

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen Mullen, Circuit Court Judge

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SC Court of Appeals

Case No. 2013-CP-07-1567

James Piotrowski, deceased, by and through his
Personal Representative Tracey L. Piotrowski,
and Tracey L. Piotrowski, Individually.....Respondents,

v.

Richard K. Santee and Carolyn Santee,
Brays Island Plantation Colony, Inc.,

Of Whom

Brays Island Plantation Colony, Inc. is theAppellant,

and

Richard K. Santee and Carolyn Santee are.....Respondents.

APPELLANT
BRAYS ISLAND PLANTATION COLONY, INC.'S
BRIEFING TO THE COURT
ON THE ISSUE OF APPELABILITY

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

By Notice of Appeal served and filed on November 6, 2014, Brays Island Plantation Colony, Inc. (“Appellant”) appealed the following orders of the Circuit Court:

- Order approving settlement of Respondents James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski, and Tracey L. Piotrowski, Individually’s survival action and wrongful death against Respondents Richard K. Santee and Carolyn Santee, which all Respondents maintain operated to dismiss the Santee Respondents as defendants in the instant litigation (filed June 17, 2014 and received on June 25, 2014);¹ and
- Order Granting in Part and Denying in Part Appellant’s Rule 59, SCRCP Motion to Alter or Amend (filed October 8, 2014 and received October 8, 2014).²

Following Appellant’s service and filing of its Notice of Appeal, the Court of Appeals transmitted a letter dated November 18, 2014, to all counsel of record, directing the parties to brief the Court on whether the order(s) of the Circuit Court are appealable. Pursuant to the Court’s directive, Appellant’s briefing on the issue of appealability follows.

¹ See Exhibit A.

² See Exhibit B.

FACTS/PROCEDURAL BACKGROUND

The instant appeal emanates from a wrongful death and survival action instituted by Respondent James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski, and Tracey L. Piotrowski, Individually (“the Piotrowski Respondents”), in the Court of Common Pleas in Beaufort County.³ The defendants in this action are Dr. and Mrs. Richard and Carolyn Santee (“the Santee Respondents”) and Appellant.

The incident giving rise to the case at bar occurred on Thanksgiving Day 2010 (November 24, 2010) and into the early morning of November 25, 2010. Tracey and James (“Jim”) Piotrowski had traveled to Sheldon, South Carolina from Florida. The two arrived at the Santee residence at Brays Island at approximately 7:00 p.m. that evening. Already at the Santee residence were the Santee Respondents (the owners of the home at Brays Island), as well as Mrs. Santee’s elderly mother, Mrs. Santee’s sister, Linda Flad (the mother of Jim Piotrowski), and Steven Piotrowski, the brother of Jim Piotrowski and son of Linda Flad.

³ Tracey L. Piotrowski is the decedent James Piotrowski’s widow. Decedent went by the nickname “Jim.” She is now married to Jim Piotrowski’s brother, Steven.

Throughout the evening, multiple alcoholic beverages, which included beer, liquor, and wine, were consumed by those gathered. Based on the written and recorded statements and discovery conducted thus far, it appeared to be a typical family holiday get-together with everyone enjoying each other's company and having a good time with no apparent discontent or discord.

As the evening wore on, everyone proceeded to wind down and go to bed, but for Dr. Santee, Jim Piotrowski and Tracey Piotrowski. Tracey then left Dr. Santee and Jim alone in the kitchen with everything seemingly alright until approximately fifteen to twenty minutes later. There are many unanswered questions from this point forward with respect to exactly what happened in the home that precipitated the tragic events leading to this lawsuit. However, it would appear that the alcohol consumption that everyone took part in that night was a significant factor in the events. The medical records of Dr. Santee, as well as the Beaufort County Sheriff's Department investigative materials, indicate that no toxicology or blood alcohol screening were performed at Savannah Memorial Hospital on Dr. Santee. However, the Life Star records when Dr. Santee was airlifted from his home to Savannah Memorial Hospital indicated a "smell of alcohol on

breath” for Dr. Santee. A toxicology screen was performed on the decedent Jim Piotrowski, which showed that his blood alcohol level was .262, which is over three times the legal limit in South Carolina so as to be able to operate a motor vehicle on the public highways of this state.

It is alleged that at some point in time after everyone went upstairs an argument ensued between Dr. Santee and Jim Piotrowski. It is unknown exactly where the argument began or the reason for the argument. Nevertheless, Dr. Santee either proceeded to his bedroom after the argument ensued, or was in the bedroom when the argument occurred, wherein he then obtained a .410 revolver and apparently proceeded to the kitchen area where there was a confrontation between himself and Jim Piotrowski. At this point in time, Dr. Santee apparently shot Jim Piotrowski three times, and based on the recorded statements, Jim Piotrowski was lying face down on the kitchen floor in a pool of blood. Dr. Santee apparently placed the revolver down somewhere in the kitchen and began yelling for his wife, Carolyn Santee. Carolyn Santee ran out of the bedroom and down the hall and into the kitchen where she saw her nephew Jim Piotrowski laying on the floor face down, trying to get up. At this point time, her husband was not hurt. Dr. Santee instructed his wife to immediately call Brays Island security.

Carolyn Santee made a call to Brays Island Security and it was noted that she needed immediate assistance at her residence. The call was taken by Don Gaedcke of the Brays Island Security Staff. Gary Knox, a Brays Island security officer, was in the security shed at the time and heard who he later identified as Carolyn Santee yelling frantically on the phone to “hurry, hurry.” There was no mention of gunshots made to Brays Island Security. At this point in time Brays Island Security was not aware of the nature and extent of the call for assistance. Thereafter, however, Carolyn Santee did call 911 wherein she indicated that her husband shot her nephew and that she needed an ambulance. During this time, there is complete chaos, which can be heard on the 911 phone call between Carolyn Santee and emergency dispatch.

In the meantime, Knox proceeded to the Santee residence. During this time, Knox believed that he was responding to a medical emergency. Accordingly, when Knox arrived at the Santee home, he parked out of the way of the driveway thinking that EMS was going to come. Knox, believing that this was a medical emergency, grabbed his CPR bag and walked up to the home. Knox approached the house and knocked on the door; however, there was no response. Knox heard a dog bark, but again there was no

response. Looking in the home, he now saw a man (later identified as Jim Piotrowski) fall in front of him.

Still standing outside of the front door, Knox observed Jim Piotrowski get up and move towards the staircase. Knox saw Jim Piotrowski holding a firearm and then observed another man sitting at the bottom of the stairs (later identified as Dr. Santee). At this point in time, Knox saw Jim Piotrowski pointing the weapon at Dr. Santee with his right hand, while grabbing Dr. Santee's collar with his left hand, pulling Dr. Santee's face up towards the barrel of the weapon, and then firing the weapon, striking Dr. Santee. This is the only discharge of a firearm Knox observed at the Santee home. In response to what he just witnessed, Knox removed his firearm from his holster, opened the front door to the home, and fired one round at Jim Piotrowski. Immediately upon being struck, Jim Piotrowski fell to the ground and dropped the gun. Knox grabbed that gun with his left hand, put his gun away, and waited for help. Jim Piotrowski did not regain consciousness⁴ and died at the scene.

The Piotrowski Respondents thereafter filed suit in the Court of Commons Pleas in Beaufort County against Richard K. Santee and Carolyn

⁴ At present, this circumstance is an uncontroverted fact between the parties.

Santee, and Brays Island Plantation Colony, Inc., asserting causes of action against both sets of defendants for wrongful death, survival, and negligent infliction of emotional distress. All parties were represented by counsel admitted to practice in South Carolina.

Written discovery ensued. Prior to the commencement of depositions, the parties mediated the case on May 21, 2014. This mediation resulted in the Piotrowski Respondents arriving at a confidential monetary settlement with the Santee Respondents. The Piotrowski Respondents and Appellant did not resolve the claims asserted against Appellant.

S.C. Code Ann. § 15-51-41 and -42 prescribes the procedure for court approval of wrongful death or survival actions. However, contrary to the statutory requirements enunciated by the General Assembly, Piotrowski Respondents **did not** file a petition for approval of settlement or other related materials pertaining to the settlement with the Santee Respondents in the instant case with the Beaufort County Clerk of Court,⁵ nor did the Piotrowski

⁵ Our law contemplates that a petition for approval of a wrongful death/survival action settlement must be filed with the approving trial-level court in order to make the petition and resulting settlement legally operative. See, e.g., Ex parte McLeod, 323 S.C. 461, 464, 476 S.E.2d 167, 168-69 (Ct. App. 1996) (holding Probate Court did not have jurisdiction to award

Respondents serve any of the materials reportedly handed up or otherwise transmitted to the Circuit Court (but not filed) upon Appellant, a party in the instant case.⁶

attorneys fees in a wrongful death action because, inter alia, no petition for settlement had been filed with the court).

In the instant case, applying Ex parte McLeod, since no petition was filed with the clerk of court in Beaufort County, it is conceivable this Court could hold the Circuit Court was without jurisdiction to grant the settlement, thus nullifying the June 17, 2014, order granting settlement and dismissing the Santee Respondents from the case.

⁶ Article I, § 9 of the South Carolina Constitution provides that all courts of this state shall be public. Because South Carolina has a long history of maintaining open court proceedings and records, Rule 41.1, SCRCF was created to establish the guidelines for governing the filing under seal of settlements and other documents. See Jean Hoefler Toal & Bratton Riley, The New Role of Secret Settlements in the South Carolina Justice System, 55 S.C. L. Rev. 761 (2004) (providing factual background and rationale for the creation of Rule 41.1, SCRCF). Accordingly, in order to obtain a settlement that is sealed, the moving party must proceed pursuant to the clearly-worded protocol found in Rule 41.1, SCRCF:

[A]ny party seeking to file documents under seal shall file and serve a “Motion to Seal.” The motion shall identify, with specificity, the documents or portions of documents for which sealing is considered necessary, shall contain a non-confidential description of the documents, and shall be accompanied by a separately sealed attachment labeled “Confidential Information to be submitted to Court in Connection with the Motion to Seal.” The attachment shall contain the documents for the court to review in camera. The motion shall state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

-
- (1) the need to ensure a fair trial;
 - (2) the need for witness cooperation;
 - (3) the reliance of the parties upon expectations of confidentiality;
 - (4) the public or professional significance of the lawsuit;
 - (5) the perceived harm to the parties from disclosure;
 - (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and
 - (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

The burden is on the party seeking to seal documents to satisfy the court that the balance of public and private interests favors sealing the documents. Id.

All orders sealing documents or all or parts of settlements shall set forth with specificity the reasons that require they be sealed. Id.

Importantly, the rule contemplates that pursuit of filing a settlement under seal require notice to all parties: **“Unless otherwise ordered by the court, the clerk of court shall treat the motion to seal in a manner similar to all other motions filed with the court. The motion shall be entered in the Clerk's File Book and on the Motion Calendar and a hearing on the motion shall be held.”** Id. (emphasis added).

A settlement hearing in open court and on the record was held **without notice to Appellant**, which obviously precluded Appellant's ability to appear and participate in the proceedings. Appellant received a copy of the June 17, 2014, order via email from counsel to the Santee Respondents on June 25, 2014. Appellant thereafter filed and served a timely Rule 59, SCRCF motion to alter or amend the June 17, 2014, order.

As noted in footnote 5, because of the arguable errors and ambiguities:
(a) connected with the procedure employed by the Piotrowski Respondents and

In the instant case, the transcript of the record would appear to reveal that counsel for Piotrowski Respondent and the Circuit Court did not comply with the mandates of Rule 41.1, SCRCF:

Attorney Applegate: Your Honor, we did not file this petition, but we do have an order, which we also provided to your office yesterday. The petition references the release and the motion and the release. There's a confidentiality provision. As so, we were hoping to avoid filing a motion to seal, and simply to, you know, file the order in this case, ultimately, not mentioning the sum.

The Court: Okay.

Attorney Applegate: If that will be okay with the Court.

(Exhibit C at pp. 4 & 5).

Santee Respondents to obtain a confidential or sealed settlement; (b) as well in the June 17, 2014, order ultimately executed by the Circuit Court, an ancillary question exists whether the Piotrowski Respondents' claims against the Santee Respondents was technically/appropriately dismissed.⁷

Following a September 16, 2014, hearing on Appellant's Rule 59, SCRCF motion to alter or amend, the Circuit Court issued a October 8, 2014, Order, which required the Piotrowski Respondents to provide the unfiled petition for settlement (which did not contain a certificate of service) to Appellant, but denied Appellant's motion to disapprove the settlement or require the Santee Respondents to remain in the litigation as parties and defendants. Appellant received the unfiled petition for settlement on October 27, 2014.⁸

⁷ In addition to the overarching inquiry of whether the Circuit Court possessed the requisite jurisdiction to approve a survival action settlement via unfiled petition, Appellant additionally questions the legal efficacy of settlement pursuant to the wrongful death statute that allocates no settlement dollars to the wrongful death (and negligent infliction of emotional distress) counts.

⁸ To be Exhibit D. The Circuit Court required Piotrowski Respondents to provide the unfiled petition for settlement to Appellant pursuant to the parties' standing confidentiality agreement/order that exists in this case. This document will therefore be filed separately with the Court of Appeals.

Upon its review of the unfiled petition, Appellant has learned the Piotrowski Respondents have allocated the entirety of the settlement proceeds from the Santee Respondents to the survival cause of action. Appellant avers this allocation arguably/potentially precludes Appellant from realizing the benefit of any setoff in this action if it is tried and the Piotrowski Respondents obtain a verdict against Appellant. This is because there is no evidence of any conscious pain and suffering by Jim Piotrowski after being shot by Gary Knox of Brays Island security. Accordingly, the survival action cause of action against Appellant is destined for either voluntary dismissal, summary judgment, or directed verdict due to the absence of any such evidence. Thus, any verdict against Appellant would be for wrongful death or negligent infliction of emotional distress. Since no settlement dollars were allocated by the Piotrowski Respondents towards wrongful death or negligent infliction of emotional distress, the money paid to them by the Santee Respondents conceivably cannot operate as a setoff against a verdict realized against Appellant. Appellant therefore maintains that the strategies employed by the Piotrowski Respondents in the settlement approval process as enunciated above with respect to failing to provide notice of the hearing to Appellant, failing to serve Appellant with a copy of the petition, and failing

to file the petition with the Circuit Court, and failing to file the proper motion to seal was for the purpose of hiding this allocation from Appellant and leading it to trial with a belief that a setoff existed, only to pull the rug out from Appellant after verdict.⁹

Appellant appeals the Circuit Court's judgments concerning approval of the settlement and dismissal of the Santee Respondents as "defendants" and "parties" from the instant case. See S.C. Code Ann. § 15-38-15.

LAW/ANALYSIS

I. Rules Governing Appealability

In South Carolina, as a general rule, only final judgments are appealable. Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); Bolding v. Bolding, 283 S.C. 501, 323 S.E.2d 535 (Ct. App. 1984); see also State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 224 (2010) ("An appeal ordinarily may be pursued only after a party has obtained a final

⁹ In the September 16, 2014, hearing on Appellant's motion to alter or amend the circuit judge remarked that one of the reasons why dismissal of the Santee Respondents was to be granted was that Appellant would be entitled to the benefit of a setoff pursuant to S.C. Code Ann. § 15-38-15. The Piotrowski Respondents did or said nothing in response to disabuse the judge of her notion concerning the existence of a setoff in the case at bar. Appellant has ordered a transcript of this proceeding and will produce the same to the Court of Appeals upon its production by the court reporter. This transcript will become Exhibit E to this filing.

judgment.”) (citing Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); Mid-State Distribs., Inc. v. Century Imps., Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993); S.C. Code Ann. § 14-3-330(1); Rule 72, SCRCF; and Rule 201(a), SCACR)). “Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final.” Ex parte Wilson, 367 S.C. 7, 625 S.E.2d 205 (2005).

The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330. Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005). An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable. Id.; Baldwin Constr. Co. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004); Woodard v. Westvaco Corp., 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds, Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002); Mid-State Distributors, 310 S.C. at 333 n. 3, 426 S.E.2d at 780 n. 3.

Section 14-3-330 states:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) **Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas** and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, **and final judgments in such actions**; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) **An order affecting a substantial right made in an action when such order** (a) in effect determines the action and prevents a judgment from which an appeal might be taken or **discontinues the action**, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

Appellant maintains its appeal to the Court of Appeals satisfies §

14-3-330, particularly subsections (1) and (2).

II. The Circuit Court's Orders of June 16, 2014, and October 8, 2014, Operate as Final Orders of Dismissals of the Santee Respondents, Which Make Them Immediately Appealable

Though it references a petition for approval of settlement that was never filed or formally made part of the record, the Circuit Court entered an order on June 16, 2014, which ostensibly operated to approve the settlement between the Piotrowski Respondents and the Santee Respondents. The Piotrowski Respondents and the Santee Respondents also maintain this order operated to dismiss the Santee Respondents from the instant law suit.¹⁰ The Circuit Court's approbation of this intent regarding dismissal of the Santee Respondents is

¹⁰ The June 16, 2014, order recites the following concerning dismissal of the Santee Respondents:

ORDERED, ADJUDGED AND DECREED that Tracey L. Piotrowski, Individually as the appointed Personal Representative of the Estate of James Piotrowski, is hereby authorized and directed to accept the compromise settlement offer and to execute and deliver the full, final and complete release. This release shall include Richard K. Santee, Carolyn Santee and State Farm Fire and Casualty Insurance Company. This does not release the Petitioner's claims against Brays Island Plantation Colony, Inc. Richard K. Santee and Carolyn Santee are hereby dismissed with prejudice.

See Exhibit A at 1.

evinced in the court's subsequent October 8, 2014, order on Appellant's motion to alter or amend.¹¹

Assuming, arguendo, the orders of June 16 and October 8 are legally operative notwithstanding the absence of a filed petition for approval of the settlement, Appellant avers these orders constitute final orders (or judgments) of dismissal, which are immediately appealable. See S.C. Code Ann. § 14-3-330(1). Moreover, as a party aggrieved by this dismissal, Appellant asseverates that it possesses the requisite standing to prosecute such an appeal.

The Circuit Court's grant of dismissal with prejudice to the Santee Respondents is a final order because it left nothing further for determination concerning the Santee Respondents. "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are

¹¹ Specifically, the October 8, 2014, order referenced the Santee Respondents' dismissal as follows:

After reviewing the Motion, relevant case law, supporting memorandum, exhibits, correspondence from counsel, and hearing arguments of counsel, this Court **GRANTS** Defendant's motion insofar as Plaintiff must provide Defendant with a copy of the Petition for settlement subject to a Confidentiality Order and **DENIES** Defendant Bray's Island's motion insofar as its request this Court to disapprove the settlement or require the Santees to remain Defendants in this lawsuit.

See Exhibit B at 2.

determined, is interlocutory; but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final.” Adickes v. Allison & Bratton, 21 S.C. 245, 259 (1883).

The Circuit Court’s orders expressly ruled that all of the Piotrowski Respondents’ claims against the Santee Respondents were dismissed and forever barred. This ruling therefore adjudicated all of the claims as to the Santee Respondents in the first party action. Nothing short of direct appeal could resurrect the action against the Santee Respondents in the instant case. As outlined below, due to the finality of this dismissal, as well as the Piotrowski Respondents’ election to allocate all settlement proceeds from the Santee Respondents to the survival action and the arguable ambiguities that exist in the language of S.C. Code Ann. § 15-38-15, an appeal at this stage was necessary. Timely service of an appeal is a jurisdictional requirement that cannot be waived. Rule 203, SCACR. Thus, Appellant was under a compulsion to appeal at this juncture of the proceedings or run the risk of being forever precluded from challenging the Circuit Court’s dismissal of the Santee Respondents.

III. The Combination Effect of the Inherent Ambiguities Contained with S.C. Code Ann. § 15-38-15 and the Prospective Absence of Setoff in the Instant Case Necessitate an Immediate Appeal

Central to the dispute in the instant case is allocation of fault and whether the factfinder at a prospective trial will have the opportunity to completely assign fault to whom it most appropriately resides.

The facts of the instant case arguably demonstrate that the entirety of fault resides with Dr. Santee, as well as Jim Piotrowski, for Jim Piotrowski's death. But for, inter alia, the existence of whatever dispute arose between Dr. Santee and Jim Piotrowski, which resulted in gunfire between the two of them, Brays Island security would never have been summoned to the home and forced to make a split-second decision. Appellant avers a jury in the instant case should be able to consider Dr. Santee's fault, as well as allocate the appropriate percentage of liability to him, when deciding overall culpability for Jim Piotrowski's death. In light of this circumstance, as well as **the critical fact that a setoff arguably does not exist in this case**, Appellant maintains: (1) either the Santee Respondents should not be dismissed from the instant action; or (2) that if the Santee Respondents are to be dismissed from the case at bar, they should still appear on the verdict form if the case against Appellant proceeds to trial and verdict.

In 2005, the General Assembly enacted S.C. Code Ann. § 15-38-15.

This statute states:

- (A) In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.
- (B) Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).

(C) The jury, or the court if there is no jury, shall:

- (1) specify the amount of damages;**
- (2) determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning “comparative negligence”; and**
- (3) upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury,**

death, or damage to property, specify in a separate verdict under the procedures described at subitem (b) below the percentage of liability that proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent. In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff's recoverable damages (as determined under item (2) above).

(a) For this purpose, the court may determine that two or more persons are to be treated as a single party. Such treatment must be used where two or more defendants acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant is vicariously responsible for the conduct of another defendant.

(b) After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant. However, no additional evidence shall be allowed.

(D) A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

(E) Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability as determined pursuant to subsection (C).

(F) This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.

(emphasis added).

Joint and several liability is one important issue this statute addresses.

Joshua D. Shaw, Limited Joint and Several Liability Under Section 15-38-15:

Application of the Rule and the Special Problem Posed by Nonparty Fault, 58

S.C. L. Rev. 627 (20007). Section 15-38-15 does not abolish joint and several liability, but does limit the instances when it applies. Id. Under this statute, the jury allocates fault between the parties, and a defendant can be held jointly and severally liable only if he is fifty percent or more at fault for the plaintiff's damages. Id. This revision of joint and several liability law in 2005 reflected an evolving national approach to tort liability and brought South Carolina in line with the trend toward abolishing or limiting joint and several liability. Id. Nevertheless, how the trial courts should apply South Carolina's joint and several liability provision is ambiguous, especially regarding the role nonparties play in fault allocation. Id. **This ambiguity was realized contemporaneously with the statute's enactment by many and continues to be recognized; however, curiously, this ambiguity has neither been addressed nor resolved by either of our appellate tribunals.**

In his 2007 article in the South Carolina Law Review, Joshua D. Shaw clearly identified the ambiguity that is created within § 15-38-15:

Section 15-38-15 does not clearly address the issue of nonparty fault in negligence actions. On the one hand, the statute provides that the determination of joint and several liability is based on the defendant's percentage of fault relative to the fault of the other defendants and the plaintiff and does not mention the fault of nonparties. The statute continues in subsection (C)(3) by instructing the jury in how it must allocate fault: "In determining

the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent.” While this language seemingly forecloses any debate on the issue of allocation of fault to nonparties, subsection (D) casts doubt on this assumption. Subsection (D) provides that “[a] defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.” A court could construe these provisions as being contradictory: subsection (D) allows a defendant to argue that a nonparty is at fault, while subsection (C) requires that the fault of the defendants and plaintiff equal one hundred percent.

Id. at 633 (footnotes omitted).

Dismissal of the Santees is prejudicial to Appellant. First, Brays Island’s alleged liability in this action derives entirely from the alleged actions of Dr. Santee. Indeed, based on the allegations of the Complaint,¹² Brays Island would not have had a reason to be at the Santees’ home if it were not for Dr. Santee shooting Jim Piotrowski. See Exhibit F at ¶¶ 11-14.

Given the nature of Dr. Santee’s liability, Brays Island has an undeniable interest in having him listed on the verdict form. However, South Carolina’s joint and several liability law is ambiguous regarding the role nonparties play in fault allocation. See S.C. Code Ann. § 15-38-15. As such,

¹² See Exhibit F.

it is unclear whether nonparties may be listed on the verdict form. Regardless, the law is clear that parties may be listed on the verdict form. Accordingly, maintaining the Santee Respondents as technical parties to the action insures that fault may be properly allocated between the parties alleged to be jointly and severally liable for Plaintiff's injuries.

Further, Appellant has an interest in the Santee Respondents being listed on the verdict form if the benefit of setoff exists. The absence of a setoff affects a substantial right, which would otherwise be afforded to Appellant pursuant to § 15-38-15(D). See S.C. Code Ann. § 14-3-330(2).¹³ Appellant would be prejudiced if the Santees are dismissed from this lawsuit.¹⁴

¹³ “We [the Court of Appeals] believe a narrow construction of section 14-3-330(2)(c) requires us to focus on the effect of the order....” Thornton v. S. Carolina Elec. & Gas Corp., 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011). The effect of the Circuit Court's dismissal of the Santee Respondents is arguably the preclusion of, inter alia, Appellant's right to a setoff. Accordingly, appellate review of this order at this time is imperative.

¹⁴ Additionally, as noted in Appellant's motion to alter or amend, upon information and belief, the Santee Respondents now reside outside the state of South Carolina. Thus, if the Santees are no longer parties to this action, they will be beyond the subpoena power of the Circuit Court and prohibit (or at the very least, substantially inhibit) Brays Island from conducting necessary discovery as to both Dr. and Mrs. Santee to prepare this case for trial. See Rule 45, SCRCF.

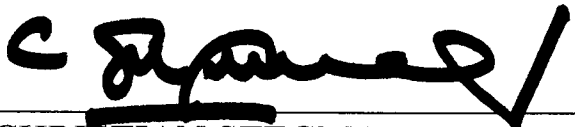
CONCLUSION

For the reasons stated herein, Appellant avers the Circuit Court's orders of June 16, 2014, and October 8, 2014, affect the substantial right of setoff afforded to Appellant and operate as final orders of dismissals of the Santee Respondents. Thus, these orders are immediately appealable.

Appellant further invites the Court of Appeals to explore whether the absence of a filed petition for approval of the survival action invalidated the orders of June 16, 2014, and October 8, 2014, due to a lack of jurisdiction.

Respectfully submitted,
COLLINS & LACY, P.C.

By: _____


CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
J. BENNETT CRITES, III
bcrites@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

December 1, 2014
Columbia, South Carolina

2014 JUN 17 PM 1:53

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JEFF J. ROSEHEAD
CLERK OF COURT
IN THE COURT OF COMMON PLEAS
BEAUFORT COUNTY, S.C.
CASE NO.: 2013-CP-07-1567

James Piotrowski deceased by and
through his Personal Representative
Tracey L. Piotrowski and Tracey L.
Piotrowski Individually,

Petitioner,

vs.

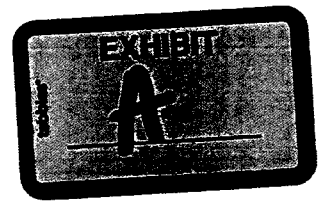
Richard K. Santee, Carolyn Santee, and
Brays Island Plantation Colony, Inc.,


Respondent.

ORDER

Upon considering the attached Petition of Tracey L. Piotrowski, Individually and as the Personal Representative of the Estate of James Piotrowski, deceased, it appears that under the conditions set forth in the Petition, the offer is fair, just, and equitable and should be approved by this Court. Therefore, it is

ORDERED, ADJUDGED AND DECREED that Tracey L. Piotrowski, Individually as the appointed Personal Representative of the Estate of James Piotrowski, is hereby authorized and directed to accept the compromise settlement offer and to execute and deliver the full, final and complete release. This release shall include Richard K. Santee, Carolyn Santee and State Farm Fire and Casualty Insurance Company. This does not release the Petitioner's claims against Brays Island Plantation Colony, Inc. Richard K. Santee and Carolyn Santee are hereby dismissed with prejudice.





PRESIDING JUDGE

Beaufort, South Carolina
17 day of June, 2014.

2 (CW)



David C. Cleveland
dcleveland@clawsonandstaubes.com

June 24, 2014

File No.: 2013-0834 dcc

Via Email Only

J. Bennett Crites, III, Esq.
Collins & Lacy
200 Meeting St., Suite 403
Charleston, SC 29401

Re: James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski, and Tracey L. Piotrowski, Individually v. Richard K. Santee, Carolyn Santee, and Brays Island Plantation Colony, Inc.
Case No.: 2013-CP-07-1567

Dear Bennett:

Attached please find a copy of the certified Order dismissing this case as to Defendants Richard Santee and Carolyn Santee. Please destroy any and all discovery responses from the Santees marked "confidential."

It was a pleasure working with you on this case. With kind regards, I am

Very truly yours,

CLAWSON AND STAUBES, LLC

A handwritten signature in black ink, appearing to be "DC", written over the printed name of David C. Cleveland.


David C. Cleveland

DCC/krb
Attachment

that Defendant Bray's was not entitled to a copy of the Petition approving settlement pursuant to the Confidentiality Agreement reached between the settling parties at mediation. Furthermore, Plaintiff argued and provided this Court with two Orders which held that confidential agreements between settling parties are not relevant and not discoverable to a non-settling defendant until a verdict, judgment, or adjudication is reached. At this time, no verdict, judgment, or adjudication has been entered in this case and discovery is still ongoing.

After reviewing the Motion, relevant case law, supporting memorandum, exhibits, correspondence from counsel, and hearing arguments of counsel, this Court **GRANTS** Defendant's motion insofar as Plaintiff must provide Defendant with a copy of the Petition for settlement subject to a Confidentiality Order and **DENIES** Defendant Bray's Island's motion insofar as its request this Court to disapprove the settlement or require the Santees to remain Defendants in this lawsuit.

AND IT IS SO ORDERED.



Carmen Mullen
Presiding Judge, Fourteenth Judicial Circuit

October ⁹9, 2014
Beaufort, South Carolina

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BEGINNING 1:48 P.M.

BY THE COURT:

THE COURT: Please be seated. We're ready to go ahead forward with the wrongful death settlement. Is that correct?

MR. APPELATE: Settlement hearing, yes, your Honor.

THE COURT: Please. Wanda, do you have the caption?

COURT REPORTER: I do, your Honor.

THE COURT: Okay.

MR. APPELATE: Your Honor, good morning. William Applegate here, representing Tracy Piotrowski. We sent a petition to your office yesterday. I have a signed copy of that petition I can hand up to you now.

THE COURT: Whenever you're ready. Thank you.

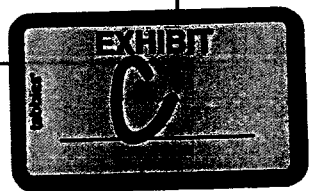
MR. APPELATE: Okay.

THE COURT: Do you need your copy to refer to? I've got the one you sent me, if you want it.

MR. APPELATE: Okay. Sure. Thank you.

THE COURT: Sure.

MR. APPELATE: Your Honor, we did not file this petition, but we do have an order, which we also provided to your office yesterday. The petition references the release and the motion and release. There's a confidentiality provision. And so, we were



1 hoping to avoid filing a motion to seal, and simply to,
2 you know, file the order in this case, ultimately, not
3 mentioning the sum.

4 THE COURT: Okay.

5 MR. APPLGATE: If that will be okay with the
6 Court.

7 THE COURT: And you're Ms. Piotrowski. Is that
8 correct?

9 TRACY PIOTROWSKI: Yes.

10 THE COURT: Ma'am, if you don't mind, just please
11 stand. And I'm just going to put you under oath, if
12 that's all right.

13 TRACY PIOTROWSKI: Yes.

14 THE COURT: Just put your -- do you swear or affirm
15 the testimony you give to be the truth, so help you God?

16 TRACY PIOTROWSKI: I do.

17 THE COURT: All right. Ma'am, please take a seat.
18 Number one, I am so sorry for your loss. I hate that
19 you have to be here. With that said, as the personal
20 representative of the estate, do you want me to approve
21 this settlement?

22 TRACY PIOTROWSKI: I do.

23 THE COURT: You do? And does this resolved this
24 matter completely, Mr. Applegate?

25 MR. APPLGATE: No, your Honor. There's still one
26 party remaining in the case.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

2013 JUN 14 PM 1:55
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-07-1567
JERRI ANN RESEARCH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

James Piotrowski, deceased, by and through
his Personal Representative Tracey L.
Piotrowski, and Tracey L. Piotrowski
Individually,

Plaintiffs,

vs.

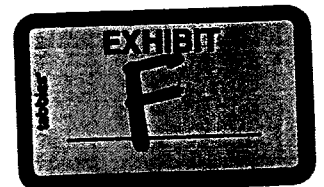
Richard K. Santee, Carolyn Santee, and
Brays Island Plantation Colony, Inc.
Defendants.

**SUMMONS
(JURY TRIAL DEMANDED)**

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber(s) at their office at 291 East Bay Street, Floor 2, Charleston, South Carolina 29401 within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to appear and defend by filing an answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Signature page to follow



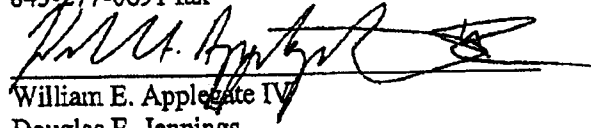
YARBOROUGH APPELEGATE LLC

291 East Bay Street, Floor 2

Charleston, SC 29401

843-972-0150 office

843-277-6691 fax



William E. Applegate IV

Douglas E. Jennings

and

SAVAGE LAW FIRM

Andrew J. Savage, III

Donald L. McCune, Jr.

15 Prioleau Street

Charleston, SC 29401

843-720-7470 office

Attorneys for the Plaintiffs

6-11, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 James Piotrowski, deceased, by and through)
 his Personal Representative Tracey L.)
 Piotrowski, and Tracey L. Piotrowski)
 Individually,)
 Plaintiffs,)
)
 vs.)
)
 Richard K. Santee, Carolyn Santee, and)
 Brays Island Plantation Colony, Inc.)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2013-CP-07-21567

2013 JUN 14 PM 12:55
 CLERK OF COURT
 BEAUFORT COUNTY, S.C.

COMPLAINT
 (JURY TRIAL DEMANDED)

TO THE DEFENDANTS ABOVE-NAMED:

The Plaintiffs, complaining of the Defendants, would respectfully show unto the Honorable Court that:

1. The Decedent James Piotrowski was a citizen and resident of the State of Florida. The Plaintiff, Tracey Piotrowski, is a citizen and resident of the State of Florida, and is the duly appointed Personal Representative of the Estate of James M. Piotrowski, Jr., deceased. She brings this action on behalf of the Estate for damages recoverable pursuant to Section 15-5-90, Code of Laws of South Carolina (1976, as amended) for Wrongful Death and for damages recoverable by the statutory beneficiaries of the Decedent pursuant to section 15-51-10, et seq., Code of laws of South Carolina (1976, as amended) for the Survival Action.

2. The Plaintiff, Tracey Piotrowski, was at all times herein married to and the legal spouse of the Decedent.

3. The Defendants, Richard and Carolyn Santee, are husband and wife, and upon information and belief, were citizens and residents of the County of Beaufort, State of South Carolina at the time of Plaintiffs' injuries and, upon information and belief, have subsequently moved to North Carolina.

4. The Defendant, Brays Island Plantation Colony Inc. (hereinafter "Brays Island"), is a corporation that maintains its principal place of business in Sheldon, County of Beaufort, South Carolina, and transacts business in the state of South Carolina.

5. All acts complained of in this Complaint occurred in the County of Beaufort, and this Court has jurisdiction over the parties herein and the subject matter of the action.

General Factual Allegations

6. The Decedent, James Piotrowski, was the nephew of Mr. and Mrs. Santee, and the Decedent and his wife, Tracey Piotrowski, were invited to stay at Defendants' residence to celebrate the holidays.

7. On November 24, 2010, the Plaintiff and the Decedent had dinner with the Defendants Richard and Carolyn Santee and other family members at the Santees' residence located within Bray's Island Plantation.

8. Throughout the course of the day on November 24, 2010, and into that evening, Defendants Richard Santee and Carolyn Santee each consumed multiple alcoholic beverages to the point that they became grossly intoxicated.

9. At all times herein, the Defendants were aware that multiple firearms were kept in their residence, some of the weapons which were loaded.

10. At approximately 12:15 a.m. on November 25, 2010, Defendant Richard Santee obtained a firearm that was not under lock and key or otherwise secured.

11. On November 25, 2010, the Defendant Richard Santee, while intoxicated, recklessly discharged a handgun and shot Plaintiff James Piotrowski.

12. As a result of the Plaintiff being shot, a chaotic situation developed at the home and Bray's Island Security was called to the home.

13. That on November 25, 2010, Bray's Island Security Officer Gary Knox entered into Defendant Santee's home and negligently fired a weapon at James Piotrowski and struck him.

14. That as a result of being shot by Defendant Santee and Brays Island Security Officer Gary Knox, James Piotrowski died.

FOR A FIRST CAUSE ACTION
Negligence, Gross Negligence

(As to Richard Santee)

15. Plaintiffs reallege and reincorporate Paragraphs 1 through 14 above as if fully set forth herein.

16. Defendant Richard Santee invited Plaintiffs into his home and owed to Plaintiffs a duty to exercise reasonable care to provide for the safety of his social guest and not to put Plaintiffs in an unreasonably dangerous situation.

17. On or about November 25, 2010, with Plaintiffs as guests in his home, Defendant Richard Santee consumed alcoholic beverages in a volume and manner that caused him to be extremely intoxicated.

18. While intoxicated, Defendant Richard Santee carelessly and recklessly obtained a handgun and discharged it injuring Plaintiff James Piotrowski.

19. Defendant Richard Santee was aware of the inherent hazards of not having his firearms secured or under lock and key when alcohol would be consumed to the point of intoxication and was aware of the inherent dangers in handling a firearm when intoxicated.

20. The injuries and damages to the Plaintiffs were the direct and proximate result of the negligence, grossly negligent, willful, wanton, and reckless acts and/or omissions of the Defendant Richard Santee in one or more of the following particulars:

- a. In not securing the various firearms in the house;
- b. In the mishandling of a firearm resulting in the Plaintiff being shot;
- c. In taking possession of a firearm when not warranted by the circumstances;
- d. In handling a firearm while intoxicated; and
- e. Other particulars which will be shown at trial.

21. As a direct and proximate result of the Defendant's negligence and carelessness described above, Plaintiff James Piotrowski was seriously injured and died on November 25, 2010.

(As to Carolyn Santee)

22. Plaintiffs reallege and reincorporate Paragraphs 1 through 21 above as if fully set forth herein.

23. Defendant Carolyn Santee invited plaintiffs into her home and owed to Plaintiffs a duty to exercise reasonable care to provide for the safety of her social guest.

24. On or about November 25, 2010, with Plaintiffs as guests in her home, Defendant Carolyn Santee consumed alcoholic beverages in a volume and manner that caused her to be extremely intoxicated.

25. While intoxicated, Defendant Carolyn Santee allowed Defendant Richard Santee to obtain a loaded handgun and carry it throughout the house where it was ultimately discharged.

26. Defendant Carolyn Santee was aware of the inherent hazards of not having their firearms secured or under lock and key when alcohol would be consumed to the point of intoxication and was aware of the inherent dangers in handling a firearm when intoxicated.

27. The injuries and damages to the Plaintiffs were the direct and proximate result of the negligence, grossly negligent, willful, wanton, and reckless acts and/or omissions of the Defendant Carolyn Santee in one or more of the following particulars:

- a. In not securing the various firearms in the house;

- b. In allowing the Defendant Richard Santee access to a firearm while he was intoxicated;
- c. In failing to warn the Plaintiff when Defendant Richard Santee took control of a firearm; and
- d. Other particulars which will be shown at trial.

(As to Brays Island Plantation Colony Inc.)

28. Plaintiffs reallege and reincorporate Paragraphs 1 through 27 above as if fully set forth herein.

29. Upon information and belief, Brays Island Plantation is a private residential sporting community which provides multiple services to its residential community, including security services.

30. At all times relevant hereto, Brays Island was responsible for any individual, employee, agent, servant, or legal representative acting on its behalf or at its direction and is vicariously liable for the conduct complained of herein regarding the actions or inactions of any of these individuals.

31. Upon information and belief, Brays Island, leading up to and including the date of the incident, was charged with the duty of protecting its residents and securing the Brays Island plantation community, and its guests, including both Plaintiff and Plaintiff's decedent.

32. On November 25, 2010, Officer Gary Knox was employed by Brays Island and responded to a call for assistance at the Santee residence.

33. The injuries and damages to the Plaintiffs were the direct and proximate result of the negligence, grossly negligent, willful, wanton, and reckless acts and/or omissions of the Defendant Bray's Island in one or more of the following particulars:

- a. In failing to properly train its security officers;
- b. In failing to follow its security policies and procedures resulting in placing Plaintiff in known and obvious danger;

- c. In failing to use the degree of care and caution that a reasonable Security Company would have used under the circumstances then and there prevailing;
- d. In using unnecessary and excessive force under the circumstances;
- e. In discharging a weapon prior to fully assessing a chaotic or hostile situation;
- f. In failing to allow trained law enforcement to handle a situation that a security officer was not trained or equipped to handle; and
- g. In intervening in a chaotic or hostile situation without sufficient information to fully assess the immediate danger.

FOR A SECOND CAUSE OF ACTION

Negligent infliction of Emotional Distress/ Bystander Claim
(As to All Defendants)

34. Plaintiffs reallege and reincorporate Paragraphs 1 through 33 above as if fully set forth herein verbatim.

35. The willful, wanton, reckless, grossly negligent, and negligent acts of Defendants, as set out above, resulted in the serious injury and death of Tracey Piotrowski's husband, James Piotrowski.

36. Tracey Piotrowski was in the house at the time of the injuries and came downstairs and watched as her husband suffered and gasped for breath until his death, contemporaneously perceiving this incident and the injuries sustained.

37. As a result of these Defendants' conduct, the perception of the incident, and the injuries and death of her husband, Tracey Piotrowski has suffered mental anguish, loss of sleep, depression, loss of enjoyment of life, physical pain and suffering, emotional pain and suffering, and will continue to do so in the future.

38. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of Defendants, as set out above, as well as their violations of state law, Plaintiffs are entitled to recover actual and punitive damages, jointly and severally, as determined by a jury.

FOR A THIRD CAUSE OF ACTION
SURVIVAL ACTION
(As to All Defendants)

39. Plaintiffs reallege and reincorporate Paragraphs 1 through 38 above as if fully set forth herein verbatim.

40. The injuries and damages to the Plaintiff were the direct and proximate result of the negligence, grossly negligent, willful, wanton, and reckless acts and/or omissions of the Defendants in one or more of the following particulars:

- a. In not securing the various firearms in the house;
- b. In the mishandling of a firearm resulting in the Decedent being shot;
- c. In taking possession of a firearm when not warranted by the circumstances;
- d. In handling a firearm while intoxicated;
- e. In allowing the Defendant Richard Santee access to a firearm;
- f. In erroneously believing, due to intoxication, that threat of harm existed so as to exercise self-defense;
- g. In failing to warn the Decedent when the Defendant Richard Santee took control of a firearm.

41. As a direct and proximate result of the negligence, carelessness, recklessness, and gross negligence of the Defendants, Plaintiff James Piotrowski was severely injured and died.

42. As a direct and proximate result of the incident giving rise to Plaintiffs' complaint, the following damages were sustained:

- a. Physical pain;
- b. Suffering;
- c. Mental anguish;
- d. Incurred cost for medical and funeral expenses.

FOR A FOURTH CAUSE OF ACTION
WRONGFUL DEATH
(As to All Defendants)

43. Plaintiffs reallege and reincorporate Paragraphs 1 through 42 above as if fully set forth herein verbatim.

44. As a result of the above described acts and/or omissions of the Defendants, Plaintiff and the other statutory beneficiaries of Plaintiff's Decedent have suffered, and will in the future suffer, the following particulars giving rise to a wrongful death action against the Defendants:

- a. Grief;
- b. Shock;
- c. Sorrow;
- d. Loss of companionship;
- e. Loss of the deceased's counsel on family matters;
- f. Emotional distress;
- g. Pecuniary loss and loss of the financial support of the Decedent;
- h. Medical expenses and funeral expenses.

FOR A FIFTH CAUSE OF ACTION
LOSS OF CONSORTIUM
(As to All Defendants)

45. Plaintiffs reallege and reincorporate Paragraphs 1 through 44 above as if fully set forth herein verbatim.

46. At all times herein Plaintiff and Decedent were husband and wife.

47. As a result of the Defendants' conduct, Plaintiff has lost the society, companionship, services, and other intangible qualities of the marital relationship.

WHEREFORE, the Plaintiffs pray that the Court enter judgment against the Defendants, jointly and severally, for the Plaintiffs' actual and punitive damages, in an amount to be determined by the jury, for reasonable costs for this action, and for such other and further relief as this court may deem just and proper.

Signature page to follow

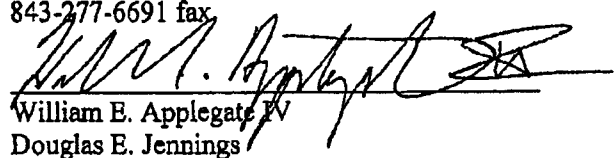
YARBOROUGH APPEGATE LLC

291 East Bay Street, Floor 2

Charleston, SC 29401

843-972-0150 office

843-277-6691 fax



William E. Applegate
Douglas E. Jennings

and

SAVAGE LAW FIRM

Andrew J. Savage, III

Donald L. McCune

15 Prioleau Street

Charleston, SC 29401

843-720-7470 office

Attorneys for the Plaintiffs

6-11, 2013
Charleston, South Carolina



**YARBOROUGH
APPLEGATE**

ATTORNEYS AT LAW

July 8, 2013

VIA CERTIFIED MAIL
RESTRICTED DELIVERY
RETURN RECEIPT

Kevin Rhatigan, as RA for
Bray's Island Plantation Colony, Inc.
115 Brays Island Drive
Sheldon, SC 29941

Re: James Piotrowsi, deceased, by and through his Personal Representative Tracey L. Piotrowski, and Tracey L. Piotrowski Individually
Case No. 2013-CP-07-1567
Our File No. 13-032

Dear Mr. Rhatigan:

Enclosed for service upon you as Registered Agent for Bray's Island Plantation Colony, Inc. please find the file-stamped Summons and Complaint in the above-referenced matter. Upon receipt please forward to your insurance company or legal representative.

With kind regards, I am,

Sincerely,

Michelle Holder,
Paralegal to William E. Applegate IV

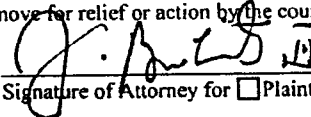
/mrh
Enclosures as stated

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 James Piotrowski, deceased, by and through his Personal)
 Representative Tracey L. Piotrowski, and Tracey L.)
 Piotrowski Individually)
)
 Plaintiff,)
)
 vs.)
)
 Richard K. Santee, Carolyn Santee, and Brays Island)
 Plantation Colony, Inc.)
 Defendant.)

FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NUMBER: 2013-CP-07-1567
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

2014 JUL -9 PM 3:58

check box above indicating submitting party

<u>Name, S.C. Bar No. and address of plaintiff's attorney:</u> William E. Applegate, IV, Esquire Yarborough Applegate, LLC 291 East Bay Street, 2nd Floor Charleston, South Carolina 29401 telephone: (843) 972-0150 fax: (843) 277-6691 e-mail: william@yarboroughapplegate.com other:		<u>Name, S.C. Bar No. and address of defendant's attorney:</u> J. Bennett Crites, III, Esquire 200 Meeting Street, Suite 403 Charleston, SC 29401 telephone: 843.714.2500 fax: 843.714.2501 e-mail: bcrites@collinsandlacy.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 Reconsideration		Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
Estimated Time Needed: 30 minutes			
SECTION II: Motion Type			
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion -			
I hereby move for relief or action by the court as set forth in the attached proposed motion.			
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant		July 7, 2014 Date submitted	
SECTION III: Motion Fee			
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <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"/> Sexually Violent Predator Act <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Proposed order submitted at request of the court; or,		<input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	
reduced to writing from motion made in open court per judge's instructions Name of Court Reporter:			
<input type="checkbox"/> Other:			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		DATE FILED	
<input type="checkbox"/> MOTION FEE COLLECTED: \$ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$			

2014 JUL -9 PM 3:58

SCCA/233 (11-03)



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 JAMES PIOTROWSKI, DECEASED, BY)
 AND THROUGH HIS PERSONAL)
 REPRESENTATIVE TRACEY L.)
 PIOTROWSKI, AND TRACEY L.)
 PIOTROWSKI, INDIVUALLY,)
)
 Plaintiffs,)
)
 vs.)
)
 RICHARD K. SANTEE, CAROLYN)
 SANTEE, AND BRAYS ISLAND)
 PLANTATION COLONY, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NUMBER: 13-CP-07-1567

DEFENDANT
BRAYS ISLAND
PLANTATION COLONY, INC.'S
MOTION TO ALTER OR AMEND

(Hearing Requested)

2014 JUL -9 3:58 PM
 CLERK OF COURT
 BEAUFORT COUNTY

TO: ALL COUNSEL OF RECORD:

Defendant Brays Island Plantation Colony, Inc. ("Brays Island") moves this Honorable Court pursuant to Rule 59(e), SCRPC to alter or amend its June 17, 2014, Order approving the settlement between Plaintiff, Richard K. Santee, and Carolyn Santee, and dismissing Richard K. Santee and Carolyn Santee (collectively, the "Santees") as defendants in this action. A copy of the Order is attached hereto as Exhibit A. Although the Undersigned as counsel for Brays Island has not received written notice from the Court as to the entry of the order, this motion is made within ten (10) days after receipt of written notice of the entry of the Order from counsel for Santees, attached hereto as Exhibit B. This motion is based upon the grounds that, upon information and belief, the settlement and dismissal of the Santees were not in accordance with the South Carolina Rules of Civil Procedure, and the dismissal of the Santees prejudices Brays Island, to wit:

1. Brays Island first learned of the June 17 Order on June 25, 2014, when it was provided to the Undersigned by the Santees' counsel (Exhibit B). Brays Island had no knowledge of

the Petition for Approval of Settlement or the Order prior to that date. Rule 5 of South Carolina Rule of Civil Procedure requires written motions, written notices, and similar such papers be served on all parties of record. Similarly, Rule 6(d), SCRCP requires that a motion be served on the opposing party no later than ten (10) days before the time specified for a hearing. Here, contrary to the clear requirements of the South Carolina Rules of Civil Procedure, Brays Island was not served with the Petition or provided prior notice of any hearing on the matter contained in the Petition.

2. Procedural due process requires notice and the opportunity to be heard. McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 194, 743 S.E.2d 843, 847 (Ct. App. 2013) (quoting Cameron & Barkley Co. v. S.C. Procurement Review Panel, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995)). As discussed supra, Brays Island was not provided with notice of the Petition or the opportunity to be heard on the matters contained therein prior to the issuance of the June 17 Order. As such, Brays Island was not afforded due process in this instance.
3. Pursuant to Rule 41(a)(2), SCRCP, "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." Here, as Brays Island was not provided notice of the Petition or the matters contained therein as required by the South Carolina Rules of Civil Procedure, and further, was not afforded procedural due process, dismissal of the action as against the Santees was not proper.
4. While the Undersigned understands a confidentiality agreement as to the settlement of the case was reached at mediation as between Plaintiff and Santees, it is unclear at this time based on the pleadings that have been served on the Undersigned whether the approval of

this settlement was sealed by the Court. Out of an abundance of caution, Brays Island raises this issue as part of the instant motion. South Carolina law disfavors secret settlements. *See* Rule 41.1, SCRCP; Jean Hoefler Toal & Bratton Riley, The New Role of Secret Settlements in the South Carolina Justice System, 55 S.C. L. Rev. 761 (Summer 2004). Here, and to the extent there was a secret settlement, Brays Island would respectfully show it is inappropriate because Dr. Santee and Brays Island are alleged to be jointly and severally liable for Plaintiff's injuries. Accordingly, the substance of the settlement agreement could affect Brays Island's right to offset and Brays Island's liability, especially to the extent the settlement agreement addresses any issues of fault or causation or Mary Carter Agreements that may have been reached between Santees and Plaintiff. Accordingly, Brays Island has an interest in matters relating to the approval of the settlement.

5. Dismissal of the Santees is prejudicial to Brays Island for a number of reasons. First, Brays Island's alleged liability in this action derives entirely from the alleged actions of Dr. Santee. See Compl. Indeed, based on the allegations of the Complaint, Brays Island would not have had a reason to be at the Santees' home if it were not for Mr. Santee shooting the Decedent. (Compl. at ¶¶ 11-14).

Given the nature of Dr. Santee's liability, Brays Island has an undeniable interest in having him listed on the verdict form. However, South Carolina's joint and several liability law is ambiguous regarding the role nonparties play in fault allocation. See S.C. Code Ann. § 15-38-15. As such, it is unclear whether nonparties may be listed on the verdict form. Regardless, the law is clear that parties may be listed on the verdict form. Accordingly, maintaining the Santees

as parties to the action insures that fault may be properly allocated between the parties alleged to be jointly and severally liable for Plaintiff's injuries.

Finally, upon information and belief, the Santees now reside outside the State. If the Santees are no longer parties to this action, they will be beyond the subpoena power of the Court and prohibit Brays Island from conducting necessary discovery as to both Dr. and Mrs. Santee to prepare this case for trial. See Rule 45, SCRPC. Again, given the nature of Dr. Santee's liability, Brays Island has an undeniable interest in the Santees appearing at trial.

In short, Brays Island's alleged liability derives entirely from the actions of Dr. Santee. Accordingly, Brays Island has an interest in the Santees being listed on the verdict form and appearing at trial. Brays Island would be prejudiced if the Santees are dismissed from this lawsuit.

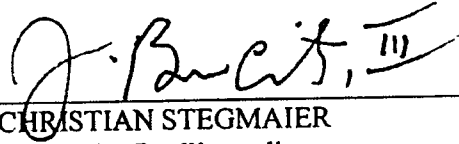
CONCLUSION

For the forgoing reasons, Brays Island respectfully requests this Court reconsider its June 17, 2014 Order, refuse to approve the settlement to the extent the approval of the settlement was (1) a secret settlement and/or (2) conditioned upon the dismissal of the Santees, and require the Santees to remain as Defendants in this lawsuit. Brays Island further requests that the Court provide Brays Island with the opportunity to be heard on the matters contained in the Petition.

Pursuant to Rule 11, SCRCP, the undersigned confirms that consultation with opposing counsel was not had as the same would serve no useful purpose.

Respectfully Submitted,

COLLINS & LACY



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ATTORNEYS FOR DEFENDANT
BRAYS ISLAND PLANTATION COLONY, INC

July 7, 2014
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen Mullen, Circuit Court Judge

Case No. 2013-CP-07-1567

RECEIVED

DEC 02 2014

SC Court of Appeals

James Piotrowski, deceased, by and through his
Personal Representative Tracey L. Piotrowski,
and Tracey L. Piotrowski, Individually.....Respondents,

v.

Richard K. Santee and Carolyn Santee,
Brays Island Plantation Colony, Inc.,

Of Whom

Brays Island Plantation Colony, Inc. is theAppellant,

and

Richard K. Santee and Carolyn Santee are.....Respondents.

PROOF OF SERVICE

I hereby certify that I served the **Appellant Bray’s Island Plantation
Colony, Inc.’s Briefing to the Court on the Issue of Appelability** upon all

parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on December 1, 2014, addressed to the following:

COUNSEL SERVED:

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Respectfully submitted,
COLLINS & LACY, P.C.

By:



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December 1, 2014
Columbia, South Carolina



Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

December 1, 2014

VIA UNITED STATES MAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
DEC 02 2014
SC Court of Appeals

Re: *James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski, and Tracey L. Piotrowski Individually v. Richard K. Santee, Carolyn Santee, and Brays Island Plantation Colony, Inc.*
Appellate Case No. 2014-002396
C&L File No. 961-01004

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Appellant Brays Island Plantation Colony's Briefing to the Court on the Issue of Appelability in the above-referenced matter. Please return a filed, stamped copy of same to me via the enclosed return envelope.

By copy of this letter, a copy of same is being forwarded for service upon all counsel.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

Respectfully,

Christian Stegmaier

CBS/mmm

Enclosures

cc: Andrew J. Savage, III, Esquire
David C. Cleveland, Esquire
William E. Applegate, IV, Esquire