

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS

Harbor Island Owners' Association, )  
 )  
Plaintiff, )

Case No. 2018-CP-07-02331

vs. )

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

Barbara and Patrick Shurtleff, Sandra and )  
Billy Lynn, Tracey E. Cooperman, John W. )  
Daniel, and John E. Price, Sr., )  
 )  
Defendants. )

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This matter is before the Court on Plaintiff, Harbor Island Owners Association's (hereinafter "HIOA" or "Plaintiff") motion for summary judgment as to its nuisance claim under the Public Waters Nuisance Abatement Act pursuant to Rule 56, SCRPC. Plaintiff filed its motion on June 12, 2025. Plaintiff also filed a Memorandum in support of its Motion and several exhibits on June 12, 2025. Defendant, John E. Price, Sr. ("Defendant") filed a response in opposition to Plaintiff's motion which also was accompanied by exhibits on January, 15, 2026. Counsel for Defendant also presented an additional argument to this Court via email on the morning of January 16, 2026 before the hearing.

A hearing took place via WebEx on January 16, 2026. Counsel for Plaintiff and Defendant both appeared and the motion was argued. After review of the materials submitted to the Court and consideration of the argument made by counsel at the hearing, and based upon applicable law, this Court concludes that summary judgment is appropriate as to Plaintiff's claim under the Public

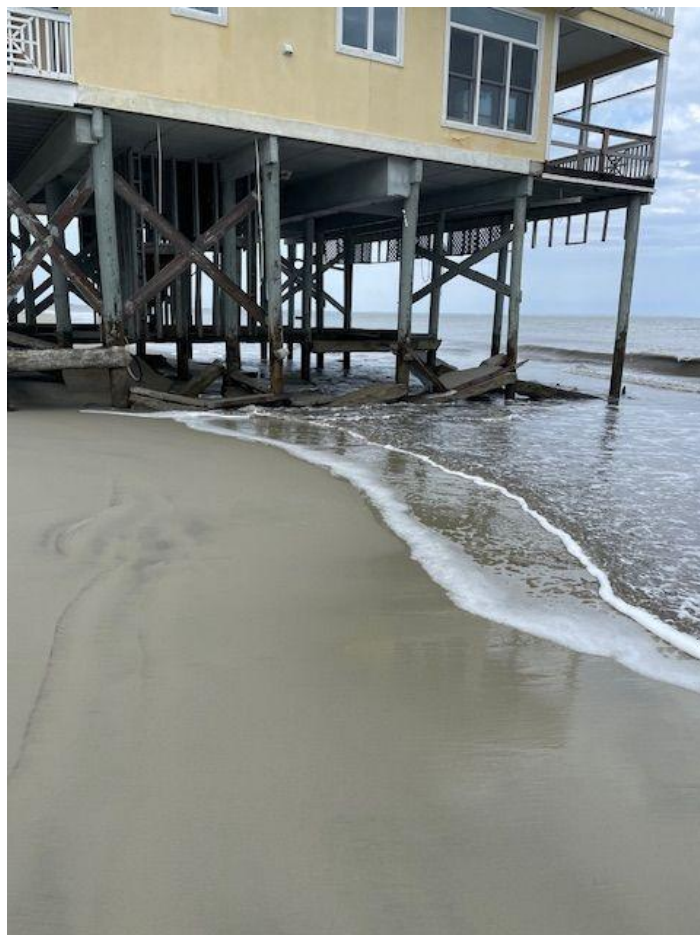
Waters Nuisance Abatement Act. S.C. Code Ann. § 49-30-10, et seq. Therefore, pursuant to Rule 56, SCRCP, this Court grants Plaintiff's motion for summary judgment.

### **MATERIAL FACTS**

Plaintiff is a non-profit corporation organized and existing under the laws of the State of South Carolina and composed of owners of real property on Harbor Island in Beaufort County, South Carolina.

Defendant is the record title holder of a residential house located at 90 North Harbor Drive on Harbor Island in Beaufort County, South Carolina. Indeed, Defendant filed a copy of the deed to this property as an Exhibit to its Opposition. It is undisputed that the house was formerly inhabited by Mr. Price as a residence. Defendant has admitted and photographic evidence confirms that the structure in question is situated on pilings which hold the structure in place on the beach and in the ocean.

Testimonial evidence, a survey and photographs all show that the structure is currently located below the mean high water mark of the Atlantic Ocean. The following photograph that was included in Plaintiff's Exhibit 1 is but one piece of evidence that shows that the structure is located below the mean high water mark:



There is also un rebutted evidence that this structure has been located below the mean high water mark for several years. Both the property manager employed by Plaintiff, Mr. Peter Dunning, as well as Plaintiff's expert witness, Dr. Rob Young, stated in their respective affidavits that Defendant's structure has been located below the mean high water mark for several years. This comports with other evidence such as the survey that was filed as an exhibit as well.

There is no evidence that Defendant possesses a permit from any State or Federal agency that allows his structure to be located on or in the waters of South Carolina. Defendant failed to offer any evidence of a permit from any entity that allows his structure to be maintained in its current location below the mean high water mark.

The State of South Carolina is the title holder of lands along the coast below the mean high water mark and the boundary extends seaward three (3) geographical miles from the coast line. *Estate of Tenney v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 100, 106, 712, S.E.2d 395, 398 (2011)(“Under the public trust doctrine, the State holds presumptive title to tidal land below the high water mark to be held in trust for the benefit of all people of South Carolina”); *McQueen v. South Carolina Coastal Council*, 354 S.C. 142, 149, 580 S.E.2d 116, 119-20 (2004)(accord); 43 U.S.C. § 1312 (“The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line”).

### **STANDARD OF REVIEW**

Summary Judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCF. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010)(citation omitted). “[H]owever, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

### **CONCLUSIONS OF LAW**

**I. The Location of Defendant’s Structure in the Public Waters of South Carolina Violates South Carolina’s Public Waters Nuisance Abatement Act.**

The South Carolina Public Waters Nuisance Abatement Act (“PWNAA” or “the Act”) authorizes “the removal of nuisance structures from the public waters of the State....” S.C. Code Ann. § 49-30-20. To that end, Code Section 49-30-70 states that “[a]n unpermitted structure is declared to be a public nuisance and shall be enjoined and abated as provided in this chapter.” S.C. Code Ann. § 49-30-70(A). The PWNAA definition states that a “structure” is “built upon pilings embedded in the beds of the public waters of the State when the structure is being used, has been used, or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used primarily as a means of transportation upon these public waters; and is not owned, occupied, or possessed pursuant to a permit issued by the department.” S.C. Code Ann. § 49-30-30(7).

The term “Waters of the State” is defined by the PWNAA by referring to S.C. Code Ann. § 50-21-10. S.C. Code Ann. § 49-30-30(9). That Code section defines “Waters of the State” as “waters within the territorial limits of the State but not private lakes or ponds.” S.C. Code Ann. § 50-21-10(29). South Carolina’s territorial waters extend from the mean high water mark seaward from the coast for 3 geographical miles pursuant to the Submerged Lands Act. 43 U.S.C. § 1312 (“The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line”); *see also*, *Tenney*, 393 S.C. at 106 (South Carolina “holds presumptive title to tidal land below the high water mark”); *Horry County v. Woodward*, 282 S.C. 366, 368, 318 S.E.2d 584, 586 (Ct. App. 1984)(owner of real property upon which water encroaches bears “risk that land will be lost by gradual erosion or submergence” to the State).

Given the undisputed facts in this matter, the Court concludes that Defendant's house meets the definition of a “structure” under the Act as it is built on pilings located in the waters of the State without any permit and has been used as a residence but is not capable of being used as a

means of transportation. S.C. Code Ann. § 49-30-30(7); *see also*, *Tenney*, 393 S.C. at 108 (“a person who possesses title to land especially vulnerable to [coastal] volatility takes title with the knowledge their land is at risk of loss to the State by natural forces”). Therefore, Defendant’s structure constitutes a nuisance under the PWNAA and must be removed from the waters of the State. Unless and until Defendant’s structure is removed, it interferes with the people of South Carolina’s right “to use and enjoy the public waters of the State.” S.C. Code Ann. § 49-30-20. There was also undisputed evidence that Defendant’s structure threatens the safety of neighbors and the public who come near it. As Defendant has violated the Act, Plaintiff is entitled to an order from this Court which requires Defendant to remove the structure. S.C. Code Ann. § 49-30-70(B).

**II. Defendant’s Arguments are not Germane to the Issue in Question and are, Regardless, Unavailing.**

In response to Plaintiff’s motion, Defendant argued that “[t]he record does not support the imposition of a legal duty on Mr. Price or the HOA as a matter of law.” The Court concludes that there is ample undisputed evidence in the record to support the legal conclusion that Defendant’s structure is a nuisance. There is no dispute that Defendant is the record title holder and owner of the structure. Defendant has admitted this fact both in response to the amended complaint and in response to request for admissions served by Plaintiff. There is also no dispute that the structure is located in the waters of the State. Under South Carolina law, a property owner is obligated to ensure that his or her property does not cause a nuisance to neighboring property owners and/or the public. *See* S.C. Code Ann. § 49-30-70(A); *see also*, *Neal v. Darby*, 282 S.C. 277, 285, 318 S.E.2d 18, 23 (Ct.App. 1984)(“[a] nuisance is anything which works hurt, inconvenience, or damage; anything which essentially interferes with the enjoyment of life or property”)(citation

omitted). This is an obligation that is imposed regardless of the content of any additional covenants that govern property owner responsibilities on Harbor Island. Even the covenants that Defendant has filed do not purport to absolve or relieve Defendant or any other property owner on Harbor Island of obligations imposed by State law including the PWNAA. In that Act, the General Assembly decreed that a structure located in the waters of the State without the requisite permit is, per se, a public nuisance and “shall be enjoined and abated....” S.C. Code Ann. § 49-30-70(A). Defendant’s argument on this point is unavailing.

Defendant questions the enforcement authority of Plaintiff but Defendant has not identified and the Court has not located any covenant in the record that purports to preclude Plaintiff from initiating and pursuing this action. As a non-profit corporation organized and existing under the laws of South Carolina, Plaintiff is a citizen of the State of South Carolina. *See, e.g., Navy Federal Credit Union v. LTD Financial Services, LP*, 972 F.3d 344, 356 (4th Cir. 2020)(a corporation is a citizen of every state by which it has been incorporated); *Crescent Mfg. Co. v. Tax Comm’n*, 129 S.C. 480, 124 S.E. 761, 764 (1924)(noting that a corporate entity is a citizen of South Carolina because it was incorporated herein). As a non-profit corporate citizen, Plaintiff has the right, among other actions, to “sue and be sued[,]” to “deal with, real or personal property or any legal or equitable interest in property[,]” and “to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.” S.C. Code Ann. § 33-31-302(1), (4), (18).

In addition, the PWNAA itself provides that Plaintiff may, upon proper notice to the Attorney General, which has not been disputed here, pursue enforcement of the Act by bringing a suit to require Defendant to remove its structure from the waters of the State. S.C. Code Ann. § 49-30-70(B) (“If the Attorney General does not commence an action within ninety days after

receiving notice pursuant to this chapter, a citizen of this State may bring an action to enjoin the unpermitted structure's use and seek an order from the court requiring its removal.”).

Defendant argued that the State of South Carolina should have been joined as a necessary party to this action. Defendant forgets that the State of South Carolina was named as a party to this suit initially and that the State moved for and was granted a dismissal in this action. Regardless, as noted earlier, Plaintiff proceeded under the PWNAA which expressly allows it to prosecute this claim if, after proper notice to the State's Attorney General, the State does not commence an action within ninety days. S.C. Code Ann. § 49-30-70(B). As related in its Second Amended Complaint and undisputed here, Plaintiff provided proper notice, the State did not commence an action within ninety days and Defendant's argument is without merit.

Defendant also maintains that there are factual questions regarding causation—presumably the causes of erosion on Harbor Island. To bolster this argument, Defendant claims that there are expert reports in this matter, but the only expert opinion properly before the Court is the opinion of Plaintiff's expert, Dr. Rob Young, who has stated that Defendant's structure is located below the mean high tide line and is a danger to the public. Dr. Young prepared a report for Plaintiff in 2016 that discussed options for addressing erosion but that does not raise an issue of disputed fact here. The only other expert opinion that the Court could identify in the record consists of a letter from Dr. Timothy Kana to Plaintiff that relates to groins used on Hunting Island and potential methods to address erosion on Harbor Island. This was not in the form of an affidavit, and Defendant has not explained how potential causes of erosion are relevant to any issue here. Even assuming for the purpose of this argument that there are differing theories as to why erosion has occurred on Harbor Island, the undisputed material fact is that erosion has occurred on Harbor Island over many years such that Defendant's structure is now located below the mean high water

mark and in waters over which the State of South Carolina has authority. Nothing in the affidavit or the earlier report of Dr. Young or the letter of Dr. Kana calls that conclusion into dispute.

The remainder of Defendant's arguments center on what he claims are successive motions for summary judgment filed by Plaintiff and information potentially relevant to another matter. The record is clear that Plaintiff has only filed one motion for summary judgment in this matter and that motion is the subject of this Order. The remainder of Defendant's arguments are without merit.

### **CONCLUSION**

For the above-stated reasons, this Court concludes that there are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law.

Accordingly, for the reasons stated herein, the Court hereby grants Plaintiff's motion for summary judgment and orders the removal of Defendant's structure from the waters of the State. All costs associated with removing the structure must be borne by Defendant. S.C. Code Ann. § 49-30-70(B). Plaintiff, as the prevailing party, "may recover the cost of the action, including attorney's fees." *Id.* To that end, Plaintiff must submit the proper proof of costs to this Court for consideration and a separate Order on that issue will be entered.

IT IS SO ORDERED.

(Judge's E-Signature Page to Follow)



Beaufort Common Pleas

**Case Caption:** Harbor Island Owners Association VS South Carolina State Of ,  
defendant, et al

**Case Number:** 2018CP0702331

**Type:** Order/Summary Judgment

So Ordered

s/ Robert Bonds, 2770