

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

RECEIVED
NOV 22 2013
SC Court of Appeals

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr., Respondents,

v.

Watson's Orchard Property Owners Association, Inc., a South Carolina Corporation, and Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, Defendants,

Of whom Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as co-Personal Representative of the Estate of James B. Stephens, are the Appellants.

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F.

Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herrman,..... Third-Party Defendants.

**APPELLANTS' REPLY RE MOTION TO REQUIRE RESPONDENTS TO
COMPLY WITH THE RULES REGARDING DESIGNATION OF
MATERIALS FOR THE RECORD ON APPEAL**

Respondents assert in their Response regarding this motion that “[a]t the conclusion of the trial the court ruled that it would accept all evidence and make a determination of its relevancy.” Respondents cite pages 283-86 of the Transcript.

The trial court made no such ruling. The transcript refers to Appellants’ counsel’s efforts to ensure that all documents for which he had moved for admission had in fact been admitted. The only evidence that was at issue was the evidence which Appellants’ counsel had moved to admit and to which Respondents’ counsel had objected. From the transcript:

MR. HERLONG: Yes. Your Honor, I'd like to double check with her make sure everything got admitted that shoulda been and, uh, ---

THE COURT: Okay.

MR. HERLONG: --- just, uh, double check our housekeeping.

(Whereupon, a discussion was held off the record.)

MR. HERLONG: Your Honor, if I might interrupt you for one second. Um, I believe all the exhibits were admitted except for those two that were just marked for identification involvin' your, that lot with you.

MR. HILLER: You mean the five lots that I own, ---

MR. HERLONG: Yeah, exactly.

MR. HILLER: --- that I bought ---

MR. HERLONG: Yeah, exactly.

MR. HILLER: --- and then transferred to my corporation?

MR. HERLONG: Exactly.

MR. HILLER: Right, ---

MR. HERLONG: I think everything was admitted ---

MR. HILLER: --- that was just ---

MR. HERLONG: --- other than that. Are you, are you in agreement on that, Randy?

THE COURT: Over over his objection.

MR. HERLONG: Over his objection.

MR. HILLER: No, you actually sustained that objection.

I recall ---

THE COURT: Yeah, yeah, I did, ---

MR. HILLER: Okay.

THE COURT: --- I did.

MR. HERLONG: We're talkin' about everything else, the ---

MR. HILLER: Oh, yeah, everything else was over my objection.

Tr. 285:6-86:13 (attached).

The trial court did not rule that it would "accept" all evidence and "make a determination of its relevancy." Moreover, even if the trial court had agreed to keep the record open after trial (which it did not do), the court did not consider the relevance of the documents that Respondents now seeks to have made part of the record and admit them. Indeed, these are documents that were not even copied to

Appellants' counsel in the post-trial letter in which they were (presumably) conveyed to the court. The copy of the letter received by the undersigned was in a thin envelope that did not include the referenced documents.

Accordingly, Appellants request that the Court order Respondents to comply with the Rules concerning the Record on Appeal and the designation of materials for the Record on appeal and to remove from their Designation any materials not presented to the trial court during the trial.



William D. Herlong
The Herlong Law Firm, LLC
531 S. Main St., Ste. 201
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3801
Attorney for Appellants

Other counsel of record:
Randall S. Hiller
P.O. Box 1716
Greenville, SC 29602
(864) 232-0026
Attorney for Respondents

November 19, 2013

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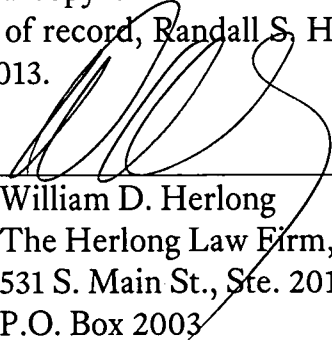
v.

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**PROOF OF SERVICE
FOR
APPELLANTS' REPLY RE MOTION TO REQUIRE RESPONDENTS TO
COMPLY WITH THE RULES REGARDING DESIGNATION OF
MATERIALS FOR THE RECORD ON APPEAL**

I hereby certify that I have served the APPELLANTS' REPLY RE MOTION TO REQUIRE RESPONDENTS TO COMPLY WITH THE RULES REGARDING DESIGNATION OF MATERIALS FOR THE RECORD ON APPEAL on respondents by depositing a copy of each in the United States Mail, postage paid, addressed to their attorney of record, Randall S. Hiller, P.O. Box 1716, Greenville, SC 29602 on November 19, 2013.



William D. Herlong
The Herlong Law Firm, LLC
531 S. Main St., Ste. 201
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3801
Attorney for Appellants

H THE HERLONG LAW FIRM, LLC

531 S. Main Street., Suite 201 | P.O. Box 2003 | Greenville, S.C. | 29602-2003
b 864.382.3800 | f 888.501.1278

November 19, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Hanold *et al.*, Respondents v. Watson's Orchard Property Owners Association, Inc., *et al.*, Defendants, and Of whom Pelham Farm, LLC *et al.*, Appellants v. Property Owners in Watson's Orchard Subdivision, *et al.*, Third-Party Defendants.
C.A. No. 2009-CP-23-7707

Dear Ms. Kitchings:

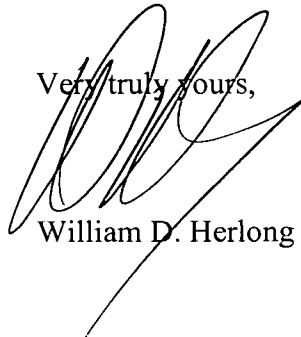
Enclosed please find one original and seven copies of Appellants' Reply re Motion to Require Respondents to Comply with the Rules Regarding Designation of Materials for the Record on Appeal along with the Proof of Service.

Please return one of the copies which has been stamped to me the envelope provided.

If you have any questions please give me a call.

Thank you.

Very truly yours,



William D. Herlong

cc: Randall Hiller

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