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SC Court of Appeals

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.

**RESPONDENT-APPELLANT'S RETURN TO APPELLANT-RESPONDENT
LORBERBAUM'S MOTION REQUESTING PERMISSION TO FILE A
SUPPLEMENTAL BRIEF AND TO SUPPLEMENT THE RECORD ON APPEAL**

The Respondent-Appellant Turner's Marina LLC, pursuant to Rule 240, SCACR, files this Return to the Appellant-Respondent's Motion Requesting Permission to File a Supplemental Brief and To Supplement the Record on Appeal. Turner's Marina objects to both requests.

As to the Request to File Supplemental Brief, the recently filed case of Spring Valley Interests, LLC v. The Best for Last, LLC, Appellate Case 2022-00813, filed July 10, 2024, cited by the movant as a basis for supplemental briefing, is not on point in this litigation and does not warrant further briefing. Spring Valley discusses an option created on or about May 3, 2017, the attempted exercise of which gave rise to a Complaint seeking specific enforcement of the Purchase Option. Best filed an Answer asserting that the Purchase Option was void because it violated the Common Law Rule Against Perpetuities (CLRAP). This Court affirmed the Circuit Court's holding that the CLRAP was in that case, preempted by the South Carolina Uniform Rule Against Perpetuities (SCURAP), which supposedly provided protection to Spring Valley under the facts of that case.

Spring Valley is inapplicable in this case for several reasons, the most important of which is that the SCURAP is inapplicable in our case. The R.V. Covenants Right of Repurchase that Lorberbaum violated, was created in 1981. The SCURAP specifically provides that it applies to nonvested property interests "created on or after July 1, 1987." Section 27-6-60. The Appellant-Respondent does not allege in this appeal that she enjoyed protection under the CLRAP, and has waived that claim. The only issue raised by the Appellant-Respondent is "Did the Trial Court commit an error of law by failing to find that that subject Right of First Repurchase violated the Uniform Statutory Rule Against Perpetuities (S.C. Code Ann. Section 27-6-10 *et. seq.*" Lorberbaum Brief filed August 21, 2023, p. 4. Thus, there is no reason, and it would be a waste of time and money, to have the parties brief the issue of whether the Right of Repurchase would have been impacted by a claim that the CLRAP somehow applied to it.

As to the Request to Supplement the Record on Appeal, the Respondent-Appellant Turner's Marina objects to same because it will inject a new issue into the appeal, after the Appellant-Respondent Lorberbaum already moved this Court on June 9, 2023 to file an Amended Record on Appeal, which motion was denied by Order of this Court dated August 9, 2023. As the Court noted then, "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." Despite the fact that the Appellant-Respondent does not mention anywhere in her Appellate Brief the June 29, 2022 Supplement to Defendant Lorberbaum's Pre-Trial Memoranda, she now seeks to add it to the Record on Appeal. The only purpose for adding it to the ROA now would be to try to bootstrap an argument later that the CLRAP is under consideration in this appeal. As is noted above, it is not. The Appellant-Respondent only seeks review in this appeal of the Circuit Court's "failure" to find that the Right of Repurchase violated the SCURAP. The effort to add wording to the ROA that mentions the "Rule Against Perpetuities" in general in a supplement to her Pre-Trial Memorandum under the pretense that it "is important in that it confirm [sic] specific aspects of the Rule Against Perpetuities were brought to the Court's attention prior to trial" is misplaced and misleading. The record already shows that the Circuit Court considered the argument that the "rule against perpetuities" somehow impacted the Right of Repurchase, and specifically rejected that argument. And the Appellant-Respondent then chose to appeal on the issue of whether the Right of Repurchase violated the SCURAP, which on its face is inapplicable, because this Right of Repurchase was established in 1981.

For these reasons, Turner's Marina LLC respectfully requests that the Court deny the pending Motion.

s/Thomas C. Taylor

Thomas C. Taylor, Esq.

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TURNER'S MARINA LLC**

Bluffton, South Carolina
August 1, 2024

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PROOF OF SERVICE

I hereby certify that this law firm represents the Respondent-Appellant Turner's Marina, LLC in the above-captioned matter and that on the date below, in Bluffton, South Carolina, a copy of the foregoing was served on the following persons via electronic mail to their AIS E-mail address:

Documents Served: RESPONDENT-APPELLANT'S RETURN TO APPELLANT-RESPONDENT LORBERBAUM'S MOTION REQUESTING PERMISSION TO FILE A SUPPLEMENTAL BRIEF AND TO SUPPLEMENT THE RECORD ON APPEAL

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Bluffton, South Carolina
August 1, 2024

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SUPREME COURT BAR

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August 1, 2024

Via E-Mail Attachment: ctappfilings@sccourts.org

Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **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; Case No. 2022-001547; Return to Motion**

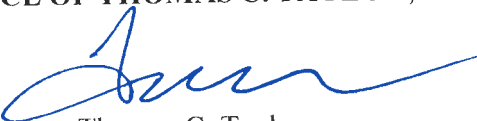
Dear Clerk Kitchings:

I represent the Respondent-Appellant Turner's Marina LLC in this matter. I am attaching hereto an electronic copy of Turner's Marina's Return to the pending Motion of Ms. Lorberbaum Requesting Permission To File A Supplemental Brief and to Supplement the Record on Appeal, and a Proof of Service of same. Please file the Return.

Please let me know if you have any questions. As always, I thank you and your staff for your assistance and professionalism in handling these matters.

Yours very truly,

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt
Attachment

cc: Russell P. Patterson, Esq., and James S. Murray, Esq., via email transmittal
Neil Turner, via e-mail transmittal