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Sep 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough,
Master in Equity

Case No. 2017-CP-10-03099

Appellate Case No. 2022-001479

Elizabeth Heatley, Neil B. McCann, Jr., David Neil Monk, Thomas V. Bessent,
and Mariner’s Cay Marina Council of Co-Owners, Inc..... Respondents,

vs.

Mariner’s Cay Marina Condo, LLC, Mariner’s Cay Fuel Dock, LLC, George A. Farmer, Jr., and
South Atlantic Bank, Defendants

Of which Mariner’s Cay Marina Condo, LLC, Mariner’s Cay Fuel Dock, LLC
and George A. Farmer, Jr., are the Appellants.

**REPLY OF RESPONDENTS TO MOTION OF APPELLANTS
FOR RESCHEDULING OF ORAL ARGUMENT**

Appellants filed their motion on September 9, 2024, seeking a rescheduling of the oral arguments in this case, presently scheduled for October 8, 2024. Notably, Appellants’ Motion is unsupported by affidavits, and contains little factual detail except that “... *the Appellants have already purchased tickets for travel outside of the country. The Appellants have scheduled this*

travel in order to make necessary repairs on their rental property and the financial burden to change these plans would cost them thousands of dollars.”

However, as is the practice of this Court, the date for oral argument in this case was carefully vetted with the parties in June of 2024, more than two months ago. All counsel in this case received a letter from the Court dated June 12, 2024 assigning tentative oral argument dates in September and October of 2024. Appellants, by their counsel, responded to the Court by letter dated June 17, 2024 that he was available for oral argument on the tentative dates, including October 8, 2024. (see Exhibit “C”). Likewise, the undersigned replied on behalf of Respondents by letter dated June 17, 2024 that he was available for oral argument on the reported dates, which included October 8, 2024. (see Exhibit “D”).

The present motion filed by Appellants was preceded by an email from them to this Court on September 4, 2024 in which they report: “*Good afternoon. We were just made aware that our client will be out of the country from Oct. 10-15, 2024, and oral arguments are scheduled for Oct. 8. Please advise at your earliest convenience as to rescheduling and if something formal is required by the Court, regarding this request.” (See Exhibit “A”). (Emphasis added.)*

The undersigned replied, by email on September 4th, as follows: “*Dear Ladies and Gentlemen: With all due respect, these dates were vetted between the Court and counsel by letters exchanged between June 12 and June 17th of this year. At that time, all parties cleared and confirmed the noticed dates. Moreover, according to the advice in the email below, the Appellant’s unavailability does not begin until October 10th; two days after the scheduled hearing on oral arguments. Accordingly, Respondents would prefer that the October 8th date remain unchanged.” (See Exhibit “B”).*

Subsequently, on September 5, 2024 this Court advised Appellant, by letter, to proceed on the scheduling issue more formally, by motion.

Respectfully, Respondents oppose any continuance of the oral arguments presently scheduled for October 8, 2024. Litigation of the issues in this case has been pending since the filing of a Summons and Complaint on June 16, 2017; more than seven years ago. The parties are anxious for a conclusion to the long, drawn-out litigation of the issues between them. The underlying issue on the merits is whether Appellants hold valid title to units in a boat marina horizontal property regime. However, notwithstanding the trial court's order that they do not hold good title, Appellants have continued in possession, and the use and enjoyment, of the disputed properties pending the trial and the appeal.

Moreover, because Appellants have failed and refused to follow the rules of the Marina or to contribute to their fair share of its costs by the payment of assessments, the trial court issued a temporary order subsequent to the filing of the within appeal, to compel Appellants to perform in accordance with the terms of the Master Deed by which they claim title. That temporary order is now also challenged by appeal to this Court. (See Appellate Case number 2024-001221. The "secondary appeal".) In that secondary appeal, this Court is presently considering whether the temporary order is appealable.

According to the earlier email transmitted by Appellants on September 4, 2024, (Exhibit "A"), Appellants' unavailability does not commence until October 10, 2024, two days after the scheduled oral argument here at issue. Appellants have not asserted by affidavit or otherwise that those circumstances do not prevail at present. No good reason has been presented for a continuance.

Therefore, in the circumstances Respondents oppose any continuance of the oral argument

presently scheduled for October 8, 2024.

Respectfully,

BARR, UNGER & McINTOSH, LLC



Capers G. Barr, III
S.C. Bar No: 00542
11 Broad Street (29401)
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
cgb@barrungermcintosh.com
Attorney for Respondents

Charleston, South Carolina
September 10, 2024

Exhibit "A"

From: [Amanda Dowd](#)
To: [Court Of Appeals Filings](#); dstaley@sccourts.org; Lfalin@sccourts.org
Cc: [Amanda Dowd](#); [Hamlin O'Kelley](#); [Julie Hall](#); [Capers Barr III](#); [David Cleveland](#); [Kevin Mims](#); [Whidbee S. Perrin](#); teamcleveland@cslaw.com; efilings@lmlawllp.com
Subject: RE: FW: Elizabeth Heatley v. Mariner's Cay Marina Condo, LLC 2022-001479
Date: Wednesday, September 4, 2024 4:13:26 PM

Good afternoon. We were just made aware that our client will be out of the country from Oct. 10-15, 2024, and oral arguments are scheduled for Oct. 8. Please advise at your earliest convenience as to rescheduling and if something formal is required by the Court regarding this request.

Kind regards,
Amanda

From: Staley, Denesha [<mailto:dstaley@sccourts.org>]
Sent: Wednesday, September 4, 2024 12:39 PM
To: Capers Barr III <cgb@barrungermcintosh.com>; dcleveland@clawsonandstaubes.com; kmims@lmlawllp.com; wperrin@lmlawllp.com; hamlin.okelley@buistbyars.com
Cc: Falin, Lynn <LFalin@sccourts.org>; Julie Hall <julie@barrungermcintosh.com>; teamcleveland@cslaw.com; efilings@lmlawllp.com
Subject: Elizabeth Heatley v. Mariner's Cay Marina Condo, LLC 2022-001479

Good afternoon,

Attached please find correspondence from the South Carolina Court of Appeals.

PLEASE DO NOT RESPOND TO THIS EMAIL.

Send ALL correspondence to ctappfilings@sccourts.org only. Any parties not included in this email will receive the attached correspondence via US Mail.

Denesha M. Staley
Sr. Appeals Specialist
SC Court of Appeals
[1220 Senate Street](#)
[Columbia, SC 29201](#)
(803)-734-1079

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# Exhibit "B"

**From:** [Capers Barr III](#)  
**To:** [Amanda Dowd](#); [Court Of Appeals Filings](#); [dstaley@sccourts.org](#); [Lfalin@sccourts.org](#)  
**Cc:** [Hamlin O'Kelley](#); [Julie Hall](#); [David Cleveland](#); [Kevin Mims](#); [Whidbee S. Perrin](#); [teamcleveland@cslaw.com](#); [efilings@lmlawllp.com](#)  
**Subject:** RE: FW: Elizabeth Heatley v. Mariner's Cay Marina Condo, LLC 2022-001479  
**Date:** Wednesday, September 4, 2024 4:28:36 PM

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Dear Ladies and Gentlemen:

With all due respect, these dates were vetted between the Court and counsel by letters exchanged between June 12 and June 17<sup>th</sup> of this year. At that time, all parties cleared and confirmed the noticed dates.

Moreover, according to the advice in the email below, the Appellant's unavailability does not begin until October 10<sup>th</sup>; two days after the scheduled hearing on oral arguments.

Accordingly, Respondents would prefer that the October 8<sup>th</sup> date remain unchanged.

With kind regards to all,  
Capers Barr

**Capers G. Barr, III**  
Barr, Unger & McIntosh, L. L. C  
11 Broad Street  
P. O. Box 1037  
Charleston, South Carolina 29402-1037  
(843) 577-5083  
(843) 377-1226 (direct)  
(843) 723-9039 (fax)  
[cgb@barrungermcintosh.com](mailto:cgb@barrungermcintosh.com)  
[www.barrungermcintosh.com](http://www.barrungermcintosh.com)

---

**From:** Amanda Dowd [mailto:[amanda.dowd@buistbyars.com](mailto:amanda.dowd@buistbyars.com)]  
**Sent:** Wednesday, September 4, 2024 4:13 PM  
**To:** Court Of Appeals Filings <[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)>; [dstaley@sccourts.org](mailto:dstaley@sccourts.org); [Lfalin@sccourts.org](mailto:Lfalin@sccourts.org)  
**Cc:** Amanda Dowd <[amanda.dowd@buistbyars.com](mailto:amanda.dowd@buistbyars.com)>; Hamlin O'Kelley <[hamlin.okelley@buistbyars.com](mailto:hamlin.okelley@buistbyars.com)>; Julie Hall <[julie@barrungermcintosh.com](mailto:julie@barrungermcintosh.com)>; Capers Barr III <[cgb@barrungermcintosh.com](mailto:cgb@barrungermcintosh.com)>; David Cleveland <[DCleveland@clawsonandstaubes.com](mailto:DCleveland@clawsonandstaubes.com)>; Kevin Mims <[kmims@lmlawllp.com](mailto:kmims@lmlawllp.com)>; Whidbee S. Perrin <[wperrin@lmlawllp.com](mailto:wperrin@lmlawllp.com)>; [teamcleveland@cslaw.com](mailto:teamcleveland@cslaw.com); [efilings@lmlawllp.com](mailto:efilings@lmlawllp.com)  
**Subject:** RE: FW: Elizabeth Heatley v. Mariner's Cay Marina Condo, LLC 2022-001479

Good afternoon. We were just made aware that our client will be out of the country from Oct. 10-15, 2024, and oral arguments are scheduled for Oct. 8. Please advise at your earliest convenience as to rescheduling and if something formal is required by the Court regarding this request.

Kind regards,  
Amanda

---

**From:** Staley, Denesha [<mailto:dstaley@sccourts.org>]  
**Sent:** Wednesday, September 4, 2024 12:39 PM  
**To:** Capers Barr III <[cgb@barrungermcintosh.com](mailto:cgb@barrungermcintosh.com)>; [dcleveland@clawsonandstaubes.com](mailto:dcleveland@clawsonandstaubes.com);  
[kmims@lmlawllp.com](mailto:kmims@lmlawllp.com); [wperrin@lmlawllp.com](mailto:wperrin@lmlawllp.com); [hamlin.okelley@buistbyars.com](mailto:hamlin.okelley@buistbyars.com)  
**Cc:** Falin, Lynn <[LFalin@sccourts.org](mailto:LFalin@sccourts.org)>; Julie Hall <[julie@barrungermcintosh.com](mailto:julie@barrungermcintosh.com)>;  
[teamcleveland@cslaw.com](mailto:teamcleveland@cslaw.com); [efilings@lmlawllp.com](mailto:efilings@lmlawllp.com)  
**Subject:** Elizabeth Heatley v. Mariner's Cay Marina Condo, LLC 2022-001479

Good afternoon,

Attached please find correspondence from the South Carolina Court of Appeals.

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*Denesha M. Staley*  
Sr. Appeals Specialist  
SC Court of Appeals  
[1220 Senate Street](#)  
[Columbia, SC 29201](#)  
(803)-734-1079

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Exhibit "C"



652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1408
Main 843.856.4488

G. Hamlin O'Kelley, III
Attorney At Law
Hamlin.okelley@buistbyars.com

June 17, 2024

VIA EMAIL: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

RECEIVED
Jun 17 2024
SC Court of Appeals

*RE: Elizabeth Heatley v Mariners Cay Marina Condo, LLC et al.,
C/A No.: 2017-CP-10-3099 Appellate Case No. 2022-001479
Client File No.: 9819.0001*

Dear Ms. Kitchings:

Per the Court's request, I am available on all of the following dates in regard to the above-referenced matter:

September 10, 11, 12, 24, 25, 26
October 7, 8, 15, 16, 17

Should you have any questions, please feel free to contact me.

With kindest regards, I remain

Yours very truly,

G. Hamlin O'Kelley, III

GHOIII/atd

(Via Email Only)

Capers G. Barr, III, Esq.
Capers G. Barr, IV, Esq.
David C. Cleveland, Esq.
Kevin W. Mims, Esq.
Whidbee S. Perrin, Esq.

Exhibit "D"
BARR, UNGER
& MCINTOSH
ATTORNEYS AT LAW

Capers G., Barr, III
Direct Dial: 843-377-1226
Email: cgb@barrungermcintosh.com

June 17, 2024

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Jun 17 2024

SC Court of Appeals

Hon. V. Claire Allen
Chief Deputy Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Elizabeth Heatley v. Mariner's Cay Marina Condo, LLC
Appellate Case No: 2022-001479
Our File No: 2015-1172

Dear Ms. Allen:

Pursuant to your letter of June 12, 2024, this is to advise that I have no schedule conflicts for the dates you have suggested. I have reserved the dates of September 10, 11, 12, 24, 25, and 26; and October 7, 8, 9, 10, 15, 16, and 17 on my calendar.

Please advise if you require anything further.

With kind regards,

Sincerely yours,



Capers G. Barr, III

CGBIII/jth

cc: Hamlin O'Kelley, Esq (w/encl)
Kevin W. Mims, Esq. (via email only - w/encl)
Whidbee S. Perrin, Esq. (via email only - w/encl)
David C. Cleveland, Esq. (via email only - w/encl)
Adam Friend and Members, Mariners Cay Marina HOA Board of Directors (w/encl)

RECEIVED

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough,
Master in Equity

Case No. 2017-CP-10-03099

Appellate Case No. 2022-001479

Elizabeth Heatley, Neil B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and
Mariner’s Cay Marina Council of Co-Owners, Inc.....Respondents,

vs.

Mariner’s Cay Marina Condo, LLC, Mariner’s Cay Fuel Dock, LLC, George A. Farmer,
Jr., and South Atlantic Bank, Defendants

Of which Mariner’s Cay Marina Condo, LLC, Mariner’s Cay Fuel Dock, LLC and George
A. Farmer, Jr., are the Appellants.

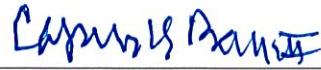
PROOF OF SERVICE

I certify that I have served the Respondents Reply To Motion of Appellants

For Rescheduling of Oral Argument, by transmitting a copy of the same via Email to:

1. G. Hamlin O’Kelley, III, Buist Byars & Taylor,
hamlin.okelley@buistbyars.com, attorney for Appellants Mariner’s Cay
Marina Condo, LLC, Mariner’s Cay Fuel Dock, LLC, and George A. Farmer,
Jr.;
2. Kevin M. Mims, Luzuriaga Mims, LLP KMims@lmlawllp.com; attorney for
Appellants;
3. Whidbee S. Perrin, Sr., wperrin@lmlawllp.com

4. David C. Cleveland, Clawson and Staubes, LLC,
DCleveland@clawsonandstaubes.com.
5. The South Carolina Court of Appeals, via email to ctappfilings@sccourts.org.



Capers G. Barr, III
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SC Bar No: 00542
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cgb@barrungermcintosh.com
Attorney for Respondents

Charleston, South Carolina
September 10, 2024

**BARR, UNGER
& MCINTOSH**
ATTORNEYS AT LAW

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Direct Dial: 843-377-1226
Email: cgb@barrungermcintosh.com

September 10, 2024

RECEIVED
Sep 10 2024
SC Court of Appeals

VIA E-MAIL

ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

RE: Elizabeth Heatley v. Mariners Cay Marina Condo, LLC et al.,
C/A No.: 2017-CP-10-3099 / Appellate Case No.: 2022-001479
Our File Number: 2017-1152.01

Dear Ms. Kitchings:

Enclosed for filing in the above referenced appeal is the Reply of Respondents To Motion of Appellants For Rescheduling of Oral Argument, with Exhibits, together with Proof of Service.

By copy of this letter, I am serving same upon all counsel. Should you have any questions please feel free to contact me.

With kind regards,

Sincerely yours,



Capers G. Barr, III

CGBIII/jth

Enclosure (as stated)

cc: G. Hamlin O'Kelley, III (hamlin.okelley@buistbyars.com) (w/encl)
David C. Cleveland, Esq. (DCleveland@clawsonandstaubes.com) (w/encl)
Kevin W. Mims, Esq. (KMims@lmlawllp.com) (w/encl)
Whidbee S. Perrin, Esq. (wperrin@lmlawllp.com) (w/encl)
Adam Friend and Board Members (w/encl)