

EXHIBIT "1" TO NOTICE OF APPEAL

PALMETTO BAY MARINA, LLC v. YACHT CLUB OF HHI HOMEOWNERS, INC.

**RECEIVED**

JUN 26 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )  
 )  
PALMETTO BAY MARINA, LLC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
YACHT CLUB OF HHI )  
HOMEOWNERS, INC., )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2022-CP-07-00453

ORDER  
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This matter came before me for a non-jury trial on May 15th, 2024. Present at the hearing was Curtis L. Coltrane Esquire on behalf of the Plaintiff and Terry A. Finger, attorney for the Defendant. Agents and representatives of the parties were also present.

Plaintiff is the owner and operator of the Palmetto Bay Marina on Hilton Head Island, South Carolina. Defendant owns real property in the Marina and has operated a Yacht Club since initially being incorporated in 1972.

Plaintiff seeks a Declaratory Judgment prohibiting “Members” of the Defendant or Members of the general public from storing boats on property owned by the Defendant. Plaintiff alleges that this prohibition is within the chain of title on the parcels of real estate owned by the Defendant.

Defendant raised the defenses of statute of limitations, laches, Rule Against Perpetuities, no privity of contract, bankruptcy assignment, and merger.

Having reviewed the pleadings, hearing the testimony, reviewing the exhibits, and listening to the arguments of counsel, I make the following

### **FINDINGS OF FACT**

1. A Contract of Sale between the Yacht Club of Hilton Head Island (Purchaser) and Palmetto Bay Marina, a South Carolina partnership (Seller), dated January 25<sup>th</sup>, 1979 is in the respective chain of title for the property owned by the Defendant. The Contract of Sale is recorded with the Beaufort County Register of Deeds (ROD) in Deed Book 277 at page 259. See Exhibit P1.
2. The Contract of Sale in paragraph 10 states: "The Purchaser may store on the property boats owned by it. It shall not store on the property boats owned by its Members, if the Seller has available storage space at its customary rates."
3. Plaintiff has succeeded to the rights of the Palmetto Bay Marina, South Carolina partnership, and has the right to assert any claims arising from said Contract of Sale. Plaintiff acquired the property by deed dated April 5, 2019 recorded in ROD deed book 3752 at page 2817. See Exhibit P24.
4. Defendant has succeeded to the rights of the Yacht Club of Hilton Head Island, a non-profit corporation to 3 parcels of property that were initially acquired by the Yacht Club of Hilton Head by deeds July 6, 1979 recorded in ROD deed book 284 at page 1787; and dated October 6, 1981 recorded in ROD Deed Book 344 at page 597. See Exhibits P3 and P4.
5. The Defendant acquired the property from the Yacht Club of Hilton Head Island by deed dated December 8, 2011 recorded in ROD deed book 3106 at page 1957. See Exhibit P5.
6. Boats have been stored by Members on the Defendant's real property since the property was acquired in 1979. Plaintiff was aware of the storage of boats on Defendant's property since before it acquired the property. No effort was made by Plaintiff or any of the

- numerous predecessors in title to complain about or attempt to stop the storage of Member boats on Defendant's property.
7. No evidence was introduced that Members of the general public have ever stored boats on the Plaintiff's property.
  8. The Plaintiff owns five boats that are stored on the property. This does not violate Paragraph 10 of Contract of Sale.
  9. The uncontradicted testimony was that Member boats had been stored on Defendant's property (and Defendant's predecessor) on a consistent and regular basis for many decades. The business record found by Defendant showing boat storage for Members was ongoing for decades. See Exhibit D7. Uncontradicted testimony indicated a boat in storage had its engine stolen in 1993. Uncontradicted testimony was that Member boat storage had been done on the property since its acquisition. See Paragraph 4 above. The current rental rate is \$40 per month.
  10. Plaintiff maintains it has outside storage available at "customary rates." The rate is three (\$3) dollars per foot per day. See Exhibit P27. This storage rate is apparently designed in association with the Plaintiff's boat yard repair business. After a boat is repaired, if the owner does not remove from the yard, the \$3 per foot per day applies. For a 30-foot boat, the storage rate would be \$90 per day, as opposed to the \$40 per month the Plaintiff is charging its Members.
  11. Plaintiff also owns a dry stack boat storage facility at another location on Hilton Head Island and the boat storage rates for inside storage are approximately 25% of the rates it charges for outside storage at Palmetto Bay Marina.

12. The \$3 per foot per day is not “customary”, it is punitive in nature as it relates to Defendant’s Members.
13. There is an acknowledged limited amount of parking in Palmetto Bay Marina. The parking is not of sufficient capacity to service the multitude of businesses located and operating successfully in the Marina.
14. The Defendant, through cross-examination and direct testimony, indicated that it believed this lawsuit was designed to pressure Defendant to sell its property to Plaintiff, have Defendant merge with another club on Hilton Head, and allow Plaintiff additional land to develop in the Marina. Defendant was not interested in selling.

Based upon the FINDINGS OF FACT, I make the following

**CONCLUSION OF LAW**

1. This Court has proper personal and subject matter jurisdiction.
2. This case was referred to me as Master in Equity by Order of Reference dated February 13, 2023.
3. The Defendant has been storing Member boats on the subject property for many decades. This case was filed on March 16, 2022. The uncontracted testimony was that the storage of boats was plainly viable to Plaintiff and Plaintiff’s predecessors in title. It is questionable to whether the Contract of Sale, Exhibit P1, is a document that could be a “sealed instrument” under S.C. Code Ann. § 15-3-520 thereby establishing a 20 year statute of limitations. Even if it was a “sealed instrument” the Statute of Limitations has long expired. The Statute of Limitations defense is proven by a preponderance of the evidence.
4. Defendant has raised the defense of laches: This defense has merit and is an additional ground to deny Plaintiff’s claim. Courts have the inherent power to do all things

reasonably necessary to ensure that just results are reached to the fullest extent possible. *Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1998). The party seeking to establish laches must show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice. *Kelley v. Kelley*, 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct.App.2006). To establish laches as a defense, the Defendant must show the complaining party unreasonably delayed its assertion of a right, thereby prejudicing the Defendant. *Id.* "[T]he determination of whether laches has been established is largely within the discretion of the trial court." *Id.* at 607, 629 S.E.2d at 391. Additionally, for the defense of laches to be sustained, "the circumstances must have been such as to import that the complainant had abandoned or surrendered the claim or right which he now asserts." *Id.* (quoting *Byars v. Cherokee County*, 237 S.C. 548, 560, 118 S.E.2d 324, 330 (1961)).

The testimony is clear that Defendant's storage of Member boats has been ongoing for far longer than the Statute of Limitations. Defendant has made storage available to its Members, is part of the business model, attracts Members, and is a part of Defendant's revenue stream. The extreme delay in asserting rights under Paragraph 10 of the Contract of Sale is unreasonable under the facts and circumstances and to enforce same after all these years would be prejudicial to Defendant. It is clear that Plaintiff's predecessors in title abandoned or surrendered the claim that Plaintiff now asserts. The defense of laches is proven by preponderance of the evidence.

5. In light of the rulings on the Statute of Limitations and Laches defenses, the Court need not rule on the additional defenses listed in Defendant's Answer as the Fourth through Seventh Defenses.

**NOW THEREFORE**, the Complaint of the Plaintiff is hereby dismissed with prejudice. Both parties are responsible for their own attorney fees and costs.

**AND IT IS SO ORDERED.**

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Marvin H. Dukes, III  
Master-in-Equity, Beaufort County

Beaufort, South Carolina

\_\_\_\_\_ day of June, 2024