

The Supreme Court of South Carolina

Kelaher, Connell & Connor

04/27/2012

RECEIPT #64009

Case No: 2011-191609
Case Short Title: City of N.Myrtle Beach v. East Cherry
Event: Rehearing - Petition for Rehearing
Fee Type: Motion Fee
Amount: \$25.00
Payment Type: Check
Reference No: 35418
Check/Money Order Date: 04/17/2012
Comments:

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April 26, 2012

The Honorable Daniel E. Shearouse
The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RE: City of North Myrtle Beach vs. East Cherry Grove Realty Co., LLC, et. al.
Case tracking # 2011191609

Dear Mr. Shearouse:

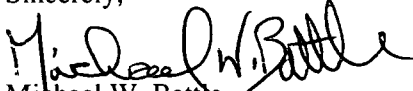
I have enclosed for filing the original and six (6) copies of Respondent City of North Myrtle Beach's Response to Appellant's Petition for Rehearing together with the Proof of Service.

By copy of this letter to all counsel involved in this Appeal, I am serving them with a copy of the Response to Appellant's Petition for Rehearing.

Please return a "clocked" copy of the Proof of Service. I have enclosed an extra copy of the Proof of Service, as well as a self-addressed, stamped envelope for your convenience.

I appreciate your assistance in this matter.

Sincerely,


Michael W. Battle

Enclosures: stated

C Gene Connell, Jr.
J. Emory Smith
Chris Noury

RECEIVED

APR 30 2012

S.C. SUPREME COURT



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

APR 26 2012

S.C. Supreme Court

April 26, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

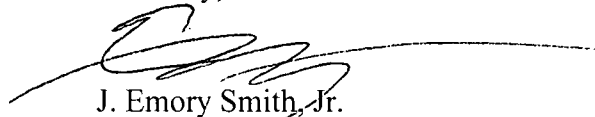
Re: City of North Myrtle Beach v. E. Cherry Grove Realty Co. and State
09-CP-26-5782

Dear Mr. Shearouse:

Enclosed for filing with your Office are the original and six copies of the Return of the State to the Petition for Rehearing together with a certificate of service.

Thank you for your assistance.

Sincerely,



J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc: Michael W. Battle, Esquire
Gene M. Connell, Esquire

KELAHER, CONNELL & CONNOR, P.C.

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GENE M. CONNELL, JR.
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* OF COUNSEL

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238-5648
FAX: 238-5050

April 24, 2012

RECEIVED

APR 25 2012

VIA FEDERAL EXPRESS

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

S.C. Supreme Court

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

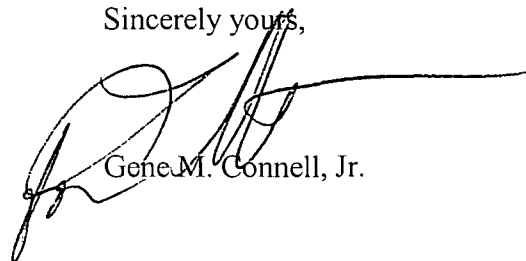
Dear Mr. Shearouse:

Enclosed please find an original and seven (7) copies of Appellants' **Petition for Rehearing, Memorandum of Law in Support of Petition for Rehearing and Proof of Service** of same in the above-captioned matter. I enclose our check for \$25.00 for the filing fee. Please return a filed copy to this office in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated document on Respondents through counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

City of North Myrtle Beach, Respondent,

v.

East Cherry Grove Realty Co.,
LLC, The State of South
Carolina, and John Doe, Defendants,

Of whom East Cherry Grove
Realty Co., LLC is the Appellant,

and The State of South
Carolina is Respondent.

Appeal From Horry County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27113
Heard March 8, 2012 – Filed April 11, 2012

AFFIRMED

Gene M. Connell, Jr., of Kelaher, Connell & Connor, of Surfside
Beach, for Appellant.

Attorney General Alan Wilson and Assistant Deputy Attorney
General J. Emory Smith, Jr., of Columbia, and Michael W. Battle, of
Battle, Vaught & Howe, of Conway, for Respondents.

JUSTICE PLEICONES: Appellant East Cherry Grove Realty Co., LLC, appeals from a jury verdict finding that the State of South Carolina holds title to disputed canals in North Myrtle Beach. The question was submitted to the jury on three theories: that two quitclaim deeds established title in the canals; that the canals had been dedicated to the public; and that the State of South Carolina holds title to the canals in trust for the public. The jury returned a verdict for the State on all three theories. Appellant argues that the trial court erred when it denied Appellant's motions for directed verdict on each theory. We find that the question of ownership under the quitclaim deeds was properly submitted to the jury and therefore affirm.¹

FACTS

In 1961, the State of South Carolina (State) filed suit against the predecessors in interest of East Cherry Grove Realty, LLC (collectively, East Cherry Grove), seeking to establish its title to all tidal lands in the East Cherry Grove area of North Myrtle Beach. In 1963, a consent order stipulated that certain property was not a subject of the suit and exempt from a temporary injunction that prevented East Cherry Grove from selling any property below the mean high-water mark.² The order provided in relevant part that

Since this action was filed[,] the title to certain property not intended by the [State] to be included in this suit, has been questioned In order that the title to this property (that above the unquestioned mean high water mark) could be quieted a survey was made

¹ Under the two-issue rule, we need not reach the questions whether the other two theories were properly submitted to the jury. Smoak v. Libherr-America, Inc., 281 S.C. 420, 422-23, 315 S.E.2d 116, 118 (1984).

² The land that was released from the temporary injunction is shown on the related plat as the area between the "Estimated Line of Demarcation Between the Upland and Marshland as of 1948-49" and the Atlantic Ocean.

Ordered[,] that all the land lying between said . . .
“estimated line of Demarcation between upland and marsh land” .
. . . and the Atlantic Ocean is hereby released and is declared not
to be involved in nor within the scope of the above entitled action
as it is and was above the mean high water mark of the adjacent
tidal water prior to any alleged artificial changing of the level of
the land or of the waterway.

After a bench trial, the trial judge ruled in favor of East Cherry Grove. However, in 1969, while the case was on appeal to this Court, the parties negotiated a settlement. As part of the settlement, the parties exchanged quitclaim deeds. These deeds defined an “agreed-on mean high water mark” by metes and bounds, which appeared as a bold line enclosing an area of marshlands on the related plat. The agreed mean high-water mark referred to in these deeds is not coterminous with the “Estimated Line of Demarcation” used in the 1963 order. The deeds quitclaimed all of the land “below” that mark, i.e., the land within the bold line (State’s Land), to the State and all of the land “above” that mark, i.e., the land between the marshlands and the oceanfront (East Cherry Grove’s Land), to East Cherry Grove. The deed from East Cherry Grove to the State contains additional language as follows:

That all areas lying below the agreed mean high water mark on Northeast Canal, Nixon Canal, proposed Nixon Canal Extension, Main Channel, Nye Cut and all other existing canals are quit-claimed to the State of South Carolina, except that: It is understood and agreed that Nye Cut will remain open until Main Channel (“proposed relocation of Creek”) between 25th Avenue and Nixon Canal has been cut, at which time C. D. Nixon, et al, will have the right to build a bridge at either 22nd Avenue or 23rd Avenue across Main Channel, and close Nye Cut, all as shown on the said plat; and title to land proposed to be closed will remain in C. D. Nixon, et al.

That all areas that become areas lying below the mean high water mark as the result of excavation above the agreed mean high water mark are quit-claimed to the State of South Carolina.

The quitclaim deeds were approved and made part of a 1969 court order ending the original litigation. The 1969 order also stated that it did not affect the 1963 order.

The parties agree that the canals have been open to public use at all times since their construction.

Respondent City of North Myrtle Beach (City) brought the present lawsuit against East Cherry Grove, LLC (Appellant), and the State to settle title to the canal bottoms located in the property deeded to East Cherry Grove in the 1969 settlement. The City asserted that the State held title to the canal bottoms, a position in which the State concurred. (Hereinafter the City and State are jointly designated Respondents.) At the conclusion of a jury trial, the trial court denied Appellant's motions for a directed verdict. The jury returned a special verdict with separate findings that the State has title in the canals based on the quitclaim deeds; that East Cherry Grove had dedicated the canals to the public; and that the State holds title to the canals in trust for the public. This appeal followed.

ISSUES

1. Did the trial court err when it failed to find the 1963 order conclusive on the issue of ownership and found the quitclaim deeds ambiguous?
2. Did the trial court err when it failed to find that the State is estopped to deny the 1963 order?

STANDARD OF REVIEW

The nature of the underlying issue determines the nature of a suit for declaratory judgment. Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). The determination of title to real property is an action at law. Wigfall v. Fobbs, 295 S.C. 59, 367 S.E.2d 156 (1988). In reviewing an action at law tried to a jury, the Court's jurisdiction extends only to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence that reasonably supports the jury's findings. Townes Associates, Ltd., v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). Questions of

law are decided with no particular deference to the trial court. Wiegand v. U.S. Automobile Association, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

DISCUSSION

Appellant argues that the trial court erroneously refused to grant it a directed verdict because title to the canals was unambiguously established in East Cherry Grove in the court-approved settlement of prior litigation. We disagree.

On the first theory submitted to it, the jury found that the State owns the canals under the quitclaim deeds. Appellant argues that the trial court erred when it denied Appellant's motion for a directed verdict and submitted this question to the jury. Appellant argues in the alternative that the trial court should have found that the 1963 order was conclusive on the issue of ownership; that the quitclaim deeds unambiguously quitclaimed all interest in the canals to East Cherry Grove; and that the State is estopped by the 1963 order from claiming ownership of the canals. We find no error.

1. Did the trial court err when it failed to find the 1963 order conclusive on the issue of ownership and found the quitclaim deeds ambiguous?

Appellant argues that the 1963 order is conclusive on the issue of ownership under the quitclaim deeds because it effectively eliminates contradictory language from the quitclaim deeds, rendering them unambiguous, or, in the alternative, that the language of the quitclaim deeds unambiguously conveys all interest in the canals to East Cherry Grove. We disagree.

“As a general rule, judgments are to be construed like other written instruments. The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety. If the language employed is plain and unambiguous, there is no room for construction or interpretation, and the effect thereof must be declared in the light of the literal meaning of the language used.” Weil v.

Weil, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct. App. 1989) (citations and internal quotation marks omitted).

In this case, the original suit was ultimately settled by the 1969 order, which incorporated the parties' quitclaim deeds and stated that it did not affect the 1963 order. Thus, the 1963 order and quitclaim deeds must be interpreted as parts of a single, court-approved settlement agreement.

The 1963 consent order does contain language arguably implying that most property in the area of East Cherry Grove's Land as established in the deeds is titled in East Cherry Grove. Appellant construes this language as both the State's admission that it had no claim to that land in 1963 and the court's ratification in 1969 that none of East Cherry Grove's Land would be quitclaimed to the State by virtue of the settlement agreement. We disagree.

Viewed in isolation, the 1969 reference to the 1963 order is susceptible of this interpretation. As explained below, however, construing all of the documents together we find the settlement at least ambiguous as to ownership of the canal bottoms. First, this argument ignores the fact that the land was divided by one line, the Estimated Line of Demarcation, in the 1963 order and by a different line, the agreed-on mean high water mark, in the deeds. Second, Appellant's argument ignores the fact that when parties settle a lawsuit, either may include property or other concessions not a part of the original suit. In other words, whatever land was involved in the original suit, the settlement was not necessarily limited to that property. The court might have approved East Cherry Grove's quitclaim of any property to the State as consideration to settle the suit without believing such a transfer would conflict with the 1963 order. The court's purpose for stating in the 1969 order that the settlement did not affect the 1963 order could have been nothing more than to avoid any taint on the title to lots sold by East Cherry Grove to third parties between 1963 and 1969.

An examination of the quitclaim deeds bears out such an interpretation. The first paragraph of the quitclaim deed from East Cherry Grove to the State quitclaims all right to "All of that certain area . . . shown on a plat . . . to be below the agreed mean high water mark as delineated on said plat" and proceeds to describe this agreed line by metes and bounds. Had the parties intended the Estimated Line of Demarcation established in the 1963 order to finally settle title, the delineation of an agreed mean high-water mark in the

deeds would have been unnecessary. Moreover, the agreed mean high-water mark replicates the Estimated Line of Demarcation in only a small fraction of its length.

In addition, in a subsequent paragraph the deed quitclaims to the State “all areas lying below the agreed mean high water mark on Northeast Canal, Nixon Canal, proposed Nixon Canal Extension, Main Channel, Nye Cut and all other existing canals” The plat shows that all of the existing and proposed canals were located on East Cherry Grove’s Land.

Further, the quitclaim deed to the State specifically excludes certain items on the plat from its ambit. The plat can be characterized as a rectangle, the top of which (west) is given to the State without reservation and the bottom of which is deeded generally to East Cherry Grove. Within the area deeded generally to East Cherry Grove, however, certain parts, mostly waterways, are singled out for special treatment. First, an area to the left of the lower portion (south), the “Recreational Lake,” is specifically excluded from the deed. Similarly, an area to the right of the lower portion (north), is also excluded. In the center portion of the plat deeded to East Cherry Grove, however, the existing canals “are quit-claimed to the State of South Carolina,” as are any future canals. The only exception to the title in the canals going to the State is found in reference to Nye Cut, where the deed specifically envisions future changes involving the filling of that waterway and the vesting of title in that future highland in East Cherry Grove. While the affirmation of the 1963 order in the 1969 settlement arguably can be read to reaffirm title in East Cherry Grove in the whole of the lower portion of the plat, such a reading renders all of the specific exceptions and exemptions in this quitclaim deed meaningless.

Appellant argues in the alternative that the quitclaim deed’s references to the canals were not to the whole of the canals but to the junctures of the canals with the State’s Land or that this language constituted a promise that East Cherry Grove would not dam the canals. Even if these interpretations are possible, they are not apparent from a straightforward reading of the deed’s language. At a minimum, this language permits the interpretation that East Cherry Grove intended to quitclaim title to the bottoms of these canals to the State.

A later dispute between East Cherry Grove and a resident who had purchased a lot on the Recreational Lake was heard by the same judge, who concluded “That the area comprising Recreational Lake is not now and never was owned by [East Cherry Grove].” This finding is inconsistent with Appellant’s interpretation of the settlement agreement. Rather, it confirms that the 1963 order was not included with the 1969 order for the purpose of affirming that East Cherry Grove had title to all of the area comprising East Cherry Grove’s Land and gives effect to the quitclaim deed’s exclusion of the Recreational Lake from what remained East Cherry Grove’s Land.

We find that the 1963 order and quitclaim deeds, interpreted as parts of the 1969 settlement agreement and court order, do not unambiguously quitclaim all interest in the canals to East Cherry Grove. Thus, the trial court did not err when it refused to rule that the 1963 order conclusively established title to the canals in East Cherry Grove and found the quitclaim deeds ambiguous.

2. Did the trial court err when it failed to find that the State is estopped to deny the 1963 order?

Appellant argues that the trial court erred when it denied Appellant’s motions for nonsuit and directed verdict on the basis that the State is judicially estopped from denying that East Cherry Grove owned all of the area containing the disputed canal bottoms based upon the 1963 order. We disagree.

“Judicial estoppel is an equitable concept that prevents a litigant from asserting position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary.” Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004) (citations omitted).

In this case, the 1963 order fails to demonstrate a definite position taken by the State with regard to canal bottoms located within East Cherry Grove’s Land. Even if it did, principles of judicial estoppel would not apply where a contrary position as to title is premised on intervening documents such as the quitclaim deeds here. Permitting the State to argue that it has title to the canals certainly does not threaten the integrity of the judicial process.

We find that the elements of judicial estoppel are not met, the State is not estopped to assert title to the canal bottoms, and the trial court did not err when it denied Appellant's motions for nonsuit and directed verdict.

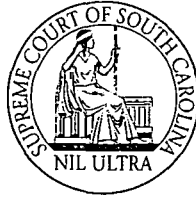
Because the State is not estopped to claim title to the canal bottoms under the 1963 order, the 1963 order does not answer the question of ownership, and the quitclaim deeds were ambiguous, the trial court did not err when it denied Appellant's motion for nonsuit and directed verdict and submitted the question of ownership under the quitclaim deeds to the jury.

Appellant's remaining exceptions are disposed of pursuant to Rule 220(b), SCACR, and the following authorities: North Greenville College v. Sherman Construction Co., Inc., 270 S.C. 553, 557, 243 S.E.2d 441, 442 (1978) (trial court has broad discretion to determine the admissibility of evidence, and its decisions are reversed only when they constitute an abuse of discretion that amounts to an error of law); Rule 403, SCRE; Richardson v. Donald Hawkins Construction, Inc., 381 S.C. 347, 352, 673 S.E.2d 808, 811 (2009) (permitting exclusion of evidence that would mislead or confuse the jury, constitute undue delay or waste of time, or be cumulative); State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 636 (1980) (judge's charge to the jury must correctly state the law, but reversal is not warranted "when considered as a whole, [the charge] adequately cover[s] the applicable law under the facts of the case"); Hardin v. South Carolina Dept. of Transp., 371 S.C. 598, 609 n.4, 641 S.E.2d 437, 443 n.4 (2007) ("Government action can effect no taking unless it has deprived an owner of a property interest.").

CONCLUSION

For the reasons given above, the jury verdict is **AFFIRMED**.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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February 28, 2012

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Assistant Deputy Attorney General J. Emory Smith, Jr.
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P.O. Box 11549
Columbia, SC 29211

Michael W. Battle, Esquire
Battle, Vaught & Howe, PA
P. O. Box 530
Conway, SC 29526

Re: City of N. Myrtle Beach v. East Cherry

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant 15 minutes

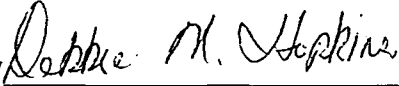
Respondents 15 minutes

Appellant in Reply 5 minutes

This case is scheduled for hearing on Thursday, March 8, 2012 at 10:00 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By 
Administrative Assistant

DES/dmh

The Supreme Court of South Carolina

City of North Myrtle Beach, Respondent,

v.

East Cherry Grove Realty Co.,
LLC, The State of South
Carolina and John Doe, Defendants,

Of whom East Cherry Grove
Realty Co., LLC is the Appellant,

and The State of South
Carolina is Respondent.

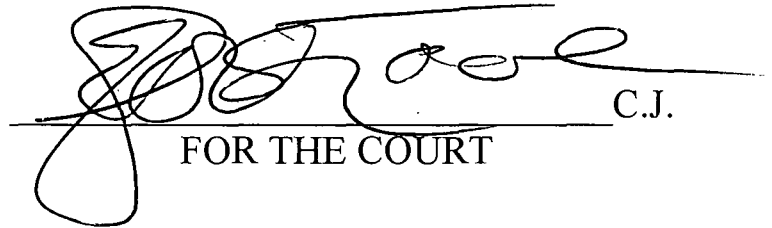
The Honorable William H. Seals, Jr.
Horry County
Trial Court Case No. 2009-CP-26-05782

ORDER

The notice of appeal in this matter was served in April 2011, and the case is currently on the March 2012 Preliminary List for oral argument. Respondent City of North Myrtle Beach now moves to expedite this appeal, and the other parties do not oppose the motion.

The motion is granted to the extent that oral arguments in this matter shall be held on March 8, 2012.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

February 7, 2012

cc: Gene M. Connell, Jr., Esquire
Assistant Deputy Attorney General J. Emory Smith, Jr.
Michael W. Battle, Esquire

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

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* OF COUNSEL

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238-5648

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RECEIVED
February 1, 2012

FEB 03 2012

S.C. SUPREME COURT

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Attn: Debbie Hopkins
Post Office Box 11330
Columbia, SC 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

Dear Debbie:

Pursuant to your request, I am returning filed copies of Final Briefs which were inadvertently returned to me when I hand delivered Records on Appeal and Final Briefs to the Court on Tuesday. I enclose:

- Final Brief of Appellant;
- Appellant's Final Reply Brief (as to Respondent City); and
- Appellant's Final Reply Brief (as to Respondent State).

With best regards, I am

Sincerely yours,

Gene M. Connell, Jr.

Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

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January 23, 2012

The Honorable Daniel E. Shearouse
The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RE: City of North Myrtle Beach vs. East Cherry Grove Realty, et al
Trial Court Case No. 2009-cp-26-5782

Dear Mr. Shearouse:

I have enclosed for filing the original and six (6) copies of a Rule 263(b) Motion for Expedition with attached Memorandum on Behalf of The City of North Myrtle Beach ("City"), a check in the amount of \$25.00, together with our Proof of Service.

By copy of this letter, I am serving counsel of record a copy of this Motion and corresponding Memorandum and enclose a Proof of Service to that effect.

Please return a "clocked" copy of the Proof of Service. I have enclosed and extra copy of the Proof of Service, as well as a self-addressed, stamped envelope for your convenience.

I appreciate your assistance in this matter.

Sincerely,


Michael W. Battle
Battle & Vaught, P.A.

Enclosures: stated

C Gene Connell
J. Emory Smith, Jr.
Chris Noury

RECEIVED

JAN 25 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
The City of North Myrtle Beach,	)	C/A No.09-CP-26-5782
	)	
Petitioner,	)	
	)	
v.	)	ANSWER OF THE STATE OF
	)	SOUTH CAROLINA
Ray Nixon, LLC, Windle Skipper,	)	
individually and as the personal	)	
representative of the Estate of C.D. Nixon,	)	
N.F. Nixon, Jr., John W. Ray,	)	
State of South Carolina, and John Doe,	)	
	)	
Respondents.	)	
_____	)	

The Respondent State of South Carolina, by way of answer to the Complaint herein, alleges as follows:

FOR A FIRST DEFENSE

1. The State denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. As to paragraph 1 of the Complaint, the State admits only that Petitioner has brought this suit for the purposes indicated regarding the referenced property, but the State is without sufficient information to admit or deny whether Petitioner is entitled to relief, and therefore denies that Petitioner is entitled to relief.
3. As to paragraph 2 of the Complaint, the State admits only that the City is a duly incorporated municipality. The State is without sufficient information to admit or deny the remaining allegations of this paragraph.

4. As to paragraph 3, the State craves reference to the statutes, constitutional provisions and case law of the State of South Carolina, and denies any of the allegations in that paragraph that are inconsistent with that authority.

5. The State admits the first sentence of paragraph 4 on information and belief. As to the last sentence of that paragraph, the State admits only that Nixon's heirs may claim an interest in the canals, but the State denies, on information and belief, that Nixon's heirs have a legal interest in the canals at issue. To the extent that any deeds or prior Court orders may specifically address the interests in the canals, the State craves reference to those deeds and orders to the extent that they are consistent with South Carolina law. The State also craves reference to applicable South Carolina law including, but not limited to, the applicable law regarding the State's presumptive ownership of tidelands. The State denies any allegations in this paragraph regarding ownership that are inconsistent with South Carolina law or with any ownership or public trust interest that the State has in the canals at issue.

6. The State admits paragraph 5 on information and belief and craves reference to the deed noted in this paragraph, but the State also alleges that it has presumptive ownership of the tidelands in this State and craves reference to that law to the extent that it may apply to the canals at issue.

7. As to paragraph 6, the State admits only that John Doe has been named in this complaint as alleged, but the State denies, on information and belief, any ownership of John Doe or any other claimant to this property. The State denies any allegations in paragraph 6 regarding ownership that are inconsistent with South Carolina law or the interests of the State in the canals at issue.

8. The State admits paragraph 7 on information and belief but craves reference to the Exhibit A noted therein and denies any allegations inconsistent with that exhibit.

9. As to paragraph 8, the State admits only that the City has determined that it is necessary to dredge the canals and that it has brought this suit for the purpose of determining the rights alleged. The State craves reference to the applicable law for a complete statement of the City's authority.

10. The State admits paragraph 9 on information and belief, but craves reference to any applicable lawsuits.

11. As to paragraph 10, the State craves reference to the referenced deeds for a complete statement of their provisions, and also craves reference to any applicable Court orders.

12. As to Paragraph 11, the State craves reference to the deed noted for a complete statement of its provisions.

13. The State admits Paragraph 12 on information and belief. The State craves reference to the deed and any pertinent Court Orders for a complete statement of their provisions.

14. The State is without sufficient information to admit or deny the allegations of paragraph 13.

15. The State is without sufficient information to admit or deny the allegations of paragraph 14 and therefore denies any such allegations except as follows: the State denies, on information and belief, that the referenced property owners have any interests in the canals; the State denies any allegations in this paragraph regarding ownership that are inconsistent with South Carolina law or the ownership or public trust interest that the State has in the canals at issue; and the

State admits that the public has a right under the Constitution and statutes of South Carolina to make use of navigable waters, including, but not limited to, the canals.

16. Paragraph 15 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answer to the previous allegations and paragraphs of the Complaint and reasserts them.

17. As to paragraph 16, the State admits only that the City is seeking the judgment referenced. The State denies any claim of the Petitioner that is inconsistent with any ownership interest or public trust interest that the State has in the canals.

18. The State admits paragraph 17 on information and belief, but the State craves reference to the quitclaim deed for a complete statement of its provisions, and the State preserves any other legal basis for ownership that it may have, including but not limited to the State's presumptive title to tidelands below mean high water.

19. The State is without sufficient information to admit or deny the allegations of paragraph 18, and therefore denies those allegations, and craves reference to §5-7-30 for a complete statement of its provisions. The State denies any claim of the Petitioner that is inconsistent with any ownership interest or public trust interest that the State has in the canals.

20. Paragraph 19 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

21. The State is without sufficient information to admit or deny the allegations of paragraphs 20 through 23 except as follows: the State denies that it does not have title or other legal interest in the canals; the State denies, on information and belief, that its co-Respondents have a

legal interest in the canals; as to dredging, the State admits, on information and belief, only that Petitioner has the permit documents attached as Exhibit A to the Complaint; the State admits that the public has a right under the Constitution and statutes of South Carolina to make use of navigable waters, including, but not limited to, the canals; and the State denies any claim of the Petitioner that is inconsistent with any ownership interest or public trust interest that the State has in the canals.

22. Paragraph 24 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answer to the previous allegations and paragraphs of the Complaint and reasserts them.

23. The State is without sufficient information and belief to admit or deny paragraphs 25 through 29 except as follows: the State denies, on information and belief, that Petitioner has any prescriptive easement applicable to any ownership interest that the State has in the property at issue; as to dredging, the State admits, on information and belief, only that Petitioner has the permit documents attached as Exhibit A to the Complaint; the State denies any claim of the Petitioner that is inconsistent with any ownership or public trust interest that the State has in the canals; the State admits that the public has a right under the Constitution and statutes of South Carolina to make use of navigable waters, including, but not limited to, the canals.

24. Paragraph 30 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answer to the previous allegations and paragraphs of the Complaint and reasserts them.

25. The State is without sufficient information and belief to admit or deny paragraphs 31 through 35 except as follows: the State admits that the public has a right under the Constitution and statutes of South Carolina to make use of navigable waters, including, but not limited to, the canals;

the State denies any claim of the Petitioner that is inconsistent with any ownership or public trust interest that the State has in the canals.

26. Paragraph 36 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answer to the previous allegations and paragraphs of the Complaint and reasserts them.

27. The State is without sufficient information and belief to admit or deny paragraphs 37 through 40 except as follows: the State admits that the public has a right under the Constitution and statutes of South Carolina to make use of navigable waters, including, but not limited to, the canals; the State admits that tidelands properties are public trust properties of the State; the State is without sufficient information to admit or deny whether the State or the English Crown ever granted the property in question and therefore denies any such allegations; the State denies any claim of the Petitioner that is inconsistent with any ownership or public trust interest that the State has in the canals.

28. Paragraph 41 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answer to the previous allegations and paragraphs of the Complaint and reasserts them.

29. The State is without sufficient information and belief to admit or deny paragraphs 42 and 43 except as follows: the State admits only that the public has a right under the Constitution and statutes of South Carolina to make use of navigable waters, including, but not limited to, the canals; as to dredging, the State admits, on information and belief, only that Petitioner has the permit documents attached as Exhibit A to the Complaint; the State denies any easement or other claim of

the Petitioner that is inconsistent with any ownership or public trust interest that the State has in the canals.

FOR A SECOND DEFENSE

30. As an affirmative defense, the State alleges that it has *prima facie* fee simple title, in public trust, of all lands now or formerly lying below the high water mark of all tidal navigable waters in the State, including any lands involved in this case which now lie or formerly lay below the mean high water mark, unless those lands are properly granted and deeded under State law.

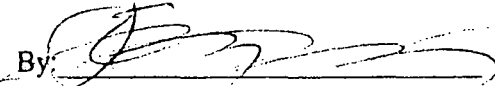
FOR A THIRD DEFENSE

31. At least to the extent that any navigable waters are involved, regardless of the ownership of the subject property, the general public cannot be excluded from the property, because the public has a right under the Constitution and statutes of South Carolina to make use of navigable waters.

WHEREFORE, having fully answered the Complaint herein, the State prays that the Court take action consistent with this Answer and the proof in this case.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General
J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
Email: AGESmith@ag.state.sc.us

By: 

ATTORNEYS FOR THE STATE OF SOUTH CAROLINA

August 12, 2009

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-5782

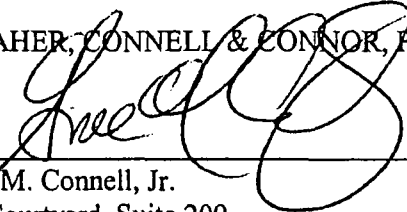
City of North Myrtle Beach,)
)
Plaintiff,)
)
vs.)
)
Ray Nixon, LLC, Windle Skipper,)
individually and as the personal)
representative of the Estate of C.D.)
Nixon, N.F. Nixon, Jr., John W. Ray,)
State of South Carolina and John Doe,)
)
Defendants.)
)

**SUMMONS
(Counterclaim)**

TO: THE PLAINTIFF, CITY OF NORTH MYRTLE BEACH., ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaim on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Counterclaim within the time aforesaid; the Defendant in this action will apply to the Court for the relief demanded in the Counterclaim and judgment by default will be rendered against you for the relief demanded in the Counterclaim.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
**Attorney for Defendants Ray Nixon, LLC,
N.F. Nixon, Jr., John W. Ray, and Windle
Skipper Individually and as PR of the
Estate of C.D. Nixon**

August 21, 2009
Surfside Beach, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-5782**

City of North Myrtle Beach,)
)
Plaintiff,)
)
vs.)
)
Ray Nixon, LLC, Windle Skipper,)
individually and as the personal)
representative of the Estate of C.D.)
Nixon, N.F. Nixon, Jr., John W. Ray,)
State of South Carolina and John Doe,)
)
Defendants.)
_____)

**ANSWER AND
COUNTERCLAIM**

The Defendants, **Ray Nixon, LLC, N.F. Nixon, Jr., John W. Ray and Windle Skipper, Individually and as Personal Representative of the Estate of C.D. Nixon**, answering the Plaintiff's Complaint, would respectfully state as follows:

1. The Defendants admit the allegations of Paragraph 1 of Plaintiff's Complaint.
2. The Defendants admit the allegations of Paragraph 2 which state that the City of North Myrtle Beach is a duly incorporated municipal corporation. The Defendants deny the remaining allegations of Paragraph 2 of Plaintiff's Complaint.
3. The Defendants deny that provision of Paragraph 3 which states that the City has the responsibility for the canals. The Defendants do not have sufficient information and belief to answer the remaining allegations of Paragraph 3 of Plaintiff's Complaint.
4. The Defendants admit that Ray Nixon, LLC is a limited liability corporation and that its principal place of business is in Horry County, South Carolina, that John W. Ray is a citizen and resident of the State of South Carolina, and that N.F. Nixon, Jr. is a citizen and resident of Horry County, South Carolina.

5. The Defendants do not have sufficient information and belief to answer the allegations of Paragraph 5 of Plaintiff's Complaint.

6. The Defendants do not have sufficient information and belief to answer the allegations of Paragraph 6 of Plaintiff's Complaint.

7. The Defendants do not have sufficient information and belief to answer the allegations of Paragraph 7 of Plaintiff's Complaint other than to state that these Defendants who are owners of the property were not given notice of the permit.

8. The Defendants deny the allegations of Paragraph 8 of Plaintiff's Complaint.

9. The Defendants admit the allegations of Paragraph 9 of Plaintiff's Complaint.

10. The Defendants admit so much of Paragraph 10 which indicate that a deed swapping occurred. The remaining allegations of Paragraph 10 are denied.

11. The Defendants deny the allegations of Paragraph 11 of Plaintiff's Complaint.

12. The Defendants deny the allegations of Paragraph 12 of Plaintiff's Complaint.

13. The Defendants deny the allegations of Paragraph 13 of Plaintiff's Complaint.

14. The Defendants deny the allegations of Paragraph 14 of Plaintiff's Complaint other than to state that East Cherry Grove Realty at times sold lots in the Cherry Grove Section of North Myrtle Beach.

15. The Plaintiffs deny the allegations of Paragraph 15 of Plaintiff's Complaint.

16. The Plaintiffs deny the allegations of Paragraph 16 of Plaintiff's Complaint.

17. The Plaintiffs deny the allegations of Paragraph 17 of Plaintiff's Complaint.

18. The Plaintiffs deny the allegations of Paragraph 18 of Plaintiff's Complaint.

19. The Plaintiffs deny the allegations of Paragraph 19 of Plaintiff's Complaint.

20. The Plaintiffs deny the allegations of Paragraph 20 of Plaintiff's Complaint.

21. The Plaintiffs deny the allegations of Paragraph 21 of Plaintiff's Complaint.
22. The Plaintiffs deny the allegations of Paragraph 22 of Plaintiff's Complaint.
23. The Plaintiffs deny the allegations of Paragraph 23 of Plaintiff's Complaint.
24. The Plaintiffs deny the allegations of Paragraph 24 of Plaintiff's Complaint.
25. The Plaintiffs deny the allegations of Paragraph 25 of Plaintiff's Complaint.
26. The Plaintiffs deny the allegations of Paragraph 26 of Plaintiff's Complaint.
27. The Plaintiffs deny the allegations of Paragraph 27 of Plaintiff's Complaint.
28. The Plaintiffs deny the allegations of Paragraph 28 of Plaintiff's Complaint.
29. The Plaintiffs deny the allegations of Paragraph 29 of Plaintiff's Complaint.
30. The Plaintiffs deny the allegations of Paragraph 30 of Plaintiff's Complaint.
31. The Plaintiffs deny the allegations of Paragraph 31 of Plaintiff's Complaint.
32. The Plaintiffs deny the allegations of Paragraph 32 of Plaintiff's Complaint.
33. The Plaintiffs deny the allegations of Paragraph 33 of Plaintiff's Complaint.
34. The Plaintiffs deny the allegations of Paragraph 34 of Plaintiff's Complaint.
35. The Plaintiffs deny the allegations of Paragraph 35 of Plaintiff's Complaint.
36. The Plaintiffs deny the allegations of Paragraph 36 of Plaintiff's Complaint.
37. The Plaintiffs deny the allegations of Paragraph 37 of Plaintiff's Complaint.
38. The Plaintiffs deny the allegations of Paragraph 38 of Plaintiff's Complaint.
39. The Plaintiffs deny the allegations of Paragraph 39 of Plaintiff's Complaint.
40. The Plaintiffs deny the allegations of Paragraph 40 of Plaintiff's Complaint.
41. The Plaintiffs deny the allegations of Paragraph 41 of Plaintiff's Complaint.
42. The Plaintiffs deny the allegations of Paragraph 42 of Plaintiff's Complaint.
43. The Plaintiffs deny the allegations of Paragraph 43 of Plaintiff's Complaint.

FOR A SECOND DEFENSE AND COUNTERCLAIM

44. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

45. That the Defendants are the owners of certain real property located in North Myrtle Beach, South Carolina.

46. That the aforementioned property is described in a Quit Claim Deed dated December 17, 2009 and filed December 22, 1969 (attached hereto as Exhibit "A").

47. That the aforementioned Quit Claim Deed is signed by the Governor of the State of South Carolina at that time, Robert E. McNair.

48. That further, the Defendants, as part of the settlement of a lawsuit, did deed to the State of South Carolina by Quit Claim Deed dated December 12, 1969 and filed December 22, 1969 certain real property (attached hereto as Exhibit "B").

49. That further, the Defendants obtained from the Office of the Attorney General an Opinion on October 31, 1980 (attached hereto as Exhibit "C"), which Opinion provides that the Defendants own the canals in Cherry Grove.

50. That, further, prior to this date, on or about August 1, 1968, the Honorable James B. Morrison, then Judge of the Fifteenth Judicial Circuit, found as a matter of law that East Cherry Grove Realty Company had good and valid title to the beds of all creeks and streams. (This document is attached hereto as Exhibit "D").

51. That further the South Carolina Court of Appeals on or about January 27, 2009 issued an Opinion whereby Defendants' predecessor in interest was found to be the owner of the aforementioned property and that this real property was deeded by Defendants' predecessor back to East Cherry Grove Realty Company. (This document is attached hereto as Exhibit "E").

52. That the South Carolina Department of Health and Environmental Control (DHEC) is a political subdivision of the State and has just authorized the City of North Myrtle Beach to be issued a dredging permit which allows the said City to dredge Defendants' property.

53. That Defendants as owners of the property were not advised of such permit until the South Carolina Administrative Law Court issued such permit the second week of May 2009.

FOR A FIRST CAUSE OF ACTION
(Trespass)

54. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

55. The Plaintiff City of North Myrtle Beach is a landowner and is a municipal corporation and has obtained a permit from DHEC to perform excavation in man-made canals on the land of the Defendants and intends to trespass on Defendants' property.

56. That the proposed work includes performing excavation using hydraulic dredge to remove one hundred thousand cubic yards of material from approximately twenty-four acres of man-made canals on the land of the Defendants.

57. That the Plaintiff City of North Myrtle Beach intends to enter upon the lands of the Defendants to execute this permit and to do this work.

58. That the Plaintiff City of North Myrtle Beach has been informed by the Defendants that it does not have permission to enter upon Defendants' property and that the obtaining of a permit to do so is trespass without permission.

59. That Plaintiff City of North Myrtle Beach has also developed real property upstream from the Defendants' property. Such development has led to the contamination of water flowing from these developed areas onto Defendants' property.

60. That entry upon the property was intentional, reckless and willful without regard to Defendants' property rights and without permission of the Defendants.

61. As a result of the actions, the Defendants' property has been altered and damaged and Plaintiff City will continue to alter Defendants' property unless this court holds Plaintiff City liable for damages for trespass.

62. That Defendants ask for judgment for damages for trespass and for the trespass to obtain the permits. That further, Defendants are informed and believe that it is entitled to an Order requiring the City of North Myrtle Beach to refrain from entry upon its land during the pendency of this suit.

63. That Defendants seek judgment against Plaintiff City of North Myrtle Beach for the cost of trespass and for coming onto Defendants' property without permission pursuant to a permit that Plaintiff has without notice to the Defendants.

FOR A SECOND CAUSE OF ACTION
(Nuisance)

64. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

65. The Plaintiff City of North Myrtle Beach's actions in developing real property upstream from Defendants' property and the contamination of the water flowing from these developed areas onto the Defendants' property are unreasonable, unwarrantable and unlawful uses of the property.

66. That the Plaintiff City of North Myrtle Beach in applying for a permit to dig the Defendants' property is also a nuisance and is violative of law.

67. That the Plaintiff City of North Myrtle Beach's actions in obtaining a permit are an unreasonable interference with the Defendants' use and enjoyment of its own land.

68. As a direct and proximate result of the nuisance created by the Plaintiff City of North Myrtle Beach, the value of the Defendants' property has been diminished as a result of the actual harm.

69. The Defendants have suffered as a direct and proximate result actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Inverse Condemnation)

70. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

71. The Plaintiff City of North Myrtle Beach has now obtained from DHEC a permit to dredge Defendants' property all without Defendants' consent.

72. That this excavation includes digging in canals owned by the Defendants pursuant to a deed held when the State of South Carolina granted such property to the Defendants.

73. The proposed work includes performing excavation using a hydraulic dredge to remove one hundred thousand cubic yards of material from approximately twenty-four acres of man-made canals on the land of the Defendants.

74. The obtaining of the permit from DHEC by Plaintiff City of North Myrtle Beach is an affirmative, positive, aggressive act on the part of the Plaintiff, which is a governmental agency.

75. That these affirmative, positive and aggressive acts means that the Plaintiff City of North Myrtle Beach intends to condemn Defendants' land.

76. That the filing of the application and the approval of the application constitute a taking of Defendants' property for public use with permanence by Plaintiff City of North Myrtle Beach.

77. The Defendants are entitled to recover the value of the land which has been taken by the Plaintiff City of North Myrtle Beach through the dredging process and Defendants ask for damages for inverse condemnation and for attorney's fees.

**FOR A FOURTH CAUSE OF ACTION AND MOTION HEREIN
(Temporary and Permanent Injunction as to Plaintiff City of North Myrtle Beach)**

78. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

79. Despite protests from the Defendants, the Plaintiff City of North Myrtle Beach has obtained a permit to dredge Defendants' property without its consent.

80. The Plaintiff City of North Myrtle Beach seeks to take property of the Defendants without due compensation.

81. The Defendants have no adequate remedy at law and will be irreparably harmed if the Plaintiff City of North Myrtle Beach is not enjoined from entering upon the lands and taking the property of the Defendants herein described.

82. The Plaintiff City of North Myrtle Beach should be enjoined both temporarily and permanently from entering onto the lands of the Defendants during the pendency of this lawsuit and thereafter.

**FOR A FIFTH CAUSE OF ACTION
(Declaratory Judgment)**

83. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

84. This is an action for declaratory judgment pursuant to the Uniform Declaratory Judgment Act of South Carolina as set forth in S.C. Code Ann. § 15-53-10 (1976), as amended,

et seq., to declare that Defendants are the rightful owners of the property Plaintiff City of North Myrtle Beach has a permit to dredge.

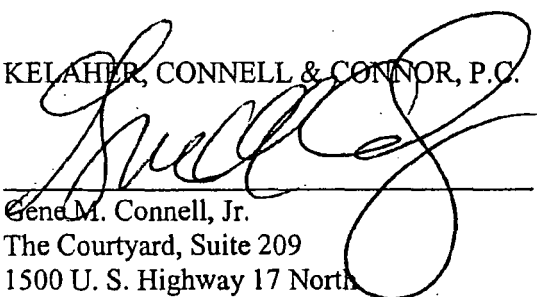
85. That the State of South Carolina provided a deed to the Defendants which deed has been in force and effect since 1969.

86. That the Plaintiff has no ownership in the property and has no right to have a permit for the Defendants' property without their consent.

WHEREFORE, the Defendants pray respectfully for a jury trial and an Order of the Court as follows:

- A. That Plaintiff's Complaint be dismissed.
- B. For an Order temporarily and permanently restraining and enjoining the Plaintiff City of North Myrtle Beach from entering upon the property of the Defendants.
- C. For a judgment for damages sustained to Defendants' property as a result of the trespass.
- D. For a judgment for damages sustained to Defendants' property as result of nuisance.
- E. For a judgment for damages sustained by the Defendants' for inverse condemnation of its property.
- F. For an Order of this Court declaring that the Defendants are the owners of the property pursuant to a deed given by the State of South Carolina and that the Plaintiff should be restrained from coming on Defendants' property without its permission.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.

The Courtyard, Suite 209

1500 U. S. Highway 17 North

Post Office Drawer 14547

Surfside Beach, South Carolina 29587-4547

(843) 238-5648 (phone)

(843) 238-5050 (facsimile)

gconnell@classactlaw.net

**Attorney for Defendants Ray Nixon, LLC,
N.F. Nixon, Jr., John W. Ray, and Windle
Skipper Individually and as PR of the
Estate of C.D. Nixon**

August 21, 2009
Surfside Beach, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Tracking # 2011191609

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach

Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe

Defendants

Of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

CERTIFICATE OF SERVICE

Sherri Benninga certifies that she is an employee with the law firm of Battle & Vaught, P.A., attorneys for Respondent City of Myrtle Beach, and that she has mailed the Rule 204(b) Motion for Certification and Memorandum to the addressees shown this 9th day of June 2011, with proper postage attached thereto.

ADDRESSEES:

Gene Connell, Jr.
Kelaheer, Connell & Connor, PC
P.O. Drawer 14547
Surfside Beach, SC29587
Attorneys for Appellant

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

A handwritten signature in black ink, appearing to read "Sherri Benninga", written over a horizontal line.

Sherri Benninga, Paralegal
Battle & Vaught, PA
Po Box 530
Conway, SC 29528
(843) 248-4321

BATTLE & VAUGHT P.A.
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MICHAEL W. BATTLE
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VICTORIA T. VAUGHT
E-Mail Address: vvaught@battlevaught.com

JAMES R. BATTLE, II
E-Mail Address: jbattle@battlevaught.com

June 9, 2011

The Honorable Daniel E. Shearouse
The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED
JUN 13 2011
SC Court of Appeals

RE: City of North Myrtle Beach vs. East Cherry Grove Realty Co., LLC, et. al.

Dear Mr. Shearouse:

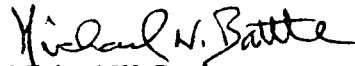
I have enclosed for filing the original and six (6) copies of a Rule 204(b) Motion for Certification with attached memorandum on Behalf of The City of North Myrtle Beach, a check in the amount of \$25.00, together with our Certificate of Service.

By copy of this letter to their counsel, I am serving East Cherry Grove Realty Co., LLC, et. al., with a copy of this Motion and enclose a certificate of service to that effect.

Please return a "clocked" copy of the Certificate of Service. I have enclosed and extra copy of the Certificate of Service, as well as a self-addressed, stamped envelope for your convenience.

I appreciate your assistance in this matter.

Sincerely,



Michael W. Battle
Battle & Vaught, P.A.

C Gene Connell, Jr.
 J. Emory Smith
 Chris Noury
 ✓ The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

May 18, 2011

Gene M. Connell, Esquire
Kelaheer, Connell
& Connor, P.C.
P O Drawer 14547
Surfside Beach, SC 29587

Re: City of N. Myrtle Beach v. East Cherry
Case Tracking #: 2011191609

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten(10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Tanya A. Gee
CLERK


TAG/ec

cc: J. Emory Smith, Jr, Esquire
Michael W. Battle, Esquire
The Honorable Melanie Huggins



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 18, 2011

Gene M. Connell, Esquire
Kelaher, Connell
& Connor, P.C.
P O Drawer 14547
Surfside Beach, SC 29587

Re: City of N. Myrtle Beach v. East Cherry
Case Tracking #: 2011191609

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: J. Emory Smith, Jr, Esquire
Michael W. Battle, Esquire
The Honorable Melanie Huggins

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

April 27, 2011

Brenda R. Babb
Circuit Court Report
P. O. Box 4800
Calabash, NC 28467-9820

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

Dear Ms. Babb:

On March 28 – March 31, 2011, the above case was tried in Horry County before the Honorable William H. Seals, Jr., Circuit Court Judge. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr.:sm

cc: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire
South Carolina Court Administration
Clerk of Court, South Carolina Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED
APR 29 2011

CASE NO. 2009-CP-26-5782

SC Court of Appeals

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

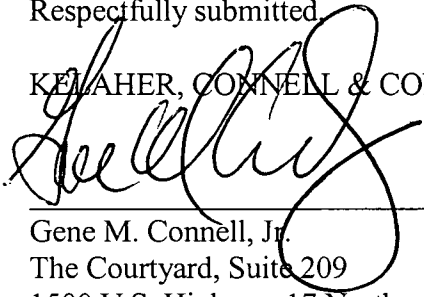
of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

NOTICE OF APPEAL

The Defendant, East Cherry Grove Realty Co., LLC, appeals the jury verdict rendered on March 31, 2011 before The Honorable William H. Seals, Jr. Appellant received notice of this jury verdict on March 31, 2011.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

April 27, 2011

Other Counsel of Record:

Michael W. Battle, Esquire

Battle & Vaught, PA

P.O. Box 530

Conway, SC 29528

(843) 248-4321

Attorney for Respondent City of North Myrtle Beach

J. Emory Smith, Jr., Esquire

Office of the Attorney General

Post Office Box 11549

Columbia, SC 29211

803-734-3680

Attorney for Respondent State of South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

RECEIVED
APR 29 2011
SC Court of Appeals

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served a **Notice of Appeal** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: April 27, 2011

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 27th day of April, 2011.

Shannon R. Ryan
Notary Public for South Carolina
My Commission Expires: 2-25-19

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

April 27, 2011

2011 191 609
RECEIVED
APR 29 2011
SC Court of Appeals
33619 100
AREA CODE 843
238-5648
FAX: 238-5050

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

Dear Ms. Gee:

Enclosed for filing is a Notice of Appeal in the above-captioned case. Also enclosed are the following:

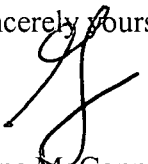
1. Proof of Service of the Notice of Appeal on the Respondent.
2. A copy of the Jury Verdict.
2. Our check for the \$100.00 filing fee.

Please return clocked copies to us in the self-addressed, stamped envelope provided.

By copy of this letter, I hereby serve the Respondents, through counsel of record, with the Notice of Appeal.

Thank you for your kind assistance in this matter.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach

East Cherry Grove Realty Co., LLC,

VS.

The State of South Carolina and

John Doe

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☒ **JURY VERDICT.** This action came before the court for a trial by-jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 4(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See Attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

- We the jury find that, according to the two quitclaim deeds in evidence as Plaintiff's Exhibits 4 and 5, that title to the canals in dispute in this case belongs to The State of South Carolina.*
- Did the original east Cherry Grove Realty Co. or C.D. Nixon dedicate the canals involved in this lawsuit to the public? Yes*
- Does the State of South Carolina hold the title to the canals involved in this lawsuit in trust for the public? Yes*

Dated at Conway, South Carolina, this 31st day of March, 2010.


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Michael W. Battle

Gene M. Connell Jr.

Emory J. Smith Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

City of North Myrtle Beach,

Plaintiff,

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and
John Doe,

Defendants.

C/A NO. 2009-CP-26-5782
(Consolidated)

Verdict

MELANIE JOHNS-WARD
CLERK OF COURT

11 MAR 31 PM 3:00

FILED
HORRY COUNTY

1. We the jury find that, according to the two quitclaim deeds in evidence as Plaintiff's Exhibits 4 and 5, that title to the canals in dispute in this case belongs to (please check one)

_____ East Cherry Grove Realty, LLC

☒ _____ The State of South Carolina .

2. Did the original east Cherry Grove Realty Co. or C.D. Nixon dedicate the canals involved in this lawsuit to the public?

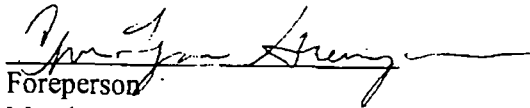
☒ _____ Yes.

_____ No.

3. Does the State of South Carolina hold title to the canals involved in this lawsuit in trust for the public?

☒ _____ Yes.

_____ No.


Foreperson
March 31, 2011



ALAN WILSON
ATTORNEY GENERAL

June 15, 2011

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: City of North Myrtle Beach v. E. Cherry Grove Realty Co. and State
09-CP-26-5782
Return to Motion for Certification

Dear Mr. Shearouse:

I would appreciate your accepting this letter Return consenting to the above Motion for Certification. I have enclosed the original and six copies of this letter.

Should the Court prefer a more formal return, please let me know, and I will be happy to file one. By copy of this letter, I am serving the Honorable Tanya Gee and counsel listed below by United States mail.

Respectfully submitted,


J. Emory Smith, Jr.
Assistant Deputy Attorney General

COPY

cc: Michael W. Battle, Esquire
Gene M. Connell, Esquire
The Honorable Tanya Gee

RECEIVED

JUN 15 2011

SC Court of Appeals

KELAHHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

P. O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587



02 1P \$ 001.28⁰
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MAILED FROM ZIP CODE 29575

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

OCT 31 2011

October 31, 2011

S.C. SUPREME COURT
HD

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: City of North Myrtle Beach v. E. Cherry Grove Realty Co. and State
09-CP-26-5782
Extension Request

Dear Mr. Shearouse:

I would appreciate the Court's granting an extension of time of fifteen days for the State to file its initial brief and designation of matter for the record in this case. I believe that our brief and designation are currently due on November 7. Under this proposed extension, these documents would be due on Tuesday, November 22.

The reasons for this extension are my other court deadlines around the current due date. Although the State may concur in portions of the legal arguments of Respondent City of North Myrtle Beach, I believe that the State will still need to brief at least one argument in this case. The additional time requested will be helpful.

Thank you for your consideration of this request for an extension of time.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc: Michael W. Battle, Esquire
Gene M. Connell, Esquire

RECEIVED

OCT 11 2011

S.C. SUPREME COURT

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

KELAHER, CONNELL & CONNOR, P.C.
ATTORNEYS AT LAW
SUITE 209
THE COURTYARD
1500 U.S. HIGHWAY 17 NORTH
P.O. DRAWER 14547
SURFSIDE BEACH, SOUTH CAROLINA 29587

AREA CODE 843
238-5648
FAX: 238-5050

October 7, 2011

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

Dear Mr. Shearouse:

Enclosed please find the following for filing in the above-captioned matter;

- (1) Original and one copy of Initial Brief of Appellant, with Proof of Service;
- (2) Original and one copy of Designation of Matter to be Included in Record on Appeal, with Proof of Service;
- (3) Self-addressed, stamped envelope for return of a filed copy of each to this office.

By copy of this letter, we hereby serve copies of the Initial Brief and Designation of Matter on counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom
East Cherry Grove Realty Co., LLC is Appellant
and
The State of South Carolina is Respondent

PROOF OF SERVICE

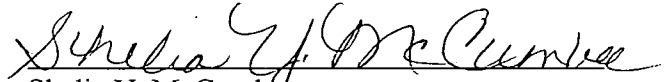
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Initial Brief of Appellant** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

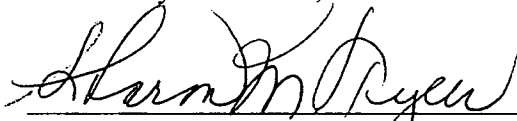
and

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: October 7, 2011


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 7th day of October, 2011.


Notary Public for South Carolina
My Commission Expires: 2-25-19

BATTLE & VAUGHT P.A.
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
POST OFFICE BOX 530
CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
FACSIMILE (843) 248-4512
www.battlevaught.com

MICHAEL W. BATTLE
E-Mail Address: mbattle@battlevaught.com
VICTORIA T. VAUGHT
E-Mail Address: vvaught@battlevaught.com

JAMES R. BATTLE, II
E-Mail Address: jbattle@battlevaught.com

22, 2011

The Honorable Daniel E. Shearouse
The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RE: City of North Myrtle Beach vs.
C/A No. 2009-CP-26-5782

Dear Mr. Shearouse:

The City of North Myrtle Beach does not
Extend the Time to File Appellant's Initial
Engineers has indicated that a permit will not be issued while title to the canals is disputed and
because the silting of the canals continues, the City asks that all parties be cognizant of the fact
that the City requested the S.C. Supreme Court to accept jurisdiction so the case could be
resolved in an expedient manner.

Sincerely,


Michael W. Battle
Battle & Vaught, P.A.

C Gene Connell, Jr.
J. Emory Smith
Chris Noury

Dan
Do we need to
get an expedited
hearing schedule?
NO UNLESS THEN
ASK.

Motion to
as of

RECEIVED
AUG 24 2011
S.C. SUPREME COURT

The Supreme Court of South Carolina

City of North Myrtle Beach, Respondent,

v.

East Cherry Grove Realty Co.,
LLC, The State of South
Carolina and John Doe, Defendants,

Of whom East Cherry Grove
Realty Co., LLC is the Appellant,

and The State of South
Carolina is Respondent.

The Honorable William H. Seals, Jr.
Horry County
Trial Court Case No. 2009-CP-26-05782

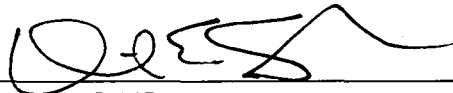
ORDER

The request for an extension to serve and file the Initial Brief of
Appellant and Designation of Matter is granted and extended until
October 17, 2011.

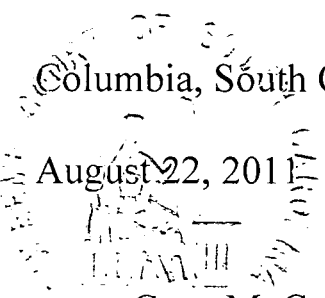
IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK



Columbia, South Carolina

August 22, 2011

cc: Gene M. Connell, Esquire
Michael W. Battle, Esquire
Assistant Deputy Attorney General J. Emory Smith, Jr.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom

East Cherry Grove Realty Co., LLC is Appellant
and

The State of South Carolina is Respondent

**NOTICE OF MOTION AND MOTION TO EXTEND
TIME TO FILE APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Appellant, moves this Court for an Order extending the time to file Appellant's Initial Brief and Designation of Matter in the above-captioned case which are due on or before September 2, 2011. The basis of this Motion is that this is a complex case which requires extensive briefing, the Transcript of Record is over 700 pages, and there are numerous exhibits. Further, Appellant's counsel has had four appeals requiring briefs due in the

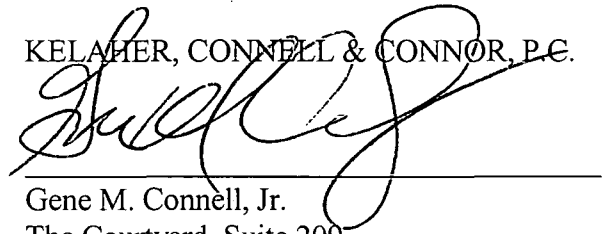
month of August
RECEIVED
AUG 22 2011
S.C. SUPREME COURT

WHEREFORE, given the complexity of the case and the extensive briefing required, Appellant respectfully requests this Court issue its Order extending the time to file Appellant's Initial Brief and Designation of Matter until October 15, 2011.

Respectfully submitted,

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

A handwritten signature in black ink, appearing to read 'Gene M. Connell, Jr.', is written over a horizontal line.

Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

August 17, 2011
Surfside Beach, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom

East Cherry Grove Realty Co., LLC is Appellant
and

The State of South Carolina is Respondent

PROOF OF SERVICE

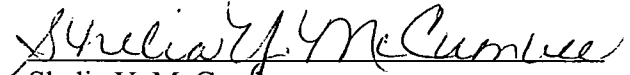
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served a **Notice of Motion and Motion to Extend Time to File Appellant's Initial Brief and Designation of Matter** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

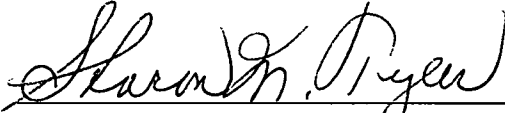
and

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: August 18, 2011


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 18th day of August, 2011.


Notary Public for South Carolina
My Commission Expires: 2-25-19

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

August 17, 2011

RECEIVED

AUG 22 2011

S.C. SUPREME COURT

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

Dear Mr. Shearouse:

Enclosed please find an original and seven (7) copies of our Notice of Motion and Motion to Extend Time to File Appellant's Initial Brief and Designation of Matter and Proof of Service in the above-captioned matter. I also enclose a check for \$25.00 for the filing fee. Please return a filed copy to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated documents on Respondents through counsel of record.

With best regards, I am

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

August 3, 2011

South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

To Whom It May Concern:

This is to inform you that the transcript for the trial held on March 28, 2011 thru March 31, 2011, on the above mentioned case, was received in my office on August 3, 2011. I am notifying you of same pursuant to Rule 207(a)(5), SCACR.

Thank you.

Sincerely yours,



Gene M. Connell, Jr.

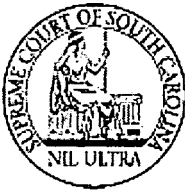
GMC,Jr.:fo

cc: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire
Clerk of Court, South Carolina Court of Appeals
clients

RECEIVED

AUG 12 2011

S.C. Supreme Court



The Supreme Court of South Carolina

(City of North Myrtle Beach
(
(
(
TITLE OF (V. 2009CP2605782B
CASE (
(
(
(East Cherry Grove Realty Co.
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RECEIVED

JUN 30 2011

S.C. SUPREME COURT

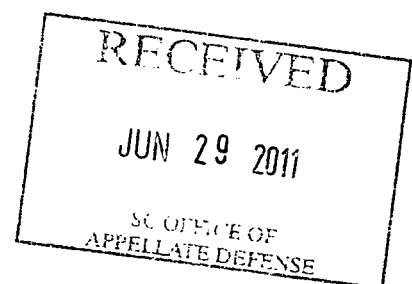
Notice

Upon request and for good cause shown, Brenda Babb, Court Reporter, is hereby granted an extension up to and including July 30, 2011 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
06/27/2011

cc: Gene M. Connell, Jr., Esq.
Michael W. Battle, Esq.
J. Emory Smith, Jr., Esq.
Brenda Babb



THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Tracking # 2011191609

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

RECEIVED

JUN 13 2011

SC Court of Appeals

City of North Myrtle Beach

Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe

Defendants

COPY

Of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

RULE 204(b) MOTION FOR CERTIFICATION

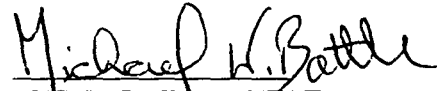
Respondent City of North Myrtle Beach (City) hereby moves before the South Carolina Supreme Court pursuant to Rule 204(b) SCACR for certification to transfer jurisdiction to the SC Supreme Court of the above captioned case filed in the SC Court of Appeals by Appellant East Cherry Grove Realty Co., LLC. The grounds for the motion are the case involves a matter of significant public interest.

The case arises in connection with the City's plans to perform much needed maintenance dredging improvements for public canals bordered by approximately 600 home sites in the East Cherry Grove section of North Myrtle Beach. The canals contain

public waters which are navigable and used by the general public. Appellants claim they own the bottoms of the canals and the City's maintenance dredging will constitute a taking of their property. The State of South Carolina claims it owns the property through a quitclaim deed it received in 1969 from Appellants' predecessor in title. Declaratory judgments were filed by the parties to determine ownership of the canals. On March 31, 2011, a jury found the State of South Carolina owned the canals which had been dedicated to the public and were held in trust for the public by the State.

The City's Motion for certification will be supported by the attached Memorandum of Authorities, Appellants' Notice of Appeal, the parties Pleadings and such affidavits as may be requested by the Court.

The City cannot issue public improvement bonds and perform the maintenance dredging until the ownership of the canals is resolved. The City of North Myrtle Beach respectfully requests that this Court inquire into the matters set forth in the motion together with its supporting memorandum and grant the City's Motion for Certification.


MICHAEL W. BATTLE
Battle & Vaught P.A.
Post Office Box 530
Conway, South Carolina 29528
(843)248-4321
Attorneys for Petitioner
Respondent City of North Myrtle Beach

Conway, South Carolina
June 9, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Tracking # 2011191609

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

RECEIVED

JUN 13 2011

SC Court of Appeals

City of North Myrtle Beach

Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe

Defendants

Of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

MEMORANDUM IN SUPPORT OF
THE CITY OF NORTH MYRTLE BEACH'S
RULE 204(b) MOTION FOR CERTIFICATION

MICHAEL W. BATTLE SCB # 584
Battle & Vaught P.A.
Post Office Box 530
Conway, South Carolina 29528
(843)248-4321
Attorneys for Petitioner/
Respondent City of North Myrtle Beach

Conway, South Carolina
June 9, 2011

Statement of the Case

The case arises from a dispute over ownership of all the canals in the East Cherry Grove Section of North Myrtle Beach. The State of South Carolina claims ownership of the canals through a 1969 quitclaim deed from C.D. Nixon and the East Cherry Grove Realty Company. The City of North Myrtle Beach, with permission from the State, plans to improve the canals through a public improvement, maintenance dredging project. Appellants claim ownership of the canals through the last will of C.D. Nixon, now deceased. Appellants claim the dredging project will constitute a taking of their property and they are entitled to compensation if the canals are dredged.

Declaratory judgment actions were filed by the parties and consolidated. On March 31, 2011, a jury returned a verdict in favor of the Respondents finding: 1) the canals belonged to the State of South Carolina by virtue of the 1969 quitclaim deed; 2) Appellants' predecessors in title had dedicated the canals to the public; and 3) the State of South Carolina held title to the canals in trust for the general public. (Copy attached). Appellants duly appealed the jury's verdict and the Court's order upholding the jury's verdict.

Factors that favor certification.

1. The appeal affects the interests of the general public in that area. The canals are in serious need of maintenance dredging. East Cherry Grove is a relatively large canal community. The general public has used the canals for transportation and recreation for the past fifty years. Approximately 600 home sites adjoin the canals in East Cherry Grove. Former Chief Justice Hon. David Harwell testified for the

Respondents that the canals are silting in and now, at low tide, the canals are not useable for much other than breeding mosquitoes. During the past six years the silting in of the canals appears to be growing worse. An extended appellate delay will drive up the maintenance dredging costs and the amount of work necessary to complete the City's plans.

2. Notwithstanding the trial verdict, the City cannot proceed with its dredging plans. The City is required to obtain a dredging permit from the U.S. Army Corps of Engineers. The Corps of Engineers will not act on the City's application because of the pending dispute over ownership of the canals. In addition, public improvement bonds cannot be issued if the property is determined to be private property.

3. An eminent domain proceeding is not a viable alternative. Even if the City attempted to condemn Plaintiffs' alleged interest in the canals, it could not condemn property claimed or owned by the State. See *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 397, 629 S.E.2d 624, 628 (2006). The City contends that the only way to proceed with a dredging plan is to get the appeal on the property ownership dispute resolved one way or the other.

4. Both the State and the Appellants have informally indicated through their attorneys that the matter will have to be decided by the SC Supreme Court before the matter is ended.

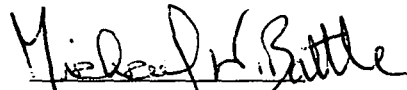
5. The significance of the public's interest in the resolution of the dispute can be demonstrated by the fact that legislation was recently enacted and supported by SCDHEC and environmental groups which will allow the City and other similarly situated municipalities or counties to do maintenance dredging in canal communities such

as East Cherry Grove with the proper permits from the U.S. Army Corps of Engineers.

See R. # 75, signed by the Governor on June 7, 2011(Copy attached).

Conclusion.

The City of North Myrtle Beach respectfully requests that the Court grant its Motion for Certification pursuant to Rule 204 (b), SCACR, and that the Court transfer jurisdiction of the appeal to itself from the S.C. Court of Appeals.



MICHAEL W. BATTLE

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Post Office Box 530

Conway, South Carolina 29528

(843)248-4321

Attorneys for Petitioner

Respondent City of North Myrtle Beach

Conway, South Carolina

June 9, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

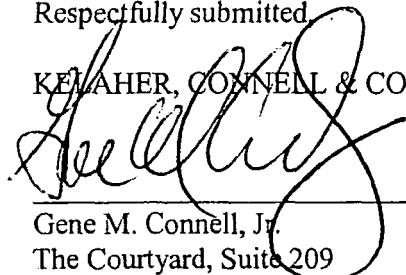
of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

NOTICE OF APPEAL

The Defendant, East Cherry Grove Realty Co., LLC, appeals the jury verdict rendered on March 31, 2011 before The Honorable William H. Seals, Jr. Appellant received notice of this jury verdict on March 31, 2011.

Respectfully submitted

KEWAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

April 27, 2011

Other Counsel of Record:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
(843) 248-4321
Attorney for Respondent City of North Myrtle Beach

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
803-734-3680
Attorney for Respondent State of South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach

East Cherry Grove Realty Co., LLC,

VS.

The State of South Carolina and

John Doe

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 4(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See Attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

- We the jury find that, according to the two quitclaim deeds in evidence as Plaintiff's Exhibits 4 and 5, that title to the canals in dispute in this case belongs to The State of South Carolina.*
- Did the original east Cherry Grove Realty Co. or C.D. Nixon dedicate the canals involved in this lawsuit to the public? Yes*
- Does the State of South Carolina hold the title to the canals involved in this lawsuit in trust for the public? Yes*

Dated at Conway, South Carolina, this 31st day of March, 2010.


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Michael W. Battle

Gene M. Connell Jr.

Emory J. Smith Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

City of North Myrtle Beach,

Plaintiff,

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and
John Doe,

Defendants.

C/A NO. 2009-CP-26-5782
(Consolidated)

Verdict

MELANIE JOHNSON-WARD
CLERK OF COURT

11 MAR 31 PM 3:00

FILED
HORRY COUNTY

1. We the jury find that, according to the two quitclaim deeds in evidence as Plaintiff's Exhibits 4 and 5, that title to the canals in dispute in this case belongs to (please check one)

_____ East Cherry Grove Realty, LLC

☒ The State of South Carolina .

2. Did the original east Cherry Grove Realty Co. or C.D. Nixon dedicate the canals involved in this lawsuit to the public?

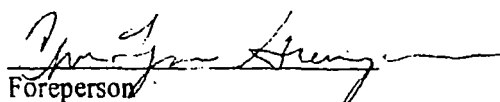
☒ Yes.

_____ No.

3. Does the State of South Carolina hold title to the canals involved in this lawsuit in trust for the public?

☒ Yes.

_____ No.


Foreperson
March 31, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served a **Notice of Appeal** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: April 27, 2011

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 27th day of April, 2011.

Sharon N. Ryce
Notary Public for South Carolina
My Commission Expires: 2-25-19

H*3587

H*3587(Rat #0075) General Bill, By Edge, Viers, Hardwick, Hearn, Clemmons, Barfield, Hayes and Loftis

Similar(S 497)

AN ACT TO AMEND SECTION 48-39-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF TERMS USED IN THE REGULATION OF COASTAL TIDELANDS AND WETLANDS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO DEFINE "MAINTENANCE DREDGING"; TO AMEND SECTION 48-39-130, RELATING TO PERMITS REQUIRED TO UTILIZE CRITICAL AREAS AND EXEMPTIONS FROM SUCH PERMITS, SO AS TO EXEMPT DREDGING BY MUNICIPALITIES AND COUNTIES IN CERTAIN EXISTING RECREATIONAL USE CANALS AND ESSENTIAL ACCESS CANALS CONVEYED TO THE STATE OR DEDICATED TO THE PUBLIC SINCE 1965 IF THE DREDGING IS AUTHORIZED BY A PERMIT FROM THE UNITED STATES ARMY CORPS OF ENGINEERS AND TO PROVIDE THAT DEPARTMENT ADMINISTERED CERTIFICATIONS FOR SUCH DREDGING ARE WAIVED; TO AMEND SECTION 48-39-150, RELATING TO THE PROCEDURES AND REQUIREMENTS FOR THE APPROVAL OR DENIAL OF CRITICAL AREA USE PERMITS, INCLUDING THE TIME WITHIN WHICH WORK MUST BE COMPLETED UNDER SUCH PERMITS, SO AS TO PROVIDE THAT WORK AUTHORIZED UNDER A MAINTENANCE DREDGING PERMIT MUST BE COMPLETED IN TEN YEARS, RATHER THAN FIVE YEARS; TO REQUIRE THE DEPARTMENT TO PROMULGATE REGULATIONS FOR MAINTENANCE DREDGING; AND TO PROVIDE THAT THE PROVISION AUTHORIZING DREDGING PURSUANT TO THIS ACT IS REPEALED JULY 1, 2026. - ratified title

02/03/11 House Introduced and read first time (House Journal-page 6)
02/03/11 House Referred to Committee on Agriculture, Natural
Resources and Environmental Affairs
(House Journal-page 6)
02/16/11 House Member(s) request name added as sponsor: Hayes
03/02/11 House Committee report: Favorable with amendment
Agriculture, Natural Resources and Environmental
Affairs (House Journal-page 2)
03/03/11 House Member(s) request name added as sponsor: Loftis
03/03/11 House Amended (House Journal-page 26)
03/03/11 House Read second time (House Journal-page 26)
03/03/11 House Unanimous consent for third reading on next
legislative day (House Journal-page 27)
03/03/11 Scrivener's error corrected
03/04/11 House Read third time and sent to Senate
(House Journal-page 2)
03/08/11 Senate Introduced and read first time (Senate Journal-page 33)
03/08/11 Senate Referred to Committee on Agriculture and Natural
Resources (Senate Journal-page 33)

04/14/11 Senate Polled out of committee Agriculture and Natural
Resources (Senate Journal-page 19)
04/14/11 Senate Committee report: Favorable Agriculture and
Natural Resources (Senate Journal-page 19)
04/26/11 Senate Amended (Senate Journal-page 31)
04/26/11 Senate Read second time (Senate Journal-page 31)
04/26/11 Senate Roll call Ayes-41 Nays-0 (Senate Journal-page 31)
04/27/11 Scrivener's error corrected
05/19/11 Senate Read third time and returned to House with
amendments (Senate Journal-page 17)
05/25/11 House Concurred in Senate amendment and enrolled
(House Journal-page 29)
05/25/11 House Roll call Yeas-107 Nays-1 (House Journal-page 29)
06/01/11 Ratified R 75
06/07/11 Signed By Governor

VERSIONS OF THIS BILL

2/3/2011
3/2/2011
3/3/2011
3/3/2011-A
4/14/2011
4/26/2011
4/27/2011

H. 3587

**NOTE: THIS COPY IS A TEMPORARY VERSION. THIS DOCUMENT WILL
REMAIN IN THIS VERSION UNTIL PUBLISHED IN THE ADVANCE SHEETS TO
THE ACTS AND JOINT RESOLUTIONS. WHEN THIS DOCUMENT IS PUBLISHED
IN THE ADVANCE SHEET, THIS NOTE WILL BE REMOVED.**

(R75, H3587)

**AN ACT TO AMEND SECTION 48-39-10, CODE OF LAWS OF SOUTH CAROLINA,
1976, RELATING TO THE DEFINITION OF TERMS USED IN THE REGULATION
OF COASTAL TIDELANDS AND WETLANDS BY THE DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL, SO AS TO DEFINE "MAINTENANCE
DREDGING"; TO AMEND SECTION 48-39-130, RELATING TO PERMITS
REQUIRED TO UTILIZE CRITICAL AREAS AND EXEMPTIONS FROM SUCH
PERMITS, SO AS TO EXEMPT DREDGING BY MUNICIPALITIES AND COUNTIES
IN CERTAIN EXISTING RECREATIONAL USE CANALS AND ESSENTIAL ACCESS
CANALS CONVEYED TO THE STATE OR DEDICATED TO THE PUBLIC SINCE
1965 IF THE DREDGING IS AUTHORIZED BY A PERMIT FROM THE UNITED
STATES ARMY CORPS OF ENGINEERS AND TO PROVIDE THAT DEPARTMENT
ADMINISTERED CERTIFICATIONS FOR SUCH DREDGING ARE WAIVED; TO**

AMEND SECTION 48-39-150, RELATING TO THE PROCEDURES AND REQUIREMENTS FOR THE APPROVAL OR DENIAL OF CRITICAL AREA USE PERMITS, INCLUDING THE TIME WITHIN WHICH WORK MUST BE COMPLETED UNDER SUCH PERMITS, SO AS TO PROVIDE THAT WORK AUTHORIZED UNDER A MAINTENANCE DREDGING PERMIT MUST BE COMPLETED IN TEN YEARS, RATHER THAN FIVE YEARS; TO REQUIRE THE DEPARTMENT TO PROMULGATE REGULATIONS FOR MAINTENANCE DREDGING; AND TO PROVIDE THAT THE PROVISION AUTHORIZING DREDGING PURSUANT TO THIS ACT IS REPEALED JULY 1, 2026.

Be it enacted by the General Assembly of the State of South Carolina:

Definition of term

SECTION 1. Section 48-39-10 of the 1976 Code is amended by adding:

"() 'Maintenance dredging' means excavation to restore the depth of underwater lands or restore channels, basins, canals, or similar waterway accesses to depths and dimensions that support and maintain prior or existing levels of use that previously have been dredged pursuant to a license issued by the department or an exemption as provided in Section 48-39-130(D)(10) as added by Act ____ of 2011."

Exemption from permit

SECTION 2. Section 48-39-130(D) of the 1976 Code is amended by adding:

"(10) Dredging in existing navigational canal community developments by counties or municipalities of manmade, predominately armored, recreational use canals and essential access canals conveyed to the State or dedicated to the public for that purpose between 1965 and the effective date of this act if the maintenance dredging is authorized by a permit from the United States Army Corps of Engineers pursuant to the Federal Clean Water Act, as amended, or the Rivers and Harbors Act of 1899. All other department administered certifications for such dredging are deemed waived."

Completion of work required

SECTION 3. Section 48-39-150(F) of the 1976 Code is amended to read:

"(F) Except for maintenance dredging permits, work authorized by permits issued under this chapter must be completed within five years after the date of issuance. Maintenance dredging permitted under this chapter must be completed within ten years after the date of issuance. The time limit may be extended for good cause showing that due diligence toward completion of the work has been made as evidenced by significant work progress. An extension only may be granted if the permitted project meets the policies and regulations in force when the extension is requested or the permittee agrees to accept additional conditions which would bring the project into compliance. The time periods required by this subsection must be tolled during the pendency of an administrative or a judicial appeal of the permit issuance."

Regulations to be promulgated

SECTION 4. The Department of Health and Environmental Control shall promulgate regulations, pursuant to Chapter 23, Title 1, to provide for maintenance dredging as defined in Section 48-39-10. The maintenance dredging regulations must:

- (1) take into account the fact that areas subject to maintenance dredging have previously been impacted and should be evaluated on the incremental impact of the maintenance dredging on existing conditions;
- (2) require the submission of a dredging program document depicting the estimated dimensions, including the existing and proposed depths and location of the general areas proposed to be dredged; the estimated quantity of material to be dredged; the proposed methods

and techniques to accomplish the dredging; and the anticipated **dredge** material placement information at approved **dredge** disposal locations;

(3) require that, to the extent practicable and reasonable, such maintenance dredging should be timed to minimize interference with and impacts to aquatic life designated as a threatened or endangered species;

(4) require that such maintenance dredging should not cause significant erosion above the ordinary high water mark;

(5) provide that the department must send notice of the expiration of any maintenance dredging permit to the permittee no later than thirty days prior to such permit's expiration;

(6) provide that the department may issue a five-year extension for any department permit for maintenance dredging as defined in Section 48-39-10 existing as of the effective date of the regulation.

The regulations should not exceed the scope or stringency of any applicable federal regulations to maintenance dredging and should, to the maximum extent possible, avoid duplication of analysis or evaluation of considerations subject to review by the United States Army Corps of Engineers pursuant to a Clean Water Act Section 404 permit for the same maintenance dredging project.

Prospective repeal

SECTION 5. Section 48-39-130(D)(10) of the 1976 Code is repealed on July 1, 2026. Any maintenance dredging occurring after July 1, 2026, in areas that were dredged pursuant to Section 48-39-130(D) must be performed pursuant to the provisions contained in Chapter 39, Title 48 and the maintenance dredging regulations promulgated pursuant to this act.

Effect of act on department's authority and on pending applications

SECTION 6. Nothing in this act shall be construed to expand or increase the department's jurisdiction or to require permits for activities or projects that are not currently subject to regulation by the department. Except for the extension of the permit duration for maintenance dredging permits to ten years, nothing in this act shall be construed to impact any pending request or application for any license or approval from the department.

Severability clause

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 8. This act takes effect upon approval of the Governor.
Ratified the 1st day of June, 2011.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2011.

Governor

STATE OF SOUTH CAROLINA

COUNTY OF Horry

City of North Myrtle Beach,

Plaintiff(s)

vs.

Ray Nixon, LLC, Windle Skipper, Individually and
as the personal representative of the Estate of C.D.
Nixon, N.F. Nixon, Jr., John W. Ray, State of SC,
and John Doe

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009-CP - 26-

5782
COPY

(Please Print)

Submitted By: Michael W. Battle

Address: 1200 Main Street

Conway, SC 29526

SC Bar #: 584

Telephone #: 843-248-4321

Fax #: 843-248-4512

Other:

E-mail: mbattle@battlevaught.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499)
Declaratory Relief |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Michael H. Battle

Date: June 11, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) COURT OF COMMON PLEAS
C/A No. 2009-CP-26-

City of North Myrtle Beach,)
)
Petitioner,)

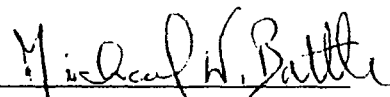
v.)

Summons

Ray Nixon, LLC, Windle Skipper,)
individually and as the personal)
representative of the Estate of C.D.)
Nixon, N.F. Nixon, Jr., John W. Ray,)
State of South Carolina, and John Doe)
)
Respondents.)

FILED
JUN 11 PM 3:38
CLERK OF COURT
JUN 11 2009

YOU ARE HEREBY SUMMONED and required to mail or hand deliver your written Answer to the Complaint of Petitioner City of North Myrtle Beach in this action, a copy of which is hereby served upon you, to the attorneys for Petitioner City of North Myrtle Beach, Michael W. Battle, Battle & Vaught, P.A., P.O. Box 530, Conway, South Carolina 29528 within thirty (30) days from the date of delivery of the Summons, Complaint and Lis Pendens or a judgment of default will be entered against you for the matters demanded in the complaint.


MICHAEL W. BATTLE
Battle & Vaught P.A.
Post Office Box 530
Conway, South Carolina 29528
(843)248-4321
Attorneys for Petitioner

Conway, South Carolina
June 11, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

COURT OF COMMON PLEAS
C/A No. 2009-CP-26-

City of North Myrtle Beach,)
)
Petitioner,)

v.)

Ray Nixon, LLC, Windle Skipper,)
individually and as the personal)
representative of the Estate of C.D.)
Nixon, N.F. Nixon, Jr., John W. Ray,)
State of South Carolina, and John Doe)
)
Respondents.)

COMPLAINT
(Declaratory Judgment)
(Non-Jury)

FILED
JUN 11 PM 3:38
CLERK OF COURT
HORRY COUNTY, SC

Petitioner City of North Myrtle Beach respectfully alleges and would show unto this
Honorable Court as follows:

PARTIES & PROPERTY

1. The above captioned lawsuit has been filed to determine the parties' rights and quiet title to certain canals existing or constructed in the Cherry Grove Section of North Myrtle Beach. The canals are shown on the plat created for East Cherry Grove Realty and recorded in the Office of the Register of Deeds for Horry County in Plat Book 52 at page 51.

2. Petitioner City of North Myrtle Beach (City) is a duly incorporated municipal corporation under the laws of the State of South Carolina and the City has purchased property in the Cherry Grove Section of North Myrtle Beach. The deeds conveying the property to the City refer to plats which show the canals which are the subject of the within lawsuit. The City has an interest in the property in question because the statutory authority delegated to it by the State of

South Carolina, because the canals were dedicated to the public and because of the property the City owns in the area.

3. The State of South Carolina has delegated to the City the responsibility for streets, and canals, and other property and doing such other acts as may be necessary to protect the safety, health and welfare of the public in connection with the use of such property located within the City's jurisdiction.

4. Defendants Ray Nixon, LLC, Windle Skipper, individually and as the personal representative of the Estate of C.D. Nixon, N.F. Nixon, Jr., and John W. Ray (Nixon's heirs) are residents of the State of South Carolina or corporations duly organized under the laws of the State of South Carolina with their principal place of business located in Horry County, South Carolina. Nixon's heirs may have or claim an interest in the canals that are the subject of the above captioned lawsuit.

5. Defendant State of South Carolina (State) is made a party to this lawsuit because it has an interest in the property in question through a quitclaim deed from East Cherry Grove Realty Company, C. D. Nixon and John H. Nye, as officers, directors or stockholders of East Cherry Grove Realty Company and as individuals to the State of South Carolina dated December 12, 1969 and recorded in Deed Book 420 at page 586.

6. John Doe is a fictitious party who represents any property owner who has or may claim an interest in the canals because he or she acquired property through deeds that refer to plats showing the canals that are the subject of the within lawsuit.

FACTS

7. On or about September 19, 2005, the City of North Myrtle Beach was issued a permit by the SC Department of Health and Environmental Control (SCDHEC) to perform certain limited dredging of canals located in the Cherry Grove Section of North Myrtle Beach. The permit, Permit Number 2004-1W-215-P, shows the scope of the work together with the particular canals (permit canals) to be dredged. The permit has been amended by consent of the parties to allow the City to haul spoilage from the dredging offsite. (Attached Exhibit A).

8. The City in the exercise of its powers in relation to roads, streets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government has determined that it is necessary to dredge the canals in the areas specified in the amended permit and brings this lawsuit to determine its rights to effect that purpose.

9. Over many years the canals have been the subject of repeated litigation over legal and possessory rights to the canals.

10. East Cherry Grove Realty Company, C. D. Nixon and John H. Nye, as officers, directors or stockholders of East Cherry Grove Realty Company and as individuals (East Cherry Grove Realty) swapped deeds with the State of South Carolina in settlement of one such lawsuit whereby East Cherry Grove Realty quitclaimed to the State any interest in property generally "below the mean high watermark" and the State quitclaimed interest to the 1969 Grantors generally any interest in property "above the mean high water mark". (Copies of the deeds are attached as Exhibit B).

11. The quitclaim deed from East Cherry Grove Realty to the State contained the

following provisions:

“That all areas lying below the agreed mean high water mark on the Northeast Canal, Nixon Canal, proposed Nixon Canal Extension, Main Channel, Nye Cut and all other existing canals are quitclaimed to the State of South Carolina....”

....

“That all areas that become areas lying below the mean high water mark as a result of excavation above the agreed mean high water mark are quitclaimed to the State of South Carolina.”

12. The area to be dredged in the permit canals (permit area) was quitclaimed to the State in 1969 as shown in Exhibit B and East Cherry Grove Realty and the Nixon heirs' rights to the permit areas were terminated by that quitclaim deed and settlement agreement.

13. In addition to the quitclaim deed, East Cherry Grove Realty dedicated the canals to the public and City duly accepted their dedication along with other streets and canals outside of the permit areas.

14. East Cherry Grove Realty also sold lots in the Cherry Grove Section of North Myrtle Beach with property descriptions that incorporated plats recorded in the Register of Deeds for Horry County that showed canals and streets. Property owners who have purchased property which refer to the plat may have or claim an interest in the canals.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY RELIEF AS TO QUITCLAIM DEED)

15. Each and every pertinent allegation above is re-stated as fully as if set forth verbatim herein.

16. The City is informed and believes it is entitled to a judgment from the Court determining its rights to the canals under S.C. Code Ann. §15-67-10, et.seq.

17. The State of South Carolina has title to the property through the quitclaim deed issued by East Cherry Grove Realty.

18. The City as a political subdivision of the State has maintained control and possession of the property through the authority delegated to it by S.C. Code Ann. § 5-7-30.

**FOR A SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT AS TO DEDICATION OF CANALS)**

19. Each and every pertinent allegation above is re-stated as fully as if set forth verbatim herein.

20. East Cherry Grove Realty and their successors in interest intended to dedicate to the canals to the general public for the use and enjoyment of the State, its citizens and other members of the public. This intent may be found in the recordation of plats showing the canals on recorded plats; the sale or disposition of lots with reference to the map; the advertisement of the property to the public, the above mentioned quitclaim deed to the State of South Carolina and the unimpeded, longstanding, continuous and widespread public use of the canals without interference from the Respondents.

21. The City, the State and the general public accepted the dedication of the canals.

22. The City is informed and believes that Respondents do not have any private legal rights or private claims to legal title to the canals.

23. The City is informed and believes it is entitled pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10, to an order from this Court declaring that the canals were dedicated to the State of South Carolina, the City and the general public as a public rights of way and that the City has the right to dredge the canals as set forth in the

SCDHEC's amended permit and perform such other acts and services as are authorized under the statutes of the State of South Carolina.

FOR A THIRD CAUSE OF ACTION
(Prescriptive Easement)

24. Each and every pertinent allegation above is re-stated as fully as if set forth verbatim herein.

25. For over twenty years until the present, the City and its citizens have continuously used the canals in question as right of ways to travel the waters of the United States of America, to recreate and to access the Atlantic Ocean.

26. Those uses are usual and customary for such canals.

27. Those uses by the City and the general public were under a claim of right and adverse to Respondents' interest in the canals.

28. The City is informed and believes that it is entitled to a prescriptive easement over the property for the purpose of declaring the canals public right of ways.

29. The City is informed and believes it is entitled pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10, to an order from this Court declaring that the canals are public right of ways by prescriptive easement and that the City is entitled to exercise all rights of a municipality under the South Carolina statutes in connection with public rights of ways including but not limited to dredging the canals.

FOR A FOURTH CAUSE OF ACTION
(Law By Custom)

30. Each and every pertinent allegation above is re-stated as fully as if set forth verbatim herein.

31. The City's reasonable use of the canals for recreation, transportation, and marine activities has been long and general.

32. This use has been exercised without interruption by Respondents.

33. Respondents likewise knew of this custom and acquiesced in the continued exercise of this custom.

34. This customary use is reasonable, appropriate, peaceable and free from dispute.

35. The City is informed and believes that the custom of public use of the canals is of such a character so as to become law.

**FOR A FIFTH CAUSE OF ACTION
(Public Trust Doctrine)**

36. Each and every pertinent allegation above is re-stated as fully as if set forth verbatim herein.

37. If Respondents or their predecessors in interest obtained the property in question, that property was obtained from the State of South Carolina or from the English Crown.

38. Those sovereigns held in trust for the public's marine commercial and recreational use the canals affected by tidal waters.

39. This trust necessarily extends to the canals as they necessary for the full use and enjoyment of the tidal areas.

40. Plaintiff is informed and believes that any grant by the State of South Carolina or the English Crown of beach property, including the properties at issue, necessarily included an implied right of public use to the non-tidal portions of the canals.

**FOR A SIXTH CAUSE OF ACTION
(Easement Rights)**

41. Each and every pertinent allegation above is re-stated as fully as if set forth verbatim herein.

42. Plaintiff has purchased and currently owns property in the Cherry Grove Section of North Myrtle Beach. The deeds issued to the City refer to maps or plats which show the area in question as public canals. The City purchased the property in reliance on the information set forth in the plats and maps referred to in its deeds together with other maps and plats filed of record in the office of the Register of Deeds for Horry County, South Carolina.

43. The City is informed and believes it is entitled pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10, to an order from this Court declaring that the City has vested easement rights to the canals and that the City is entitled to exercise all rights of a municipality under the South Carolina statutes in connection with easement rights of ways including but not limited to dredging the canals.

WHEREFORE, Plaintiff prays as follows that the City be issued an order from this Court quieting title to the canals and/or that the City is entitled to exercise all rights of a municipality under the South Carolina statutes in connection with the canals as public rights of ways including but not limited to dredging the canals and such further and other relief that this Court may deem just and proper.


MICHAEL W. BATTLE
Battle & Vaught P.A.
Post Office Box 530
Conway, South Carolina 29528
(843)248-4321
Attorneys for Petitioner

Conway, South Carolina
June 11, 2009

THE STATE OF SOUTH CAROLINA
In the Supreme Court of South Carolina
Tracking # 2011191609

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach

Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe

Defendants

Of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

RULE 263(b) MOTION FOR EXPEDITION

Respondent City of North Myrtle Beach (City) hereby moves before the South Carolina Supreme Court pursuant to Rule 263(b) SCACR for expedition in the Supreme Court of South Carolina by Respondent North Myrtle Beach. The grounds for the motion are the case involves a matter of significant public interest.

The case arises in connection with the City's plans to perform much needed maintenance dredging improvements for public canals bordered by approximately 600 home sites in the East Cherry Grove section of North Myrtle Beach. The canals contain public waters which are navigable and used by the general public. Appellants claim they

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S.C. SUPREME COURT

own the bottoms of the canals and the City's maintenance dredging will constitute a taking of their property. The State of South Carolina claims it owns the property through a quitclaim deed it received in 1969 from Appellants' predecessor in title. Declaratory judgments were filed by the parties to determine ownership of the canals. On March 31, 2011, a jury found the State of South Carolina owned the canals which had been dedicated to the public and were held in trust for the public by the State.

The City's Motion for certification will be supported by the attached Memorandum of Authorities, the Final Briefs of the Parties and the Record on Appeal.

The City cannot issue public improvement bonds and perform the maintenance dredging until the ownership of the canals is resolved. The City of North Myrtle Beach respectfully requests that this Court inquire into the matters set forth in the motion together with its supporting memorandum and grant the City's Motion for Certification and expedite the resolution of the appeal in such manner as the Court believes is just and proper..


MICHAEL W. BATTLE
Battle & Vaught P.A.
Post Office Box 530
Conway, South Carolina 29528
(843)248-4321
Attorneys for Petitioner
Respondent City of North Myrtle Beach

Conway, South Carolina
January 23, 2012

THE STATE OF SOUTH CAROLINA
In the Supreme Court of South Carolina
Tracking # 2011191609

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach

Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe

Defendants

Of whom East Cherry Grove Realty Co., LLC is Appellant
and The State of South Carolina is Respondent

MEMORANDUM IN SUPPORT OF
THE CITY OF NORTH MYRTLE BEACH'S
RULE 263(b) MOTION FOR EXPEDITION

MICHAEL W. BATTLE SCB # 584
Battle & Vaught P.A.
Post Office Box 530
Conway, South Carolina 29528
(843)248-4321
Attorneys for Petitioner/
Respondent City of North Myrtle Beach

Conway, South Carolina
January 23, 2012

Statement of the Case

The case arises from a dispute over ownership of all the canals in the East Cherry Grove Section of North Myrtle Beach. The State of South Carolina claims ownership of the canals through a 1969 quitclaim deed from C.D. Nixon and the East Cherry Grove Realty Company. The City of North Myrtle Beach, with permission from the State, plans to improve the canals through a public improvement, maintenance dredging project. Appellants claim ownership of the canals through the last will of C.D. Nixon, now deceased. Appellants claim the dredging project will constitute a taking of their property and they are entitled to compensation if the canals are dredged.

Declaratory judgment actions were filed by the parties and consolidated. On March 31, 2011, a jury returned a verdict in favor of the Respondents finding: 1) the canals belonged to the State of South Carolina by virtue of the 1969 quitclaim deed; 2) Appellants' predecessors in title had dedicated the canals to the public; and 3) the State of South Carolina held title to the canals in trust for the general public. (Copy attached). Appellants duly appealed the jury's verdict and the Court's order upholding the jury's verdict.

Factors that favor expedition.

1. The appeal affects the interests of the general public in that area. The canals are in serious need of maintenance dredging. East Cherry Grove is a relatively large canal community. The general public has used the canals for transportation and recreation for the past fifty years. Approximately 600 home sites adjoin the canals in East Cherry Grove. Former Chief Justice Hon. David Harwell testified for the Respondents that the canals are silting in and now, at low tide, the canals are not useable for much other than breeding mosquitoes. During the past six years the silting in of the

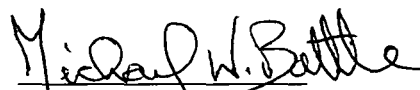
canals appears to be growing worse. An extended appellate delay will drive up the maintenance dredging costs and the amount of work necessary to complete the City's plans.

2. Notwithstanding the trial verdict, the City cannot proceed with its dredging plans. The City is required to obtain a dredging permit from the U.S. Army Corps of Engineers. The Corps of Engineers will not act on the City's application because of the pending dispute over ownership of the canals. In addition, public improvement bonds cannot be issued if the property is determined to be private property.

3. The significance of the public's interest in the resolution of the dispute can be demonstrated by the fact that legislation was recently enacted and supported by SCDHEC and environmental groups which will allow the City and other similarly situated municipalities or counties to do maintenance dredging in canal communities such as East Cherry Grove with the proper permits from the U.S. Army Corps of Engineers. See R. # 75, signed by the Governor on June 7, 2011.

Conclusion.

The City of North Myrtle Beach respectfully requests that the Court expedite the resolution of the appeal in such manner as the Court deems is just and proper.



MICHAEL W. BATTLE

Battle & Vaught P.A.

Post Office Box 530

Conway, South Carolina 29528

(843)248-4321

Attorneys for Petitioner

Respondent City of North Myrtle Beach

Conway, South Carolina
January 23, 2012

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

City of North Myrtle Beach,.....Respondent,

v.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe.....Appellant,

The Honorable William H. Seals, Jr.
Horry County
Trial Court Case No. 2009-CP-26-5782

PROOF OF SERVICE

Sherri Benninga certifies that she is an employee with the law firm of Battle & Vaught, P.A., attorneys for Respondent City of North Myrtle Beach, and that she has mailed a copy of a Rule 263(b) Motion for Expedition with attached Memorandum of Respondent City of North Myrtle Beach to the addressees shown this 23rd day of January, 2012, with proper postage attached thereto.

Gene M. Connell, Jr.
Kelaher, Connell & Connor, P.C.
PO Box 14547
Surfside Beach, SC 29587-4547

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

This 23rd day of January, 2012.


Sherri Benninga, Paralegal
Battle & Vaught, P.A.

Hopkins, Debbie

From: Emory Smith <AGESMITH@scag.gov>
Sent: Thursday, February 02, 2012 11:05 AM
To: Hopkins, Debbie
Cc: Mike Battle; gconnell@classactlaw.net; Allen, Linda
Subject: Re: City of North Myrtle Beach v. East Cherry Grove Realty

In light of my response for the State to the scheduling below, is a formal response needed to the City's Motion to Expedite? The State does not object to the Motion to Expedite and respects whatever determination the Court makes as to scheduling.

Emory Smith

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3680
Email: agesmith@scag.gov
>>> Emory Smith 1/31/2012 4:16 PM >>>
Ms. Hopkins:

I have a conflict on March 20 when I have to attend an argument in Richmond at the Fourth Circuit. I do not have conflicts on the other days.

Thank you.

Emory Smith
Counsel for the State

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3680
Email: agesmith@scag.gov
>>> "Mike Battle" <mbattle@battlevaught.com> 1/31/2012 4:14 PM >>>

Ms. Allen,

This will confirm our telephone conversation in which I indicated that I do not have a conflict for the dates: March 6,7,8, 20 or 21. If you need anything else, please let me know.

Thanks.

Mike Battle

Hopkins, Debbie

From: Gene Connell <gconnell@classactlaw.net>
Sent: Thursday, February 02, 2012 11:59 AM
To: Hopkins, Debbie
Cc: agesmith@ag.state.sc.us; mbattle@battlevaught.com
Subject: East Cherry Grove

Ms. Hopkins,

This confirms that I do not object to the Motion for Expedition filed by Mike Battle.

As to the dates you provided for possible hearing, I would ask that the hearing be set for March 8 if at all possible.

Should you need anything further, please contact me.

Gene M. Connell, Jr., Esq.
Kelaher, Connell & Connor, P.C.
P. O. Drawer 14547
Surfside Beach, SC 29587-4547
Phone: (843) 238-5648
Fax: (843) 238-5050
Email: gconnell@classactlaw.net

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Hopkins, Debbie

From: Emory Smith <AGESMITH@scag.gov>
Sent: Tuesday, January 31, 2012 4:16 PM
To: Mike Battle; Hopkins, Debbie; Allen, Linda
Cc: gconnell@classactlaw.net
Subject: Re: City of North Myrtle Beach v. East Cherry Grove Realty

Ms. Hopkins:

I have a conflict on March 20 when I have to attend an argument in Richmond at the Fourth Circuit. I do not have conflicts on the other days.

Thank you.

Emory Smith
Counsel for the State

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3680
Email: agesmith@scag.gov
>>> "Mike Battle" <mbattle@battlevaught.com> 1/31/2012 4:14 PM >>>

Ms. Allen,

This will confirm our telephone conversation in which I indicated that I do not have a conflict for the dates: March 6,7,8, 20 or 21. If you need anything else, please let me know.

Thanks.

Mike Battle

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

MICHAEL W. BATTLE
BATTLE & VAUGHT, PA
P.O. BOX 530
1200 MAIN STREET
CONWAY, SOUTH CAROLINA 29528
(843)248-4321
mbattle@battlevaught.com

Hopkins, Debbie

From: Frankie Odonnell <modonnell@classactlaw.net>
Sent: Tuesday, January 31, 2012 4:12 PM
To: Hopkins, Debbie
Subject: East Cherry Grove Realty case

Debbie:

This is to confirm that Gene Connell has conflicts on March 6 and 7 but is **available on March 8, 20 or 21st, 2012.**

Thank you.

Frankie O'Donnell
Legal Assistant to Gene M. Connell, Jr.

Kelagher, Connell & Connor, PC
P. O. Drawer 14547
Surfside Beach, S. C. 29587
(843)238-5648 fax # (843-238-5050)

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD WITHOUT PERMISSION

This message is intended only for the named recipient. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

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Hopkins, Debbie

From: Allen, Linda
Sent: Tuesday, January 31, 2012 4:18 PM
To: Hopkins, Debbie
Subject: FW: City of North Myrtle Beach v. East Cherry Grove Realty

From: Mike Battle [mailto:mbattle@battlevaught.com]
Sent: Tuesday, January 31, 2012 4:14 PM
To: Allen, Linda
Cc: gconnell@classactlaw.net; AGESMITH@scag.gov; cpnoury@nmb.us
Subject: City of North Myrtle Beach v. East Cherry Grove Realty

Ms. Allen,

This will confirm our telephone conversation in which I indicated that I do not have a conflict for the dates: March 6, 7, 8, 20 or 21. If you need anything else, please let me know.

Thanks.

Mike Battle

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MICHAEL W. BATTLE
BATTLE & VAUGHT, PA
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1200 MAIN STREET
CONWAY, SOUTH CAROLINA 29528
(843)248-4321
mbattle@battlevaught.com

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

January 30, 2012

RECEIVED

JAN 31 2012

S.C. Supreme Court

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

Dear Mr. Shearouse:

Enclosed please find the original (unbound) and fourteen (14) copies of the following for filing in the above-captioned case:

- Record on Appeal with Certificate of Counsel;
- Final Brief of Appellant with Certificate of Counsel and Proof of Service;
- Appellant's Final Reply Brief (as to Respondent City) with Certificate of Counsel and Proof of Service; and
- Appellant's Final Reply Brief (as to Respondent State) with Certificate of Counsel and Proof of Service.

I also enclose fifteen (15) copies of two (2) CDs with the following exhibits: P-1, P-7A, P-20, D-15, D-23, D-31, C-5 and D-38.

Pursuant to the Order of the Court dated January 27, 2012 all exhibits released to us by the Horry County Clerk of Court are being hand delivered to the Supreme Court.

I also enclose an additional copy of the Proof of Service of each of the Briefs and would ask that you please return a filed copy of each to this office in the self-addressed, stamped envelope enclosed for your convenience.

Daniel E. Shearouse, Clerk
January 30, 2012
Page 2

By copy of this letter, I hereby serve the Respondents, through counsel of record, with each of the Final Briefs as stated above as well as copies of the CDs. The Record on Appeal was previously served and Proof of Service provided to the Court pursuant to Rule 210.

Thank you for your kind assistance in this matter.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

The Supreme Court of South Carolina

City of North Myrtle Beach, Respondent,

v.

East Cherry Grove Realty Co.,
LLC, The State of South
Carolina and John Doe, Defendants,

Of whom East Cherry Grove
Realty Co., LLC is the Appellant,

and The State of South
Carolina is Respondent.

The Honorable William H. Seals, Jr.
Horry County
Trial Court Case No. 2009-CP-26-05782

ORDER

Pursuant to Rule 210(f) of the South Carolina Appellate Court Rules, it is
ordered that the Clerk of Court for Horry County release the following
exhibits:

Plaintiffs Exhibits:

- P-1 Map of dredging project
- P-2 Permit
- P-3 Two letters dated 7/19/10 and 7/27/10
- P-4 Deed from East Cherry Grove to State of South Carolina
- P-5. Deed from State of South Carolina to East Cherry Grove
- P-7A Plat

- P-15 Three Deeds - East Cherry Grove Company
- P-16 Judge Morrison's Order dated April 26, 1973
- P-18 Petition (3/20/69) and Order (4-7-69) - Channel Dev. Corp.
- P-20 Five Exhibits from Deposition of Dr. Nixon (Nixon Ex. 1)
Nixon Ex. 2, 3, 4, 5
- P-21 Documentation of Navigability of Cherry Grove Channels
dated 29 October 10
- P-22 Documentation of Navigability of Cherry Grove Channels
dated 24 September 10
- P-23 Contract with DDC (Wooten)
- P-24 Microfilm Letter
- P-25 South Carolina Department of Health and Environmental Control
mounted on large poster
- P-26 C.B. Berry article (mounted on poster filed with the Court)
- P-27 Quit-Claim deed, Book 420 at page 586
(mounted on five posters filed with the Court)
- P-28 Blow up of 1968 Plat from Latimer Deposition
- P-29 1979 large Plat filed with the Court
- P-30 1977 Deed of Dissolution
- P-31 Two-Page Jim Quinn Letter dated May 13, 1994
- P-32 Two page October 31, 1980 letter
(mounted on two posters filed with the Court)
- P-33 Legend (with 27 color photographs filed with the Court)

Defendant's Exhibits:

- D-2 Chain of Title
- D-4 Map with Color Markings
- D-5 Petition of State of South Carolina May 28, 1965
- D-6 Order of Judge Morrison - June 13, 1963
- D-7 Agreed Statement of Facts
- D-8 Transcript of [Land] Record and Appendix - Pages 1-17 only
- D-10 Ten Dock Permits
- D-11 Three photos of Marsh in Old Cherry Grove
- D-15 Map of Cherry Grove Beach
- D-17 Deed of Distribution -- Estate of Nixon to Ray T. Nixon
- D-18 Warranty Deed - Ray T. Nixon to East Cherry Grove
- D-19 Real Estate Tax Receipts - 2009
- D-20 Map of Cherry Grove Beach (same as P-20)
- D-21 Judge Morrison's Order dated August 2, 1968
- D-22 Judge Morrison's Supplemental Order dated December 23, 1969
- D-23 Map of Heritage Shores
- D-24 Qualifications of C.B. Berry
- D-25 Grant - State of South Carolina to David Morrall
- D-26 Grant - King George II to John Morrall
- D-27 Grant - State of South Carolina to Daniel Morrall
- D-28 Grant - King George to John Alston
- D-29 Map of Area from Old File

D-30 Ray Letter w/attachments dated 7/19/10
D-31 Map
D-32 Written Demo. of Tax Amount w/check & Hickman Business Card
D-33 Kings Grant Deed 12/4/1735
D-34 Kings Grant Deed 8/8/1767
D-35 Kings Grant Deed 7/4/1785
D-36 Kings Grant Deed 7/3/1786
D-37 Plat showing Compilation of King's Grants
D-38 Compilation of 8-1/2x11 slides (1-17)
D-39 Taped map
D-40 Check #2027 dated 1/1/11 in the amount of \$445.50

Court's Exhibits:

C-1 Deposition of Dr. Nixon (written)
C-2 Video Deposition of Ed Latimer
C-3 Sealed paper Deposition of Ed Lattimer
(Exhibits to Deposition filed with the Court)
C-4 Video Deposition of C.B. Berry
C-5 Deposition of C.B. Berry
(Incorrectly identified in Transcript Index as Verdict Form)
C-6 Transcript of Appendix
C-7 Defendant's Request to Charge
(Incorrectly identified in Transcript Index as Plaintiff's)
C-8 Plaintiff's Request to Supplement Charge
C-9 Copy of *Vaughn v. Vermillion* case

to be transported to the South Carolina Supreme Court for consideration in
the above referenced appeal.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK

Columbia, South Carolina

January 27, 2012

cc: Gene M. Connell, Jr., Esquire
Attorney General Alan Wilson
Assistant Deputy Attorney General J. Emory Smith, Jr.
Michael W. Battle, Esquire
The Honorable Melanie Huggins



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

January 24, 2012

JAN 24 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

S.C. Supreme Court

Re: City of North Myrtle Beach v. E. Cherry Grove Realty Co. and State
09-CP-26-5782

Dear Mr. Shearouse:

Enclosed for filing with your Office is the original and fourteen copies of the Brief of the State together with a Rule 211, SCACR, statement and certificate of service.

Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.

Assistant Deputy Attorney General

cc: Michael W. Battle, Esquire
Gene M. Connell, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 12 2012

S.C. Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom
East Cherry Grove Realty Co., LLC is Appellant
and
The State of South Carolina is Respondent

**NOTICE OF MOTION AND MOTION
FOR RELEASE OF EXHIBITS**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Appellant, moves this Court for an Order allowing Appellant to take possession of all original exhibits from the above-captioned trial. The basis of this motion is that although Appellant has taken extraordinary measures to produce the most legible copies available of the trial exhibits for the Record on Appeal, Appellant realizes that the original exhibits are necessary for the Court's review and full understanding of the case.

WHEREFORE, Appellant respectfully requests this Court issue its Order allowing Appellant to take possession of all exhibits from the Horry County Clerk of Court and to

provide the exhibits either contemporaneously with the Record on Appeal or immediately thereafter.

Respectfully submitted,

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

A handwritten signature in black ink, appearing to read "Gene M. Connell, Jr.", is written over a horizontal line.

Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

January 10, 2012
Surfside Beach, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom

East Cherry Grove Realty Co., LLC is Appellant
and

The State of South Carolina is Respondent

PROOF OF SERVICE

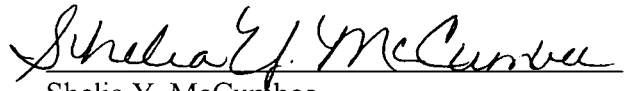
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served a **Notice of Motion and Motion for Release of Exhibits** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

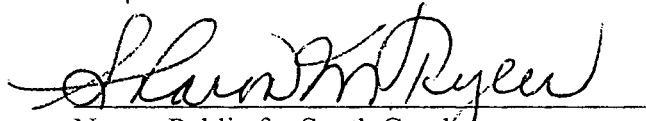
and

Alan Wilson
J. Emory Smith, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: January 10, 2012


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 10th day of January, 2012.


Notary Public for South Carolina
My Commission Expires: 2-25-19

BATTLE & VAUGHT P.A.
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
POST OFFICE BOX 530
CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
FACSIMILE (843) 248-4512
www.battlevaught.com

MICHAEL W. BATTLE
E-Mail Address: mbattle@battlevaught.com
VICTORIA T. VAUGHT
E-Mail Address: vvaught@battlevaught.com

JAMES R. BATTLE, II
E-Mail Address: jbattle@battlevaught.com
M. KIRK BATTLE
E-Mail Address: kbattle@battlevaught.com

January 17, 2012

The Honorable Daniel E. Shearouse
The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RE: City of North Myrtle Beach vs. East Cherry Grove Realty Co., LLC, et. al.
Case tracking # 2011191609

Dear Mr. Shearouse:

I have enclosed for filing the original and fifteen (15) copies of Respondent City of North Myrtle Beach's Final Brief together with the Certificate of Counsel. Also enclosed is the Respondent's Proof of Service.

By copy of this letter to all counsel involved in this Appeal, I am serving them with a copy of the Final Brief of the Respondent City of North Myrtle Beach.

Please return a "clocked" copy of the Proof of Service. I have enclosed an extra copy of the Proof of Service, as well as a self-addressed, stamped envelope for your convenience.

I appreciate your assistance in this matter.

Sincerely,


Michael W. Battle

Enclosures: stated

C Gene Connell, Jr.
J. Emory Smith
Chris Noury

90. SUPREME COURT

JAN 18 2012

RECEIVED

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

January 10, 2012

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

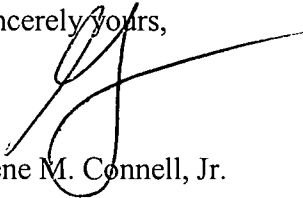
Dear Mr. Shearouse:

Enclosed please find an original and seven (7) copies of our Notice of Motion and Motion for Release of Exhibits and Proof of Service in the above-captioned matter. I also enclose a check for \$25.00 for the filing fee. Please return a filed copy to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated document on Respondents through counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

January 10, 2012

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

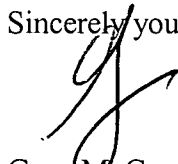
Dear Mr. Shearouse:

Enclosed please find the original and one (1) copy of our Proof of Service of the Record on Appeal in the above-captioned matter. Please return a filed copy to this office in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, I hereby serve the Respondents, through counsel of record, with the Record on Appeal.

Thank you for your kind assistance in this matter.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

RECEIVED

JAN 12 2012

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom
East Cherry Grove Realty Co., LLC is Appellant
and
The State of South Carolina is Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Record on Appeal** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

and

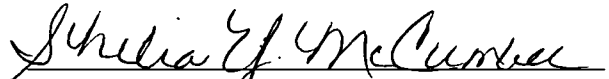
RECEIVED

JAN 12 2012

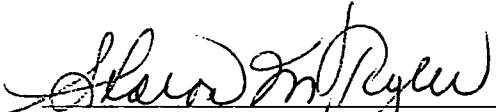
S.C. SUPREME COURT

Alan Wilson
J. Emory Smith, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: January 10, 2012


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 10th day of January, 2012.


Notary Public for South Carolina
My Commission Expires: 2-25-19

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

December 12, 2011

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

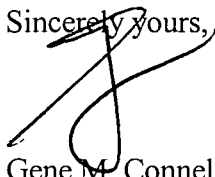
Dear Mr. Shearouse:

Enclosed please find an original and one (1) copy of Appellant's Reply Brief (as to Respondent State of South Carolina) with Proof of Service in the above-captioned matter. Please return a filed copy to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated documents on Respondents through counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

RECEIVED

DEC 18 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom

East Cherry Grove Realty Co., LLC is Appellant
and

The State of South Carolina is Respondent

PROOF OF SERVICE

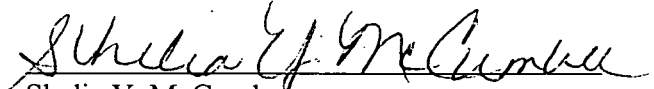
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Appellant's Reply Brief as to Respondent State of South Carolina** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

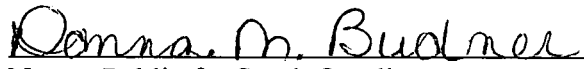
and

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: December 12 2011


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 12th day of December, 2011.


Notary Public for South Carolina
My Commission Expires: 2/14/17



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

DEC - 2 2011

December 2, 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: City of North Myrtle Beach v. E. Cherry Grove Realty Co. and State
09-CP-26-5782

Dear Mr. Shearouse:

Enclosed for filing with your Office is the original Initial Brief of the State together with a certificate of service. I do not have any documents to designate for the Record other than those already designated by the other parties.

Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc: Michael W. Battle, Esquire
Gene M. Connell, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

DEC - 2 2011

APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. Supreme Court

William H. Seals, Jr. Circuit Court Judge

Case No. 2009-CP-26-5782

City of North Myrtle Beach.....Respondent,

v.

East Cherry Grove Realty Co., LLC,
the State of South Carolina and John Doe.....Defendants,

of whom, East Cherry Grove Realty Co., LLC, is Appellant,

and, the State of South Carolina is Respondent.

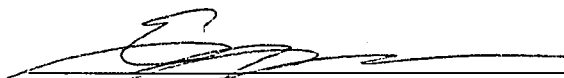
CERTIFICATE OF SERVICE

I hereby certify that I have served the State's Initial Brief on counsel for
the other parties by mailing copies to them at the addresses below via the
United States Mail this December 2, 2011:

Michael W. Battle, Esquire
Battle & Vaught, P.A.
P.O. Box 530
Conway, SC 29528-0530

Certificate of Service
North Myrtle Beach v. East Cherry Grove Realty
December 2, 2011
Page 2

Gene M. Connell, Esquire
Kelaher, Connell & Connor, P.C.
Attorneys at Law
P.O. Drawer 14547
Surfside Beach, SC 29587



J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Attorneys for the State

The Supreme Court of South Carolina

City of North Myrtle Beach, Respondent,

v.

East Cherry Grove Realty Co.,
LLC, The State of South
Carolina and John Doe, Defendants,

Of whom East Cherry Grove
Realty Co., LLC is the Appellant,

and The State of South
Carolina is Respondent.

The Honorable William H. Seals, Jr.
Horry County
Trial Court Case No. 2009-CP-26-05782

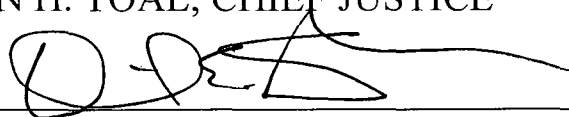
ORDER

For good cause having been shown, the request for an extension to
serve and file the Initial Brief of Respondent and Designation of Matter on
behalf of the State is granted and extended until December 2, 2011.

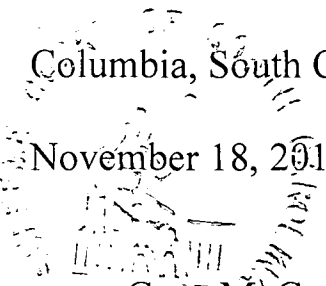
IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK



Columbia, South Carolina

November 18, 2011

cc: Gene M. Connell, Jr., Esquire
Michael W. Battle, Esquire
Assistant Deputy Attorney General J. Emory Smith, Jr.

ALAN WILSON
ATTORNEY GENERAL



RECEIVED

NOV 17 2011

S.C. Supreme Court

November 17, 2011

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: City of North Myrtle Beach v. E. Cherry Grove Realty Co. and State
09-CP-26-5782
Extension Request

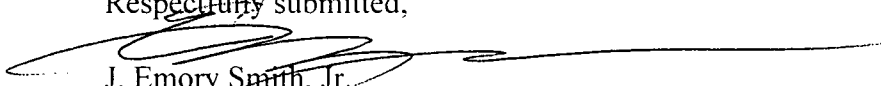
Dear Mr. Shearouse:

I would appreciate the Court's granting an extension of time of ten additional days for the State to file its initial brief and designation of matter for the record in this case. I believe that our brief and designation are currently due on November 22 following a fifteen day extension previously granted. Under this proposed extension, these documents would be due on Friday, December 2.

Although this extension request is my second, the total days requested in both requests is less than thirty. The reasons for this extension are a major Federal court deadline on the same date which was set after I made my last extension request. Although the State may concur in portions of the legal arguments in the brief of Respondent City of North Myrtle Beach, I believe that the State will still need to brief at least one argument in this case. The additional time requested will be helpful.

Thank you for your consideration of this request for an extension of time.

Respectfully submitted,


J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc: Michael W. Battle, Esquire
Gene M. Connell, Esquire

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

November 14, 2011

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, et al.
C/A No. 2009-CP-26-5782
Our File No. 2009-0133C

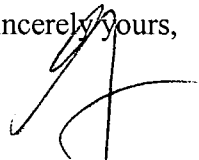
Dear Mr. Shearouse:

Enclosed please find an original and one (1) copy of Appellant's Reply Brief (as to Respondent City of North Myrtle Beach) with Proof of Service in the above-captioned matter. Please return a filed copy to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated documents on Respondents through counsel of record.

With best regards, I am

Sincerely yours,


Gene M. Connell, Jr.

RECEIVED

NOV 17 2011

S.C. SUPREME COURT

GMC,Jr.:sm
Enclosures

cc w/enc.: Michael W. Battle, Esquire
J. Emory Smith, Jr., Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2009-CP-26-5782

City of North Myrtle Beach Respondent

vs.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe..... Defendants

Of whom

East Cherry Grove Realty Co., LLC is Appellant
and

The State of South Carolina is Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Appellant's Reply Brief as to Respondent City of North Myrtle Beach** on the Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Michael W. Battle, Esquire
Battle & Vaught, PA
P.O. Box 530
Conway, SC 29528
Attorney for Respondent City of North Myrtle Beach

and

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent State of South Carolina

DATE OF MAILING: November 14, 2011

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 14th day of November, 2011.

Donna M. Budner
Notary Public for South Carolina
My Commission Expires: 2/14/17

BATTLE & VAUGHT P.A.
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
POST OFFICE BOX 530
CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
FACSIMILE (843) 248-4512
www.battlevaught.com

RECEIVED

NOV 09 2011

S.C. SUPREME COURT

MICHAEL W. BATTLE
E-Mail Address: mbattle@battlevaught.com
VICTORIA T. VAUGHT
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JAMES R. BATTLE, II
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E-Mail Address: kbattle@battlevaught.com

November 4, 2011

The Honorable Daniel E. Shearouse
The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

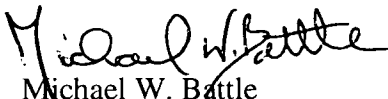
RE: City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC et.al.
Trial Court Case No. 2009-cp-26-5782

Dear Mr. Shearhouse:

Enclosed for filing please find the original and one (1) copy of the Initial Brief and Designation of Matter To Be Included in the Record on Appeal of Respondent City of North Myrtle Beach in the above-referenced matter. I would appreciate your acknowledging receipt of these documents by file stamping the extra copy and returning them to me in the enclosed envelope.

By copy of this letter, I am serving counsel of record and enclose a Proof of Service to that effect. If you have any questions or if you need any additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,


Michael W. Battle
Battle & Vaught, P.A.

Enclosures: stated
C: Gene Connell
J. Emory Smith, Jr.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

City of North Myrtle Beach,.....Respondent,

v.

East Cherry Grove Realty Co., LLC,
The State of South Carolina and John Doe.....Appellant,

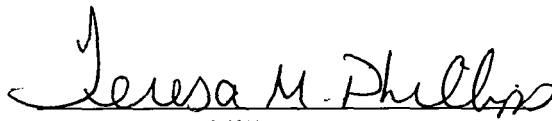
The Honorable William H. Seals, Jr.
Horry County
Trial Court Case No. 2009-CP-26-5782

PROOF OF SERVICE

This is to certify that I, an employee of the law offices of Battle & Vaught, P.A., have caused to be served this day one (1) copy of the Initial Brief and Designation of Matter to be Included in the Record on Appeal of Respondent City of North Myrtle Beach by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Gene M. Connell, Jr.
Kelaheer, Connell & Connor, P.C.
PO Box 14547
Surfside Beach, SC 29587-4547

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211


Teresa M. Phillips

This 4th day of November, 2011.

The Supreme Court of South Carolina

City of North Myrtle Beach,

Respondent,

v.

East Cherry Grove Realty Co.,
LLC, The State of South
Carolina and John Doe,

Defendants,

Of whom East Cherry Grove
Realty Co., LLC is the

Appellant,

and The State of South
Carolina is

Respondent.

The Honorable William H. Seals, Jr.

Horry County

Trial Court Case No. 2009-CP-26-05782

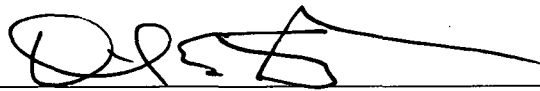
ORDER

For good cause having been shown, the time for serving and filing the respondent's initial brief and designation of matter in the above entitled matter is hereby extended until November 22, 2011.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

October 31, 2011

cc: Gene M. Connell, Esquire
Assistant Deputy Attorney General J. Emory Smith, Jr.
Michael W. Battle, Esquire