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Aug 06 2024

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

APPELLANT-RESPONDENT PAIGE LORBERBAUM'S REPLY TO THE RETURN OF
RESPONDENT-APPELLANT TURNER'S MARINA LLC TO APPELLANT-
RESPONDENT'S MOTION REQUESTING PERMISSION TO FILE A SUPPLEMENTAL
BRIEF DUE TO NEW COURT OF APPEALS DECISION AND TO SUPPLEMENT THE
RECORD ON APPEAL

The Appellant-Respondent, Paige Lorberbaum ("Lorberbaum") files this Reply under Rule 240(f) SCACR to the Return of Respondent -Appellant Turner's Marina, LLC's ("Turner") to Lorberbaum's July 23, 2024 Motion to File Supplemental Brief and to Supplement the Record as follows:

1. Request to File Supplemental Brief

Turner has completely mischaracterized the holding in *Spring Valley Interest, LLC v. The*

Best for Last, LLC, Appellate Case 2022-00813, filed July 10, 2024. This Court in Spring Valley did not find that the CLRAP was preempted by the SCURAP, resulting in Spring Valley being able to legally enforce its Purchase Option. This Court reached the exact opposite conclusion, finding the Purchase Option was not protected by the SCURAP and was thus void under the CLRAP. This decision is directly on point in the instant appeal concerning the validity of a right of first refusal on a Recreational Vehicle Lot.

Turner further asserts the CLRAP is not an issue in this appeal, citing Lorberbaum's Statement of Issue on Appeal, which stated the Trial Court did not properly apply the SCURAP. As stated in Reply Brief of Lorberbaum(p.12), the substance of Lorberbaum 's brief, and in fact her entire appeal, is based on the failure of the Trial Court to apply the CLRAP under *Webb v. Reames*, 326 S.C. 444, 485 S.E. 2d 384 (Ct. App. 1997), and cases following same, as to very similar rights of repurchase. A review of the substance of Loberbaum two appellate briefs clearly confirm the main argument on appeal deals with the application of the CLRAP under *Webb*. Turner, in its Brief in Response discusses *Webb* and the CLRAP for three(3) entire pages (pp. 16 through 19), and concludes by asking this Court to overturn said decision as conflicting with the SCURAP. The Trial Court and the parties to this appeal have extensively dealt with the application of the CLRAP and SCURAP to the instant facts, thus making Spring Valley very relevant.

The decision in Spring Valley brought in focus the prior substantial uncertainty and confusion as to the interplay of the CLRAP and SCURAP. The significant impact of said decision on this case should be briefed by counsel for the parties to this appeal.

2. **Request to Supplement the Record on Appeal**

The request to supplement the Record of Appeal by adding the three(3) page June 29, 2022 Supplement to Defendant's Pretrial Brief (Ex. 1 to Lorberbaum's Motion) is not an attempt to

create an entirely new issue on appeal. On page 2 of said Supplemental Brief, trial counsel for Lorberbaum specifically raised the CLRAP, citing *Webb*. On page 12 of Lorberbaum’s Reply brief, she specifically stated, “[t]he *Webb* decision was cited in Lorberbaum’ Pre-Trial Brief. (R. pp. 50-54) ” Counsel for Lorberbaum incorrectly referenced Lorberbaum’s June 24, 2022 Pre-Trial Memorandum, which did not cite *Webb*, instead of the June 29, 2022 Supplemental to its Pre-Trial Brief, which did cite *Webb*. Rule 212(b) SCACR is clearly intended to allow for such an amendment to the Record on Appeal due to such an inadvertent omission of a trial pleading, even up to the time of oral arguments. There is no prejudice to Turner by allowing such a request.

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson
Russell P. Patterson, Esq. (SC Bar No.: 4375)
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
Russell@russellpattersonlaw.com
lauren@russellpattersonlaw.com
Attorneys for the Appellant-Respondent,
Paige N. Lorberbaum

Hilton Head Island, South Carolina
August 6, 2023

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v.

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

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, counsel for Respondent was served with a copy of the Appellant- Respondent Paige Lorberbaum's Reply to the Return of Respondent- Appellant Turner's Marina LLC to Lorberbaum's Motion Requesting Permission to File a Supplemental Brief due to new Court of Appeals Decision and to Supplement the Record on Appeal by electronic mail to their AIS e-mail address:.

Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
P.O. Box 1808
Bluffton, SC 29910-1808
tom@thomastaylorlaw.com

James S. Murry
Turner Padgett Graham & Laney, PA
P.O. Box 1495
Augusta, GA 20903-1495
Jmurray@turnerpadgett.com

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson
Russell P. Patterson, Esq. (SC Bar No.: 4375)
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
Russell@russellpattersonlaw.com

Hilton Head Island, South Carolina
August 6, 2024

*Attorneys for the Appellant,
Paige N. Lorberbaum*

Russell P. Patterson, P.A.
Serving the Lowcountry for over 35 years



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Physical Address

19 Shelter Cove Ln., Ste. 107
Hilton Head, SC 29928

Russell P. Patterson

russell@russellpattersonlaw.com

Lauren P. Williams

lauren@russellpattersonlaw.com

Mailing Address

P.O. Box 8047
Hilton Head, SC 29938
(843) 341-9300
(843) 341-9301 fax

August 6, 2024

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

Via U.S. Mail & E-Mail

RE: Paige N. Lorberbaum, Appellant v. Turner's Marina, LLC, Jeffrey A. Klapper,
Diane L. Klapper, Respondents
Case No.: 2022-001547

Dear Ms. Kitchings:

I am submitting the following for filing in the above matter:

1. Appellant- Respondent Paige Lorberbaum's Reply to the Return of Respondent-Appellant Turner's Marina LLC to Appellant-Respondent's Paige Lorberbaum's Motion Requesting Permission to File a Supplemental Brief due to new Court of Appeals Decision and to Supplement the Record on Appeal
2. An original Proof of Service of the above document upon opposing counsel.

Thank you for your assistance in this matter. Please do not hesitate to contact us with any questions.

Sincerely,
RUSSELL P. PATTERSON, P.A.

A handwritten signature in blue ink, appearing to read 'Russell P. Patterson', written over the typed name.

Russell P. Patterson

Enclosures

cc: Counsel of Record w/enc