

5

RECEIVED

NOV 24 2014

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
COURT OF APPEALS**

**APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS**

IN CASE NO. 2009-CP-1000685, THE HONORABLE MIKELL R. SCARBOROUGH

Case No. 2014-001345

PAUL DAVIS.....Appellant,

v.

CHARLESTON HARBOR RESORT & MARINA.....Respondent,

**RESPONDENT'S RESPONSE TO NOTICE OF MOTION
TO STRIKE DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

This Memorandum is filed in response to the Appellant's Motion to Strike Designation of Matter, except the Return of the Private Process Server, Daniel F. Delcollo and the Affidavit of Joyce Lockhart. The Appellant contends there were no other items entered into evidence. Respondent requests the Motion be denied because all of the documents identified by the Respondent to be included in the Record on Appeal were filed with the Court and considered by the lower court. Attached as Exhibit 1 is a copy of Plaintiff's Memorandum in Opposition to Defendant's Motion for Relief from the Judgment filed on August 19, 2013, prior to the hearing at 3:00 p.m. that day on the Defendant's Motion from Relief from Judgment. A copy of the Charleston County website activities' page for this case is attached as Exhibit 2, and shows the document was filed on August 19, 2013. The Clerk of Courts' website also shows that the

document consists of fifty-five (55) pages. Copies of the documents were provided to the lower court at the hearing. The undersigned counsel for the Respondent began his argument with: "I would like to -- this is a memorandum and some documents." (Exhibit 3, Transcript of Hearing, p. 4, ln. 8-9 (A copy of pages 1-7 of the transcript are attached as Exhibit 3)). A review of the transcript demonstrates the documents attached to the Plaintiff's Memorandum were discussed and considered by the lower court. For example, the vessel documentation (Exhibit 2 to Plaintiff's Memorandum) and the License Agreement for Dockage with the Plaintiff (Exhibit 3 to Plaintiff's Memorandum) were discussed on page 6 of the transcript.

The documents designated by the Plaintiff to be included on the Record on Appeal, and objected to by the Appellant, are:

1. Order for Supplemental Proceedings dated May 15, 2013. (The Order giving rise to Davis' Motion from Relief from Judgment, and referred to on p. 8 of the Order on appeal here).
2. Judgment denying Defendant's Motion for Relief Without Prejudice dated August 5, 2013. (Referred to on p. 9 of the Order on appeal here).
3. U.S. Coast Guard General Index or Abstract of Title for Vessel Grand Cru (Exhibit 1 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 2 of the Order on appeal here)
4. National Vessel Documentation Center Certification of Documentation for Vessel Grand Cru (Exhibit 2 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 2 of the Order on appeal here).
5. Charleston Harbor Resort & Marina License Agreement for Dockage dated April 19, 2007 (Exhibit 3 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 2 of the Order on appeal here).
6. State of Delaware Certificate for Renewal and Revival of Charter dated April 17, 2013 (Exhibit 4 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 2 of the Order on appeal here)

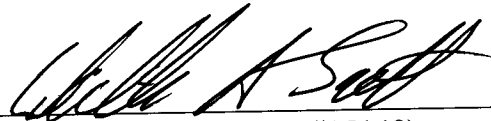
7. Sunset Cay Marina Visitor Dockage Agreement dated May 27, 2008 (Exhibit 5 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 2-3 of the Order on appeal here)
8. Letter to Paul Davis dated January 28, 2009 (Exhibit 6 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 3 of the Order on appeal here).
9. Return of Private Process Server on Corporate Systems, Inc. dated February 4, 2009 (Exhibit 7 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, also designated by the Respondent, and referred to on p. 3 of the Order on appeal here).
10. Transcript of Judgment dated April 3, 2009 (Exhibit 8 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 3 of the Order on appeal here).
11. Complaint filed in Small Claims Court, Case No. 2012CV1010600380, dated March 12, 2012 (Exhibit 10 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment).
12. Letter to Wendy J. Keefer, Esquire, dated June 8, 2012 (Exhibit 12 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 3 of the Order on appeal here).
13. Email from Wendy Keefer to Lynn Davis dated June 11, 2012 (Exhibit 13 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 3 of the Order on appeal here).
14. Defendants' Answer and Counterclaim dated June 12, 2012 (Exhibit 11 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment).
15. Civil Action Cover Sheet, Summons and Complaint dated September 24, 2012, in *Sunset Cay Marina v. Paul A. Davis, et al.*, in Case No. 2012-CP-10-6204 (Exhibit 14 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 3 of the Order on appeal here).

16. Defendants' Answer and Counterclaim dated November 20, 2012, in *Sunset Cay Marina v. Paul A. Davis, et al.*, in Case No. 2012-CP-10-6204 (Exhibit 15 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 3 of the Order on appeal here).
17. *Chesapeake Venture Corp., et al. v. Sunset Cay Marine, et al.*, U.S. District Court for the District of South Carolina, Civil Action No. 2:13-cv-01657-DCN, dated June 18, 2013 (Exhibit 16 to Plaintiff's Memorandum In Opposition to Defendant's Motion from Relief from Judgment, and referred to on p. 3 of the Order on appeal here).

Since all of the documents objected to by the Appellant were in the record and considered by the lower court, they are properly designated. The Respondent respectfully requests the Appellant's Motion to Strike be denied.

Respectfully submitted.

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)
775 St. Andrews Blvd.
Charleston, SC 29412
(843) 556-5656

ATTORNEY FOR RESPONDENT

Dated this 21th day of November, 2014.

RECEIVED

NOV 24 2014

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
COURT OF APPEALS**

**APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS**

IN CASE NO. 2009-CP-1000685, THE HONORABLE MIKELL R. SCARBOROUGH

Case No. 2014-001345

PAUL DAVIS.....Appellant,

v.

CHARLESTON HARBOR RESORT & MARINA.....Respondent,

PROOF OF SERVICE

I certify that I have served the **Respondent's Response to Notice of Motion to Strike Designation of Matter to be Included in the Record on Appeal**, by depositing a copy of it in the United States Mail, postage prepaid, on November 21, 2014, addressed to Pro Se Appellant Paul Davis, 14639 C.R. Koon Highway, Newberry, SC 29109 and Paul Davis, 107 Averill Lane, Irmo, SC 29063.

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)
775 St. Andrews Blvd.
Charleston, SC 29412
(843) 556-5656
ATTORNEY FOR RESPONDENT

Dated this 21th day of November, 2014.