

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM BEAUFORT COUNTY  
IN THE COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER IN EQUITY AND CIRCUIT COURT JUDGE

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CASE NUMBER 2025-1276

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PALMETTO BAY MARINA, LLC.....APPELLANT,

vs.

YACHT CLUB OF HHI HOMEOWNERS, INC.....RESPONDENT.

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INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

1. Is a property owner bound by a deed restriction running with the title to the land appearing the in property owner's chain of title?
2. Is a property owner bound by a "non-waiver" agreement appearing in the property owner's chain of title so as to preclude defenses based on the statute of limitations and laches?
3. Can the defense of laches be proved in the absence of any evidence of a detrimental change in position by the party asserting laches?
4. In the absence of compliance with S. C. Code Ann. § 19-5-510 (Supp. 2025), is it proper to admit purported business records as evidence?
5. Is it proper to base fact findings in an Order on evidence regarding settlement negotiations that was ruled inadmissible at trial?
6. Must an order be reversed when the findings of fact upon which an order is based are without evidentiary support in the record?

## STATEMENT OF THE CASE

Palmetto Bay Marina, LLC (herein, “Palmetto Bay”), commenced this case by filing a Summons and Complaint on March 16, 2022. In the Complaint, Palmetto Bay stated a single cause of action for Declaratory Judgment as to the rights and liabilities of Palmetto Bay and the defendant Yacht Club of HHI Homeowners, Inc. (herein, “Yacht Club”), under a deed restriction in documents recorded in the Office of The Register of Deeds for Beaufort County, South Carolina. In the Complaint, Palmetto Bay alleged the following material facts:

- (a) Palmetto Bay owns five properties in the Palmetto Bay Marina area on Hilton Head Island.<sup>1</sup>
- (b) With respect to the five properties it owns, Palmetto Bay is the successor in interest to an entity known as Sea Pines Plantation Company.<sup>2</sup>
- (c) Yacht Club owns one property in the Palmetto Bay Marina area Hilton Head Island.<sup>3</sup>
- (d) With respect to the property it owns, Yacht Club is the successor in title to an entity known as Yacht Club of Hilton Head Island.<sup>4</sup>
- (e) The Yacht Club of Hilton Head Island was dissolved by action of its board of directors on April 6, 2013.<sup>5</sup>

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<sup>1</sup> Complaint, paragraph 5. R.\_\_\_\_.

<sup>2</sup> Complaint, paragraph 6. R.\_\_\_\_.

<sup>3</sup> Complaint, paragraph 7. R.\_\_\_\_.

<sup>4</sup> Complaint, paragraph 8. R.\_\_\_\_.

<sup>5</sup> Complaint, second paragraph numbered 11. R.\_\_\_\_.

(f) The chain of title to the property owned by Yacht Club includes the following restriction:

[Yacht Club] may store boats owned by it. It shall not store on the property boats owned by its members, if [Palmetto Bay] has available storage space at its customary rates.<sup>6</sup>

(g) Yacht Club leases space on the Yacht Club property to persons for the storage of boats.<sup>7</sup>

(h) The actions of Yacht Club in leasing space for the storage of boats on the Yacht Club property violate the restriction in its chain of title.<sup>8</sup>

Yacht Club filed its Answer on May 3, 2022. In its Answer, Yacht Club denied the material allegations of the Complaint.<sup>9</sup> Yacht Club also alleged the following affirmative defenses:

(a) That Palmetto Bay's claim is barred by the Statute of Limitations.<sup>10</sup>

(b) That Palmetto Bay's claim is barred by Laches.<sup>11</sup>

(c) That Palmetto Bay's claim is barred by the Rule Against Perpetuities.<sup>12</sup>

(d) That there is no privity of contract between Palmetto Bay and Yacht Club.<sup>13</sup>

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<sup>6</sup> Complaint, paragraphs 9, 10 and first paragraph numbered 11. R.\_\_\_\_.

<sup>7</sup> Complaint, paragraph 13. R.\_\_\_\_.

<sup>8</sup> Complaint, paragraphs 12, 13, 14 and 15. R.\_\_\_\_.

<sup>9</sup> Answer, paragraphs 1 – 14. R.\_\_\_\_.

<sup>10</sup> Answer, paragraphs 15 – 16. R.\_\_\_\_.

<sup>11</sup> Answer, paragraphs 17 - 18. R.\_\_\_\_.

<sup>12</sup> Answer, paragraphs 19 – 20. R.\_\_\_\_.

<sup>13</sup> Answer, paragraphs 21 – 22. R.\_\_\_\_.

(e) That Palmetto Bay's claims regarding Yacht Club's property were extinguished by the bankruptcy of Sea Pines in 1986.<sup>14</sup>

(f) That Palmetto Bay's claim is barred by the doctrine of merger.<sup>15</sup>

The case was referred to the Hon. Marvin H. Dukes, III, as Master In Equity for Beaufort County, South Carolina by an order of the Hon. Carmen T. Mullen, filed on February 1, 2023. The case was tried before the Hon. Marvin H. Dukes, III, on May 15, 2024. On July 1, 2024, Judge Dukes filed his Order dismissing Palmetto Bay's case based on the defenses of the statute of limitations and laches.<sup>16</sup> Palmetto Bay filed its Motion to Alter or Amend on July 9, 2024. Judge Dukes filed his Order denying Palmetto Bay's Motion to Alter or Amend on June 6, 2025. Palmetto Bay filed its Notice of Appeal on June 26, 2025.

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<sup>14</sup> Answer, paragraphs 23 – 25. R.\_\_\_\_.

<sup>15</sup> Answer, paragraphs 26 – 27. R.\_\_\_\_.

<sup>16</sup> July 1, 2024, Order, pp. 4 – 5. R.\_\_\_\_.

## STATEMENT OF FACTS

The following material facts are established by the record for this case.

1. Yacht Club owns real property in the Palmetto Bay Marina area of Hilton Head Island that is known as:

All those certain pieces, parcels, or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly shown and described as Parcel 1, containing 0.9365 acres, and Parcel 2, containing 0.2131 acres, on a plat entitled "A plate of Parcels 1, 2 and 3 of Yacht Club Palmetto Bay, a section of Sea Pines Plantation," dated May 7, 1979, prepared by Jerry L. Richardson, SCRLS #4784, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 27 at Page 212.

AND

All that certain piece, parcel or tract of land containing 0.250 acres, shown and described at Tract II C on a Plat entitled "A Plat of Tract I A through Tracts III D, Palmetto Bay Marina Area," dated September 24, 1981, prepared by Jerry L. Richardson, SCRLS # 4784 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 199. (herein, the "Yacht Club Property")

2. The chain of title to the Yacht Club Property includes the following:
  - (a) A "Contract of Sale" between the "Yacht Club of Hilton Head Island" and "Palmetto Bay Marina recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 277 at Page 259 (herein, the "Contract of Sale").<sup>17</sup>
  - (b) An "Assignment and Termination Agreement" between "The Yacht Club of Hilton Head Island" and "Palmetto Bay Marina Village Associates" recorded in the Office of The

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<sup>17</sup> Trial Transcript, Palmetto Bay Exhibit 1. R.\_\_\_\_. Transcript of Trial, p. 21, l. 14, to p. 22, l. 6. R.\_\_\_\_.

Register of Deeds for Beaufort County, South Carolina, in Deed Book 255 at Page 1224 (herein, the “Assignment Agreement”).<sup>18</sup>

(c) A deed from Sea Pines Plantation Company to the “Yacht Club of Hilton Head Island” recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 284 at Page 1787. Among other things, this conveyance is made subject to the Contract of Sale recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 277 at Page 259 (herein, the “Sea Pines Deed”).<sup>19</sup>

(c) A deed from “Palmetto Bay Marina Village Associates, A Tennessee General Partnership,” to the “Yacht Club of Hilton Head Island, South Carolina,” recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 334 at Page 597. Among other things, this conveyance is made subject to all of the covenants and restrictions set out in the Deed from Sea Pines Plantation Company to the Yacht Club of Hilton Head Island recorded in Deed Book 284 at Page 1787. This includes the Contract of Sale recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 277 at Page 259 (herein, the “Palmetto Bay Deed”).<sup>20</sup>

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<sup>18</sup> Trial Transcript, Palmetto Bay Exhibit 2. R.\_\_\_\_. Transcript of Trial, p. 21, l. 14, to p. 22, l. 6. R.\_\_\_\_.

<sup>19</sup> Trial Transcript, Palmetto Bay Exhibit 3. R.\_\_\_\_. Transcript of Trial, p. 21, l. 14, to p. 22, l. 6. R.\_\_\_\_.

<sup>20</sup> Trial Transcript, Palmetto Bay Exhibit 4. R.\_\_\_\_. Transcript of Trial, p. 21, l. 14, to p. 22, l. 6. R.\_\_\_\_.

(d) A deed from the “Yacht Club of Hilton Head Island” to Yacht Club, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, recorded in in Official Record Book 3106 at Page 1957.<sup>21</sup>

3. The conveyances made in both the Sea Pines Deed and the Palmetto Bay Deed were made subject to the terms of the Contract of Sale.

4. The Contract of Sale includes the following restriction related to the Yacht Club Property:

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. (herein, the “Deed Restriction”)

5. The Contract of Sale also includes the following text:

22. Survival of Certain Provisions. Each Covenant, condition and representation herein made shall survive the closing. All provisions which are to be performed or apply to circumstances subsequent to closing shall likewise survive the closing.

And

25. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives, successors and assigns.

6. The Assignment Agreement includes the following text:

Palmetto Bay and Assignor hereby cancel and terminate the Contract and agree that the Contract is null and void, of no further effect whatsoever and that neither party thereto shall, from and after the date hereof, have any further rights hereunder, including all easements and rights-of-way granted thereunder, provided, however, those certain provisions contained in paragraphs 10, 11, 14 and 15 of the Contract shall survive said termination and be incorporated in this Agreement as if fully set out herein. (emphasis added)<sup>22</sup>

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<sup>21</sup> Trial Transcript, Palmetto Bay Exhibit 5. R. \_\_\_\_\_. Transcript of Trial, p. 21, l. 14, to p. 22, l. 6. R. \_\_\_\_\_.

<sup>22</sup> Trial Transcript Palmetto Bay Exhibit 2, p. 3, para VI. R. \_\_\_\_\_. “Paragraph 10” in the Contract of Sale is the Deed Restriction.

And:

No delay on the part of Assignee in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercises thereof or the exercise of any other power or right.<sup>23</sup>

7. Palmetto Bay is the successor in interest to the rights of Palmetto Bay Marina set out in the Contract of Sale, the rights of Sea Pines Plantation Company, Inc., set out in the Sea Pines Deed and the rights of Palmetto Bay Marina Village Associates, Ltd., set out in the Assignment Agreement and the Palmetto Bay Deed.<sup>24</sup>

8. The Yacht Club of HHI Homeowners, Inc., or those acting by, through or under it, currently stores boats or leases space for the storage of boats on the Yacht Club Property.<sup>25</sup>

9. Palmetto Bay Marina, LLC, offers space and has space available for lease to store boats on its property to the general public, at an advertised, customary rate.<sup>26</sup>

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<sup>23</sup> Trial Transcript Palmetto Bay Exhibit 2, p. 3 Article VIII(b). R.\_\_\_\_.

<sup>24</sup> Trial Transcript Palmetto Bay Exhibits 6 – 26. R.\_\_\_\_. Trial Transcript, p. 29, l. 3 to p. 31, l. 14. See also Transcript of Trial, p. 33, l. 8 to p. 34, l. 7, R.\_\_\_\_.

<sup>25</sup> Trial Transcript, p. 139, l. 5 – 17, R.\_\_\_\_.

<sup>26</sup> Transcript of Trial, p. 73, l. 5 to p. 77, l. 7, R.\_\_\_\_; p. 112, l. 19 to p. 116, l. 22, R.\_\_\_\_; p. 167, l. 3 to p. 174, l. 10, R.\_\_\_\_.

## SCOPE OF REVIEW

Palmetto Bay seeks a declaratory judgment that the actions of Yacht Club violate the restriction in its own chain of title. Declaratory judgments are neither legal nor equitable.<sup>27</sup> The standard of review for a declaratory judgment action is, therefore, determined by the nature of the underlying issue.<sup>28</sup> An action to enforce a restrictive covenant is in equity.<sup>29</sup> On appeal from an action at equity, tried by the judge alone without a reference, the appellate court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence.<sup>30</sup>

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<sup>27</sup> *Felts v. Richland Cnty.*, 303 S.C. 354, 400 S.E.2d 781 (1991); *Wiedemann v. Town of Hilton Head Island*, 344 S.C. 233, 542 S.E.2d 752 (Ct.App.2001).

<sup>28</sup> *Bundy v. Shirley*, 412 S.C. 292, 301, 772 S.E.2d 163, 168 (2015).

<sup>29</sup> *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006).

<sup>30</sup> *Seabrook Island Property Owners Association v. Marshland Trust, Inc.*, 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004).

## ARGUMENT NUMBER 1

YACHT CLUB'S DEFENSES OF STATUTE OF LIMITATIONS AND LACHES FAIL BECAUSE DOCUMENTS IN YACHT CLUB'S CHAIN OF TITLE INCLUDE A NON-WAIVER TERM AND BECAUSE THE DEED RESTRICTION RUNS WITH THE LAND. (Questions Presented 1 and 2)

In the Order, Judge Dukes found Yacht Club established the defenses of Statute of Limitations and Laches.<sup>31</sup> However, the conclusions of Judge Dukes are in error because the Deed Restriction is binding on the successors and assigns of all owners, including Yacht Club, and the Deed Restriction runs with the land. Further, Yacht Club's chain of title includes the "Assignment and Termination Agreement" that expressly continues and incorporates the Deed Restriction, and includes a "non-waiver" term. The law in South Carolina is that non-waiver terms are valid and enforceable.<sup>32</sup> In the "Assignment and Termination Agreement" the following text appears:

No delay on the part of Assignee in exercising a power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any power of right hereunder preclude other or further exercises thereof or the exercise of any power or right.<sup>33</sup>

Yacht Club does not deny that the "Assignment and Termination Agreement" is in Yacht Club's chain of title. The "non-waiver" agreement vitiates the statute of limitations and laches defenses of Yacht Club because Yacht Club's predecessor in title contracted

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<sup>31</sup> Judge Dukes' conclusions are based on inadmissible evidence, which is the subject of Argument Number 2.

<sup>32</sup> *Crotts v. Fletcher Motor Company*, 219 S.C. 210, 64 S.E.2d 540 (1951).

<sup>33</sup> Trial Transcript, Palmetto Bay Exhibit 2, R.\_\_\_\_. The exhibits in Yacht Club's chain of title were admitted without objection from Yacht Club. Trial Transcript, p. 21, l. 14, to p. 22, l. 6. R.\_\_\_\_.

them away. The Order does not address the non-waiver agreement, and this was brought to Judge Dukes' attention in Palmetto Bay's Motion to Alter or Amend.<sup>34</sup>

Because the plain text of the non-wavier agreement specifically addresses the statute of limitations and laches defenses, and nullifies them, the conclusions in the Order are without support in the record or in law.

b. The Deed Restriction runs with the title to the Yacht Club Property. The documents imposing the Deed Restriction state that they are binding on the successors and assigns of the parties.<sup>35</sup> Language binding the successors and assigns demonstrates that the restriction runs with the land.<sup>36</sup>

The Conclusion in the Order that the statute of limitations defense abrogates Palmetto Bay's ability to enforce the Deed Restriction against current violations misapprehends the nature of the Deed Restriction and the fact that it runs with the land. While the statute of limitations might prevent the beneficiary of a Deed Restriction from suing over a violation that occurred more than three (3) years prior to the suit, such as a failure to pay an assessment, the statute of limitations does not prevent the beneficiary of the Deed Restriction from suing to prevent a current violation. The Order does not cite any authority for the conclusion.<sup>37</sup>

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<sup>34</sup> Motion to Alter or Amend, p. 4. R.\_\_\_\_.

<sup>35</sup> Trial Transcript, Palmetto Bay Exhibit 1, p. 5, R.\_\_\_\_; Palmetto Bay Exhibit 2, p. 4, R.\_\_\_\_; Trial Exhibit 3, p. 1, R.\_\_\_\_.

<sup>36</sup> *Harbison Community Association, Inc. v. Mueller*, 319 S.C. 99, 459 S.E.2d 860 (Ct.App. 1995).

<sup>37</sup> Yacht Club did not argue changed conditions that abrogate the deed restriction, it only argued the statute of limitations.

The conclusion that Palmetto Bay is prohibited from enforcing the Deed Restriction which runs with the land because of violations that have occurred in the past is incorrect and is without support in South Carolina law.

## ARGUMENT NUMBER 2

YACHT CLUB OFFERED NO EVIDENCE SHOWING IT CHANGED ITS POSITION IN ANY WAY BASED ON THE CLAIMED DELEY IN THE ENFORCEMENT OF THE DEED RESTRICTION. IN THE ABSENCE OF EVIDENCE OF A DETRIMENTAL CHANGE IN POSITION, THE LACHES DEFENSE FAILS. (Question Presented 3)

A party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice.<sup>38</sup> In this case, Yacht Club failed to produce evidence showing that it incurred expenses or entered into obligations or otherwise detrimentally changed its position as a result of claimed delayed enforcement of the Deed Restriction and delayed enforcement was the cause of any such change in position. The testimony of Yacht Club's witnesses was only that it had engaged in the practice of storing member's boats on its property for an extended period. None of Yacht Club's witnesses testified that Yacht Club changed its position in any way, gave up any rights or opportunities or incurred any expenses based on the claimed delayed enforcement.<sup>39</sup>

The passage of time alone Is Insufficient to establish laches.<sup>40</sup> Yet, the passage of time alone is the sole basis for Judge Dukes' conclusion that the defense of laches was proved.<sup>41</sup> Because

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<sup>38</sup> *Hallums v. Hallums*, 296 S.C. 195, 371 S.E.2d 525 (1988).

<sup>39</sup> The testimony of Yacht Club's witnesses appears in the Trial Transcript as follows: Witness Michael Gilroy, p. 123, . 24 to p. 140, l. 23, R.\_\_\_\_ and p. 147, l. 16 to 152, l. 14, R.\_\_\_\_; Atlee Claude Virtz Compher, III, p. 142, l. 6 to p.147, l. 12, R.\_\_\_\_, and p. 153, l. 3, to p. 165, l. 13, R.\_\_\_\_. There is no testimony from either witness as to any claimed prejudice suffered by Yacht Club as a result of the claimed delayed enforcement.

<sup>40</sup> *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct.App. 1999).

<sup>41</sup> The July 1, 2024, Order reads, in relevant part:

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.

July 1, 2024 Order, p. 5, R.\_\_\_\_. Completely missing is any finding of fact showing a detrimental change of position by Yacht Club. The conclusion that prejudice would result is wholly without support in the record.

there is no evidence in the record showing that Yacht Club made any detrimental change to its position based on the claimed delayed enforcement, there is no evidence supporting Judge Dukes' conclusion that laches was proved.

### ARGUMENT NUMBER 3

THE TRIAL COURT ADMITTED DOCUMENTS INTO EVIDENCE THAT YACHT CLUB FAILED TO AUTHENTICATE AS REQUIRED BY THE UNIFORM BUSINESS RECORDS ACT, AND INCLUDED FINDINGS IN THE ORDER BASED ON EVIDENCE THAT THE TRIAL COURT EXCLUDED UNDER RULE 408 SCRE, ALL OF WHICH IS REVERSIBLE ERROR. (Issues Presented 4, 5 and 6)

S. C. Code Ann. § 19-5-510 (Supp. 2025), reads:

The term “business” shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

This section may be cited as the Uniform Business Records as Evidence Act.

In this case, Yacht Club’s witnesses offered evidence to establish that the alleged violations of the Deed Restriction had occurred over a lengthy period. In each instance, Palmetto Bay objected to the evidence, based on S. C. Code Ann. § 19-5-510 (Supp. 2025), and the following facts: An entity known as “Yacht Club of Hilton Head Island” was organized in or around the year 1972.<sup>42</sup> At some time in or around the year 2011, a new entity, Yacht Club, was formed.<sup>43</sup> The former “Yacht Club of Hilton Head Island” and Yacht Club are two different entities. Yacht Club was organized as a homeowners’ association for the purpose of avoiding real estate taxes on Yacht Club’s property.<sup>44</sup>

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<sup>42</sup> Trial Transcript, p. 123, l. 6 – 10, R.\_\_\_\_.

<sup>43</sup> Trial Transcript, p. 125, l. 128, l. 4, R.\_\_\_\_; p. 158, l. 12 to p. 159, l. 11. R.\_\_\_\_.

<sup>44</sup> Trial Transcript, p. 126, l. 3, to p. 128, l. 4, R.\_\_\_\_;

At Trial, Yacht Club offered witnesses for the purposes of identifying purported business records of both the former “Yacht Club of Hilton Head Island” and Yacht Club. At each point, an objection was made because: (a) none of the witnesses were the custodian of records for the former “Yacht Club of Hilton Head Island”; (b) none of the witnesses testified on personal knowledge as to the mode of preparation; (c) none of the witnesses testified on personal knowledge as to whether the purported records were made at or near the time of the act.<sup>45</sup>

In the July 1, 2024, Order, Findings of Fact 6 and 9 and Conclusions Of Law 3, 4 and 5 are based on the evidence that was admitted over objection because the evidence failed to comply with the requirements of S. C. Code Ann. § 19-5-510 (Supp. 2025).

Rule 408, SCRE, read as follows, in relevant part:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

In the July 1, 2024, Order, Finding of Fact number 14 is based evidence that was ruled inadmissible at trial because it concerns evidence related to settlement discussions.<sup>46</sup> Despite the evidence having been excluded at trial, Finding Of Fact 14 in the July 1, 2024, Order is based on the excluded evidence.<sup>47</sup> The Conclusions of Law are

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<sup>45</sup> Trial Transcript, p. 128, l. 6, to p. 131, l. 16, R.\_\_\_\_; p. 132, l. 3, to p. 133, l. 9, R.\_\_\_\_; p. 136, l. 16 to p. 138, l. 14, R.\_\_\_\_; p. 144, l. 14, to p. 145, l. 2, R.\_\_\_\_; p. 145, l. 25, to p. 147, l. 12, R.\_\_\_\_.

<sup>46</sup> Trial Transcript, p. 88, l. 3 to p. 89, l. 22, R.\_\_\_\_.

<sup>47</sup> July 1, 2024, Order, p. 4, para. 14, R.\_\_\_\_.

infected by this inadmissible evidence, as is shown by the Court's characterization of Palmetto Bay's actions in the text.

The Conclusions of Law are all based on factual findings as to events from the past that find support only in inadmissible evidence. Absent the underpinning of the inadmissible evidence, there is no evidence in the record to support the conclusions in the July 1, 2024, Order that Yacht Club made out its defenses of the Statute of Limitations and Laches.

#### ARGUMENT NUMBER 4

THE ONLY EVIDENCE IN THE RECORD IS THAT PALMETTO BAY HAS STORAGE SPACE AVAILABLE AT ITS CUSTOMARY RATES CHARGED TO THE GENERAL PUBLIC. THE TRIAL COURT'S CONTRARY FINDING IS REVERSIBLE ERROR. (Issue presented 6)

The text of the Deed Restriction reads:

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.<sup>48</sup>

The only evidence in the record is that Palmetto Bay has storage space available at its customary rates. The Court's finding to the contrary is without evidentiary support in the record.<sup>49</sup>

The only evidence in the record is that the rate charged by Palmetto Bay for storage of boats is the published, customary rate charged to the public for boat storage at Palmetto Bay Marina. This rate is not specific to any "service space" but applies generally to all boat storage offered by Palmetto Bay at Palmetto Bay Marina.

Judge Dukes' finding that Palmetto Bay offers storage space for a lesser amount at a location on the north end of Hilton Head Island is without evidentiary support in the record. The only evidence is that the only facility owned by Palmetto Bay Marina is Palmetto Bay Marina, and it does not own or operate a marina located on the north end of Hilton Head Island.<sup>50</sup>

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<sup>48</sup> Trial Transcript, Palmetto Bay Exhibit 1, R.\_\_\_\_.

<sup>49</sup> Transcript of Trial, p. 73, l. 5 to p. 77, l. 7, R.\_\_\_\_; p. 112, l. 19 to p. 116, l. 22, R.\_\_\_\_; p. 167, l. 3 to p. 174, l. 10, R.\_\_\_\_.

<sup>50</sup> Trial Transcript, p. 83, l. 6 – 22. R.\_\_\_\_.

Because Judge Dukes' finding that Palmetto Bay Marina does not have available storage space at its customary rate is without evidentiary support in the record, the Conclusions of Law that are founded on it cannot be sustained.

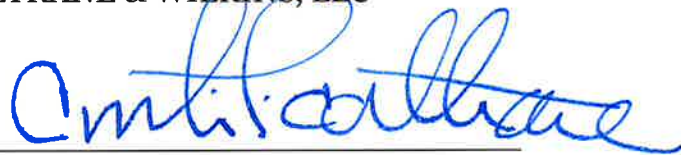
CONCLUSION

For the foregoing reasons, Palmetto Bay urges the Court to reverse the July 1, 2024, Order of the Hon. Marvin H. Dukes, III, granting judgment in favor of Yacht Club, and finding that the Deed Restriction is enforceable against Yacht Club, and that Yacht Club's actions of storing boat of its members on the Yacht Club Property violates the Deed Restriction.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By:



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