THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-In-Equity

Mikell R. Scarborough, Master-In-Equity for Charleston County

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Appellate Case No. 2015-001146
Trial Court Case No. 2013-CP-10-1225

Kiawah Resort Associates, L.P., a Delaware Limited Partnership, and Kiawah Development Partners II LLC, Appellants/Respondents,

v.

Kiawah Island Community Association, Inc., a South Carolina Not-for-Profit Corporation, Respondent,

and

Kiawah Property Owners Group, Inc., and Inlet Cove Club Homeowners Association, Inc. Respondents/Appellants

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RESPONDENTS' FINAL BRIEF OF APPELLANTS/RESPONDENTS

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STATEMENT OF THE CASE

Appellant/Respondent Kiawah Resort Associates, L.P. ("KRA"), filed a civil action against Respondent Kiawah Island Community Association, Inc. ("KICA"), on March 1, 2013, asserting equitable claims for declaratory judgment, reformation of deed, and specific performance arising from a property transfer made pursuant and subsequent to the execution of the September 26, 1994 Development Agreement ("1994 Development Agreement") between KRA and the Town of Kiawah Island ("Town").

On April 17, 2013, the real parties in interest joined in a Consent Order of Reference to Special Referee. Leonard Krawcheck, Esq., was designated Special Referee. On May 10, 2013, Respondents/Appellants Kiawah Property Owners' Group, Inc. ("KPOG"), and Inlet Cove Club Homeowners' Association, Inc. ("Inlet Cove") (collectively the "Intervenors"), filed a Motion to Intervene. As a result of the Motion to Intervene, the Special Referee recused himself due to his law partner's prior representation of Inlet Cove. This caused the real parties in interest to incur significant delay in achieving a hearing on the merits. The Master granted the Motion to Intervene on November 5, 2013, over the objection of both KRA and KICA.

On October 18, 2013, KRA filed a Motion to Join KDP II as an Additional Plaintiff and to Amend Complaint, which was granted. KRA and KDP II filed their Amended Complaint on November 19, 2013. In consultation with the parties, the Master scheduled a trial on the merits, which began on Monday, December 9, 2013, and reconvened on Wednesday, December 11, 2013, on which date it was completed.

On December 16, 2013, just three business days after the hearing concluded, KPOG's board of directors formally adopted a plan of dissolution. Following KPOG's formal

dissolution, and due to a lack of any evidence in the record to support a finding of legal standing on the part of Intervenors, KRA and KDP II filed a Motion for Relief from the Order Granting the Motion to Intervene on March 27, 2014. On the date of the hearing, the Master received arguments from the parties but denied the Motion for Reconsideration. That same day, the Master also issued his Final Order dated June 4, 2014 ("Final Order"), denying the claims for reformation of deed, declaratory judgment, and specific performance by KRA and KDP II.

On June 16, 2014, KRA and KDP II filed a Motion to Alter or Amend the Final Order, which included a renewed request that Intervenors be dismissed for lack of standing among numerous other arguments. On May 7, 2015, the Master issued his Order on Motion to Alter or Amend the Final Order, in which he reaffirmed the Final Order in result, but disclaimed any continuing reliance upon the evidence presented by Intervenors and dismissed Intervenors from the action due to lack of standing. On June 8, 2015, Intervenors filed an appeal challenging their dismissal from the action for lack of standing.

SUMMARY OF FACTS

This dispute arises from a mistaken property description resulting from a scrivener's error in a Quit-Claim Deed ("Quit-Claim Deed"). The real parties in interest to this dispute are KRA (the grantor under the Quit-Claim Deed), KDP II (the successor in interest to the grantor), and KICA (the grantee under the Quit-Claim Deed). The Quit-Claim Deed was prepared in order to effectuate a transfer of the "Beachfront Strip" from KRA to KICA pursuant and subsequent to the execution of the 1994 Development Agreement between KRA and the Town. As a result of the scrivener's error in the Quit-Claim Deed, an area comprising 4.62 acres of property was included in the property description ("Additional

Land") and was mistakenly transferred to KICA. Neither KRA, nor KICA, nor the Town intended for the Additional Land to be conveyed or otherwise included in the property description, as demonstrated by the record below, as well as the Brief previously filed with this Court by KRA and KDP II.

Intervenors had no role or involvement in the negotiation or the drafting of the 1994 Development Agreement or the Quit-Claim Deed. Intervenors are not parties to the 1994 Development Agreement or the Quit-Claim Deed. They are not third-party beneficiaries under the 1994 Development Agreement or the Quit-Claim Deed. Nor are they grantees under any easement or any document of record that would create any specific interest on their part in the subject property. Each former member of now-dissolved KPOG and each current member of Inlet Cove, to the extent they still own property on Kiawah Island, is a member of KICA. No claim or injury separate from that which is alleged to arise through membership in KICA is asserted.

The impetus for the intervention of KPOG and Inlet Cove was to afford an environmental public interest group, the South Carolina Environmental Law Project, a potential opportunity to intercede and oppose a developer's right to recover 4.62 acres of the developer's valuable, oceanfront property that had been mistakenly conveyed to the community association due to a scrivener's error. On May 28, 2013, the South Carolina Environmental Law Project ("SCELP") filed a Motion to Intervene on behalf of KPOG and Inlet Cove. The alleged basis for intervention was that Intervenors had an alleged "interest" in the 4.62 acres of Additional Land, which they alleged would not be represented adequately by KICA. In addition, Intervenors moved to intervene due to the existence of common questions of fact or law between their claims and defenses and those involved in the main

action, even though they have no claims or defenses in the case. KPOG and Inlet Cove are strangers to the Quit-Claim Deed, and have no interest in the subject property, and have no concrete, particularized and discrete injury relevant to this case.

At the hearing on the Motion to Intervene, the Master granted the Motion and requested that the SCELP, as counsel for KPOG and Inlet Cove, submit a proposed order. SCELP submitted the proposed order to the Master at 7:03 p.m. on the evening on October 31, 2013, copying counsel for the real parties in interest on the submission. By noon the next day, the Master had signed the proposed Order in the form submitted, without allowing for any comment from the real parties in interest. Counsel for KRA and KDP II, viewing the various findings set forth in the proposed Order that the Master signed, submitted a letter to the Master on November 5, 2013, seeking to confirm that the findings of fact in the Order related only to the Motion to Intervene and would not be binding upon the ultimate determination of standing. (R. p. 2286). In response, the Master's law clerk responded that the Master stated that the parties could either file a Rule 59(e) Motion or presume that the Order related to the Motion to Intervene.

In the Order Granting Intervention, the Master relied upon affirmative representations made by KPOG regarding its alleged role and purpose:

> KPOG acts to: represent the combined interests of membership on issues that may affect the fundamental character of Kiawah Island; support the preservation of the natural resources and beauty of Kiawah Island and appropriate environmental conservation policies and/or methods; work with local government units in support of property owners' shared perspectives, concerns and investments, and foster and support economic growth that is consistent with the preservation of the natural beauty of Kiawah Island and the quality of life which forms the basis for the members' original and continuing attraction to Kiawah Island.

See Order Granting Intervention, at R. p. 3. However, on December 16, 2013, three business days after the hearing concluded, KPOG's Board of Directors adopted a formal plan of dissolution. KPOG announced its adoption of a plan of dissolution shortly thereafter on its website and also in a letter circulated to KPOG members on January 6, 2014. *See* Ex. A to Pls' Motion for Relief from the Order Granting Intervention (R. pp. 600-601). Although KPOG adopted the "legal plan of dissolution" within a few days after the hearing, the first date when KPOG initially discussed and prepared its legal plan of dissolution is unknown.

KPOG presented the plan of dissolution to its membership at its annual meeting, which was held on February 22, 2014. The main item on the agenda for the annual meeting was to hold a vote to approve KPOG's dissolution according to the legal plan adopted by KPOG's Board of Directors during the December 16, 2013, board meeting. *See* Ex. B to Pls' Motion for Relief from the Order Granting Intervention (R. pp. 603-604). At the annual meeting, KPOG's members duly voted in favor of its dissolution. Approximately 98.5% of the votes cast were in favor of dissolution (1,036 votes), and 1.5% of the votes cast were against the pre-planned dissolution (16 votes). As indicated by the records of the South Carolina Secretary of State, KPOG formally dissolved on March 5, 2014. *See* Exhibit C to Pls' Motion for Relief from the Order Granting Intervention (R. pp. 606-607).

During the hearing on the merits, the only Inlet Cover property owner who testified, Peter Mugglestone, admitted that it was "undetermined" if reformation of the Quit-Claim Deed would have any impact on him. (R. p. 1332, line 14). The two KPOG members presented as witnesses by KPOG, Wendy Kulick and Greg Vanderwerker, were not even allowed to testify as to any speculative belief regarding how the granting of deed reformation might impact them, as they had no reliable basis to formulate any admissible testimony. (R.

p. 1311, line 10 – p. 1313, line 11; p. 1357, lines 10-20). No testimony of a discrete and particularized injury was presented by either Intervenor. Each witness called by Intervenors conceded that he or she had no independent knowledge or evidence of the relevant intent of the Town, KRA, or KICA. (R. p. 1298, lines 8-13; p. 1321, lines 8-12; p. 1345, lines 3-8; p. 1377, lines 11-22. Seeing that Intervenors had no personal knowledge of the relevant facts and no particularized injury, and that KPOG summarily dissolved itself as soon as the hearing was completed, KRA and KDP II included a renewed argument that Intervenors should be dismissed for lack of standing within their Motion to Alter or Amend filed June 16, 2014.

On May 7, 2015, the Master issued his Order on Motion to Alter or Amend the Final Order. The Master reaffirmed the Final Order in terms of its ultimate result, but dismissed KPOG and Inlet Cove as parties to the action due to lack of standing. The basis for the Master's conclusion that Intervenors lacked standing was that neither intervening entity had asserted any discrete claims that were separately derived or that were distinct from their membership in KICA. The Master found that the members of KPOG and Inlet Cove are inherently members of KICA and that KICA is the party that has the sole right and authority to prosecute or defend claims arising under the KICA Declaration. *See* Order on Motion to Alter or Amend the Final Order, at R. p. 53. The Master properly granted Appellants/Respondents' Motion to Alter or Amend regarding the dismissal of Intervenors on the basis that they did not have standing separate from their capacity as KICA members, which precludes the continuing involvement of Intervenors in this case.

ARGUMENTS

I. THE MASTER CORRECTLY DISMISSED KPOG AND INLET COVE DUE TO LACK OF STANDING

The Master correctly found that Intervenors lacked standing and properly dismissed them from this action. On appeal, Intervenors argue that the Master confused the legal standards for intervention and standing. This argument is incorrect, as the finding and conclusion that Intervenors had no discrete claim separately derived from that of KICA is focused upon and dispositive of the issue of standing. The Master's conclusion that the Intervenors lacked standing was based upon a finding that Intervenors did not have any claim (*i.e.*, injury) that is discrete from the claim of KICA, the party to which the Additional Land was mistakenly conveyed. This is consistent with applicable South Carolina law regarding standing. *See, e.g., Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014) (standing requires that plaintiff must have suffered an injury-in-fact which is concrete, particularized and actual or imminent invasion of a legally protected interest). The lack of a discrete claim is synonymous with the lack of a particularized injury-in-fact. Although the Master's analysis may have been concise, it was an adoption of the detailed argument that the real parties in interest had been making from the outset.

Intervenors also argue that their dismissal for lack of standing was inconsistent with the Master's prior findings. This argument also fails. The Master is able to amend, correct and reverse prior findings and conclusions, including any findings or conclusions relevant to standing, until such time as the Master no longer has jurisdiction over the matter. Intervenors had the burden of establishing standing not only at the time that intervention was initially sought, but also at every successive stage in the litigation. The Master properly determined that Intervenors had not met their burden. Also, to the extent that there were inconsistencies

or amendments to the Master's findings relating to standing, changes in circumstances and ultimate lack of proof justified the change.

A. The Master's Standing Analysis Had the Correct Focus, Which Was the Absence of a Discrete, Individualized Claim or Injury on the Part of Intervenors

The Master correctly dismissed KPOG and Inlet Cove on the basis that they had no discrete claim separate from that of KICA. In this sense, the use of the word "claim" is commensurate with the word "injury." Although the Master did not include express citations to applicable precedent, his analysis is consistent with applicable precedent. Intervenors, as associations, failed to demonstrate associational standing and therefore lacked standing, which resulted in their appropriate dismissal.

As Intervenors cite in their Brief to this Court, the United States Supreme Court has established the following requirements to show standing: (1) the plaintiff must suffer an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560–61, 112 S.Ct. 2130, 2136 (1992). South Carolina has adopted the *Lujan* test, but has recently clarified the applicable legal standard for associational standing in *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014).

An organization can only have associational standing "if one or more of its members will suffer an individual injury by virtue of the contested act." *Carnival*, 407 S.C. at 76, 753 S.E.2d at 850 (citing *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S. Carolina Dep't of Natural Res.*, 345 S.C. 594, 600-01, 550 S.E.2d 287, 291 (2001)). An organization has

standing only if the alleged individualized injury to it or its members is more than a mere interest in a problem. *See, e.g., Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). These authorities reflect the requirement that the injury be individualized, *i.e.*, different from that already being claimed by others. By trying to bootstrap onto an alleged injury that is specific to KICA, Intervenors fail to present a discrete, individualized injury that would give them the right to intermeddle in litigation where they are not a real party in interest.

KPOG and Inlet Cove presented no evidence of injury in fact. The members of the associations have not suffered any harm but merely feared the prospect of future harm. Prospective concern falls far short of the standard of "concrete and particularized and ... actual or imminent" harm. *See, e.g., Beaufort,* 346 S.C. at 303, 551 S.E.2d at 590. Inlet Cove presented only one of its members as a witness in this case, who conceded that it was "undetermined" whether reformation of the Quit-Claim Deed would impact him at all. This falls short of establishing standing. *See Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012) (holding that to establish standing, a plaintiff must show a causal connection between the injury and the conduct complained of and it must be likely, as opposed to speculative, that the injury will be redressed by a favorable decision). The Master recognized this defect and dismissed Intervenors accordingly.

As established in *Lujan* and clarified in *Carnival*, the individual injury must be an "injury in fact" that is concrete, particularized, actual and imminent. It cannot be "conjectural or hypothetical," or in this case, "undetermined." The Master properly dismissed KPOG and Inlet Cove from this action due to their failure to meet the applicable burden to prove legal standing.

B. The Master Was Entitled to Amend, Correct and Reverse His Preliminary Findings Regarding Standing That Were Made Prior to the Evidentiary Hearing

Intervenors argue that their dismissal is erroneous because it is inconsistent with the Master's preliminary findings made at prior stages in the litigation. Intvrs' Initial Br., p. 26. However, Intervenors' argument is contrary to law. *See e.g., PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 335 (Ct. App. 1988) ("The trial judge, under our procedure, is afforded many opportunities to change his mind."). In the Order on the Motion to Alter or Amend, the Master properly revisited the issue of standing and dismissed Intervenors from continued involvement in this dispute. He was entitled to do this and did not commit error by recognizing that legal standing on the part of Intervenors simply did not exist.

The United States Supreme Court has made it clear that the burden of establishing standing rests on the moving party. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342, 126 S. Ct. 1854, 1861 (2006). Furthermore, this obligation is not a one-time duty. The moving party carries the burden of establishing standing at every stage of the litigation, from the initial pleading through summary judgment, trial and appeal. *Lujan*, 504 U.S. at 561; *Wyoming Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 47 (D.C. Cir. 1999) (courts of appeal are obliged to examine standing under all circumstances); *see also Diamond v. Charles*, 476 U.S. 54, 62, 106 S. Ct. 1697, 1703 (1986) (dismissing appeal due to lack of standing on the part of intervenor-defendant); *Davis v. Fed. Election Comm'n,* 554 U.S. 724, 733, 128 S. Ct. 2759, 2768 (2008) (standing must exist on the date the complaint is filed and throughout the action). Standing is an "indispensable part" of the case and must be supported in the same way as any other matter on which the party bears the burden of proof,

i.e., with the manner and degree of evidence required at the "successive stages of the litigation." *Lujan,* 504 U.S. at 561. Furthermore, standing can be challenged at any time in the litigation, including on appeal, by the other parties or by the court *sua sponte*. *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110, 122 S. Ct. 511, 514 (2001).

In the Order Granting Intervention, the Master noted that the courts of South Carolina recognize the long-standing principle that aesthetic and recreational interests "can" provide the basis for standing. Order Granting Intervention, at R. p. 8. The preliminary determinations in the Order Granting Intervention relating to the issue of standing were for the purpose of determining whether to grant the Motion to Intervene. They did not bind the Master, or this Court, to any ultimate determination on the issue of standing.

Intervenors incorrectly argue that the findings contained in the Order Granting Intervention are the "law of the case" because the Order Granting Intervention has not been appealed. Intvrs' Initial Br., p. 32. The logic for this argument is unclear, as the dismissal of Intervenors for lack of standing obviated the need for any appeal of the Order Granting Intervention. In any event, Intervenors misstate the "law of the case" doctrine. Under the law of the case doctrine, a party is precluded from relitigating, *after an appeal,* matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). The doctrine does not prevent the Master from deciding, as he did here, that Intervenors ultimately failed to establish their legal standing. The Master was permitted to modify his prior preliminary findings on the issue of standing set forth in the Order Granting Intervention and properly dismissed the Intervenors in light of the evidence presented at trial. A trial judge, until final judgment, controls the trial of the case before him, and as a general

rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree. *PPG Indus.*, 297 S.C. at 183, 375 S.E.2d at 334. Intervenors have failed to present a basis for this Court to reverse the Master's dismissal of Intervenors for lack of standing. Neither of the two points of error raised (alleged confusion of the legal standard and alleged inconsistent findings of fact) have any merit, which requires that the appeal of Intervenors be denied.

C. The Portions of the Order on the Motion to Alter or Amend Relating to Standing Are Sufficient for Purposes of Rule 52, SCRCP

Intervenors argue that the portion of the Order on the Motion to Alter or Amend relating to standing is insufficient. However, the Order contains the necessary finding and conclusion to form an adequate statement of the court's decision regarding standing under our applicable rules of procedure. Rule 52, SCRCP provides that "[i]n all actions tried upon the facts without a jury ... the court shall find facts specially and state separately its conclusions of law thereon[.]" Rule 52, SCRCP. This Court has held that this rule "is directorial in nature so where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding." *In re Treatment & Care of Luckabaugh,* 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002) (citing *Noisette v. Ismail,* 304 S.C. 56, 58, 403 S.E.2d 122, 123 (1991)). The requirement for appropriately detailed findings "is designed ... to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system." *Id.* at 132, 568 S.E.2d at 343. "[T]here is no blanket requirement that the trial court set forth a separate

explanation on all of its rulings." *Porter v. Labor Depot*, 372 S.C. 560, 568, 643 S.E.2d 96, 100 (Ct. App. 2007).

The Order on the Motion to Alter or Amend contains a separate section regarding Intervenors' lack of standing. The Master found standing to be lacking based on his finding and conclusion that neither KPOG nor Inlet Cove had a claim that was discrete from that asserted by KICA. Order on Motion to Alter or Amend the Final Order, at R. p. 53. The requirement of a discrete or individualized and particular injury, as opposed to a generalized one, has been long recognized as a core requirement for standing to exist. *See, e.g., Commonwealth of Massachusetts v. Mellon,* 262 U.S. 447, 488, 43 S. Ct. 597, 601 (1923) ("[t]he party who invokes the [judicial] power must be able to show ... that he has sustained or is immediately in danger of sustaining some direct injury ... and not merely that he suffers in some indefinite way in common with people generally."). This analysis may have been concise, but was completely sufficient.

D. Intervenors Have Failed to Preserve Any Issue Relating to Standing for Appellate Review

Intervenors argue that the Order on (KRA and KDP II's) Motion to Alter or Amend is defective for the alleged lack of findings or inconsistent findings, but failed to ask the Master to correct or amplify his findings by filing a Motion to Alter or Amend of their own within 10 days of the issuance of the Order upon which Intervenors base this appeal. An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be persevered for appellate review. *See, e.g., McCain v. Brightharp*, 399 S.C. 240, 251, 730 S.E.2d 916, 922 (Ct. App. 2012); *Herron v. Century BMW,* 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("[a]t a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge"); *Mathis v. Brown & Brown of S. Carolina,*

Inc., 389 S.C. 299, 311, 698 S.E.2d 773, 779 (2010) (holding that, in order for an issue to be properly preserved for appeal, it must have been both raised to and ruled on by the trial court). This requirement is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). On this basis, Intervenors are precluded from appealing the Master's Order on the Motion to Alter or Amend the Final Order, as the alleged error raised on appeal was not raised or ruled upon by the lower court.

II. KPOG'S PROMPT DISSOLUTION AND LACK OF EVIDENCE OF ANY ACTUAL OR THREATENED INJURY ARE ADDITIONAL SUSTAINING GROUNDS FOR THE MASTER'S DISMISSAL OF KPOG DUE TO LACK OF STANDING

Intervenors filed a 33-page brief in this appeal, but fail to even acknowledge KPOG's dissolution that was timed to immediately follow the evidentiary hearing. Intervenors fail to apprehend that KPOG's dissolution has an impact on its alleged associational standing, but this fact serves as an additional sustaining ground for the Master's dismissal. As set forth above, an association may possess standing by virtue of associational standing on behalf of its members. *See, e.g., Beaufort,* 346 S.C. at 301, 551 S.E.2d at 589. However, KPOG cannot have associational standing on behalf of any members after March 5, 2014, when KPOG's dissolution was effective. The South Carolina Nonprofit Corporation Act provides that, upon dissolution, a dissolved non-profit corporation "continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs." S.C. Code ANN. § 33-31-1406.

The arguments provided by KPOG in support of standing evaporated when KPOG swiftly dissolved itself after the close of evidence. Although the nonprofit corporation statutes provide that dissolution does not automatically abate or suspend a proceeding

involving the dissolved entity (S.C. Code ANN. § 33-31-1406), KPOG does not have associational standing to appeal the Master's decision as its activities are limited to winding up and liquidating its affairs. KPOG has intervened in this action on the basis of environmental activism, which is not an activity "appropriate to wind up and liquidate [KPOG's] affairs" following KPOG's formal dissolution. KPOG's associational standing cannot exist in the absence of the association itself. KPOG's continuing intervention was improper due to changed circumstances.

Additionally, KPOG presented no evidence of an actual or threatened injury, which precludes KPOG from having any further standing in this action. The two KPOG members presented as witnesses were unable to present any admissible evidence of an actual or threatened injury that would result if reformation were granted. (R. p. 1311, line 10 – p. 1313, line 11; p. 1357, lines 10-20. The absence of any such evidence is fatal to standing and required KPOG's dismissal, even though this was not among the findings and conclusions articulated by the Master in the Order on the Motion to Alter or Amend. For these additional sustaining grounds, the Master was correct to dismiss KPOG for lack of standing.

III. INLET COVE'S LACK OF EVIDENCE OF ANY ACTUAL OR THREATENED INJURY IS AN ADDITIONAL SUSTAINING GROUND FOR THE MASTER'S DISMISSAL OF INLET COVE DUE TO LACK OF STANDING

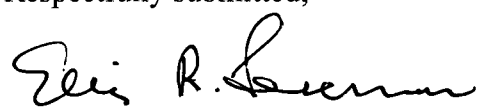
A party cannot appeal from a decision that does not affect its interest, however erroneous and prejudicial it may be to some other person's rights and interests. *Beaufort,* 346 S.C. at 301, 551 S.E.2d at 589-90. The only witness presented by Inlet Cove admitted that it was "undetermined" whether he would suffer any injury as a result of reformation. (R. p. 1332, line 14). This admission undercuts any suggestion that Inlet Cove presented evidence of a concrete and particularized, actual or imminent invasion of a legally protected interest.

Although the Master did not cite to this admission on the part of the only member of Inlet Cove who testified, it serves as an additional sustaining ground to affirm the Master's ruling on the issue of standing.

CONCLUSION

For purposes of the issue of standing on the part of Intervenors, KRA and KDP II request that the Order on Motion to Alter or Amend the Final Order be affirmed as it relates to the single issue of dismissal of Intervenors as parties to this action due to lack of standing.

Respectfully submitted,

By: 

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Respondents' Final Brief of Appellants/Respondents complies with Rule 211(b), SCACR.

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Mikell R. Scarborough, Master-In-Equity for Charleston County

Appellate Case No. 2015-001146
Trial Court Case No. 2013-CP-10-1225

Kiawah Resort Associates, L.P., a Delaware Limited Partnership, and Kiawah Development Partners II LLC., Appellants/Respondents,

v.

Kiawah Island Community Association, Inc., a South Carolina Not-for-Profit Corporation, Respondent,

and

Kiawah Property Owners Group, Inc., and Inlet Cove Club Homeowners Association, Inc. Respondents/Appellants

PROOF OF SERVICE

I hereby certify that I have this date served (via federal express overnight delivery) a true and correct copy of **Respondents' Final Brief of Appellants/Respondents** to the following counsel of record:

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