

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

RECEIVED

MAY 22 2012

S.C. Supreme Court

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

South Carolina Court of Appeals
Opinion No. 4616 (2009 WL 4282641)
(Filed 24 November 2009)

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

RETURN TO MOTION TO STRIKE

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TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT:

COMES NOW the Respondent, Mayo Read, Jr., ("Mr. Read") together with the Respondent, South Carolina Department of Health and Environmental Control ("SCDHEC"),¹ pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, and jointly respectfully submit their joint response to the Motion to Strike previously submitted by the Petitioner, Too Tacky Partnership ("Too Tacky").

I. STATEMENT OF THE CASE

On 30 March 2005, SCDHEC, by and through the OCRM, issued a *Critical Area Permit & Coastal Zone Consistency Certification* (the "Dock Permit") to the Respondent, Mayo Read, Jr. ("Mr. Read"). (R.p.1; R.p.16; R.pp.302-308).² This certification authorized Mr. Read to construct a private dock accessing Leadenwah Creek on and across property owned by Too Tacky.³ (R.p.1; R.p.16; R.p.22; R.pp.302-308).

¹ Reference to the Respondent, South Carolina Department of Health and Environmental Control ("SCDHEC"), also includes reference to SCDHEC's Office of Ocean and Coastal Resource Management ("OCRM").

² As this Supreme Court is aware, Too Tacky prepared and filed the Appendix in this appeal. Too Tacky numbered the pages in the Appendix consecutively, including renumbering the Record On Appeal. Mr. Read and SCDHEC have retained the original numbering scheme from the Record on Appeal in order to indicate the record citations in this brief. This has been done to maintain the continuity in the briefs. Any additional citations will be referenced to the Appendix pages.

³ Too Tacky is a South Carolina limited partnership (R.p.198, lines 12-5; R.pp.322-325) comprised of Lawton Grimball ("Mr. Grimball") and his wife. (R.p.198, lines 12-15). Too Tacky has been heretofore represented in this case by Mr. Grimball. (R.p.198, lines 12-20).

After DHEC-OCRM issued the Dock Permit to Mr. Read, Too Tacky challenged the permit's validity in a contested case proceeding before the South Carolina Administrative Law Court (the "ALC").⁴ (R.p.16; R.p.22). The Honorable John D. McLeod, Administrative Law Judge, heard the contested case (R.p.16; R.p.71) and affirmed DHEC-OCRM's decision to grant the Dock Permit.⁵ (R.pp.1-13; R.pp.15-16; R.p.18; R.p.71). Too Tacky appealed the ALC's decision to the Coastal Zone Management Appellate Panel (the "CZMAP") (R.p.14; R.pp.24-28) which, in turn, unanimously affirmed the ALC. (R.pp.14-15).

On 12 April 2007, Too Tacky filed a Petition for Judicial Review with the Circuit Court. (R.p.16; R.p.30).⁶ Too Tacky sought a *de novo* judicial review of the Dock Permit's validity. (R.p.30). Mr. Read responded to the petition by denying the material allegations (R.p.36, paras. 4-5; R.p.37, paras. 9-10, 12, 14; R.pp.38, paras. 19-22) and asserting various defenses (R.p.39, paras. 26, 28), including a lack of subject matter jurisdiction. (R.p.38, para. 24). Similarly, DHEC-OCRM responded by denying the material allegations. (R.p.41, paras. 1, 5; R.p.42, paras. 8-9). DHEC-OCRM also asserted the affirmative defenses of lack of subject matter jurisdiction⁷ (R.p.42, para. 10), and failure to state a cause

⁴ See generally S.C. Code Ann. §§ 1-23-310, *et seq.* (Thomson West 2005); 1-23-600(B)) (Thomson West 2005); and 48-39-150 (Thomson West Supp. 2005).

⁵ See generally Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 2006 WL 2617201 (S. C. Admin. Law Judge Div., filed 17 August 2006).

⁶ See S.C. Code Ann. § 48-39-180 (Thomson West 2005).

⁷ See Rule 12(b)(1), SCRCivP.

of action.⁸ (R.pp.42-43, para. 11). The Circuit Court affirmed the CZMAP's decision (R.pp.16-19) and then denied Too Tacky's subsequent motion to alter or amend the decision.⁹ (R.pp.21, 63-70).

Too Tacky appealed to the South Carolina Court of Appeals which, by published opinion, affirmed the Circuit Court (and also, by implication, the ALC and CZMAP) in all respects. (App.455-460).¹⁰ Thereafter, on 23 September 2009, Too Tacky filed its Petition for Rehearing with the Court of Appeals (App.445-452). The Court of Appeals denied the petition by order dated 24 November 2009). (App.453-454).¹¹ Thereafter, on 28 December 2009, Too Tacky filed its Petition for Writ of Certiorari with this Supreme Court. By order dated 1 December 2011, this Supreme Court granted the petition. The parties have filed their respective briefs with this Supreme Court.

Mr. Read and DHEC-OCRM now jointly move to dismiss this appeal on the grounds Too Tacky no longer has the requisite standing to pursue the matter.

II. STATEMENT OF THE FACTS

A. History Of The Parties' Property

Too Tacky and Mr. Read were previously adjacent property owners on Wadmalaw Island in Charleston County. (R.pp.1A-2; R.p.316). On 28 October 1986, their common predecessor-in-title, subdivided some 17.71 acres into four

⁸ See Rule 12(b)(6), SCRCivP.

⁹ See generally Rule 59(e), SCRCivP.

¹⁰ See Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 386 S.C. 32, 686 S.E.2d 194 (Ct.App. 2009).

essentially equal sized lots designated as Lots Nos. 1 through 4, via a plat entitled "*Plat of Division of Lands of Alma E. Wagner*" located at the end of Tacky Point Road near Leadenwah Creek (the "Wagner Plat"). (R.p.1A, para. 1; R.p.316). The Wagner Plat specifically depicts a 50' wide pathway clearly labeled "50' [D]rainage – [E]asement & Creek Access for Lots [Nos.] 1, 2 & 3" across the rear or landward edge of Lot 4.¹² (R.p.1A, para. 1; R.p.316). Neither Lot No. 2 nor Lot No. 3 has direct access to deep water due to the large expanse of marsh directly in front of both of those properties. (R.p.1A, para. 2; R.p.202, line 16 – R.p.203, line 17; R.p.204, lines 11-20; R.p.316).¹³ The deed to Lot No. 3 specifically stated the "conveyance of the Grantor's interest in the 50' right-of-way [wa]s subject to the private use by the owner of Lots [Nos.] 1, 2, and 4, as set out in the dedication which appears on the [Wagner] Plat." (R.p.317).

Six years after Mrs. Wagner's 1986 subdivision of the 17.71 acres into four lots, *Too Tacky purchased Lot No. 4* from Robert L. McFarland on 7 April 1992.¹⁴ (R.pp.1A-2, para. 3, R.pp.322-325) and slightly over six years later Mr.

¹¹ In concert with denying rehearing, the Court of Appeals withdrew the original opinion and issued a substituted and refilled opinion.

¹² Lot No. 4 is bordered by marshlands and the Leadenwah River *nee* creek. (R.p.16). Ms. Alma E. Wagner – the then owner of all four lots signed the Wagner Plat. (R.p.16). The Wagner Plat was also stamped as approved by the Clerk for Charleston County Council and subsequently recorded in the RMC Office in Charleston County at Plat Book BK, Page 145. (R.p.16).

¹³ Lot No. 1 has direct deep-water access to the west into a branch of the Leadenwah River.

¹⁴ Too Tacky's deed was recorded in the Charleston County RMC Office on the same day in Book L212 at p.207. (R.pp.322-325).

Read purchased Lot 3, also from Mr. McFarland on 24 April 1998.¹⁵ (R.p.1A-2, para. 3; R.pp.317-321). Mr. Read's parents, I. Mayo Read, Sr., and Ellen P. Read, purchased Lots Nos. 1 and 2. (R.pp.1A-2, para. 3).¹⁶ The deeds for all four lots, including both Mr. Read's and Too Tacky's deeds, specifically incorporated the Wagner Plat by reference.¹⁷ (R.pp.1A-2, para. 3; R.pp.276-285; R.pp.316-325).

B. Too Tacky Sells Lot No. 4 To A Third-Party

On 11 January 2011,¹⁸ Too Tacky sold all of its fee interest in the subject property to Kelly J. Albers for \$665,000.00.¹⁹ Pursuant to the Albers Deed, Too Tacky has not retained any interest in the property as noted by the following language:

¹⁵ Mr. Read's deed was recorded in the Charleston County RMC Office on 28 April 1992, in Book R301 at p.161. (R.pp.317-321).

¹⁶ At the time of the ALC hearing, Mr. Read's parents had purchased Lot No. 3 from him. (R.pp.1A-2, para. 3 n.1; R.p.187, lines 1 – R.p.189, lines 1-4). Mayo Read, Sr., serving as Mr. Read's agent, was issued the Dock Permit and signed the Dock Permit. (R.pp.1A-2, para. 3 n.1; R.pp.302-308). Mayo Read, Sr. attended and actively participated in the ALC hearing. (R.pp.1A-2, para. 3 n.1; R.p.186, line 18 – R.p.187, line 25). See Rule 25(c), SCRCivP, in conjunction with Rule 68, SCALDJ.

¹⁷ The Too Tacky deed, in describing the property provides that “[s]aid lot of land containing such size, shape, dimensions, buttings and boundings as shown on said [Wagner] plat, ***which [Wagner] plat is incorporated herein by reference.***” (R.pp.1A-2, para. 3 n.2; R.p.322) (Emphasis added). Even the Albers Deed incorporates the Wagner Plat. (Albers Deed, p.1).

¹⁸ This was a little over two years after Too Tacky sought certiorari from this Supreme Court, but almost 11 months before certiorari was granted.

¹⁹ See Title to Real Estate from Too Tacky, A Partnership to Kelly J. Albers dated 6 January 2011, (the “Albers Deed”) (A copy of the Albers Deed is attached hereto as Exhibit “A” and incorporated herein by reference). The Albers Deed was recorded in the RMC Office for Charleston County in Book 0165 at Page 599.

KNOW ALL MEN BY THESE PRESENTS, that Too Tacky, A Partnership, A South Carolina Partnership, . . . , for and in consideration of the sum of . . . \$665,000.00 . . . and other valuable consideration, unto us in hand paid by Kelly J. Albers, an individual, . . . have granted, bargained, sold[,] and released, and by these presents do grant, bargain, sell, and release unto . . . KELLY J. ALBERS, an individual, his heirs and assigns forever, in fee simple, together with all of his right, title[,] and interest in and to [Lot No. 4 containing 4.48 acres].

* * *

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises [Lot No. 4] belonging or in anywise incident or appertaining.

*(Albers Deed, pp.1-2).***20**

III. ARGUMENT AND CITATION OF AUTHORITY

As noted, DHEC-OCRM granted Mr. Read the Dock Permit on 30 March 2005. (R.p.1; R.p.16; R.pp.302-308). Too Tacky unquestionably challenged that issuance in the ALC, the CZMAP, the Circuit Court, and the Court of Appeals. While Too Tacky has been consistently unsuccessful at each level below, Too Tacky now looks for relief in this Supreme Court. Unfortunately for Too Tacky, it

20 Too Tacky admittedly attempted to remain relevant by agreeing to defend Mr. Albers' ownership of Lot No. 4 against Mr. Read's and DHEC-OCRM's assertion that the Dock Permit was valid and enforceable. (*Albers Deed*, p.2, para. 3). Neither the sale of Lot No.4 to a third-party or the Albers Deed has previously been disclosed in this litigation except as noted in Footnote 2 and elsewhere in Mr. Read's and DHEC-OCRM's Joint Respondents' Brief. While the *Albers Deed*, a copy of the required Real Estate Sales Affidavit, and a copy of the Charleston County Auditor's Office's Property Card for Lot No. 4 were attached to the Respondents' Joint Brief as an **Appendix**, those documents have previously been removed from the copies filed with this Supreme Court. See Charleston County Auditor Property Card (screen shot) (the "Property Card") found at <http://prcweb.charlestoncounty.org/mainAssessor.asp?parcelid=1560000189> (document screen shot last viewed on 8 May 2012). A copy of the Property Card (screen shot) is attached hereto as **Exhibit "B"** and incorporated herein by reference.

has unilaterally and, more importantly, voluntarily eliminated its ability to continue its “pursuit of justice” by selling all of its interests in Lot No. 4 to a third-party and, thereby, eliminating its “personal stake” in this matter.

At the time Too Tacky initiated this matter, Too Tacky as a “person adversely affected by the [OCRM's] staff's initial permitting application decision [exercised its] right to file a request for a contested case hearing before [the ALC].²¹ With amazing persistence, Too Tacky pursued this matter all the way to this Supreme Court, but approximately 11 months before this Supreme Court granted certiorari, Too Tacky sold all of its interests in and claim to Lot No. 4. Too Tacky has forfeited its right to continue on.

As this Supreme Court noted in Smiley v. South Carolina Department of Health and Environmental Control,

First, [Too Tacky] must have suffered an ‘injury in fact’ - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not ‘conjectural’ or ‘hypothetical.’ ‘ Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.’ Third, it must be ‘likely’, as opposed to merely ‘speculative’, that the injury will be “redressed by a favorable decision.”²²

²¹ Smiley v. South Carolina Department of Health and Environmental Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32 (2007) (citing S.C. Code Ann. § 48-39-150 (Thomson West 2005)) (First alteration in original). As this Supreme Court noted “[t]he statutory scheme was substantially altered in 2006 to conform to the new ALJ/Court of Appeals appellate review scheme.” Smiley v. South Carolina Department of Health and Environmental Control, 374 S.C. 326, 329 n.2, 649 S.E.2d 31 n.2 (citing 2006 Act No. 387). See also generally S.C. Code Ann. Reg. § 30-6(A) (Thomson West 2005).

²² Smiley v. South Carolina Department of Health and Environmental Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32 (citing Lujan v. Defenders of Wildlife, 504

Additionally, as this Supreme Court further noted in Georgetown County League of Women Voters v. Smith Land Company, Inc.,²³

The linchpin of this analysis is that [Too Tacky] must have a personal stake in the litigation, meaning [Too Tacky] is the real party in interest. In other words, [Too Tacky] must have a real, material, or substantial interest in the litigation, not a merely nominal or technical one. Moreover, the injury must be of a personal nature to [Too Tacky as] the party bringing the action [Too Tacky] bears the burden of proving all of its elements.²⁴

When Too Tacky sold all of its rights and interest in Lot No. 4 to Mr. Albers, Too Tacky lost the ability to claim that it had “suffered [a legally protected] ‘injury in fact’ – [which was both] (a) concrete and particularized, and (b) ‘actual or imminent[.]’”²⁵ Even though Too Tacky had standing when it initiated this litigation, Too Tacky voluntarily forfeited its position when it sold Lot No. 4 to Mr. Albers. Too Tacky’s own unilateral actions have rendered this appeal moot.²⁶

U.S. 555, 560-561 (1992) (Internal citations omitted); Sea Pines Association for the Protection of Wildlife, Inc. v. South Carolina Department of Natural Resources, 345 S.C. 594, 550 S.E.2d 287 (2001)).

²³ Georgetown County League of Women Voters v. Smith Land Company, Inc., 393 S.C. 350, 713 S.E.2d 287 (2011).

²⁴ Georgetown County League of Women Voters v. Smith Land Company, Inc., 393 S.C. 350, 358, 713 S.E.2d 287, 291-292 (Internal citations and quotation marks omitted).

²⁵ Smiley v. South Carolina Department of Health and Environmental Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32 (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561; Sea Pines Association for the Protection of Wildlife, Inc. v. South Carolina Department of Natural Resources, 345 S.C. 594, 550 S.E.2d 287).

²⁶ See South Carolina Department of Revenue v. Club Rio, 392 S.C. 636, 642-643, 709 S.E.2d 690, 692 (Ct.App. 2011) (quoting Sloan v. Greenville County, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct.App. 2009) (Internal citation and quotation marks omitted in original). Even though Too Tacky attempted to “keep its foot in the door” by promising to defend Mr. Albers from and against Mr. Read’s and DHEC-OCRM’s assertion that the Dock Permit was properly issued and, in turn, enforceable,

In South Carolina Department of Revenue v. Club Rio,²⁷ our Court of

Appeals noted:

[Appellate courts do] not concern [themselves] with moot or speculative questions. An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.²⁸

As the situation in this case, with Too Tacky having sold its interests in its property, “ [m]oot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable.”²⁹

As this matter involves Too Tacky’s personal challenge to Mr. Read’s Dock Permit, Too Tacky’s 100% divestiture of all of its interest in the property has mooted consideration of any of the issues Too Tacky has raised. Absent documentary proof to the contrary, of which none has yet been offered, Too Tacky no longer has standing to attack DHEC-OCRM’s grant of the Dock Permit to Mr. Read. In fact, contrary to Too Tacky’s attempt to “keep itself in the game” (Albers Deed, p.2, para. 3), Too Tacky no longer has a personal stake in the subject matter of this litigation other than warranting and defending Mr. Albers’

²⁷ South Carolina Department of Revenue v. Club Rio, 392 S.C. 636, 709 S.E.2d 690.

²⁸ South Carolina Department of Revenue v. Club Rio, 392 S.C. 636, 643, 709 S.E.2d 690, 692 (quoting Sloan v. Greenville County, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Internal citation and quotation marks omitted in original)).

title to Lot No. 4 from the alleged “encroachment” of the Dock Permit. Too Tacky had, of course, been doing that very thing for itself since the initiation of this litigation. Furthermore, Too Tacky’s “title defense” is being provided by Too Tacky’s title insurance company to which Too Tacky does not assumably have any an out-of-pocket payment obligation. Consequently, Too Tacky cannot itself benefit from any relief granted in its favor by this Supreme Court.³⁰

In any case, the allegedly “offending documents” set forth in the **Appendix** to Mr. Read’s and SCDHEC’s joint Respondents’ Brief have previously been physically removed from the copies of the Respondents’ Brief filed with this Supreme Court. Consequently, that issue is no longer of any merit. Furthermore, as this Supreme Court is aware, the “arguments” and “comments” Mr. Read and SCDHEC set forth in one or more footnotes contained in their Respondents’ Brief, have been reiterated (and expounded upon in full) in their joint Motion to Dismiss Appeal contemporaneously filed with this return. This Supreme Court will directly address those arguments in a decision on the Motion to Dismiss Appeal thereby rendering any “arguments” or “comments” in the footnotes of the Respondents’ Brief moot.

²⁹ Linda Mc Co, Inc. v. Shore, 390 S.C. 543, 557, 703 S.E.2d 499, 506 (2010) (quoting Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (Citation omitted)).

³⁰ See Rock Hill National Bank v. Honeycutt, 289 S.C. 90, 105, 344 S.E.2d 875, 879 (Ct.App. 1986) (citing Duke Power Company v. South Carolina Public Service Commission, 284 S.C. 81, 96, 326 S.E.2d 395, 404 (1985)). See also Georgetown County League of Women Voters v. Smith Land Co., Inc., 393 S.C. 350, 358 n.4, 713 S.E.2d 287, 291 n.4 (2011) (Hearn, J, *concurring in part, dissenting in part*); Powell v. Ex rel. Kelley v. Bank of America, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct.App. 2008).

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Respondents, Mayo Read, Jr., and the South Carolina Department of Health and Environmental Control, respectfully request this Supreme Court to deny Too Tacky's Motion to Strike.

Respectfully submitted:

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18 May 2012
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Recorded by and to be returned to:

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File No. 1302.02

STATE OF SOUTH CAROLINA)	
)	TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)	

KNOW ALL MEN BY THESE PRESENTS, that Too Tacky, A Partnership, a South Carolina partnership, in the State aforesaid, for and in consideration of the sum of SIX HUNDRED SIXTY-FIVE THOUSAND DOLLARS AND 00/100 (\$665,000.00) and other valuable consideration, unto us in hand paid by KELLY J. ALBERS, an individual, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell, and release unto the said KELLY J. ALBERS, an individual, her heirs and assigns forever, in fee simple, together with all of his right, title and interest in and to the following described property, to wit:

All that land located in Charleston County on Wadmalaw Island, known as Tacky Point Farm which is a portion of Tar Kiln Plantation and designated as Lot 4, containing 4.48 acres as shown on a plat by Robert L. Frank and recorded in the RMC Office for Charleston County on October 28, 1986, in Plat Book BK, Page 145. Said lot of land containing such size, shape, dimensions, buttings, and boundings as shown on said plat, which plat is incorporated herein by reference. Also, all that fifty (50') foot ingress and egress right of way as shown on the said recorded plat leading from Lot 4 to the Tacky Point Road extension on line generally North of Lots 2 and 3.

SAID parcel subject to all easements and restrictions of record and as shown on said plat.

Being the same property conveyed to Too Tacky a Partnership by a Master's Deed from the Charleston County Master in Equity dated March 3, 1992, and recorded June 4, 1992, in Deed Book O-214, at Page 134 in the RMC Office for Charleston County.

Portion of Tax Map #: 156-00-00-189

Grantees' Address: 1135 Quick Rabbit Loop, Charleston, SC 29414

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said KELLY J. ALBERS, an individual, her heirs and assigns forever.

AND Grantor does hereby bind himself and his heirs and assigns, to warrant and forever defend, all and singular, the said premises unto the said KELLY J. ALBERS, an individual, her heirs and assigns forever, against it and its Successors and Assigns, and all those claiming by, through or under Grantor. With exception and notwithstanding the forgoing, the Grantor hereby covenants with the Grantee that Grantor will warrant and defend the title to the 50' Easement for Drainage & Creek Access for Lots 1,2 and 3, as show on a Plat entitled, "PLAT OF A DIVISION OF LANDS OF ALMA E. WAGNER" recorded in the Charleston County RMC in Plat Book BK, at Page 145, subject to permitted exceptions, against the lawful claims of all persons claiming by, under or through Grantor and no others as to.

STATE OF SOUTH CAROLINA) AFFIDAVIT Date of Transfer of Title
COUNTY OF CHARLESTON) January 6, 2011

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. Lot 4, Tar Klin Plantation, Wadmalaw Island, SC is being transferred by Too Tacky, a Partnership, to Kelly J. Albers, this ____ day of January, 2011.
3. Check one of the following: The DEED is:
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ____ EXEMPT from the deed recording fee because of Exemption No 4. Explanation, if required: ____ (If exempt, please skip items 4-7, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) has been checked.
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$665,000.00.
 - (b) ____ The fee is computed on the fair market value of the realty which is \$
 - (c) ____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$
5. Check YES ____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is \$
6. The Deed recording fee is computed as follows:
 - (a) X the amount listed in item 4 above.
 - (b) ____ the amount listed in Item 5 above (no amount place zero).
 - (c) ____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with this transaction as: Legal representative
8. Check if Property other than Real Property is being transferred on this Deed:
 - (a) Mobile Home
 - (b) Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased, CASE NUMBER: ____ Personally appeared before me the undersigned attorney who, being duly sworn, certifies that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Representative in this Estate and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

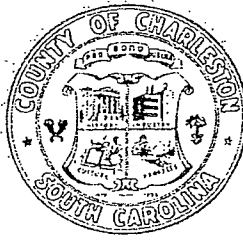
SWORN to this 6th day of January, 2011.

Arthur O. Kasper
Notary Public for South Carolina
My Commission Expires: 5/2/2016

By: [Signature]
Legal Representative

RECORDER'S PAGE

NOTE: This page MUST remain with the original document



RMC BK 0165 Pg 599 : pg 5 *

Handwritten initials/signature

Filed By:

TECKLENBURG & JENKINS, LLC
 P. O. BOX 20667
 CHARLESTON SC 29413

RECORDED		
Date:	January 11, 2011	
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Charlie Lybrand, Register Charleston County, SC		

MAKER:

TOO TACKY ETC

Note:

RECIPIENT:

ALBERS KELLY J

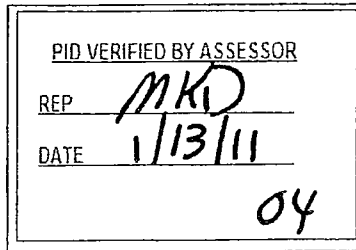
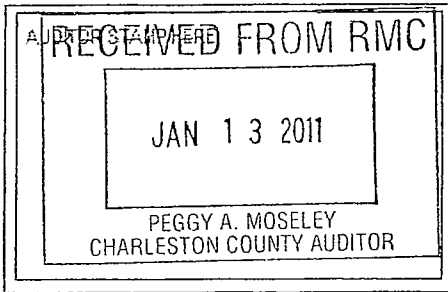
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Recording Fee	\$ 10.00
State Fee	\$ 1,729.00
County Fee	\$ 731.50
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 2,470.50

DRAWER
 CLERK



0165
Book



599
Page



01/11/2011
Recorded Date



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Pgs



Original Book



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CHARLESTON COUNTY
Auditor
 Peggy A. Moseley

- MAIN MENU
- EXIT

Parcel ID
 1560000189

Sub-Division
 TAR KLIN

Tax District
 51, St. John's Fire District

Legal Description :LOT 4
 Acreage High: 4.48 Marsh: 0 Swamp: 0 Water: Total: 4.48
 Property Address :1814 TACKY POINT RD EXT
 Mailing Address : 1135 QUICK RABBITT LOOP, CHARLESTON- SC, 29414

Jurisdiction : CNTY-ASSESSR

Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Deed	Deed Date	Sale Date	Sale Price
ALBERS KELLY J	-	TOO TACKY A PARTNERSHIP	-	0165-599	01/11/2011	01/06/2011	\$665,000
TOO TACKY A PARTNERSHIP	-	MCFARLAND ROBERT L	-	O214-134	06/04/1992	06/02/1992	\$9
TOO TACKY A PARTNERSHIP	-	MCFARLAND ROBERT L	-	L212-207	04/07/1992	04/07/1992	\$210,000
MCFARLAND ROBERT L	-	MCFARLAND ROBERT L	-	L212-205	04/07/1992	04/03/1992	\$9



For Plat Comment and Owner Comment information on plats and deeds recorded prior to 01/05/2004, please click on Card Image button.

Basic deed transfer information is complete back to 1991.
 For records and transactions preceding that date, please click on Card Image button.

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**STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT**

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

South Carolina Court of Appeals
Opinion No. 4616 (2009 WL 4282641)
(Filed 24 November 2009)

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

**PROOF OF SERVICE
for
RESPONSE TO MOTION TO STRIKE**

Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.,*

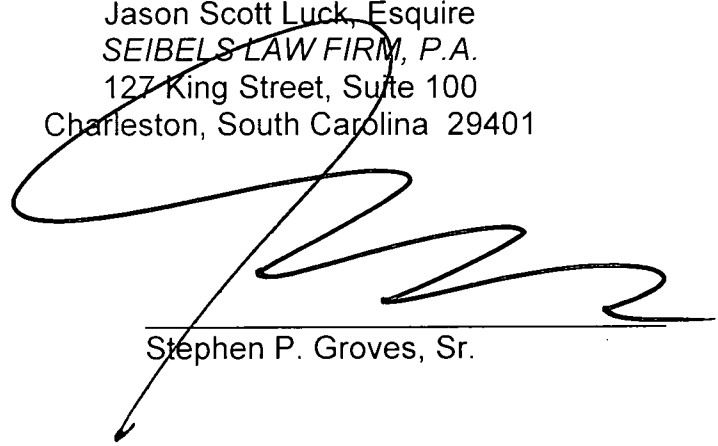
Carlisle Roberts, Jr., Esquire
Chief Counsel, DHEC
Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Ste. 400
N. Charleston, S. Carolina 29405
Telephone: 843.953.0213
Telecopier: 843.953.0201

Attorneys for Respondent, SCDHEC

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 8 May 2012 (original service of the Respondents' Joint Motion to Dismiss Appeal and Return to Motion to Strike), and on 18 May 2012, I served the separate version of the Respondents' Joint Return to Motion to Strike submitted by both the Respondent, I. Mayo Read, Jr., and the Respondent, South Carolina Department of Health and Environmental Control, on all counsel appearing in this appeal, via the United States Mail, postage pre-paid, and addressed as follows:

Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

John P. Siebels, Jr., Esquire
Jason Scott Luck, Esquire
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, South Carolina 29401

A large, stylized handwritten signature in black ink, which appears to be "Stephen P. Groves, Sr.", is written over the printed name and extends upwards into the address block above.

Stephen P. Groves, Sr.

Charleston, South Carolina
18 May 2012

NPCHAR1:923318.1-TBF-(SPG) 035563-00001

18 May 2012

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

MAY 22 2012

S.C. Supreme Court

Attention: Ms. Linda Allen

Re: Too Tacky Partnership v. South Carolina Department of Health and Environmental Control and Mayo Read, Jr.

Civil Action No.: 2007-CP-10-1520

Appeal from the Charleston County Court
of Common Pleas and the South Carolina
Court of Appeals (Opinion No. 4616)

Supreme Court Tracking No.: 2009-149126

NP File No.: 035563-00001

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Dear Mr. Shearouse:

Enclosed please find the following documents for filing in the above-referenced matter on behalf of both the Respondent, Mayo Read, Jr., as well as, the Respondent, South Carolina Department of Health and Environmental Control:

- a. Original and seven copies of a *separate* joint Motion to Dismiss Appeal;
- b. Original and seven copies of a *separate* joint Return to Motion to Strike;
- c. Original and one copy of a *separate* Proof of Service for the joint Motion to Dismiss Appeal; and
- d. Original and one copy of a *separate* Proof of Service for the joint Return to Motion to Strike.

As you are aware, I have already submitted our firm check for \$25.00 as payment for the applicable filing fee for the, now *separate*, Motion to Dismiss Appeal.

NEXSEN | PRUET

Hon. Daniel Shearouse
Clerk of Court
18 May 2012
Page 2

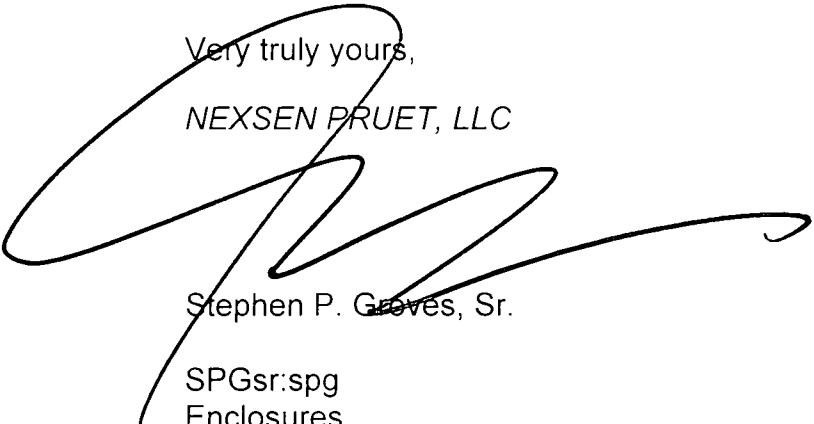
I would greatly appreciate you kindly filing both the joint *separate Motion to Dismiss Appeal*, the joint *separate Return to Motion to Strike*, and the *separate Proofs of Service* with the Supreme Court and returning one stamped copy of each to my attention in the enclosed self-addressed stamped envelope.

If you need anything else or if I otherwise may be of any assistance to you, your office, or to the Supreme Court regarding this matter, please feel free to contact me at your convenience. My direct telephone number is 843.720.1725, the direct telecopier number is 843.414.8206, and the e-mail address is sgroves@nexsenpruet.com.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Stephen P. Groves, Sr.

SPGsr:spg
Enclosures
CCE

Bradley D. Churdar, Esquire
John P. Siebels, Jr., Esquire/Jason Scott Luck, Esquire