

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 18 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, 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. Herman, Third Party Defendants.

**RESPONSE TO MOTION TO REQUIRE RESPONDENT TO
COMPLY WITH THE RULES REGARDING DESIGNATION OF
MATERIALS FOR THE RECORD ON APPEAL**

This was a non-jury trial.

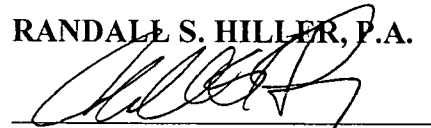
At the outset of the trial the parties notified the court that they had stipulated that the documents that they had traded in discovery would not require authentication and each previously provided and marked the stipulated documents. (Transcript Page 25)

At the conclusion of the trial the court ruled that it would accept all evidence and make a determination of its relevancy. (Transcript Pages 283-286)

In light of the ruling of the trial court and prior to the date for submission of post trial briefs the Respondent by its letter of September 14, 2012 (attached) tendered all of the stipulated documents to the trial judge for submission into the record under the identical conditions that the Defendants evidence was submitted. No objection was made by Appellants' counsel to such submission and all of the documents submitted were already in the court record by way of previously having been submitted as attachments to summary judgment motions and memoranda.

The failure to include the certification was an oversight and a revised additional designation of materials of the record is attached hereto.

RANDALL S. HILLER, P.A.



Randall S. Hiller

S.C. Bar No.: 2513

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(864) 232-0026

Attorney for Respondent

Other Counsel of Record:
William Herlong, Esq.
P.O. Box 2003
Greenville, SC 29602

MOTIONS AND MATTERS

1 stated objections. Mr. Hiller.

2 MR. HILLER: First, Your Honor, Mr. Herlong and I have
3 have an agreement that the documents that we've traded in
4 discovery we would not require authenticative ---

5 THE COURT: Okay.

6 MR. HILLER: --- authentication although we can object on
7 other grounds so all all I'm going to do now is offer the, uh,
8 the original Declaration of Restrictions and protected
9 covenants and then the, uh, the agreement to release
10 Declaration of Covenants and Restrictions. Plaintiffs' 1,
11 there's 2.

12 (Declaration of Restrictions and Covenants marked
13 Plaintiffs' Exhibit No. 1 and Agreement to Release Declaration
14 of Restrictions and Protective Covenants marked Plaintiffs'
15 Exhibit No. 2 for identification.)

16 MR. HERLONG: Your Honor, as a little bitta housekeeping,
17 I've got the big fat notebook, a copy of which I gave to you,
18 I've got a couple a copies and I thought frankly Mr. Hiller
19 will need to go through it but I thought frankly we might just
20 mark it as one big exhibit. I've got the individual things in
21 here as SJ1, SJ2 and so forth for summary judgment but and
22 they will include -- actually, they don't include that
23 agreement but they do include the restrictions.

24 THE COURT: You wanna look at that, Randy, and see

25 MR. HILLER: I've looked at it, Your Honor, and, um, um,

MOTIONS AND MATTERS

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"Yes."

"Today you do?"

"Yeah."

"Did you know anything about that when you moved into
Watson's Orchard?"

Answer: "Not when I moved in". That's it, Your Honor.

THE COURT: Okay. Alright.

MR. HERLONG: Rest of our case.

THE COURT: No reply?

MR. HILLER: No, sir.

THE COURT: Okay. Well clearly I'm not gonna rule from
the bench, gotta re -- I've got to read this deposition, go
through everything. Has this caused a big rift in the
subdivision, ---

MR. HILLER: Uh, two thirds ---

THE COURT: --- hope ---

MR. HILLER: --- of 'em hate the other third ---

THE COURT: Well and ---

MR. HILLER: --- and vice versa.

THE COURT: --- and I'm sorry that's happened ---

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

THE COURT: --- but I I hope that, uh, folks can repair
~~their relationships and and move forward and I will review all~~
~~this and and come to decision sometime in the near future.~~

Okay. Thank you very much. You need to tell me anything? I

MOTIONS AND MATTERS

1 mean, ya'll wanna ---

2 MR. HERLONG: Well, I ---

3 THE COURT: You wanna make closin' statements?

4 UNIDENTIFIED WOMAN: Yes.

5 MR. HERLONG: Not a big one ---

6 MR. HILLER: No.

7 MR. HERLONG: --- but maybe a little one.

8 THE COURT: Alright, go.

9 MR. HILLER: What can we do? Can we just do a post-
10 trial brief?

11 THE COURT: Short one.

12 MR. HERLONG: A short one's fine.

13 MR. HILLER: Forty, fifty pages?

14 MR. HERLONG: Yeah, sixty, seventy pages.

15 (Laughter.)

16 MR. HILLER: Yeah, ---

17 MR. HERLONG: Short one's fine, Your Honor.

18 MR. HILLER: --- I think he's got one prepared, uh, uh,
19 but but I ---

20 THE COURT: How can you have ---

21 MR. HILLER: --- there was, ---

22 THE COURT: --- it prepared ----

23 MR. HILLER: --- there was some testimony I expected that
24 ~~didn't happen and there was some testimony I didn't expect~~
25 ~~that did happen so it needs a little tweaking plus it it~~

MOTIONS AND MATTERS

1 it it ---

2 THE COURT: Okay, ya'll do a post-trial brief if ya'd
3 like, limit it to, uh, less than ten pages.

4 MR. HILLER: Alright.

5 THE COURT: Is that good?

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

9 THE COURT: Okay.

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

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

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

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

18 MR. HERLONG: Yeah, exactly.

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

20 MR. HERLONG: Yeah, exactly.

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

22 MR. HERLONG: Exactly.

23 MR. HILLER: Right,

24 MR. HERLONG: I think everything was admitted

25 MR. HILLER: --- that was just

MOTIONS AND MATTERS

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

3 THE COURT: Over over his objection.

4 MR. HERLONG: Over his objection.

5 MR. HILLER: No, you actually sustained that objection.
6 I recall ---

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

8 MR. HILLER: Okay.

9 THE COURT: --- I did.

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

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

14 MR. HERLONG: Okay, alright, that ---

15 MR. HILLER: That's the ---

16 MR. HERLONG: --- sounds good.

17 MR. HILLER: --- only one I won, right?

18 THE COURT: Which one, which one were in?

19 MR. HERLONG: It was ---

20 MR. HILLER: Somethin' somethin' vs. Washington ---

21 MR. HERLONG: --- was it 9 ---

22 MR. HILLER: --- Holdings, ---

23 MR. HERLONG: --- and 10?

24 MR. HILLER: --- Washington Holdings ---

25 COURT REPORTER: Nine and ten

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ATTORNEYS AT LAW

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September 14, 2012

The Hon. Edward W. Miller
305 E. North St. , Ste. 219
Greenville, SC 29601

Re: *Hanold, et al v. WOPOA, et al*
2009-CP-23-7707

Dear Judge Miller:

During the course of the above trial I provided a copy of all potential Plaintiffs' exhibits to Mr. Herlong, which exhibits were either previously contained within the Court file by way of exhibits to summary judgment motion or exhibits to depositions.

With the exception of the last two exhibits, which were entered directly through the testimony of the Defendants' witnesses, I did not tender these into evidence based upon my continuing contention that parol or extrinsic evidence was not admissible to prove intent pursuant to the original declaration of covenants.

However, based upon the discussion held at the very conclusion of the case wherein you indicated you would accept all the evidence of the Defendant into the record and make a decision as to its admissibility or not after your review of the documents, I now wish to move the enclosed documents into evidence subject to that caveat.

I am enclosing herewith the trial exhibits which I ask the Court to accept into evidence under the same limited basis that the Defendants documents were accepted into evidence.

Yours very truly,



Randall S. Hiller

RSH\ak
Enclosures.

Cc: William Herlong, Esq. (via email)

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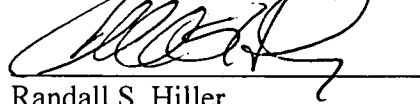
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**ADDITIONAL MATTERS TO BE INCLUDED IN THE RECORD ON
APPEAL**

1. Deed from Lincoln of South Carolina, Inc. to Watson's Orchard Property Owners Association, Inc. recorded January 16, 1981.
2. October 1, 200 letter from Patrick H. Grayson, Jr. to Claire T. Manning.
3. Email from Ralph Aiken dated September 21, 2008.
4. Watson Orchard Property Owners Association Property Sale Advisory Committee meeting notes dated February 8, 2005.
5. Memorandum to Watson's Orchard Property Owners Association stock holders from Ralph Aiken dated July 21, 2008.
6. Letter from Patrick H. Grayson dated September 1, 2009 to Mr. Tom Dunlop.
7. Non Binding Indication of Support with attachment, undated, Bates number W001622.
8. Letter to Association Members from Ralph Aiken and Dorothy Brown dated April 15, 2006, Bates number W002047.
9. Votes of Jim, John, Jerry, Frank, Joel and Ralph, undated, Bates number W001471.
10. Vote options, handwritten note, undated, Bates number W000876.
11. WOPOA Committee meeting agenda, dated July 15, 2008, Bates number W001926-1927; W000969, W001891.
12. Certification of Ralph Aiken dated October 2, 2009.
13. Letter to Pat Grayson from James Robinson dated December 4, 1980.
14. Letter to Jim Stephens from Ray Lathan dated November 20, 1996, Bates number W002219.
15. Memo from Marion Seiffert to Claire Manning , Chicago Title dated November 7, 2008.
16. By-Laws of WOPOA.
17. Letter from WOPOA to neighbors dated November 16, 2009.
18. Handwritten WOPOA minutes dated May 29, 2001, Bates number W002056.
19. Letter from Langston Black to WOPOA dated June 15, 2010.
20. Memo from Ralph Aiken to WOPOA dated May 23, 2008.
21. Email from Ralph Aiken dated June 6, 2008.
22. Handwritten notes regarding land planning, undated. No Bates number.

23. Items for discussion by WOPOA Action Committee dated June 18, 2008.
24. Letter from Joel Norwood regarding market value estimates, undated.
25. Email from Ralph Aiken to various members dated July 30, 2008 with attachments.
26. Letter to WOPOA lot owners dated November 5, 2008.
27. Letter sent via email to Committee dated regarding zoning/votes (marked "Plaintiff's exhibit 13").
28. Letter dated November 16, 2009 to neighbors from WOPOA Board of Directors and Action Committee.
29. RelatiCorp proposal, undated.
30. Vote count Bates number W001471.
31. Handwritten vote count/notes Bates number W001542.
32. Handwritten notes regarding votes dated October 29, 2008.

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Attorney for Respondent

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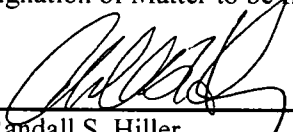
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Patricia L. Herman,.....Third Party
Defendants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Additional Designation of Matter to be Included in Record on Appeal complies with Rule 211(b), SCACR.

November 12, 2013



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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PROOF OF SERVICE

I certify that I have served the Respondent's Response to Motion to Comply of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on November 14, 2013, addressed to its attorney of record, William Herlong, Esq., Post Office Box 2003, Greenville, South Carolina 29602.

November 14, 2013



Randall S. Hiller
850 Wade Hampton Blvd.
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Attorney for Respondents

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November 14, 2013

SC Court of Appeals
Attn: Clerk
1015 Sumter St.
Columbia, SC 29201

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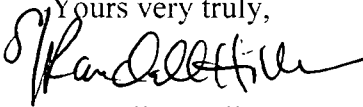
NOV 18 2013

SC Court of Appeals

**Re: R.C. Frederick Hanold, III, et al (Respondents) v. Watson's Orchard Property
Owners Association, et al
Ct. of Appeals No.: 2013-000452**

Dear Clerk:

Please find enclosed one original and two copies of Respondents' Response to Motion to Require Respondent to Comply regarding the above. Please file the original with the Court and return the stamped copies to me in the envelope provided.

Yours very truly,

Randall S. Hiller

RSH/ak

Enclosures.

Cc: William Herlong, Esq.