

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge
Fifteenth Judicial Circuit

Case No. 2015-CP-26-3173
Appellate Case No. 2017-002196

RECEIVED

AUG 03 2018

SC Court of Appeals

Condo-World Development, LLC
and Heron Point Golf Club Limited Partnership Respondents

vs.

Myrtle Beach Golf & Yacht Club Association, Inc. Appellant

AND

Myrtle Beach Golf & Yacht Club Association, Inc. Appellant

vs.

South State Bank Respondent

**RESPONDENTS CONDO-WORLD DEVELOPMENT, LLC AND
HERON POINT GOLF CLUB LIMITED PARTNERSHIP'S
RETURN TO APPELLANT'S MOTION TO DETERMINE
SCOPE OF STAY OF PROCEEDINGS**

Respondents Condo-World Development, LLC and Heron Point Golf Club Limited Partnership (“Respondents”) hereby submit their return to the Motion to Determine Scope of Stay of Proceedings filed by Appellant Myrtle Beach Golf & Yacht Club Association, Inc. (“the Association”).

The Association seeks an order finding the lower court may not proceed with the claims remaining below that are not on appeal. The motion should be denied and the Court should issue an order finding the Association's appeal of third-party damage and indemnity claims against a bank does not preclude the lower court from proceeding with the claims that remain before the lower court, all of which relate to title to the subject property.

INTRODUCTION

Respondent Heron Point owns the Heron Point Golf Course on which Respondent Condo-World holds a mortgage lien. In 2015, Respondents filed this declaratory judgment action against the Association seeking a determination that the golf course is not encumbered by claimed use restrictions.

The Association asserted counterclaims for declaratory relief, seeking a determination that the golf course is restricted. In 2017, the Association chose to amend its answer to assert third-party damage and indemnity claims against a bank, which claims were dismissed and are the subject of this appeal.

The Association argued before the lower court that this appeal stays the underlying case from proceeding. The lower court correctly rejected this argument, ruled that the matters remaining below could properly be heard, and chose to bifurcate the claims to allow dispositive motions to be heard on the claims that remain before the lower court. The Association chose to file a separate appeal of that order. Respondents moved to dismiss that appeal because the lower court's order in that regard is not immediately appealable. Respondents and the Association both briefed whether the matters that remain below are stayed as the lower court ruled they were not stayed. This Court granted Respondents' motion to dismiss.

Because the third-party damage and indemnity claims that are the subject of this appeal have no effect on the claims remaining before the lower court—all concerning the use of the golf course—this Court should issue an order finding the claims remaining before the lower court are not stayed.

BACKGROUND

I. Respondents' Complaint

Respondents filed a Complaint against the Association on April 27, 2015. [R. at 29-80]. Respondents seek an order declaring the golf course owned by Heron Point, on which Condo-World holds a mortgage lien, is not restricted by various matters such that Respondents can develop the property at issue in this case.

More specifically, the Respondents seek an order declaring:

- That the Declaration of Covenants and Restrictions of the Myrtle Beach Golf & Yacht Club (“MBGYC”) recorded in 1984 and amended in 1985 do not run with the golf course property;
- The golf course property was not submitted and/or dedicated as part of the MBGYC subdivision’s common areas; and, consequently, it is not subject to the declaration of covenants;
- That the alleged use restrictions referenced in the deed recorded in Deed Book 1540, at Page 482 (“Heron Point Deed”), were personal to First Federal Savings and Loan Association of Charleston (“First Federal”), the successor by merger to Peoples Federal Savings and Loan Association (“Peoples”) as the grantor/covenantor, and do not run with the golf course property;
- That First Federal as the Grantor/Covenantor had previously waived, relinquished and released the following restrictions as the same may have applied, if at all, to the Enterprise Tracts, including the golf course property, by Deed known as “Waiver of Restrictions [Deed]” recorded May 5, 2005, in Deed Book 2905, at Page 574;
- That the Association lacks standing to enforce the alleged restrictions referenced in the Heron Point Deed because they are personal to Peoples, its successors, and assigns, and do not run with the golf course property. Accordingly, Condo-World, as the managing partner of Heron Point, has the sole authority to enforce the use restrictions in the Heron

Point Deed against the golf course property assuming the restrictions have not been previously waived, relinquished and released for the reasons described above;

- That the First Mortgage and Security Agreement (“Security Agreement”) by and between Peoples Federal Savings and Loan Association (“Mortgagee”) and Heron Point Golf Club Limited Partnership (“Mortgagor”) contains a certain covenant stating that *"the mortgagor shall not remove, demolish, materially alter or materially change the use of the golf course ... without the prior consent of Mortgagee."* This language evidences that the use restrictions in the Security Agreement are only personal to the Mortgagee, its heirs, successors, and assigns, and do not run with the golf course property. Accordingly, Condo-World as the current mortgagee by assignment, has the sole authority to enforce the personal use restrictions against the golf course property;
- The Association lacks standing to enforce the subdivision’s declaration of covenants against the golf course property. The golf course property has not ever been subjected by amendment to the declaration of covenants of the MBGYC Subdivision. For these reasons, the golf course property has not ever been inured to the benefit of the Association’s members because they possess no title and interest in the golf course property;
- That even if the use restrictions described above do apply to the golf course property, which is expressly denied, they do not unreasonably limit the golf course property’s use only to a golf course; and
- The golf course property is not subject to the declaration of covenants due to the changed economic circumstances, which have rendered the golf course property unsuitable for a golf course use.

II. The Association’s Counterclaims

On June 11, 2015, the Association filed an Answer, Defenses, and Counterclaims seeking an order declaring certain claimed restrictions do apply to the golf course, which would prevent residential development of the property. [R. at 81-95]. On November 5, 2015, the Association filed an Amended Answer, Defenses and Counterclaims. [R. at 105-119]. On February 14, 2017, the Association filed a Second Amended Answer, which included a Third-Party Complaint against South State Bank. [R. at 120-141]. The Association filed a revised and corrected Second Amended Answer and Third-Party Complaint on March 13, 2017. [R. at 414-432].

Like Respondents, the Association's counterclaims against Respondents all relate to matters of title, more particularly whether the golf course is restricted.

More specifically, the Association seeks an order declaring:

- The two 1984 Dusenbury Deeds for Tracts I and II are valid and run with the title of those properties to include, but not be limited to, the golf course;
- The Covenants and Restrictions recorded in 1984 and amended in 1985 are valid and run with the title to the golf course and otherwise inure to the benefit of the Association and its homeowners/members;
- The golf course is a defined Common Element in the 1984 and 1985 Covenants and Restrictions and any land use change is subject to and governed by the controls set forth in the referenced Covenants and Restrictions;
- The deed restrictions contained in the "1992 Indenture" for Tracts I and II are valid and run with the title of those properties to include the golf course and are otherwise not personal to the original Grantor and/or its successors in interest;
- That any prior waiver, relinquishment, or release of the above described restrictions by the original Grantor and/or its successors in interest in relation to the 1992 Indenture Deed were invalid and/or are of no legal effect as to the rights of the Association as to the alleged deed restrictions, Covenants and Restrictions, and/or other relevant agreements at issue in this litigation;
- The Association has standing to enforce the alleged deed restrictions, Covenants and Restrictions, and/or other relevant agreements at issue in this litigation;
- That the Plaintiffs continue to be bound by any and all restrictive language in the First Mortgage and Security Agreement as it relates to the 1992 Indenture Deed; and
- That as a matter of law, economic hardship on the part of the Plaintiffs is not a legal justification for Court ordered modification, waiver, relinquishment, or release of the alleged deed restrictions, Covenants and Restrictions, and/or other relevant agreements at issue in this litigation.

III. The Association's Third-Party Complaint

In its Third-Party Complaint, the Association asserted causes of action for breach of contract, contractual indemnification, equitable indemnification, and permanent injunction against South State Bank. [R. at 426-432].

In response to the Association's Third-Party Complaint, South State Bank filed a motion to dismiss, which was granted and denied in part by Order of the Honorable Larry B. Hyman, Jr., entered July 26, 2017. [R. at 7]. The Association filed a Motion to Reconsider, which motion was denied per order entered October 4, 2017. [R. at 3]. On October 18, 2017, the Association filed this appeal.

IV. Scheduling Order, Pleadings, and other Orders

After Judge Hyman had already dismissed most of the Association's third-party claims and denied the Association's motion to reconsider, on October 9, 2017, Judge Hyman, with the consent of counsel for the parties, entered an Amended Scheduling Order, attached as **Exhibit A**, where the court agreed to bifurcate some of the issues in the case. Judge Hyman, with the consent of the parties, ruled that he would hear the primary issue in the underlying case, but not the third-party claims filed by the Association.

On November 7, 2017, Judge Hyman issued a Form 4 Order/Judgment, attached as **Exhibit B**, which ruled that various pending motions could not "appropriately be heard at this time due to a pending appeal on this issue."

On November 15, 2017, the Association filed a Motion to Stay the Case, attached as **Exhibit C**, in which the Association argued the matters decided in the orders on appeal "are broad enough to encompass virtually the entire proceedings in the first-party action and third-party action. Therefore, [the Association] requests a stay of proceedings, consistent with Rule 241, SCACR, pending determination of the Appeal."

On November 15, 2017, Respondents filed a Motion to Reconsider, attached as **Exhibit D**, asking the court to reconsider its November 7, 2017, Form 4 Order/Judgment because the appeal of the dismissal of the Association's Third-Party Complaint did not stay the underlying case.

On November 30, 2017, Judge Hyman issued an order, attached as **Exhibit E**, finding its November 7, 2017, Form 4 Order/Judgment “was inadvertently entered, stating that [the Association’s] motions for Summary Judgment and to Reconsider, Alter or Amend and Plaintiffs’ Motion to Reconsider, Alter or Amend could not appropriately be heard at this time due to a pending appeal.”

Judge Hyman further ordered as follows:

After due consideration, I hereby bifurcate those claims against the Defendant South State Bank, which were previously dismissed pursuant to my order dated October 4, 2017. That ruling is presently under appeal to the South Carolina Supreme Court. *The remaining issues in the case, including the remaining cause of action against South State Bank and the issue of standing, can, in all fairness, be litigated without the necessity of hearing the matters which have been dismissed and are subject to appeal.* I therefore order that those matters be bifurcated from the case. All other motions, including dispositive motions, affecting all other matters not under appeal may appropriately be heard. Thus, the November 7, 2017 Form 4 Order is hereby amended so that Defendant’s Motion for Summary Judgment may be heard. Any and all dispositive motions in this action shall be appropriately noticed to this Court and shall be filed within two week[s] of the issuance of this Order. (emphasis added)

On December 19, 2017, the Association appealed Judge Hyman’s order and the appeal was designated as Appellate Case No. 2017-002642. Respondents moved to dismiss the appeal arguing Judge Hyman’s order is not immediately appealable. Both parties briefed whether the claims that remain below are stayed. This Court dismissed the Association’s appeal by order entered March 23, 2018, attached as **Exhibit F**, which provides in full as follows:

Respondents Condo-World Development, LLC and Heron Point Golf Club Limited Partnership have filed a motion to dismiss this appeal, arguing the order on appeal is not immediately appealable. The motion is granted. *See Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72-73, 533 S.E.2d 331, 333-34 (2000) (ruling a bifurcation order is not immediately appealable); *id.* at 73, 533 S.E.2d at 333 (“[T]rial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right.”).

The Association failed to file a motion to reconsider or otherwise challenge this Court's dismissal of its appeal.

ARGUMENTS AND AUTHORITIES

I. **THE APPEAL OF THE ASSOCIATION'S THIRD-PARTY CLAIMS FOR DAMAGES AND INDEMNITY AGAINST SOUTH STATE BANK DO NOT AFFECT THE ISSUES AND CLAIMS REMAINING BEFORE THE LOWER COURT.**

Rule 205, SCACR, provides:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. *Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.* (emphasis added).

Rule 241(a), SCACR, provides:

As a general rule, *the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.* This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. *The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.* (emphasis added).

Our courts have interpreted these rules to provide that “the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).” *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012); *see also Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009) (Notice of appeal from order of contempt issued against newspaper in defamation suit for newspaper’s refusal to comply with discovery order did not deprive the lower court of jurisdiction to rule on newspaper’s motion for summary judgment, where the issue on summary judgment as to whether newspaper acted with actual malice was unaffected by appeal from contempt order);

Arnal v. Fraser, 371 S.C. 512, 641 S.E.2d 419 (2007) (While appeal from amended final divorce judgment was pending, lower court retained jurisdiction to enforce provisions in decree that were not stayed by appeal regarding father's obligation to pay child support and medical expenses.).

The matters pending before the lower court are competing declaratory relief claims between the Association and Respondents. They all concern whether the golf course is restricted. Neither the Association nor Respondents seek damages.

The Association's dismissed third-party claims for breach of contract, contractual indemnification, and equitable indemnification against South State Bank do not affect the underlying claims between the Association and Plaintiffs. The Association's dismissed third-party claims are damage and indemnity—they do not relate to title to the subject property.

The third-party claims asserted by the Association against South State Bank concern an unrecorded 1988 Settlement Agreement formed in Richland County. Respondents are not parties to the unrecorded 1988 Settlement Agreement. Only South State Bank, through its predecessor, and the Association are parties to the unrecorded 1988 Settlement Agreement. Three of the third-party claims asserted by the Association against South State Bank seek damages and indemnity from South State Bank based on the unrecorded 1988 Settlement Agreement.

More specifically, the third-party claims asserted by the Association against South State Bank, and which are the subject of this appeal, are as follows:

Claim	Factual Basis	Relief Sought
Breach of Contract	The Association and South State Bank's predecessor agreed in the unrecorded 1988 Settlement Agreement to cause a restriction to be placed on the property. The Association claims South State Bank breached the unrecorded 1988 Settlement Agreement because it executed the 2005 Waiver of Restrictions.	Actual damages, consequential damages, punitive damages, attorney's fees, and costs.
Contractual Indemnity	Same as above, but the Association references the indemnity provisions of the unrecorded 1988 Settlement Agreement.	Contractual indemnity for incurring expenses in defending the first-party claims.
Equitable Indemnity	Same as above.	Equitable indemnity for incurring expenses in defending the first-party claims.

The issues being litigated between the Association and Respondents all relate to whether the deed restriction runs with the land; whether the Association can enforce the deed restriction; whether other alleged restrictions or covenants that pre-date the unrecorded 1988 Settlement Agreement encumber the property; and whether the 2005 Waiver of Restrictions effectively released the restrictions on the golf course.

Neither party seeks monetary damages or indemnity in the first-party claims. The Association's counterclaims seek the exact opposite of what Respondents seek. All the relief sought relates to the status of title to the property.

The issues on appeal related to the dismissal of third-party damage and indemnity claims against South State Bank do not affect the primary title issues that remain to be litigated in the lower court—whether the deed restriction runs with the land and whether the Association can enforce the deed restriction.

The Association's dismissed claims for damages and indemnity against South State Bank all arise out of a third-party complaint, but derivative liability is the essence of third-party claims. As the Association admits and pleads in two of its dismissed claims, they apply only "to the extent the allegations contained in [Respondents'] Complaint are proven true." [R. at 430]. As a result, those claims would not be reached until after the underlying dispute between the Association and Respondents is resolved. *See* Rule 14(a), SCRPC (authorizing a defending party to bring into a lawsuit "a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him."); *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (Under Rule 14, SCRPC, a third-party claim may be asserted under Rule 14(a) only when the third-party plaintiff would have a substantive claim against the third-party defendant founded upon derivative liability and the outcome of the principal claim impacts the third-party defendant's liability (citing Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 1446)); *see also Laughlin v. Dell Fin. Servs., L.P.*, 465 F. Supp. 2d 563, 566 (D.S.C. 2006) ("A third-party defendant's liability under third-party practice rule must be secondary or derivative to the original defendant's liability to the original plaintiff"); 6 Charles A. Wright *et al.*, *Federal Practice & Procedure* § 1446 at 157 (3d ed. 2017)) (the third-party plaintiff's claim must be dependent upon the outcome of the main claim).

This Court's determination of the Association's appeal of its damage and indemnity claims, has no bearing on the claims remaining before the lower court, which are summarized as follows:

Subject	Respondents' Request for Declaratory Relief	Association's Request for Declaratory Relief
1984 Dusenbury Deeds conveying Tract I and II.	None, but Respondents in their answer to counterclaims assert lack of standing. ¹	The restrictions in these deeds are valid and run with the title to Tract I and II, including the golf course.
1984 Covenants and Restrictions as amended in 1985 ("1985 Covenants").	The 1985 Covenants do not run with the golf course property.	The 1985 Covenants are valid, run with the title to the golf course, and inure to the benefit of the Association and its members
Standing to enforce the 1985 Covenants.	The Association lacks standing to enforce the 1985 covenants against the golf course because the golf course has never been subjected to the 1985 Covenants.	The Association has standing to enforce the 1985 Covenants.
Whether the golf course was submitted as common area or common element under the 1985 Covenants.	The golf course was not submitted as a common area and it is not subject to the 1985 Covenants.	The golf course is a defined Common Element in the 1985 Covenants and any land use change is subject to and governed by the controls set forth in the 1985 Covenants.
1992 Deed conveying the golf course from Peoples Federal to Respondent Heron Point.	The alleged use restrictions in the 1992 Deed were personal to Peoples Federal, they do not run with the golf course property, the Association lacks standing to enforce the alleged restrictions, and Respondents have the sole authority to enforce these restrictions.	The deed restrictions in the 1992 Deed are valid and run with the title of those properties to include the golf course and are otherwise not personal to the original Grantor and/or its successors in interest.
Language in the mortgage that encumbers the golf course: "the mortgagor shall not remove, demolish, materially alter or materially change the use of the golf course ... without the prior consent of Mortgagee."	Personal to the Mortgagee, its heirs, successors, and assigns, and does not run with the golf course. Condo-World, the current mortgagee by assignment, has the sole authority to enforce the personal use restrictions against the golf course.	Respondents continue to be bound by any and all restrictive language in the Mortgage as it relates to the 1992 Deed.
2005 Waiver of Restrictions executed by	Operated to waive, relinquish, and release the restrictions as the same may	Any prior waiver, relinquishment, or release of the above described restrictions by the original Grantor

¹ Respondents' Amended Answer to Corrected Second Amended Answer, Counterclaims, and Third-Party Complaint of the Defendant Myrtle Beach Golf & Yacht Club is attached as **Exhibit G**. Respondents asserted lack of standing as a defense to all claims asserted by the Association.

First Federal, successor to Peoples Federal	have applied, if at all, to the golf course.	and/or its successors in interest in relation to the 1992 Deed were invalid and/or are of no legal effect as to the rights of the Association as to the alleged deed restrictions, the 1985 Covenants, and/or other relevant agreements at issue in this litigation.
Change of Economic Circumstances	The golf course is not subject to the 1985 Covenants due to the changed economic circumstances, which have rendered the golf course property unsuitable for a golf course use.	Economic hardship is not a legal justification for Court ordered modification, waiver, relinquishment, or release of the alleged deed restrictions, Covenants and Restrictions; and/or other relevant agreements at issue in this litigation.

The remaining third-party claim against South State Bank also affects title to the property. In that claim, the only claim asserted by the Association against South State Bank that does not seek damages or indemnity, the Association seeks an order enjoining South State Bank “from any future waiver of deed restrictions relating to the Heron Point Golf Course property.” The appeal of the damage and indemnity claims does not affect that remaining third-party claim.²

Accordingly, the instant appeal does not stay the claims remaining before the lower court.

II. THIS COURT’S PRIOR ORDER DISMISSING THE APPEAL OF JUDGE HYMAN’S ORDER, WHICH FOUND THAT THE CLAIMS REMAINING BELOW CAN PROCEED, IS THE LAW OF THE CASE.

In his order entered November 30, 2017, Judge Hyman ruled that the case below can proceed despite this appeal. Judge Hyman effectively ruled the claims that remain below are not stayed. The Association appealed that order. Both parties briefed the issue of whether the case was stayed. This Court dismissed the appeal. The Association neither filed a motion for reconsideration seeking clarification nor did it otherwise seek further review of that order.

² If this Court finds the Association’s third-party claim for injunctive relief is a matter affected by this appeal, this Court can issue an order staying only that claim.

The Association is barred from now arguing a stay exists when it failed to challenge this Court's order dismissing the appeal of Judge Hyman's order. *See 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."); *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (stating "the law of the case prohibits issues which have been decided in a prior appeal from being relitigated in the trial court in the same case" and "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case.").

III. THE ASSOCIATION IS BARRED FROM ARGUING THE CLAIMS REMAINING BELOW ARE STAYED BECAUSE THE ASSOCIATION, SOUTH STATE BANK, AND RESPONDENTS AGREED IN A CONSENT ORDER THAT THE CLAIMS REMAINING BELOW WOULD PROCEED DESPITE THE COURT HAVING DISMISSED THREE OF THE ASSOCIATION'S THIRD-PARTY CLAIMS.

As mentioned above, after Judge Hyman had already dismissed most of the Association's third-party claims and denied the Association's motion to reconsider, on October 9, 2017, Judge Hyman, with the consent of the Association, entered an Amended Scheduling Order where the court and the parties agreed to bifurcate some of the issues and agreed to a schedule regarding how the claims remaining below would proceed.

The Association, having agreed to the consent order entered October 9, 2017, is barred from now arguing the lower court cannot proceed. *See Johnson v. Johnson*, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (stating that generally, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties by direct appeal); *Hooper v. Rockwell*, 334 S.C. 281, 290, 513 S.E.2d 358, 363 (1999) (providing a party "may not appeal [a] consent order because such orders are not appealable"); *McAleese v. McAleese*, 309 S.C.

548, 551, 424 S.E.2d 558, 559–60 (Ct. App. 1992) (explaining law of the case refers to the idea the terms of orders which are not appealed become the law of the case regardless of whether those terms are legally correct).

CONCLUSION

Just because the Association uses the terms “inextricably intertwined,” “inextricably linked,” and “same nexus of facts” numerous times throughout its motion does not make it so. The Association made these same arguments before and this Court rejected those arguments. The Association’s dismissed third-party claims for breach of contract, contractual indemnification, and equitable indemnification against South State Bank do not affect the underlying claims between the Association and Respondents, claims related to title to the subject property.

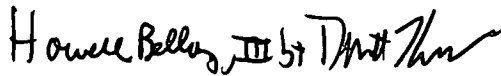
Accordingly, this Court should deny the Association’s motion for a stay and issue an order finding the claims that remain before the lower court are not stayed by the Association’s appeal and the lower court must proceed with hearing those claims.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,



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August 3, 2018

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third Party Defendant.

**AMENDED CONSENT SCHEDULING
ORDER**

Pursuant to Rules 16, 26, and 39 SCRCP, the parties have stipulated that this is a non-jury matter and that the matter should be transferred to non-jury roster. Based on the above and with consent of counsel for the parties, the following schedule is hereby Ordered in this matter:

1. This matter shall be subject to a second court ordered mediation which shall be completed no later than December 31, 2017;
2. Discovery in this matter shall be completed on or before December 15, 2016; and
3. The non-jury trial of this matter shall be heard by Judge Hyman on or before January 26, 2018, or as soon as Court Administration can schedule a date certain non-jury trial date. In accordance with the above, Judge Hyman shall first determine the ultimate issue in the case of whether the deed restrictions in the alleged Indenture deed between Peoples Federal Savings and Loan Association ("Peoples Federal") and

Heron Point Golf Club Limited Partnership (“Heron Point”) recorded on April 15, 1992 are personal or rather run with title to the golf course property. Judge Hyman decided in chambers to bifurcate the personal verses real covenant issue from the remainder of the case with the consent of the parties’ counsel.

4. Judge Hyman shall hear Myrtle Beach Golf & Yacht Club’s outstanding Motions previously scheduled for hearing on September 11, 2017 and September 25, 2017, to include a Motion for Summary Judgment and Motion to Strike/Motion in Limine, on or before the October 30, 2017 non-jury term of court, or as soon as said Motions can be scheduled.
5. Judge Hyman shall conclude his in-camera review of the outstanding Hines document production Motions as soon as can be scheduled prior to any non-jury trial of this matter.
6. All other outstanding Motions shall be decided by Judge Hyman on or before the scheduled non-jury trial date which the Court determines are necessary to help resolve the personal verses real covenant issue with respect to the golf course property.

IT IS SO ORDERED.

Conway, South Carolina

_____, 2017

Judge Larry B. Hyman, Jr.
Fifteenth Judicial Circuit

I CONSENT:

s/ Howell V. Bellamy, Jr.
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Howell V. Bellamy, III, Esquire
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Attorneys for Plaintiffs / Counter-Defendants

I CONSENT:

s/ Christopher H. Pearce
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Attorneys for Defendant / Counter-Plaintiff / Third Party Plaintiff

I CONSENT:

s/ Audra M. Byrd
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Attorneys for Third Party Defendant
South State Bank



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Amend

So Ordered

s/ Larry B. Hyman 2152

EXHIBIT B

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP2603173

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Condo World Development LLC	Heron Point Golf Club Limited Partnership	Myrtle Beach Golf & Yacht Club Association Inc	South State Bank
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PLAINTIFF(S) _____ DEFENDANT(S) _____

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

Defendants Myrtle Beach Golf & Yacht Club Association Inc.'s Motion for Summary Judgment and Motion to Reconsider cannot appropriately be heard
Plaintiff Condo World Development LLC's Motion to Reconsider Alter or Amend cannot appropriately be heard at this time due to a pending appeal on this issue.
Defendant's Motion to Strike Affidavit is continued to allow supplement of the motion.

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2152

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Howell Vaught Bellamy III PO Box 357 Myrtle Beach, SC 29578

Christopher H. Pearce 1314 Professional Drive Myrtle Beach, SC 29577
Laurence Raymond Wells IV 1314 Professional Drive Myrtle Beach, SC 29577
Audra McCall Byrd PO Box 2116 Myrtle Beach, SC 29578
Kerry Kathleen Jardine 1314 Professional Dr Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Sallie Beth Todd

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff

vs.

South State Bank,

Third Party Defendant.

MOTION TO STAY

TO: THE PLAINTIFFS AND THEIR ATTORNEY, HOWELL V. BELLAMY, III AND THE DEFENDANTS/THIRD-PARTY DEFENDANT AND ITS ATTORNEY, AUDRA M. BYRD:

YOU WILL PLEASE TAKE NOTICE THAT Defendant/Third-Party Plaintiff, Myrtle Beach Golf & Yacht Club Association, Inc. (hereinafter referred to as "Myrtle Beach"), by and through its undersigned counsel, will appear before the Presiding Judge of the Court of Common Pleas for the County of Horry, South Carolina, on the tenth (10th) day after service hereof, or at such other place and time as may be determined by the Court, and there and then move for an Order of the Court to Stay pursuant to Rule 241 of the South Carolina Appellate Court Rules.

The basis for this motion is that Myrtle Beach has filed a Notice of Appeal of the Orders of the Honorable Larry B. Hyman, dated (i) September 29, 2017 and (ii) July 26, 2017. The Appeal has been assigned Civil Action No. 2017-002196 (the "Appeal"). Pursuant to Rule 241,

SCACR, the Notice of Appeal stays all matters decided in those Orders. Upon information and belief, the matters decided in those Orders are broad enough to encompass virtually the entire proceedings in the first-party action and third-party action. Therefore, Myrtle Beach requests a stay of proceedings, consistent with Rule 241, SCACR, pending determination of the Appeal.

THE PEARCE LAW GROUP, P.C.

By: /s/ Christopher H. Pearce
Christopher H. Pearce, Esquire
S.C. Bar No.: 71083
E-mail: cpearce@pearcelawgroup.com
L. Raymond Wells, Esquire
S.C. Bar No.: 102622
E-mail: rwells@pearcelawgroup.com
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

ATTORNEYS FOR DEFENDANT
MYRTLE BEACH GOLF & YACHT
CLUB ASSOCIATION, INC.

November 14, 2017

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Condo-World Developers, LLC,)
 And Heron Point Golf Club)
 Limited Partnership,)
)
 Plaintiffs,)
)
 vs.)
)
 Myrtle Beach Golf & Yacht)
 Club Association, Inc.,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTHTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2015-CP-26-03173

**AFFIDAVIT OF NICOLE M. RICHARDSON
 AUTHORIZED E-FILER CERTIFYING
 TECHNICAL FAILURE**

FILED
 HORRY COUNTY
 2017 NOV 15 AM 9:21
 CLERK OF COURT
 HORRY COUNTY, SC


The undersigned **NICOLE M. RICHARDSON** ("Affiant") being a resident of Horry County, South Carolina, after being duly sworn under oath, hereby certifies as follows:

1. I am an authorized e-filer for The Bellamy Law Firm, which represents the Plaintiffs in the above-referenced matter.
2. As an authorized e-filer, I attempted to e-file Plaintiff's Notice of Motion and Motion to Reconsider, Alter or Amend, which requires a filing fee, on November 14th, 2017.
3. Upon logging into the e-filing portal, a notice was posted as follows:
 "Based on the continued inability of the vendor that processes credit card payments to property administer the payment process, the South Carolina Judicial Department has announced a limited Technical Failure of the E-Filing System for November 14, 2017, in accordance with Section 9(b) of the South Carolina Electronic Filing Policies and Guidelines. This limited Technical Failure only affects filings that require payment of filing fees. E-Filers should utilize the provision of Section 9(b) of the South Carolina Electronic Filing Policies and Guidelines to submit filings through available alternative procedures with respect to any document that requires a fee and must be filed on November 14, 2017..."
4. I also attempted to e-file the Motion the morning of November 15th; however, the payment processing vendor was still down.
5. Therefore, Plaintiff's Notice of Motion and Motion to Reconsider, Alter or Amend is being submitted to the Clerk of Court for traditional filing.

FURTHER, Affiant sayeth naught.


NICOLE M. RICHARDSON

Sworn to and subscribed before me
This 15 day of November, 2017


Notary Public - State of South Carolina
My Commission Expires: 7/21/2025

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-26-03173

PAID

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant,

Myrtle Beach Golf & Yacht Club
Association, Inc.

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third-Party Defendant.

**PLAINTIFFS, CONDO-WORLD
DEVELOPMENT, LLC AND HERON
POINT GOLF CLUB LIMITED
PARTNERSHIPS' NOTICE OF MOTION,
AND MOTION TO RECONSIDER, ALTER
OR AMEND FORM 4
ORDER/JUDGEMENT NOVEMBER 7, 2017
PURSUANT TO RULES 52 AND 59, SCRCP**

FILED
IN CIVIL DIVISION
2017 NOV 15 AM 9:21
CLERK OF COURT
HORRY COUNTY

TO: CHRIS PEARCE, ATTORNEY FOR MYRTLE BEACH GOLF & YACHT CLUB
ASSOCIATION, INC., THE DEFENDANT AND THIRD-PARTY PLAINTIFF
AUDRA BYRD, ATTORNEY FOR SOUTH STATE BANK, THIRD-PARTY
DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, Condo-World Development,
LLC and Heron Point Golf Club Limited Partnership, hereby move the Court to
reconsider, alter or amend its ruling in its FORM 4 ORDER providing that Defendant's *"Notice
of Summary Judgment cannot be appropriately heard"* at this time due to a pending appeal,
which Order was filed on November 7, 2017; and was received by counsel for the Plaintiffs
Condo-World Development, LLC and Heron Point Golf Club Limited Partnership on November

7, 2017. See Attached Exhibit "A". This Motion is made pursuant to Rules 52 and 59, SCRCP, and upon the grounds set forth below. Plaintiffs seek this Court's Order amending its ruling on the FORM 4 ORDER as follows:

1. Defendant Myrtle Beach Golf & Yacht Club Association's Motion for Summary Judgment is not stayed under the provisions of Rule 241, SCACR.
2. Pursuant to the terms of the Amended Consent Scheduling Order, the Court will hear arguments and rule on the ultimate issue in the case of whether the deed restrictions in the alleged Indenture Deed between Peoples Federal Savings and Loan Association ("Peoples Federal") and Heron Point Golf Club Limited Partnership ("Heron Point") recorded on April 15, 1992, are personal or real covenants. A copy of the Amended Consent Scheduling Order marked Exhibit "B" is attached hereto and incorporated as part of this Motion.

CONCLUSION

Based on the foregoing cited evidence before the Court, and upon such other arguments and submissions of counsel as may be reviewed by the Court, and viewing the evidence and all reasonable inferences to be drawn therefrom, Plaintiffs respectfully request this Court:

1. Alter and amend its FORM 4 Order to specifically consider the questions, issues, arguments and grounds presented above by Plaintiffs and make a ruling thereon;
and
2. For such other and further relief as this Court deems reasonable and proper.

Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.

s/Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

hbellamyiii@bellamylaw.com

Howell V. Bellamy, Jr. (SC Bar # 68543)

nrichardson@bellamylaw.com

1000 29th Ave. N.

Myrtle Beach, SC 29577

843-448-2400 Phone

843-448-3022 Facsimile

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP2603173

ELECTRONICALLY FILED - 2017 Nov 07 2:36 PM - HORRY - COMMON PLEAS - CASE # 2015CP2603173

Condo World Development LLC	Heron Point Golf Club Limited Partnership	Myrtle Beach Golf & Yacht Club Association Inc	South State Bank
-----------------------------	---	--	------------------

PLAINTIFF(S) _____ DEFENDANT(S) _____

Submitted by: Clerk of Court Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

Defendants Myrtle Beach Golf & Yacht Club Association Inc.'s Motion for Summary Judgment and Motion to Reconsider cannot appropriately be heard
 Plaintiff Condo World Development LLC's Motion to Reconsider Alter or Amend cannot appropriately be heard at this time due to a pending appeal on this issue.
 Defendant's Motion to Strike Affidavit is continued to allow supplement of the motion.

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge _____ 2152 _____
Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on _____, and a copy mailed first class or placed in the appropriate attorney's box on _____, to attorneys of record or to parties (when appearing pro se) as follows:

Howell Vaught Bellamy III PO Box 357 Myrtle Beach, SC 29578

Christopher H. Pearce 1314 Professional Drive Myrtle Beach, SC 29577
Laurence Raymond Wells IV 1314 Professional Drive Myrtle Beach, SC 29577
Audra McCall Byrd PO Box 2116 Myrtle Beach, SC 29578
Kerry Kathleen Jardine 1314 Professional Dr Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Sallie Beth Todd

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2017-11-07 14:33:09 page 3 of 3



TRONICALLY FILED - 2017 Oct 09 3:43 PM - HORRY - COMMON PLEAS - CASE#2015CP2603173

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third Party Defendant.

**AMENDED CONSENT SCHEDULING
ORDER**

Pursuant to Rules 16, 26, and 39 SCRCP, the parties have stipulated that this is a non-jury matter and that the matter should be transferred to non-jury roster. Based on the above and with consent of counsel for the parties, the following schedule is hereby Ordered in this matter:

1. This matter shall be subject to a second court ordered mediation which shall be completed no later than December 31, 2017;
2. Discovery in this matter shall be completed on or before December 15, 2016; and
3. The non-jury trial of this matter shall be heard by Judge Hyman on or before January 26, 2018, or as soon as Court Administration can schedule a date certain non-jury trial date. In accordance with the above, Judge Hyman shall first determine the ultimate issue in the case of whether the deed restrictions in the alleged Indenture deed between Peoples Federal Savings and Loan Association ("Peoples Federal") and

Heron Point Golf Club Limited Partnership ("Heron Point") recorded on April 15, 1992 are personal or rather run with title to the golf course property. Judge Hyman decided in chambers to bifurcate the personal verses real covenant issue from the remainder of the case with the consent of the parties' counsel.

4. Judge Hyman shall hear Myrtle Beach Golf & Yacht Club's outstanding Motions previously scheduled for hearing on September 11, 2017 and September 25, 2017, to include a Motion for Summary Judgment and Motion to Strike/Motion in Limine, on or before the October 30, 2017 non-jury term of court, or as soon as said Motions can be scheduled.
5. Judge Hyman shall conclude his in-camera review of the outstanding Hines document production Motions as soon as can be scheduled prior to any non-jury trial of this matter.
6. All other outstanding Motions shall be decided by Judge Hyman on or before the scheduled non-jury trial date which the Court determines are necessary to help resolve the personal verses real covenant issue with respect to the golf course property.

IT IS SO ORDERED.

Conway, South Carolina

_____, 2017

Judge Larry B. Hyman, Jr.
Fifteenth Judicial Circuit

I CONSENT:

s/ Howell V. Bellamy, Jr.
Howell V. Bellamy, Jr., Esquire
Howell V. Bellamy, III, Esquire
The Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578

Attorneys for Plaintiffs / Counter-Defendants

I CONSENT:

s/ Christopher H. Pearce
Christopher H. Pearce
The Pearce Law Group, P.C
1314 Professional Drive
Myrtle Beach, SC 29577

~~Attorneys for Defendant / Counter-Plaintiff / Third Party Plaintiff~~

I CONSENT:

s/ Audra M. Byrd
Audra M. Byrd
Turner Padgett Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, SC 29578

Attorneys for Third Party Defendant
South State Bank



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Amend

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2017-10-09 14:16:35 page 4 of 4

ELECTRONICALLY FILED - 2017 Oct 09 3:43 PM - HORRY - COMMON PLEAS - CASE#2015CP2603173

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-26-03173

Condo-World Development, LLC and)
Heron Point Golf Club Limited Partnership)

Plaintiffs,)

v.)

Myrtle Beach Golf & Yacht Club)
Association)

Defendant.)

CERTIFICATE OF SERVICE

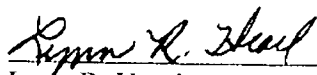
FILED
IN COUNTY
2017 NOV 15 AM 9:21
CLERK OF COURT
HORRY COUNTY, SC

I, Lynn Hearl, employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P. A., Counsel for the Plaintiffs in the above-captioned action, certify that I have this day served the following via hand deliver to the counsel listed below a copy of the following:

1. Plaintiffs, Condo-World Development, LLC and Heron Point Golf Club Limited Partnerships' Notice of Motion, and Motion to Reconsider, Alter or Amend Form 4 Order/Judgment November 7, 2017 Pursuant to Rules 52 and 59, SCRPC

Christopher H. Pearce, Esquire

Audra Byrd, Esq.


Lynn R. Hearl

Myrtle Beach, South Carolina
November 15, 2017

EXHIBIT E

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and)
Heron Point Golf Club Limited Partnership,)

Plaintiffs,)

vs.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.,)

Defendant.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.,)

Defendant/Third Party)
Plaintiff,)

vs.)

South State Bank,)

Third Party Defendants.)

**ORDER GRANTING PLAINTIFFS
MOTION TO RECONSIDER, ALTER, OR
AMEND FORM 4 ORDER/JUDGMENT
NOVEMBER 7, 2017.**

A hearing was held on November 15, 2017. The hearing was scheduled for the purpose of an *in camera* review of the documents involved in the Hinds subpoena / document production and to address other outstanding matters as needed.

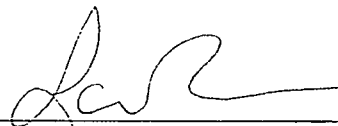
At the November 15, 2017 hearing, the Court reconsidered its November 7, 2017 Form 4 Order on four motions, to wit: Defendant Myrtle Beach Golf & Yacht Club Association Inc.'s Motion to Reconsider, Alter or Amend the Courts' ruling Granting South State Bank's Motion to

Dismiss, Plaintiffs' Condo World Development LLC and Heron Point Golf Club Limited Partnership's Motion to Reconsider, Alter or Amend the Courts ruling Granting South State Bank's Motion to Dismiss, Defendant's Motion for Summary Judgment, and Defendant's Motion to Strike Affidavit. A Form 4 Order was inadvertently entered, stating that Defendant's motions for Summary Judgment and to Reconsider, Alter or Amend and Plaintiffs Motion to Reconsider, Alter or Amend could not appropriately be heard at this time due to a pending appeal.

After due consideration, I hereby bifurcate those claims against the Defendant South State Bank, which were previously dismissed pursuant to my order dated October 4, 2017. That ruling is presently under appeal to the South Carolina Supreme Court. The remaining issues in the case, including the remaining cause of action against South State Bank and the issue of standing, can, in all fairness, be litigated without the necessity of hearing the matters which have been dismissed and are subject to appeal. I therefore order that those matters be bifurcated from the case. All other motions, including dispositive motions, affecting all other matters not under appeal may appropriately be heard. Thus, the November 7, 2017 Form 4 Order is hereby amended so that Defendant's Motion for Summary Judgment may be heard. Any and all dispositive motions in this action shall be appropriately noticed to this Court and shall be filed within two week of the issuance of this Order.

IT IS SO ORDERED!

November 27, 2017
Conway, South Carolina



The Honorable Judge Larry B. Hyman
Chief Administrative Judge for Common Pleas

EXHIBIT F

The South Carolina Court of Appeals

Condo-World Development, LLC and Heron Point Golf Club Limited Partnership, Respondents,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,
Appellant,

AND

Myrtle Beach Golf & Yacht Club Association, Inc.,
Appellant,

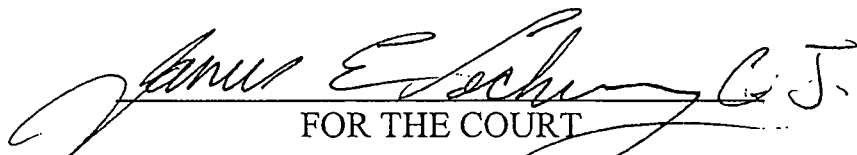
v.

South State Bank, Respondent.

Appellate Case No. 2017-002642

ORDER

Respondents Condo-World Development, LLC and Heron Point Golf Club Limited Partnership have filed a motion to dismiss this appeal, arguing the order on appeal is not immediately appealable. The motion is granted. *See Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72-73, 533 S.E.2d 331, 333-34 (2000) (ruling a bifurcation order is not immediately appealable); *id.* at 73, 533 S.E.2d at 333 ("[T]rial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right.").


FOR THE COURT

FILED

March 23, 2018

Columbia, South Carolina

cc: Kerry Kathleen Jardine, Esquire
Audra McCall Byrd, Esquire
Howell Vaught Bellamy, III, Esquire
Howell V. Bellamy, Jr., Esquire
Laurence Raymond Wells, IV, Esquire
Christopher H. Pearce, Esquire
Demetri K. Koutrakos, Esquire

EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2015-CP-26-03173

Condo-World Development, LLC and)
Heron Point Golf Club Limited Partnership)
Plaintiffs,)

vs.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.,)
Defendant/Third-Party)
Plaintiff,)

vs.)

South State Bank,)
Third-Party Defendant.)

**PLAINTIFFS CONDO-WORLD
DEVELOPMENT, LLC AND HERON POINT
GOLF CLUB LIMITED PARTNERSHIP'S
AMENDED ANSWER TO CORRECTED
SECOND AMENDED ANSWER,
COUNTERCLAIMS, AND THIRD-PARTY
COMPLAINT OF THE DEFENDANT
MYRTLE BEACH GOLF & YACHT CLUB
ASSOCIATION, INC.**

**TO: CHRISTOPHER H. PEARCE, ESQUIRE, ATTORNEY FOR THE
DEFENDANT AND THIRD PARTY PLAINTIFF MYRTLE BEACH GOLF
& YACHT CLUB ASSOCIATION, INC.**

NOW COMES the Plaintiffs Condo-World Development, LLC and Heron Point Golf Club Limited Partnership (hereinafter, "Condo-World" and "Heron Point Golf Club") answering the Corrected Second Amended Answer, Counterclaims, and Third Party Complaint of the Defendant Myrtle Beach Golf & Yacht Club Association, Inc. (hereinafter, "MBG&YCA") herein, and would respectfully allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Objections Applicable to All Allegations)

1. Each and every allegation that is not hereafter specifically admitted, modified or explained is denied and strict proof is demanded thereof.
2. These answering Plaintiffs Condo-World and Heron Point Golf Club hereby

object to any allegations which in any way attempt to characterize, interpret, describe, or explain the legal effect of any written document, or provision thereof, which is referred to, referenced, or incorporated with Defendant MBG&YCA's Corrected Second Amended Answer, Counterclaims, and Third-Party Complaint ("Second Amended Answer, Counterclaims, and Third-Party Complaint"), and to which document or provision these answering Plaintiffs specifically crave reference, and specifically demand strict proof thereof via reference to a proper legal definition, interpretation, and/or reference obtained from the entire document or other document of record.

3. These answering Plaintiffs Condo-World and Heron Point Gold Club deny the allegations contained in Paragraphs 1-11 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint that are inconsistent and contrary to the allegations contained in its Plaintiffs' Complaint and strict proof is demanded thereof.

4. These answering Plaintiffs Condo-World and Heron Point Golf Club deny the allegations contained in Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, regarding Affirmative Defenses Two through Seven, and demand strict proof thereof.

5. The allegations contained in Paragraphs 25 and 26 of the Defendant MBG&YCA's Answer require no response by these answering Plaintiffs Condo-World and Heron Point Golf Club. To the extent a response is required, the allegations contained in Paragraphs 25 and 26 are denied and strict proof is demanded thereof.

6. The allegations contained in Paragraphs 27, 28 and 29 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint are admitted.

7. Responding to the allegations of Paragraph 30 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, these answering Plaintiffs are without sufficient knowledge and/or information so as to allow it to form a belief as to the Defendant's allegations therein, therefore, denied and strict proof is demanded thereof.

8. The allegations contained in Paragraph 31 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint is denied and strict proof is demanded thereof.

9. The allegations contained in Paragraph 32 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint does not require a response by these answering Plaintiffs Condo-World and Heron Point Golf Club. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraph 32 and strict proof is demanded thereof.

10. Responding to the allegations contained in Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, these answering Plaintiffs Condo-World and Heron Point Golf Club would crave reference to the public records of Horry County for the accuracy of the Defendant's allegations. The Plaintiffs deny all allegations contained in these Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 that are inconsistent with the information contained in the public records on file with the Office of the Horry County Clerk and/or the Office Registered Deeds. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 and strict proof is demanded thereof.

11. The allegations contained in Paragraphs 57, 58, and 59 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint require no response by these answering Plaintiffs Condo-World and Heron Point Golf Club. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraphs 57, 58, and 59, and strict proof is demanded thereof.

12. The allegations in Paragraph 60 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, including all sub-parts thereto, are denied by these answering Plaintiffs Condo-World and Heron Point Golf Club and strict proof is demanded thereof.

13. The allegations of Paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96 including prayer for relief and its sub-parts A, B, C, D, E, F, and G are not directed at the Plaintiffs and do not require a response from them. To the extent a response is required, Plaintiffs deny the allegations of these paragraphs and demand strict proof thereof.

FOR A SECOND DEFENSE

14. That the foregoing defense is incorporated herein by reference as if fully repeated verbatim herein.

15. These answering Plaintiffs Condo-World and Heron Point Golf Club assert that pursuant to Rule 12(b)(6), SCRCP, the Defendant MBG&YCA has failed to state facts sufficient to state a Counterclaim against these answering Plaintiffs for Declaratory Judgment.

FOR A THIRD DEFENSE

16. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

17. Defendant MBG&YCA's claims may be barred by doctrine of acquiescence, waiver, estoppel, and/or laches.

FOR A FOURTH DEFENSE

18. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

19. These answering Plaintiffs Condo-World and Heron Point Golf Club allege the Defendant MBG&YCA has unclean hands as to its own inequitable conduct and bad faith under the facts and circumstances which give rise to its alleged injuries and/or damages.

20. Such inequitable conduct constitutes a complete bar and/or defense to any counterclaim for equitable relief sought hereunder by the Defendant.

FOR A FIFTH DEFENSE

21. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

22. The Heron Point golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course, was not submitted and/or dedicated as part of the MBG&YCCG Subdivision's common areas; and, consequentially, it is not subject to the declaration of covenants.

FOR A SIXTH DEFENSE

23. That the foregoing defenses are incorporated hereby refernce4 as if fully repeated verbatim herein.

24. That the Myrtle Beach Golf & Yacht Club Subdivision ("MBG&YCS")'s amended and restated declaration of covenants and restrictions¹ ("declaration of covenants") do not run with the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course.

¹ The Amended and Restated Declaration of Covenants and Restrictions for Myrtle Beach Golf & Yacht Club Subdivision, recorded in Deed Book 931 at Page 563.

FOR A SEVENTH DEFENSE

25. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

26. The use restrictions referenced in the "Heron Point Deed" recorded in Deed Book 1540, at Page 482, were personal to the grantor/covenanter, and never ran with the golf course property formally known as the Myrtle Beach Golf & Yacht Club Golf Course.

FOR AN EIGHTH DEFENSE

27. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

28. Even if the Heron Point Golf Course Property is subject to the declaration of covenants, which is expressly denied, due to changed economic circumstances the golf course property is no longer unsuitable for use as a golf course. The doctrine of changed economic circumstances is a complete bar to the Defendant MBG&YCA's counterclaims.

FOR A NINTH DEFENSE

29. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

30. These answering Plaintiffs Condo-World and Heron Point Golf Club assert the Defendant MBG&YCA lacks standing as a complete bar to its counterclaims.

FOR A TENTH DEFENSE

31. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

32. Upon information and belief, some or all of the Defendant MBG&YCA's Answer is barred by the applicable statute of limitation.

FOR AN ELEVENTH DEFENSE

33. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

34. The Plaintiffs Condo-World and Heron Point Golf Club reserve and do not waive any additional or further defenses as may be revealed through discovery in this matter or through investigation.

WHEREFORE, having fully responded to the corrected Second Amended Answer, Counterclaims, and Third-Party Complaint of the Defendant, Myrtle Beach Golf & Yacht Club Association, Inc., Plaintiffs Condo-World and Heron Point Golf Club pray for the following relief:

1. Corrected Second Amended Answer, Counterclaims, and Third Party Complaint of the Defendant, Myrtle Beach Golf & Yacht Club Association, Inc., be dismissed with prejudice and the relief requested therein be denied;
2. That they be awarded costs and attorney fees in this matter in accordance with State law; and
3. That this Honorable Court award such other and further relief as it may deem just and proper.

Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.

s/Howell V. Bellamy, III
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ATTORNEYS FOR PLAINTIFFS

Myrtle Beach, SC
August 18, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge
Fifteenth Judicial Circuit

RECEIVED

AUG 03 2018

SC Court of Appeals

Case No. 2015-CP-26-3173
Appellate Case No. 2017-002196

Condo-World Development, LLC
and Heron Point Golf Club Limited Partnership Respondents

vs.

Myrtle Beach Golf & Yacht Club Association, Inc. Appellant

AND

Myrtle Beach Golf & Yacht Club Association, Inc. Appellant

vs.

South State Bank Respondent

CERTIFICATE OF SERVICE

I, Katie A. Minton, an employee of Callison Tighe & Robinson, LLC, do hereby certify that, on this date, I served the foregoing **Respondents Condo-World Development, LLC and Heron Point Golf Club Limited Partnership's Return to Appellant's Motion to Determine Scope of Stay of Proceedings** upon counsel of record, by depositing a copy of the same in the

United States mail with proper first-class postage affixed thereon, addressed as follows, and via email:

Christopher H. Pearce, Esquire
Kerry K. Jardine, Esquire
L. Raymond Wells, Esquire
The Pearce Law Group, PC
1314 Professional Drive
Myrtle Beach, SC 29577
Email: cpearce@pearcelawgroup.com
Email: kjardine@pearcelawgroup.com
Email: rvells@pearcelawgroup.com
(Attorneys for Appellant Myrtle Beach Golf & Yacht Club Association, Inc.)

Audra M. Byrd, Esquire
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P. O. Box 2116
Myrtle Beach, SC 29578
Email: abyrd@turnerpadget.com
(Attorneys for Respondent South State Bank)


Katie A. Minton

August 3, 2018

Demetri "Jim" K. Koutrakos

803.404.6900

JimKoutrakos@callisontighe.com

August 3, 2018

RECEIVED

AUG 03 2018

SC Court of Appeals

VIA HAND DELIVERY

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

RE: Condo-World Development, LLC and Heron Point Golf Club Limited
Partnership vs. Myrtle Beach Golf & Yacht Club Association, Inc.
Case No. 2015-CP-26-3173
Appellate Case No. 2017-002196

Dear Ms. Kitchings:

Enclosed herewith please find an original and six (6) copies of Respondents Condo-World Development, LLC and Heron Point Golf Club Limited Partnership's Return to Appellant's Motion to Determine Scope of Stay of Proceedings in the above-referenced matter. Kindly file the same and return a clocked-in copy to my courier.

By copy of this letter, the enclosed Return is being served upon counsel of record.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Demetri "Jim" K. Koutrakos

DKK:kam

Enclosures

cc: (w/ encl.)

Christopher H. Pearce, Esquire

Kerry K. Jardine, Esquire

L. Raymond Wells, Esquire

Audra M. Byrd, Esquire

Howell V. Bellamy, III, Esquire

Howell V. Bellamy, Jr., Esquire

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