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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes III, Circuit Judge

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Appellate Case 2025-001031

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R.V. Resort and Yacht Club  
Owners' Association, Inc.,  
Securitas Services, Inc. , Mike  
Morales, and Sunset, Inc.

Respondents,

v.

Turner's Marina, LLC

Appellant.

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RESPONDENTS RV RESORT AND YACHT CLUB  
OWNER'S ASSOCIATION, INC., AND SUNSET, INC.'S INITIAL BRIEF

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Hilton Head Island, South Carolina  
March 5, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES .....(ii)

STATEMENT OF ISSUES ON APPEAL.....1

STATEMENT OF THE CASE.....1

STANDARD OF REVIEW .....6

ARGUMENT:

1. Because Appellant Never Asserted at Trial Non-Compliance with Rules 43(k) SCRPC, It Cannot Raise the Issue for the First Time on Appeal.....6

2. Even If Appellant Could Properly Argue Non-Compliance with Rule 43(k), SCRPC, the Written Settlement Agreement Fully Complied With Said Rule.....7

3. Because Appellant Never Asserted The Settlement Agreement Was An Unenforceable "Agreement to Agree" at Trial, It Cannot Raise the Issue for the First Time On Appeal...8

4. Even If Appellant Could Properly Argue the Settlement Agreement is An Unenforceable "Agreement to Agree," the Trial Court Properly Found Said Settlement Agreement Valid and Enforceable.....9

5. Because the Trial Court Found the Settlement Agreement Clear and Unambiguous, It Properly Enforced Said Agreement Pursuant to the Terms Agreed by the Parties.....10

6. Because the Trial Court Properly Enforced the Terms and Conditions of the Settlement Agreement, Its Order Requiring Appellant to Sign the Amended Easement Should Be Enforced. ....12

CONCLUSION.....17

TABLE OF AUTHORITIES

CASES

*Aperm of S.C. v Roof*, 290 S.C. 442, 351 S.E. 2d 171 (Ct. App. 1986).....10

*Buckley v Shealy*, 370 S.C. 317, 635 S.E. 2d 76 (2006).....7

*Byrd v. Livingston*, 398 S.C. 237, 727 S.E. 2d 620 (Ct. App. 2014).....6

<i>C.A. N. Enterprises, Inc. v. S. C. Human Services</i> , 296 S.C. 373, 373 S.E. 2d 584 (1988).....	15
<i>Capital City Garage &amp; Tire Co v. Elec. Storage Battery Co.</i> , 113 S.C. 352, 101 S.E. 838 (1920) .....	10,
<i>Ecclesiastes Production Ministries v Outparcel Associates, LLC</i> , 374 S.C. 483, 649 S.E. 2d 494, (2007).....	9,
<i>Kinghorn, as Trustee for Milred Ann Kinghorn Trust, Dated 28 April 2024 v. Sakakini</i> , 426 S.C. 147, 825 S.E. 2d 748 (Ct. App. 2019).....	8,
<i>Patricia Grand Hotel LLC v MacGuire Enterprises, Inc.</i> 372 S.C. 636, 643 S.E. 2d 692 (Ct. App. 2007).....	8, 10
<i>Pruitt, Inc.. v S.C. Med. Malpractice Liab. Joint Underwriting Ass'n</i> , 343 S.C. 335, 540 S.E.2d 843 (2001).....	6
<i>Scoggins v McClellan</i> , 321 S.C. 264, 468 S.E. 2d 12 (Ct. App 1996).....	6,8
<i>South Carolina Farm Bureau Mutual Insurance Company v S.E.C.U.R.E. Underwriters Risk Retention Group</i> , 347 S.C. 333, 554 S.E. 2d 870 (Ct. App. 2001).....	7
<i>Viviano v. Jeffers</i> , 447 S.C. 33, 923 S.E. 2d 649 (Ct. App. 2025).....	9

RULES

Rule 43 (k) SCRCP.....	6,7,8
Rule 59(e) SCRCP.....	5,6
South Carolina Alternative Dispute Resolution Rules .....	17

STATUTES

§ 15-53-10 S.C. Code Ann.(1976) .....	2
---------------------------------------	---

### **STATEMENT OF ISSUES ON APPEAL**

1. CAN APPELLANT ARGUE NON-COMPLIANCE WITH RULE 43(K) SCRPC FOR THE FIRST TIME ON APPEAL?
2. IF COMPLIANCE WITH RULE 43(K) SCRPC CAN BE ARGUED BY APPELLANT ON APPEAL, DID THE WRITTEN SETTLEMENT AGREEMENT COMPLY WITH SAID RULE?
3. CAN APPELLANT ARGUE THE SETTLEMENT AGREEMENT IS MERELY AN UNENFORCEABLE “AGREEMENT TO AGREE” FOR THE FIRST TIME ON APPEAL?
4. IF APPELLANT CAN ARGUE FOR THE FIRST TIME ON APPEAL THE SETTLEMENT AGREEMENT IS AN UNENFORCEABLE “AGREEMENT TO AGREE,” DID THE TRIAL COURT ERR IN HOLDING IT WAS ENFORCEABLE
5. DID THE TRIAL COURT ERR IN FINDING THE SETTLEMENT AGREEMENT WAS UNAMBIGUOUS AND PROPERLY ENFORCED ITS TERMS?
6. DID THE TRIAL COURT ERR IN ITS ORDER REQUIRING APPELLANT TO EXECUTE THE SECOND AMENDMENT TO LEASE?

### **C. STATEMENT OF THE CASE**

The Appellant initiated this action by the filing of a Summons and Complaint on June 11, 2021 against the R.V. Resort and Yacht Club Owners’ Association, Inc. (“POA”), and Securitas Services, Inc., and its employee Mike Morales (collectively “Securitas”). (Tr. \_\_ p. \_\_). Appellant asserted it held certain rights under the June 12, 1981 covenants recorded in Deed Book 925 at Page 820 at the Beaufort County Register of Deeds (“Covenants”) and the June 12, 1981 Lease, recorded

with the Covenants, with a stated term of ninety-nine (99) years (“ 1981 Lease”). These documents were applicable to certain property on Hilton Head Island known as the “Outdoor Resorts Marina,” consisting of a 200 lot recreational vehicle resort, marina, fuel docks, parking lot, recreational facilities and a two-story building.

Appellant’s Complaint included a cause of action for a Declaratory Judgment under § 15-53-10 et. seq., S.C. Code Ann. (1976) seeking to confirm Appellant’s rights under the Covenants and Lease as to various properties at the Outdoor Resorts’ Marina, including recreational facilities, roadways, restrooms, manager’s office, a portion of the two (2) story building (collectively “Recreational Facilities”), and the rights of the POA and its members to enter or traverse 1.41 acres owned by Appellant. Appellant requested Injunctive Relief against the POA and Securitas as to future violations of its rights under the Covenants and Lease. Appellant also asserted a cause of action for damages against both the POA and Securitas for interference with Appellant’s lease to a jet ski business by interfering with its tenants’ use of various facilities claimed to be under the control of Appellant. Finally, Appellant sought to have Receiver appointed over the Recreational Facilities. ( Tr. p. \_\_ )

The POA on July 12, 2021 timely filed an Answer to Complaint for Damages, for the Appointment of a Receiver, and for a Declaration of Legal Rights and for Temporary and Permanent Injunctive Relief and Counterclaim (Tr. \_\_ p. \_\_). The POA generally denied Appellant’s allegations, raised various affirmative defenses, and asserted a Counterclaim for abuse of process. Appellant timely responded to the POA’s counterclaim.

On July 22, 2021, Appellant notified Respondent Sunset, Inc. (“Sunset”, ) which operated a high-end restaurant pursuant to a long-standing lease from the POA on the second floor of the

two-story building owned by the POA, that its employees and patrons could no longer use the adjacent parking lot or restrooms located on the first floor of the two-story building owned by the POA. Sunset, on August 1, 2021, filed a Motion to Intervene and to be added as a Third-Party Defendant (Tr. \_\_p. \_\_), a Motion for Temporary Restraining Order of Third-Party Defendant Sunset, Inc. d/b/a Sunset Grill (Tr. \_\_ p. \_\_), along with a supporting Affidavit of Linda Lockman (Tr. \_\_ p. \_\_). By Order of August 5, 2021, the Honorable Robert Bonds issued an Order granting both motions, directing Sunset and its patrons could continue to use the parking spaces and restrooms upon posting a \$25,000 bound (Tr. \_\_ p. \_\_). Said bond was subsequently posted.

On August 25, 2021 Appellant filed an Amended Summons and Complaint adding new causes of action for trespass against Sunset, and conversion against the POA for rents paid by Sunset. (Tr. p. \_) The Defendants duly filed responsive pleadings.

On November 22, 2022, the Honorable Eugene C. Griffin, Jr. ordered the case to be bifurcated, with all claims and counterclaims referred to Marvin H. Dukes, III, Beaufort County Master-In-Equity, with the exception of Appellant's claims for tortious interference with contract, trespass and conversion, which were to be heard by a jury. (Tr. \_\_ p. \_\_)

On June 21, 2024, as a result of the Honorable Marvin Dukes III being elected to the Circuit Court, the Supreme Court of South Carolina issued an Order providing Judge Dukes was granted concurrent jurisdiction as Special Master-in Equity to dispose of matters pending in the Master's Office and Circuit Court until a new Master-in-Equity was appointed. (Tr. \_\_ p. \_\_)

The parties thereafter filed amended Complaints and Counterclaims. At the time the case was mediated on December 13, 2023, Appellant was proceeding under its July 20, 2023 Third Amended Summons and Complaint, which included Causes of Action for a Declaratory Judgment,

Injunctive Relief, Interference with Contractual Relationship, Appointment of a Receiver, Trespass as to Sunset, Conversion by the POA as to rents collected by the POA from Sunset, and Trespass against the POA and Securitas relating to traversing Appellant's 1.4 acre parcel (Tr. \_\_ p. \_\_\_\_).

The POA was proceeding under its August 4, 2023 Amended Answer and Counterclaim (Tr. \_\_ p. \_\_) consisting of a general denial and Counterclaim for a Declaratory Judgment of the rights of the parties under the Lease and Covenants, tortious interference with the POA's lease with Sunset, and various equitable, legal, and affirmative defenses. Sunset was proceeding under its August 4, 2023 Amended Answer and Counterclaim seeking a Declaratory Judgment of the enforceability of its Lease with the POA, the rights of the parties to the restrooms, parking lots, Recreational Facilities, recovery of attorney fees and costs, tortious interference by Appellant of its lease with the POA, and various equitable, legal and affirmative defenses (Tr. \_\_ p. \_\_\_\_). Appellant filed timely responses to all counterclaims (Tr. \_\_ p. \_\_\_\_)

The case was set for a trial starting February 12, 2024. Prior to trial, on December 13, 2023, mandatory mediation was conducted with Jack C. Gresh serving as mediator. Mediation was attended in person by nine (9) POA Board members, Neil Turner, owner of Appellant, Linda Lockman, owner of Sunset, Mike Morales, and counsel for all parties. Mediation proceeded for sixteen (16) continuous hours. Mediation was successful and all counsel and their parties executed a three (3) page typed Mediated Settlement Agreement and Dismissal of All Claims and Counterclaims With Prejudice ("Settlement Agreement") at the end of mediation (Tr. \_\_ p. \_\_\_\_). The Mediator, on December 14, 2023 filed the Proof of ADR (Tr. \_\_ p. \_\_\_\_).

Thereafter, a dispute arose as to the language in an amended lease and amended easement to be signed by the parties, as provided in the Settlement Agreement. On February 23, 2024,

Appellant filed its Motion to Enforce the Settlement Agreement (Tr. \_\_ p. \_\_). On March 4, 2024, the POA and Sunset filed their joint Motion to Enforce Settlement Agreement (Tr. \_\_ p. \_\_). Appellant, the POA and Sunset thereafter filed various Affidavits and Legal Memoranda in support of their respective Motions. (Tr. \_\_ p. \_\_) On May 7, 2024, Appellant also filed a Motion to Set Aside the Settlement Agreement based on Mutual Mistake. (Tr. \_\_ p. \_\_)

On April 11, 2024, May 8, 2024, and June 26, 2024 the Trial Judge heard arguments on the above two Motions to Enforce Settlement Agreement and the Motion to Set Aside the Settlement Agreement. Thereafter, he issued the following Orders as to the competing motions to enforce the Settlement Agreement.

1. August 5, 2024- Order Granting Defendants' Motion to Enforce Settlement Agreement as to Amended Easement Tr. \_\_ p. \_\_ ("Easement Order").

2. August 5, 2024- Order Ruling on Plaintiff's and Defendants' Motion to Enforce Settlement Agreement (Amendments to Lease- Armed Security Guards/Gates) (Tr. \_\_ p. \_\_ - "Lease Order").

On August 15, 2024, Appellant filed a Motion to Alter or Amend Orders under Rule 59(e) SCRCF as to the August 5, 2024 Lease Order and Easement Order (Tr. \_\_ p. \_\_). On September 24, 2024, the POA and Sunset filed the Affidavit of Linda Lockman, the owner of Sunset, relating to Appellants' claim of a mutual mistake. On January 21, 2025 the Trial Court conducted a hearing on the Plaintiff's Rule 59 (e) Motion and Plaintiff's Motion as to a Mutual Mistake. Pursuant to a Stipulation of Dismissal, dated March 17, 2025, Securitas was dismissed from this action (Tr. \_\_ p. \_\_). Securitas is thus not a party to this appeal.

On April 25, 2025, the Trial Court issued an Order Denying Plaintiff's Rule 59(e) SCRCP Motion as to both the Lease Order and Easement Order, but did agree to delete Section 14 of the Amended and Restated Easement attached as Exhibit 1 to the Easement Order. (Tr. \_\_ p. \_\_)

On April 25, 2025, the Trial Court Judge issued an Order denying Plaintiff's Motion to Set Aside Settlement Agreement due to Mutual Mistake (Tr. \_\_ p. \_\_) ("Mistake Order.")

On May 23, 2025, Appellant filed its Notice of Appeal as to the Easement Order, the Lease Order, the April 25, 2025 Order Denying Appellant's Rule 59(e) Motion, and the Mistake Order.

### **STANDARD OF REVIEW**

Settlement agreements are viewed as contracts. *Pruitt, Inc. v S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001). "In an action at law, on appeal of a case tried without a jury, the judge's findings will not be disturbed unless they are without evidentiary support." *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E. 2d 620, 622 (Ct. App. 2014). The appellate court is permitted to determine questions of law with no deference to the Trial Court. *Byrd*, 398 S.C. at 241, 727 S.E. 2d at 622,

### **ARGUMENT**

#### **I. BECAUSE APPELLANT NEVER ASSERTED AT TRIAL NON-COMPLIANCE WITH RULE 43(k) SCRCP, IT CANNOT RAISE THE ISSUE FOR THE FIRST TIME ON APPEAL.**

There is likely no other appellate doctrine enforced by this Court more often than the long-standing rule a party cannot raise for the first time on appeal an issue or position not asserted at trial. As set forth in *Scoggins v McClellan*, 321 S.C. 264, 267, 468 S.E. 2d 12, 14 (Ct. App 1996) "[a]n issue may not be raised for the first time on appeal but must have been raised to the trial judge to be preserved for appellate review. Issues not raised in the trial court will not be considered on

appeal.” See also: *South Carolina Farm Bureau Mutual Insurance Company v S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 342, 554 S.E. 2d 870, 875 (Ct. App. 2001).

Appellant filed very extensive pleadings and strongly asserted its legal positions during four (4) separate hearings before the Trial Court as to the enforcement of the Settlement Agreement<sup>1</sup>, but not once raised the issue it was unenforceable under Rule 43(k) SCRCPP. Not only was said rule never mentioned, but in fact, Appellant filed on February 23, 2024, a Motion to Enforce the very Settlement Agreement it now asserts on appeal is not binding. (R at \_\_\_).

While it should be noted Appellant retained new counsel to handle this appeal, there is no exception to the rule raising new issues on appeal because new counsel wishes to try out new legal positions on appeal. This issue is clearly not available to Appellant on appeal.

## **II. EVEN IF APPELLANT COULD PROPERLY ARGUE ON APPEAL NON-COMPLIANCE WITH RULE 43(k) SCRCPP, THE SETTLEMENT AGREEMENT FULLY COMPLIED WITH SAID RULE.**

The Appellant asserts the Settlement Agreement does not comply with the requirements of Rule 43(k) SCRCPP since it was not in the form of a Consent Order, a written stipulation by counsel entered into the record, or made in open court and noted upon the record (Appellants’ Brief, P. \_\_\_), Appellant purportedly quotes Rule 43 (k) SCRCPP, and further cites *Buckley v Shealy*, 370 S.C. 317,322, 635 S.E. 2d 76, 78 (2006) and numerous other cases decided prior to 2009.

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<sup>1</sup> (a) Plaintiff Turner’s Marina LLC’s Motion to Enforce Mediation Settlement Agreement, dated February 23, 2024 (R at \_\_\_) (b) Affidavit of Neil Turner, dated April 2, 2024 (R at \_\_\_); (c) Hearing before Trial Court, on April 11, 2024 (R at \_\_\_); (d) Memo in Support of Plaintiff Turner’s Marina, LLC’s Motion to Enforce Mediation Settlement Agreement, dated May 3, 2024 (R at \_\_\_); (e) Plaintiff Turner’s Marina LLC’s Motion to Set Aside Settlement Agreement Due to Mutual Mistake, dated May 7, 2024 (R at \_\_\_); (f) Hearing before Trial Judge on May 8, 2024 (R at \_\_\_); (g) Plaintiff Turner’s Marina LLC’s Memo in Response to Defendants’ Supplemental Memo of May 8, 2024, filed on May 13, 2024 (R at \_\_\_); (h) Plaintiff Turner’s Marina LLC’s Memo in Response to Defendants’ Reply Memo of May 30, 2024, filed May 31, 2024 (R at \_\_\_); (i) Hearing before Trial Court on June 26, 2024; (j) Plaintiff’s S.C.R.Civ. R. 59(e) Motion to Alter or Amend Orders dated August 5, 2025, filed August 15, 2025 (R at \_\_\_); (k) Hearing before Trial Court on January 21, 2025

As clearly stated in the Notes to Rule 43 SCRPC, subsection (k) was amended in 2009 to provide a settlement agreement is enforceable if it is reduced in writing and signed by the parties and their counsel. Said rule since 2009 reads as follows:

(k) **Agreements of Counsel.** No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record or **reduced to writing and signed by the parties and their counsel.**(emphasis added).

Thus, since 2009, there is a new, third (3<sup>rd</sup>) option to comply with this rule simply by all parties and their counsel signing a settlement agreement. This clearly stated option has been enforced by our Courts as to settlement agreements on numerous occasions since 2009. *Viviano v. Jeffers*, 447 S.C. 33, 44, 923 S.E. 2d 649, 655 (Ct. App. 2025); *Kinghorn, as Trustee for Milred Ann Kinghorn Trust, Dated 28 April 2024 v. Sakakini*, 426 S.C. 147, 152-153, 825 S.E. 2d 748, 750-751 (Ct. App. 2019). Appellant’s argument, based entirely on the old version of the rule, has no merit, and the Lease Order and Easement Order should be affirmed.

**III. BECAUSE APPELLANT NEVER ASSERTED THE SETTLEMENT AGREEMENT WAS AN UNENFORCEABLE “AGREEMENT TO AGREE.” AT TRIAL, IT CANNOT RAISE THE ISSUE FOR THE FIRST TIME ON APPEAL**

As with the Appellant’s argument raising non-compliance with Rule 43(k) SCRPC, Appellant’s argument the Settlement Agreement is an unenforceable “agreement to agree” was never raised before the Trial Court. Although Appellant submitted numerous extensive filings and during four (4) separate hearings made various arguments (see Footnote 1, p. 7), this position was never previously asserted. To the contrary, Appellant, on February 23, 2025, filed a Motion to Enforce the very Settlement Agreement it now asserts on appeal is now unenforceable. (R at \_\_\_).

Based on *Scoggins*, Id, 321 S.C. at 267, 458 S.E. 2d at 267, *Patricia Grand Hotel LLC v MacGuire Enterprises, Inc.* 372 S.C. 636,639, 643 S.E. 2d 692, 695 (Ct. App. 2007), Appellant

cannot assert an “agreement to agree” rendered the Settlement Agreement unenforceable for the first time on appeal. This issue cannot be considered on appeal.

**IV. EVEN IF APPELLANT COULD PROPERLY ARGUE THE SETTLEMENT AGREEMENT IS AN UNENFORCEABLE "AGREEMENT TO AGREE," THE TRIAL COURT PROPERLY FOUND SAID SETTLEMENT AGREEMENT VALID AND ENFORCEABLE**

Assuming, *arguendo*, Appellant can argue the Settlement Agreement is an unenforceable “agreement to agree” on appeal, this Court should reject same. Appellant has not identified any material, required term not included in the Settlement Agreement. The Settlement Agreement clearly stated what specific changes to the existing Lease and the Easement, recorded at Deed Book 397 at Page 1611 (“1984 Easement”) were to be made ( Tr. p. \_\_\_ ). There were no issues left to be negotiated later.

As to the Amended Easement, § 9 of the Settlement Agreement (R at \_\_\_ ) states as follows:

“9. The 1984 easement recorded at Book 397 at Page 1612 will be updated to include granting access to the Association. Owners of the Property, and each of their guests, lessees, invitees, and licensees to Parcel “B.” The parties agree that Parcel B is referenced in Plat Book 148 at Page 60.”

The Easement Order by the Trial Court (Tr. \_\_\_ p. \_\_\_ ) correctly enforced this clear, unambiguous agreement of the parties by adopting almost verbatim the language agreed to by the parties in §2 of the Amended and Restated Easement attached as Exhibit 1 to the Court’s Easement Order (Tr. P. \_\_\_ ). The Trial Court properly followed the long-recognized rules as to enforcing the intention of the parties as set forth in *Ecclesiastes Production Ministries v Outparcel Associates, LLC*, 374 S.C. 483, 497-498, 649 S.E. 2d 494, 501-502 (2007).

The same result is reached upon a review of the Court’s Lease Order. Again the Court incorporated almost verbatim the language of the parties used in the Settlement Agreement as to §§ 1 (Rent); 2 (Parking); 3 (Parking); 4 (Bathroom); 5 (Pool); 6( Parking), 7 (Ships Store); 8 (Holder

of Rights Under Lease) in the Second Amendment to Lease, attached as Exhibit 1 to the Lease Order (Tr. \_\_ P. \_\_).

The mere fact the Appellant disagrees with the Court's enforcement of the clear and unambiguous terms and conditions of the Settlement Agreement does not magically transform a binding Settlement Agreement to an unenforceable "agreement to agree" under the three (3) cases it cited.

In *Capital City Garage & Tire Co v. Elec. Storage Battery Co.*, 113 S.C. 352, 101 S.E. 838 (1920), there was no evidence to show an agreement to renew the parties' existing contract, nor any evidence to support a new contract. In *Patricia Grand Hotel, LLC. Id.*, the Court found clear evidence of the intention of parties as to the location of the leased premises. In *Aperm of S.C. v Roof*, 290 S.C. 442, 351 S.E. 2d 171 (Ct. App. 1986), the Court found a royalty contract binding as there were no issues left for future settlement. Where all material terms are set forth in a settlement agreement, as found in the present case, our Courts do not hesitate to enforce same.

The Trial Court properly enforced the plainly stated intent of the parties as set forth in the Settlement Agreement. There simply was no "agreement to agree" in the carefully drafted Settlement Agreement.

**V. BECAUSE THE TRIAL COURT FOUND THE SETTLEMENT AGREEMENT CLEAR AND UNAMBIGUOUS, IT PROPERLY ENFORCED SAID AGREEMENT PURSUANT TO THE TERMS AGREED BY THE PARTIES.**

Appellant asserts that the Trial Court found the Settlement Agreement was ambiguous and thereafter improperly interpreted the Settlement Agreement (Appellants Brief, p. \_\_). A review of both the Easement Order (Tr. P. \_\_) and the Lease Order (Trial P. \_\_) reflect the Trial Court found the Settlement Agreement was in fact clear and unambiguous. In the Easement Order at p. 2, the Trial Judge stated: "It is this Court's opinion the language of Section 9 of the Settlement

Agreement is clear and unambiguous.” (Tr. P. \_\_\_\_). In the Lease Order at p. 5, the Trial Judge stated: “It is this Court’s opinion that the language at §§ 2(b) and 6 of the Settlement Agreement is clear and unambiguous...” ( Tr. p. \_\_ ) Appellant has simply misstated the conclusions of the Trial Court on this issue.

Appellant only cites two (2) examples to support its position of the Court improperly interpreting the intent of the parties to the Settlement Agreement. The first is in the Lease Order. The Trial Court rejected Appellant’s arguments that §§ 2 (b) and 6 of the Settlement Agreement were intended to restrict the hours of operation of the restaurant operated by Respondent Sunset. The Trial Court’s Order properly rejected said position for a number of valid reasons.

First, there simply is no language in the Settlement Agreement restricting the hours of operation for the restaurant. If that were the intent of the parties, it would have been very easy to add specific language to do so. None is present.

Second, §§ 2(b) and 6 of the Settlement Agreement deal exclusively with parking spaces for the restaurant- not its hours of operation. While the term “Business Hours” is defined in the Settlement Agreement in said sections, it is clear that term is used only to set forth parking rules- not hours of operation. The Court noted that there were two (2) parking spaces restricted solely for restaurant use with no time restriction (i.e., 24 hours, 7 days a week, 365 days a year- §§2(c) and 2(d). The creation of the restricted spaces without time restrictions is inconsistent with the Appellant’s position. Finally, it should be noted, pursuant to § 7 of the Settlement Agreement (Tr. \_\_ p. \_\_), the restaurant space is owned by the POA and is expressly not subject to Appellant’s Lease. Thus, there was never a claim asserted by Appellant that it had any control of the hours of operation of the restaurant in the multitude of claims it did assert. It simply was not an issue in this litigation.

The only other example cited by Appellant as to improper interpretation of the Settlement Agreement is also in the Lease Order. Appellant asserts in its Brief, Paragraph 8 of the Second Amendment to the Lease (Tr. \_\_ p. \_\_) dealt with “Drafting the Agreement.” (Appellant Brief p. \_\_) This paragraph of the Second Amendment to Lease in fact, does not deal with drafting of the Second Amendment to the Lease, but is a standard, boilerplate provision as to binding successors or assigns. (Tr. \_\_ p. \_\_),. It reads as follows:

8. Binding Effect- This addendum shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors, and assigns.

The Trial Court properly followed the rules of contract construction as set forth in *Ecclesiastes*, Id. Its decision should be affirmed.

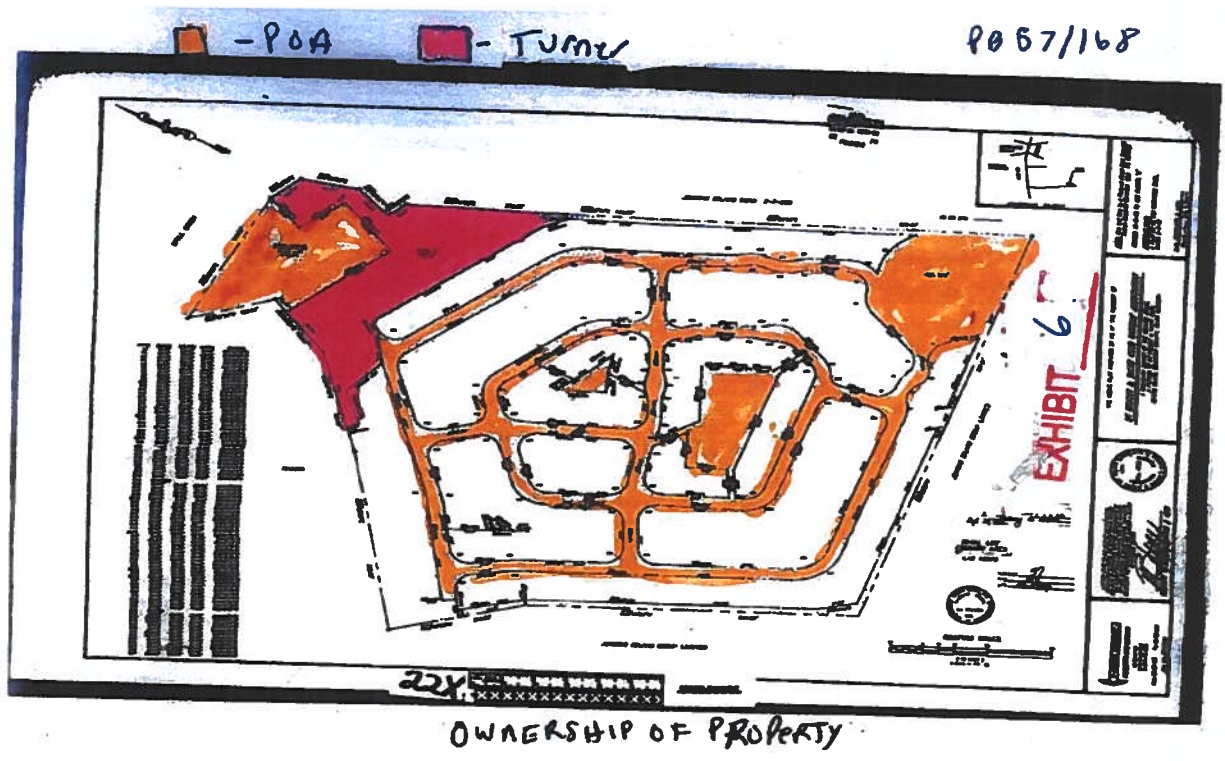
**VI. BECAUSE THE TRIAL COURT PROPERLY ENFORCED THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT, ITS ORDER REQUIRING APPELLANT TO SIGN THE AMENDED EASEMENT SHOULD BE ENFORCED.**

Appellant challenges the Trial Court’s conclusion in the Easement Order enforcing §9 of the Settlement Agreement where the parties agreed to modify an Easement, dated January 1, 1984, and recorded at Deed Book 397 at Page 1611 (“1984 Easement”) (Tr. \_\_ p. \_\_). The 1984 Easement was between the original developer and declarant, Outdoor Resorts R.V. Resort and Yacht Club (“Grantor”) and the POA (“Grantee.”). It was a “...permanent, non-exclusive right-of-way on, over and across the paved roads...” (1984 Easement p.1, 2<sup>nd</sup> para.- emphasis added) located on Grantor’s property, described on Exhibit A. It was for the benefit of the POA, the 200 lot owners and “...their guests, lessees, invitees, and licensees of Grantee employed to operate and maintain the improvements constructed on property described in Exhibits “A” and “B”, and their employees, Grantee’s successors and assigns and property managers.” (1984 Easement, p. 1, 3<sup>rd</sup> para.). To clearly understand the 1984 Easement, it is necessary to fully understand the parcels of

real property subject to same.

The property owned by the Grantor, consisting of 1.40 acres, is defined in Exhibit A pursuant to a metes and bounds description referencing Plat Book 29 at Page 184. (Tr. \_\_ p. \_\_, “1984 Easement Plat” ). The 1984 Easement Plat consists of seven (7) pages. Grantor’s property subject to the easement is best depicted as the shaded areas on Page 7 of 7, excluding an RV lot also owned by the Grantor adjacent to Jenkins Island Road, which is not relevant to this appeal. Appellant currently owns the shaded areas shown on page 7 of 7 originally owned by the Grantor under the 1984 Easement.

The property owned by the Grantee, or POA, is shown as the shaded areas on Page 6 of 7 of the Easement Plat. The 200 lots are also shown on said plat. Thus, the 1984 Easement granted the POA a non-exclusive easement across only the **paved roads** on Grantor’s property to enter the RV Park, go to and from the lots and the Recreational Facilities, “Rec Bld,” pool, tennis, and restaurant located on the second floor of the “Rec Bld” on the POA’s property to the north. An easier to follow graphical depiction of the properties owned by the parties described in the amended easement is set forth below, which was presented to the Trial Court (Tr. \_\_p. \_\_).



With an understanding of the properties identified in the 1984 Easement Plat, the Court can now review the applicable provisions of the Settlement Agreement. Section 9 of the Settlement Agreement reads as follows:

9. The 1984 easement recorded at Book 397 at Page 1612 will be updated to include granting access to the Association, Owners of the Property, and each of their guests, lessees, invitees, and licensees to Parcel "B." The Parties agree that Parcel B is referenced in Plat Book 148 at Page 60.

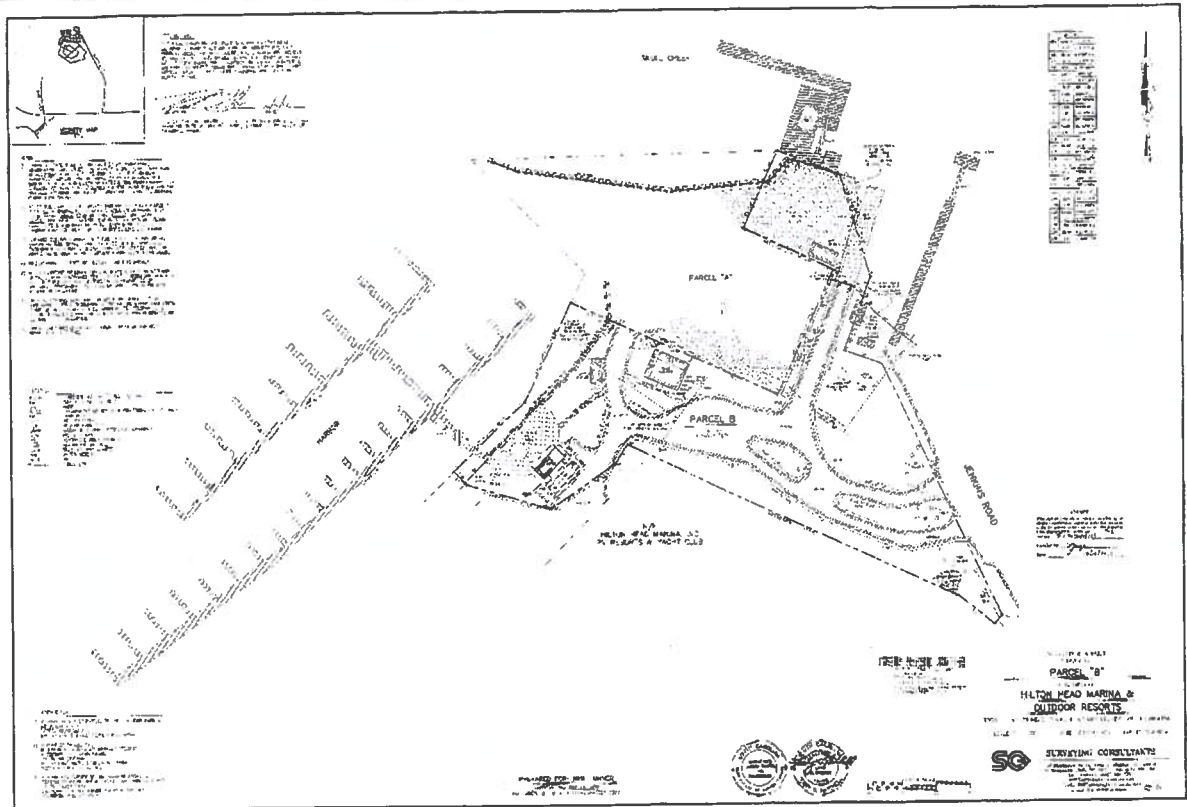
The Trial Judge in its Easement Order (Tr. \_\_ p. \_\_) adopted almost verbatim the language agreed to by the Parties. The granting clause of the Amended and Restated Easement, attached as Exhibit 1 to the Easement Order (Tr. \_\_ p. \_\_), §2(a) states as follows:

2. Grant of Easement

(a) Grantor does hereby grant, bargain, sell and convey to Grantee, a permanent, perpetual, non-exclusive right-of-way, on, over, and across that certain property owned by Grantor as more particularly depicted as "Parcel B" on that certain

plat or survey entitled “Boundary and As-Built Survey of Parcel “B”, a portion of Hilton Head Marina and Outdoor Resorts,” dated July 24, 2017 and recorded in the ROD in Plat Book 148 at Page 160, as prepared by Terry G. Hatchell, a South Carolina Registered Land Surveyor (S.C. Reg. No. 11059) (“2017 Survey”).

Parcel B is shown on Plat Book 148 at Page 60 (Tr. \_\_\_) as shown below:



Appellant purports to include a full and accurate copy of PB 148 P. 160 in its Brief (Appellant’s Brief p. 4). However, the copy attached includes labels not on the original plat nor presented to the Trial Judge. Said depiction is also missing certain portions shown on the original recorded plat.

The actual recorded plat, much like the 1984 Easement Plat, again shows the 1.41 acres

owned by Appellant, excluding only a sliver of land to the Northwest adjacent to the Marina. However, the non-exclusive easement is no longer limited to just “paved roads” under the Settlement Agreement.

Appellant argues the Trial Court should have limited the Amended and Restated Easement to just the “paved roads” on Parcel B owned by Appellant. As the Trial Court noted, the limitation restricting the Amended and Restated Easement to “paved roads” is nowhere to be found in the Settlement Agreement. The Trial Court followed the rules of contract construction set forth in *Ecclesiastes*, *Id.* and enforced the intent of the parties as clearly stated in §9 of the Settlement Agreement. The Court does not have the authority to insert new terms and conditions under its role of interpreting and enforcing contracts. *C.A. N. Enterprises, Inc. v. S.C. Human Services*, 296 S.C. 373, 378, 373 S.E. 2d 584, 587 (1988).

Appellant’s position that §9 of the Settlement Agreement should also be limited to just the “paved roads” in Parcel B fails for a second reason. If that were the case, there would be no change whatsoever in the 1984 Easement, which was already limited to paved roads. Such a construction is non-sensical and illogical.

Since the Trial Court correctly did find §9 of the Settlement agreement to be unambiguous, it did not look beyond the four corners of the Settlement Agreement to construe same. However, if this Court should find the subject language somehow is ambiguous, this Court should consider the Affidavit of Christopher Sibley, dated April 9, 2024. (Tr. \_\_ p. \_\_), a board member of the POA directly involved with the extensive mediation. He summarized the intent of the POA in negotiating the language in §9 as follows:

“...the POA prior to this litigation clearly already held easement rights over all paved roads located in Parcel B. Ever since the Plaintiff took over ownership of its property, there has been continual disputes about the POA, its members, lessees and invitees using sidewalks and other areas within Parcel B. All of these access

issues were resolved when the Plaintiff in its counsel reviewed and executed the Settlement Agreement which clearly granted an easement for access over all of Parcel B- not just the paved roads. Further, the primary reason the POA agreed to reduce the Plaintiff's rent by half (1/2) in the Settlement Agreement was in consideration of the Plaintiff granting this expanded easement."

In fact, since the Settlement Agreement was executed on December 13, 2023, Appellant has been paying the reduced rent. In essence, Appellant is seeking to cherry- pick the provisions of the Settlement Agreement it likes, and disputing the provisions it does not.

A review of § 3 of the September 24, 2024 Affidavit of Linda Lockman, owner of the Sunset restaurant is enlightening as well (Tr. \_\_ p. \_\_).

"... Ever since the Plaintiff took over ownership of its property; there has been continual disputes about the POA and patrons, employees and suppliers of Sunset Grill using sidewalks and **other areas within Parcel B.** All of these issues were resolved when Plaintiff, by its counsel, reviewed and executed the Settlement Agreement, which clearly granted an easement for access to Sunset, the POA and others over all Parcel B- not just the paved roads."

The issue of the POA, Sunset, the 200 lot owners and their guests and invitees crossing Appellant's 1.41 acres ( Parcel B) was specifically at issue in the litigation. Appellant sought damages for these alleged actions of trespass and a Declaratory Judgment as to its rights under the 1981 Lease, Covenants and 1984 Easement pursuant to its July 20, 2023 Third Amended Summons and Complaint (Tr. \_\_ p. \_\_). Both the POA and Sunset sought confirmation by way of Declaratory Judgments as to these issues in their respective amended pleadings (Tr. \_\_, p. \_\_, p. \_\_).

Based upon the above, the Trial Court properly enforced the unambiguous agreement of the parties expanding the scope of the 1984 Easement, beyond "paved roads."

### CONCLUSION

Since the adoption of South Carolina Alternative Dispute Resolution Rules in 2006 ("SCADR"), this Court has vigorously encouraged the South Carolina Bar to adopt and use

mediation to resolve disputes. This effort has been an overwhelming success. In this case, the parties, their experienced counsel, and the mediator spent over sixteen (16) straight hours resolving a very complicated, long-running dispute by following the SCADR and having all parties and their counsel sign a typed, three (3) page Settlement Agreement at the end of mediation. This Court should enforce the Trial Court's Orders enforcing the end result of this very beneficial process.

Respectfully submitted,

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Hilton Head Island, South Carolina  
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