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

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.

INITIAL BRIEF OF RESPONDENTS

Philip A. Kilgore
Lucas J. Asper
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main Street, Suite 500
Greenville, South Carolina 29601

(864) 271-1300 (telephone)
(864) 235-8806 (facsimile)
philip.kilgore@ogletree.com
lucas.asper@ogletree.com

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

Henrietta U. Golding, Esq.
Alicia E. Thompson, Esq.
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578-0336
(843) 444-1107 (telephone)
(843) 444-4729 (facsimile)

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

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2. WHETHER THE TRIAL COURT PROPERLY CONCLUDED THAT, REGARDLESS OF WHETHER SCRCP RULE 43(K) APPLIED TO THE SETTLEMENT AGREEMENT, THE SETTLEMENT AGREEMENT FULLY SATISFIED THE REQUIREMENTS OF SCRCP RULE 43(K)?

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4. WHETHER K.A. DIEHL AND ASSOCIATES, INC., AS A THIRD-PARTY BENEFICIARY, HAS STANDING TO ENFORCE THE SETTLEMENT AGREEMENT?

STATEMENT OF THE CASE

A. The four Actions were interrelated, with the parties, their counsel, and the issues overlapping among the Actions.

The four Actions Appellant Mark dos Santos ("Appellant" or "Santos") appealed involved two class actions (the -673 Action and the -674 Action) and two derivative actions (the -743 Action and the -744 Action). (*See* Complaints.) Each of the Actions involved allegations regarding the management of Respondents The Myrtle Beach Resort Homeowners Association, Inc. ("MBR") and Ocean Front Spa Horizontal Property Regime, Inc. ("OFS"), oversight of such management, and other actions of the Boards of Directors of OFS and/or MBR, including the approval, implementation, and collection of a "gate pass fee" and an increase in the "gate pass

fee." (*See id.*) The Plaintiffs in the Actions were all property owners at MBR and OFS (which is one of four regimes at MBR), and were all represented by the same counsel. (*Id.*) Appellant Santos was a Plaintiff in all four of the Actions. (*Id.*) MBR, OFS, and their respective Defendant Board Members were similarly represented by the same counsel.

Respondent FirstService Residential South Carolina, Inc., formerly known as K.A. Diehl & Associates, Inc.[1] ("K.A. Diehl") was named as a Defendant in the -743 Action and the -744 Action and was represented by the same counsel. (*See id.*) In those Actions, the Plaintiffs alleged that K.A. Diehl breached management contracts with MBR and OFS in various respects, including the implementation of the "gate pass fee" as MBR's agent. (*Id.*) Before the Actions were filed, K.A. Diehl filed Civil Action No. 2015-CP-26-5573 ("-5573 Action") asserting tort claims against Plaintiffs in the Actions, with the exception of Plaintiff Jeffrey Richardson. (Defs.' Consolidated Response to Pls.' Mots. to Reconsider the Order and Final Judgment, at Ex. A.) In Plaintiffs' Answer in the -5573 Action, Plaintiffs filed counterclaims asserting similar claims to those alleged in the Actions. (*Id.*).

B. All parties participated in a consolidated mediation of the Actions, at the conclusion of which the parties agreed to a full and final resolution of the Actions.

On February 10, 2017, the parties notified their choice of mediator that they agreed to schedule a mediation to take place on May 1, 2017, in the Actions and the -5573 Action. (Reply in Support of Defs.' Consolidated Mot. for Preliminary Approval of Settlement Agreement, at Ex. A.) The mediator selected was Karl A. Folkens, Esq., one of the most experienced and well-respected mediators in South Carolina. (*Id.*) On March 26, 2017, Mediator Folkens confirmed the mediation was to take place on May 1, 2017. (*Id.* at Ex. B.)

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[1] FirstService Residential South Carolina, Inc., is the same legal entity as K.A. Diehl & Associates, Inc., and has simply changed its name.

On April 26, 2017, Plaintiffs' counsel informed Defendants' counsel that Plaintiff Richardson would be unable to attend the mediation in person, and on April 28, 2017, confirmed to counsel for the Defendants that he would "have settlement authority from Mr. Richardson . . . ." (Defs.' Consolidated Mot. for Preliminary Approval of Settlement Agreement, at Ex. C.)

On May 1, 2017, Plaintiffs and their counsel were physically present with the exception of Plaintiff Richardson and Appellant. Appellant's absence was not anticipated. Before the mediation commenced, the parties agreed the mediation could proceed in Appellant's absence, conditioned on his counsel having his settlement authority. The mediation proceeded with these understandings.

All parties and their counsel attended the May 1 mediation conference, either in person or via telephone, and participated in the mediation. (Initial Br. of Appellant at 1.) In accordance with Rule 6(b) of the South Carolina Court Annexed Alternative Dispute Resolution ("ADR") Rules, at the commencement of the mediation conference Mediator Folkens confirmed that (a) all parties agreed for Appellant and Plaintiff Richardson to attend via telephone, and (b) counsel for Plaintiffs had full settlement authority for and on behalf of Appellant and Plaintiff Richardson. Appellant and Plaintiff Richardson actively participated in the mediation conference via telephone.

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 the -5573 Action. In accordance with ADR Rule 6(f), Mediator Folkens ensured that the parties reduced their agreements to writing. All parties to the Actions signed an agreement that accurately captured the terms of the negotiated resolution ("Settlement Agreement"). (Defs.' Consolidated Mot. for Preliminary Approval of Settlement Agreement, at Ex. A.) A separate

settlement agreement was executed by the parties to the -5573 Action. (Defs.' Consolidated Response to Pls.' Mots. to Reconsider the Order and Final Judgment, at 11.)

Due to Appellant and Plaintiff Richardson not being physically present and with the assent of the parties, Plaintiffs' counsel executed the Settlement Agreement on their behalf as their duly-authorized agent, with the Settlement Agreement making clear that both Appellant and Plaintiff Richardson were thereby signing through the actions of their counsel-agent. Before signing on behalf of Appellant and Plaintiff Richardson, Plaintiffs' counsel orally read the operative provisions of the Settlement Agreement to them over the telephone.

Plaintiffs' counsel presented the Settlement Agreement to Mediator Folkens and Defendants' counsel, signed by or for all of the named Plaintiffs, including Appellant. Based on the parties' negotiated settlement, memorialized in the Settlement Agreement, Mediator Folkens filed an Amended Proof of ADR form in each of the Actions and the -5573 Action, 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." (Reply in Support of Defs.' Consolidated Mot. for Preliminary Approval of Settlement Agreement, at Ex. C.).

C. The single, consolidated Settlement Agreement fully and finally resolved all four Actions in exchange for consolidated consideration from MBR and OFS.

In the Settlement Agreement, the named Plaintiffs, including Appellant, agreed to release and forever discharge "Released Parties" from all "Claims," as those terms were defined in the Settlement Agreement. (Defs.' Consolidated Mot. for Preliminary Approval of Settlement Agreement, at Ex. A ¶¶ 4, 6). The release provisions of the Settlement Agreement are as follows:

> In exchange for and in consideration of the promises set forth in this Agreement, and except for the rights to enforce the provisions of this Agreement, Plaintiffs, their heirs, executors, administrators, legal and personal representatives, successors and assigns, hereby

> covenant not to sue and fully release and forever discharge Defendants and their respective present and former parents, heirs, assigns, subsidiaries, affiliates, and related entities or corporations, and any of their past and present officers, directors, shareholders, employers, past and present employees, agents, partners, attorneys, heirs, successors, insurers and assigns (the "Released Parties"), from any and all claims, demands, actions, charges, complaints, suits, administrative proceedings, debts, promises, contracts, grievances, and causes of action (hereinafter collectively referred to as "Claims"), in law or in equity, whether known or unknown, which Plaintiffs and their heirs, executors, administrators, agents, distributees, beneficiaries, successors in interest and assignees may have by reason of any matter, cause or thing whatsoever from the beginning of the world to only the day of the date of Plaintiffs' execution of this Agreement, including, but not limited to, any and all claims which were actually asserted or might have been asserted by Plaintiffs in the Settled Actions. Plaintiffs agree never to file a lawsuit against Defendants based on any reason contained in this Agreement. The Release does not purport to release any claims that the law does not permit to be released.

(*Id.*) All Respondents are Released Parties within the meaning of the Settlement Agreement. (*Id.*) In addition to the Release of Claims, the named Plaintiffs agreed as follows in the Settlement Agreement: "Within 15 days of receipt of the Payment, Plaintiffs' counsel shall file a **stipulation of dismissal with prejudice** in each of the Settled Actions." (*Id.* ¶ 5 (emphasis in original).) The introductory paragraph to the Settlement Agreement defined the "Settled Actions" to include all four Actions (the -673 Action, the -674 Action, the -743 Action, and the -744 Action). (*Id.*)

In exchange for and in consideration of the promises set forth in the Settlement Agreement, MBR, OFS, and the Defendant Board Members promised to pay funds as follows:

- The sum of $15,000 to Plaintiffs and Plaintiffs' attorney to fund a binding arbitration of a declaratory judgment action to adjudicate whether the gate pass fee (a central issue in all four Actions) is proper.

- The sum of $15,000 to The Board of Directors for the Myrtle Beach Resort Horizontal Property Regime and the Board of Directors for the Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime to fund the defense of a binding arbitration of a declaratory judgment action to adjudicate whether the gate pass fee is proper.
- The sum of $5,000 to Plaintiffs' attorney to be held in trust by to pay an arbitrator to resolve the arbitration described above.
- The sum of $50,000 to pay Plaintiffs' attorneys' fees.

(*Id.* ¶ 1.)

D. Several Plaintiffs expressly ratified the Settlement Agreement in the weeks that followed the mediation.

Representative members of the Plaintiff classes who were then serving on the OFS Board of Directors ratified the settlement and affirmed their understanding that the Actions had been resolved fully and finally through mediation. These Plaintiffs (Nancy Moore, Steven Dame, and Jim Perkins), joined by the two other OFS Board Members, did so by providing official written notification on May 4, 2017, to over 170 of the putative class members (their constituents, who are fellow members of the OFS community) that they had been able to successfully "resolve [the] five lawsuits." (Defs.' Consolidated Mot. for Preliminary Approval of Settlement Agreement, at Ex. B ¶ 5.)

In addition, shortly after the mediation, these Plaintiffs posted notices in the OFS building informing all residents that "The recent state court litigation between various 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." (*Id.* at Ex. B, ¶ 6.)

E. The trial court entered its consolidated Order enforcing the Settlement Agreement.

On September 21, 2017, the trial court entered its Order Granting Defendants' Motion to Enforce Settlement Agreement, finding:

- The Settlement Agreement was the result of extensive negotiations following a lengthy period of contested litigation between the parties;
- All parties and their counsel attended and participated in the mediation conference (in person or via telephone) resulting in the Settlement Agreement, which concluded with all parties signing the Settlement Agreement (personally or through their designated agents);
- As the Settlement Agreement was not an "agreement between counsel," SCRCP Rule 43(k) was inapplicable; and
- Even if SCRCP Rule 43(k) did apply, the Settlement Agreement complied with the Rule—all parties to the Settlement Agreement signed the document (personally or through their designated agents), as did their attorneys.

(Sept. 21, 2017 Order.) The single, consolidated Order applied to all four of the Actions, and ruled that the single, consolidated Settlement Agreement was valid and binding. (*Id.*)

F. Plaintiffs filed motions to reconsider the Order enforcing the Settlement Agreement, which the trial court denied.

On September 29, 2017, Plaintiffs filed motions to reconsider the Order enforcing the Settlement Agreement. On November 7, 2017, Judge Seals (1) informed the 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." (Nov. 7, 2017 E-Mail from Judge Seals' Chambers (emphasis added).) On November 14, 2017, Respondents' counsel submitted for Judge Seals' consideration a single, consolidated draft order, as requested, which

contained the captions of and addressed all four Actions. (Nov. 14, 2017 E-mail to Judge Seals' Chambers.)

On December 5, 2017, the trial court entered its single, consolidated Order Denying Plaintiffs' Motions to Reconsider, which contained the captions for and addressed all four Actions, and electronically filed it in the -673 Action. (Dec. 5, 2017 Order.) The December 5, 2017, Order affirmed that the single, consolidated Settlement Agreement that resolved all four Actions was valid and binding. (*Id.*) On December 7, 2017, the trial court electronically filed the identical Order in the remaining three Actions (the -674 Action, the -743 Action, and the -744 Action). (Dec. 7, 2017 Orders.)

G. This Court dismissed as untimely the appeal in the -673 Action.

On January 8, 2018, Appellant filed a single Notice of Appeal for all four Actions. On January 25, 2018, Respondents moved to dismiss as untimely the entire appeal based on the trial court's entry of the Order on Appeal on December 5, 2017. On March 15, 2018, the Court entered an Order dismissing as untimely the appeal in the -673 Action. The Court's March 15, 2018, Order allowed the appeal in the remaining three Actions to proceed but specifically invited Respondents to raise their preclusion argument in their brief.

Appellant did not request rehearing or otherwise challenge the dismissal of the appeal in the -673 Action. On April 3, 2018, the Court issued a Partial Remittitur remitting the -673 Action to the trial court, rendering the Order enforcing the Settlement Agreement final and binding law of the case in the -673 Action.

STANDARD OF REVIEW

Settlement Agreements "'are viewed as contracts'" under South Carolina law. *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 621-22 (Ct. App. 2012) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)). "An action to construe a

contract is an action at law." *Id.* at 241, 727 S.E.2d at 622 (citing *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541 (Ct. App. 2008)). Because it is an action at law, this Court is to review the Court's Order enforcing the Settlement Agreement "under an 'any evidence' standard." *Pruitt v. S.C. Med. Malpractice Liability Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (citing *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991)). Accordingly, "the judge's findings will not be disturbed unless they are without evidentiary support." *Byrd*, 398 S.C. at 241, 727 S.E.2d at 622 (citing *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).

ARGUMENTS

1. THE VALIDITY OF THE SETTLEMENT AGREEMENT HAS BEEN FULLY AND FINALLY DECIDED IN THE -673 ACTION, TO WHICH SANTOS WAS A PARTY, AND COLLATERAL ESTOPPEL PRECLUDES HIM FROM CHALLENGING THE VALIDITY OF THE AGREEMENT IN THIS APPEAL.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (citing *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009)). Collateral estoppel applies if "the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* (citing *Beall v. Doe*, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189-90 n.1 (Ct. App. 1984)).

Each of these elements is clearly present here, mandating rejection of Appellant's arguments based on the validity of the Settlement Agreement already having been fully and finally determined in the -673 Action. Appellant simply cannot dispute any of the following:

- The validity and binding nature of the Settlement Agreement was actually litigated in the -673 Action. The parties (including Appellant) actively and thoroughly litigated this precise issue in the context of Respondents' motion to enforce the Settlement Agreement, which is the very motion that precipitated this appeal.
- The validity and binding nature of the Settlement Agreement was directly determined in the -673 Action. The single, consolidated Order the trial court entered in the Actions on September 21, 2017, addressed a single issue—the validity and binding nature of the Settlement Agreement. The title of the Order was "Order Granting Defendants' Motion to Enforce Settlement Agreement." Similarly, the single, consolidated Order denying Plaintiffs' (including Appellant's) motions to reconsider the September 21, 2017, Order reaffirmed this single issue—the validity and binding nature of the Settlement Agreement – and the Defendants' ability to enforce that Agreement.
- The validity and binding nature of the Settlement Agreement was not only necessary to support the prior judgment, it was the entire purpose of the prior judgment: to adjudicate whether Respondents could enforce the Settlement Agreement.
- Because this Court has dismissed the appeal of the -673 Action, the trial court's decision enforcing the Settlement Agreement as valid and binding in the -673 Action is the law of the case, and that issue has been fully and finally determined. *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters

that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." (citing C.J.S. *Appeal & Error* § 991 (2008)).

Each of the above facts is beyond dispute. Accordingly, collateral estoppel bars Appellant from relitigating the validity and binding nature of the Settlement Agreement in this appeal.

To hold otherwise would (1) require Respondents and the Court to waste time and resources analyzing, litigating, and determining an issue that has already been conclusively adjudicated, and (2) potentially lead to inconsistent results (and inconsistent rights and obligations of the same set of parties). Collateral estoppel exists to address situations such as this, and Appellant's appeal should be rejected accordingly. This is a simple and straightforward issue, and barring the appeal based on collateral estoppel eliminates the need to even address the remaining issues before the Court.

2. REGARDLESS OF WHETHER SCRCP RULE 43(K) APPLIED TO THE SETTLEMENT AGREEMENT, THE AGREEMENT COMPLIED FULLY WITH THE PROVISIONS OF THE RULE AND IS VALID AND BINDING ON THE PARTIES.

A plain reading of SCRCP Rule 43(k) shows that it does not apply since the Settlement Agreement was not an "agreement between counsel." It was an agreement between the parties. The trial court correctly concluded that, even if Rule 43(k) did apply, the Settlement Agreement complied with both the letter and spirit of the Rule.

Neither Appellant nor any of the other plaintiffs in the trial court have ever attempted to contradict the following facts, all of which are undisputed and mandate enforcement of the Settlement Agreement:

- On May 1, 2017, all parties and their counsel attended and participated in (either in person or via telephone) the Court-mandated mediation in the Actions.

- Appellant and Plaintiff Richardson actively participated in the mediation conference via telephone.
- 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.
- The Settlement Agreement accurately captured the terms of the negotiated resolution.
- Plaintiffs' counsel executed the Settlement Agreement on behalf of Appellant and Plaintiff Richardson as their duly-authorized agent, with the Settlement Agreement making clear that both Appellant and Plaintiff Richardson were thereby signing through the actions of their counsel-agent.
- Based on the parties' negotiated settlement, memorialized in the Settlement 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."
- After the mediation, three of the named Plaintiffs (Nancy Moore, Steven Dame and Jim Perkins) expressly ratified the Settlement Agreement.

These undisputed facts leave no doubt that the Settlement Agreement fully satisfied Rule 43(k).

Rule 43(k) 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 clearly occurred here, mandating enforcement of the Settlement Agreement:

- The parties' negotiated resolution was "reduced to writing" in the Settlement Agreement;
- All parties to the Settlement Agreement signed the document, either personally or through the actions of their duly-authorized agents; and
- The Settlement Agreement bears the signatures of the parties' counsel: "A. Preston Brittain"—counsel for Plaintiffs—twice (once in an agency capacity for Appellant, and once in an agency capacity for Plaintiff Richardson); and "Phillip A. Kilgore"—counsel for Defendants who were all party to the Settlement Agreement—five times (in an agency capacity for two corporate Defendants and the three individual Defendants who were present via telephone).

Appellant admits each of these facts, mandating the trial court's conclusion that the Settlement Agreement satisfied Rule 43(k).

A. Counsel for all named parties to the Settlement Agreement signed the Agreement.

In attempt to evade the Settlement Agreement, Appellant asks the Court to adopt the tortured and absurd interpretation of Rule 43(k) he advanced in the lower court. Appellant does not deny that his lawyer and Respondents' lawyer signed the Settlement Agreement. He contends that the Court should ignore the signatures of Plaintiffs' counsel and Defendants' counsel on the Settlement Agreement because, in his view, neither signed "on his own behalf" or in his "own capacity as counsel."[2] (Initial Br. of Appellant at 2, 8.) Rule 43(k) has no such capacity requirement, expressed or implied.

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[2] It should be noted that neither attorney identified any limitation on the capacity in which he signed. In all instances at issue here, the clients' signatures were "By his Attorney" or "By its Attorney."

The purpose of SCRCP 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). The purpose of the attorney signature requirement for this form of SCRCP Rule 43(k) agreement between counsel is obvious: it is the attorney's confirmation that the document accurately expresses the terms of the deal the parties have reached. It is certainly not to signal counsel's agreement to be bound personally by its terms. An attorney representing a party to a settlement agreement would almost never have any substantive obligations or rights under such an agreement.

Here, counsel for Plaintiffs and counsel for Defendants signed the Settlement Agreement as attorneys and agents of their clients. Thus, it is beyond dispute that the parties' attorneys did in fact sign the Settlement Agreement, which is all the Rule would require. 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."). The Rule requires counsel to sign a covered agreement and, in this instance, the parties' counsel did sign.

Moreover, by signing the Settlement Agreement as agents/attorneys for their principals/clients, both counsel clearly indicated that they had fulfilled their duties to their clients, having reviewed the Settlement Agreement and confirmed that it accurately sets forth the relevant terms of settlement. Finally, their signatures constitute representations that their clients gave them express permission to sign in their stead.

Neither attorney would have signed the Settlement Agreement as the agent of his client unless these facts were true. Appellant's attempt to conjure up a capacity requirement in Rule 43(k) and his contention that the Settlement Agreement is non-binding because the attorneys did not sign in their "own" capacity must be rejected accordingly.

B. Appellant and Richardson signed the Settlement Agreement for purposes of Rule 43(k) by directing their agent/counsel to sign on their behalf.

Appellant's second absurd argument is that, if the signatures are in any way construed to be those of legal counsel, they cannot be signatures of the parties. He asserts that even when a party expressly directs his/her/its agent/attorney to sign an agreement on his/her/its behalf and the attorney does so in a manner making clear that the attorney is signing in the place of the party, the party has not actually signed the agreement for purposes of Rule 43(k). This argument was not properly preserved for appellate review, as Appellant abandoned this contention in the motions to reconsider the September 21, 2017, Order enforcing the Settlement Agreement and focused exclusively on allegations regarding the attorney signature requirement. The trial court specifically recognized this fact:

> 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 . . . above—their contention that Plaintiffs' counsel and Defendants' counsel did not "sign" the agreement for purposes of Rule 43(k).

(Order Denying Pls.' Mots. to Reconsider at 9 & n.4.) Placing aside Appellant's waiver of and failure to preserve this argument, his contention defies age-old agency principles and must be rejected.

Below are the actual signatures from the Settlement Agreement with which Santos apparently takes issue:

Mark Dos Santos

By his Attorney

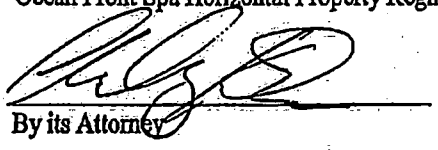
Jeffrey Richardson

By his Attorney

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

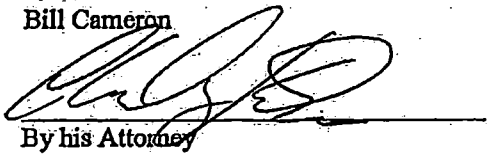
By its Attorney

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



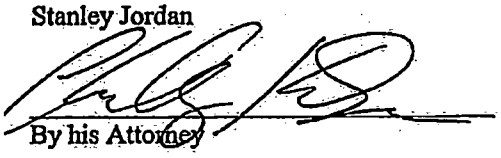
By its Attorney

Bill Cameron



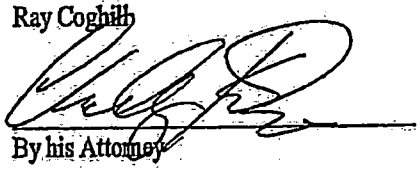
By his Attorney

Stanley Jordan



By his Attorney

Ray Coghill



By his Attorney

(Defs.' Consolidated Mot. for Preliminary Approval of Settlement Agreement, at Ex. A.) All of these signature blocks make clear that the parties/principals have signed the Settlement 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 clearly 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 Settlement Agreement.

To accept Appellant's argument, corporate defendants (which always sign through their agents) and other parties who must sign agreements through their agents (due to incapacity, absence, or otherwise) would apparently never be able to enter into a binding agreement under Rule 43(k). This is clearly not what the Legislature intended, and the absurd result Appellant seeks must be avoided. *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))).

Santos relies heavily on *Farnsworth* in making his contentions—a case that is plainly distinguishable on the facts. In *Farnsworth*, the plaintiff's counsel sent a letter extending a settlement offer to the defendant's counsel. 367 S.C. at 636, 627 S.E.2d at 725. The defendant's counsel then signed the letter confirming the defendant's acceptance of the offer. *Id.* The plaintiff—who had never signed an agreement of any kind, personally or by granting permission to her agent/attorney—subsequently decided that she would prefer to go through with a trial rather than resolving her claims. *Id.*

Farnsworth differs from this case in a critical way: it involved a prototypical agreement between counsel—one attorney sending a letter to another attorney conveying a settlement offer based on prior representations of his client, which the second attorney accepted. Neither party in *Farnsworth* was directly involved in the settlement communications or signed an agreement of any kind.

By comparison, all parties and their attorneys here actively participated in a full-day mediation culminating in a negotiated resolution. All parties to the Settlement Agreement then personally signed the Settlement Agreement or, due to their physical absence but telephonic presence, specifically directed their attorney to sign the Settlement Agreement as their agent to memorialize the settlement the parties had just reached. An attorney signing a document with present, express permission to sign on behalf of his client is very different from an attorney conveying a settlement offer on behalf of a client based on a prior representation of the client. *Farnsworth* is by no means dispositive of the case at hand.

There can simply be no dispute that all parties to the Settlement Agreement and their attorneys signed the Settlement Agreement. This satisfied the letter and spirit of Rule 43(k), mandating enforcement of the Settlement Agreement. The trial court's decision must be affirmed.

3. RULE 43(K) DID NOT APPLY TO THE SETTLEMENT AGREEMENT, WHICH WAS NOT AN "AGREEMENT BETWEEN COUNSEL."

Even though the Settlement Agreement complies with the requirements of Rule 43(k), by its plain language, the Rule is inapplicable to the Settlement Agreement. Rule 43(k) 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). The Settlement Agreement was not an "agreement of counsel" or an "agreement between counsel." The Settlement Agreement was an agreement of

the parties and between the parties, resulting from mediation that all parties attended (either in person or by telephone) and in which they participated.

"'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 plainly demonstrates Rule 43(k)'s inapplicability to the Settlement Agreement.

A Rule 43(k) "agreement between counsel" contemplates an agreement negotiated by attorneys that must be followed by some other overt action, identified in the Rule, before it becomes enforceable. One of these actions is where the "agreement between counsel" is later "reduced to writing and signed by the parties and their counsel." SCRCP Rule 43(k). This means that attorneys, after reaching agreements with other counsel, must consult with their clients about the terms and ensure that their clients sign an agreement memorializing those terms. The obvious purpose of this Rule is to protect parties in connection with agreements negotiated and entered into by their attorneys. The Rule is not designed to supplant the basic law of contract pertaining to agreements into which the parties themselves enter.

A recent Court of Appeals opinion recognized as much. Under 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 in *Farnsworth* recognized the importance of two words in the introductory clause of Rule 43(k), emphasizing "between counsel" when

quoting the Rule. *See Farnsworth*, 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)). The *Farnsworth* Court went a step further in its holding, 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 *Farnsworth* 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" would have been entirely 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). The Rule applies only to those that are "agreement[s] between counsel," as the plain language of the Rule makes clear.

The history of Rule 43(k) further demonstrates its inapplicability to the Settlement Agreement. In reaching its conclusions, the *Farnsworth* Court compared Circuit Court Rule 14 to SCRCP 43(k) and pointed out language in the new rule that was not present in the old rule. *See Farnsworth*, 367 S.C. at 638 n.3, 627 S.E.2d at 726 n.3. ("Under [the old] rule, [the] 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.").

Likewise, this Court can draw conclusions from another difference between Rule 43(k) and old Circuit Court Rule 14. 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). Thus, Old Circuit Court Rule 14 addressed the

enforceability of both agreements between parties and agreements between their attorneys. Rule 43(k), however, retains no reference to "agreement[s] or consent[s] between parties" and makes reference only to "agreement[s] between counsel." The logical conclusion is that this omission by the drafters 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 the new Rule, the Legislature must have contemplated the possibility of including agreements between parties within the scope of Rule 43(k), but elected to omit any reference to such agreements. Such omission in the revised 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).

Appellant relies on an earlier case, *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995), in an attempt to overcome the clear and straightforward meaning of Rule 43(k). *Ashfort* appears easily 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. Nothing in the record reflects the terms of the purported agreement or whether it was in writing or was between the parties, and

the lower court concluded "there had been no 'meeting of the minds' regarding the terms of the settlement." *Id.* at 493, 458 S.E.2d at 534.

Based on that limited record, the *Ashfort* court was left with nothing more than representations by counsel that a purported agreement had been reached—facts that did not allow the court to enforce the agreement under contract principles and fell woefully short of the requirements of the then-current version of Rule 43(k) to either "reduce[the agreement] to the form of a consent order or written stipulation signed by counsel and entered in the record, or [make it] in open court and note[it] upon the record." *Id.*

Appellant here has little left to rely on than two sentences from *Ashfort*[3] taken out of context to assert that all settlement agreements, even those that are not "agreements between counsel," are governed by Rule 43(k). This reliance is ill-placed for several reasons. First, *Ashfort* did not have before it a pure "settlement agreement" reached between parties. Second, *Ashfort* never purported to extend its ruling to "all settlement agreements" or all "agreements regarding pending litigation" within the scope of future versions of Rule 43(k). Third, the Court evinced no intent for *Ashfort* to be treated as a seminal decision for the proposition that decades of contract jurisprudence have been modified to carve out a subset of contracts between parties which are not enforceable unless their lawyers also sign.

Farnsworth is a more reliable barometer of the Court's view of the scope of Rule 43(k). As indicated above, in quoting the Rule, the *Farnsworth* Court emphasized the words "between counsel," 367 S.C. at 637, 627 S.E.2d at 725, and noted that "Rule 43(k) plainly applies to all

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[3] "In our opinion, Rule 43(k) is applicable to settlement agreements," *Id.* at 494, 458 S.E.2d at 534, and "The intent of Rule 43(k) is to require all agreements regarding pending litigation to either be announced in open court or to be reduced to a consent order or written stipulation and entered."

settlement agreements signed by counsel." *Id.* at 637-38, 627 S.E.2d at 725-26 (emphasis added).

The sparse facts in *Ashfort* bear no similarity to the present facts. Here (1) all of the parties (with the assistance of counsel) 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 Settlement Agreement that all parties to the Settlement Agreement signed before leaving the mediation, and (3) a seasoned and well-respected mediator filed a notice with the Court confirming each of the above two facts.

The Settlement Agreement in this case was not an "agreement between counsel," as contemplated in Rule 43(k). The Settlement Agreement was negotiated, memorialized, and executed by all of the parties to the Settlement Agreement after a full day of mediation in which all actively participated. The trial court properly held that Rule 43(k) was inapplicable and enforced the Settlement Agreement accordingly. The same result is mandated on appeal.

4. K.A. DIEHL, AS A THIRD-PARTY BENEFICIARY, HAS STANDING TO ENFORCE THE SETTLEMENT AGREEMENT.

As an additional ground for appeal, Appellant seeks a modification of the trial court orders limiting the right to enforce the Settlement Agreement to MBR, OFS, and the individual directors. He asserts that K.A. Diehl is not a party and does not have standing to enforce the Settlement Agreement. Although this argument was not preserved for appeal, as it was not raised in the motions to reconsider the September 21, 2017 Order enforcing the Settlement Agreement, it is wholly without merit.

Appellant completely ignores the fact that K.A. Diehl is a third-party beneficiary to the Settlement Agreement. "A third-party beneficiary is a party that the contracting parties intend to directly benefit." *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150

(1988). "The presumption that a contract is not enforceable by an individual may be overcome by showing" that the individual was intended to benefit under the terms of the agreement. *Id.* "When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties used, to be taken and understood in their plain, ordinary, and popular sense." *C.A.N. Enterprises, Inc. v. S.C. Health & Human Sers. Fin. Com.*, 296 S.C. 373, 377, 373 S.E.2d 584 (1998).

By the express language of the Settlement Agreement, K.A. Diehl derives the direct benefits of 1) being released of Plaintiffs' claims; and 2) a dismissal of claims against it in the Actions with prejudice. The Settlement Agreement clearly and unambiguously "release[s] and forever discharge[s] Defendants and . . . any of their past and present . . . agents . . . from any and all claims, demands, actions, charges, complaints, suits, administrative proceedings, debts, promises, contracts, grievances, and causes of action," whether known or unknown, through the date of the Settlement Agreement. The Settlement Agreement defines "Defendants" as MBR, OFS, and the individual directors. K.A. Diehl, as MBR's and OFS's managing agent at the time of execution, is explicitly a released party as an agent.

To read the Settlement Agreement in any other manner would lead to the "unusual and extraordinary" conclusion that OFS and MBR would agree to Plaintiffs maintaining claims against their agent, exposing OFS and MBR to arguments that they should indemnify their agent. *Id.* Instead, the Court must employ the "reasonable, fair and just" construction of the Settlement Agreement that all parties intended K.A. Diehl to be a released party.

Likewise, the benefit of the dismissal of all claims with prejudice pending in the -743 Action and the -744 Action inures to K.A. Diehl, as a Defendant in those lawsuits. The express language states Plaintiffs are obligated to "file a stipulation of dismissal with prejudice in each of

the Settled Actions." The dismissal is unconditional and applies uniformly to all claims, whether against the other Defendants or K.A. Diehl. Any other interpretation would be tortured and fly in the face of "the ordinary, plain, and popular sense" of the terms in the dismissal provision. *Id.*

To the extent that the terms of the Settlement Agreement are ambiguous, the evidence in the record supports the conclusion that Appellant intended for K.A. Diehl to benefit from the Settlement Agreement. The OFS directors sent a notice to the OFS members that "the recent state court litigation between various 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." By the clear language of the notice, several Plaintiffs explicitly recognized that the release and agreement to dismiss with prejudice was intended to directly benefit K.A. Diehl, as the management company.

Additionally, Appellant settled the claims in the -5573 Action, agreeing to release and dismiss the counterclaims against K.A. Diehl that are similar to the claims in the Actions. This evidences that the settlement agreements reached at the May 1 mediation were intended to be global and to settle all actions between the parties with finality. Finally, the agreement to dismiss in of itself is further evidence of Appellant's intent that the scope of the release includes claims against K.A. Diehl in the Actions. Even if you accepted Appellant's absurd assertion that he did not intend to release K.A. Diehl, Plaintiffs could not maintain the actions against K.A. Diehl by the express language of the Settlement Agreement, because all claims, including those against K.A. Diehl, must be dismissed by the parties. "Common sense and good faith, the leading touchstones of construction of the provisions of a contract," dictate that K.A. Diehl is released of Plaintiffs' claims and that the Actions be dismissed in their entirety. *Id.*, 296 S.C. at 377 (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 360, 218 S.E.2d 431, 434 (1975)).

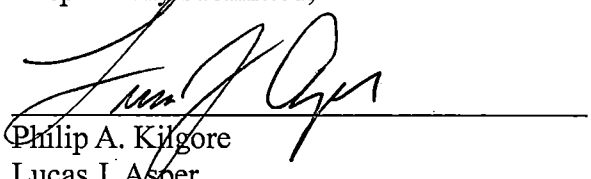
As a third-party beneficiary, K.A. Diehl has standing to enforce the Settlement Agreement.

CONCLUSION

As a threshold issue, Santos is precluded from even pursuing this appeal based on the doctrine of collateral estoppel. The validity and binding nature of the Settlement Agreement has been conclusively determined in the -673 Action, to which Santos was a party (and in which he contested this very issue), and he cannot relitigate that issue here.

Even if collateral estoppel did not preclude Santos' arguments on appeal (though it does), the trial court's decision appropriately applied the facts to the law and rightly concluded that (1) Rule 43(k) is inapplicable to the Agreement and, even if it did, (2) the Settlement Agreement complied fully with Rule 43(k); and (3) K.A. Diehl has the right to enforce the Settlement Agreement. Accordingly, Respondents request that the Court affirm the decision of the lower court.

Respectfully submitted,



Philip A. Kilgore
Lucas J. Asper
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main Street, Suite 500
Greenville, South Carolina 29601
(864) 271-1300 (telephone)
(864) 235-8806 (facsimile)
philip.kilgore@ogletree.com
lucas.asper@ogletree.com

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

Henrietta U. Golding (with express permission)

Henrietta U. Golding, Esq.
Alicia E. Thompson, Esq.
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578-0336
(843) 444-1107 (telephone)
(843) 444-4729 (facsimile)

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

May 4, 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

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,

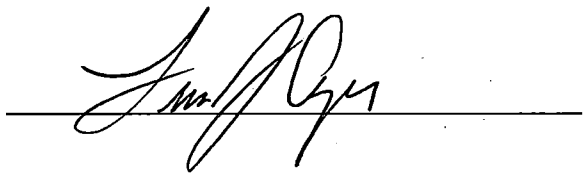
And

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.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent 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.*

May 4, 2018



Ogletree Deakins

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Attorneys at Law
The Ogletree Building
300 North Main Street, Suite 500
Greenville, SC 29601
Telephone: 864.271.1300
Facsimile: 864.235.8806
www.ogletreedeakins.com

Lucas J. Asper
lucas.asper@ogletree.com

May 4, 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

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of (1) the Initial Brief of Respondents, and (2) Respondents' Designation of Matter to be Included in the Record on Appeal in the above-referenced matter. Please file the original and return the clocked-in copy to us in the self-addressed, stamped envelope enclosed.

A copy of these filings are being served on Appellant Mark Dos Santos' counsel Kirby D. Shealy and K.A. Diehl's counsel Henrietta U. Golding.

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

Sincerely,

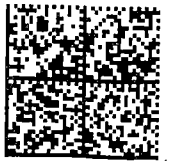
OGLEREE, DEAKINS, NASH,
SMOAK & STEWART, P.C

Lucas J. Asper

LJA:lah

Enclosures

cc: Kirby D. Shealy, III, Esq., via email and regular mail
Henrietta U. Golding, Esq., via email and regular mail



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Ogletree Deakins

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

The Ogletree Building
300 North Main Street
Suite 500
Greenville, SC 29601

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