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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr.

Appellate Case No.: 2023-001099

TNT and More, Inc., d/b/a Crab Catchers on the Waterfront Appellant,

v.

TnW and More, LLC d/b/a Little River Water Sports, Eric Rolf, Justin Whitley, and Stephen
Rolf individually, a/k/a Atlantic Jet Ski Rentals, LLC d/b/a East Coast Jet Ski Adventures
..... Respondents.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

STATEMENT OF ISSUES ON APPEAL vi

STATEMENT OF THE CASE.....1

STANDARD OF REVIEW1

STATEMENT OF FACTS.....2

ARGUMENT.....9

 I. THE COURT ERRED IN FAILING TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW WARRANTING INJUNCTIVE RELIEF FOR EAST COAST.....9

 II. THE COURT ERRED IN FINDING IT WAS OBLIGATED TO GIVE CONTROLLING EFFECT TO THE ORDER DATED JUNE 6, 2022, SIGNED BY JUDGE JOHN IN A SEPARATE MATTER.....10

 III. THE COURT ERRED IN GRANTING EAST COAST’S MOTION FOR A TEMPORARY INJUNCTION TO THE EXTENT IT REQUIRED THE RESTORATION OF “THE UNPERMITTED HUT AND ELECTRONIC SYSTEMS” TO THEIR PREVIOUS UNPERMITTED CONDITIONS AND LOCATION, WHICH WILL UPEND THE CURRENT RESTORED STATUS QUO OF CRAB CATCHERS’ PROPERTY (TAX MAP #131-03-05-043) AND CAUSE THE USE OF CRAB CATCHERS’ PROPERTY TO BE IN DIRECT VIOLATION OF JUDGE MAYER’S UN-APPEALED ABATEMENT ORDER AS WELL AS CERTAIN PROVISIONS OF THE HORRY COUNTY’S CODE ORDINANCES ALL OVER AGAIN.....11

 IV. THE COURT ERRED IN PERMITTING EAST COAST TO CHANGE THE SCOPE OF ITS REQUESTED TEMPORARY INJUNCTION TO PROSPECTIVE RELIEF FOR FUTURE AND ANTICIPATED VIOLATIONS THAT MIGHT NEVER OCCUR FROM WHAT WAS ORIGINALLY REQUESTED IN ITS FILED MOTION.....13

 V. THE COURT ERRED IN GRANTING EAST COAST’S MOTION FOR TEMPORARY INJUNCTION DUE TO ITS LACK OF STANDING. SPECIFICALLY, EAST COAST PRESENTED NO EVIDENCE AT THE HEARING DEMONSTRATING IT HAD A RIGHT, TITLE, OR INTEREST IN CRAB CATCHERS’ SUBJECT PROPERTY (TAX MAP #131-03-05-043) WHERE THE UNPERMITTED “SHED” HAD BEEN PREVIOUSLY LOCATED AND ORDERED TO BE REMOVED FROM

THE PROPERTY PURSUANT TO AN UN-APPEALED ABATEMENT ORDER SIGNED BY JUDGE MAYERS.14

VI. THE COURT ERRED IN CONSIDERING SUPPLEMENTAL EVIDENCE UNILATERALLY PRESENTED BY EAST COAST’S COUNSEL AFTER THE PRELIMINARY MANDATORY INJUNCTION HEARING HAD ALREADY CONCLUDED ON SEPTEMBER 27, 2022. THE COURT IMPROPERLY RELIED UPON THE PRIOR ORDERS AND FINDING IN PART FILED IN THE COMPANION ACTION (CASE NO. 2021-CP-26-01512) IN GRANTING EAST COAST’S MOTION FOR TEMPORARY INJUNCTION.17

VII. THE COURT ERRED IN GRANTING EAST COAST’S MOTION FOR A TEMPORARY INJUNCTION WITHOUT FIRST REQUIRING IT TO POST AN ADEQUATE SECURITY BOND AS MANDATED BY RULE 65(C), SCRC. STATED DIFFERENTLY, NO ADEQUATE SECURITY BOND HAS BEEN POSTED BY EAST COAST.19

CONCLUSION21

TABLE OF AUTHORITIES

Cases

<u>Adlerman & Sons Co. v. Wilson</u> , 69 S.C. 156, 48 S.E. 85 (1904).....	15
<u>Aggarao v. MOL Ship Mgmt. Co.</u> , 675 F.3d 355, 378 (4th Cir. 2012).....	19
<u>AJG Holdings, LLC v. Dunn</u> , 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).....	27
<u>Alberti v. Cruise</u> , 383 F.2d 268 (4th Cir. 1967)	16, 17
<u>Atwood Agency v. Black</u> , 374 S.C. 68, 646 S.E.2d 882 (2007)	27
<u>Brinkley v. S.C. Dep't of Corr.</u> , 386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009)	9
<u>Buckner v. Preferred Mut. Ins. Co.</u> , 255 S.C. 159, 177 S.E.2d 544 (1970)	14
<u>Byerly v. S.C. Nat. Bank Corp.</u> , 313 S.C. 385, 438 S.E.2d 233 (1993).....	22
<u>Charleston Joint Venture v. McPherson</u> , 308 S.C. 145, 417 S.E.2d 544 (1992).....	22
<u>County Council of Charleston v. Felkel</u> , 244 S.C. 480, 137 S.E.2d 577 (1964).....	15
<u>Crossmann Communities of N. Carolina, Inc. v. Harleysville Mut. Ins. Co.</u> , 411 S.C. 506, 769 S.E.2d 453 (Ct. App. 2015).....	13
<u>Denman v. City of Columbia</u> , 387 S.C. 131, 691 S.E.2d 465 (2010)	21
<u>Elam v. S.C. Dep't of Transp.</u> , 361 S.C. 9, 602 S.E.2d 772 (2004).....	8
<u>Epps v. Bryant</u> , 218 S.C. 359, 62 S.E.2d 832 (1950).....	27
<u>Ex Parte Zeigler</u> , 83 S.C. 78, 64 S.E. 513 (1909).....	28
<u>George Sink PA Inj. Laws. v. George Sink II L. Firm LLC</u> , No. 2:19-CV-01206-DCN, 2019 WL 6318778 (D.S.C. Nov. 26, 2019)	16
<u>George Sink, P.A. Inj. Laws. v. George Sink II L. Firm LLC</u> , 407 F. Supp. 3d 539, 549–50 (D.S.C. 2019)	16, 18
<u>Good v. Jarrard</u> , 93 S.C. 229, 76 S.E. 698 (1912).....	23
<u>Greenwood County v. Shay</u> , 202 S. C. 16, 23 S. E. 2d 825 (1943)	15
<u>Helsel v. City of N. Myrtle Beach</u> , 307 S.C. 29, 413 S.E.2d 824 (1992).....	16
<u>Knohl v. Duke Power Co.</u> , 260 S. C. 374, 196 S. E.2d 115 (1973)	14, 15, 28
<u>MailSource, LLC v Bailey & Assocs.</u> , at 368, 588 S.E.2d at 638 (Ct. App. 2003)	14, 15
<u>Mayflower Industries v. Thor Corp.</u> , 182 F.2d 80 (3rd Cir. 1950)	16
<u>Momeier v. John McAlister, Inc.</u> , 203 S.C. 353, 27 S.E.2d 504 (1943)	22
<u>Narruhn v. Alea London Ltd.</u> , 404 S.C. 337, 745 S.E.2d 90 (2013).....	17
<u>Peek v. Spartanburg Reg 7 Healthcare Sys.</u> , 367 S.C. 450, 626 S.E.2d 34 (Ct App. 2005)	14
<u>Powell v. Immanuel Baptist Church</u> , 261 S.C. 219, 199 S.E.2d 60 (1973).....	15, 18
<u>S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank</u> , 403 S.C. 640, 744 S.E.2d 521 (2013).....	24
<u>S.C. Pub. Serv. Auth. v. S.C. Power & Light Co.</u> , 224 S.C. 466, 137 S.E.2d 507 (1964).....	14, 15
<u>Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.</u> , 361 S.C. 117, 603 S.E.2d 905 (2004).....	14
<u>Shirley's Iron Works, Inc. v. City of Union</u> , 403 S.C. 560, 743 S.E.2d 778 (2013)	14
<u>Sloan Constr. Co. v. Southco Grassing, Inc.</u> , 395 S.C. 164, 717 S.E.2d 603 (2011).....	14
<u>Stemple v. Bd. of Ed. of Prince George's Cnty.</u> , 623 F.2d 893 (4th Cir. 1980).....	19
<u>T & R Assocs., Inc. v. City of Amarillo</u> , 601 S.W.2d 178 (Tex. Civ. App. 1980)	19
<u>Transcon. Gas pipeline Corp. v. Porter</u> , 252 S. C. 478, 167 S. E. 2d 313 (1969).....	14
<u>Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund</u> , 389 S.C. 422, 699 S.E.2d 687 (2010).....	14
<u>Williamsburg Rural Water and Sewer Co., Inc. v. Williamsburg County Water and Sewer Authority</u> , 367 S.C. 566, 627 S.E.2d 690 (2006).....	26

Statutes

11A WRIGHT & MILLER, FED. PRAC. & PROC. § 2948.....	19
---	----

43A C.J.S. Injunctions § 27.....19
43A C.J.S. Injunctions § 50.....21
12 S.C. Jur. Equity § 19 (1992).....27, 29
Jur. Injunctions § 1322

Rules

Rule 52, South Carolina Rules of Civil Procedure.....8
Rule 59, South Carolina Rules of Civil Procedure.....8
Rule 59(e), South Carolina Rules of Civil Procedure8
Rule 65, South Carolina Rules of Civil Procedure.....8, 14
Rule 65(c), South Carolina Rules of Civil Procedure26, 27, 29
Rule 65(d), Federal Rules of Civil Procedure 16
Rule 65(d), South Carolina Rules of Civil Procedure16, 28
Rule 210, South Carolina Appellate Court Rules.....26

STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE COURT ERR IN FAILING TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW WARRANTING INJUNCTIVE RELIEF FOR EAST COAST?
- II. DID THE COURT ERR IN FINDING IT WAS OBLIGATED TO GIVE CONTROLLING EFFECT TO THE ORDER DATED JUNE 6, 2022, SIGNED BY JUDGE JOHN IN A SEPARATE MATTER?
- III. DID THE COURT ERR IN GRANTING EAST COAST'S MOTION FOR A TEMPORARY INJUNCTION TO THE EXTENT IT REQUIRED THE RESTORATION OF "THE UNPERMITTED HUT AND ELECTRONIC SYSTEMS" TO THEIR PREVIOUS UNPERMITTED CONDITIONS AND LOCATION, WHICH WILL UPEND THE CURRENT RESTORED STATUS QUO OF CRAB CATCHERS' PROPERTY (TAX MAP #131-03-05-043) AND CAUSE THE USE OF CRAB CATCHERS' PROPERTY TO BE IN DIRECT VIOLATION OF JUDGE MAYER'S UN-APPEALED ABATEMENT ORDER AS WELL AS CERTAIN PROVISIONS OF THE Horry COUNTY'S CODE ORDINANCES ALL OVER AGAIN?
- IV. DID THE COURT ERR IN PERMITTING EAST COAST TO CHANGE THE SCOPE OF ITS REQUESTED TEMPORARY INJUNCTION TO PROSPECTIVE RELIEF FOR FUTURE AND ANTICIPATED VIOLATIONS THAT MIGHT NEVER OCCUR FROM WHAT WAS ORIGINALLY REQUESTED IN ITS FILED MOTION?
- V. DID THE COURT ERR IN GRANTING EAST COAST'S MOTION FOR TEMPORARY INJUNCTION DUE TO ITS LACK OF STANDING. SPECIFICALLY, EAST COAST PRESENTED NO EVIDENCE AT THE HEARING DEMONSTRATING IT HAD A RIGHT, TITLE, OR INTEREST IN CRAB CATCHERS' SUBJECT PROPERTY (TAX MAP #131-03-05-043) WHERE THE UNPERMITTED "SHED" HAD BEEN PREVIOUSLY LOCATED AND ORDERED TO BE REMOVED FROM THE PROPERTY PURSUANT TO AN UN-APPEALED ABATEMENT ORDER SIGNED BY JUDGE MAYERS?
- VI. DID THE COURT ERR IN CONSIDERING SUPPLEMENTAL EVIDENCE UNILATERALLY PRESENTED BY EAST COAST'S COUNSEL AFTER THE PRELIMINARY MANDATORY INJUNCTION HEARING HAD ALREADY CONCLUDED ON SEPTEMBER 27, 2022. THE COURT IMPROPERLY RELIED UPON THE PRIOR ORDERS AND FINDING IN PART FILED IN THE COMPANION ACTION (CASE NO. 2021-CP-26-01512) IN GRANTING EAST COAST'S MOTION FOR TEMPORARY INJUNCTION?
- VII. DID THE COURT ERR IN GRANTING EAST COAST'S MOTION FOR A TEMPORARY INJUNCTION WITHOUT FIRST REQUIRING IT TO POST AN

ADEQUATE SECURITY BOND AS MANDATED BY RULE 65(C), SCRPC. STATED DIFFERENTLY, NO ADEQUATE SECURITY BOND HAS BEEN POSTED BY EAST COAST?

STATEMENT OF THE CASE

Plaintiff, TNT and More, Inc., d/b/a Crab Catchers on the Waterfront (“Crab Catchers”), by and through its undersigned counsel, moves before the Honorable J. Cordell Maddox, Jr. within ten (10) days after the service hereof or at such other time as counsel may be heard to reconsider, alter, or amend the Court’s Order granting the Defendants Eric Rolf, Justin Whitley, and Stephen Rolf, Individually and a/k/a Atlantic Jet Ski Rentals, LLC, d/b/a East Coast Jet Ski Adventures’ (collectively, and hereinafter “East Coast”) Motion for a Temporary Injunction, pursuant to Rule 65, SCRCP. Crab Catchers received the signed and filed Order on November 30, 2022. This Motion is made pursuant to Rules 52 and 59 SCRCP, and the following grounds in support of Crab Catchers’ Motion to reconsider, alter, or amend or vacate the Court’s Order are discussed in more specific detail and set forth below:

STANDARD OF REVIEW

Rule 59(e) allows a court to alter or amend a judgment upon a party's timely motion. A motion under Rule 59(e) has long been viewed as a “motion for reconsideration.” Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A motion to reconsider pursuant to Rule 59(e), SCRCP, is appropriate in two basic situations. First, “[a] party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Id. at 24, 602 S.E.2d at 780. Second, “[a] party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Id. The decision to grant relief under Rule 59 rests within the sound discretion of the trial judge and will not be disturbed on appeal unless the “findings are wholly unsupported by the evidence or the conclusions reached

are controlled by error of law.” Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 184, 687 S.E.2d 54, 56 (Ct. App. 2009).

STATEMENT OF THE FACTS

TNT and More, Inc. (“Crab Catchers”) was incorporated on June 23, 1997. It was formed to operate a restaurant business called Crab Catchers on the Waterfront, located at 4474 Waterfront Avenue in Little River, South Carolina. Crab Catchers owns the property located at 4474 Waterfront Ave as well as the adjacent parking lot located at 4412 Waterfront Ave.

In July of 2016, TnW was formed for the purpose of operating a marina and recreational fishing charter business in Little River, known as Little River Water Sports. TnW’s business is located on the property bearing TMS No. 131-03-05-023 which sits adjacent and contiguous to all of Crab Catchers’ properties.

In 2016, to help TnW finance the construction of its marina and recreational fishing charter business as well as the purchase of the real property bearing TMS No. 131-03-05-023, Crab Catchers agreed to put up the restaurant business and its properties as collateral for the commercial loan, thus enabling TnW to borrow from United Community Bank (“UCB”) the sum of \$1,100,000.00. (Affidavit of Robert Benoit, R. p. ____.) The Loan documents were completed in November of 2017, and as security for the aforesaid commercial property improvement loan, the parties permitted the bank to place mortgages on their real properties as set forth below:

1. Mortgage – TMS Nos.: 131-03-05-043; 131-03-03-013; 131-03-05-024; 131-03-03-019; 131-03-03-018; 131-03-03-020; and 131-03-05-025. The Mortgagor was TNT, and the security agreement was executed on November 29, 2017; and
2. Mortgage – 1.5 acres located adjacent to TMS No. 131-03-05-024. The Mortgagor was TnW, and the security agreement was executed on November 29, 2017.

A Critical Area and Water Quality Permit No.: 2017-00414 was issued by SC Department of Health and Environmental Control (“SCDHEC”) Office of Ocean and Coastal Resource

Management (“OCRM”) to TnW on July 27, 2017 to modify an existing dock located on the Plaintiff’s property listed as Tax Identification No.: 131-03-05-024 for the installation of a 4’ x 20’ ramp to access a new 15’ x 15’ floating dock and a new 5’ x 20’ floating finger pier; and the installation of a new 5’ x 183’ access floating dock, and five new 5’ x 30’ floating finger piers on TnW’s property. The purpose for the authorized work, according to the permit, “*is to provide patron access to the Crab Catchers restaurant and to allow dockage of recreational fishing charters to embark and disembark patrons at this location.*” (Emphasis added).

On October 30, 2017, Horry County Planning and Zoning Department approved and issued Commercial Permit No.: 10-17-77947 to TnW for the construction of a floating dock marina. This permit was approved for the installation of a 4’x20’ ramp to access a 15’x15’ floating dock, a 5’x183’ access floating dock, five (5) 5’x30’ floating dock piers, and a 5’x20’ floating finger pier. This permit received its final inspection and was closed out on March 31, 2019. The building permit described above also contained a handwritten provision stating “*Absolutely no other work or construction other than what is on OCRM permit/Placard. No structures on pier.*” (Emphasis added).

On March 4, 2021, TnW entered into a dock lease agreement with Atlantic Jet Ski Rentals, LLC, d/b/a East Coast Jet Ski Adventures (“East Coast”) without receiving prior approval from the Crab Catchers or UCF. Per the terms of the commercial lease, East Coast had the right to occupy and use the designated dock known as the Little River Water Sports Marina (“LRWS Marina”) Pier A and slips 6, 7, 11, and 12 appurtenant to such designated dock for the operation of its jet ski rental business. However, East Coast has never had the right to operate its jet ski rental business in an un-permitted “shed” located on the Crab Catchers’ property bearing (Tax Map #131-03-05-043). East Coast has acknowledged this fact yet continues to trespass on the Crab Catchers’

real property by using and occupying the un-permitted “shed” to operate its Jet Ski rental business without Crab Catchers’ permission. (Lease Agreement, R. p. ____). Crab Catchers has sued East coast for trespass in the Court of Commons Pleas under Civil Action No.: 2021 –CP-26-04496.

On January 31, 2022, the Horry County Code Enforcement Department issued two Uniform Ordinance Summons (Uniform Ordinance Summons numbered: HCS 002691 and HCS 002693, issued to Donald Kettner, R. p.____.) numbered: HCS 002691 and HCS 002693 for the failure to obtain a Building Permit under Section 105.1, to Donald Kettner of TNT for violations committed by TnW by the placement of unpermitted structures on Crab Catchers’ real property, as follows:

1. Uniform Ordinance Summons 002691 involved the placement of an unpermitted structure known as the “shed” on Crab Catchers’ property; and
2. Uniform Ordinance Summons 002693 involves modifying a fueling system located on Crab Catchers’ property without a building permit.

On April 6, 2022, prior to the hearing commencing on the citation for the unpermitted “shed”, TnW’s counsel, Ms. Golding, showed up without prior written notice and presented several motions to Honorable Bradley Mayers (“Judge Mayers”) for his review, including a motion to intervene. None of the motions were presented to Crab Catchers’ counsel prior to the hearing. Because prior notice was not provided, Judge Mayers stated he “needed to review these documents and would continue the hearing to May 4th”. The May 4th hearing date was recommended by David Jordan, attorney for Horry County, because there was already a hearing scheduled on a separate citation issued to Crab Catchers. All parties agreed and then left the courtroom.

On May 4, 2022, the citation hearing commenced; however, TnW’s counsel, Ms. Golding, was not in attendance. Upon information and belief, several attempts were made by Judge Mayers’ office and officials from the Commercial Building Department to contact Ms. Golding, but they

were unsuccessful. The citation hearing proceeded with Crab Catchers entering a guilty plea and Judge Mayers accepting that plea. Judge Mayers then assessed a \$500.00 fine against Crab Catchers and at the recommendation of David Jordan and Crab Catchers' counsel, verbally ordered the unpermitted structure to be removed from the subject property within thirty (30) days.

On June 1, 2022, at another citation hearing, Judge Mayers signed a written abatement order requiring Crab Catchers to remove the unpermitted "Shed" from its property within ten (10) days from its execution. (Judge Mayers Orders, R. p. ____.)

Notice of abatement order was sent to TnW' counsel on June 2, 2020 by Attorney Michael Harrison. TnW was given seven (7) days to respond and remove the unpermitted "shed" from Crab Catchers' property. TnW's counsel responded that same day and informed Attorney Harrison that her clients would not remove the shed from Crab Catchers' property. Robert Benoit, a shareholder of Crab Catchers, scheduled the date of the shed removal for the morning of June 9, 2022. Prior to removal of the unpermitted shed from Crab Catchers' property, the shed needed to be repositioned in the back of Crab Catchers' parking lot to allow the carrier easy access away from overhead power lines. The relocation of the unpermitted shed occurred on the evening of June 5, 2022, after the restaurant had closed and the parking lot was empty. Before relocating the unpermitted shed, Mr. Benoit contacted Horry County Police Department ("HCPD") and requested an officer come by to review the abatement order issued by Judge Mayers and to advise him of Crab Catchers' intent to remove the unpermitted "shed" from Crab Catchers' property. Mr. Benoit did this to ensure the HCPD had visibility of what he was doing so it would not be construed as something illegal. Horry County Police Department Patrol Officer, Corporal Smith, who arrived at Crab Catchers around 10:00 p.m. reviewed the abatement order and found that Mr. Benoit was, in fact, acting in accordance with the requirements of the abatement order.

On June 9, 2022, at 7:30 a.m., Mr. Benoit contacted HCPD again and requested their assistance while Crab Catchers' owners removed the unpermitted "shed" from Crab Catchers' property. Mr. Benoit anticipated that there may be some resistance from TnW or East Coast and having the police there was merely to keep the peace. Prior to loading the unpermitted "shed" for removal, Mr. Benoit presented the abatement order to Horry County Police Officer Sargent Lee. Sgt Lee read the order and then contacted Judge Mayers directly by phone. Judge Mayers verified the order was correct and to allow Crab Catchers' owners to proceed with removing the unpermitted "shed" from Crab Catchers' property. The unpermitted "shed" was finally removed from Crab Catchers' property at approximately 8:25 a.m. on June 9, 2022.

On June 13, 2022, East Coast filed an Ex Parte Motion for Expedited Emergency Injunction seeking a temporary mandatory injunction requiring the Crab Catchers to restore the "unpermitted hut and electronic systems" to their previous condition, which directly contradicts and countermands the previous lawful judgment and order of abatement issued by Judge Mayers.

On September 23, 2022, TnW's Motion for an Amendment of the Judgment or, alternatively, for a New Trial filed in Magistrates' Court on June 9, 2022 were both dismissed by Judge Mayers for failure to prosecute. See Crossmann Communities of N. Carolina, Inc. v. Harleystown Mut. Ins. Co., 411 S.C. 506, 524, 769 S.E.2d 453, 463 (Ct. App. 2015) (Under the law of the case doctrine, "[a]n un-appealed ruling is the law of the case and requires affirmance." Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010); see Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970) (finding an unchallenged ruling, "right or wrong, [was] the law of th[e] case"). "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743

S.E.2d 778, 785 (2013) (internal quotations marks omitted). The law of the case doctrine applies to issues explicitly decided and issues necessarily decided in the former case. Sloan Constr. Co. v. Southco Grassing, Inc., 395 S.C. 164, 170, 717 S.E.2d 603, 606 (2011).

STANDARD FOR GRANTING A TEMPORAY INJUNCTION

The granting of a temporary injunction is governed by Rule 65, SCRPC, "An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004); Peek v. Spartanburg Reg 7 Healthcare Sys., 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct App. 2005).

Three conditions must be met before a court can issue a temporary injunction pursuant to Rule 65, SCRPC. First, the "complaint must allege facts sufficient to state a cause of action for an injunction." MailSource, LLC v Bailey & Assocs., at 368, 588 S.E.2d at 638 (Ct. App. 2003); Knohl v. Duke Power Co., 260 S. C. 374, 376, 196 S. E.2d 115, 116 (1973) (citing S.C. Pub. Serv. Auth. v. S.C. Power & Light Co., 224 S.C. 466, 137 S.E.2d 507 (1964)).

Second, the complaint must demonstrate that the temporary injunction is "reasonably necessary to protect the interests of the moving party during pending litigation." Transcon. Gas pipeline Corp. v. Porter, 252 S. C. 478, 481, 167 S. E. 2d 313, 315 (1969). The law is well settled that in determining whether to issue a temporary injunction, "the merits of the case are not to be considered, except in so far as they may enable the court to determine whether prima facie showing has been made." Id. Therefore, it follows that when a prima facie showing has been made to demonstrate plaintiff's entitlement to relief, "a temporary injunction will be granted without regard to the ultimate termination of the case on its merits." Id. (citing Adlerman & Sons Co. v. Wilson, 69 S.C. 156, 48 S.E. 85 (1904)).

Third, the party seeking the temporary restraining order must show irreparable harm or damage if the injunction is not issued. Greenwood County v. Shay, 202 S. C. 16, 23 S. E. 2d 825 (1943). “A complaint fails to state a cause of action for the issuance of an injunction unless it contains allegations of fact upon which it may be concluded that a plaintiff has no adequate remedy at law.” Knohl, 260 S. C. at 376, 196 S. E.2d at 116 (citing S.C. Pub. Serv. Auth. v. S.C. Power & Light Co., 224 S.C. 466, 137 S.E.2d 507 (1964)) (holding that a “complaint fails to state a cause of action for injunctive relief unless facts are alleged which show that the plaintiff has no adequate and complete remedy at law”). The focus is not that the person seeking the injunction does not have a legal remedy, instead the person must not have an “adequate legal remedy.” Id.

“[T]he sole purpose of a temporary injunction is to preserve the status quo....” MailSource, LLC v. Bailey & Assocs. 356 S.C. 363, 367, 588 S.E.2d 635, 638 (quoting Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973)). “[A] temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation....” Id. (quoting County Council of Charleston v. Felkel, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964)). Stated differently, “[t]he Fourth Circuit has defined status quo in this context as the last uncontested status between the parties which preceded the controversy.” George Sink, P.A. Inj. Laws. v. George Sink II L. Firm LLC, 407 F. Supp. 3d 539, 549–50 (D.S.C. 2019), modified sub nom. George Sink PA Inj. Laws. v. George Sink II L. Firm LLC, No. 2:19-CV-01206-DCN, 2019 WL 6318778 (D.S.C. Nov. 26, 2019) (internal quotation marks and citation omitted). “A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction.” Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413

S.E.2d 824, 826 (1992). Thus, East Coast must allege facts sufficient to warrant an injunction *and* demonstrate the injunction’s necessity to protect its legal rights without prejudice to the rights of either party pending a hearing on the merits, which Plaintiffs have failed to do.

ARGUMENT

I. THE COURT ERRED IN FAILING TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW WARRANTING INJUNCTIVE RELIEF FOR EAST COAST.

Rule 65(d), SCRCF requires that “[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained;...” This Rule is the same as Rule 65(d), FRCP. The Fourth Circuit Court of Appeals has clearly stated that “[t]hese terms are mandatory and must be observed in every instance.” Alberti v. Cruise, 383 F.2d 268, 271-272 (4th Cir. 1967) (citing Mayflower Industries v. Thor Corp., 182 F.2d 80 (3rd Cir. 1950). “The Rule clearly requires that every restraining order and order granting an injunction shall (1) set forth the reasons for its issuance, (2) be specific in its terms, and (3) describe in reasonable detail and not be reference to the complaint or other document the act or acts sought to be restrained.” Id. at 271. (Emphasis added).

The Court in Alberti concluded that the Order at issue was not in compliance with Rule 65(d) because there was no finding by the court that the Defendant would suffer irreparable damage or that she had no adequate remedy at law in the event the injunction should be denied. Id. at 272. The Court remanded the case with directions to the District Court to vacate the injunction order because “*there were no specific findings of fact as required and no statement of conclusions of law to support the issuance of the injunction.*” Id. (Emphasis added). Similarly, in this matter, the Court has failed to make findings of fact and conclusions of law. The Order

signed by the Court fails to make any findings that East Coast would suffer irreparable harm or that East Coast has no adequate remedy at law, or that prima facie showing has been made to demonstrate East Coast's entitlement to relief. (Order Granting Defendants' Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----),

II. THE COURT ERRED IN FINDING IT WAS OBLIGATED TO GIVE CONTROLLING EFFECT TO THE ORDER DATED JUNE 6, 2022, SIGNED BY JUDGE JOHN IN A SEPARATE MATTER.

The Court states, "*In making its finding, the Court is guided by the previous finding and order issued by Judge John in the companion action. This Court is obliged to give controlling effect to that order and its finding.*" (Emphasis added). The Court appears to be referring to the general rule that prohibits one circuit court judge from overruling another. However, this is a separate matter. The general rule is inapplicable in this instance because the Court would not be overruling Judge John's Order. See Narruhn v. Alea London Ltd., 404 S.C. 337, 745 S.E.2d 90 (2013). Judge John's Order dealt with a matter in which East Coast was not a party to the case and Crab Catchers' counsel was not of record at the time of the hearing. As noted by East Coast, "*Judge John declined to resolve our motion at the same time.*" (Emphasis added). Judge John's Order dealt with a separate matter; therefore, the Court is not obligated to give controlling effect to that order and its findings in this matter.

Lastly, Judge John's Order specifically provides: "*this order does not address any other person or entity not named in the above-entitled manner,*" upon information and belief, to prevent East Coast from improperly acquiring standing through his order to bring a contempt claim against Crab Catchers. Accordingly, the Court erred in giving controlling effect to Judge John's Order and its findings, to the extent this Court allowed East Coast to acquire standing through Judge John's Order to bring a contempt claim for alleged future conduct against Crab Catchers on the disputed

parcel (PIN #:09020011/TMS #:131-03-05-023). Additionally, the Court erred in finding no detriment had occurred to Crab Catchers in granting East Coast's Motion which permits East Coast to bring a contempt claim for alleged future conduct against Crab Catchers based upon Judge John's order and its findings.

III. THE COURT ERRED IN GRANTING EAST COAST'S MOTION FOR A TEMPORARY INJUNCTION TO THE EXTENT IT REQUIRED THE RESTORATION OF "THE UNPERMITTED HUT AND ELECTRONIC SYSTEMS" TO THEIR PREVIOUS UNPERMITTED CONDITIONS AND LOCATION, WHICH WILL UPEND THE CURRENT RESTORED STATUS QUO OF CRAB CATCHERS' PROPERTY (TAX MAP #131-03-05-043) AND CAUSE THE USE OF CRAB CATCHERS' PROPERTY TO BE IN DIRECT VIOLATION OF JUDGE MAYER'S UN-APPEALED ABATEMENT ORDER AS WELL AS CERTAIN PROVISIONS OF THE HORRY COUNTY'S CODE ORDINANCES ALL OVER AGAIN.

The inherent purpose behind the equitable remedy of a temporary injunction: to preserve or restore the status quo and not to violate the status quo. See Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973) ("The sole purpose of a temporary injunction is to preserve the status quo . . ."). Stated differently, "[t]he Fourth Circuit has defined status quo in this context as the last uncontested status between the parties which preceded the controversy." George Sink, P.A. Inj. Laws. v. George Sink II L. Firm LLC, 407 F. Supp. 3d 539, 549–50 (D.S.C. 2019), modified sub nom. George Sink PA Inj. Laws. v. George Sink II L. Firm LLC, No. 2:19-CV-01206-DCN, 2019 WL 6318778 (D.S.C. Nov. 26, 2019) (internal quotation marks and citation omitted). "The status quo to be preserved by a preliminary injunction, however, is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the last uncontested status between the parties which preceded the controversy." Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 378 (4th Cir. 2012) (citing Stemple v. Bd. of Ed. of Prince George's Cnty., 623 F.2d 893, 898 (4th Cir. 1980)). See also, 43A C.J.S. INJUNCTIONS § 27 ("*The status quo that will be preserved by a preliminary*

injunction is the last, actual, peaceable, non-contested status that preceded the pending controversy, as it presently or formerly existed. This is the last uncontested set of facts preceding the pending controversy.”) (Emphasis added); 11A WRIGHT & MILLER, FED. PRAC. & PROC. § 2948 (“This standard allows the court to restore the status quo ante when the continuation of the situation would inflict irreparable harm on plaintiff.”).

Here, “the last uncontested status” before the present controversy should be defined as the time right before the marina and jet ski businesses began operating before violating building permits and critical area permit issued by Horry County in 2018 and DHEC–OCRM in 2017, respectively. Therefore, the current preliminary mandatory injunctive relief sought by East Coast disturbs and violates the law, rather than upholds the status quo. See 43A C.J.S. Injunctions § 27 (*The status quo, however, must be lawful and it thus cannot be a state of affairs that contravenes the law*) (Emphasis added). T & R Assocs., Inc. v. City of Amarillo, 601 S.W.2d 178 (Tex. Civ. App. 1980)(*On application of city for temporary injunction restraining operation of lounge in violation of zoning and building code ordinances of city, status quo to be preserved was status which existed before operation of lounge began in admitted violation of city's ordinance, and not state of affairs which would permit continuing violation of the law*) (Emphasis added).

Accordingly the Court erred in granting East Coast’s Motion for a Temporary Injunction to the extent it required the restoration of “the unpermitted hut and electronic systems” to their previous unpermitted conditions, which will upend the current restored status quo of Crab Catchers’ property (Tax Map #131-03-05-043) and cause the use of its property to be unlawful and in direct violation of Judge Mayer’s un-appealed abatement order and Horry County’s Code Ordinances all over again. (Order Granting Defendants’ Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----),

IV. THE COURT ERRED IN PERMITTING EAST COAST TO CHANGE THE SCOPE OF ITS REQUESTED TEMPORARY INJUNCTION TO PROSPECTIVE RELIEF FOR FUTURE AND ANTICIPATED VIOLATIONS THAT MIGHT NEVER OCCUR FROM WHAT WAS ORIGINALLY REQUESTED IN ITS FILED MOTION.

At the Motion hearing on September 29, 2022, East Coast’s counsel essentially abandoned its originally requested temporary mandatory injunctive relief: “*requiring Plaintiff]] (sic) to restore the hut and electronic systems to their previous condition prior to Plaintiff’s removal and damaging of the same,*” and instead were now requesting the Court (Email, R. p. ____.) to issue “*a temporary order pendente lite which mirrors the language of Judge Seals’ Emergency Temporary Restraining Order dated July 19, 2021 but does so in my clients (East coast jet ski. i.e., the tenant on the property) favor so that our client would have standing to seek a contempt order should the need arise.*” (Emphasis added). The Court confirms this bait and switch by East Coast’s counsel when it states in its Order: “East Coast now seeks an order simply restraining and enjoining Crab Catchers, any of its owners, members, employees, or agents, acting either directly or indirectly on its behalf, from trespassing onto the disputed parcel and from obstructing, tampering, or otherwise interfering in any way with East Coast’s business operations, its employees, customers, and/or property.” (Order, R. p. ____.).

In its Ex Parte Motion for Expedited Emergency Injunction (“Ex Parte Motion”) East Coast specifically stated “[Crab Catchers’] actions to remove, damage, and destroy the Jet Ski hut and the electronics/ electrical wiring . . . contained therein have caused immediate and irreparable harm to [East Coast] . . .” (East Coasts’ Ex Parte Motion, R. p. ____.)

In the instant case, “*East Coast now seeks the same or similar order from this Court enjoining Crab Catchers from any interference with its business or property, such that East Coast would have standing to seek a contempt finding should their business or property, which*

is not that of Long but operates on the disputed parcel pursuant to Long's authority, be interfered with by Crab Catchers." (Order, R. p. ____.) (Emphasis added). Consequently, by abandoning its originally requested mandatory injunctive relief: *"requiring Plaintiff[] (sic) to restore the hut and electronic systems to their previous condition prior to Plaintiff's removal and damaging of the same,"* East Coast cannot now prove it has suffered immediate and irreparable harm in order to obtain temporary injunctive relief. Denman v. City of Columbia, 387 S.C. 131, 691 S.E.2d 465 (2010) (To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law).

Furthermore, *"Injunctive relief may not be used to ameliorate the mere possibility of a future invasion of a right or against prospective violations that may never occur."* 43A C.J.S. Injunctions § 50. Accordingly, the court erred in granting East Coast's Motion for a Temporary Injunction for only prospective violations and future interference with East Coast's business. (Order Granting Defendants' Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----).

V. THE COURT ERRED IN GRANTING EAST COAST'S MOTION FOR TEMPORARY INJUNCTION DUE TO ITS LACK OF STANDING. SPECIFICALLY, EAST COAST PRESENTED NO EVIDENCE AT THE HEARING DEMONSTRATING IT HAD A RIGHT, TITLE, OR INTEREST IN CRAB CATCHERS' SUBJECT PROPERTY (TAX MAP #131-03-05-043) WHERE THE UNPERMITTED "SHED" HAD BEEN PREVIOUSLY LOCATED AND ORDERED TO BE REMOVED FROM THE PROPERTY PURSUANT TO AN UN-APPEALED ABATEMENT ORDER SIGNED BY JUDGE MAYERS.

"A party must have an estate in land to have standing to seek injunctive relief in connection with the land." Byerly v. S.C. Nat. Bank Corp., 313 S.C. 385, 438 S.E.2d 233 (1993); See Jur. Injunctions § 13. (Emphasis added); Charleston Joint Venture v. McPherson, 308 S.C. 145, 417 S.E.2d 544 (1992) (Part owner of shopping mall, who was responsible for overall maintenance of mall, had standing to sue on behalf of other mall owners in action seeking to enjoin

protestors from conducting speech activities upon mall premises). Compare. Momeier v. John McAlister, Inc., 203 S.C. 353, 27 S.E.2d 504 (1943) (That municipal authorities had done nothing about violation of zoning ordinance did not preclude property owner from right to injunction to restrain use of adjacent property as funeral home in violation of zoning ordinance).

At the hearing on September 29, 2022, East Coast presented no evidence demonstrating that it had a right, title, or interest in the Crab Catchers' subject property (Tax Map #131-03-05-043) where the unpermitted "shed" had been previously located and ordered to be removed from the property pursuant to an un-appealed abatement order signed by Judge Mayers.

Here, Crab Catchers is the sole legal owner of the subject property (Tax Map #131-03-05-043) (Quit Claim and Warranty Deeds, R. p. ____.) evidenced by its Quitclaim and later Warranty Deeds (Exhibit H), which clearly show Crab Catchers is the sole legal title owner of the subject property (Tax Map #131-03-05-043) and not East Coast. Also, the Mortgage, Security Instrument #: 2017000139116 (Mortgage dated November 17, 2017, R. p. ____.), between Mortgagor, Crab Catchers, and Lender, UCF, dated November 17, 2017, is further evidence that Crab Catchers is the sole legal owner of subject property (Tax Map #131-03-05-043) and not TNW and Wade Long and East Coast. See Good v. Jarrard, 93 S.C. 229, 76 S.E. 698 (1912)(While an "owner" of land is ordinarily one who holds the fee-simple title, the term may apply to one who has a lesser estate, such as a trustee or mortgagor in possession).

Additionally, in its Amended Answer and Counterclaims (Amended Answer and Counterclaims, R. p. ____.) to Crab Catchers' Amended Complaint, East Coast admits to the following relevant facts:

Paragraph 45. [East Coast] leases jet ski docks, two boat slips, and fuel docks from TnW and More, LLC, located at a marina in Little River, South Carolina [PIN #: 09020011/TMS #: 131-03-05-023].

Paragraph 46. These jet skis, boat slips, and fuel docks are located upon property over which ownership of is disputed between the Plaintiff and Defendant TnW and More, and which is subject to Plaintiff's Complaint. [PIN #: 09020011/TMS #: 131-03-05-023].

Considering the above, it is undisputed that East Coast has no right, title, or interest in the Crab Catchers' subject property (Tax Map #131-03-05-043), but it can only claim a lease interest in the "*jet skis docks, boat slips, and fuel docks*," which improvements are only located on the Marina property (PIN#: 09020011/TMS #:1310305023). Stated differently, East Coast's lease agreement with TNW only permits it to operate its jet ski rental business on the Marina property (PIN 09020011/TMS 1310305023) in which East Coast claims ownership is disputed. However, Crab Catchers claims no right, title, or interest in the Marina property (PIN#: 09020011/TMS #:1310305023), which is solely owned by TNW. Lastly, it is undisputed that East Coast has no lease agreement with Crab Catchers or its permission to operate its jet ski rental business out of an unpermitted "shed" located on Crab Catchers' subject property (Tax Map #131-03-05-043) in violation of specified provisions of both the Horry County Building and Zoning Ordinances. Accordingly, East Coast has failed to present any evidence of a right, title, or interest in Crab Catchers' subject property (Tax Map #131-03-05-043) to establish its standing to bring its Motion for a Temporary Injunction. See S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013) ("*A party seeking to establish standing bears the burden of proving it.*"). (Emphasis added).

For the foregoing reasons, the court incorrectly found East Coast is currently operating its jet ski rental business on a disputed parcel (Tax Map #131-03-05-043). The Court's finding is not supported by evidentiary record in this matter because Crab Catchers is the undisputed legal owner of the subject property (Tax Map #131-03-05-043); and, consequently, the Court erred by issuing an order enjoining Crab Catchers from trespassing on its own property (Tax Map #131-03-05-

043). East Coast clearly admits in its pleadings that the “disputed property” is the marina property and not Crab Catchers’ property (Tax Map #131-03-05-043), where the unpermitted “tool shed” had been previously located and ordered to be removed from the property by Judge Mayers. (Order Granting Defendants’ Motion for Partial Summary Judgment filed November 30, 2022, R. p. ---).

Accordingly, the Court erred in granting East Coast’s Motion for Temporary Injunction as a matter of law due to the East Coast’s lack of standing and failure to present any evidence of its right, title, or interest in the subject real property (Tax Map #131-03-05-043) at the motion hearing held on September 29, 2022. (Order Granting Defendants’ Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----).

VI. THE COURT ERRED IN CONSIDERING SUPPLEMENTAL EVIDENCE UNILATERALLY PRESENTED BY EAST COAST’S COUNSEL AFTER THE PRELIMINARY MANDATORY INJUNCTION HEARING HAD ALREADY CONCLUDED ON SEPTEMBER 27, 2022. THE COURT IMPROPERLY RELIED UPON THE PRIOR ORDERS AND FINDING IN PART FILED IN THE COMPANION ACTION (CASE NO. 2021-CP-26-01512) IN GRANTING EAST COAST’S MOTION FOR TEMPORARY INJUNCTION.

On September 29, 2022, the Court allowed East Coast’s counsel to unilaterally supplement the record outside of the hearing record without allowing Crab Catchers’ counsel an opportunity to respond. After the hearing, East Coast’s counsel sent an email (Email, R. p. ____.) to the Court dated September 29, 2022, 4:10, PM, which attached three prior orders that were filed in the companion lawsuit (Case No. 2021-CP-26-01512) because East Coast’s counsel felt they would shed light on the background in this case regarding issues argued at the hearing. The three orders filed in the companion lawsuit (Case No. 2021-CP-26-01512) provided to the Court by East Coast’s counsel were as follows:

- a. Emergency Temporary Order dated July 19, 2021 and signed by Judge Seals. This order contained a number of factual findings which, per the affidavits we submitted with our current motion, sets forth the conduct of Crab catchers. We are asking for a temporary order *pendente lite* which mirrors the language of this

order but does so in my clients (East Coast jet ski. i.e., the tenant on the property) favor so that our client would have standing to seek a contempt order should the need arise.

- b. Order regarding contempt and sanctions signed by your Honor on June 6, 2022.
- c. Order granting Plaintiff's Motion for Temporary Restraining Order dated June 6, 2022, signed by Judge John. This was the order Judge John signed in response to the identical motion that was filed simultaneous to ours in the companion case. *Judge John declined to resolve our motion at the same time and that is why ours was eventually set for this afternoon.* (Emphasis added).

The Court should not rest its decision in granting East Coast's Motion for a Temporary Injunction based upon supplemental and/or after-created evidence: three orders from the companion case, Case No. 2021-CP-26-1512, which was emailed to the Court after the preliminary mandatory injunction hearing had already occurred on September 29, 2022. Furthermore, East Coast was not party to the companion case, Case No. 2021-CP-26-1512. Not to mention East Coast had the opportunity to supplement its Motion with the three orders from the companion case, Case No. 2021-CP-26-1512, but chose not to do so prior to hearing on September 29, 2022. (Order Granting Defendants' Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----).

Nothing in the South Carolina Rules of Civil Procedure permits a party to unilaterally add after-created evidence and/or to supplement the record with evidence that was not presented at the hearing. See Williamsburg Rural Water and Sewer Co., Inc. v. Williamsburg County Water and Sewer Authority, 367 S.C. 566, 627 S.E.2d 690 (2006) (Nothing in the appellate court rules permits a party to unilaterally add after-created evidence to the record). For example, the Record on Appeal cannot be amended to bring in a matter that was not before the trial court at the hearing on September 29, 2022. Rule 210, SCACR provides: "*The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of*

Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal,” during the hearing. Rule 210, SCACR.

Based upon the foregoing reasons, the Court erred in granting East Coast’s Motion for Temporary Injunction based upon supplemental evidence unilaterally presented to the Court by East Coast’s counsel after the hearing by email which was unduly prejudicial to Crab Catchers. Stated differently, nothing in the South Carolina Rules of Civil Procedure permits a party to unilaterally add after-created evidence and/or to supplement the record with evidence that was not produced at the hearing. (Order Granting Defendants’ Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----).

VII. THE COURT ERRED IN GRANTING EAST COAST’S MOTION FOR A TEMPORARY INJUNCTION WITHOUT FIRST REQUIRING IT TO POST AN ADEQUATE SECURITY BOND AS MANDATED BY RULE 65(C), SCRCP. STATED DIFFERENTLY, NO ADEQUATE SECURITY BOND HAS BEEN POSTED BY EAST COAST.

Rule 65(c), SCRCP, provides that:

Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. (Emphasis added).

Here, the facts are undisputed that East Coast has not posted a security bond as required by Rule 65(c), SCRCP before requesting this Court to grant its Motion for Temporary Injunction enjoining Crab Catchers from allegedly trespassing on its undisputed property. Accordingly, the Court erred by not requiring East Coast to post a bond for the payment of such costs and damages as may be incurred or suffered by Crab Catchers if it is found that Crab Catchers was wrongfully enjoined from going on its subject property by East Coast.

Furthermore, in the Case of Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007), the South Carolina Supreme Court held even a nominal bond does not satisfy Rule 65(c), SCRPC. The Supreme Court found that a nominal amount was improper “*because it erroneously assumes[d] the injunction [was] proper instead of providing an amount sufficient to protect appellants in the event the injunction [was] ultimately deemed improper.*” Id. at 73, 646 S.E.2d at 884. (Emphasis added). In Atwood Agency v. Black, the Supreme Court remanded the case to the trial court to award the appropriate amount of costs and damages incurred as a result of the temporary injunction. *See also* 12 S.C. Jur. *Equity* § 19 (1992) (“Rule 65(c) of the South Carolina Rules of Civil Procedure requires that security be posted before the court may issue ... a temporary injunction.”) (Emphasis added). AJG Holdings, LLC v. Dunn, 382 S.C. 43, 49, 674 S.E.2d 505, 507–08 (Ct. App. 2009)(“*[B]ecause Rule 65(c), SCRPC, requires the trial court to order [the Plaintiffs] to post a bond before issuing the temporary injunction, and no bond was ordered in this case, the Court of Appeal remanded the case to the trial court to amend the order of injunction to require execution of a sufficient bond*”) (Emphasis added) (Citing the cases of Epps v. Bryant, 218 S.C. 359, 365, 62 S.E.2d 832, 834–35 (1950) and Ex Parte Zeigler, 83 S.C. 78, 81, 64 S.E. 513, 514 (1909) (holding the injunction was correctly granted, but the court erred in not requiring a bond and, thus, the circuit court's judgment was modified to require the filing of a proper bond).

Accordingly, the Court erred by not requiring East Coast to post a bond for the payment of such costs and damages as may be incurred or suffered by Crab Catchers if it is found that Crab Catchers was wrongfully enjoined from going on its subject property (Tax Map #131-03-05-043) by East Coast. (Order Granting Defendants’ Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----).

CONCLUSION

Based on the foregoing reasons, cited evidence before the Court, and upon such other arguments and submissions of Crab Catchers' counsel as may be reviewed by the Court, and viewing the evidence and all reasonable inferences to be drawn from the supporting affidavits and attached Exhibits in the light most favorably to Crab Catchers, the Circuit Court Order granting Respondents' Motion for a Temporary Injunction should be reversed on one or more of the following grounds as set forth below:

1. The Court erred in failing to make findings of fact and conclusions of law in its order (Order Granting Defendants' Motion for Partial Summary Judgment filed November 30, 2022, R. p. ----), as expressly required by Rule 65(d), SCRCP, warranting the injunctive relief requested by the Respondents;
2. The Court erred in finding it was obligated to give controlling effect to the Order dated June 6, 2022, signed by Judge Steven H. John in a separate matter;
3. The Court erred in finding Respondents' Motion and Answer and Counterclaims state a cause of action for a Temporary Injunction because Respondents failed to plead or allege facts showing no adequate and complete remedy at law existed in the case. (Amended Answer and Counterclaims, R. p. ____). Knohl v. Duke Power Co., 260 S.C. 374, 376, 196 S.E.2d 115, 116 (1973) (holding that a "[claim] fails to state a cause of action for injunctive relief unless facts are alleged which show that the party has no adequate and complete remedy at law");
4. The Court erred in allowing Respondents to amend the relief requested in its Motion from a mandatory preliminary injunction to one for prospective injunction based upon certain previous orders and their findings filed in companion lawsuit (Case No. 2021-CP-26-01512);
5. The Court erred in granting the Respondents' Motion for a Temporary Injunction because the record reflects that the Respondents' have failed to allege and demonstrate a factual basis for each essential element required for granting a Temporary Injunction: (1) they are likely to suffer irreparable harm; (2) they have an inadequate remedy at law, or (3) they are likely to succeed on the merits of their underlying claims;

6. The Court erred in granting Respondents' Motion for Temporary Injunction due to their lack of Standing. Respondents presented no evidence at the hearing demonstrating that it has a right, title, or interest in Crab Catchers' subject property (Tax Map #131-03-05-043) where the unpermitted "shed" had been previously located and was ordered to be removed from the subject property pursuant to an un-appealed abatement Order signed by Judge Mayers;
7. The Court erred in considering supplemental evidence unilaterally presented by Respondents' counsel after the preliminary injunction hearing had already concluded on September 27, 2022, which prior orders and their findings filed in the companion action (Case No. 2021-CP-26-01512) the Court improperly relied upon in granting East Coast's Motion for Temporary Injunction;
8. The Court erred in granting Respondents' Motion for a Temporary Injunction without requiring Respondents to post an adequate security bond as mandated by Rule 65(c), SCRPC. See 12 S.C. Jur. *Equity* § 19 (1992) ("Rule 65(c) of the South Carolina Rules of Civil Procedure requires that security be posted before the court may issue ... a temporary injunction.") (Emphasis added); and
9. Grant such other and further relief as this Court deems reasonable and proper.

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