

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2012-ALJ-07-0050-CC

James R. Maull,

Appellant/Petitioner,

v.

South Carolina Department of Health and Environmental Control and David Abdo,

Respondents,

and Russell and Laura Schaible,

Respondents.

APPELLANT/PETITIONER MAULL'S REPLY
TO RESPONDENT ABDO'S RESPONSE
TO PETITION FOR WRIT OF SUPERSEDEAS

YOUNG CLEMENT RIVERS, LLP
Michael A. Molony
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*Attorney for the Appellant/Petitioner,
James R. Maull*

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JUN 18 2014

SC Court of Appeals

By and through his undersigned counsel, the Appellant/Petitioner, James R. Maull (“Maull”), hereby replies to Respondent David Abdo’s (“Abdo”) response in opposition to his petition for a writ of supersedeas.

Abdo responds to Maull’s petition largely with an appeal to emotion, noting that his children will not stop growing up while this matter works its way through the legal system, and asking rhetorically, “How long should [he] be required to wait [to build his dock]?” (Abdo Response p. 4.)

The answer, if the rule of law is to be honored, is that Abdo must wait until Maull’s appellate rights are fully and meaningfully exercised—but that is only if Abdo insists upon unduly encroaching upon Maull’s existing dock by building his dock strictly in accordance with his personal preference, i.e., the configuration allowed by the amended permit.

While Abdo’s desire to spend time with his sons enjoying the water is certainly understandable, even touching, it cannot fairly be said that Maull is preventing him from doing so. To be clear, Maull has never objected to a dock being built on the Abdo property and does not do so now; indeed, Maull actively supported issuance of the original dock permit in 2007—a fact that Abdo does not address in his response. Maull’s challenge to the amended permit is in no way aimed at preventing Abdo from building a dock on his property and enjoying the water with his family; rather, it is aimed at protecting the value and enjoyment of Maull’s own property **and protecting the public**. (And, of course, as a practical matter, Abdo is free to enjoy the water with his family any time he wishes, with a public boat landing on Wappoo Creek being located mere minutes from his house.)

With particular regard to the public interest, Abdo overlooks or ignores that the issue of whether his dock (if built as allowed by the amendment) would create a navigational hazard is

itself a contested issue on appeal that would be effectively mooted by his premature dock construction. And, of course, underlying the threat to this issue is the real-life threat to the boating public—including a high volume of both commercial and recreational floatage—posed by Abdo’s actions. Again, the only expert testimony in this matter is that if Abdo builds his dock in accordance with the amended permit it will create a navigational hazard—another fact that Abdo does not address in his response. Abdo’s personal preference in terms of dock configuration simply must yield to the interests of public safety.

Also, it must be remembered that it was not until after the original dispute over issuance of a dock permit for the Abdo property had been resolved that Maull duly reconfigured his own dock and expended substantial funds to purchase a large fishing boat. In fact, in his response to the instant petition, Abdo recounts that “[w]hen [he] purchased the improved property at 29 Broughton Road in 2007, the prior owner had already obtained a dock permit,” but it was not until “May 2011, [that] Abdo submitted an amended application to reconfigure the dock authorized to be built under the existing permit.” (Abdo Response p. 1.)

Just as Abdo’s children will not stop growing up during the pendency of Maull’s appeal of the amended permit, they, of course, did not stop growing up during the years-long interim between the issuance of the original permit and Abdo’s determination that the dock permit issued for his property in 2007 was not acceptable to him. Maull does not make this point to be glib, but to point clarify his position. It was Maull that helped with the original issuance of the permit in 2007, and it was Maull that changed his own position in reliance thereon by reconfiguring his dock and making a large boat purchase, but it is Abdo’s after-the-fact attempt to change the original permit that stands to diminish the value and enjoyment of Maull’s property and to create

a public navigational hazard—and is the true reason, not any action on the part of Maull, that Abdo has not yet built a dock at his property to enjoy with his family.

And, to be clear, while Maull is certainly interested in the full and meaningful pursuit and protection of his legal rights—as he is doing via his pending appeal—Maull has no interest in that process taking any more time than necessary. In addition to the fact that the pending appeal has been fully briefed, with the appellate record filed, and the matter ready for consideration by the Court of Appeals, in hopes of obtaining a decision from that court as soon as possible, Maull would be happy to join with the other parties to the appeal in asking that it be expedited, if they are so inclined.

Moreover, consistent with his lack of objection to a dock being constructed at the Abdo property, Maull, of course, has no objection to Abdo building his dock in accordance with the configuration authorized by the original permit. Even beyond that, Maull stands at the ready to work with Abdo to find an agreeable compromise configuration and, in fact, Maull presently has a proposed alternate dock configuration that Maull believes will satisfy his concerns, accomplish Abdo's objectives, and will be acceptable to DHEC—but, it seems, Abdo is unwilling to even attempt such a resolution.

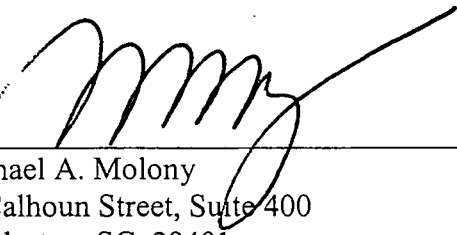
So, with Maull duly availing himself of his appellate rights, with that appellate process poised to yield a decision by the Court of Appeals in the reasonably near future, and with Abdo unwilling to even explore the potential for a compromise, the only way to prevent Maull's right to a full and meaningful appeal from being undermined by Abdo's attempt to proceed with dock construction is for this Court to grant a writ of supersedeas.

Respectfully, Abdo's contention that his premature dock construction does not stand to render a contested issue moot is disingenuous. Notably, in this regard, Abdo simply offers that

“[i]f Maull is ultimately successful in his appeal . . . Abdo’s dock constructed in accordance with the amended permit would be **subject to removal.**” (Abdo Response p. 4) (emphasis added.) Abdo goes only so far as to concede that his dock would be “subject to removal,” stopping short of conceding the dock would have to be removed. Maull submits that this equivocation is reflective of the fact that, if Abdo goes ahead with dock construction notwithstanding Maull’s appeal, even a favorable result for Maull will only give rise to further—costly and time-consuming—legal wrangling about the actual removal of Abdo’s dock. Also, beyond its manifest inefficiency, Abdo’s idea that his prematurely-built dock could simply be removed in the event of Maull’s success on appeal is indeed overly simplistic, and does not account for the—otherwise needless—adverse environmental impact from dock removal. And, of course, as noted above, the question of whether construction of the Abdo dock as allowed by the amendment would create a public navigational hazard is itself a contested issue in this case that Abdo’s present actions threaten to render moot.

Respectfully submitted,

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Charleston, South Carolina

Dated: June 16, 2014

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2012-ALJ-07-0050-CC

James R. Maull,

Appellant/Petitioner,

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and Russell and Laura Schaible,

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*Attorney for the Appellant/Petitioner,
James R. Maull*

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SC Court of Appeals

I, Tara R. O'Donnell, of Young Clement Rivers, LLP, do hereby certify that I have served the **APPELLANT/PETITIONER MAULL'S REPLY TO RESPONDENT ABDO'S RESPONSE TO PETITION FOR WRIT OF SUPERSEDEAS** on all other parties hereto by depositing a copy of the same in the United States Mail, postage prepaid, on June 16, 2014, addressed as follows to the parties or their attorneys of record:

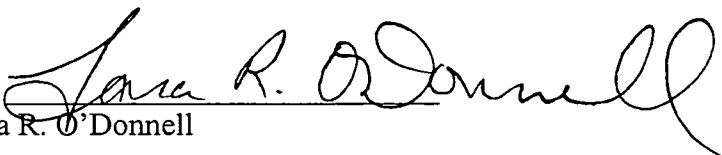
Leslie S. Riley, Esquire
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Attorney for Russell and Laura Schaible

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Attorney for SCDHEC

Stanley C. Rodgers, Esquire
Law Office of Stanley Rodgers
101 Queen Street, Suite 200
Charleston SC, 2940
Attorney for David Abdo (with respect to Petitioner/Appellant Maull's Petition for Writ of Supersedeas)

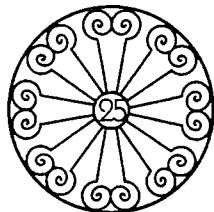
David Abdo
Pro Se (SC Court of Appeals case)
29 Broughton Rd.
Charleston, SC 29407

YOUNG CLEMENT RIVERS, LLP

By: 
Tara R. O'Donnell

Charleston, South Carolina

Dated: June 16, 2014



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June 16, 2014

Via U.S. Mail

Jana E. Shealy
Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

Re: James R Maull v. SCDHEC and David Abdo
Dock Permit - P/N #OCRM-07-128-F for David Abdo
ALC Case No.: 2012-ALJ-07-0050-CC
SC Appellate Case No. 2013-001878
YCR File: 2880-20110924

Dear Ms. Shealy:

Enclosed please find for filing the original and two copies of the Petitioner/Appellant Maull's reply to Respondent Abdo's Response to Petition for Writ of Supersedeas. I would appreciate your returning the clocked copies in the enclosed self addressed envelope.

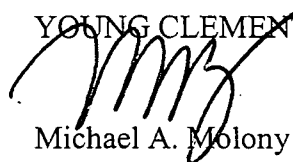
By copy of this letter, I am serving all parties of record as well the South Carolina Court of Appeals.

Thank you for your attention in this matter.

With kind regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Michael A. Molony

MAM/tro

Enclosure(s)

cc: James R. Maull, Sr.
Stanley C. Rodgers
David Abdo
Leslie S. Riley, Esquire
Nathan Haber
The Honorable Jenny Abbott Kitchings (Clerk of Court SC Court of Appeals)

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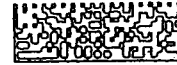
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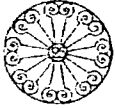
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