

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2009-CP-10-5799

Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a,
Elaine D. Peery,

Appellant.

RECEIVED

AUG 21 2014

SC Court of Appeals

APPELLANT'S MEMORANDUM ADDRESSING APPEALIBILITY

Pursuant to the Court's request dated August 1, 2014, Appellant Elaine Devlin Peery a/k/a Elaine D. Peery respectfully submits this memorandum addressing the issue of whether or not the order challenged on appeal is appealable. The order in question is the Order on Judgment Creditor's Motion for a Rule to Show Cause and Order of Contempt (Rule to Show Cause).

Respondent filed a Notice of Motion for Rule to Show Cause and for an Order for Contempt, having been filed and stamped by the Clerk of the lower Court on June 10, 2014. The Motion Cover Sheet is not signed nor dated, nor does it bear the stamp of the Clerk of Court. Ex. A Further, the Respondent's letter to the Clerk of Court, the Honorable Julie J. Armstrong, dated June 10, 2014 indicates the Notice of Motion for Rule to Show Cause and for an Order for Contempt was sent via

courier to the Clerk of Court, without the documents being sent in the same manner to opposing counsel. Ex. B.

Counsel for Respondent further signed a Certificate of Service indicating that Appellant's counsel was served with the aforementioned motion on June 10, 2014. During a hearing on June 20, 2014, Counsel for the Appellant argued that the Appellant had not been properly served with the Rule to Show Cause. The Rule to Show Cause filed on June 10, 2014, was not personally served upon the Appellant until July 9, 2014, after the lower court ordered on June 26, 2014 that the Appellant be served with the Rule to Show Cause. Ex. C.

As reflected in the transcript of the June 20, 2014 hearing (Page 22 of Transcript of Record, from the hearing held on Friday, June 20, 2014, commencing at 10:00 a.m., the Court stated: *"However, before I specifically find Ms. Peery in contempt Court, of I'm going to require that she be served personally with a rule to show cause, that rule to show cause order(ing) (sic) her to appear. And I'll give you a date in a second. And she's to show cause why she's failed to appear at these hearings. And she's to be put on notice in the rule to show cause that should she fail to appear at (the) next hearing she will be subject to arrest, and that will be through the Charleston County Sherriff's Office."* The Court further stated: *"I'm going to set that appearance for August the 29th at 10:00 a.m. That should provide plenty of time to get her served and notice to be there."*

Thus, Respondent's counsel has erroneously propounded in the Order on Judgment Creditor's Motion for a Rule to Show Cause and Order of Contempt signed by the Court on June 26, 2014 and filed on June 30, 2014, that the Appellant was held in Contempt at the hearing. Respondent's counsel has argued that the Appellant is subject to sanctions from a prior finding of contempt, held on June 20, 2014. Again, the lower Court has made no such finding and has mistakenly signed an Order indicating that such a finding was made:

The Appellant argues that the Rule to Show Cause is appealable because the Order on Judgment Creditor's Motion for a Rule to Show Cause and Order of Contempt was erroneously entered because a hearing on the issue of contempt has yet to be held and is scheduled for August 29, 2014. The Honorable Mikell Scarborough, Master In Equity clearly indicated that the Appellant had not been personally served with the Rule to Show Cause as of the date of the June 20, 2014 hearing, and further, the Master scheduled the hearing for August 29, 2014 at 10:00 a.m., and specifically indicated that this should allow ample time for personal service of the Rule to Show Cause upon the Appellant. In accordance with the Master's ruling, the Appellant was personally served with the subject Rule to Show Cause on July 9, 2014. Thus, the Respondent's argument that the Order on Judgment Creditor's Motion for Rule to Show Cause and Order of Contempt is interlocutory is improperly stated and therefore without merit.

Respondent further argues that the Rule to Show Cause is not appealable because it is interlocutory, because the Court has not addressed the issue of sanctions. Respondent further claims that the lower court intends to address the issue of sanctions at the hearing scheduled for August 29, 2014. On the contrary, the lower Court specifically determined that the Appellant was not personally served with the Rule to Show Cause (See Page 22 of Transcript from hearing held on June 20, 2014).

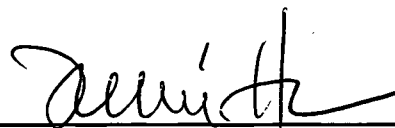
The lower Court then specifically instructs counsel for the Respondent to personally serve the Appellant, and the Court then scheduled a hearing for August 29, 2014 to address the issue of contempt once the Appellant had been properly served with the Rule Show Cause. Service on the Appellant was accomplished on July 9, 2014. This further confirms that the lower Court has not yet ruled on the issue of Contempt.

The findings propounded by the Respondent in the Rule to Show Cause Order clearly misrepresent the lower Court's findings that the hearing on August 29, 2014 was specifically

scheduled to address the issue of contempt, after the Appellant had been properly served with the Rule to Show Cause.

When counsel for Respondent was unable to provide proof of personal service to the Court, the Court ordered Respondent's counsel to serve the Appellant with the Rule to Show Cause Petition and Notice of the August 29, 2014 hearing. Therefore, Appellant argues that the issue of contempt is scheduled to be heard at the August 29, 2014 hearing, any inclusion of a finding of contempt in any preceding Order is in error and premature. The Transcript from the hearing on June 20, 2014 clearly reveals that no such findings were made, nor were there findings made by the lower court *sua sponte*. "In order to sustain an finding of contempt, the record must be clear and specific as to the acts or conduct upon which such finding is based" Whetstone v. Whetstone, 309 SC. 227, 420 SE.2d 877, 881 (Ct.App.1992)

To allow the existing Order to stand would deprive the Appellant of due process and the opportunity to offer a defense on the issue of contempt at the upcoming scheduled hearing. It is at this time wherein the Appellant will have the opportunity to defend the accusation of contempt. The Appellant respectfully requests that the Court of Appeals finds that that an Order on Judgment Creditor's Motion for a Rule to Show Cause and Order of Contempt is in fact appealable.



Vernee C. Hancock, Esquire
SC Bar No.: 15174
Post Office Box 2276
Summerville, South Carolina 29484
(843) 851-1476
Attorney for Appellant

August 20, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
²⁰⁰⁹
CASE NO. ~~2010~~ CP-10-5799

Windswept Villas III Horizontal Property
Regime)

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

Elaine Devlin Peery a/k/a Elaine D. Peery)

Defendant.)

Plaintiff's Attorney: Katie F. Monoc, Bar No: 78131 Address: Pratt-Thomas Walker, PA P. O. Drawer 22247 Charleston, SC 29413 Phone: 843-727-2244 Fax 843-727-2238 E-mail: kfm@p-tw.com Other: _____	Defendant's Attorney: Vernee Hancock, Bar No: _____ Address: PO Box 2276 Summerville, SC 29484 Phone: 843-851-1476 Fax 843-851-0183 E-mail: hancocklawfirm@gmail.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion for Rule to Show Cause and For an Order of Contempt Estimated Time Needed: 15 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted: _____	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ <input type="checkbox"/> EXEMPT: (check reason): <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court, or reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	JUDGE CODE _____
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

2009 CP-10-5799

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 WINDSWEPT VILLAS III HORIZONTAL)
 PROPERTY REGIME)
 Petitioner/ Judgment Creditor,)
)
 vs.)
)
 ELAINE DEVLIN PEERY, A/K/A)
 ELAINE D. PEERY,)
)
)
 Respondent/ Judgment Debtor.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO. 09-CP-10-5799

FILED
 2014 JUN 10 AM 11:04
 JULIE J. ARMSTRONG
 CLERK OF COURT
 Clock in date Canceled

**NOTICE OF MOTION AND
 MOTION FOR
 RULE TO SHOW CAUSE AND FOR
 AN ORDER OF CONTEMPT**

BY _____
 JULIE J. ARMSTRONG
 CLERK OF COURT
 2014 JUN 10 AM 11:04
FILED

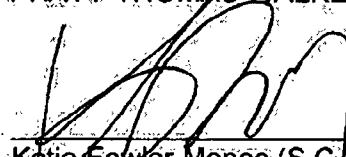
YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Petitioner/Judgment Creditor will move before the Honorable Master in Equity for Charleston County on June 20, 2014 at 9:30 a.m. for an Order of Contempt based on the following:

1. An Order of Reference was filed on October 31, 2013, a copy of which is attached hereto as Exhibit A. The Order required Elaine Peery to personally appear to answer questions under oath on January 13, 2014. Elaine Peery retained counsel, who appeared on that day and later filed a Notice of Appearance; however, Elaine Peery did not personally appear.
2. The matter was continued and a second hearing on Supplemental Proceedings was scheduled for April 21, 2014. A Notice of Hearing was served upon Elaine Peery's attorney in accordance with the South Carolina Rules of Civil Procedure on or about March 27, 2014. Notwithstanding, Elaine Peery again failed to appear.

3. To date, Elaine Peery has refused to comply with the Order of Reference filed October 31, 2013. Neither Elaine Peery nor her attorneys have provided the undersigned counsel with the materials required by the Court's October 31, 2013 Order. Nor has she agreed to submit to a deposition in compliance with the Order of Reference.
4. This Motion is supported by the Affidavit of Katie Fowler Monoc, attached hereto as Exhibit B.

WHEREFORE, the Petitioner/Judgment Creditor moves this Honorable Court to enter an Order of Contempt for the numerous failures by the Respondent/Judgment Debtor to comply with a Court Order and to appear at these Supplemental Proceedings. The Petitioner/Judgment Creditor further moves for sanctions in accordance with Rule 37 of the South Carolina Rules of Civil Procedure, an award of costs and attorneys' fees associated with the filing of this Motion, and other relief in favor of the Petitioner/Judgment Creditor as the Court deems just and proper.

PRATT-THOMAS WALKER, P.A.



Katie Fowler Monoc (S.C. Bar No. 78131)
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: (843) 727-2244
Fax: (843) 727-2236
E-mail: kfm@p-tw.com
Attorney for Judgment Creditor

June 10, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 09-CP-10-5799

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Creditor,)

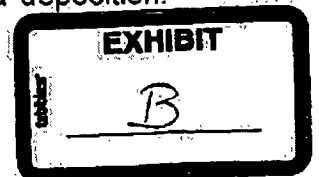
vs.)

ELAINE DEVLIN PEERY A/K/A)
ELAINE D. PEERY,)
Respondent/ Judgment Debtor.)

AFFIDAVIT IN SUPPORT OF
PETITIONER'S MOTION FOR RULE
TO SHOW CAUSE

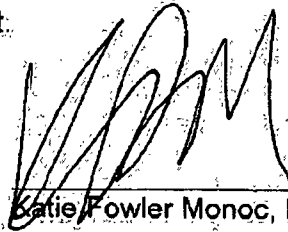
I, Katie Fowler Monoc, having been duly sworn, depose and say that:

1. I am over the age of 18 and make this affidavit on personal knowledge and information.
2. I am counsel for the Petitioner/Judgment Creditor Windswept Villas III Horizontal Property Regime ("Windswept") in the above-matter.
3. I emailed John Cantrell, counsel for the Respondent/Judgment Debtor, on February 14, 2014 to communicate the need to proceed with discovery to determine whether Elaine Peery has assets to pay my client's legal fees, interest on the judgment, and costs owed by the Respondent Judgment Debtor. I asked that Cantrell provide me with dates he and his client would be available for her deposition and reminded him I needed the materials outlined in the Court's October 31, 2013 Order to prepare for that deposition.
4. I emailed John Cantrell again on March 3, 2014 to remind him to speak with his client about her availability for a deposition over the next three weeks and the discovery owed pursuant to the Order of Reference.
5. Having not received deposition dates or discovery, I emailed Jeff McDaniel, copying John Cantrell, on March 14, 2014 to set the continued hearing on Supplemental Proceedings and to request that the Court order the debtor's timely cooperation with discovery for the identification of assets which may be used to satisfy (in full) the amounts owed per the underlying judgment.
6. As of today, I still have not received any documents owed by the Elaine Peery in accordance with the Court's October 31, 2013 Order. Nor has Counsel for the Judgment Debtor provided me with Elaine Peery's availability for a deposition.



Nor has Elaine Peery personally appeared at any of the noticed hearings on these Supplemental Proceedings.

Further Affiant sayeth naught.



Katie Fowler Monoc, Esquire

SWORN to and subscribed before me this

10 day of June, 2014

Thurmon (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: Aug. 21, 2016

EXHIBIT B

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

(843) 727-2244 (direct dial)
(843) 727-2239 (fax)
kfm@p-tw.com (e-mail)

E. DOUGLAS PRATT-THOMAS
G. TRENHOLM WALKER
W. ANDREW GOWDER, JR.
JON L. AUSTEN
LINDSAY K. SMITH-YANCEY (SC, NC)
THOMAS H. HESSE (SC, GA)
IAN W. FREEMAN (SC, CA)
DANIEL S. McQUEENEY, JR.
KATHLEEN FOWLER MOROC
JOHN P. LINTON, JR.

OF COUNSEL
THOMAS P. GRESSETTE, JR. (SC, USVI)

June 10, 2014

Via Courier

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

RECEIVED

AUG 21 2014

SC Court of Appeals

Re: Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery
Case No.: 10-CP-10-5799
Our File No.: 6835-003

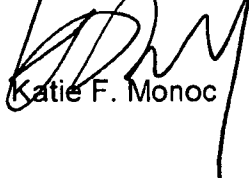
Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Notice of Motion and Motion for Rule to Show Cause and For an Order of Contempt, Affidavit in Support of Petitioner's Motion for Rule to Show Cause, and Notice of Hearing in the above referenced matter. Also enclosed are the motion slip and a check for \$25.00 for the administrative filing fee. Please file the originals and return stamped copies to me via our courier.

Thank you for your many courtesies in these regards.

Yours very truly,

PRATT-THOMAS WALKER, P.A.



Katie F. Monoc

KFM\cam
Enclosures
cc: John R. Cantrell, Jr., Esq. (w/encl.)
Vernee Hancock, Esq. (w/encl.)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
CASE NO. 09-CP-10-5799)

WINDSWEPT VILLAS III HORIZONTAL)
PROPERTY REGIME)
Petitioner/ Judgment Creditor,)

vs.)

ELAINE DEVLIN PEERY A/K/A)
ELAINE D. PEERY,)

Respondent/ Judgment Debtor.)

CERTIFICATE OF SERVICE

BY

JULIE ARMSTRONG
CLERK OF COURT

FILED

2014 JUN 10 AM 11:07

The undersigned hereby certifies that copies of the Motion for Rule to Show Cause and For an Order of Contempt, Affidavit in Support of Petitioner's Motion for Rule to Show Cause, and Notice of Hearing in the above-referenced matter have been served upon counsel listed below on June 10, 2014, by facsimile and by United States Mail:

John R. Cantrell, Jr., Esq.
P.O. Box 1276
Goose Creek, SC 29445-1276
Facsimile: 309-213-0922

Vernee C. Hancock, Esq.
P.O. Box 2276
Summerville, SC 29484
Facsimile: 843-851-0183

PRATT-THOMAS WALKER, P.A.

Christine Morrow

Christine Morrow, Paralegal to
Katie Fowler Monoc (S.C. Bar No. 78131)
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: (843) 727-2244
Fax: (843) 727-2236
E-mail: kfm@p-tw.com
Attorney for Judgment Creditor

Charleston, South Carolina

EXHIBIT C

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET,
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843-727-2200
FAX: 843-727-2238

WWW.P-TW.COM

(843) 727-2244 (direct dial);
(843) 727-2239 (fax);
kfm@p-tw.com (e-mail);

E. DOUGLAS PRATT-THOMAS
G. TREKHOLM WALKER
W. ANDREW GOWDER, JR.
JON L. AUSTEN
LINDSAY K. SMITH-YARCEY (SC, DC)
THOMAS H. HESSE (SC, GA)
IAN W. FREEMAN (SC, GA)
DARIEL S. McQUEENEY, JR.
KATHLEEN FOWLER MONOC
JOHN P. LINTON, JR.

OF COUNSEL
THOMAS P. GRESSETTE, JR. (SC, USVI)

July 17, 2014

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery
Case No.: 2009-CP-10-5799
Our File No.: 6835-003

Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Affidavit of Service upon Elaine Peery dated July 9, 2014. Please file the original and return a stamped copy to us in the enclosed envelope.

Thank you for your many courtesies in these regards.

Yours very truly,

PRATT-THOMAS WALKER, P.A.


Christine Morrow
Paralegal to Katie E. Monoc

Enclosures

cc: John Cantrell, Esq. (w/encl.)
Vernee Hancock, Esq. (w/encl.)

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: ²⁰⁰⁹~~2046~~-CP-10-5799 Court Date: 8/29/2014 10:00:am

Plaintiff:

Windswept Villas III Horizontal Property Regime

vs.:

Defendant:

Elaine Devlin Peery a/k/a Elaine D. Peery

For:

Katie Fowler Monoc
Pratt-Thomas Walker Professional Association
P.O. Drawer 22247
Charleston, SC 29413

Received by PROCESS SERVICE, INC. to be served on Elaine D. Peery, 3053 Pignatelli Crescent, Mount Pleasant, SC 29466.

I, John Gordon being duly sworn, depose and say that on the 9th day of July, 2014 at 11:25 am,

PERSONALLY served by delivering a true copy of the LETTER, MOTION AND ORDER INFORMATION FORM AND COVERSHEET, NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE AND FOR AN ORDER OF CONTEMPT, EXHIBITS A-B, ORDER ON JUDGMENT CREDITOR'S MOTION FOR A RULE TO SHOW CAUSE AND ORDER OF CONTEMPT and NOTICE OF HEARING with the date and hour of service endorsed thereon by me, to Elaine D. Peery at the address of: 3053 Pignatelli Crescent, Mount Pleasant, SC 29466, and informed said person of the contents therein.

I am over eighteen and have no interest in the above action.

Subscribed and Sworn to before me on the 9th day of July, 2014 by the affiant who is personally known to me

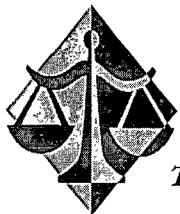
Rebecca Sparks
NOTARY PUBLIC
Commission Expires: 02/20/23



John Gordon
Process Server

PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2014001649



Vernee C. Hancock

Telephone: (843) 851-1476

Attorney at Law

Fax: (843) 851-0183

Post Office Box 2276, Summerville, South Carolina 29484

Vernee C. Hancock, Esq.

E-Mail: hancocklawfirm@gmail.com

August 21, 2014

VIA HAND DELIVERY

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

RECEIVED

AUG 21 2014

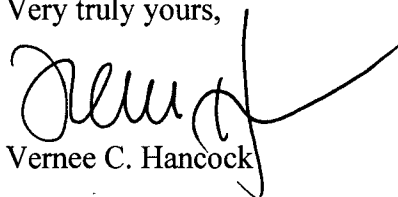
SC Court of Appeals

Re: Windswept Villas III Horizontal property Regime vs. Elaine Devlin Peery
Case No.: 2009-DR-10-5799

Dear Ms. Kitchings:

Please find enclosed the original and two (2) copies of the Appellant's Memorandum Addressing Appealability in the above referenced matter. Please file the original and return two (2) stamped copies to me in the enclosed self-addressed envelope I have provided.

Very truly yours,



Vernee C. Hancock

VCH/nac

Enclosures (as stated)

cc: Katie Fowler Monoc, Esq. (Via Hand Delivery)