

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Case No. 2011-CP-07-2994  
Appellate Case No.: 2016-001789

**RECEIVED**

OCT 20 2016

SC Court of Appeals

The Edgewater on Broad Creek  
Owners Association, Inc. .... Respondent,

v.

Ephesian Ventures, LLC ..... Appellant.

**MOTION FOR LEAVE  
TO FILE A REPLY OUT OF TIME**

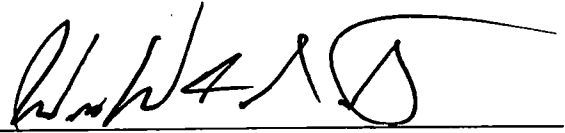
1. Appellant served and filed by mail its return to Respondent's motion to dismiss on October 5, 2016.

2. Respondent's undersigned counsel is a resident of Beaufort County and was subject to the evacuation of Beaufort County pursuant to the order of the Governor effective October 5, 2016.

3. U.S. Mail service for Beaufort County was disrupted due to Hurricane Matthew.

WHEREFORE, Respondent respectfully requests that the Court grant Respondent leave to file a Reply, being submitted concurrently herewith, out of time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. Ward Borden', written over a horizontal line.

October 17, 2016

F. Ward Borden, S.C. Bar # 10117  
Wm. Weston J. Newton, S.C. Bar # 66502  
JONES, SIMPSON & NEWTON, P.A.  
Post Office Box 1938  
Bluffton, South Carolina 29910  
(843) 706-6111

Attorney for the Respondent

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**REPLY TO APPELLANT'S RETURN  
TO RESPONDENT'S MOTION TO DISMISS**

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The Master in Equity e-mailed notice of the entry of the order in question to Mr. Cooke and to Mr. Spitz, two of the three attorneys for Appellant, but not to Mr. Barfield. The Master's e-mail went not only to Mr. Cooke but to two others apparently associated with him at Barnwell Whaley<sup>1</sup> as well as to co-counsel Spitz.

In its return to the motion to dismiss, the Appellant states that Mr. Cooke does not "remain [] actively involved as counsel ..." and that Mr. Barfield is "lead counsel". [Return, pp. 2 & 1'.] Mr. Cooke participated in the argument of the summary judgment motion which led to the main order under appeal. He did not attend argument of the Rule

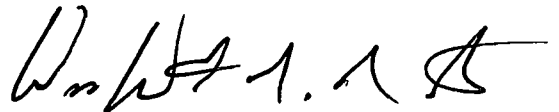
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<sup>1</sup> These were: "Dawes Cooke ([mmason@barnwell-whaley.com](mailto:mmason@barnwell-whaley.com)); Karen Jessee for M. Dawes Cooke Jr. ([kjessee@barnwell-whaley.com](mailto:kjessee@barnwell-whaley.com))".

59 motion, which requires and often receives no oral argument in any case. The Master heard argument as a courtesy to counsel and their client. Mr. Cooke is listed as counsel for his client on the Beaufort County Clerk of Court's Public Index. [Exhibit 1, attached.] Mr. Cooke's name is first on virtually every pleading filed by his client in this case, including the Appellant's Rule 59 motion return to the motion to dismiss.

Written notice to any one of several attorneys of entry of an order is notice to the party represented and begins the jurisdictional time limit for service of a notice of appeal by the party represented.

Respectfully submitted,



October 17, 2016

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F. Ward Borden, S.C. Bar # 10117  
Wm. Weston J. Newton, S.C. Bar # 66502  
JONES, SIMPSON & NEWTON, P.A.  
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Attorney for the Respondent



## Beaufort County Fourteenth Judicial Circuit Public Index



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[SC.GOV Home Page](#)

**Switch View**

### Edgewater On Broad Creek Owners Association, Inc , plaintiff, et al VS Ephesian Ventures, Llc

Case Number:	2011CP0702994	Court Agency:	Beaufort County Common Pleas	Filed Date:	07/19/2011
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Dukes, Marvin H III		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

[Case Parties](#)
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[Tax Map Information](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Borden, F. Ward	7 Plantation Park Dr., Suite 3 Bluffton SC 29910				Plaintiff Attorney		12/18/2015
<input checked="" type="checkbox"/> Cooke, M. Dawes Jr.	PO Drawer H Charleston SC 294020197				Defendant Attorney		01/14/2013
<input checked="" type="checkbox"/> Council Of Co-Owners Of The Edgewater On Broad Creek Horizon (Inactive)					Plaintiff		05/04/2012
<input checked="" type="checkbox"/> Edgewater On Broad Creek Owners Association, Inc					Plaintiff		07/27/2015
<input checked="" type="checkbox"/> Ephesian Ventures, Llc					Defendant		03/08/2016
<input checked="" type="checkbox"/> Mogil, Michael W.	2 Corpus Christie Place Ste. 303 Hilton Head Island SC 29928				Plaintiff Attorney		08/19/2014
<input checked="" type="checkbox"/> Spitz, Stephen A.	151 Meeting Street Suite 350 Charleston SC 29401				Defendant Attorney		07/15/2016

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**PROOF OF SERVICE**

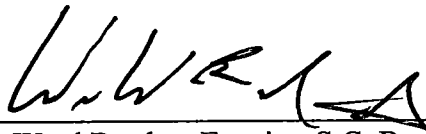
The undersigned hereby certifies that on the date indicated below, he served counsel for the Appellant with a copy of the *Motion for Leave to File a Reply Out of Time and Reply to Appellant's Return to Respondent's Motion to Dismiss* by mailing copies of the same by United states Mail with first class postage prepaid to the following addresses:

K. Michael Barfield, Esquire  
M. Dawes Cooke, Jr., Esquire  
D. Summers Clarke, II, Esquire  
BARNWELL, WHALEY, PATTERSON & HELMS, LLC  
P.O. Drawer H  
Charleston, SC 29402

Stephen A. Spitz, Esquire  
STEVENS & LEE  
151 Meeting Street, Suite 350  
Charleston, SC 29401

Michael W. Mogil, Esquire  
LAW OFFICES OF MICHAEL W. MOGIL, P.A.  
2 Corpus Christie Place, Suite 303  
Hilton Head Island, SC 29928

October 17, 2016  
Bluffton, South Carolina

  
F. Ward Borden, Esquire S.C. Bar # 10117  
Wm. Weston J. Newton, Esquire S.C. Bar # 66502  
JONES, SIMPSON & NEWTON, P.A.  
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LAW OFFICES

JONES, SIMPSON & NEWTON, P.A.

WILLIAM W. JONES, JR.  
MARK S. SIMPSON  
WM. WESTON JONES NEWTON

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SAMUEL L. KIRKLAND (SC & OH)  
F. WARD BORDEN (SC, VA & DC)  
DEAN S. HASKELL (SC & CT)  
KATHRYN A. SNELGROVE  
DAVID P. GEIS (OF COUNSEL) (SC & NY)

THIS CORRESPONDENCE ORIGINATED AT THE BLUFFTON OFFICE

E-mail: [wborden@jsplaw.net](mailto:wborden@jsplaw.net)

October 17, 2016

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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SC Court of Appeals

Re: The Edgewater on Broad Creek Owners Association, Inc. v. Ephesian Ventures, LLC,  
Case Tracking No.: 2016-001789

Dear Ms. Kitchings:

I am writing on behalf of the Respondent in the above-referenced matter, The Edgewater on Broad Creek Owners Association, Inc. Please find enclosed an original and seven copies of Respondent's Motion for Leave to File a Reply Out of Time, it's Reply to Appellant's Return to Respondent's Motion to Dismiss, and of a Proof of Service, plus a check for \$25.00 payable to the Clerk, S.C. Court of Appeals for filing this motion, and a self-addressed envelope with postage thereon to be used to return to us one file-stamped copy of Respondent's Motion and Proof of Service.

If there are any questions, please contact me. In advance, thank you for your assistance.

Respectfully,

JONES, SIMPSON & NEWTON, P.A.

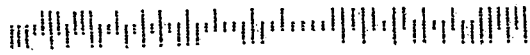


Wm. Weston J. Newton

Enclosures

cc: M. Dawes Cooke, Esq., Michael Barfield, Esq.  
and D. Summers Clarke, Esq. (w/encl.)  
Stephen A. Spitz, Esq. (w/encl.)  
Michael W. Mogil, Esq. (w/encl.)

78  
JONES, SIM  
P.O. Box 1938  
Bluffton, SC 29910



Hasler EIP  
10/17/2016  
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The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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