

14 THE COURT: Is your answer no, it does not?

15 THE WITNESS: I'm sorry, Your Honor. No, it does not.

16 BY MR. MURRAY:

17 Q So can you tell the Court what a gap in title typically  
18 means?

19 A A gap in title would be where there is a link in the  
20 chain of title that is missing. We have all grown up and  
21 been educated to the fact that the transfers of ownerships  
22 are kind of like a chain and each ownership is considered a  
23 link in the chain. So if you have a break in the link, that  
24 would be the same thing.

25 Q If that Quit Claim deed didn't convey declarant's

1 rights and the right of first refusal, they would still be  
2 owned by ORRV; is that correct?

3 A That's possible.

4 Q In the chain of title, this Six Ess and ORA do assign  
5 their rights to the next person, I guess it was Billy Bob's.  
6 But isn't it true that if ORA and Six Ess never had those  
7 rights, that conveyance was a nullity? I'm not trying to  
8 trick you.

9 A No, I understand. I'm just mulling that over. If this  
10 is the only instrument, then that does not necessarily -- it  
11 could and it could not. It depends, you know, looking at  
12 the whole entire thing.

13 Q You strictly construe things that prevent the sale of  
14 property, isn't it supposed to be evidence, not could or  
15 could not?

16 A Well, I'm coming at it from title insurance aspect of  
17 the situation. You know, that's kind of -- that's all about  
18 risks. I'm more into that hat, you know, that's what I did  
19 for 35 years, so I'm trying to refrain a little bit from  
20 that.

21 Q Would you admit that's a very weak spot in that chain  
22 of title?

23 A Yes, I could with respect to this particular document.

24 MR. MURRAY: Thank you.

25 THE COURT: Go ahead, Mr. Johnson.

1 BY MR. JOHNSON:

2 Q In your search of the chain on the covenants, the 1981  
3 covenants, did you come across a document that recited that  
4 the joint venture terminated and that automatically vested  
5 rights in the partners and one of the partners withdrew and  
6 that left only the other partner as it related to ORA and  
7 Six Ess?

8 A Yes, sir.

9 Q And did you find anything other than those recitals  
10 that documented any of those recitals?

11 A No, sir.

12 Q Are those ipsa dixit recitals sufficient to pass title  
13 with these restrictions?

14 A In that particular instance, it would read to me that  
15 the entitled partnership became vested in one partner and  
16 not the other. And to clear up the chain, one would need  
17 then to have a transfer of the partnership name into another  
18 entity and that would be by the remaining partner.

19 Q You didn't find any of that, did you?

20 A I did see a deed, as I recall, reciting that.

21 Q Is that any different than saying Mary Smith died  
22 leaving seven children and three of them died with no issue  
23 and those four are the only heirs and why won't you issue  
24 title insurance?

25 A I would ask for a little bit more than just that

1 particular recital. I'd want to see the evidence of the  
2 passage of the other three, death certificate or something,  
3 or an indemnity.

4 Q One last question, why doesn't this perpetual of right  
5 to repurchase violate the rule against perpetuities?

6 A In some of these transfers, the person receiving it was  
7 a corporation. Technically, a corporation does not have any  
8 passing away, dying. It's an entity forever. And in that  
9 instance, the rule of perpetuities wouldn't apply.

10 Q How about other instances?

11 MR. TAYLOR: Your Honor, objection. I don't understand  
12 the question.

13 THE COURT: Well, he said in an instance of a  
14 corporation being in the chain, it would not, so are there  
15 any other instances that it could be a violation of the  
16 rule. I guess that's the question.

17 MR. JOHNSON: Yes, sir.

18 THE WITNESS: I guess it would be if it was  
19 individuals, life in being plus 21 years.

20 BY MR. JOHNSON:

21 Q It would be violative or it would be -- I'm not sure I  
22 understood your answer?

23 A I thought you were asking me would the rule against  
24 perpetuities apply -- I mean, when would it apply.

25 Q Yes, sir.

644/203  
8/3/93

26735

203

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT ) QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, THAT OUTDOOR RESORTS R.V. RESORT AND YACHT CLUB, a South Carolina joint venture, in the State aforesaid, for and in consideration of the sum of TEN DOLLARS (\$10.00), to it in hand paid at and before the sealing of these presents by SIX ESS CORPORATION, a South Carolina corporation and ORA OF CAROLINA, INC., a South Carolina corporation, in the State aforesaid, the receipt of which 2400 Crestmoor Road, Nashville, TN 37215 is hereby acknowledged, has remised, released and forever quit-claimed and, by these Presents does hereby remise, release and forever quit-claim unto the said SIX ESS CORPORATION and ORA OF CAROLINA, INC., their Successors and Assigns, forever as tenants in common, all of its right, title and interest in and to the following described property, to-wit:

ALL that certain piece, parcel or tract of land being located on Jenkins Island, Hilton Head Island, Beaufort County, South Carolina, designated as that certain 7.00 acre parcel of land being known as Hilton Head Harbor Marina as reflected on a plat thereof prepared by E. H. Freiesleben, P.E. & L.S. #4624 dated February, 1977, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 25, at Page 123.

ALL that certain piece, parcel or tract of land lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 10.00 acres, more or less, as reflected on a plat thereof prepared by E. H. Freiesleben, Consultant, recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 26, at Page 59. According to said plat, said property is bounded on the North by lands now or formerly of The Hilton Head Harbor Marina; on the East by the Western right-of-way of S. C. 7-298; on the South and West by lands now or formerly of The Hilton Head Company, Inc.

This being a portion of the same property conveyed to the Grantor herein by deed recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, in Deed Book 325 at Page 915.

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

SEARCHED INDEXED SERIALIZED FILED

|     |   |   |    |     |     |
|-----|---|---|----|-----|-----|
| 501 | 6 | A | 36 | 157 | 176 |
| 501 | 6 | A | 36 | 157 | 176 |

BEAUFORT COUNTY TAX MAP REFERENCE

|     |   |   |    |     |     |
|-----|---|---|----|-----|-----|
| 501 | 6 | A | 36 | 157 | 176 |
| 501 | 6 | A | 36 | 157 | 176 |

EXHIBIT  
Defendants  
K-2  
LV  
DPT

204

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said SIX ESS CORPORATION and ORA OF CAROLINA, INC., their Successors and Assigns, forever as tenants in common.

IN WITNESS WHEREOF, OUTDOOR RESORTS R.V. RESORT AND YACHT CLUB has caused these presents to be executed in its name this 3<sup>rd</sup> day of August in the year of Our Lord One Thousand Nine Hundred Ninety-Three and in the Two Hundred Seventeenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED and DELIVERED in the Presence of

OUTDOOR RESORTS R.V. RESORT AND YACHT CLUB, a South Carolina joint venture

[Signature]  
DUKE D. WEEKS  
[Signature]  
F. R. ZEVENKA

By: [Signature]  
Its: SECRETARY

NUMBERED 14:26 FROM HUGHES & WIZERS P.A. TO 10/00000130 P.000/000

205

STATE OF FLORIDA PROBATE  
COUNTY OF POLK

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **OUTDOOR RESORTS R.V. RESORT AND YACHT CLUB**, by its duly authorized partner(s), sign, seal and, as its act and deed, deliver the within Deed and that (s)he, with the other witness whose name appears as a witness, witnessed the execution thereof.

SWORN TO before me  
this 3rd day of August, 1993.

John V. Vinkle (SEAL)  
Notary Public for Florida John V. Vinkle  
My Commission expires:  
Notary Public, State of Florida  
My Commission Expires March 15, 1994

GRUCE D WEEKS

This Deed was prepared in the Law Offices of Hughes & Wizers, P.A., P. O. Box 8087, Hilton Head Island, SC 29938, by Edward M. Hughes, Esquire.

Grantor's address: 2400 Crestmoor Road, Nashville, TN 37215

Hughes & Winters, P.A.

5032 FILED  
5059 THERESA A. MORRIS  
P.M.C.  
BEAUFORT COUNTY, S.C. /mll

206

93 AUG 11 AM 9:21

BK 644 PG 203

FOLDER #

RECORDED THIS 11TH DAY  
OF September 19 23  
IN BOOK 2 PAGE 203  
FILED  
Mary A. Slaney KC  
BEAUFORT COUNTY, S.C.

EXHIBIT  
Deed Book  
L-13  
LV  
20

Form No. 122-This is Not Recd by a Clerk  
Record 222

The State of South Carolina  
COUNTY OF BEAUFORT

1144 915

WHEREAS, the within described property was conveyed to Outdoor Resorts, R.V. Resort and Yacht Club, a South Carolina Partnership by Deed from Six Sea Corporation recorded in Deed Book 225 at Page 915; and

WHEREAS, the Grantee should have been Outdoor Resorts, R.V. Resort and Yacht Club, a joint venture consisting of ORA of Carolina, Inc. and Six Sea Corporation and it is the intention of this re-recording to correct same.

KNOW ALL MEN BY THESE PRESENTS, That

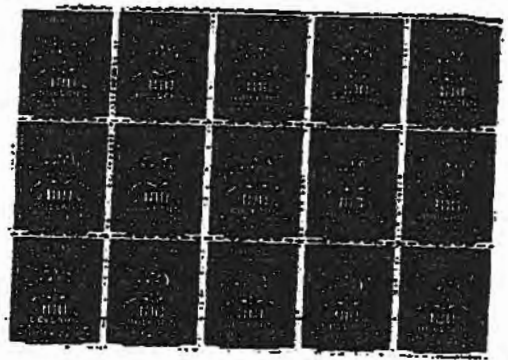
SIX SEA CORPORATION

Revenue Stamp  
Collected  
\$ 255  
Beaufort County, S.C.

to the State aforesaid, \_\_\_\_\_ for and \_\_\_\_\_ in consideration of the sum of

Ten and 69/100 (\$10.69) \_\_\_\_\_ Dollars  
and other valuable consideration  
to it in hand paid at and before the sealing of these presents, by Outdoor Resorts, R.V. Resort and Yacht Club, a joint-venture consisting of ORA of Carolina, Inc. and Six Sea Corporation  
in the State aforesaid, \_\_\_\_\_ (the receipt whereof is hereby acknowledged)

has granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release, to the said Outdoor Resorts, R.V. Resort and Yacht Club, a joint venture consisting of ORA of Carolina, Inc. and Six Sea Corporation its successors and assigns, forever the property as set forth in Exhibit "A" which is attached hereto and made a part hereof.



Beaufort County Tax Map Reference  
Map No. 10-24-1-588  
36

1145 916

TOGETHER with all and singular the Rights, Members, Enrollments and Appurtenances to the said Premises belonging, or to any time incident or appurtenance.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Outdoor Sports, E.V. Hunt and Tackle Club, a joint venture consisting of OSH of Carolina, Inc. and Six Ees Corporation, its successors. *Hold and Assign forever*

And the said Six Ees Corporation *has hereby bind itself*  
and its successors, to insure and forever defend all and singular the said premises unto the said Outdoor Sports, E.V. Hunt and Tackle Club, a joint venture consisting of OSH of Carolina, Inc. and Six Ees Corporation, its successors *lawfully*  
*holding or to claim the same, or any part thereof.*

IN WITNESS WHEREOF Six Ees Corporation *has caused*  
these presents to be executed in its name by *Roger D. May Sr.*  
President and by *Gregory D. May*  
and its corporate seal to be hereunto affixed this *8th* day of *June*  
in the year of our Lord one thousand nine hundred and *eighty-one* and of the day  
Appointed and *fifth* year of the Sovereignty and Independence of the United  
States of America.

Signed, Sealed and Delivered in Presence of  
*Sharon Justice* Witness  
*Theresa J. Kelly* Witness  
SIX EES CORPORATION (Seal)  
*Roger D. May Sr.* President  
*Gregory D. May* Sec. or Treas.

EXHIBIT "A"

1146 917

ALL that certain piece, parcel or tract of land being located on Jenkins Island, Hilton Head Island, Beaufort County, South Carolina, designated as that certain 7.00 acre parcel of land being known as Hilton Head Harbor Marina as reflected on a plat thereof prepared by E. H. Fraidenlabin, P.E. S.L.S. #6624 dated February, 1977, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 23, at Page 121.

Said property is subject to all obligations, covenants and restrictions recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 245, at Page 1052, and subject to restrictions of record.

This being the same property conveyed to the Grantor by Deed of Roger D. Shay, Sr. dated June 8, 1981 and recorded June 18, 1981 in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 324 at Page 940.

and


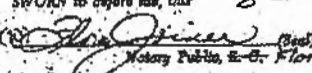
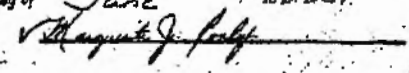
ALL that certain piece, parcel or tract of land lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 10.00 acres, more or less, as reflected on a plat thereof prepared by E. H. Fraidenlabin, Consultant, recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 26, at Page 52. According to said plat, said property is bounded on the North by lands now or formerly of The Hilton Head Harbor Marina, on the East by the Eastern right-of-way of S. E. 7-298, on the South and West by lands now or formerly of The Hilton Head Company, Inc.

Said property is subject to all obligations, restrictions, limitations, and covenants of record in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 245, at Page 1053.

This being the same property conveyed to the Grantor by Deed of Roger D. Shay, Sr. dated June 8, 1981 and recorded June 18, 1981 in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 325 at Page 940.

The State of <sup>Florida</sup> ~~South Carolina~~,  
County of ~~Beaufort~~

PERSONALLY appeared before me (s) ~~Flora~~ ~~John~~ ~~MARGUERITE J.~~  
(Name and Title of Witness) ~~CONLEY~~  
who, on oath, says that he saw the within named Six Has Corporation 918  
by (s) RODGER D. SHAY SR. (Name and Title of Corporation) No. 1147  
President sign the within Deed, and (T) GRACE D. SHAY (Name and Title) No.  
attest the same, and the said Corporation, by said officers, and  
said Deed, and, as to sex and legal, deliver the same, and that he will ~~FLORA JOHNSON~~  
witness the execution thereof. (Name and Title of other Witness)

(9)  (Witness)  
SWORN to before me, this 8<sup>th</sup> day of June A. D. 19 25<sup>th</sup>.  
 (Notary)  
Notary Public, E.-C. Florida. 

Notary Public, State of South or Long  
by Commission expires August 28, 2025

Notary  
The State of South Carolina

SIX BBS CORPORATION

4149

TO  
OUTDOOR RESORTS, R. V. RESORT AND  
YACHT CLUB, A JOINT VENTURE CONSISTING  
OF ONE ORGANIZATION, INC. AND SIX BBS  
CORPORATION

TITLE TO REAL ESTATE

Filed this 18th day of  
June A. D. 19 81  
at 2:30 o'clock P. M.  
and recorded Vol. 325 Page 915  
Fee, \$ 4.00

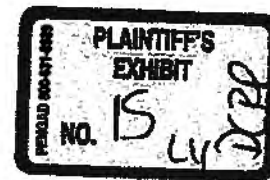
Dip. Commission M. Funder  
Notary Public Commission  
County, S. C.

Recorded this 23rd day of  
June 20 81

to WPA page 716  
Vol. 3  
Audited Beaufort County

919  
Handwritten  
FILED AT BEAUFORT COUNTY S. C. IN BOOK 325 PAGE 915  
OCTOBER 1981  
Sharon B. Anderson  
CLERK OF COURT OF COMMON PLEAS

RECORDED THIS 18th DAY  
OF August 1981  
IN BOOK M PAGE 934  
Sharon B. Anderson  
CLERK OF COURT OF COMMON PLEAS



---

**From:** Kristy Harper [mailto:kjh@johnsonslawoffice.com]  
**Sent:** Friday, April 19, 2019 1:28 PM  
**To:** Law Office of Chester C. Williams; Tom Johnson  
**Cc:** Neil Turner; Tom Taylor  
**Subject:** RE: Lot 158 RV Resort and Yacht Club

Thank you very much. I still don't see a chain of conveyances to Turner, however. From what documents does Turner claim the right of Hilton Head Co ?

With kind regards,

Tom Johnson  
Attorney at Law

Law Offices of Darrell Thomas Johnson, Jr., LLC  
Post Office Box 1125  
300 Main Street  
Hardeeville, SC 29927  
(843) 784-2142 – Office  
(843) 784-5770 – Fax  
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**From:** Law Office of Chester C. Williams [mailto:firm@ccwlaw.net]  
**Sent:** Friday, April 19, 2019 12:59 PM  
**To:** Tom Johnson; Kristy Harper  
**Cc:** Neil Turner; Tom Taylor  
**Subject:** Lot 158 RV Resort and Yacht Club

Dear Tom:

Thanks for taking our call about Lot 158 at the RV Resort and Yacht Club.

As we discussed, Turner's Marina, LLC has elected to exercise its right of repurchase in connection with the pending sale of Lot 158 by Jeffrey A. Klapper and Diane L. Klapper to Paige Nichole Lorberbaum pursuant to that certain Contract of Sale and Purchase of Real Property of 25 March 2019 by and between the Klappers, as sellers, and Ms. Lorberbaum, as purchaser. This email constitutes written notice to you, as the attorney for one or both of the sellers and the purchaser, of Turner's Marina, LLC exercise of that right.

As we further discussed, there is a second right of repurchase which has its source in the attached deed from The Hilton Head Company, Inc. to Rodger D. Shay, recorded in Beaufort County Deed Book 245 at Page 1052. The rights of The Hilton Head Company, Inc. under that deed were assigned to BillyBob's Marinas, Inc. by the Assignment of Rights recorded in Beaufort County Record Book 1843 at Page 1509, also attached. If you have not already done so, you may want to request an additional waiver from BillyBob's Marinas, Inc.

Please let us know if you are representing the Klappers so we may make arrangements for their conveyance of Lot 158 to Turner's Marina, LLC.

Also, please let us know if you have any questions or comments, or if we may be of further assistance.

Regards,

Chet Williams

Law Office of Chester C. Williams, LLC  
17 Executive Park Road, Suite 2  
PO Box 6028  
Hilton Head Island, SC 29938-6028  
843-842-5411  
843-842-5412 (fax)  
[Firm@CCWLaw.net](mailto:Firm@CCWLaw.net)  
[www.CCWLaw.net](http://www.CCWLaw.net)

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9-22-22

ELECTRONICALLY FILED - 2022 Sep 21 5:28 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

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

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-07-1064

PLAINTIFF'S  
PETITION FOR REFORMATION  
OF RIGHT OF REPURCHASE  
PURSUANT TO  
S.C. CODE ANNOT. 27-6-60

Based upon the Defendant Lorberbaum's arguments made at the hearing on the pending cross Motions to Alter or Amend held on September 21, 2022, specifically regarding the operation of the Rule Against Perpetuities in South Carolina, the Plaintiff draws to the Court's attention the specific requirements of South Carolina Code Annotated Section 27-6-60, which states as follows:

**SECTION 27-6-60.** Effect of timing of creation of property interest; savings clause.

(A) Except as extended by subsection (B), this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 1987. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(B) If a nonvested property interest or a power of appointment was created before July 1, 1987, and is determined in a judicial proceeding, commenced on or after July 1, 1987, to violate this State's rule against perpetuities as that rule existed before July 1, 1987, a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that preserves most closely the transferor's plan of distribution and that brings that plan within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

This provision of the Uniform Statutory Rule Against Perpetuities Act requires this Court, should it find the 1981 Covenants' Right of First Refusal violates South Carolina's Rule Against Perpetuities, upon Petition of an interested party, reform the disposition by inserting a "savings

clause” that preserves most closely the transferor’s plan of distribution and that brings the plan within the limits of the Rule Against Perpetuities applicable when the nonvested property interest or power of appointment was created.

The Plaintiff does hereby petition this Court, should it determine that the 1981 Covenant-based Right of Repurchase violates South Carolina’s Rule Against Perpetuities, to reform the disposition of the Right of Repurchase by inserting a savings clause that provides that Section 12.9 of the Covenants is amended to add the sentence: “This Right of Repurchase reserved to the Developer, terminates twenty-one (21) years after the death of American tennis player Venus Ebony Starr Williams.” Ms. Williams was born on June 17, 1980 and was thus a life in being at the creation of this Declaration of Covenants in 1981.

If this Court determines to Alter or Amend its Order to hold that the Rule Against Perpetuities applies to the Covenant-based Right of Repurchase, the Plaintiff requests this Honorable Court follow the requirements of S.C. Code Annot. Section 27-6-60 and insert the requested “savings clause” that will preserve most closely the transferor’s plan for the Right of Repurchase and brings it within the Rule Against Perpetuities applicable in 1981 at the recording and creation of the Declaration of Covenants.

I SO MOVE.

Respectfully submitted,  
**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  
September 21, 2022

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)

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

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

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

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

8. Further, South Carolina law provides for similar time periods to run from the date post-trial Orders are issued under Rule 59 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 "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 HHC Co. Right of Repurchase. However, Billybob's Marina's Inc. retained the right to exercise the HHC Co. 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 HHC Co. Right of Repurchase from Billybob's Marinas, Inc. prior to April 22, 2019, and recorded same, thereby satisfying the HHC Co. 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

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ELECTRONICALLY FILED - 2022 Aug 04 3:47 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

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



**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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STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

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

TURNER'S MARINA LLC,  
Plaintiff,

vs.

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

Defendants.

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

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

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

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

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

11-1-22

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. 2020-CP-07-1064

Paige N. Lorberbaum

Appellant,

v.

Turner's Marina LLC, Jeffrey A. Klapper, Diane L. Klapper,

Respondents.

NOTICE OF APPEAL

Paige N. Lorberbaum ("Lorberbaum") appeals the Order of the Honorable Donald B. Hocker, dated August 4, 2022, which found a right of repurchase to be valid and properly exercised (Ex. 1), and the Order of the Honorable Donald B. Hocker, dated September 27, 2022, which denied Lorberbaum's request for reconsideration (Ex. 2).

Appellant received written notice of entry of this judgment, by way of the Order denying Lorberbaum's request for reconsideration, on September 27, 2022 when it was electronically filed.

October 27, 2022

/s/ Russell P. Patterson  
Russell P. Patterson  
Russell P. Patterson, P.A.  
SC Bar No.: 4375  
P.O. Box 8047  
Hilton Head, SC 29938  
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*Attorneys for Appellant*

**Other Counsel of Record:**

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*Turner's Marina LLC*

**James S. Murray**  
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*Attorney for Respondents,*  
*Jeffrey A. Klapper, Diane L. Klapper*



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

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11-3-22

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM BEAUFORT COUNTY  
FOURTEENTH JUDICIAL CIRCUIT  
DONALD B. HOCKER, CIRCUIT COURT JUDGE

---

CIVIL ACTION NUMBER: 2020-CP-07-1064

---

Paige N. Lorberbaum,

Appellant,

vs.

Turner's Marina LLC;  
Jeffrey A. Klapper;  
Diane L. Klapper,

Respondents.

---

NOTICE OF CROSS-APPEAL

---

Turner's Marina LLC ("Cross-Appellant/Respondent") hereby respectfully submits its Notice of Cross-Appeal of the Orders of the Honorable Donald B. Hocker, dated August 4, 2022 and September 26, 2022, pursuant to Rule 203, SCACR. Cross-Appellant/Respondent received notice of Appellant Paige N. Lorberbaum's Notice Of Appeal on November 1, 2022. Copies of the Orders being appealed are attached respectively as **Exhibit 1** and **Exhibit 2**.

s/Thomas C. Taylor

Thomas C. Taylor, Esq.  
Law Office of Thomas C. Taylor, LLC.  
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Bluffton, South Carolina 29910  
South Carolina Bar Number: 5499  
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ATTORNEY FOR CROSS-APPELLANT/RESPONDENT  
TURNER'S MARINA LLC

Bluffton, South Carolina  
November 3, 2022

EXHIBIT 1

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

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

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

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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.

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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

ELECTRONICALLY FILED - 2022 Aug 04 3:47 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064  
ELECTRONICALLY FILED - 2022 Nov 03 11:58 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701064

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



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

11/27/23

EXHIBIT 5 TO MOTION TO DISMISS

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

APPELLATE CASE NO. 2022-001547

Turner's Marina LLC,

Respondent-Appellant,

vs.

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

Defendants,

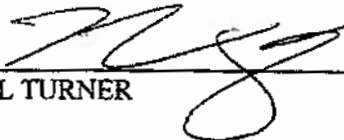
Of whom Paige Lorberbaum is the Appellant-Respondent and Jeffrey A. Klapper and Diane L. Klapper are Respondents.

AFFIDAVIT OF NEIL TURNER

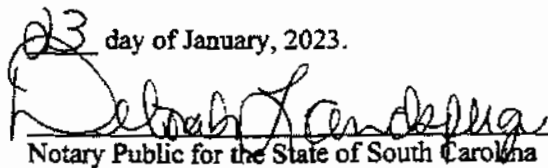
1. My name is Neil Turner. I am above the age of majority, and I give this Affidavit based upon my personal knowledge and in support of the Appellant-Respondent's Motion to Dismiss Paige N. Lorberbaum's Appeal in this matter.
2. I am the President of Turner's Marina LLC, which owns and operates the Hilton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

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

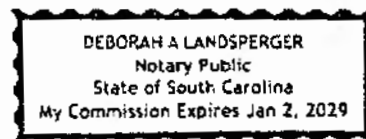
FURTHER AFFLIANT SAYETH NOT.

  
NEIL TURNER

Sworn to before me this

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

My commission expires: Jan 2, 2029



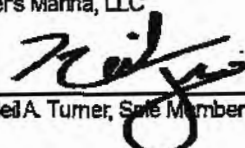
**BUYER'S STATEMENT**

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

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

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

| BALANCE           |                  |
|-------------------|------------------|
| <b>From Buyer</b> | <b>55,872.05</b> |

APPROVED:  
 Turner's Marina, LLC  
 BY:   
 Neil A. Turner, Sole Member

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

**SELLER'S STATEMENT**

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

**CREDITS**

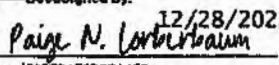
|                              |  |                  |
|------------------------------|--|------------------|
| Purchase Price               |  | 54,500.00        |
| Assessments                  | 12/29/22 to 01/01/23 RV Resort & Yacht Club OA | 28.66            |
| Less Total Credits to Seller |  |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

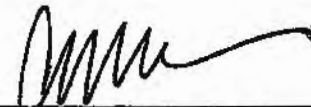
**DEBITS**

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

**BALANCE**

|           |                  |
|-----------|------------------|
| To Seller | <u>32,551.59</u> |
|-----------|------------------|

APPROVED: DocuSigned by: 12/28/2022  
  
 Paige N. Lorberbaum 36832A452...

  
 Law Office of Chester C. Williams, LLC



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

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

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

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

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

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

(signature page to follow)





I N D E X

(PW) - Denotes Plaintiff's Witness  
(DW) - Denotes Defense Witness

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| <u>(PW) NEIL TURNER:</u>                |                 |
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| Direct Examination by Mr. Murray.....   | 161             |
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| <u>(DW) PAIGE LORBERBAUM:</u>           |                 |
| Direct Examination by Mr. Johnson.....  | 172             |
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| Cross-Examination by Mr. Murray.....    | 187             |
| Recross-Examination by Mr. Taylor.....  | 188             |

1 business itself.

2 So in 2017 when we did our own analysis, we came up  
3 with the land being 1.6, which brought the value down to  
4 three million and then a third of it was the marina revenue  
5 and the other two-thirds was the RV revenue valued at two  
6 million dollars on that day. I think it was like 2.3, yeah.

7 Q You valued when you were considering making this  
8 purchase the declarant rights for the rental at what number?

9 A Two million dollars.

10 Q Now, did you understand that if you made an offer on  
11 this, you were going to be buying those declarant rights?

12 A Yes, that was actually one of the big things. We  
13 talked about actually buying just the marina and they said  
14 they would not sell it unless I bought the declarant rights  
15 with it. So it was part of one of those conversations.

16 Q Was it in Turner's Marina's financial interest to own  
17 the lots?

18 A To own the declarant rights to the lots, yes.

19 Q The declarant rights?

20 A Very much so. Each one of these are income-producing  
21 lots. There's 200 of them. We're able to rent them out to  
22 people that just want to be transient campers and it is a  
23 massive cash flow.

24 MR. MURRAY: Your Honor, may I interrupt?

25 THE COURT: Sure.

1 then said lot shall be offered for sale to the developer at  
2 the same price at which the property is about to be sold.  
3 And the said developer shall have 30 days within which to  
4 exercise its option to purchase said property. And should  
5 the developer fail or refuse within 30 days after the  
6 receipt of notice of the price and terms to exercise its  
7 option to purchase, said property at the price at which it  
8 is about to be sold, then the owner of the said property  
9 shall have the right to sell said property subject to all  
10 covenants and limitations herein contained.

11 MR. TAYLOR: I move the admission of 3.

12 MR. JOHNSON: No objection to the document, Your Honor.

13 THE COURT: All right. 3 into evidence for the  
14 Plaintiff.

15 (Plaintiff's Exhibit No. 3 admitted into evidence.)

16 BY MR. TAYLOR:

17 Q Neil, let's go back to talking then about what occurred  
18 after purchase of Billy Bob's. That closed in December of  
19 '17, correct?

20 A Correct, December 21st, 2017.

21 Q Neil, when you purchased the business from Billy Bob's,  
22 did you acquire property that benefited from the recorded  
23 covenants to your understanding?

24 A Yes, we did.

25 Q And what was that?

1       A     It was Lot 106, it was also the marina and the harbor.  
2       And the whole property itself has a lease hold, has a  
3       99-year lease, so the entire property.

4       Q     How did they benefit from the covenants?

5       A     So there's a provision in the covenants that gives the  
6       marina a lease hold option for 99 years.  Additionally, we  
7       purchased the right that was reserved for the declarant for  
8       the rental of every lot for the property itself and then we  
9       owned a lot as well.

10      Q     Neil, tell the Court if you would, please, what did you  
11      do after December 21st, 2017, when you became, in essence,  
12      stepped into the shoes of the declarant?  What did you do  
13      from that point forward when Turner's Marina was approached  
14      about exercising that right of first -- first, let me ask  
15      you, did there come a time and have there been other times  
16      that Turner's Marina was requested after December 21st,  
17      2017, to exercise and sign a waiver of your right of first  
18      refusal?

19      A     Yes.  The most recent one was two days ago, actually.

20      Q     Can you tell the Court based from 2017 forward when you  
21      took control how you approached that issue?  In other words,  
22      Neil, simply, when a lot became available and you were told  
23      here is your 30 days, what did you do and how did you  
24      evaluate it?

25      A     So when I'm notified of any lot sale through request

1 for a waiver, we go out. We look at the property. We see  
2 what it would cost to fix the property up if there's any  
3 damage or anything or any liability that we would need to  
4 take care of. We look at the purchase price itself. We try  
5 to see and analyze if it is either an economically sound  
6 investment to make or if it's not. And so we, basically,  
7 take about two to three weeks trying to make sure that it's  
8 a financial benefit to us to exercise our right to purchase  
9 it or not.

10 Q And when you talk about financial benefit, you mean  
11 will it rent?

12 A Correct, yes. The entire premise of these covenants  
13 for the declarant was to retain the right of rental. So we  
14 look at everything to make sure that the price point makes  
15 sense, do we have a high return on investment, will we be  
16 able to rent it out continuously or as much as we need to in  
17 order to make our money back over the 61-year period left.

18 Q Neil, prior to April 2nd of 2019, when you became  
19 aware, I believe, of proposed conveyance from Klapper to  
20 Lorberbaum, had there been previous times when you had been  
21 approached and asked to waive your right of first refusal?

22 A Yes.

23 Q Had you done that or had you purchased any lots or  
24 both?

25 A I had waived -- up to that point, I believe I exercised

1 one, but I could be wrong, it might have been right after.

2 But we did waive on most of them coming forward.

3 Q And why would that be?

4 A It just wasn't an economically viable option for us.  
5 Lot prices were increasing, so we were looking to buy the  
6 highest priced lots. We were trying to make sure our return  
7 on investment was a proper one to do so.

8 (Plaintiff's Exhibit No. 4 marked for identification.)

9 Q Neil, I hand you what I've marked for identification as  
10 No. 4 and ask you if you can tell us what that is, if you  
11 recognize it?

12 A Yes, this is an e-mail from Mr. Johnson's law firm from  
13 Ms. Christy Harper to an e-mail address that we control  
14 asking for a waiver to the right of first refusal.

15 MR. TAYLOR: Move No. 4 into evidence.

16 MR. JOHNSON: No objection.

17 THE COURT: No. 4 into evidence for the Plaintiff.

18 (Plaintiff's Exhibit No. 4 admitted into evidence.)

19 BY MR. TAYLOR:

20 Q Neil, did you in April of 2019 maintain the e-mail  
21 address for Turner's Marina at manager@hiltonheadharbor.com?

22 A Yes.

23 Q Did you receive Exhibit No. 4 from someone representing  
24 themselves as Christy Harper on or about April 2nd, 2019, at  
25 10:20 a.m.?

1 A Yes, that's correct.

2 Q Did you read it?

3 A I did.

4 Q And what did you infer from reading it and what action,  
5 if any, did you take?

6 A At this point, as we do with everything that comes in  
7 the door that's looking to sell a lot, we look at the  
8 contract, we saw the terms, look at the purchase price and  
9 then we go out and actually observe the property to make  
10 sure that it's a viable option to buy.

11 So after receiving this, I would go out and check it  
12 out. I was -- if I recall correctly, I had some kids that  
13 was -- I don't want to say issues because they're never an  
14 issue, they're amazing, but I was dealing with kids around  
15 that time frame. So, generally, I try to get an answer back  
16 if I do want to purchase it well within the 30 days, but  
17 sometimes it will go all the way until the 30th day.

18 Q Neil, to your understanding, was the Exhibit No. 4  
19 notice given to you on April the 2nd of 2019 a trigger for a  
20 30-day period?

21 A Yes, that would be the notice that I had, that's the  
22 beginning.

23 Q And when would you then have needed to alert them as to  
24 your intention to purchase under the right of repurchase?

25 A May 1st, that's 30 days from April 2nd.

1 (Plaintiff's Exhibit No. 5 marked for identification.)

2 BY MR. TAYLOR:

3 Q Neil, I'm handing you what I've marked for  
4 identification as 5 and ask you if you can recognize that?

5 A Yes, this is the attachment that was on the e-mail that  
6 we just discussed in Exhibit 4. This is the proposed waiver  
7 of right of repurchase that I received from Christy Harper.  
8 Attached, as well, was the contract for sale and purchase of  
9 real estate between Jeffrey Klapper and Diane Klapper and  
10 Paige Lorberbaum.

11 Q So to make sure the record is clear, No. 5 came as an  
12 electronic attachment to No. 4?

13 A That is correct.

14 MR. TAYLOR: Your Honor, I would move 5.

15 MR. JOHNSON: No objection.

16 THE COURT: Without objection, 5 for the Plaintiff.

17 (Plaintiff's Exhibit No. 5 admitted into evidence.)

18 BY MR. TAYLOR:

19 Q Mr. Turner, did you recognize in general the type of  
20 wording of this document and did you believe it to be a  
21 proposed waiver?

22 A Yes, the title is wavier of right to repurchase.

23 Q And did you understand that you were being requested to  
24 execute that in order to allow the Klappers to convey their  
25 Lot 158 to Ms. Lorberbaum?

1 A That is correct.

2 Q And Neil, was the proposed contract attached to No. 5  
3 as you were looking at it when it came electronically?

4 A Yes, this is all one PDF attachment. I don't know if  
5 this is the whole contract, but it's two of two pages, so I  
6 have both pages.

7 Q That's what you got?

8 A This is what I received, correct.

9 Q And, Neil, tell us then specifically concerning Lot  
10 158, what did you do and what did you decide to do and who  
11 did you tell, if anyone, about your intentions?

12 A So, like I said, we had some things going on with the  
13 family, so it was delayed a little bit. When I say a little  
14 bit, maybe a week. We went out and looked at the property.  
15 We saw that it was a low lying property. We may have to do  
16 some concrete work to fix it. We looked at the power  
17 pedestal like we do every site.

18 We did speak with Ms. Lorberbaum on the phone. She  
19 asked if I had the intention to exercise or not. She said  
20 that this was not -- she was told by the Klappers this is  
21 not a big deal, it's just a formality. It's something that  
22 goes through. And I said, Okay, well, I'm still considering  
23 it, but I'm leaning toward purchasing it.

24 After that, I had a conversation with Ms. Lorberbaum's  
25 father, who proceeded to ask me if I was going to purchase

1 the lot or not, use my waiver. I informed him that I was  
2 not. That was after the fact of saying that I was going to  
3 purchase the lot, so he was notified.

4 And then on April 19th, I called Tom Johnson's office  
5 in order to make sure I understood exactly what was  
6 transpiring -- I believe it was April 19th -- and ask if he,  
7 in fact, is closing on the lot -- or did, in fact, close on  
8 the lot and he said yes. And I said, You do understand that  
9 I have a first right of refusal? He said, Yep, I don't  
10 care. I said, Okay. Thank you very much. And that was the  
11 conversation.

12 Q Neil, on April the 19th, 2021, did you have a  
13 conversation with Chester Williams, your then retained  
14 counsel?

15 A Yes. And then he sent a letter to -- oh, sorry.

16 Q What did you tell Mr. Williams to do on your behalf?

17 A I told him to go ahead and exercise our right of  
18 repurchase. We actually forwarded the e-mail sent from  
19 Christy Harper to Chester C. Williams. So we informed him  
20 that we were actually going to exercise that right.

21 Q Neil, you understood the price of, because of you had  
22 the contract in front of you, to be \$54,500, correct?

23 A Correct.

24 Q Was Turner's Marina ready, willing and able to tender  
25 the \$54,500 prior to May 1st in order to close Lot 158?

1 A Yes.

2 Q Did the Klappers, Ms. Lorberbaum or their legal counsel  
3 ever offer you the opportunity to purchase and close the lot  
4 for \$54,500?

5 A I did not speak to the Klappers directly. I received a  
6 waiver notice with Tom Johnson's office handling both sides.  
7 That was the notice I received only.

8 Q But when you asked to exercise your right, what I'm  
9 trying unartfully to ask is did you ever have the  
10 opportunity to tender the check and buy the lot?

11 A No.

12 Q Do you know if the Klappers moved forward to sell the  
13 lot to Ms. Lorberbaum after April the 19th?

14 A Yes.

15 Q How do you know that?

16 A They closed on the lot April 22nd.

17 Q And after they closed on the lot, do you know then when  
18 Ms. Lorberbaum assumed residency on the lot?

19 A I believe April 23rd or 24th. I'd have to pull the  
20 record.

21 Q In general, can you tell the Court what Ms. Lorberbaum  
22 did on the lot? Did she bring an RV in that was a drivable  
23 one?

24 A No, she did not bring one in. They actually had it  
25 towed in. The company that towed -- it's called a fifth

1 wheel travel trailer, was not drivable. You have to have a  
2 vehicle to tow it itself. So they drove it in, parked it on  
3 the lot and she's been there -- or the rigs been there ever  
4 since.

5 Q Did Ms. Lorberbaum tell you in the conversation you had  
6 prior to April the 19th that she had already purchased an RV  
7 and they were holding it for her?

8 A She did.

9 Q And that was before closing?

10 A That is correct.

11 Q Neil, why did you decide to file this suit?

12 A For a myriad of reasons. First and foremost, this  
13 first right of repurchase was a big indicator for us to buy  
14 the lot -- or to buy the declarant rights. If we do not  
15 followup on these things, then we are not going to be able  
16 to assert the same plan in the future. They would ask why I  
17 didn't assert it on that one, but I did this one.

18 This is a massive amount of revenue-generating income  
19 over the next 61 years. Every lot we look at, we do want to  
20 make sure the return on investment is proper and this one is  
21 a very good return on investment. So in every way, shape or  
22 form, we're trying to protect the interest that we purchased  
23 for 4.6 million dollars.

24 Q Neil, do you have a loan on the purchase price that you  
25 bought that --

1 A I do. I do.

2 Q Are you still paying for one or more loans on that?

3 A I am.

4 Q Neil, have you exercised your right of first refusal to  
5 purchase other lots between the time you acquired the  
6 declarant rights and to date?

7 A Yes, I have. Four in total, I believe.

8 Q Based upon your experience of what you see at the RV  
9 resort -- let me preface by saying, Neil, are you at the  
10 property most every day?

11 A Every day, but Wednesday and Sunday.

12 Q And do you routinely travel around inside the area  
13 where the concrete pads are?

14 A Generally speaking, yes.

15 Q And are you generally aware in your opinion of what  
16 lots are being sold if they are about to be sold?

17 A We have a general awareness of what is on the market.  
18 We don't know if there's a contract being put up or not, but  
19 once the contract is implemented, we get a notification.

20 Q Based on your experience, what you've seen while you've  
21 been there, do most lawyers in Beaufort County request a  
22 wavier from you of Turner's Marina's right of first refusal?

23 MR. JOHNSON: If Your Honor please, I would object to  
24 that as relevant, on the grounds of relevance.

25 THE COURT: All right. What other lawyers do

1 concerning other lots, where is the relevance, Mr. Taylor?

2 MR. TAYLOR: Your Honor, the relevance from my  
3 perspective is that this is a well-recognized situation  
4 where there are two rights of first refusal. And almost all  
5 lawyers at Hilton Head who close one of these lots  
6 recognized it and request the waiver from both Mr. Turner  
7 and Billy Bob, which holds the old Hilton Head Company  
8 waiver until the two years expires or the loan is paid off.

9 MR. JOHNSON: If Your Honor please, first of all, I  
10 would suggest this -- what lawyers is not based on consensus  
11 of what the Hilton Head Bar thinks, but it's already in  
12 evidence that we asked for that waiver. Asking -- in a real  
13 estate transaction, asking for a Quit Claim or a waiver  
14 doesn't prove anything except that the lawyer is trying to  
15 be careful at that stage -- I say careful, prevent any cloud  
16 on the title, which is different than necessarily a defect  
17 in the title. But if a couple of sheets of paper can avoid  
18 a controversy in the future, it's done.

19 So I would say to make this question relevant at all,  
20 you could ask -- to make the question a complete premise,  
21 you would have to ask what do most lawyers do when you  
22 refuse to give the waiver. Because what they do when he  
23 agrees to give the waiver is inapplicable to this case.

24 THE COURT: Okay. Reword your question -- I'll sustain  
25 the objection, but allow you to ask what Mr. Johnson has

1 indicated he would be good with.

2 MR. TAYLOR: Thank you, Judge.

3 BY MR. TAYLOR:

4 Q Mr. Turner, in the event that you decline to exercise  
5 the waiver, what do most lawyers based on your experience  
6 then do for a closing transaction?

7 A The other four -- the other ones that I have exercised  
8 by right of repurchase, they have given them to me. They  
9 have allowed -- am I answering that correctly?

10 Q Allow you to purchase?

11 A Allowed me to purchase. Yeah, they allowed me to  
12 interrupt the sale and give it to me and I had to pay for  
13 the deed to be transferred to me.

14 Q Neil, last weekend, did you search the public records  
15 of Beaufort County and copy all of the recorded waivers of  
16 Turner's Marina's rights of first refusal that's been filed  
17 since Turner's Marina bought the declarant rights?

18 A Yes.

19 (Plaintiff's Exhibit No. 6 marked for identification.)

20 Q I hand you what I've marked for identification as  
21 Plaintiff's No. 6 and ask you if that is a true and correct  
22 copy of the 54 waivers that you found on public records that  
23 Turner's Marina had executed?

24 A That is correct.

25 MR. TAYLOR: Your Honor, moving --

1 MR. JOHNSON: Your Honor, reserving my objection to  
2 relevance, I have no objection to the public records of  
3 Beaufort County.

4 THE COURT: So noted.

5 And how many waivers are there? Did you say 56?

6 MR. TAYLOR: Your Honor, there are 53 executed by  
7 Turner's Marina and four executed by Billy Bob's that  
8 Turner's Marina was buying.

9 THE COURT: How many from Billy Bob's?

10 MR. TAYLOR: Four, Your Honor, on lots that Turner's  
11 Marina was buying.

12 THE COURT: Exhibit 6 in evidence for the Plaintiff.

13 (Plaintiff's Exhibit No. 6 admitted into evidence.)

14 BY MR. TAYLOR:

15 Q Neil, are you aware based on your background and  
16 experience of having worked with Billy Bob's who Billy Bob's  
17 and its principles routinely use to do their closings on  
18 Hilton Head for these lots?

19 A Yes.

20 Q Who was that?

21 A John Wilkins.

22 Q And are you aware of whether or not it was Mr. Wilkins'  
23 practice, based upon your personal knowledge, to elicit a  
24 waiver from Turner's Marina when Billy Bob's was selling  
25 lots?

1       A     Yes, absolutely.  And in the event that I did not sign  
2       a waiver, he would file an affidavit stating that he  
3       notified me within 30 days enclosed.

4       Q     Neil, have you endeavored to make a calculation of the  
5       amount of damages that Turner's Marina has suffered as a  
6       result of not being able to purchase Lot 158 in April of  
7       2019?

8       A     A conservative one, yes, sir.

9           MR. MURRAY:  Your Honor, I'm going to object.  That  
10       question calls for speculation.

11           THE COURT:  I'm going to allow it.  I think it just  
12       goes probably more to the weight that I give it, but I think  
13       it's certainly -- he has a right to offer his opinion, then  
14       make a determination how valid or reliable his opinion may  
15       be.  So I'll overrule your objection.

16           MR. TAYLOR:  Your Honor, thank you.

17       BY MR. TAYLOR:

18       Q     Neil, I'm handing you -- have you endeavored to make an  
19       estimate of your damages that you believe Turner's Marina  
20       has suffered as a result of not being able to acquire Lot  
21       158?

22       A     Yes, sir, a conservative one, but I have.

23       Q     Explain to the Court how you compute that and what  
24       number you believe is a correct damages amount?

25       A     So through our historical records from '15, '16, '17

1 and '18 and for the rental of Lot 158, each time there was a  
2 lot rental we were able to record it down, 2018 was the only  
3 year that the Klappers were not on their site or a guest was  
4 not on their site, so it was given to a full year, the  
5 assumption of that. So it's the best indicator to see what  
6 the price would have been, so we used that year's income,  
7 which is \$4,147.50. I have 61 years left in that declarant  
8 right of the right of rental, so it would amount to  
9 \$252,997.50 is what I am asserting conservatively as  
10 damages.

11 (Plaintiff's Exhibit No. 7 and 8 marked for  
12 identification.)

13 BY MR. TAYLOR:

14 Q Neil, I'll hand you what I've marked for identification  
15 as Exhibit No. 8 and ask you if that is a copy of an  
16 accounting numbers that you just referred to for the  
17 Klappers' lot rental that you used to calculate damages you  
18 just testified to?

19 A That is correct, yes. These are our records, our  
20 internal records stating each lot's rental for that time  
21 frame.

22 Q And Neil, I believe that's marked 8; is that right?

23 A Yes, sir.

24 Q Neil, is Exhibit No. 8 a true and correct copy of an  
25 accounting document which you requested from your software

1 which you have in your custody and control?

2 A Yes, sir.

3 Q Is it a fair reflection of a business record that is  
4 normally kept in the course of business of Turner's Marina?

5 A Yes, sir.

6 THE COURT: What happened to No. 7?

7 MR. TAYLOR: I'm about to get to that, Judge.

8 BY MR. TAYLOR:

9 Q Neil, I go back to No. 7 and ask you is that simple  
10 document reflective of the damages claim that you have just  
11 articulated a moment ago in testimony?

12 A Yes, it is.

13 Q What is your calculations of damages 61 years lost  
14 annual revenue at \$4,147.50 an average year?

15 A Conservatively, it's \$252,997.50.

16 MR. TAYLOR: Your Honor, move 7 and 8, please, for the  
17 Plaintiff.

18 THE COURT: Subject to your objection, Mr. Murray?

19 MR. MURRAY: Yes.

20 MR. JOHNSON: I note the same objection.

21 THE COURT: Subject to their objections, I'll allow 7  
22 and 8 into evidence.

23 MR. TAYLOR: I understand, Your Honor. Thank you.

24 (Plaintiff's Exhibit Nos. 7 and 8 admitted into  
25 evidence.)

1 BY MR. TAYLOR:

2 Q Neil, Turner's Marina by this case in its pleadings  
3 asked the Court to either convey Turner's Marina or award  
4 damages in the amount of \$252,997.50. You were asked by the  
5 Court to elect one of the other remedies, which one does  
6 Turner's Marina request the Court to choose?

7 A I would like ownership of the lot to be transferred to  
8 Turner's Marina. I'm prepared and ready to pay the sales  
9 price minus the loss rental, but if the Court deems that is  
10 not the appropriate avenue, damages will be fine.

11 Q Mr. Turner, have you had to hire and pay an attorney to  
12 bring this suit?

13 A I have.

14 Q Is that attorney me?

15 A That is you.

16 Q And what, Mr. Turner, are you paying me on an hourly  
17 basis?

18 A \$325 an hour.

19 Q To your knowledge, based upon your lifetime in the  
20 Hilton Head and Beaufort County area, is that rate  
21 comparable to what other lawyers of similar background and  
22 experience would charge?

23 A Yes.

24 Q And, Neil, final question before I ask Mr. Johnson and  
25 Jeb to question you, did you do everything that you could on

1 April 19th of 2019 to convey to Mr. Johnson as the closing  
2 attorney that you wished to exercise your right of  
3 repurchase on 158?

4 A Yes, I did.

5 MR. TAYLOR: Your Honor, no other questions.

6 THE COURT: Mr. Murray, Mr. Johnson, who would like to  
7 go first?

8 MR. JOHNSON: I guess we're first on the pleadings.

9 THE COURT: All right.

10 MR. JOHNSON: May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. JOHNSON:

13 Q When you were investigating and getting appraisals, if  
14 I understood you right, you arrived at a right of first  
15 refusal worth two million dollars for rentals to transients,  
16 is that approximately your words?

17 A No, sir.

18 Q Maybe I wrote it down wrong.

19 A That's okay.

20 Q Tell me what that two million dollars -- how you  
21 arrived at that two million dollars?

22 A So the two million dollars encompasses all the  
23 declarant rights, so the rights to the condominium  
24 association itself, the declarant being part of that. That  
25 is where the two million dollar mark comes in.

1 of said property shall have the right to sell said property  
2 subject to all covenants, limitations therein after  
3 contained.

4 Q And does that language refer the developer -- refer to  
5 the developer and their children or the developer and their  
6 heirs or the developer and their assigns?

7 A In this current clause, no, it does not.

8 MR. JOHNSON: Thank you, sir. That's all I have.

9 THE COURT: Mr. Murray, do you have any questions?

10 CROSS-EXAMINATION

11 BY MR. MURRAY:

12 Q You testified you discussed this pending sale with Ms.  
13 Lorberbaum, but never with the Klappers; is that right?

14 A That's correct.

15 Q You ever met the Klappers?

16 A I don't believe so.

17 Q You didn't introduce yourself to them when you  
18 purchased the marina in 2017?

19 A When people come into the -- I mean, we do it through  
20 mailings and stuff, but I have never like had a personal  
21 introduction unless they come into the office.

22 Q Are you aware of whether they ever retained an attorney  
23 for this transaction?

24 A For the closing?

25 Q Yes.

1       A     As far as I understand, they used Tom Johnson's office  
2       and Ms. Lorberbaum used Tom Johnson. They both had the  
3       same. It was dual representation.

4       Q     That's your understanding?

5       A     Yes, that's my understanding.

6       Q     Did you ever offer the Klappers any money?

7       A     We contacted the closing attorney and said that we  
8       would like to interject and we would pay the 54,500.

9       Q     Do you know if the closing attorney ever informed the  
10      Klappers?

11      A     I do not.

12      Q     Now, there are many vacant lots right now on this  
13      property; isn't that true?

14      A     We have vacant lots right now, yes, sir.

15      Q     Vacant lots are not making any money?

16      A     That's correct.

17      Q     And you've never sold out all of the lots on any one  
18      day ever since you bought it?

19      A     No, that's not true. We have very much so. I'd have  
20      to pull the records to show you, but we actually have done  
21      it, yes.

22      Q     Are you aware of how many times the lot next to Ms.  
23      Lorberbaum has rented in the last year?

24      A     I would have to look at the records, I'm sorry.

25           MR. MURRAY: I'm assuming this assignment of rights has

1 A Morning.

2 Q I'm Tom Taylor. You and I have never met before, have  
3 we?

4 A No, sir.

5 Q Would you tell the Court, please, what you do?

6 A I'm a real estate paralegal at the Law Office of  
7 Darrell Johnson, so I just assist with paperwork.

8 Q (Inaudible)?

9 A Yes, sir.

10 Q How long have you worked there?

11 A 25 years.

12 Q And tell the Court the nature, basically, of what you  
13 do there. In other words, do you handle closings? What do  
14 you do?

15 A I help with all real estate matters, basically, deeds,  
16 you know, drafting documents, that kind of thing.

17 Q When you were working for Mr. Johnson in April of 2019,  
18 do you recall the Klapper transaction coming up?

19 A Yes.

20 Q And I am handing you what has been marked as entered  
21 into evidence as Plaintiff's Exhibits 4 and 5. I want to  
22 ask you if you can confirm those are -- that is an e-mail  
23 and proposed waiver of right of repurchase that you sent to  
24 Turner's Marina on April the 2nd of 2019?

25 A Yes, sir.

1 Q And why did you do that?

2 A As I would have been instructed by Attorney Johnson.

3 Q And is that the normal course of business, that Mr.  
4 Johnson would give you the specifics as to what waivers  
5 would be necessary and then you would go and get them?

6 A Normally, yes.

7 Q Was this abnormal in any way?

8 A No.

9 Q Mr. Johnson had spoken earlier in his introduction  
10 about this being a routine boring closing. Do you remember  
11 it as being that?

12 A I mean, it was a closing. I mean, we have -- I can say  
13 I've had worse, if that's what you're asking.

14 Q Ms. Harper, who represented the Klappers in this real  
15 estate transaction?

16 A Our office did.

17 (Plaintiff's Exhibit No. 9 marked for identification.)

18 BY MR. TAYLOR:

19 Q Ms. Harper, I'm handing you what I've marked for  
20 identification as Plaintiff's No. 9. Can you identify that,  
21 please?

22 A It appears to be the ALTA settlement statement from the  
23 closing on April 22nd, 2019.

24 Q Is that the closing statement that you and Mr. Tom  
25 Johnson prepared for this Klapper to Lorberbaum transaction?

1 A It appears so, yes.

2 Q And, again, a moment ago, you referred that your office  
3 represented the Klappers?

4 A We did, yes.

5 Q And would you look at Page 3, please, and tell me the  
6 signatures that are there indicated -- Jeffrey Klapper and  
7 Diane Klapper, it appears to me to be indicated by Thomas  
8 Johnson, attorney; is that correct?

9 A Right.

10 Q Did Mr. Johnson sign on behalf of the Klappers?

11 A He did.

12 (Plaintiff's Exhibit No. 10 marked for identification.)

13 BY MR. TAYLOR:

14 Q Ms. Harper, I hand you what I've marked for  
15 identification as 10. Do you recognize that as being the  
16 deed that was procured by your office for the Klappers --  
17 from the Klappers?

18 A It appears to be, yes.

19 Q And is that something that you would normally have been  
20 involved with, getting the sellers, your clients to sign the  
21 deed and get it back to your office?

22 A I would have been involved in sending it out, either by  
23 e-mail or overnight mail if they did not come to our office  
24 to sign. And then I probably would have been the person  
25 that got the FedEx, for example, and opened it and made sure

1 everything.

2 MR. TAYLOR: Your Honor, I move 9 and 10.

3 THE COURT: What says the Defense?

4 MR. MURRAY: No objection.

5 MR. JOHNSON: No objection.

6 THE COURT: 9 and 10 in evidence for the Plaintiff.

7 MR. TAYLOR: Thank you.

8 (Plaintiff's Exhibit Nos. 9 and 10 admitted into  
9 evidence.)

10 BY MR. TAYLOR:

11 Q Ms. Harper, it appears from the deed, and it's No. 10,  
12 there is an affidavit of true consideration and claim for  
13 exemption form dated April 22nd signed by Mr. Johnson. Do  
14 you recognize that as a document that would be part of the  
15 closing transaction?

16 A Yes, sir.

17 Q Does that indicate to you that it is accurate to say  
18 this transaction literally closed on April 22nd, 2019?

19 A The date of conveyance is April 17, 2019.

20 Q Excuse me?

21 A The date of conveyance on the affidavit is April 17th,  
22 2019. The ALTA settlement statement has the settlement date  
23 as April 22nd, 2019.

24 Q What number are you looking at, what exhibit number?

25 A Ten. You asked me to say what the date was on the

1 affidavit of consideration.

2 Q I apologize. I think I may have misworded my question.

3 A I'm sorry.

4 Q Let me ask it again. What day did this transaction  
5 close?

6 A According to the ALTA settlement statement, the  
7 settlement date was April 22nd, 2019, which is on Exhibit 9.

8 Q If you will assume for me that April the 19th was a  
9 Friday, April 19th, 2019, then the 22nd would have been the  
10 following Monday, correct?

11 A I don't have a calendar.

12 Q Please let me ask you this question, were you part of  
13 any conversations at the office that occurred on April the  
14 19th concerning Chet Williams' e-mails back and forth with  
15 Mr. Johnson about Neil Turner wanting to exercise his right  
16 of first refusal on Lot 158?

17 A I do not recall.

18 Q Do you recall whether at any time prior to the literal  
19 closing of this deal of Lot 158 on April 22nd that there was  
20 ever any discussion in your office, which you heard with Mr.  
21 Johnson or others contesting the viability of the Turner's  
22 Marina right of repurchase?

23 A I'm not sure that I know the specifics of what you're  
24 asking me. Did I listen in on a phone call or did I sit in  
25 on a phone call?

1 MR. JOHNSON: Your Honor, I would just offer that  
2 packet into evidence.

3 THE COURT: Okay. Any objection?

4 MR. TAYLOR: Yes, sir, we object as to relevance. I  
5 haven't heard any question at all about the right of first  
6 refusal or an issue involved with the packet. It's a  
7 voluminous document, Your Honor, so I would object on  
8 relevance.

9 THE WITNESS: I mean, this is the authorization that  
10 they signed to give Attorney Johnson authorization to sign  
11 the settlement statement, if that's what we're looking for  
12 specifically.

13 THE COURT: I'm understanding this is the closing  
14 packet or a copy of the closing packet in the  
15 Klapper/Lorberbaum closing. Without looking at the  
16 documents, it's hard for me to say whether or not your  
17 objection as to relevancy is valid or not. I'm being told  
18 it's a closing package, but that's all I know.

19 MR. JOHNSON: If Your Honor please --

20 THE COURT: Is there a particular document that you  
21 feel like is relevant?

22 MR. JOHNSON: I'll pick them out. I guess I was trying  
23 to move too fast.

24 THE COURT: I don't mind you moving fast.

25 MR. TAYLOR: I have no objection to this, Your Honor.

1 THE COURT: What is that?

2 MR. JOHNSON: This is authorization to sign settlement  
3 documents.

4 THE COURT: Okay. Without objection, that will be  
5 Defendant Lorberbaum Exhibit 1.

6 THE COURT REPORTER: We premarked eight exhibits for  
7 Mr. Johnson.

8 THE COURT: What is that then?

9 THE COURT REPORTER: This is No. 9.

10 (Defendant Lorberbaum Exhibit No. 9 admitted into  
11 evidence.)

12 BY MR. JOHNSON:

13 Q Did we do anything relevant to the Klappers other than  
14 draft a deed?

15 A We prepared all of the seller documents that are normal  
16 in the course of a closing.

17 Q And that's the deed and --

18 A Seller's affidavits. And there's also an e-mail where  
19 we sent them the settlement statement and they replied that  
20 they were approving of you signing it for them.

21 Q Okay.

22 MR. JOHNSON: I offer this as --

23 MR. TAYLOR: This refers, Your Honor, to the seller's  
24 CD and ALTA that are attached to it. If it's possible to  
25 attach the two of them, I think that would be more

1 THE COURT: Is the Plaintiff ready to call its next  
2 witness?

3 MR. TAYLOR: Yes, sir, Chester Williams.

4 CHESTER WILLIAMS,

5 after being duly sworn, testified as follows:

6 THE CLERK: State your first name and spell out your  
7 last name, please.

8 THE WITNESS: My name is Chester Williams,  
9 W-I-L-L-I-A-M-S.

10 DIRECT EXAMINATION

11 BY MR. TAYLOR:

12 Q Mr. Williams, can you tell me a little bit about your  
13 background, your age, where you live and what you do?

14 A Yes, sir. I went to law school at the Paul M. Hebert  
15 Law Center at LSU in Baton Rouge, graduated there in '82,  
16 practiced in Baton Rouge for several years. I moved to  
17 Hilton Head Island in 1985, worked with some real estate  
18 developers there. I took the bar exam in South Carolina and  
19 was admitted to practice in South Carolina in 1988.

20 Q Have you consistently practiced in the Hilton Head area  
21 since 1988?

22 A I have. I have practiced with Herb Novit and Chuck  
23 Scarminach from '88 until 2002, I think. When I left the  
24 firm, it was Novit, Scarminach and Williams. And I have  
25 been a sole practitioner -- actually, I have one part-time

1 attorney working with me since that time. But I've had my  
2 own firm since 2002.

3 Q All total, Chet, you've been practicing how many years,  
4 38?

5 A From '82, so it would 40 years. So considering Baton  
6 Rouge, also, I guess 40 years.

7 Q Chet, during the entirety of your career, have you  
8 mainly focused on the real estate area?

9 A For six or seven years when I started with Herb Novit  
10 and Chuck Scarminach, I did, essentially, nothing but  
11 residential real estate closings. I still do residential  
12 real estate closings and commercial real estate closings and  
13 I do zoning and land use work.

14 Q Have you over the course of your career performed title  
15 examination and rendered title opinions?

16 A I don't really do title examinations, I rely on  
17 professional abstractors, third party abstractors to do the  
18 actual search of the work in the courthouse. Then based on  
19 their work, I will certify title based on the transaction  
20 we're dealing with.

21 Q And over the course of, let's say, of the last 20  
22 years, how many just estimated transactions have you given  
23 title opinions on?

24 A I have no idea. If I had to make a wild guess, I'd say  
25 well over a hundred. I don't do all that much in the way of

1 lines of -- well, you'd let it in and decide later.

2 THE COURT: Is that your recollection?

3 MR. TAYLOR: My recollection is he could answer if he  
4 knows, Judge, but I'm not sure which one of us is correct.

5 THE COURT: Go ahead and answer.

6 THE WITNESS: Repeat the question, please.

7 BY MR. TAYLOR:

8 Q Was the covenant-based right of first refusal bindable  
9 in the public record?

10 A I think the question you asked was when I did closings,  
11 what did I do in the way of obtaining waivers. Because  
12 those closings all involved Turner's Marina as a party,  
13 there was no need to get any sort of waiver for them, but we  
14 did get waivers from Billy Bob's Marina because they still  
15 had the right that they had received from the Hilton Head  
16 Company through Property Research Holding.

17 Q Did you receive notice from either Tony Turner or Neil  
18 Turner concerning the proposed Klapper to Lorberbaum  
19 transaction in the April around 18th timeframe about whether  
20 they wanted to exercise Turner's Marina's right of first  
21 refusal?

22 A As I recall, I received a telephone call from Anthony  
23 Turner, who was Neil's father and an employee of Neil's, I  
24 believe, saying that Tom Johnson's office had called  
25 inquiring about the status of a waiver for the transaction

1 lines of -- well, you'd let it in and decide later.

2 THE COURT: Is that your recollection?

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4 knows, Judge, but I'm not sure which one of us is correct.

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11 what did I do in the way of obtaining waivers. Because  
12 those closings all involved Turner's Marina as a party,  
13 there was no need to get any sort of waiver for them, but we  
14 did get waivers from Billy Bob's Marina because they still  
15 had the right that they had received from the Hilton Head  
16 Company through Property Research Holding.

17 Q Did you receive notice from either Tony Turner or Neil  
18 Turner concerning the proposed Klapper to Lorberbaum  
19 transaction in the April around 18th timeframe about whether  
20 they wanted to exercise Turner's Marina's right of first  
21 refusal?

22 A As I recall, I received a telephone call from Anthony  
23 Turner, who was Neil's father and an employee of Neil's, I  
24 believe, saying that Tom Johnson's office had called  
25 inquiring about the status of a waiver for the transaction

1 involving Lot 158.

2 (Plaintiff's Exhibit No. 11 through 13 marked for  
3 identification.)

4 BY MR. TAYLOR:

5 Q I'm going to hand what's been marked for identification  
6 as Plaintiff's 11 and ask you if you recognize that  
7 document?

8 A This is an e-mail from Neil Turner to me, dated April  
9 19, 2019, sent at 7:55 a.m., saying that he would like to  
10 exercise his right of first refusal on this lot, referring  
11 to Lot 158.

12 Q Did you receive that e-mail and take any action?

13 A I did. As I recall, I called Tom Johnson's office to  
14 tell them that Neil Turner wanted to exercise his right of  
15 first refusal, and I think I talked to Tom several times  
16 that day. I know I sent e-mails to him several times that  
17 day.

18 Q We'll get to your recollection of the conversations in  
19 a minute, first, let me try to get these e-mails identified.  
20 Chet, can you look at what is marked as 12 for the  
21 Plaintiffs, please?

22 A This is an e-mail that my assistant, Robin Cleveland,  
23 sent to Tom Johnson on April 19 at 10:23 a.m. that included  
24 as attachments the RV Resort covenants, the assignment of  
25 rights that is from -- I think from ORA to Billy Bob's, the

1 absolute assignment from Billy Bob's to Turner's Marina. I  
2 think that's what those documents are, based on what the  
3 recording information says.

4 Q Chet, you recognize that as having been a document  
5 emanated from your office and your assistant, Robin,  
6 correct?

7 A Yes.

8 Q I hand you what's marked for identification as 13, sir,  
9 and ask if you can identify this e-mail?

10 A This is an e-mail that Neil Turner sent to me on April  
11 19, 2019 at 12:47 a.m. It's a forwarded e-mail that was  
12 sent to Neil from himself on the 19th and previously another  
13 forwarded e-mail that came from Christy Harper of Mr.  
14 Johnson's office to manager@hiltonheadharbor.com, which I  
15 think is one of Neil's addresses there on April 2, 2019 at  
16 10:20 a.m. And it says that attached to it is an  
17 attachment, which is not included here, but if I recall  
18 correctly, it was a blank waiver for Turner's Marina to sign  
19 for the sale of Lot 158.

20 MR. TAYLOR: Your Honor, move 11 through 14 [sic].

21 THE COURT: 11, 12 and 13, any objection?

22 MR. JOHNSON: No objection to the genuineness of the  
23 documents, Your Honor.

24 THE COURT: Okay. 11, 12 and 13 for the Plaintiff into  
25 evidence.

1           (Plaintiff's Exhibit Nos. 11 through 13 admitted into  
2 evidence.)

3 BY MR. TAYLOR:

4 Q     Chet, would it be fair to summarize that at this point  
5 in time, then, about midday or a little after noon on April  
6 19th, 2019, that you were intimately involved with this  
7 situation and reacting to it and trying to get the attention  
8 of Mr. Johnson?

9 A     Yes. As I recall, I had to go up to Quest on the north  
10 end of the island to get some blood work done, but I recall  
11 I called Tom and talked to him when I was on my way back to  
12 the office from Quest and tried to explain that there were  
13 two distinct rights of first refusal there, one held by  
14 Billy Bob's, the other held by Turner's Marina.

15 Q     And to the best you can, is there any other details of  
16 that conversation that you can recall or can you advise us  
17 as to how Mr. Johnson reacted and processed it from what he  
18 said to you?

19 A     Not that I recall, but I think I did promise him that  
20 when I got back to the office that I would send him an  
21 e-mail that included the pertinent documents.

22           (Plaintiff's Exhibit No. 14 marked for identification.)

23 MR. TAYLOR: Your Honor, I may have inadvertently said  
24 14 a moment ago. I am handing him 14, so I moved 11 through  
25 13, Judge. Pardon me.

1 THE COURT: Right, 11 through 13, I've already put  
2 those into evidence. He now has 14 in front of him?

3 MR. TAYLOR: Yes, Judge.

4 THE WITNESS: This is an e-mail that I sent to Tom on  
5 April 19th at 12:59 p.m. It says: Thanks for taking our  
6 call. As we discussed, and I went over with him the  
7 distinction between the two rights of first refusal.

8 BY MR. TAYLOR:

9 Q Chet, will you tell the Court, please, what documents  
10 did you send with that e-mail and what time were they sent?

11 A One is a document that is an assignment of rights that  
12 was recorded on September 23, 2003 in Beaufort County Record  
13 Book 1843, at Page 1509. It is the assignment of rights  
14 from Property Research Holdings to Billy Bob's Marina by  
15 which Billy Bob's Marina obtained the rights of first  
16 refusal under the old Hilton Head Company covenants.

17 And the other one is a copy of the deed recorded in  
18 Beaufort County Deed Book 245 at Page 1052, which is a deed  
19 from Hilton Head Company to Roger Shay for a seven-acre  
20 parcel, which when combined with the other ten-acre parcel  
21 that was later conveyed constitutes the property that is the  
22 Hilton Head Resort RV and Marina. And included with that  
23 document is a set of protective covenants that includes,  
24 among other things the Hilton Head Company right of  
25 repurchase.

1 Q Chet, I want you to please look at 14 with me as I read  
2 several portions and confirm that these were your words. It  
3 sometimes works easier than asking the witness.

4 The first paragraph that you wrote: As we discussed,  
5 Turner's Marina, LLC has elected to exercise its right of  
6 repurchase in connection with the pending sale of Lot 158 by  
7 Jeffery A. Klapper and Diane L. Klapper to Paige Nicole  
8 Lorberbaum pursuant to that certain contract of sale and  
9 purchase of real estate of real property of 25-March-2019,  
10 between the Klappers as sellers and Ms. Lorberbaum as  
11 purchaser. This e-mail constitutes written notice to you as  
12 the attorney for one or both of the sellers and the  
13 purchaser of Turner's Marina, LLC exercises that right.

14 Is that correct?

15 A Yes.

16 Q Secondly, you said: As we discussed further, there is  
17 a second right of repurchase, which has its source from the  
18 attached deed from the Hilton Head Company to Roger D. Shay  
19 recorded in Beaufort Deed Book 245 at Page 1052. The rights  
20 of Hilton Head Company under that deed were assigned to  
21 Billy Bob's Marina by the assignment of rights recorded in  
22 Beaufort County Record Book 1843 at Page 1509, also  
23 attached. If you have not already done so, you may want to  
24 request an additional waiver from Billy Bob's Marina.

25 Correct?

1 A Yes.

2 Q And lastly, Chet, I believe at 12:59 p.m. on April  
3 19th, you said: Please let us know if you are representing  
4 the Klappers so that we may make arrangements for their  
5 conveyance of Lot 158 to Turner's Marina, LLC?

6 A Correct.

7 Q Now, Chet, did you receive a phone call to your memory  
8 or correspondence back from Johnson law office in regards to  
9 that e-mail?

10 A I don't know if I received another phone call, but I do  
11 recall that there was an e-mail where Tom had asked -- Tom  
12 said he still didn't see that there was anything in the way  
13 of that Turner's Marina held.

14 (Plaintiff's Exhibit No. 15 marked for identification.)

15 BY MR. TAYLOR:

16 Q Chet, I've handed you what I've marked for  
17 identification as 15, is that a copy of that e-mail?

18 A It is.

19 MR. TAYLOR: Move 14 and 15, Your Honor.

20 MR. JOHNSON: No objection.

21 THE COURT: 14 and 15 into evidence. .

22 (Plaintiff's Exhibit Nos. 14 and 15 admitted into  
23 evidence.)

24 BY MR. TAYLOR:

25 Q Chet, did you respond to the e-mail that has been

1 marked as 15 and entered that was sent to you at 1:28, and  
2 it is from Christy Harper, but, clearly, it's from Tom  
3 Johnson that says: I still don't see a chain of conveyance  
4 to Turner, however, from what documents does Turner claim  
5 the right of Hilton Head Company?

6 A I don't recall if I responded to that.

7 Q Chet, what, if anything, happened the rest of the --

8 MR. JOHNSON: Your Honor, is that document in evidence?

9 THE COURT: 14 and 15. 14 is his e-mail to you and 15  
10 is your e-mail to him.

11 BY MR. TAYLOR:

12 Q Chet, in your memory of April the 19th, 2019, which,  
13 again, I would suggest to you was a Friday, did anything  
14 else occur with you that day concerning Turner's Marina's  
15 attempt to exercise this right of first refusal?

16 A I don't recall right off.

17 Q Did Mr. Johnson ever provide you to your knowledge with  
18 any information about whether he represented the Klappers as  
19 he had been asked?

20 A Not that I recall.

21 (Plaintiff's Exhibit No. 16 marked for identification.)

22 BY MR. TAYLOR:

23 Q I'm handing you what I've marked for identification as  
24 16 and ask you if you can identify that?

25 A This is an e-mail from Hilton Head Harbor, which is

1 Neil, to my office copied to your office, also, forwarding  
2 an e-mail from Christy Harper at Mr. Johnson's office that  
3 says: Please see attached pursuant to the below request.

4 Q Read the next sentence, too, please.

5 A It says: Owner information is Paige N. Lorberbaum and  
6 an e-mail address for her and an address for her. Thank  
7 you, Christy Harper.

8 Q And, Chet, did you infer from that e-mail dated April  
9 24th that the Klapper to Lorberbaum conveyance had been  
10 completed?

11 A Well, there was an attachment to this and I don't see  
12 the attachment, so I'm not sure what it was, but when she  
13 says owner information is Paige Lorberbaum, that's not the  
14 Klappers, so I think it's safe to assume that that  
15 transaction had closed.

16 Q Chet, did you ever to your memory hear anything further  
17 from Mr. Johnson or anyone involved at his office or from  
18 the Klappers or Ms. Lorberbaum about this lot conveyance and  
19 Turner's Marina's demand to exercise his right of first  
20 refusal?

21 A Not that I recall -- let me say not that I recall from  
22 Mr. Johnson's office. I never heard anything at all from  
23 the Lorberbaums or the Klappers.

24 Q Were you ever requested to prepare a waiver of right of  
25 repurchase by Mr. Johnson's office or anyone else on behalf

1 Q Chet, is there anything to your knowledge, looking back  
2 on the situation now, you could have done more on April 19th  
3 to convey to the Klappers or to Ms. Lorberbaum or their  
4 attorneys that Turner's Marina wished to exercise its right  
5 of repurchase on Lot 158?

6 A No, I thought I was pretty clear in the e-mail that I  
7 sent to Mr. Johnson on April 19th that Turner's Marina  
8 wanted to exercise that right of repurchase.

9 MR. TAYLOR: Your Honor, nothing further.

10 THE COURT: Mr. Johnson, any cross-examination?

11 MR. JOHNSON: If it please the Court and reserving any  
12 objections.

13 THE COURT: Certainly.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 Q Mr. Williams, is it okay if I call you Chet?

17 A Absolutely. We've known each other a long time.

18 Q You have rightly been referred to as an expert on real  
19 estate matters. You have indicated that you drafted this  
20 contract?

21 A I did.

22 Q In this contract, it says reserving the right to  
23 receive from PRH. Was there a reason that you did not say  
24 but granting the rights --

25 A Can you direct me to the section of the contract that

1 case, it really quite honestly has little effect and I take  
2 the position I want to hear both sides before I make a  
3 decision in the case. So if you don't make it, I don't  
4 think that would have any bearing whatsoever on my decision  
5 in the case. As I indicated, I'll take it under advisement.  
6 If you feel like you need to put something on the record  
7 real quick, then I'll be glad to allow you to do that.

8 MR. JOHNSON: Can you just note that I made a motion  
9 for an involuntary nonsuit and you denied it.

10 THE COURT: So denied.

11 Who wants to go first, Mr. Johnson?

12 Mr. Murray?

13 MR. MURRAY: Mine may be quicker.

14 MR. JOHNSON: Okay, go ahead.

15 MR. MURRAY: I call Jeff Klapper.

16 JEFF KLAPPER,

17 after being duly sworn, testified as follows:

18 THE CLERK: Once you get seated, state your full name  
19 and spell out your last name for the record.

20 THE WITNESS: My name is Jeff Klapper, last name is  
21 K-L-A-P-P-E-R.

22 DIRECT EXAMINATION

23 BY MR. MURRAY:

24 Q Mr. Klapper, are you here with your wife today?

25 A (Witness nods).

1 Q You have to give a verbal response.

2 A Yes.

3 Q Where do you live now?

4 A I live in Aiken, South Carolina.

5 Q And did you previously live here in Beaufort?

6 A No, ever since I moved here about 25 years ago, I've  
7 lived in Aiken.

8 Q Did you own a lot here in Beaufort?

9 A Yes, I did, 158.

10 Q The one we've been talking about all day?

11 A Yes.

12 Q How did you come about getting that lot?

13 A I retired in '07, bought the lot to use as a  
14 recreational lot and I tried to retire again here a few  
15 years back because I seemed to be still working, and put it  
16 up on the bulletin board about a year and a half before Ms.  
17 Lorberbaum called me. It was posted for over a year and a  
18 half and it was on the website, also.

19 Q What were you trying to do?

20 A I was just trying to sell assets and retire.

21 Q Before today, have you ever seen in person anyone here  
22 in this courtroom besides me and your wife?

23 A No. The only people I have seen, and it was just for a  
24 couple of seconds during our mediation, was Paige and Mr.  
25 Turner, but it was very quick, just a quick glimpse.

1 Q How long was it after you closed that you heard  
2 anything about this?

3 A Well, gosh, almost two years. It seemed like they  
4 waited almost to the end of the two years expiration before  
5 this lawsuit was filed.

6 Q Did you think there was any controversy at all?

7 A No. I knew there was a hiccup. We were waiting for  
8 something. It supposedly was resolved. I didn't even pull  
9 the string on it. Mr. Johnson said okay. Christy sent the  
10 paperwork to me, my wife and I signed it, sent it back.  
11 Done deal.

12 MR. MURRAY: I don't have any further questions.

13 THE WITNESS: Okay.

14 THE COURT: Mr. Taylor, do you have any  
15 cross-examination?

16 MR. TAYLOR: Yes, sir.

17 THE COURT: While he's looking at that, let me ask you  
18 one question, did you say that Billy Bob signed a waiver  
19 when you bought Lot 158? Did you say that or did I  
20 misunderstand that?

21 THE WITNESS: No, that's correct.

22 CROSS-EXAMINATION

23 BY MR. TAYLOR:

24 Q Mr. Klapper, that was the area that I wanted to ask  
25 about because I want to make sure that I understand. You

1 had owned this lot for more than ten years. I think you  
2 bought it in 2007; is that correct?

3 A That's correct.

4 Q And you knew and understood when you closed the lot at  
5 the RV Resort on 158 that a waiver of the existing right of  
6 repurchase was required for you to buy the lot?

7 A Yes.

8 Q So you also then knew for the next ten years until you  
9 sold that the declaration of covenants which covers your lot  
10 was effective and had never been removed or gone away or  
11 anything like that?

12 A I had no reason to believe anything changed.

13 Q Thus, when you got ready to sell the lot in 2017, you  
14 knew and understood that a waiver of anyone's valid right of  
15 first refusal or right of repurchase was required in order  
16 to close your lot, right?

17 A That's correct.

18 Q Did it ever cross your mind to hire an independent  
19 attorney once Paige Lorberbaum called you and told you there  
20 was a problem that Turner was going to exercise his first  
21 right of refusal?

22 A Well, no, because I knew there was an attorney handling  
23 it and I had no idea that this was -- even existed, I guess,  
24 that there was a second party involved. As far as I knew  
25 Billy Bob's signed it, it was fine, everything was a go

1       until I heard there was a bump in the road here. And as I  
2       understood it, I knew Mr. Johnson was -- it didn't delay it  
3       that long and he was taking care of it.

4       Q       Just so the record is clear, Mr. Klapper, you did learn  
5       that Turner's Marina was asserting a right to exercise a  
6       first right of refusal prior to the closing from Ms.  
7       Lorberbaum, didn't you?

8       A       Yes.

9       Q       Sir, I want to hand you what's been previously entered  
10       into evidence as Plaintiff's No. 9. If you could look at  
11       the last page.

12       MR. TAYLOR: That is the closing statement, Your Honor.

13       Q       Mr. Klapper, I just want to ask you, I thought I heard  
14       you earlier say you had never talked to anybody, but there  
15       is an indication that Tom Johnson signed that settlement  
16       statement for you. Do you see what I'm talking about?

17       A       I see it signed at the bottom.

18       Q       Did you give permission to Mr. Johnson to sign that  
19       settlement statement for you prior to it being signed?

20       A       Not specifically. I received paperwork from his office  
21       and I said this looks fine. Do you agree with this? Are  
22       these numbers okay? I said, Yes, signed it, sent it back.  
23       That was it. When we got the final closing papers, it's the  
24       same thing, took them to the bank, got them notarized,  
25       signed them and sent them back.

1 Q And Mr. Klapper, just a couple more little clean-up  
2 items. The closing on this apparently occurred in or around  
3 April 22nd, 2019, right?

4 A Yes.

5 Q And the lawsuit was actually filed against you on May  
6 13th of 2020, 13 months later, right?

7 A Correct.

8 Q It was not anywhere near two years, it was right after  
9 the one year --

10 A It was a long time.

11 Q And Mr. Klapper, one other question, you entered a  
12 third defense that said you raised the defense of unclean  
13 hands, laches and equitable estoppel, that they waited,  
14 that the Plaintiff waited for a year and after taking 13  
15 monthly regime fees from Ms. Lorberbaum before attempting to  
16 assert its rights.

17 I just want to make sure that we have an understanding,  
18 do you understand that there is a homeowners association at  
19 the resort which collects regime fees, right?

20 A Yes.

21 Q That's not Turner Marina, do you understand that?

22 A Yes.

23 Q So that is inaccurate in your answer, right? Let me  
24 word it better. You don't take the position that Mr. Turner  
25 took Ms. Lorberbaum's money?

1 THE COURT: Any objection?

2 MR. JOHNSON: No objection.

3 THE COURT: 18 into evidence for the Plaintiff.

4 (Plaintiff's Exhibit No. 18 admitted into evidence.)

5 MR. TAYLOR: Judge, thank you.

6 THE COURT: Mr. Johnson, you want to call your client.

7 MR. JOHNSON: I call Paige Lorberbaum.

8 THE COURT: Come around, please, ma'am.

9 PAIGE LORBERBAUM,

10 after being duly sworn, testified as follows:

11 THE CLERK: After you're seated, please state your name  
12 and spell out your last name for the court reporter.

13 THE WITNESS: Paige Lorberbaum, L-O-R-B-E-R-B-A-U-M.

14 DIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q Ms. Lorberbaum, tell us a little bit about yourself.  
17 Where do you live?

18 A I'm currently staying at the RV Resort. I work at  
19 Rollers Wine and Spirits, Two Poppers (ph) and I sing with  
20 my awesome boyfriend over there, who also sings and plays  
21 guitar. I'm from Texas originally. That's about it.

22 Q And tell us in your own words about your first inquiry  
23 into Outdoor Resorts.

24 A So I was a homeowner in Bluffton for about four years.  
25 Got really sick of roommates and decided to sell my house

1 and invest in the property there. I was single at the time,  
2 didn't have kids and I thought it would be a good investment  
3 property. I made a decent return on my house in Bluffton  
4 and thought it would be a good idea and wanted to make that  
5 temporary decision because I didn't obviously have the need  
6 for a large house anymore.

7 And so I started to do some research and met some  
8 neighbors in the resort, talked to a lot of people, thought  
9 it would be a good idea. I decided to sell my house. I  
10 talked a lot to Tony, Neil's father. He was really nice.  
11 He had even suggested some different places locally to help  
12 me get a mortgage loan because it wasn't a typical mortgage  
13 on that type of lot.

14 So for a few months, he was in contact with me. He was  
15 aware that I had sold my house. He was aware that I had  
16 bought an RV at Camping World. We were texting back and  
17 forth. He recommended that I go to Coastal State Bank  
18 locally in Hilton Head, who ended up actually approving my  
19 loan. So he was aware during that whole process. And like  
20 I said, he was quite pleasant to deal with throughout that  
21 time.

22 I was actually getting ready to go on a really cool  
23 trip to Poland and Israel for Holocaust remembrance trip  
24 with some people in Savannah. It was like right after we  
25 were supposed to be closing on the property. So I was

1 pretty frantic when I got the word that they were interested  
2 in purchasing the property because I had already obviously  
3 made the decision to sell my house and was staying at my  
4 dad's house in Hilton Head Plantation at the time. The RV  
5 was already supposed to be delivered. We already had the  
6 closing date set.

7 The property, like Jeff said, was for sale for over a  
8 year and a half with Tony and Neil being aware I had already  
9 made these plans, they were also aware that I had planned on  
10 using my lot for my own purposes. Obviously, not  
11 permanently, it was just a temporary investment for me to  
12 stay there for a while until, hopefully, having a family one  
13 day and moving that RV off that lot and using the rental  
14 income for myself for a long-term investment property.

15 That was my first interactions with them moving into  
16 the closing process.

17 Q And just tell us what happened next.

18 A As soon as I found out from Christy -- well, my first  
19 interaction with the first right of refusal was an e-mail  
20 from Christy saying we were waiting on a waiver. I wasn't  
21 aware it was a first right of refusal waiver. I didn't even  
22 know what that was at the time. I was just aware that we  
23 were waiting on paperwork, which was a waiver at that time.  
24 And as soon as I heard that they were trying to purchase the  
25 property out from under me at that point, I was obviously

1 quite upset and frantic and was leaving the country the next  
2 week.

3 So I called and spoke to Neil personally, pleaded with  
4 him just on a very personal level and told him my situation  
5 and asked if there was something that would sway his mind  
6 into not obviously going through with purchasing that lot.  
7 And he said he would try to make a quick decision, but at  
8 that time, he hadn't even evaluated the property yet.

9 I was obviously very upset and I called and spoke with  
10 you and you felt for me. Over that weekend, you took a lot  
11 of time and dove through all these papers to my  
12 understanding and found that there was, indeed, no first  
13 right of refusal. And that's when you informed me that they  
14 didn't have the first right of refusal and that we could  
15 move forward with closing like we had planned. So I  
16 personally called Jeff Klapper and told him that based on  
17 the paperwork that you researched that we were advised that  
18 we could move forward with the closing. So that's what we  
19 did.

20 I was never informed on the phone that Neil was trying  
21 to actually enact his first right. Like I said, he hadn't  
22 even informed me that he had done his due diligence on the  
23 property at that time. He said he needed more time to  
24 actually look at the property and that he was going to take  
25 his time doing that. So that's how it proceeded from my

1 Q Changing the subject somewhat, you -- what was your job  
2 before your current job?

3 A I was the sales manager at the Beach House Resort.

4 Q Did that involve renting vacation spots?

5 A I was the wedding sales manager, so I was in charge of  
6 selling certain events, but I also had to sell room blocks  
7 to large groups that were coming into town.

8 Q In the time you've been there, have you ever observed  
9 all of the lots being full at one time?

10 A No.

11 Q How often are there multiple vacant lots that nobody is  
12 renting on a short-time basis?

13 MR. TAYLOR: Your Honor, object as to relevancy.

14 THE COURT: I'm going to overrule your objection.

15 You can answer, if you know, ma'am.

16 THE WITNESS: Very often. The lot right next to me in  
17 the last three years, I'm estimating, has rented  
18 approximately a total of three weeks. I'm there every day  
19 and it's empty on a regular basis.

20 BY MR. JOHNSON:

21 Q Do you have any opinion that if Mr. Turner had your lot  
22 that it would have been rented every single week?

23 A The lot next to me and my lot is in a very difficult  
24 spot to park, like, to pull in, and I'm guessing that that's  
25 why. Jeff also mentioned that. When my RV was delivered,

1 they had a really difficult time parking it. It's just a  
2 really weird spot because of the way the road is, especially  
3 for larger rigs, it's a very awkward way to back it in. So  
4 I'm assuming that's why the lot next to me doesn't rent  
5 quite often because people get scared of trying to get their  
6 rigs in there.

7 My lot also floods a lot. Like he said, it's in a  
8 low-lying spot, so every time it rains, I get a good four  
9 inches of water I have to step through.

10 Q Is the community more -- in your opinion and experience  
11 more appealing or less appealing than it was some time back?

12 A The environment has gotten extremely hostile over the  
13 last few years of being there. It's much less enjoyable  
14 now.

15 Q Give us some examples that you feel like -- give me  
16 some examples if you think it would be relevant to the  
17 marketability or presentability of those spaces?

18 MR. TAYLOR: Objection, relevancy.

19 THE COURT: I'm going to overrule that.

20 You may answer it, if you know.

21 THE WITNESS: There are a lot of regulations that have  
22 been changed since I have got my lot there. The rental  
23 process has changed dramatically and a lot of owners have  
24 began keeping their rigs on their lots, even though they're  
25 not physically there because the rental process is such a

1 MR. TAYLOR: Objection, Your Honor. Asking for  
2 character witness, which is character testimony, which is  
3 highly inappropriate.

4 THE COURT: I think that probably goes beyond the  
5 issues that we have in this case. I'll sustain the  
6 objection.

7 MR. JOHNSON: That was not my intent, but I realize --  
8 BY MR. JOHNSON:

9 Q Ms. Lorberbaum, at the time you were told there were  
10 dueling rights of first refusal, were you at that point in a  
11 position to simply take that on faith because Mr. Turner  
12 told you that?

13 A No.

14 MR. JOHNSON: Indulge me one moment, Your Honor.

15 THE COURT: Oh, yeah, I'll indulge you.

16 (Pause.)

17 MR. JOHNSON: Thank you, ma'am. Please answer any  
18 questions anyone else might have.

19 THE COURT: Mr. Taylor, do you have any cross?

20 MR. TAYLOR: Yes, sir, please.

21 CROSS-EXAMINATION

22 BY MR. TAYLOR:

23 Q Ms. Lorberbaum, I was confused, I thought you just said  
24 that Neil Turner told you about the dueling rights of first  
25 refusal, but I thought you also said you had never spoken

1 with him before this. How did you first learn there was a  
2 controversy over Turner's Marina's assertion of a right of  
3 first refusal?

4 A I had never spoken to Neil before our phone call that  
5 day.

6 Q What generated your phone call? Because I presume you  
7 were upset about supposedly Turner's Marina trying to assert  
8 their right of first refusal; am I correct?

9 A Yes, that was my first time speaking to Neil.

10 Q How did you learn of this?

11 A When Christy e-mailed me saying that they were waiting  
12 on that waiver, she -- I didn't know what that waiver was  
13 and I spoke to the Johnson Law Office further and learned  
14 what that was. And that's when I called the RV Resort and  
15 Tony wasn't available and I spoke to Neil on the phone for  
16 the very first time.

17 Q And you discussed with him -- and this was prior to  
18 April the 19th of 2019, right? It was the Wednesday before  
19 that?

20 A I don't remember what day it was.

21 Q It was several days before the supposed closing was  
22 going to happen?

23 A It was probably on a Wednesday, because Friday and then  
24 Monday. That sounds right.

25 Q Ms. Lorberbaum, when you talked a few minutes ago about

1 the pad beside you never having rented in the time that  
2 you've lived there --

3 A I didn't say it never rented. I said I estimated  
4 probably a total of three weeks.

5 Q Okay. If Mr. Turner's records show that it has rented  
6 over 80 nights during that timeframe, would you be  
7 surprised?

8 A Yes, very surprised. You're saying over the last three  
9 years?

10 Q Yes. In fact, you have lived permanently on that lot  
11 for three years since you got there, right?

12 A I have kept my rig there for three years, yes, on my  
13 property.

14 Q Have you lived there as your primary residence  
15 consistently for the three years since you bought it?

16 A Yes.

17 Q Notwithstanding the fact that you know the covenants  
18 prohibit permanent living quarters being made on any lot?

19 A I have abided by the covenants by keeping my rig ready  
20 and submitting the approval necessary by getting my rig  
21 inspected every six months and submitting that to the HOA  
22 per the covenants.

23 Q And you are aware that whatever the entity was that  
24 took away the dog poop stations was not Neil Turner, right,  
25 or Turner's Marina? That was your homeowners association.

1 boyfriend in our vehicles two nights ago.

2 Q So you were pulling out?

3 A Yes.

4 Q Which was on the right side?

5 A Yes.

6 Q And what was Mr. Turner doing, I'm sorry?

7 A He was leaving on a one-way and he almost hit us and  
8 continued to tail us after waving at us and he knew it was  
9 us.

10 Q Ms. Lorberbaum, what's your educational background? Do  
11 you have a college degree?

12 A I have a psychological degree with a marketing minor.

13 Q You indicated earlier that you thought you were going  
14 to make a good investment on the property here at the RV  
15 Resort, right?

16 A Yes, sir.

17 Q Would it be correct to assume that you probably got the  
18 declaration of covenants and read them before you decided to  
19 make an investment of \$54,000?

20 A Did I read every single word of the covenants before I  
21 bought the property?

22 Q My question was did you get the covenants and read  
23 them?

24 A I probably didn't read every single word.

25 Q Did you read 12.9 that provided for a right of first

1 refusal?

2 A No, I did not.

3 Q Now, tell me, please, about what Mr. Johnson told you  
4 when -- as specifically as you can remember, ma'am. I wrote  
5 down Tom Johnson told you that there was no first right of  
6 refusal. What were you told?

7 A I was told that we had the first right of refusal  
8 waiver signed by Billy Bob's Marina and I was told that  
9 there was no first right of refusal needed from the Turners  
10 because it was -- they hadn't met one of either of those  
11 stipulations of the two years or the financial obligation.

12 Q What was relayed to you was that the right of first  
13 refusal that had the contingencies on it had not been met,  
14 right?

15 A Yes. I was told they didn't have a first right of  
16 refusal.

17 Q Because those contingencies had not been met?

18 A Correct.

19 Q Ms. Lorberbaum, last question, you have what is known  
20 as a fifth wheel RV, right?

21 A Yes.

22 Q How big is it?

23 A Thirty-six feet.

24 Q And what do you pull it with?

25 A Nothing currently.

1 A Can you repeat --

2 Q Anybody demand that you leave the property after the  
3 sale?

4 THE COURT: I think what he's asking is from the time  
5 you bought the property until the time you were served with  
6 the lawsuit, during that period of time, 13 months, have you  
7 -- did anyone make any demands for you to leave the  
8 property?

9 THE WITNESS: No.

10 MR. MURRAY: That's all.

11 THE COURT: All right.

12 Mr. Johnson, do you have anything in followup?

13 MR. JOHNSON: No, sir.

14 MR. TAYLOR: Your Honor, one question, please?

15 THE COURT: Yes, sir.

16 RE-CROSS-EXAMINATION

17 BY MR. TAYLOR:

18 Q Ms. Lorberbaum, do you contend that between the time  
19 you closed on the property and the time that you received  
20 the lawsuit that you extended any sums of money on the lot  
21 itself for improvements or otherwise?

22 A Not on the lot.

23 MR. TAYLOR: That's it, Judge. Thank you.

24 THE COURT: You can step down, ma'am.

25 So I think that concludes the Defense witnesses.