

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. 2016-CP-26-00673
Case No. 2016-CP-26-00674
Case No. 2016-CP-26-00743
Case No. 2016-CP-26-00744

RECEIVED
JAN 29 2018
SC Court of Appeals

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, Plaintiffs,

v.

Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, Plaintiffs,

v.

The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs,

v.

K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc., Plaintiffs,

v.

Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc. Defendants,

Of whom Mark Dos Santos is the Appellant,

And

Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., are the Respondents.

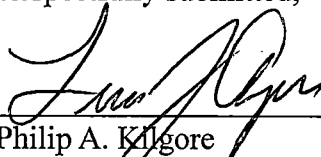
RESPONDENTS’ MOTION TO DISMISS

Respondents submit this Motion to Dismiss Appellant Mark Dos Santos’ (“Santos”) consolidated appeal in the above-referenced actions based on the untimeliness of his Notice of Appeal.

Respondents rely upon the filings before the Court and the Memorandum in Support of this Motion, together with the Attachments thereto.

WHEREFORE, Respondents request that this Court dismiss Santos' appeal, with prejudice, based on the untimeliness of his Notice of Appeal.

Respectfully submitted,



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January 25, 2018

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. 2016-CP-26-00673
Case No. 2016-CP-26-00674
Case No. 2016-CP-26-00743
Case No. 2016-CP-26-00744

RECEIVED
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SC Court of Appeals

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, Plaintiffs,

v.

Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, Plaintiffs,

v.

The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs,

v.

K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc., Plaintiffs,

v.

Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc. Defendants,

Of whom Mark Dos Santos is the Appellant,

And

Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., are the Respondents.

**MEMORANDUM IN SUPPORT OF RESPONDENTS’
MOTION TO DISMISS**

Respondents submit this Memorandum in Support of their Motion to Dismiss Appellant Mark Dos Santos’ (“Santos”) consolidated appeal based on the untimeliness of his Notice of Appeal.

The trial court entered its Order Granting Defendants' Motion to Enforce Settlement Agreement on September 21, 2017 ("Order 1").¹ This single, consolidated Order applied to all of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"). Order 1 held that the single, consolidated Settlement Agreement that resolved all four Actions (which involved Defendants offering and Plaintiffs accepting consolidated consideration in exchange for the consolidated resolution of all four Actions) was valid and binding.

All Plaintiffs (including Santos) moved for reconsideration of Order 1. On November 7, 2017, Judge Seals (1) informed all parties that he was denying Plaintiffs' Motion to Reconsider the Order and Final Judgment, and (2) requested that Respondents' counsel "prepare an order reflecting Judge Seals' ruling." (Emphasis added.)² On November 14, 2017, Respondents' counsel submitted for Judge Seals' consideration a single, consolidated draft order, as requested, which contained the captions for and addressed all four Actions.³

On December 5, 2017, the Court entered its single, consolidated Order Denying Plaintiffs' Motions to Reconsider ("Order 2"), which contained the captions for and addressed all four Actions.⁴ Order 2 affirmed that the single, consolidated Settlement Agreement that resolved all four Actions was valid and binding.

¹ Santos attached a copy of Order 1 to his Notice of Appeal.

² Attachment A to this Memorandum contains a copy of the e-mail from Judge Seals' chambers to counsel for all parties.

³ Attachment B to this Memorandum contains a copy of the e-mail from Respondents' counsel to Judge Seals' chambers, copying counsel for all parties.

⁴ Attachment C to this Memorandum contains the copy of Order 2 that was electronically filed in the -673 Action on December 5, 2017.

Santos' counsel received notice that Order 2 had been entered on December 5, when Order 2 was electronically filed in one of the four Actions (the -673 Action).⁵ While Order 2 was electronically filed in only the -673 Action on December 5, the copies of Order 2 that were electronically filed in the other three Actions on December 7 were identical to the copy of Order 2 filed in the -673 Action on December 5.

On January 8, 2018, Santos filed a single Notice of Appeal with the Court of Appeals for all four Actions. He did not attach a copy of Order 2 filed on December 5 in the -673 Action to his consolidated Notice of Appeal. Instead, he attached a copy of Order 2 filed on December 7 in one of the other three Actions, the -743 Action.

Santos' consolidated Notice of Appeal makes clear that he is appealing the single "Order Granting Defendants' Motion to Enforce Settlement Agreement" and the single "Order Denying Plaintiffs' Motion to Reconsider." Moreover, Santos' inclusion of a single copy of Order 2 with his Notice of Appeal demonstrates his acknowledgment that a single copy of Order 2, electronically filed in one of the four Actions, was sufficient to place Santos on notice of Order 2 and trigger his 30-day deadline under Rule 203(b)(1), SCACR.

Although Santos' consolidated Notice of Appeal states that he "received written notice of entry of the Order . . . on December 7, 2017," in actuality, he received such notice on December 5, 2017.⁶ Thus, for purposes of Rule 203(b)(1), SCACR, December 5 is the date Santos received

⁵ Attachment D to this Memorandum contains a copy of the December 5, 2017 Courtesy NEF from the Court's auto-notification system informing the parties that Order 2 had been filed electronically.

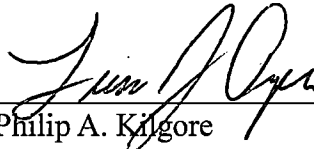
⁶ This conclusion is particularly clear in that the Settlement Agreement at issue in Order 2 was a single, consolidated Agreement that resolved all four Actions. Once the Court found the Agreement to be valid and binding in any one of the Actions, the Court necessarily addressed the Agreement's enforceability in all four Actions, and preclusion doctrines would bar Plaintiffs from contesting the validity of the Agreement in any of the Actions.

“written notice of entry of the order” in all Actions, placing his deadline to serve the Notice of Appeal on January 4, 2018 (30 days later). Santos did not file or serve his consolidated Notice of Appeal until January 8, 2018—four days after his deadline had passed. The Supreme Court has made clear on many occasions that “timely service of the notice of intent to appeal is a jurisdictional requirement, and th[e appellate] Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.” *Quality Trailer Prods., Inc. v. CSL Equip. Co.*, 349 S.C. 216, 221, 562 S.E.2d 615, 618 (2002) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)); *see also Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010) (same) (quoting *Mears*, 287 S.C. at 169, 337 S.E.2d at 207); *Oliver v. Lawrence*, Case No. 2013-002587, 2016 WL 6777563 (S.C. Ct. App. Nov. 16, 2016) (same) (quoting *Camp*, 386 S.C. at 574-75, 689 S.E.2d at 636).

Because Santos failed to timely file his Notice of Appeal under Rule 203(b)(1), his appeal is barred jurisdictionally and must be dismissed. *Id.*; *see also* Rule 260(a), SCACR (“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.”). Santos’ appeal must be dismissed accordingly.

*****SIGNATURES ON FOLLOWING PAGE*****

Respectfully submitted,



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Lucas J. Asper

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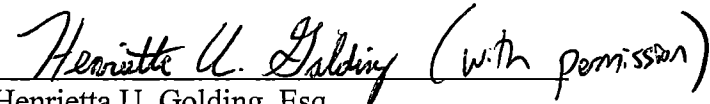
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*Attorneys for Respondents The Myrtle Beach Resort
Homeowners Association, Inc., Ocean Front Spa
Horizontal Property Regime, Phil Cox, Bill Cameron,
Stanley Jordan, Walter Jordan, Wayne Urban, Ralph Jump,
Ray Coghill and Ken Perkins*



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Alicia E. Thompson, Esq.

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*Attorneys for Respondent FirstService Residential South
Carolina, Inc., formerly known as K.A. Diehl & Associates,
Inc.*

January 25, 2018

ATTACHMENT A

Asper, Lucas J.

From: Seals, William Law Clerk (Tamara Boyer) <wsealslc@sccourts.org>
Sent: Tuesday, November 07, 2017 3:35 PM
To: Preston Brittain; Asper, Lucas J.
Cc: Kilgore, Phillip; Coggins, Robert E.; Miranda Byrnside; Thompson, Alicia; Golding, Henrietta (HGolding@mcnair.net)
Subject: Jim Perkins, et al vs. Myrtle Beach Resort, et al (2016CP2600673, 00674, 00743, 00744)

Counselors:

After careful consideration, Judge Seals is denying Plaintiff's Motion to Reconsider the Order and Final Judgment in the above referenced case.

Mr. Kilgore, if you would, please prepare an order reflecting Judge Seals' ruling.

Please let me know if you have any questions or concerns.

Tamara F. Boyer

Law Clerk to the Honorable William H. Seals, Jr.

Circuit Court Judge, At-Large, Seat 6

103 North Main Street

Marion, South Carolina 29571

Ph: (843) 423-0446 | Cell: (803) 521-5549 | Fax: (843) 423-0535

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# **ATTACHMENT B**

**Asper, Lucas J.**

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**From:** Asper, Lucas J.  
**Sent:** Tuesday, November 14, 2017 2:54 PM  
**To:** 'Seals, William Law Clerk (Tamara Boyer)'; Preston Brittain  
**Cc:** Kilgore, Phillip; Coggins, Robert E.; Miranda Byrnside; Thompson, Alicia; Golding, Henrietta (HGolding@mcnair.net)  
**Subject:** RE: Jim Perkins, et al vs. Myrtle Beach Resort, et al (2016CP2600673, 00674, 00743, 00744) [ODNSS-OGL.043838.000002]  
**Attachments:** Draft Order Denying Plaintiffs\_ Motions for Reconsideration.DOCX

Tamara:

Please find attached the draft order requested below. Let us know if you have any questions or require anything further.

Thanks,

Lucas

**Lucas J. Asper | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

The Ogletree Building, 300 North Main Street, Suite 500 | Greenville, SC 29601 | Telephone: 864-240-5697 | Fax: 864-235-8806

[lucas.asper@ogletree.com](mailto:lucas.asper@ogletree.com) | [www.ogletree.com](http://www.ogletree.com) | [Bio](#)

---

**From:** Seals, William Law Clerk (Tamara Boyer) [<mailto:wsealslc@sccourts.org>]  
**Sent:** Tuesday, November 07, 2017 3:35 PM  
**To:** Preston Brittain; Asper, Lucas J.  
**Cc:** Kilgore, Phillip; Coggins, Robert E.; Miranda Byrnside; Thompson, Alicia; Golding, Henrietta ([HGolding@mcnair.net](mailto:HGolding@mcnair.net))  
**Subject:** Jim Perkins, et al vs. Myrtle Beach Resort, et al (2016CP2600673, 00674, 00743, 00744)

Counselors:

After careful consideration, Judge Seals is denying Plaintiff's Motion to Reconsider the Order and Final Judgment in the above referenced case.

Mr. Kilgore, if you would, please prepare an order reflecting Judge Seals' ruling.

Please let me know if you have any questions or concerns.

*Tamara F. Boyer*

Law Clerk to the Honorable William H. Seals, Jr.

Circuit Court Judge, At-Large, Seat 6

103 North Main Street

Marion, South Carolina 29571

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ATTACHMENT C

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) 15TH JUDICIAL CIRCUIT
)

)
) Jim Perkins, Colleen Franke, a/k/a
) Colleen Franke Perkins, Mark Dos Santos,
) Nancy Moore, William Moore, Steven
) Dame, Errol Dos Santos, and
) Jeffrey Richardson, on behalf of
) themselves and all other similarly situated,
)

)
) Plaintiffs,
)

)
) v.
)

Civil Action No.: 2016-CP-26-00673
)
)

)
) Ocean Front Spa Horizontal Property
) Regime, Inc., Bill Cameron, Walter Jordan,
) Ralph Jump, Stanley Jordan, Ray Coghill,
) and John Doe past board directors of
) Ocean Front Spa Horizontal Property
) Regime, Inc.,
)

)
) Defendants.
)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) 15TH JUDICIAL CIRCUIT
)

)
) Jim Perkins, Colleen Franke, a/k/a
) Colleen Franke Perkins, Mark Dos Santos,
) Nancy Moore, William Moore, Steven
) Dame, Errol Dos Santos, and
) Jeffrey Richardson, on behalf of
) themselves and all other similarly situated,
)

Plaintiffs,
)

v.
)

Civil Action No.: 2016-CP-26-00674

)
) The Myrtle Beach Resort Homeowners
) Association, Inc., Phil Cox, Bill Cameron,
) Stanley Jordan, Walter Jordan, Wayne
) Urban, Ken Perkins, and John Doe past
) board directors of The Myrtle Beach
) Resort Homeowners Association, Inc.,
)

Defendants.
)
)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) 15TH JUDICIAL CIRCUIT
COUNTY OF HORRY)

Jim Perkins, Colleen Franke, a/k/a)
Colleen Franke Perkins, Mark Dos Santos,)
Nancy Moore, William Moore, Steven)
Dame, Errol Dos Santos, and)
Jeffrey Richardson, individually in their)
capacity as derivative shareholders of Ocean)
Front Spa Horizontal Property Regime, Inc.,)

Plaintiffs,)

v.)

Civil Action No.: 2016-CP-26-00744

Ocean Front Spa Horizontal Property)
Regime, Inc., Walter Jordan, Ralph Jump,)
Ray Coghill, John Doe past board)
directors of Ocean Front Spa Horizontal)
Property Regime, Inc., The Myrtle Beach)
Resort Homeowners Association, Inc.,)
Phil Cox, Bill Cameron, Stanley Jordan,)
Wayne Urban, Ken Perkins, John Doe past)
board directors of The Myrtle Beach)
Resort Homeowners Association, Inc.,)
and K.A. Diehl and Associates, Inc.,)

Defendants.)

ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER

THIS MATTER IS BEFORE THE COURT upon the Motions and Amended Motions of the Plaintiffs in each of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"). Plaintiffs move for reconsideration of the Court's September 21, 2017, Order Granting Defendants' Motion to Enforce Settlement Agreement.

The Court has reviewed Plaintiffs' Motions and Amended Motions (together with the Exhibits thereto), as well as Defendants' filings opposing Plaintiffs' Motions and Amended Motions. The Court also is familiar with the facts, legal issues, procedural history, and pleadings on file in the Actions.

For the reasons set forth below, the Court **DENIES** Plaintiffs' Motions and Amended Motions for reconsideration of the Court's September 21, 2017, Order Granting Defendants' Motion to Enforce Settlement Agreement.

A. Findings of Fact.¹

1. On May 1, 2017, all parties and their counsel attended and participated in (either in person or via telephone)² the Court-mandated mediation conference in the Actions, which was facilitated by Mediator Karl A. Folkens, Esq.—one of the most experienced and well-respected mediators in South Carolina.

2. Plaintiffs Mark Dos Santos and Jeff Richardson attended and participated in the mediation conference via telephone.

3. After a full-day mediation, involving extensive arms-length negotiations between the parties and their counsel, the parties reached a resolution of all claims in the Actions and a related matter.

4. In accordance with Rule 6(f), SCADR, Mediator Folkens ensured that the parties reduced their settlement to writing in an agreement that accurately captured the terms of the

¹ These same facts have been central to Defendants' original Consolidated Motion for Preliminary Approval of Settlement Agreement filed July 3, 2017, and Plaintiffs' Motions and Amended Motions for reconsideration of the Order granting Defendants' Motion. Plaintiffs have never disputed the accuracy of any of these facts.

² Of the eight (8) named plaintiffs in the Actions, six (6) were physically present at the mediation, and two (2)—Mark Dos Santos and Jeffrey Richardson—were present via telephone.

negotiated resolution and that all parties named in the Agreement signed—the Settlement Agreement in the Actions (“Agreement”).³

5. Due to Plaintiffs Mark Dos Santos and Jeff Richardson not being physically present, Plaintiffs’ counsel executed the Agreement on their behalf as their duly-authorized agent.

6. Plaintiffs’ counsel presented the Agreement to Mediator Folkens and Defendants’ counsel, signed by or on behalf of all of the named Plaintiffs.

7. Due to individual Defendants Ray Coghill, Bill Cameron, and Stanley Jordan not being physically present, Defendants’ counsel executed the Agreement on their behalf as their duly-authorized agent.

8. Due to the inability of the organization Defendants—Ocean Front Spa Horizontal Property Regime, Inc., and The Myrtle Beach Resort Homeowners Association, Inc.—to execute the Agreement on their own behalf, Defendants’ counsel executed the Agreement on their behalf as their duly-authorized agent.

9. Based on the parties’ negotiated settlement, memorialized in the Agreement, Mediator Folkens filed an Amended Proof of ADR form in each of the Actions making clear that all parties were present and that each of the Actions were “[f]ully settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties.”

10. After the mediation, three of the named Plaintiffs (Nancy Moore, Steven Dame and Jim Perkins) expressly ratified the Agreement by (a) official written notification to all members of the OFS community that they successfully “resolve[d the] five lawsuits”; and (b) notices posted in the OFS building informing all residents that “[t]he recent state court litigation between various

³ The record also contains a copy of the Settlement Agreement memorializing the resolution of a separate but related action (*K.A. Diehl and Associates, Inc. v. Perkins et al.*, C.A. No. 2015-CP-26-05573) that all named parties to that agreement (all named Plaintiffs plus K.A. Diehl and Associates, Inc.) signed at the conclusion of the global mediation conference.

homeowners in the Ocean Front Spa and its management company and others has been resolved between the parties to their mutual satisfaction via alternative dispute resolution that occurred on May 1.”

B. Regardless of whether Rule 43(k) Applies to the Agreement, the Agreement Fully Satisfies the Requirements of Rule 43(k).

Rule 43(k), SCRCP, contemplates several ways in which an agreement covered by the Rule becomes binding. One way is where the agreement is “reduced to writing and signed by the parties and their counsel.” That has occurred here, regardless of whether Rule 43(k) applies, fully satisfying the requirements of the Rule:

- The parties’ negotiated resolution was “reduced to writing” in the form of the Agreement;
- Each of the named parties to the Agreement signed the Agreement, either personally or through the actions of their duly-authorized agents; and
- The Agreement shows that counsel for the parties signed the agreement:
 - “A. Preston Brittain”—counsel for Plaintiffs—signed the Agreement twice (once in an agency capacity for Plaintiff Santos, and once in an agency capacity for Plaintiff Richardson both of whom were present at the mediation via telephone), and
 - “Phillip A. Kilgore”—counsel for all Defendants who were party to the Agreement—signed the Agreement five times (in an agency capacity for two corporate Defendants and the three individual Defendants who were present at the mediation via telephone).

Plaintiffs acknowledge the truth of each of these facts. This acknowledgement leaves no room to argue that Rule 43(k) was not satisfied.

1. Counsel for All Named Parties to the Agreement Signed the Agreement.

Plaintiffs' first contention is that the signatures of Plaintiffs' counsel and Defendants' counsel on the Agreement should be disregarded because counsel did not sign in their individual capacity. The Rule has no such capacity requirement. Moreover, any signature by counsel in the course of the representation of a party would, by definition, be in an agency capacity.

The purpose of Rule 43(k) is to promote certainty with respect to the terms of agreements between counsel and to remove the Court from such disputes. *See Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). Rule 43(k) was amended in 2009, adding another way in which to accomplish this purpose—by allowing the enforcement of an “agreement between counsel” (1) that is in writing, (2) to which the parties acknowledge their assent by signing the document, and (3) of which the attorneys confirm their review and approval by signing the document.

The obvious purpose of the attorney signature requirement is to ensure that the document accurately conveys the terms of the deal the parties have reached. It is certainly not to signal counsel's agreement to be bound individually, as the attorney essentially never has affirmative obligations or rights under the agreement.

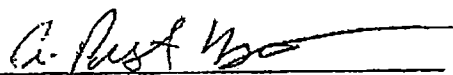

Here, counsel for Plaintiffs and counsel for Defendants signed the Agreement as agents of their clients. In other words, it is beyond dispute that the parties' attorneys did indeed sign the Agreement. Applying the most fundamental statutory interpretation principles, this fact plainly satisfies Rule 43(k), which merely requires that the document be “signed by . . . counsel.” *See State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002) (“[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.”). To the extent Rule 43 applies, it would require counsel to sign the agreement, and they did so.

Moreover, by signing the Agreement as agents/attorneys for their principals/clients, both counsel clearly indicated that they fulfilled their duties to their clients, having reviewed the Agreement and confirmed that it accurately set forth the relevant terms of settlement. Moreover, their signatures constitute representations that their clients gave them express permission to sign in their stead. Neither attorney would have signed the Agreement as the agent of his client unless these facts were true. Therefore, the Agreement satisfies the attorney signature requirement under Rule 43(k).

- 2. Plaintiffs Santos and Richardson signed the Agreement for purposes of Rule 43(k) by directing their agent/counsel to sign on their behalf.


Plaintiffs have also contended that a party does not actually sign an agreement for purposes of Rule 43(k), even when the party has expressly directed his agent/attorney to sign the agreement on his behalf and the attorney has done so in a manner making clear that the attorney is signing in the place of the party.⁴ This argument fails based on well-established agency principles.

Below are the actual signatures from the Agreement with which Plaintiffs apparently take issue:


✓ Mark Dos Santos

By his Attorney
Jeffrey Richardson

By his Attorney

⁴ Plaintiffs raised this argument in opposition to Defendants’ Motion to Approve Settlement, but Plaintiffs’ Motions to Reconsider appear to have abandoned this argument. Plaintiffs’ Motions to Reconsider focus instead on the isolated issue addressed in Section A.1 above—their contention that Plaintiffs’ counsel and Defendants’ counsel did not “sign” the agreement for purposes of Rule 43(k). The Court includes Section A.2 to address all issues potentially before the Court and to explain why Rule 43(k) has been satisfied fully.


The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA")


By its Attorney

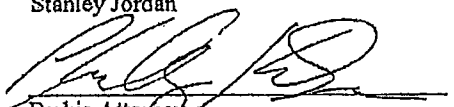
Ocean Front Spa Horizontal Property Regime, Inc. ("OFS"),


By its Attorney


Bill Cameron


By his Attorney

Stanley Jordan


By his Attorney

Ray Coghill


By his Attorney

All of these signature blocks demonstrate that the parties/principals have signed the Agreement, and that the attorneys are merely putting pen to paper as the agents of the principals.

An agent with express authority to contract is able to bind the principal by signing on the principal's behalf. *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986) ("An agent contracting with the authority of his principal binds him to the same extent as if the principal personally made the contract. The principal's liability to the third party is contractual and direct." (emphasis added)). Thus, through the actions of their agents/attorneys, all of the principals/parties effectively signed the Agreement.

To accept Plaintiffs' argument, corporate defendants (which always sign through their agents) and other parties who are forced to sign agreements through their agents (due to incapacity, absence, or otherwise) would never be able to enter into a binding agreement under Rule 43(k). This would be an absurd interpretation—one the Legislature could not have intended. *Duke*

Energy Corp. v. S.C. Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (“If possible, the Court will construe a statute so as to escape the absurdity and carry the intention into effect.” (citing *Kiriakides v. United Artist Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994))).

There is no dispute that the Agreement was in writing. The Court finds that the signature-based requirements of the applicable provision of Rule 43(k) have similarly been satisfied for the reasons discussed above. Thus, the Agreement fully satisfies Rule 43(k) regardless of whether that Rule applies to the Agreement, mandating enforcement of the Agreement.

C. The Plain Language of Rule 43(k)—as Emphasized by the Supreme Court—Renders the Rule Inapplicable to the Agreement.

Despite the fact that the Agreement complies with Rule 43(k), the plain language of the Rule 43(k) demonstrates that it is inapplicable to the Agreement. The Rule provides as follows:

(k) Agreements of Counsel. No agreement *between counsel* affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP Rule 43(k) (emphasis added). “In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” *Farnsworth*, 367 S.C. at 638, 627 S.E.2d at 726 (quoting *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)). “[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *Muldrow*, 348 S.C. at 268, 559 S.E.2d at 849. Applying this basic rule of statutory interpretation demonstrates Rule 43(k)’s inapplicability to the Agreement.

The Agreement is not an “agreement between counsel.” It is an agreement between the parties. A Rule 43(k) “agreement between counsel” contemplates an agreement negotiated by attorneys, as to which the attorneys must later take overt action, identified in the Rule, before it becomes enforceable. One of these actions can be where the “agreement between counsel” is later “reduced to writing and signed by the parties and their counsel.” SCRPC Rule 43(k). To satisfy this Rule, lawyers must memorialize their agreements with other counsel, consult with their clients about the terms, and ensure that their clients sign the agreement. The obvious purpose of the Rule is to protect parties in connection with agreements negotiated and entered into by their attorneys. The Rule is not designed to replace the basic law of contract pertaining to agreements into which the parties themselves enter.

A recent Court of Appeals opinion recognized as much. According to SCRPC Rule 43(k), “lawyers have been required . . . to reduce their agreements to a written document.” *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687, 694 (Ct. App. 2013) (Pieper, J., concurring in part and dissenting in part) (emphasis added). Likewise, the Supreme Court recognized the importance of the two words, “between counsel,” in the introductory clause, emphasizing them when quoting and construing the Rule. See *Farnsworth*, 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRPC Rule 43(k)).

The *Farnsworth* Court went a step further, noting that “Rule 43(k) plainly applies to all settlement agreements signed by counsel.” *Id.* at 638, 627 S.E.2d at 726 (emphasis added). If the Court interpreted Rule 43(k) as applying to all settlement agreements, including those entered into by parties themselves, the Court’s use of the wording “signed by counsel” was superfluous. A fair reading of this language is that the Court intended to distinguish between “all settlement agreements,” and “all settlement agreements signed by counsel.” By including this qualifying

language, the Court demonstrated that not all settlement agreements are covered by Rule 43(k)—only those that are “agreement[s] between counsel,” as the language of the Rule makes clear.

The history of Rule 43(k) further demonstrates its inapplicability to the Agreement. The predecessor to Rule 43(k), Circuit Court Rule 14, provided as follows: “No agreement or consent between parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless” *Farnsworth*, 367 S.C. at 638 n.3, 627 S.E.2d at 726 n.3 (emphasis added). The *Farnsworth* Court compared Circuit Court Rule 14 to SCRCF 43(k) to point out that language included in the old rule but omitted in the new rule rendered the agreement at issue unenforceable. *Id.* (“Under [the old] rule, Davis and Farnsworth’s agreement would be enforceable simply because it is in writing. Unlike Rule 43(k), Circuit Court Rule 14 did not contain the additional requirement that written agreements be entered into the record.”).

Similarly, new SCRCF Rule 43(k) omits other language present in old Circuit Court Rule 14, and that omission is directly relevant in this dispute. SCRCF Rule 43(k) makes no reference to “agreement[s] . . . between parties” and retains only the reference to “agreement[s] . . . between counsel.” It is fair to conclude that this omission was intentional, has meaning, and cannot be overlooked.

The Legislature clearly intended for old Circuit Court Rule 14 to apply to all litigation agreements, whether between the parties or their attorneys. In devising Rule 43(k), the Legislature must have contemplated the possibility of including agreements between parties, but elected to omit any reference to such agreements. Such omission in the new Rule, on the same subject, demonstrates the Legislature’s clear intent to limit the requirements of the Rule to only agreements “between counsel.”

To hold otherwise would require the Court to assume that the Legislature committed an oversight, simply forgot to retain the reference to agreements between parties when drafting Rule 43(k), and has allowed the error to remain in place for decades. There is no basis for such assumptions, and the Court must give meaning to the Legislature's intentional omission of "agreements between parties" from Rule 43(k).

Plaintiffs rely on *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995), in an attempt to overcome the above interpretation of Rule 43(k). *Ashfort* appears distinguishable, as that case involved (1) the attorneys vaguely "advis[ing] the circuit court that the case had been settled" without providing any details as to the terms, and (2) some undescribed, purported agreement between a party and the other party's insurer. *Id.* at 493, 495, 458 S.E.2d at 534-35. There was no evidence of the terms or form of the purported agreement between the party and the other party's insurer or how it was entered. Thus, the *Ashfort* Court was left with nothing more than representations by counsel that a purported agreement had been reached. These circumstances are what placed *Ashfort* neatly within the parameters of Rule 43(k), as the Court was relying exclusively on information from counsel.

The facts are far different here. This Court is not relying on the representations of counsel that a deal has been reached, or even the terms of the deal. The record is replete with evidence of the deal and its actual terms: (1) all of the parties (with the assistance of counsel and a seasoned and well-respected mediator) actively participated in, negotiated, and reached terms on a settlement during a full-day mediation conference, (2) the parties reduced those terms to writing in the Agreement, (3) all parties named in the Agreement signed the Agreement before leaving the mediation, and (4) the mediator filed a notice with the Court confirming each of the above facts.

Additionally, the Court must review *Ashfort* through the lens of *Farnsworth*, in which the Supreme Court expressly accounted for its prior holding. In *Farnsworth*, the Supreme Court has clarified that Rule 43(k) applies only to “agreements *between counsel*,” 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRPC Rule 43(k)) (emphasis in original), including those which are “settlement agreements *signed by counsel*,” *id.* at 638, 627 S.E.2d at 726 (emphasis added). This is consistent with the historical backdrop of Rule 43(k) and the plain language of the Rule, and this Court sees no reason to hold otherwise.

The Agreement in this case was not an “agreement between counsel,” as contemplated in Rule 43(k). The Agreement was negotiated, memorialized, and executed by all of the parties named in the Agreement, after a full day of mediation in which all actively participated. Thus, notwithstanding the Agreement’s full satisfaction of Rule 43(k), the Court finds the Rule inapplicable to the Agreement.

D. Plaintiffs’ “New Evidence” Argument does not Impact the Enforceability of the Agreement.

Plaintiffs’ Motions to Reconsider present what they refer to as “new evidence,” which they argue demonstrates that one of the individual Defendants breached the Agreement. They say that an email sent by Defendant Walter Jordan violated the Agreement’s non-disparagement clause. This new argument, which was not raised before the Order was entered, fails for several reasons.

First, by asking the court to enforce a certain provision of the Agreement in their favor, Plaintiffs have effectively conceded the enforceability of the entire Agreement. For Defendant Walter Jordan to be in breach of the Agreement’s non-disparagement clause as alleged in Plaintiffs’ “new evidence” argument, there must first be a valid and enforceable non-disparagement clause. Thus, Plaintiffs rely on the binding and enforceable nature of the Agreement as a means of repudiating the Agreement.

If Plaintiffs believe that there has been a breach of the Agreement, they are free to pursue their rights under the Agreement accordingly, at a different time and in a different forum. The alleged breach—on which the Court makes no findings whatsoever—has no bearing on whether the Agreement is binding and enforceable. That is the only issue before the Court.

Additionally, the email does not constitute “new evidence” under Rule 60(b)(2). Evidence is “newly discovered” if it was not known to the party or in his possession at the time of hearing. *See Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005). The Plaintiffs received the email in July 2016, several weeks before the hearing on Defendants’ Motion to enforce the Agreement. Since the email is not new evidence under Rule 60(b)(2), Plaintiffs’ only recourse would be Rule 59(e). But since this issue was not previously raised and preserved under Rule 59(e), it is barred as new argument. *See Fields v. Reg’l Med. Ctr.*, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005).

E. Plaintiffs’ Contentions regarding the Application of the Agreement to K.A. Diehl or its Successor in Interest are Premature.

Plaintiffs argue that the Court erred (1) “in ruling that this agreement releases KA Diehl and Associates, Inc.”, and (2) in ruling that “First Services Residential is released from liability.” Plaintiffs’ argument is premature, as the Order of which they are seeking reconsideration makes no mention whatsoever of First Services Residential, nor does it specifically address the release of K.A. Diehl and Associates, Inc. The Order simply finds that the Agreement is enforceable. Thus, Plaintiffs’ arguments with respect to the release of claims against K.A. Diehl and Associates, Inc., and First Services Residential are not yet ripe for adjudication.

F. Conclusion.

Plaintiffs' Motions and Amended Motions have never questioned the accuracy of the Agreement's terms. Nor have Plaintiffs challenged the fact that all parties to the Agreement and their respective counsel signed the Agreement at the conclusion of mediation (either personally or through their duly-authorized agents). Instead, Plaintiffs rely on untenable interpretations of Rule 43(k) that are not supported by principles of statutory construction or existing precedent. The Court rejects those interpretations of Rule 43(k) and **DENIES** Plaintiffs' Motions for reconsideration of the September 21, 2017 Orders enforcing the Agreement.

IT IS SO ORDERED on this _____ of _____, 2017.

The Honorable William H. Seals, Jr.



Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa Horizontal Property
Regime Inc , defendant, et al
Case Number: 2016CP2600673
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Certificate of Electronic Notification

Recipients

Phillip Kilgore - Notification transmitted on 12-05-2017 03:20:39 PM.

Lucas Asper - Notification transmitted on 12-05-2017 03:20:39 PM.

Andrew Brittain - Notification transmitted on 12-05-2017 03:20:39 PM.

Karl Folkens - Notification transmitted on 12-05-2017 03:20:39 PM.

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-

A filing has been submitted to the court RE: 2016CP2600673

Official File Stamp: 12-05-2017 03:20:33 PM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa
Horizontal Property Regime Inc , defendant, et al

Document(s) Submitted: Order/Other Order/Other

Filed by or on behalf of: William H. Seals

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Lucas James Asper for Bill Cameron, Walter
Jordan, Ralph Jump, Stanley Jordan, Ray Coghill,
Ocean Front Spa Horizontal Property Regime Inc

Phillip Arthur Kilgore for Bill Cameron, Walter
Jordan, Ralph Jump, Stanley Jordan, Ray Coghill,
Ocean Front Spa Horizontal Property Regime Inc

Andrew Preston Brittain for Jim Perkins et al

Karl A. Folkens

**The following people have not been served electronically by the Court. Therefore, they must
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John Doe

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ATTACHMENT D

Asper, Lucas J.

From: efiledonotreply@sccourts.org
Sent: Tuesday, December 05, 2017 3:21 PM
To: Asper, Lucas J.
Cc: LJAscstateefiling
Subject: Courtesy NEF RE: 2016CP2600673

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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2016CP2600673

Official File Stamp: 12-05-2017 03:20:33 PM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa Horizontal Property Regime Inc , defendant, et al
Document(s) Submitted: Order/Other Order/Other
Filed by or on behalf of: William H. Seals

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Lucas James Asper for Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, Ocean Front Spa Horizontal Property Regime Inc
Phillip Arthur Kilgore for Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, Ocean Front Spa Horizontal Property Regime Inc
Andrew Preston Brittain for Jim Perkins et al
Karl A. Folkens

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

John Doe

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

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Case No. 2016-CP-26-00673  
Case No. 2016-CP-26-00674  
Case No. 2016-CP-26-00743  
Case No. 2016-CP-26-00744

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**RECEIVED**  
JAN 29 2018  
SC Court of Appeals

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, ..... Plaintiffs,

v.

Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., ..... Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, ..... Plaintiffs,

v.

The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., ..... Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, ..... Plaintiffs,

v.

K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., .... Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc., ..... Plaintiffs,

v.

Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc. .... Defendants,

Of whom Mark Dos Santos is the Appellant,

And

Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., are the Respondents.

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**PROOF OF SERVICE**

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I certify that I have served the Memorandum in Support of Respondents' Motion to Dismiss on Appellant Mark Dos Santos by sending to his attorneys of record a copy of the same via electronic mail and first class mail, properly addressed, postage prepaid at the following addresses: Kirby D. Shealy III, Adams and Reese LLP, 1501 Main Street, 5th Floor, Columbia, South Carolina 29201; *Kirby.Shealy@arlaw.com*.

January 25, 2018

  
\_\_\_\_\_  
Lucas J. Asper

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

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Case No. 2016-CP-26-00673  
Case No. 2016-CP-26-00674  
Case No. 2016-CP-26-00743  
Case No. 2016-CP-26-00744

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**RECEIVED**  
JAN 29 2018  
SC Court of Appeals

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, ..... Plaintiffs,

v.

Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., .....Defendants,

And

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The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., .....Defendants,

And

Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, ..... Plaintiffs,

v.

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And

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Of whom Mark Dos Santos is the Appellant,

And

Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., are the Respondents.

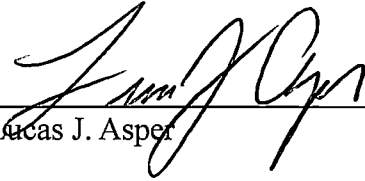
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**PROOF OF SERVICE**

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I certify that I have served Respondents' Motion to Dismiss on Appellant Mark Dos Santos by sending to his attorneys of record a copy of the same via electronic mail and first class mail, properly addressed, postage prepaid at the following addresses: Kirby D. Shealy III, Adams and Reese LLP, 1501 Main Street, 5th Floor, Columbia, South Carolina 29201; *Kirby.Shealy@arlaw.com*.

January 25, 2018

  
\_\_\_\_\_  
Lucas J. Asper

# Ogletree Deakins

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Lucas J. Asper  
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January 25, 2018

The Hon. Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RE: **Jim Perkins v. Ocean Front Spa**  
Appellate Case No. 2018-000041

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SC Court of Appeals

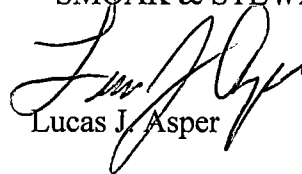
Dear Ms. Kitchings:

Please find enclosed the original and seven copies of the Respondent's Motion to Dismiss and Memorandum in Support of their Motion to Dismiss in the above-referenced matter. Please file the original and return the filed copy to us in the self-addressed, stamped envelope enclosed.

If you have any questions or concerns, please do not hesitate to contact our office. Thank you for your assistance with this matter.

Sincerely,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.



Lucas J. Asper

LJA:lah

Enclosures

cc: Kirby D. Shealy, III, Esq.  
Henrietta U. Golding, Esq.

32755842.1

**Ogletree  
Deakins**

OGLETREE, DEAKINS, NASH,  
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The Hon. Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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