THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2015-001146

Kiawah Resort Associates, L.P., a Delaware Limited Partnership, and Kiawah Development Partners II, Inc.,

Appellant/Respondents,

vs.

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.,

Respondent/Appellants.

APPELLANT'S FINAL BRIEF OF RESPONDENT/APPELLANTS

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TABLE OF CONTENTS

Page

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES CITED

STATUTES:

STATEMENT OF THE ISSUES

I. **Whether the Master-in-Equity Erred in Dismissing the Intervenors Based on Lack of Standing, Despite the Fact that:**

   a. **His Rulings Consistently Recognized Intervenors' Interests and Stake, Which Are Sufficient to Meet the Injury-in-Fact Test, and**

   b. **His Dismissal Ruling Hinged on the "Adequate Representation" Standard for Intervention and Not Any Standing Analysis**

STATEMENT OF THE CASE

This matter arises from an action filed by Kiawah Resort Associates, L.P. ("KRA")[1] on March 1, 2013 for declaratory judgment and deed reformation or, alternatively, specific performance relating to a 1995 property transaction between KRA and Kiawah Island Community Association, Inc. ("KICA") pursuant to a 1994 development agreement between KRA and the Town of Kiawah Island. Specifically in dispute is a 4.62 acre parcel that was included as part of the property conveyed in the 1995 transaction between KRA and KICA, the inclusion of which KRA claimed was a mistake. The action was given Case Number 2013-CP-10-01225 and came before Master-in-Equity Mikell R. Scarborough.

On May 10, 2013, Kiawah Property Owners Group, Inc. ("KPOG") and Inlet Cove Club Homeowners Association, Inc. ("Inlet Cove") moved to intervene pursuant to Rule 24 (a) and (b) of the South Carolina Rules of Civil Procedure (SCRCP). By order dated November 1, 2013, KPOG and Inlet Cove were granted intervention under Rule 24(a) and (b), SCRCP.

A two-day bench trial was conducted on December 9, 2013 and December 11, 2013. On March 27, 2014, KRA filed a motion pursuant to Rule 60(b), SCRCP, seeking relief from the Order Granting Intervention and dismissal of KPOG and Inlet Cove from the case, which was denied. On June 4, 2014, the master issued his Final Order denying KRA's claims for deed reformation and specific performance and declaring the 4.62 acre parcel owned by

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[1] On November 18, 2013, KRA filed an Amended Complaint adding Kiawah Development Partners II, Inc. ("KDP II") as a plaintiff in the case. Hereinafter for purposes of this brief, all references to KRA include KDP II to the extent applicable.

KICA and subject to KICA's Declaration of Covenants and Restrictions, as amended ("KICA Covenants).

Thereafter, on June 16, 2014, KRA filed a sixteen-count motion pursuant to Rule 59(e), SCRCP, to alter or amend the Final Order. On May 7, 2015, the master issued its Order on Motion to Alter or Amend the Final Order. On May 22, 2015, KRA filed a Notice of Appeal of the Final Order as well as the Order on Motion to Alter or Amend the Final Order. On June 8, 2015, KPOG and Inlet Cove filed a Notice of Appeal of the Order on Motion to Alter or Amend the Final Order. The two appeals were consolidated by this Court.

ARGUMENT

Summary of Argument

KPOG and Inlet Cove clearly have interests in this case – a fact that has been repeatedly recognized by the master, even in the Order on appeal. They have a property interest in the form of their easement rights to use and enjoy certain properties as Kiawah Island property owners. They also have aesthetic and recreational interests in the use and enjoyment of the subject 4.62 acre parcel in its natural state. The master consistently acknowledges these interests, first in the Order Granting Intervention, then in denying KRA's motion for relief from the Order Granting Intervention, and even in its Order on the Motion to Alter or Amend the Final Order. (R. pp. 3-10, 12, 53).

The master has not ruled, and neither KRA nor KICA has asserted, that intervention was improperly granted to KPOG and Inlet Cove. The Order Granting Intervention has not been altered, amended or overturned in any way. However, in a ruling purportedly on KPOG and Inlet Cove's standing, the master provided the following:

> [N]either intervening entity has asserted any *discrete* claims that are *separately derived* from their membership in KICA. Rather the KPOG and Inlet Cove members' (who are also members of KICA) sole **basis for asserting any claim** against the Property is **rooted in their easement of use and enjoyment** resulting from the Property being conveyed as Common Property and subject to the KICA Declaration . . . The Court agrees and finds that the Intervenors **do not have standing** *separate from their capacity as KICA members* and should be dismissed from the case.

(R. p. 53) (emphases added).

The master's ruling confuses the legal standards for intervention and Article III standing. There is no dispute that KPOG and Inlet Cove have interests at stake in this case.

The master states that KPOG and Inlet Cove's interests are rooted in their easement rights and acknowledges that they have standing. Yet the master dismisses them as parties because one of their bases for standing is the same as KICA's. The inquiry into whether KPOG and Inlet Cove's interests are sufficiently distinct from KICA's interests is relevant for purposes of intervention, but not for standing. The master failed to apply the basic legal principles of standing in arriving at his conclusion that KPOG and Inlet Cove did not have standing, instead applying principles of intervention and arriving at an erroneous conclusion.

I. FACTUAL OVERVIEW OF THE CASE

Historical Context

KRA was the primary developer of Kiawah Island since its purchase of the island in 1988. (R. pp. 14, 2209). Following certain transfers among KRA's affiliates, KDP II acquired KRA's development rights and ownership interests on Kiawah Island, including those related to a 4.62 acre parcel that is the subject of the dispute. (R. p. 14).

KICA serves and operates as the principal property owners' association for Kiawah Island to which all property owners become members upon the purchase of their property. (R. pp. 3, 14). KICA is governed by its recorded KICA Covenants, which grant all members and their guests an easement of use and enjoyment in properties held as Common Property and restrict KICA's ability to transfer such properties without an affirmative vote of three-fourths (3/4) of its membership. (R. pp. 14-16, 21-22, 2219).

Inlet Cove is a separate property owners' association specifically for the Inlet Cove neighborhood on Kiawah Island located in close proximity to the 4.62 acre parcel in dispute

whose members use and enjoy that property for aesthetic and recreational purposes. (R. pp. 3, 7, 287-88, 294-95).

KPOG is an advocacy organization that was formed to identify and communicate issues of significance to Kiawah Island property owners and to advocate on their behalf. (R. pp. 3, 287). KPOG acts to represent the combined interests of membership on issues that may affect the fundamental character of Kiawah Island, including preservation of the natural resources and beauty of Kiawah Island; working with local government units in support of property owners' shared perspectives, concerns and investments; and fostering economic growth that is consistent with members' quality of life and conservation interests. (R. pp. 3, 287-88).

On September 26, 1994, KRA entered into a Development Agreement (the "1994 Development Agreement") with the Town of Kiawah Island (the "Town") that required, in pertinent part, KRA to convey certain properties to KICA as Common Property subject to the KICA Covenants. (R. pp. 14-15). In particular, Section 16(b) of the 1994 Development Agreement required that KRA convey what was generally described as a ten (10) mile strip of beachfront dunes and high land (the "Beachfront Strip") to KICA as Common Property. (R. p. 15).

Attached as Exhibit 16.7 to the 1994 Development Agreement was the "Agreement for Conveyance" between KRA and KICA, which set forth the legal descriptions and draft quit claim deeds for those properties KRA was obligated to convey to KICA as Common Property, including the Beachfront Strip. (R. pp. 2236-52). KICA was not a party to the 1994 Development Agreement; however, KICA was a party to the Agreement for

Conveyance, which served as the contract between KRA and KICA regarding the conveyance of certain properties, including the Beachfront Strip. (R. p. 17).

On December 29, 1995, KRA transferred the Beachfront Strip to KICA as Common Property by quit claim deed (the "Beachfront Deed") pursuant to the 1994 Development Agreement. (R. pp. 2253-57). The Beachfront Deed describes the Beachfront Strip using identical language to the Agreement for Conveyance and draft quitclaim deed, and includes the 4.62 acre parcel. (R. pp. 18, 24-29, 2236-57).

KRA contends that it discovered an error in the property description of the Beachfront Strip in or around 1997, but did not bring this alleged error to KICA's attention until 2007 – twelve (12) years after the Beachfront Deed was executed. (R. p. 20). KRA claims that the description of the Beachfront Strip in both the Agreement for Conveyance and Beachfront Deed, specifically the point of beginning or western terminus of the property, included the 4.62 acre parcel by mistake. (R. pp. 20-21).

KRA requested that KICA issue a deed conveying back the 4.62 acre parcel; however this request was rejected by KICA on the grounds that the 4.62 acres, along with the rest of the Beachfront Strip, was conveyed as Common Property subject to the KICA Covenants requiring an affirmative vote of three-fourths (3/4) of its membership in order to be transferred. (R. pp. 20-21). Thus, KRA brought the underlying action seeking a declaratory judgment that the 4.62 acre parcel was included in the conveyance of the Beachfront Strip by mistake; reformation of the Beachfront Deed; or, alternatively, an order of specific performance requiring KICA to transfer the 4.62 acre parcel to KRA.

Rulings by the Master-in-Equity

Order Granting Intervention

On May 10, 2013, KPOG and Inlet Cove moved to intervene asserting distinct interests in aesthetic and recreational use and enjoyment of the disputed 4.62 acre parcel and setting forth serious concerns with the existing parties' ability to adequately protect and represent their interests in the matter. (R. pp. 287-90).

KICA and KRA both opposed intervention. Following a hearing, the master granted intervention finding KPOG and Inlet Cove met the standards for both intervention as of right and permissive intervention pursuant to Rule 24 (a) and (b), SCRCP, respectively. (R. pp. 6-10). It is important to note that the Order Granting Intervention was not appealed.

In his order, the master fully explored the arguments of all parties and set forth in a clear and comprehensive manner the bases upon which KPOG and Inlet Cove successfully demonstrated their right to intervene. In pertinent part, the master acknowledges that members of KPOG and Inlet Cove are members of KICA like all property owners on Kiawah Island with easement rights under the KICA Covenants. (R. p. 7). Moreover, the master astutely recognizes another, distinct interest held by KPOG and Inlet Cove based on their particular commitment to the preservation of aesthetic and recreational values in the natural environment for the benefit of Kiawah residents and homeowners; Inlet Cove's acute proximity to the 4.62 acre parcel; and the direct, adverse impacts to their members' quality of life and aesthetic and recreational use and enjoyment of the 4.62 acres that will result from the outcome of the litigation. (R. p. 7).

The master describes Inlet Cove as follows:

> Inlet Cove is a separate property owners' association specifically for the Inlet Cove neighborhood, consisting of 108 parcels on 12.73 acres of land lying and situate with the Kiawah River along its western boundary, the Beachwalker Road along its eastern boundary, and the Beachwalker Park along its southern boundary. Members of Inlet Cove independently own by deed elevated cottages as well as the land on which they sit, and jointly own the common areas within the Inlet Cove neighborhood . . . . Inlet Cove was organized and exists to provide a sense of shared community values among its members and to ensure that these values remain protected. Inlet Cove is comprised of many lifelong South Carolina residents, some of whom permanently reside in the Inlet Cove neighborhood, as well as homeowners who maintain their properties for seasonal and periodic uses. Inlet Cove's natural beauty and accessibility to passive recreational activities not only evidences its desirability, but also constitutes the core values that it serves to protect. Inlet Cove is in very close proximity to the 4.62 acres in dispute; its members use and enjoy this property for its aesthetic qualities and for viewing wildlife.

(R. pp. 3, 6-7). The master describes KPOG as follows:

> KPOG is an independent property owners' advocacy organization. Since its formation in 1981, KPOG has provided property owners with information about Kiawah and plans and activities that will impact the Kiawah property owner. KPOG's mission is to identify, examine, and communicate issues of significance to Kiawah Island property owners, and advocate on their behalf. 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 members' original and continuing attraction to Kiawah Island . . . . KPOG was organized and exists to provide information and awareness to Kiawah Island property owners regarding issues of shared concern that may impact the community. KPOG actively advocates for the protection of Kiawah Island's extraordinary character and beauty as well as the quality of life of Kiawah Island's property owners. KPOG promotes the preservation of Kiawah Island's natural resources as an important link to the maintenance of the fundamental character of Kiawah Island and seeks to ensure that growth and development on Kiawah Island remain consistent with such preservation.

(R. pp. 3, 7).

In analyzing KPOG and Inlet Cove's claimed interests, the master found that their interests were two-fold: "First, as members of KICA, they share easement rights in property held as Common Property under KICA's Covenants. Second, Inlet Cove and KPOG hold aesthetic and recreational interests in viewing, using and enjoying the 4.62 acres and surrounding wildlife in its natural state." (R. pp. 7-8). The master affirms "[o]ur courts have recognized that aesthetic interests provide a basis for challenging an activity" and cited to the progeny of cases establishing that aesthetic and recreational interests are legally cognizable for purposes of standing. (R. p. 8). The master then concludes that KPOG and Inlet Cove met their burden of showing impairment of their interest pursuant to SCRCP 24(a)(2) in that "their commitment to preserving the aesthetic and recreational values of the natural environment and the[ir] quality of life . . . will be substantially impaired without their direct participation in this matter." (R. p. 8).

Having found KPOG and Inlet Cove asserted distinct, legally protectable interests in the matter, the master next looks to whether those interests are adequately represented by the existing parties. (R. p. 8). The master cited to the rule that the presumption of adequate representation that arises when proposed intervenor and existing party have the same ultimate objective is rebutted where, as here, the existing party is a governing body obligated to represent the general, public interest which may differ from the particular interests of proposed intervenor. (R. pp. 5-6 (citing Utah Ass'n of Cntys. v. Clinton, 255 F.3d 1246, 1255-56 (10th Cir. 2001); and, In re Sierra Club, 945 F.2d 776, 779-80 (4th Cir. 1991)). The master was emphatic that "[c]learly, neither KRA nor KICA will represent Inlet Cove and

KPOG's position as to the intention of the parties or whether there was a mistake" since KRA insisted there was a mutual mistake in the transfer of the 4.62 acres and KICA had no position on the intentions of the parties or whether there was a mistake. (R. pp. 8-9).

By contrast, the master recognizes that KPOG and Inlet Cove assert a distinct position: that the parties intended the 4.62 acres to be transferred to KICA as Common Property; that any mistake was unilateral; and that KRA was not entitled to deed reformation. (R. p. 9). The master determined KICA would not "undoubtedly" make the same arguments as KPOG and Inlet Cove since it was not taking a position on the parties' intent with regard to the 4.62 acre parcel and that KPOG and Inlet Cove sufficiently established "that their interests in protecting the 4.62 acre parcel for aethetic and recreational use and enjoyment as Common Property will not be adequately represented by KICA." (R. p. 9). Accordingly, the master concludes that KPOG and Inlet Cove met the test for intervention as of right. (R. p. 9).

Though the master could have ended its analysis there, it went on to conclude: "Inlet Cove and KPOG clearly assert claims or defenses with questions of law or fact in common with those asserted by KRA and KICA in satisfaction of requisite showing for permissive intervention pursuant to SCRCP Rule 24(b)." (R. p. 10). In support of its determination that KPOG and Inlet Cove met this standard, the master points to its perception of three separate and distinct positions between KRA, KICA, and KPOG/Inlet Cove with regard to the subject 4.62 acre parcel. (R. pp. 9-10). Therefore, the master ordered that KPOG and Inlet Cove be permitted intervention in the case. (R. p. 10).

Order on Motion for Relief from Order Granting Intervention

On March 27, 2014, after trial but before the master issued his Final Order, KRA filed its Motion for Relief from Order Granting Intervention seeking to have the master reconsider its ruling granting intervention.

KRA's motion was couched as one seeking relief from the court's Order Granting Intervention, but it failed to make any allegations regarding the master's application of the standard for intervention and instead treated the Order Granting Intervention as a final judgment on standing. (R. pp. 612, 616).

Following a hearing, the master denied KRA's requested relief from the Order Granting Intervention from the bench and signed a form order to that effect. (Order on Motion for Relief from Order Granting Intervention ("Order on Motion for Relief")) (R. p. 12). On the same day, the master also issued his Final Order.

Final Order

While the legal questions at issue in this case were not necessarily complex on their own, their resolution required an in-depth understanding of substantial factual background that consisted of some rather unique circumstances. Accordingly, after two days of extensive testimony and evidence, as well as receipt of proposed orders from each party, the master issued a comprehensive 25-page Final Order denying KRA's claims for deed reformation and specific performance and declaring the 4.62 acre parcel Common Property subject to the KICA Covenants. (R. p. 37).

It is clear from the Final Order that the master carefully considered both the evidence and applicable law, dividing its Findings of Fact into several sections in order to thoroughly

cover the entirety of what was presented. (R. pp. 14-29). After summarizing the nature of the action, the master identified the parties providing, in pertinent part, that it granted intervention to KPOG and Inlet Cove based on representations that they would present evidence on the parties' intent regarding conveyance of the 4.62 acre parcel as Common Property. (R. p. 14).

Under the heading "Material Facts Pertaining to the Subject Property," the master described how and when KRA allegedly discovered a mistake with the conveyance of the Beachfront Strip, which KRA contends unintentionally included the 4.62 acres due to an error in the property description for the western terminus of the Beachfront Strip. (R. pp. 20-22). The master found not only did KRA fail to bring the alleged error to KICA's attention until 12 years after purporting to discover it, but also that the legal descriptions of the Beachfront Strip contained in the Agreement for Conveyance and draft quit claim deed as well as the Beachfront Deed all consistently describe the same western terminus for the property. (R. pp. 20-21).

The master then recounted "Evidence of intent and mistake" according to the witness testimony and evidence presented by each of the parties. (R. pp. 22-24). KRA presented evidence that it did not intend the 4.62 acres to be included in the conveyance of the Beachfront Strip to KICA and attempted to present evidence that KICA shared its intent in order to demonstrate existence of a mutual mistake. (R. pp. 22-23). The evidence presented by KICA, by contrast, amounted to sheer lack of evidence of any intent on behalf of KICA regarding the inclusion of the 4.62 acre parcel in the Beachfront Strip and "[s]ignificantly, the only official action of the KICA Board taken on this issue is the execution of the

Agreement for Conveyance which obligated KICA to receive from KRA the [4.62 acre parcel] as Common Property." (R. pp. 22-23).

Of further importance, the master found KPOG and Inlet Cove "presented evidence pertaining to KICA's intent, with respect to the inclusion of the [4.62 acre parcel] in the Beachfront Deed, by presenting evidence of the developable status of the subject property, during the relevant 1994 time frame, as the property was subject to the S.C. Beachfront Management Act at the time of the 1994 Development Agreement." (R. pp. 23-24). The master described the evidence presented by KPOG and Inlet Cove over the next several pages of its order. (R. pp. 24-28).

KPOG and Inlet Cove presented DHEC/OCRM's staff oceanographer, Bill Eiser, who testified under subpoena to establishing the jurisdictional lines on Kiawah Island in 1991, 1999, and 2009 in accordance with the Beachfront Management Act. (R. p. 24); see also S.C. Code Ann. §§ 48-39-10 *et. seq*. As Mr. Eiser testified, the 1991 jurisdictional lines along Kiawah Island's beachfront generally followed the crest of the primary dunes closest to the ocean until Beachwalker Park on the western end of the island at which point it wrapped up and around the park. (R. pp. 23-24) (R. p. 1277, line 7–p. 1293, line 22) (R. pp. 2269-71). The jurisdictional line wrapping around Beachwalker Park placed the majority of the 4.62 acre parcel and entirety of Captain Sams Spit within DHEC/OCRM's jurisdiction and subject to the Act's general prohibition on development. (R. pp. 23-24) (R. p. 1288, line 18–p. 1293, line 8) (R. pp. 2269-71).

Based on evidence presented by KPOG and Inlet Cove, the master determined that: properties including the Beachfront Strip were never surveyed or formally platted during the

relevant 1994 time frame "due, in part, to the time and expense of such an undertaking on tracts of land that are both dynamic in nature, and which were to constitute conveyances of undevelopable property[;]" Exhibit 16.2 to the 1994 Development Agreement (relied upon heavily by KRA in support of its claim for reformation) is neither a survey nor an official plat of record and its boundaries lack reliability and are of limited value in determining the intent of the parties with regard to the disputed property; the tracts referred to as "Parcel 12" and "Parcel 13" (also heavily relied on by KRA) were created by a KRA representative for development purposes and accuracy by reference to their boundaries is not sufficiently reliable; the property description for the Beachfront Strip, including the 4.62 acres as part of its western terminus, corresponded with and was derived from plats of record of Kiawah Island in existence during the 1994 time frame; and the legal description for the Beachfront Strip in the Agreement for Conveyance and Beachfront Deed is clear and plainly unambiguous given that KRA's surveyor was able to create a survey for the disputed 4.62 acre parcel using the description contained in those documents. (R. pp. 25-28).

Based on the fact that the property description of the Beachfront Strip contains an identifiable point of beginning and "'closes' such that the conveyed premises are readily apparent," and "[n]o testimony elicited at trial cast any doubt on what property the Beachfront Deed actually conveys" the master concluded "the deed unambiguously shows that KRA conveyed the [4.62 acre parcel] as part of the Beachfront Strip to KICA as

Common Property and no evidence within the Beachfront Deed itself infers a contrary intent. As such, KRA's claim for reformation must fail, under the Penza test." (R. p. 31).[2]

As the master states, it could have ended its analysis upon finding the Beachfront Deed was clear and unambiguous, however, it continued its analysis as though there were ambiguity examining extrinsic evidence and still arrived at the same conclusion that reformation must fail. (R. pp. 32-34).

Finally, the master determined that all of the relevant documents described the Beachfront Strip, including the 4.62 acres, as conveyed to KICA as Common Property subject to the KICA Covenants. (R. pp. 36-37).

In conclusion, the master denied KRA's claims for deed reformation and specific performance and declared the 4.62 acre parcel is owned by KICA subject to the KICA Covenants, requiring an affirmative vote of three-fourths (3/4) of membership in order to be transferred. (R. p. 37).

Order on Motion to Alter or Amend the Final Order

On June 16, 2014, KRA filed its Motion to Alter or Amend the Final Order. In substance, KRA's motion took issue with the weight the master assigned to certain evidence presented at trial and largely reargued KRA's case for reformation of the Beachfront Deed.

2

Citing to Penza v. Pendleton Station, LLC, 404 S.C. 198, 743 S.E.2d 850 (Ct.App.2013), the master set forth the following standard: "If a deed is ambiguous, the reformation action is treated as a matter of equity thereby allowing the Court to look at extrinsic evidence to determine the parties' intent. If a deed is unambiguous, however, the reformation claim is handled as an issue of law and thus limits the Court's examination of intent to the terms of the deed itself." (R. p. 31).

(R. pp. 700-18). KRA also reasserted its claim that KPOG and Inlet Cove should be dismissed for lack of standing. (R. pp. 653-54).

On May 7, 2015, after a hearing and receipt of proposed orders by the parties, the master issued his Order on Motion to Alter or Amend the Final Order denying all but one of the grounds raised by KRA's motion, confirming his conclusion on the merits yet ruling that KPOG and Inlet Cove should be dismissed for lack of standing. (Order on Motion to Alter or Amend the Final Order ("Order on Motion to Alter or Amend")) (R. pp. 39-54).

In two brief paragraphs, without clear basis in fact or law, the master determined KPOG and Inlet Cove should be dismissed for lack of standing. (R. p. 53). The master cites no legal authority and provides no analysis in support of this decision to make such a sudden and drastic departure from his previous findings and conclusions. (R. p. 53). Further, the master blurs or otherwise misapplies the standards for intervention and standing. (R. p. 53).

Accordingly, as set forth below, KPOG and Inlet Cove appeal the master's ruling in his Order on Motion to Alter or Amend the Final Order dismissing them as parties.

II. THE MASTER-IN-EQUITY ERRED IN RULING KIAWAH ISLAND PROPERTY OWNERS GROUP (KPOG) AND INLET COVE CLUB HOMEOWNERS ASSOCIATION (INLET COVE) SHOULD BE DISMISSED FOR LACK OF STANDING

KPOG and Inlet Cove's interests at stake have been consistently recognized throughout this case, including in the Order on appeal. Further, the right of KPOG and Inlet Cove to participate in this case has been established and upheld on several occasions beginning with the Order Granting Intervention, through the evidence and testimony

presented by KPOG and Inlet Cove at trial, which formed part of the basis for the master's Final Order, and to denial of KRA's request for relief from the Order Granting Intervention. Yet in the Order on Motion to Alter or Amend the Final Order, KPOG and Inlet Cove's interests were casually and swiftly disregarded by the master when he determined that they lacked standing and should be dismissed. As this ruling by the master is erroneous, it must be reversed.

A. The master confused and thereby misapplied the legal standards for standing and intervention

KPOG and Inlet Cove presented evidence and testimony at trial that supported their right to intervene, standing, and defenses and was used by and formed part of the basis for the master's Final Order denying KRA's claims for deed reformation and specific performance. (R. pp. 23-28) (R. p. 1264, line 9–p. 1381, line 25). Notwithstanding the master's prior rulings finding standing and a right to intervene, the master determined in his Order on Motion to Alter or Amend that KPOG and Inlet Cove should be dismissed for lack of standing. (R. p. 53).

The master's ruling on KPOG and Inlet Cove's standing is brief and lacking in substance, reading in near entirety as follows:

> [KRA] as well as KICA have shown that neither intervening entity has asserted any discrete claims that are separately derived from their membership in KICA. Rather the **KPOG and Inlet Cove members'** (who are also members of KICA) sole **basis for asserting any claim** against the [4.62 acre parcel] **is rooted in their easement of use and enjoyment** resulting from the Property being conveyed as Common Property and subject to the KICA Declaration. It is KICA who has the sole right and authority to prosecute or defend rights which arise under the KICA Declaration.

> The Court agrees and finds that the Intervenors **do not have standing separate from their capacity as KICA members** and should be dismissed from the case.

(R. p. 53) (emphases added).

Setting aside the fact that this ruling is plainly inconsistent with the master's previous rulings (discussed in greater detail in the following section), the ruling is also erroneous as a matter of law because it is based upon principles of intervention rather than principles of standing.

The standard for standing is well-settled. The South Carolina Supreme Court has adopted the basic legal test for standing announced in Lujan v. Defs. of Wildlife, 504 U.S. 555, 112 S. Ct. 2130 (1992).[3] Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 550 S.E.2d 287 (2001); see also Sloan v. Greenville Cnty., 356 S.C. 531, 590 S.E.2d 338 (Ct.App.2003). The three-pronged test arising from Lujan is as follows:

> First, the plaintiff must have suffered an 'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third

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The South Carolina Supreme Court's rulings on standing in environmental cases have consistently followed the rulings of the United States Supreme Court and other federal courts. See, e.g., Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 550 S.E.2d 287 (2001) (citing Lujan, 504 U.S. 555; and, Sierra Club v. Morton, 405 U.S. 727, 92 S.Ct. 1361 (1972)); Energy Research Found. v. Waddell, 295 S.C. 100, 367 S.E.2d 419 (1988) (citing Sierra Club v. Morton; U.S. v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 93 S.Ct. 2405 (1973); and, Conservation Council of N.C. v. Costanzo, 505 F.2d 498 (4th Cir.1974)). Accordingly, decisions of the federal courts are pertinent to this case.

> party not before the court' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'

Lujan, 504 U.S. at 560, 112 S.Ct. at 2136 (internal citations omitted).[4]

Our courts have consistently recognized that aesthetic and recreational interests provide a basis for challenging an activity. The United States Supreme Court reaffirmed this principle: "We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 183, 120 S. Ct. 693, 705 (2000) (citing Sierra Club v. Morton, 405 U.S. 727, 735, 92 S.Ct. 1361 (1972); and, Lujan, 504 U.S. at 562-63 ("Of course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for the purposes of standing.")). In Pye v. U.S., 269 F.3d 459 (4th Cir. 2001), the court also reaffirmed the principle that "aesthetic and environmental injuries can constitute an injury in fact sufficient to support a plaintiff's standing." 269 F.3d at 469 (citing Friends of the Earth v. Laidlaw, 528 U.S. 167;

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[4] The issue in this case primarily revolves around the interests at stake; however, as expounded upon in greater detail below, KPOG and Inlet Cove have also established the other elements of standing. The challenged action seeks to transfer 4.62 acres out from ownership by KICA as Common Property, which would eliminate KPOG and Inlet Cove's easement rights to that property as all KICA members are granted under the KICA Covenants. If the 4.62 acre parcel is no longer Common Property, then KPOG and Inlet Cove members will no longer be able to use and enjoy it for their particular aesthetic and recreational purposes. Clearly this action is fairly traceable to the injury. And this is redressable by a favorable decision by the court that the 4.62 acres is Common Property owned by KICA and subject to the KICA Covenants, requiring an affirmative vote by three-fourths (3/4) of membership in order to be transferred.

Sierra Club v. Morton, 405 U.S. 727; and, Duke Power Co. v. Carolina Envtl. Study Grp., 438 U.S. 59, 98 S.Ct. 2620 (1978)).

An interest in the use and enjoyment of property is a cognizable, legally protected interest. S.C. Wildlife Fed'n v. S.C. Coastal Council, 296 S.C. 187, 371 S.E.2d 521 (1988); Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision), 332 S.C. 551, 505 S.E.2d 598 (Ct. App.1998) (rev'd on other grounds). The South Carolina Supreme Court held that a plaintiff must make claims as to "use and enjoyment" of an affected area for purposes of standing. Smiley v. S.C. Dep't of Health & Envtl. Control, 374 S.C. 326, 333, 649 S.E.2d 31, 34 (2007); see also Am. Canoe Ass'n v. Murphy Farms, 326 F.2d 505 (4th Cir. 2003). Thus, our courts have long held that precisely the type of aesthetic and recreational interests in use and enjoyment of the disputed 4.62 acre parcel asserted by KPOG and Inlet Cove are sufficient to confer standing. Indeed, the Order on Motion to Alter or Amend explicitly recognizes the injury-in-fact prong by acknowledging KPOG and Inlet Cove have an easement of use and enjoyment. (R. p. 53).

South Carolina courts recognize injuries stemming from an aesthetic interest in viewing private property notwithstanding ownership or control over that property. S.C. Wildlife Fed'n, 296 S.C. at 190, 371 S.E.2d at 523; Ogburn-Matthews, 332 S.C. at 565, 505 S.E.2d at 605. But here, there is also a property interest at stake described by KPOG and Inlet Cove members.[5] KPOG and Inlet Cove, whose members are members of KICA by

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An organization has representational standing when: (1) at least one of its members would have standing to sue in his own right; (2) the organization seeks to protect interests germane to the organization's purpose; and (3) neither the claim asserted nor the relief sought requires the participation of individual members in the lawsuit. Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., 204 F.3d 149, 155 (4th Cir. 2000) (citing

virtue of owning property on Kiawah Island, were granted easement rights under the KICA Covenants to use and enjoyment Common Properties, such as the 4.62 acres. The KICA Covenants provide all members "shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every" lot or unit so owned by a member. (R. p. 2217). Moreover, the KICA Covenants and rights thereunder "shall run with and bind the land, and shall inure to the benefit of and be enforceable by [KICA], [KRA], or the Owner of any land subject to" them. (R. p. 2228).

"An easement is a right to use the land of another for a specific purpose." Rhett v. Gray, 401 S.C. 478, 490, 736 S.E.2d 873, 879 (Ct.App.2012). "The unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment." Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545, 549 (1943). Easement holders have standing to bring claims or defend their rights as such. See, e.g., Martin v. Bay, 400 S.C. 140, 732 S.E.2d 667 (Ct.App.2012) (action by easement holders asserting rights thereunder); Ten Woodruff Oaks, LLC v. Point Dev., LLC, 385 S.C. 174, 683 S.E.2d 510 (Ct.App.2009) (same); Rhett v. Gray, 401 S.C. 478 (same); West v. Newberry Elec. Co-op., 357 S.C. 537, 593 S.E.2d 500 (Ct.App.2004) (same); Smith v. Comm'rs of Pub. Works of City of Charleston, 312 S.C. 460, 441 S.E.2d 331 (Ct.App.1994) (same); Goodwin v. Johnson, 357 S.C. 49, 591 S.E.2d 34 (Ct.App.2003) (same).

Unlike in Conservation Council of N.C. v. Costanzo, 505 F.2d 498 (4th Cir. 1974), where plaintiffs' recreational use of disputed property as licensee or trespasser was

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Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)).

insufficient to show injury-in-fact for their continued use of such property in the future was not guaranteed, KPOG and Inlet Cove have express easement rights under the KICA Covenants. 505 F.2d at 501-02. In Ogburn-Matthews, the plaintiff had standing where she alleged an injury to her use and enjoyment of a wetland adjacent to her home, even though the wetland was owned by a private developer. 332 S.C. at 565. Again, in this case, the disputed 4.62 acre parcel is owned by KICA as Common Property and subject to the KICA Covenants, thus KPOG and Inlet Cove have some property interest at stake – specifically, easement rights. The master explicitly recognizes these easement rights, which are sufficient to confer standing. (R. p. 53). Such rights are further bolstered by KPOG and Inlet Cove members' particularized interests in the subject property for aesthetic and recreational purposes.

Here, however, the master fails to cite to any of the above-described standards, fails to provide any analysis, and fails to cite to any legal authority whatsoever in support of his conclusion that KPOG and Inlet Cove lack standing. (R. p. 53). Instead, the master simply states that KPOG and Inlet Cove have not asserted "any discrete claims that are separately derived from their membership in KICA" – a consideration for the court's intervention analysis, not its standing analysis. (R. p. 53). The master erred as a matter of law in failing to apply principles of standing to a ruling on standing, instead applying principles of intervention.

Intervention as of right is granted "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that

interest, unless the applicant's interest is adequately represented by existing parties." Rule 24(a)(2), SCRCP.[6] A court may also grant permissive intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b)(2), SCRCP.[7] Central to the court's intervention inquiry, therefore, is whether proposed intervenor holds a discernible interest related to the subject in dispute requiring their participation in order to ensure that interest is adequately represented. Depending on the nature of the claimed interests involved, it is possible to envision some overlap in the court's analysis of an interest sufficient to justify intervention with its injury-in-fact inquiry for standing purposes; however, the tests are not interchangeable.

A party seeking to intervene must set forth an interest and the intervention inquiry focuses on whether that interest is sufficiently distinct or if it is adequately represented by the existing parties. As discussed above, our courts have found aesthetic and recreational interests in the use and enjoyment of property sufficient to confer standing, as well as easement holders with standing to pursue actions related to those rights. Aesthetic and recreational interests in the use and enjoyment of the disputed 4.62 acre parcel formed the basis for KPOG and Inlet Cove's intervention in this case, as well as a basis for their standing. That fact, in addition to their easement rights, formed the basis for the master to look to case law discussing aesthetic and recreational interests in deciding whether to grant

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Rule 24(a)(1) also grants intervention as of right when an unconditional right to intervene is conferred by statute; however, such circumstances are inapplicable here.

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Rule 24(b)(1) also provides for permissive intervention when a conditional right to intervene is conferred by statute; however, such circumstances are inapplicable here.

intervention, despite the fact that those cases stood more directly for standing principles. (R. pp. 4-5, 7-8).

Indeed, as the master found, it is KPOG and Inlet Cove's particularized aesthetic and recreational interests in the 4.62 acres, and Inlet Cove's close proximity to that property, that distinguished them from KICA who is obligated to represent the general interests of its membership as a whole, which are not necessarily aligned with those of KPOG and Inlet Cove. (R. pp. 5-6, 7-9); see In re Sierra Club, 945 F.2d at 779-80 (although would-be intervenor and government entity share objectives, entity not adequate representative due to obligation to represent interests of general public including those with conflicting views); see also Town of Kingstree v. Chapman, 405 S.C. 282, 747 S.E.2d 494 (Ct.App.2013) (finding owners of subdivided lots held private easement rights distinct from those of public). This inquiry into whether KPOG and Inlet Cove's interests were sufficiently distinct or adequately represented was the correct standard for purposes of the master's ruling on intervention.

Given the nature of the particular interests involved in this case, the Order Granting Intervention provides some preliminary determinations regarding KPOG and Inlet Cove's standing, which contributed to the master's decision to grant intervention and were sufficient for standing purposes at that time. (R. pp. 6-9). Specifically, the master found "Inlet Cove and KPOG hold aesthetic and recreational interests in viewing, using and enjoying the 4.62 acres and surrounding wildlife in its natural state" and that our courts recognize such interests in providing a basis for standing. (R. p. 8). Moreover, the master recognized KPOG and Inlet Cove have property interests at stake in the form of easement rights, which certainly confer standing. (R. pp. 7-8).

The preliminary determinations of KPOG and Inlet Cove's standing touched upon in the Order Granting Intervention were based on pre-trial allegations that were then bolstered by the evidence and testimony presented by KPOG and Inlet Cove.

Wendy Kulick testified on behalf of KPOG that she was familiar with the 4.62 acre parcel and often walks along that area of the beach; that the 4.62 acre parcel is special in that it remains one of the few pristine areas left on Kiawah Island and a reminder of what attracted her to move there; that she currently derives aesthetic enjoyment from use of the property in its natural state; and that her ability to use, access, and enjoy the property would be impacted if it were no longer held as Common Property. (R. p. 1308, line 3–p. 1311, line 9) (R. p. 1313, line 13–p. 1314, line 8) (R. p. 1322, line 21–p. 1323, line 11).

Dr. Greg VanDerwerker also testified as a KPOG member and provided testimony related to the recreational activities he enjoys in and around the 4.62 acre parcel; that he regularly uses the 4.62 acres for beach access; that he derives aesthetic enjoyment from the property, which exhibits the unique beach landscape supporting maritime forest and various flora and wildlife that drew him to move to Kiawah Island; and that his interests in the use and enjoyment of the 4.62 acres would be impacted if it were no longer Common Property. (R. p. 1353, line 6–p. 1355, line 14) (R. p. 1356, line 18–p. 1358, line 19).

Peter Mugglestone testified as a member of Inlet Cove that he regularly uses and enjoys the 4.62 acre parcel in conjunction with his morning runs along the beach, afternoon walks out to Captain Sams Spit, and general use of the access boardwalk from Beachwalker Park that crosses the property; that he derives benefits from the 4.62 acre parcel by using it for recreational purposes as well as enjoying it for aesthetic purposes such as scenic and

wildlife observation; and that his use and enjoyment of the property for such recreational and aesthetic purposes would be adversely affected if the property were no longer Common Property. (R. p. 1329, line 2–p. 1332, line 24) (R. p. 1349, lines 12-22).

This evidence and testimony directly elaborated upon and substantiated the allegations of KPOG and Inlet Cove members' aesthetic and recreational interests in use and enjoyment of the subject 4.62 acre parcel. (R. pp. 287-91, 618-24, 713-15). Accordingly, KPOG and Inlet Cove have sufficiently established standing.

Notably absent from the masters's standing ruling is any reference to or discussion of the evidence actually presented by KPOG and Inlet Cove, which the master discussed and relied upon in his Final Order. (R. pp. 53, 14, 23-28). Again, asserting a distinct interest from their membership in KICA is not the correct legal standard under which KPOG and Inlet Cove must establish standing. Rather, they must allege their members will suffer a concrete, individualized injury from the challenged activity, which KPOG and Inlet Cove demonstrated through members' testimony that they currently use and enjoy the disputed 4.62 acre parcel and surrounding area for recreational and aesthetic purposes and that those interests will be adversely impacted if the 4.62 acres is no longer kept in its natural state as Common Property. More importantly, the Order on Motion to Alter or Amend explicitly recognizes KPOG and Inlet Cove's interests in the form of easement rights – interests which are sufficient to meet the injury-in-fact prong of standing – while at the same time dismissing those interests with no basis or analysis as insufficient for standing purposes. (R. p. 53).

The fact that KPOG and Inlet Cove members are also KICA members and share easement rights in Common Property under the KICA Covenants does not diminish the

existence of those property interests, nor disturb the existence of legally cognizable aesthetic and recreational interests testified to by KPOG and Inlet Cove members. Additionally, the master erred in determining KICA "has the sole right and authority to prosecute or defend rights which arise under the KICA Declaration" (R. p. 53), for the KICA Covenants expressly provide that they "shall inure to the benefit of and be enforceable by" members who own property subject thereto. (R. p. 2228). The interests KPOG and Inlet Cove members testified to derive from their core values in preservation of the natural resources, character, and beauty of Kiawah Island and their use and enjoyment in Common Properties such as the 4.62 acre parcel for aesthetic and recreational purposes, which form part of the basis for their memberships in KPOG and Inlet Cove.

Furthermore, despite the master's statement that its ruling on KPOG and Inlet Cove's standing was based on a showing by KRA and KICA, neither KRA nor KICA offered evidence or argument to directly refute the testimony of KPOG and Inlet Cove in establishing standing.

Therefore, for all of the reasons above, the master's ruling that KPOG and Inlet Cove should be dismissed for lack of standing is erroneous and should be reversed.

B. The master's ruling on KPOG and Inlet Cove's standing is directly contradictory to his prior rulings

The master previously issued clear, logical, and thorough findings and conclusions on KPOG and Inlet Cove's interests in this case. (R. pp. 3-10). The master recognized in plain terms that KPOG and Inlet Cove's interests were two-fold: "First, as members of KICA, they share easement rights in property held as Common Property under KICA's

Covenants. Second, Inlet Cove and KPOG hold aesthetic and recreational interests in viewing, using and enjoying the 4.62 acres and surrounding wildlife in its natural state." (R. pp. 7-8).

Even more importantly, the master clearly distinguished between those interests in determining that the basis upon which KPOG and Inlet Cove sought to intervene was their particular aesthetic and recreational interests in using and enjoying the disputed property in its natural state, rather than their general interests as KICA members even though such membership conferred enforceable easement rights upon them as previously discussed. (R. pp. 7-8). "Inlet Cove and KPOG **assert distinct interests arising from their property rights** in their commitment to the preservation of aesthetic and recreational values in the natural environment for the benefit of Kiawah residents and homeowners . . . . [T]heir members' quality of life and aesthetic and recreational use and enjoyment of the 4.62 acres will be directly and adversely impacted by the outcome of this litigation." (R. p. 7) (emphasis added).

As a result, the master found KPOG and Inlet Cove met their burden in establishing a protected interest that will be impaired without their participation in the case. (R. p. 8). Further, the master determined that KPOG and Inlet Cove's interests in protecting the disputed 4.62 acre parcel in its natural state for aesthetic and recreation use and enjoyment would not be adequately represented by an existing party and that KPOG and Inlet Cove would present separate, distinct arguments since their position on the intent of the parties and alleged mistake regarding the 4.62 acre parcel differed from both KICA's and KRA's. (R. pp. 8-9). The master's basis for granting intervention was, in part, that KICA's position is

that it had no intent while KPOG and Inlet Cove's position is that KICA did have an intent. Therefore, the master concluded KPOG and Inlet Cove met the tests for intervention under Rule 24, SCRCP. (R. pp. 9-10).

KPOG and Inlet Cove's right to intervention was fully fleshed out in the Order Granting Intervention. The testimony and evidence presented served to further support the basis for intervention. In its Final Order, the master acknowledged that it "granted KPOG and Inlet Cove leave to intervene on the basis of their representations that they would present evidence as to the parties' intent to convey and receive the [4.62 acre parcel] as Common Property." (R. p. 14). Indeed, the master found KPOG and Inlet Cove "presented evidence pertaining to KICA's intent, with respect to the inclusion of the [4.62 acre parcel] in the Beachfront Deed, by presenting evidence of the developable status of the subject property, during the relevant 1994 time frame, as the property was subject to the S.C. Beachfront Management Act at the time of the 1994 Development Agreement" and took over four of the following pages to discuss all of that evidence. (R. pp. 23-28). Finally, the master denied KRA's motion seeking relief from the Order Granting Intervention, upholding that order in substance and effect. (R. p. 12).

Yet in its Order on Motion to Alter or Amend, the master arrives at an entirely opposite determination without any legal basis or analysis and issues a ruling that directly conflicts with his prior holdings, finding that KPOG and Inlet Cove should be dismissed for lack of standing because they have not asserted interests distinct from their easement rights as members of KICA. (R. p. 53). In addition to utilizing an erroneous legal standard for standing, as discussed above, this ruling by the master is patently inconsistent with his

rulings in the Order Granting Intervention, Order on Motion for Relief, and Final Order. Previously, the master found in plain terms that KPOG and Inlet Cove assert distinct interests that are distinguishable from their interests as KICA members:

> Inlet Cove and KPOG **assert distinct interests** arising from their property rights in their commitment to the preservation of aesthetic and recreational values in the natural environment . . . . Here, Inlet Cove and KPOG's interests are two-fold. ***First*, as members of KICA, they share easement rights** in property held as Common Property under KICA's Covenants. ***Second***, Inlet Cove and KPOG **hold aesthetic and recreational interests in viewing, using and enjoying the 4.62 acres and surrounding wildlife in its natural state.**

(R. pp. 7-8) (emphases added).

Nothing has changed factually or legally warranting a departure from this ruling in the Order Granting Intervention, which sets forth interests sufficient for standing. Indeed, the master expressly denied KRA's request to revisit the Order Granting Intervention. (R. p. 12).

Further, the master clearly recognized three different positions between KPOG and Inlet Cove, KICA, and KRA in this case: "this Court perceives **three separate and distinct positions** with regard to the 4.62 acre parcel of property that is the subject of this action." (R. p. 10) (emphasis added). KPOG and Inlet Cove were also granted intervention based on their representations that they would present evidence relevant to the master's resolution of the dispute over the 4.62 acre parcel, and they did in fact present such evidence (R. pp. 9-10, 14, 23-28).

The Order Granting Intervention, as well as the findings contained therein, finally determined substantial rights of KPOG and Inlet Cove and has not been appealed, thus it is the law of the case. Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C.

422, 431, 699 S.E.2d 687, 691 (2010) ("An unappealed ruling is the law of the case and requires affirmance."); Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co., 411 S.C. 506, 524, 769 S.E.2d 543, 463 (Ct.App.2015) (citing Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right.")).

Noticeably missing from the master's ruling on KPOG and Inlet Cove's standing is some basis in fact or law to support his determination and the sudden and substantial departure from his prior holdings that it represents. Finally, as a practical and equitable matter, dismissal of KPOG and Inlet Cove from this case would be improper. KPOG and Inlet Cove's participation in this matter began shortly after the case was first initiated and they have been involved in essentially every stage thus far, including presenting significant evidence and testimony at trial affecting the ultimate disposition of the case.

For all of these reasons, the master's ruling on KPOG and Inlet Cove's standing should be overturned. KPOG and Inlet Cove ask that the remainder of the master's Order on Motion to Alter or Amend the Final Order be affirmed.

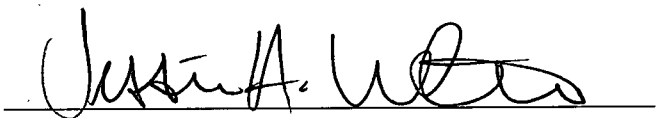
CONCLUSION

KPOG and Inlet Cove have legally cognizable interests in this case that have been consistently recognized by the master. As members of KICA, KPOG and Inlet Cove hold enforceable easement rights in Common Properties such as the 4.62 acres under the KICA Covenants. Further, KPOG and Inlet Cove have particularized aesthetic and recreational interests in the use and enjoyment of 4.62 acres and surrounding wildlife in its natural state. Yet in clear contravention of established legal principles governing intervention and

standing, as well as his previous rulings, the master erroneously ruled that KPOG and Inlet Cove should be dismissed for lack of standing.

For the foregoing errors of law, the master's ruling dismissing KPOG and Inlet Cove in the Order on Motion to Alter or Amend the Final Order should be reversed, with the remainder of the order affirmed.

Respectfully submitted,



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The undersigned does hereby certify that this Final Brief complies with Rule 211 of SCACR.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

RECEIVED
DEC 16 2015
SC Court of Appeals

Appellate Case No. 2015-001146

Kiawah Resort Associates, L.P., a Delaware Limited Partnership, and Kiawah Development Partners II, Inc.,

Appellant/Respondents,

vs.

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.,

Respondent/Appellants.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Final Brief, Final Response Brief, and Final Reply Brief of Respondent/Appellants on counsel for the parties by placing copies of same in the U.S. Mail addressed to:

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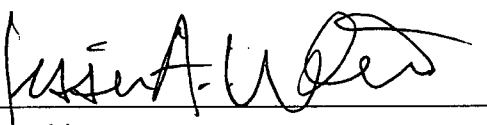

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