



Store Building and its Commercial Units 1A and 1B, and two Fuel Docks, Commercial Units 2, (the Fuel Dock Boatslips are also designated as Boatslips C-21 and C-22 in the Master Deeds);(all are hereafter referred to as the “Disputed Properties”), were unlawfully converted from Common Elements to individual units, which were ultimately conveyed to the Defendant LLCs, in contravention of the vested title interests held by the individual Plaintiffs, and in violation of statute and the plain language of the original 2006 Master Deed.

Defendants Mariners Cay Marina Condo (hereafter, “Marina Condo”) and Mariners Cay Fuel Dock, LLC (hereafter, “Marina Fuel Dock”) filed their appeal to the Court of Appeals of this Court’s orders, and the Court is informed that final briefings in the appeal were filed with the Court of Appeals on December 28, 2023.

### **The Pending Motions**

Plaintiff Council of Co-Owners has filed seven motions, seeking temporary relief during the pendency of the appeal, summarized as follows and discussed in further detail below:

1. That Defendant LLCs pay assessments on the properties they continue to hold and enjoy;
2. That the on-shore restrooms located in the Ships Store Building, Commercial Unit Number 1-A, be re-opened on a 24/7 basis as they were prior to the COVID19 emergency;
3. That Defendant Mariners Cay Condo provide proof of liability insurance covering Commercial Units 1-A and 1-B of the Ship’s Store Building for coverage amounts of at least \$300,000.00 per person per incident.
4. That Defendants Mariners Cay Marina Fuel Dock provide proof of liability insurance covering the fuel docks, also known as Commercial Unit 2, and also known as boatslips C-21 and C-22, for a coverage amount of least \$300,000.00 per person per incident.

5. That Defendant Mariners Cay Marina Fuel Dock cease and desist from tapping into remote water and power sources, resulting in cluttered walkways with power extension cords and hoses;

6. That if any commercial use is made of any Disputed Property, the liability insurance coverage must be increased to \$1,000,000.00 per person per incident for such property;

7. That Defendant Mariners Cay Marina Condo cease and desist from blocking the pedestrian ramp that provides access to the Ship's Store Building and its restrooms.

Preliminarily, accordingly, Defendants argue that this Court lacks jurisdiction to decide the motions. Defendants' jurisdictional argument must be first addressed.

### **FINDINGS AND CONCLUSIONS OF LAW**

#### **Jurisdiction**

Although they did not brief the issue to the Court, at the June 3, 2024 hearing, the Defendants orally argued that the within motions are not properly before the Court due to lack of jurisdiction. Defendants argue that, under Rule 241(a) of the South Carolina Appellate Court Rules ("SCACR"), the filing of a notice of appeal automatically stays matters decided in the order on appeal; except that the lower court retains jurisdiction over "matters not affected by the appeal"; and, likewise, that Rule 205, SCACR, provides that, upon service of a notice of appeal, the appellate court "shall have exclusive jurisdiction over the appeal"; provided, however, that "Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."

Defendants therefore argue that, because the relief sought in Movant's motions is "affected by the appeal", this Court lacks jurisdiction to hear and decide the motions.

In their filed motion and memorandum in support, Plaintiff/Movant cites SCACR Rules 205 and 241, and also the cases of *Binkley v. Burry* 352 S.C. 286, 573 S.E.2d 838 (Ct. App. 2002); and *Stokes-Craven Holdings Corp. v. McKenzie* 416 S.C. 517, 787 S.E.2d 485 (2016), to support their position that the within motions involve matters “not affected by the appeal”. In oral argument, Defendants also cite *Stokes-Craven*.

*Stokes-Craven* is a 2016 Supreme Court case in which a car dealership sued its former attorney for legal malpractice, arising from the attorney’s representation of the dealership in a case brought by a consumer against the dealer, wherein the jury returned a verdict for actual and punitive damages against the car dealer.

*Stokes-Craven*, the car dealer, filed the legal malpractice case after the underlying verdict against it had been affirmed by the Supreme Court. By that date, however, over three years had elapsed since the adverse trial verdict had been rendered in the automobile defect case. The trial court in the legal malpractice case ruled that Plaintiff Stokes-Craven’s claim was barred by the statute of limitations because more than three years had elapsed since the adverse verdict against it and Plaintiff “should have known” that it had a claim against its lawyer.

The Supreme Court reversed, observing, *inter alia*, that the verb “affect” as used in the Appellate Court Rules is defined in Black’s Law Dictionary as “To produce an effect on; to influence in some way”. Because a cause of action for legal malpractice is predicated on an injury or damage to a client caused by a breach of duty by the lawyer, no such cause of action accrues until there is a final court ruling that the client who claims legal malpractice has suffered a loss. Therefore, because no loss was sustained by the client until after the trial court damage award was affirmed on appeal, a legal malpractice claim in the circumstances was “affected by the appeal”,

and no such cause of action could accrue until the final court ruling in the underlying automobile defect case.

*Stokes-Craven* cites the case of *Tillman v. Oakes* 398 S.C. 245, 728 S.E.2.d.45 (Ct. App. 2012), a Court of Appeals decision authored by then-judge, now Supreme Court Justice, John Few. In *Tillman*, a family court appeal, the family court had ordered a change of custody by splitting the custody of two sons, one to the father, the other to the mother, after a previous agreement and Family Court order had ordered shared custody, with primary custodial placement with mother.

Mother appealed. While the appeal was pending, father filed a petition to suspend visitation of the mother with the son to whom father had been awarded custody in the challenged order on appeal. The Family Court refused to rule on the visitation issue “unless the automatic stay is lifted”. Reversing the Family Court, and citing Rule 205, SCACR, the Court of Appeals held that the issue of visitation was “not a matter affected by the appeal” of the custody question. An examination of Mother’s appeal shows that she challenged only the custody portion of the Family Court Order. “Thus there is no action the appellate courts could take ... that would affect the visitation established in the appealed order.” (*Emphasis added*). *Tillman, supra*, 398 S.C. at 257.

Likewise, in this case, this Court’s order on appeal holds that the conveyance of the Ship’s Store Building and its Commercial Units 1-A and 1-B, and the conveyances of the Fuel Docks, Boat Slips C-21 and C-22, are void and a nullity. This Court’s trial order holds that Defendants do not hold title to the Disputed Properties. The motions presently before me, however, relate to the obligations and duties attendant to Defendants’ continued possession and use of the Disputed Properties, and do not relate to the issue of ownership. In fact, these issues address the *contra* of

this Court's prior ruling. Therefore, I find the issues addressed in the motions are not "affected by the appeal".

Plaintiff persuasively argues that if Defendants claim and enjoy the benefits of use and possession of the Disputed Properties under the 2007 Amended Master Deed, they must also accept the responsibilities and burdens of that possession as imposed by the terms of the same Master Deed, as does every other unit owner in the Marina; which responsibilities are plainly set forth in the Amended Master Deed by which Defendants claim title. Because the relief sought by Plaintiffs in the within motions will not be "affected by the appeal" of the title issues, I conclude that this Court retains the power to rule on the motions of Plaintiff Council of Co-Owners during the pendency of the appeal.

Accordingly, the arguments and objections of Defendant LLCs that this Court does not have jurisdiction to decide the issues joined in the motions for temporary relief are of no avail and accordingly, they are overruled.

### **The Motions**

Movant Council of Co-Owner seeks equitable relief from the Court in seven particulars as discussed below. The relief sought by the motions is based upon the premise that the Defendant parties remain in possession, control, and enjoyment of the Disputed Properties while the appeal of this Court's Order is pending; that any claim by Defendants to ownership must be based upon the 2007 Amended Master Deed; and that, whereas this Court's order on appeal holds that the conveyances to Defendants were unlawful, equity demands that if Defendants continue to enjoy the benefits of using and possessing the Disputed Properties, they must also accept the burdens and responsibilities of co-ownership that they share with other unit holders at Mariners Cay Marina, in accordance with the terms of the 2007 Master Deed by which they claim the benefits.

1. The First Motion. In its first motion, the Defendant Council of Co-Owners seeks an order of this court that Defendants Marina Condo and Marina Fuel Dock be “ordered to pay past, present, and future assessments on the respective Disputed Properties”. The uncontradicted affidavit evidence of the past liabilities owed, is shown and explained in Exhibit “1” to Movant’s Motion, the Affidavit of Council President Adam Friend, and in Exhibit “7”, Mr. Friend’s spreadsheet calculation of past due assessments. Exhibits “1” and “7” show that Commercial Unit 1-A of the Ship’s Store Building is liable for past assessments in the sum of \$37,090.08; that Commercial Unit 1-B is liable for \$19,950.17; and the Fuel Docks, also known as Boat Slips C-21 and C-22 in the Master Deed, are liable for \$16,261.71, each. The grand total of past due assessment liabilities owed for all four units is \$89,563.67, through the first quarter of the year 2024 (January, February, and March).

Although Movants seek an Order of Judgment against the Defendant LLC’s for the total, current amount of past due sums owed, \$89,563,67, the Court will not order such judgment at the present time. However, Movant may file liens against the respective units for the past due sums in accordance with the terms of the Master Deed, Article X, Section 10.9 and the statute, South Carolina Code of Laws, Section 27-31-210.

As for the liabilities of Defendant LLCs for current assessments from the end of first quarter 2024, going forward in time: beginning with the second quarter of the year 2024 (April, May, and June of 2024), the Defendant LLCs are and shall be liable to pay the assessments on a current basis, and it shall be so ordered.

2. The Second Motion. In its second Motion, Movant seeks an order that the on-shore men’s and women’s restrooms in Commercial Unit 1-A of the Ship’s Store Building be reopened on a 24-hour per day, seven day per week schedule (hereafter referred to as “24/7”), as they were before

the limitations imposed on restroom use by the COVID 19 emergency and its attendant sequestration practices in 2020.

The uncontradicted evidence before me, in the form of the affidavits of current Council President Adam Friend (Exhibit “1” to Movant’s motions) and of former Council President Thomas Bessent, (Exhibit “9” to Movant’s motions); and the Regulations promulgated by the Office of Coastal Resource Management (“OCRM”) of the South Carolina Department of Health and Environmental Control (“SCDHEC”), (Exhibit “4” to Movant’s Motion, which is found at Recorders Book X618, Page 603 of the 2007 Master Deed), establish conclusively that a condition of the Marina Permit issued by OCRM for Mariners Cay Marina requires that separate on-shore restrooms must be provided and must be available for men and women; and that the separate men’s and women’s restrooms in Commercial Unit 1-A of the Ship’s Store Building were constructed for that purpose.

The affidavit evidence shows the on-shore restrooms were open on a 24/7 basis at least from the date of the recording of the original Master Deed in 2006 until the onset of COVID in 2020. The affidavit evidence also shows that many owners and users of the boatslips at Mariners Cay Marina, whose permanent residences are at a distance away from the Charleston/Folly Beach area, spend weekend overnights on their boats moored at the Marina, and that a valuable amenity acquired with their boatslip ownership, essential to the use and enjoyment of their property, is the availability of 24/7 access to on-shore restrooms and showers.

I find that it would be unreasonable to further delay the resumption of 24/7 use of the on-shore restrooms by boatslip owners and users at Mariners Cay Marina. The restroom use is a property right that was granted to them by their acquisition of boatslips at the Marina, and that had

long been available to them prior to COVID. I also find and conclude that Defendants fail to make any plausible or persuasive arguments to the contrary.

The Court will order the reopening of on-shore restrooms on a 24/7 basis.

2. The Third Motion. In their third motion, directed to Marina Condo, their Fourth Motion, directed to Marina Fuel Docks, and their Sixth Motion, directed to any commercial use of the Fuel Docks or the Ship's Store Units, Movants seek an Order requiring the Defendants to comply with Rules 5, 2, and 24 of the Mariners Cay Marina Rules and Regulations (see Exhibit "10" to the Motion), which require, in the instance of non-commercial use, that all Unit Owners carry and maintain liability insurance of \$300,000.00 per occurrence (Rule 5), and that, for any approved business use a unit owner must provide evidence of its business or Coast Guard license (if required), as well as proof of commercial liability insurance coverage of a minimum \$1,000,000.00 per occurrence.

At hearing, the Defendant LLCs offered no plausible argument why they should not be compelled to provide such proof of insurance, or proof of business license in the event of business activity.

Accordingly, the relief sought in Movant's Third, Fourth and Sixth Motions will be ordered.

3. The Fifth Motion. Here, the Council of Co-Owners seeks an Order that Marina Fuel Dock cease and desist from cluttering the dock walkways with electric extension cords and hoses. In its Affidavits, Movant presents evidence that Marina Fuel Dock, or its tenant(s), has run electric extension cords, and water hoses from water/electric service pedestals that are neither adjacent to, nor were they designated to serve, the Fuel Docks themselves. As explained, the reason that no service pedestals exist to serve the Fuel Docks is because those boatslips were never intended for

private use. The result is that dock walkways have become cluttered with hoses and electrical extension cords that present trip hazards for persons using the walkways. Particularly because this condition exists in a walkway constructed over a tidal waterway, this presents a dangerous condition; and the condition also violates the Marina Rules and Regulations.

Movant offered on the record to Marina Fuel Dock the opportunity to construct a service pedestal at its expense. However, the Court has not been informed of any negotiated resolution of this issue.

In the circumstances, the safety of users of the marina dock walkways is paramount. The Court takes notice that the marina boatslips exist on the Folly River, a waterway influenced by tides and currents. Not only is the practice of cluttering walkways with electric cords and water hoses unsafe, and not only is it hazardous, but it is also prohibited by the Marina Rules and Regulations. See Exhibit “10”, Rule 8: “Safety mandates that the docks be always kept clear. Lines must never cross the docks at any time and not items may be left on the dock other than in approved dock boxes including rugs, mats, or carpet material”. And Rule 9: “water hoses, power cords and boarding steps may be left on the docks when properly attended”. (*Emphasis added*).

This Court will order that Defendant Marina Fuel Docks cease and desist from connecting to power and water by electric cords and water extension hoses from service pedestals that are not dedicated to serve those boatslips.

4. The Seventh Motion. In its 7th Motion, Movant seeks an Order requiring that the Defendant Marina Condo cease and desist from blocking or otherwise interfering with access by all users of the Marina to the pedestrian ramp that allows access to the second level of the Ship’s Store Building (also known as Commercial Unit 1-A). Defendants offer no plausible argument for denying this access. Moreover, to the extent that the restrooms in the Ship’s Store Building

were constructed to serve all boatslip users, it is more than foreseeable that handicapped persons, in need of ramp access, would require access to the restrooms by that means.

This Court will order that the pedestrian ramp be made immediately accessible to all boatslip users.

Accordingly, it is hereby,

ORDERED ADJUDGED AND DECREED:

1. That this Court has jurisdiction to decide the within issues because they are not “affected by the appeal”, as previously found;

2. As to Movant’s First Motion, that Movant Council of Co-Owners may file a lien against the Disputed Properties to secure payment of past due assessments in the amounts heretofore found, that is to say, \$37,090.08 against Commercial Unit 1-A; \$19,950.17 against Commercial Unit 1-B; \$16,261.71 against the Fuel Dock known as Boatslip C-21; \$16,261.71 against the Fuel Dock known as Boatslip C-22; all for the time period ending on March 31, 2024

3. Further, as to the First Motion: That Defendant Mariners Cay Marina Condo, LLC and Defendant Mariners Cay Fuel Dock, LLC shall timely pay assessments due to the Council of Co-Owners beginning with assessments owed for the second quarter of 2024 (April, May, and June 2024), and for all future periods of time as billed, until further order of the Court.

4. As to the Second Motion: That the men’s and women’s restrooms in Commercial Unit 1-A of the Ship’s Store Building shall forthwith be, and they shall remain, open on a 24 hour per day, seven days per week schedule. Movant, Council of Co-Owners, shall continue to maintain and clean the restrooms in accordance with their past practices.

5. Further, as to the Second Motion, Movant Council of Co-Owners shall pay or

contribute to the payment of all costs attributable to water and power used for the operations of the on-shore restrooms. The Court shall retain jurisdiction of this issue, in the event the parties cannot agree.

6. As to the Third and Fourth Motions relating to liability Insurance covering any casualties or other insurable events arising from the use by Defendants of the on-shore restrooms in the Ships Store Building, and the Fuel Docks: That Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC shall, respectively, provide to Movant Council of Co-Owners evidence of the placement of liability insurance coverage covering the Disputed Properties, with coverage limits of at least \$300,000.00 per person, per incident.

7. As to the Sixth Motion, in the event of any commercial use of Commercial Units 1-A or 1-B of the Ship's Store Building, or the commercial use of the Fuel Docks: That, in the event Defendants Mariners Cay Marina Condo and/or Mariners Cay Fuel Dock, LLC shall use any of the Disputed Properties for commercial purposes, or if their tenants or other users shall utilize the Disputed Properties for commercial purposes, proof of insurance coverage with a liability limit of \$1,000,000.00 per person per incident, shall be provided to Movant.

Further, as to the Sixth Motion, in the event of any commercial use, that Defendants shall provide evidence to Movant of the appropriate licensure of the business activity, including any Coast Guard approval as required for business use on navigable waters.

8. As to the Fifth Motion: That Defendant Mariners Cay Fuel Dock, LLC shall cease and desist from tapping into water and electric service pedestals that were not and are not dedicated to users of the Fuel Docks, also known as Boatslips C-21 and C-22, to obtain electric service or water to the Fuel Docks, until further Order of this Court. The Court shall retain jurisdiction of this issue

in the event the parties seek clarification, or in the event they require an Order approving any settlement of the issue of water and power supplied to the Fuel Docks;

9. As to the Sixth Motion: That, if any of the Disputed Properties is used by any person for commercial purposes, either Defendant Mariners Cay Marina Condo and/or Defendant Mariners Cay Fuel Dock, LLC, as the case may be, shall provide proof to Movant of liability insurance of at least \$1,000,000.00 per person per incident, for the Disputed Property element that is so-used commercially.

10. As to the Seventh Motion: That Defendants Mariners Cay Marina Condo shall, forthwith, re-open access to the pedestrian ramp attached to the Ship's Store Building, to all Boatslip users and guests.

AND IT IS SO ORDERED!

Charleston, South Carolina  
\_\_\_\_\_, 2024

\_\_\_\_\_  
Mikell R. Scarborough  
Master-In-Equity For Charleston County



Charleston Common Pleas

**Case Caption:** Alben D Neighbors , plaintiff, et al VS Mariners Cay Marina Condo LLC , defendant, et al

**Case Number:** 2017CP1003099

**Type:** Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

**BARR, UNGER  
& MCINTOSH**  
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June 17, 2024

**VIA Email**

G. Hamlin O'Kelley, III, Esquire  
Buist Byars & Taylor, LLC  
652 Coleman Blvd., Ste. 200  
Mt. Pleasant, SC 29464

Re: Elizabeth Heatley, *et al* v. Mariner's Cay Marina Condo, LLC, *et al*  
Case No.: 2017-CP-10-03099  
Our File No.: 2017-1152

Dear Hamlin:

Although probably no longer required under the Rules in light of e-filing procedures, enclosed is a clocked copy of Judge Scarborough's Order on the seven Motions of Mariners Cay Marina Council of Co-Owners for Temporary Relief; which is herewith served upon you as attorney for the LLC Defendants and Mr. Farmer. As noted on its face, the Order was filed today, June 17, 2024.

Please call or email me if you wish to discuss any aspect of this.

With best regards,

Sincerely yours,



CAPERS G. BARR, III

CGBiii/jth  
Kevin W. Mims, Esq. (w/encl)  
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