

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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Case No. 2013-CP-07-1567

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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 the .....Appellant,  
and

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

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**APPELLANT BRAYS ISLAND PLANTATION COLONY, INC.'S  
RETURN TO  
RESPONDENTS RICHARD K. SANTEE AND CAROLYN SANTEE'S  
MOTION TO DISMISS**

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DEC 10 2014

**SC Court of Appeals**

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); 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).

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, on December 1, 2014, Appellant filed and served briefing on the issue of appealability. Respondent James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski, and Tracey L. Piotrowski, Individually (“the Piotrowski Respondents”) did not file any briefing expressly in

response to the Court's November 18, 2014, letter nor did Dr. and Mrs. Richard and Carolyn Santee ("the Santee Respondents"). However, the Santee Respondents did file a motion to dismiss the instant appeal, asserting the subject orders are not appealable. This return follows.

For purposes of formally responding to the Santee Respondents' motion, Appellant incorporates by reference in toto its 27 page December 1, 2014, brief to the Court on the issue of appealability, along with the exhibits contained within the filing.

As explicated within that briefing, Appellant is a party aggrieved by the Circuit Court's dismissal of the Santee Respondents. See Rule 201(b), SCACR. Specifically, Appellant avers the Circuit Court's orders of June 16, 2014, and October 8, 2014, operate as final orders of dismissals of the Santee Respondents.

Moreover, given the nature of Dr. Santee's liability for the death of James Piotrowski, Appellant 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 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.

Finally, due to the Piotrowski Respondents' election to allocate all settlement funds to the survival action, the subject orders arguably strip Appellant of the substantial right of setoff, which is both prejudicial and irreparable short of direct appeal to this tribunal at this stage of the proceedings.

Accordingly, for the reasons stated herein, as well as in Appellant's previous briefing to the Court of Appeals on the issue of appealability, Appellant respectfully requests this Court deny the Santee Respondents' motion to dismiss.

Appellant requests the Court entertain set the instant matter, which is novel, for argument before the presiding duty judge. See Rule 224(h) & (j), SCACR.

**[SIGNATURE PAGE ATTACHED]**

Respectfully submitted,  
COLLINS & LACY, P.C.

By:   
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December 8, 2014  
Columbia, 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

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Brays Island Plantation Colony, Inc.,

Of Whom

Brays Island Plantation Colony, Inc. is the .....Appellant,

and

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**PROOF OF SERVICE**

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I hereby certify that I served the **Appellant Bray's Island Plantation Colony, Inc.'s Return to Respondents' Richard K. Santee and Carolyn Santee Motion to Dismiss Appeal** upon all parties, by placing a copy in the

United States mail, postage prepaid, to all counsel of record on December 8, 2014, addressed to the following:

**COUNSEL SERVED:**

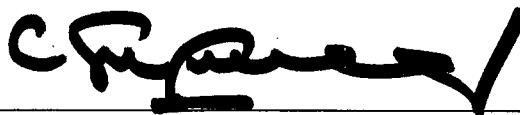
Andrew J. Savage, III, Esquire  
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Respectfully submitted,  
COLLINS & LACY, P.C.

By:



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December 8, 2014  
Columbia, South Carolina



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

December 8, 2014

**VIA UNITED STATES MAIL**

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

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 Return to Respondents' Richard K. Santee and Carolyn Santee Motion to Dismiss Appeal in the above-referenced matter. Please return a filed, stamped copy of same to us 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,

A handwritten signature in black ink, appearing to read "C. Stegmaier", with a checkmark at the end.

Christian Stegmaier

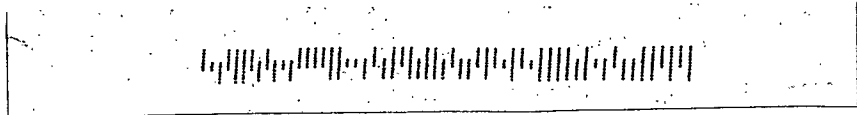
CBS/mmm  
Enclosures

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

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The Honorable Jenny Abbott  
Kitchings  
Clerk, South Carolina  
Court of Appeals  
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