RECEIVED
SEP 07 2018
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Judge

Court of Common Pleas Case No. 2015-CP-08-00547
Appellate Case No. 2018-001385

COKERS COMMONS HOMEOWNER'S ASSOCIATION, INC., . . . *Respondent,*
v.

PARK INVESTORS, LLC; CCT RESERVE, LLC, F/K/A HARRIS STREET, LLC; AND WHIPPLE DEVELOPMENT CORPORATION, ... *Defendants.*

Of which WHIPPLE DEVELOPMENT CORPORATION is the . . . *Petitioner.*

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Daniel F. Blanchard, III (SC Bar 65342)
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

R. Britton Kelly (SC Bar 73741)
KELLY LAW FIRM, LLC
180 Spring Street
Charleston, SC 29403
(843) 991-4128 telephone
britt@kellylawsc.com
ATTORNEYS FOR PETITIONER

INDEX

ARGUMENTS

Petitioner Whipple Development Corporation ("Declarant") has consistently argued in the Circuit Court, the Court of Appeals, and now this Court that the individual members of Respondent Cokers Common Homeowner's Association, Inc. ("HOA") cannot circumvent the indemnification provision in the HOA's restrictive covenants—which requires the HOA to indemnify Declarant for claims made by third parties—merely by bringing suit against Declarant in the HOA's name rather than in their individual names or capacities for injuries the individual members have allegedly sustained. Such claims of the individual owners brought in the HOA's name are third-party claims.

In its Return to Declarant's Petition, the HOA nowhere disputes this position. Rather, the HOA now broaches an entirely new argument for the first time. The HOA distorts Declarant's Petition to argue that Declarant "blindly assumes that all third-party claims invoke indemnity" and that Declarant "attempt[s] to fabricate a third-party claim [which] does not exist." See Return p. 6. First, the HOA claims for the very first time in this litigation that the indemnification provision contained in the HOA's restrictive covenants purportedly does not protect Declarant against nuisance claims brought by a third-party unless Declarant is alleged to have caused the nuisance "on behalf of" the individual members in the HOA. The HOA had never before raised this argument until its Return filed in this Court. Second, the HOA reiterates the argument it raised for the first time in its respondent's brief in the Court of Appeals that Declarant allegedly lacks standing to bring this appeal because the HOA's Complaint supposedly does not aver any claim—either a third-party or second-party claim—against Declarant for nuisance. The Court of Appeals did not address this latter argument because the HOA had not raised lack of standing at any time in the Circuit Court.

As discussed below, both of the HOA's current arguments are meritless. Declarant's Petition

should be granted to address the novel questions of law raised in this case and to correct the erroneous legal rulings made by the Circuit Court and Court of Appeals.

I. THE PLAIN LANGUAGE OF THE INDEMNIFICATION PROVISION APPLIES TO RESPONDENT'S CLAIM AGAINST DECLARANT FOR NUISANCE.

The HOA's Return makes the rather bold assertion that Declarant "does not devote a single line of its lengthy argument to the language of the [indemnification] agreement" in the HOA's restrictive covenants and "this silence, like the simple language of the agreement, speaks volumes." See Return p. 6. Following this misstatement of the facts, the HOA's Return then goes on to argue its brand new position that the indemnification provision contained in the HOA's restrictive covenants purportedly does not protect Declarant against third-party claims for nuisance unless Declarant is alleged to have caused the nuisance "on behalf of" the individual members in the HOA. Id. pp. 6-7.

First of all, the HOA's new argument altogether ignores the fact that pages 4 and 5 of Declarant's Petition quote directly from the indemnification provision found in Article XIII, Section 1, of the HOA's Bylaws (which Bylaws are incorporated into the HOA's restrictive covenants) and argue in clear and unmistakable terms that "this provision entitles the Declarant to indemnification from the HOA for its attorney's fees and expenses incurred in defending against third-party claims, not simply indemnification against a judgment." See Petition pp. 4-5 (quoting ROA p. 75). In fact, Declarant's Petition quotes the entirety of Article XIII, Section 1, not simply a few lines of that section as the HOA's Return does in an effort to confuse the provision's meaning. The HOA apparently did not read Declarant's Petition which specifically quotes in full the actual language of the indemnification provision and argues that this language protects Declarant from the HOA's cause of action for nuisance. It is difficult to fathom how Declarant could have been clearer.

Second, the HOA's argument is strikingly hypocritical and nonsensical given the fact that the first time the HOA raised its current argument involving the "plain language" of the indemnification provision was in its Return to Declarant's Petition filed in this Court. *Although the HOA filed this litigation over 3½ years ago, the HOA never argued in the Circuit Court or to the Court of Appeals that the indemnification provision in the HOA's restrictive covenants purportedly does not protect Declarant against third-party claims for nuisance unless Declarant is alleged to have caused the nuisance "on behalf of" the HOA's individual members.* To borrow the HOA's phrase, this "silence . . . speaks volumes." See Return p. 6. The HOA's Return offers no explanation or excuse for why the HOA failed to make this argument in either the Circuit Court or the Court of Appeals to give those Courts an opportunity to rule on the issue. If the HOA's alleged construction of the indemnification provision is so "plain" as the HOA now maintains, Declarant and this Court are left to wonder why the HOA did not raise it before now. The absence of an explanation is particularly perplexing given the fact the HOA so emphatically criticizes Declarant for failing to address this argument (which the HOA itself did not raise or make until after Declarant filed its Petition in this Court).[1]

Finally and most importantly, the HOA's new argument is simply wrong on the merits. Although the HOA's Return selectively quotes from *some* of the language in the indemnification

[1] As this Court observed in I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000), "[w]hile the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court." 526 S.E.2d at 724. "In such cases, the appellate court likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal." Id. "Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." Id.; see also Semken v. Semken, 379 S.C. 71, 664 S.E.2d 493, 497-98 (Ct. App. 2008) (same).

provision, the Return also completely omits, ignores, and fails to discuss other "plain language" in the indemnification provision which refutes its new argument, including the following important clause:

> It is intended that the forgoing indemnification **shall include indemnification** against all cost and expenses (including, but not limited to, counsel fees, amounts of judgment paid and amounts paid in settlement) reasonably incurred **in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other**, in which any such director, officer, Board, committee member **or Declarant**, may be involved **by virtue of such persons being or having been** such directors, officer, Board, committee member, **or Declarant**; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been **finally adjudged** in such action, suit or proceeding to be liable for **gross negligence or fraud** in the performance of his duties as such director, officer, Board, committee member, or Declarant . . . .

(ROA p. 75) (emphasis added). The indemnification provision expressly and unambiguously states that Declarant "shall" be entitled to indemnification in connection with the defense of "any" civil claim in which it may be may be involved by virtue of it "being or having been" the "Declarant" under the HOA's restrictive covenants, even if Declarant itself was guilty of negligence. It is only if Declarant is "finally adjudged" to have committed "gross negligence" or "fraud," neither of which has been alleged or adjudged in this particular case, that Declarant would be barred from indemnification.[2] The HOA's Return simply re-writes the indemnification provision to eliminate

---

[2] The HOA points out that an indemnification agreement normally will not indemnify the indemnitee against losses resulting from its own negligence. However, that normal rules falls away when the terms of the agreement indicate otherwise. Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 111, 584 S.E.2d 375, 379 (2003). In Kuhn v. Wells Fargo Bank of Nebraska, N.A., 771 N.W.2d 103 (Neb. 2009), for example, the indemnity agreement required a tenant to indemnify a landlord "from any claim or damage arising out of any injury" occurring in the leased building "with exception of claims arising out of [landlord's] gross negligence or willful misconduct." Id. at 109-10. In rejecting the tenant's argument that the agreement did not contain "clear and unequivocal language" obligating it to indemnify the landlord for any loss occasioned by the landlord's ordinary negligence, the Court held that "it is difficult to read the specific exclusion of 'gross negligence' from indemnification as anything other than the inclusion of ordinary negligence." Id. at 115; see also Public Service Co. of Colorado v. United Cable Television of Jeffco, Inc., 829

this important clause.

As discussed in detail in Declarant's Petition and in Declarant's memoranda and briefs filed in the Circuit Court and the Court of Appeals, Declarant has been forced to defend against a civil lawsuit which the HOA brought against it because it is the "Declarant" in the Declaration of Covenants, Conditions, and Restrictions for Cokers Commons recorded with the Berkeley County Register of Deeds on April 15, 2008. (ROA pp. 22 ¶ 50, 42-79). The HOA's Complaint alleges that Declarant failed to convey title to the "common areas of the Cokers Commons subdivision"—including areas known as the "Amenities Lot" (which encompasses the swimming pool) and the "HOA open space"—to the HOA in accordance with the covenants and seeks to enforce those

---

P.2d 1280, 1283 (Colo. 1992) ("The indemnity provision begins by requiring United Cable to 'indemnify and save and hold harmless' Public Service from and against all claims and liabilities in any way arising out of the rights granted United Cable. While the provision does not specifically mention the effect of any negligence on the part of Public Service, the language covers 'all claims, liabilities, causes of action, or other legal proceedings.' This indicates an intent to include claims arising from Public Service's negligence. The use of the word 'liabilities' is significant because it covers those instances where Public Service is legally liable for damages, including those where liability arises because of its own negligence." (citations omitted)); Freund v. Utah Power & Light Co., 793 P.2d 362, 371 (Utah 1990) (indemnity agreement requiring a licensee to "indemnify, protect, and save harmless Licensor from and against any and all claims, demands, causes of action, costs or other liabilities" required licensee to indemnify the licensor for its own negligence even though the agreement did not "refer expressly to negligence").

Of course, Declarant potentially could be held liable under the HOA's nuisance cause of action based on conduct that is merely negligent, not grossly negligent or fraudulent. "A nuisance may result from harm or invasion of a plaintiff's interests caused by negligent conduct." 58 AM. JUR. 2D Nuisances § 57 (2018) (footnotes omitted). "Even though a nuisance may or may not be based on the negligent act of the one creating it, and negligence is merely one type of conduct that may give rise to a nuisance, nuisance may be the consequence of negligence because the same acts or omissions that constitute negligence may give rise to a nuisance." Id.; see also Ravan v. Greenville County, 315 S.C. 447, 465 n.4, 434 S.E.2d 296, 307 n.4 (Ct. App. 1993) ("A nuisance presupposes negligence in many instances, if not in most, and the two torts may be coexisting and practically inseparable if the acts or omissions constituting negligence create a nuisance.").

In the case at bar, the agreement makes explicit that Declarant is entitled to indemnification unless finally adjudged to have committed "gross negligence" or "fraud." Mere "negligence" is insufficient to bar Declarant from indemnification.

provisions. (ROA pp. 6-7 ¶¶ 11-13, 15-16). The Complaint further alleges that Declarant other entities "abandoned" and have "not kept up" the Amenities Lot and the HOA open space. (ROA pp. 6-7 ¶ 13). The Complaint alleges that the Amenities Lot and the HOA open space have become a nuisance due to neglect. (ROA pp. 8-9 ¶¶ 23-24). The Complaint asserts that the common areas "have become a blight to the neighborhood, negatively affecting the quality of life of the owners of Cokers Commons," that "[t]he landowner members" of the HOA "have not been able to use or enjoy the pool," and "[t]he Defendants[']neglect of the Amenities Lot and the HOA open space lot has unreasonably interfered with the [HOA's] constituent member's use and ownership of their properties as well as their use of the common areas, causing damages." (ROA pp. 6-9 ¶¶ 13, 23-24). The HOA's nuisance claim seeks recovery of "actual and consequential" damages against all of the Defendants, including Declarant. (ROA p. 9). Declarant is being sued because it is or has been the Declarant under the covenants.

In summary, the "plain language" of the indemnification provision protects Declarant from the third-party claims of individual members of the HOA which the HOA is attempting to bring against the Declarant in the HOA's name. The HOA's new argument raised for the first time in this Court does not change the result.

II. DECLARANT HAS STANDING TO BRING THIS APPEAL.

The entire balance of the HOA's Return to Declarant's Petition essentially argues in a rather confusing manner that Declarant lacks standing to bring this appeal based on the HOA's faulty premise that it has not asserted a nuisance cause of action against Declarant in its Complaint. See Return pp. 8-12. The Court of Appeals expressly declined to address this argument because the HOA had failed to raise it in the Circuit Court. (App. p. 0002 n.1). The HOA nevertheless rehashes

the argument in its opposition to Declarant's Petition.

After Declarant had appealed the Circuit Court's order, the HOA made the brand new arguments in its brief to the Court of Appeals that Declarant lacks standing to bring its claim for indemnification and that a justiciable controversy is not present because Declarant purportedly is attempting to seek indemnification against claims the HOA brought against other parties, not against Declarant itself. The HOA buttressed its arguments with another brand new contention that the HOA's lawsuit makes no claim against Declarant for alleged nuisance. The HOA argued for the first time in the Court of Appeals that its Complaint merely seeks declaratory relief against Declarant.

The HOA did not raise this argument to the Circuit Court, thus the Court of Appeals declined to address it. (App. p. 0002 n.1). Even if the argument is considered at this juncture, it should be rejected on the merits. The HOA's argument is based on a mere heading or label in its Complaint and disregards the actual substance of the allegations and claims for relief asserted therein, which show that the HOA's lawsuit does seek monetary damages and other relief against Declarant for alleged nuisance. Because the Complaint states a claim against Declarant for alleged nuisance and seeks a monetary recovery from Declarant, Declarant is seeking indemnification for claims being asserted against it, not against others. In short, Declarant is asserting its own rights in this appeal; not the rights of any non-parties. Because the entire underpinning for the HOA's argument is incorrect, the argument is meritless.

It is well-settled that labels or headings in a pleading are not dispositive; rather, it is the substance that matters. Helm v. Helm, 289 S.C. 169, 345 S.E.2d 720, 722 (1986) ("Our courts are not bound by the labels parties attach to their pleadings."); Collins Holding Corp. v. Wausau Underwriters Ins. Co., 379 S.C. 573, 666 S.E.2d 897, 899 (2008) ("[i]n examining the complaint, a

court must look beyond the labels describing the acts to the acts themselves which form the basis of the claim"); Lane v. Home Ins. Co., 190 S.C. 84, 2 S.E.2d 30, 32 (1939) ("The designation of a pleading is not necessarily controlling."); Sanford v. South Carolina State Ethics Com'n, 385 S.C. 483, 685 S.E.2d 600, 607 (2009) ("Because it is 'the substance of the requested relief that matters' and not the form in which the petition for relief is framed, we may construe the Governor's request as one for injunctive relief if that is substantively what he is requesting."); Richland County v. Kaiser, 351 S.C. 89, 567 S.E.2d 260, 262 (Ct. App. 2002) ("Although the petition in this case was styled as a request for a writ of mandamus, we find that based on the relief sought, the County's pleading is more properly characterized as a request for an injunction. It is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'"); Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 437, 673 S.E.2d 448, 458 (2009).

"The name given to a pleading is not controlling, but its character is always to be determined by its allegations." Atlantic Coast Lumber Corp. v. Morrison, 152 S.C. 305, 149 S.E. 243, 245 (1929). "The court must examine the relief sought to understand the true nature of the pleading." Rowe v. Advance America, 2006 WL 7285680, *1 (S.C. Ct. App. 2006); cf. McMaster v. Strickland, 322 S.C. 451, 472 S.E.2d 623, 625 (1996) (Although plaintiff's complaint alleged only a claim for specific performance and did not request money damages as an alternative remedy, the supreme court affirmed the trial court's award of money damages to the plaintiff because "[i]n addition to a prayer for specific performance, the complaint in this case contains a prayer for general relief [which asks the court to] '[g]rant[] such other or further relief as the Court deems just and proper'" and "the factual allegations of the complaint support an award of money damages.").

On March 2, 2015, the present lawsuit was commenced purportedly by and in the HOA's

name. As discussed in Declarant's Petition, this lawsuit is being funded and controlled by William F. Barber, Jr., a real estate developer who purchased 47 lots in the Cokers Commons subdivision on April 3, 2014 through his wife's entity (Kirkland Holdings, LLC). (R. pp. 177-80, 191, 222, 242-48). On February 26, 2015, Mr. Barber and Kerine Borrillo (another landowner in the subdivision) signed a letter representing that "[a] vote was taken on February 20, 2015 by the current homeowners and landowners [in the subdivision] and the results were to pursue legal action against Park Investors, Whipple Development, Harris St Properties or any other related entity for failure to deliver and/or maintain the common areas within the subdivision." (R. p. 123).

The gravamen of the suit involves a dispute over the control, use, and condition of the "common areas" in the subdivision, which include the "Amenities Lot" (a swimming pool) and the "HOA open space." Throughout its Complaint, the HOA refers to Edward Terry (a real estate developer from Atlanta, Georgia) and Mr. Terry's alleged "entities" as being the "Developer" of the property in question. (R. pp. 5-8 ¶¶ 7, 12-13, 15-16, 20). As named in the Complaint, "the Defendants" are Mr. Terry's alleged entities: Declarant; Park Investors, LLC ("Park Investors"); and CCT Reserve, LLC, f/k/a Harris Street, LLC ("Harris Street"). The allegations in the Complaint effectively treat Mr. Terry and his alleged entities as being one and the same.

Declarant is identified as the "Declarant" in the Declaration of Covenants, Conditions, and Restrictions for Cokers Commons recorded with the Berkeley County Register of Deeds. (R. p. 222 ¶ 50); (R. pp. 42-79).[3] Park Investors and Harris Street are identified as the "record owners" of the "common areas of the Cokers Commons subdivision," including the Amenities Lot and the HOA

[3] At the time the covenants were executed and recorded, Declarant did not own the property purportedly affected by the covenants; instead, the property was owned by Westgate Partners, L.P ("Westgate"). (R. p. 6 ¶ 9) (R. pp. 14-15, 22-23 ¶¶ 14, 50-51). However, the HOA's Complaint contends that Mr. Terry, Declarant, and Westgate all share a "commonality of interest," which

open space. (R. pp. 4-5, 8-9 ¶¶ 2-3, 23).

The Complaint alleges that "the Declarant" and "the Developer" failed to convey title to the common areas—including the Amenities Lot and the HOA open space—to the HOA in accordance with the covenants and seeks to enforce those provisions. (R. pp. 6-7 ¶¶ 11-13, 15-16). Paragraph 16 of the Complaint, which is incorporated by reference into the third cause of action for nuisance, avers that "[t]he Developer never conveyed the common areas as contractually required, has still retained ownership of them, and let them fall into disrepair and blight." (R. p. 7 ¶ 16). Paragraph 13, which also contains allegations common to all of the Defendants that are incorporated by reference into the nuisance claim, alleges that "[t]he Amenities Lot area includes a pool whose maintenance and upkeep has been abandoned by the developer for nearly six years" and "[t]he pool has become a blight and the local municipality of Goose Creek has issued nuisance warnings due to the condition of the pool." (R. pp. 6-7 ¶ 13). This same paragraph asserts that "as described herein [*i.e.*, as stated in other paragraphs of the Complaint], the Amenities Lot area and the HOA Open Space Area have been abandoned by Mr. Edward Terry's entities [*i.e.*, Declarant, Park Investors, and Harris Street], have not been kept up, and should have been conveyed to the [HOA] in 2008 and were not." Id. This paragraph further alleges that "[t]he landowner members of [the HOA] have not been able to use or enjoy the pool despite repeated requests to Mr. Edward Terry to remediate the condition." Id.

Later in the Complaint, under the third cause of action for nuisance, the HOA reiterates that "[a]s alleged herein, the common areas have been abandoned, neglected, and have become a blight to the neighborhood, negatively affecting the quality of life of the owners of Cokers Commons." (R. pp. 8-9 ¶ 23). Although the heading to the third cause of action refers only to Park Investors and Harris Street and Paragraph 23 references that "Defendants Park Investors and Harris Street are the record

---

appears to be an allegation that they are alter egos of each other. (R. pp. 5-8 ¶¶ 4, 7, 13, 20).

owners of the Amenities Lot and the HOA open space lot," Paragraph 24 then refers to and makes allegations against all of the Defendants (not simply Park Investors or Harris Street). Specifically, Paragraph 24 alleges that "**[t]he Defendants[']** neglect of the Amenities Lot and the HOA open space lot has unreasonably interfered with the [HOA's] constituent member's (sic) use and ownership of their properties as well as their use of the common areas, causing damages." (R. p. 9 ¶ 24) (emphasis added). This same paragraph further asserts that "**[t]he Defendants** should be required to restore the condition of the common areas to their pre-existing condition to the time at which they were abandoned." Id. (emphasis added). Throughout the Complaint, the term "the Defendants" is used to refer to all of the Defendants, not simply some of them. Paragraph 24 nowhere indicates that "the Defendants" mentioned in that paragraph mean less than all of the Defendants named in the suit.

In addition to the paragraphs discussed above, the Complaint further alleges as follows:

> WHEREFORE, the Plaintiff prays this Honorable Court inquire into the matters set forth herein and award judgment in favor of Plaintiff [and] **against the Defendants, jointly and severally,** as follows:
>
> 1. For specific performance as described herein;
> 2. For a declaration of Plaintiff's rights as to the amenities lot and HOA open space lot;
> 3. **For all actual and consequential damages against the Defendants, jointly and severally, in an amount to be shown at trial;**
> 4. **For punitive damages in an amount to be determined by the trier of fact;**
> 5. For equitable relief as sought herein including but not limited to injunction;
> 6. For all costs associated with investigating and prosecuting this action; and
> 7. **For all other relief this Honorable Court deems just and proper.**

(R. p. 9) (underlining in original; bold added).

The Complaint specifically alleges the HOA is seeking a monetary judgment for "actual and

consequential damages," "punitive damages," and "other relief" against *all of the Defendants (including Declarant) "jointly and severally."*[4] See Gissel v. Hart, 382 S.C. 235, 243, 676 S.E.2d 320, 324 (2009) ("[T]he complaints here specifically named the Harts as individual defendants, and alleged they were jointly and severally liable, or liable in the alternative. It is clear that the Harts were named as individual defendants, and the Court of Appeals erred in [determining] otherwise."). Despite the HOA's arguments to the contrary, the HOA's Complaint is not limited to seeking only declaratory relief against Declarant. Because the Complaint does state a claim against Declarant for alleged nuisance and seeks a monetary recovery from Declarant, the HOA's assertion that Declarant lacks standing to seek indemnification against the claim is meritless.

CONCLUSION

Declarant respectfully requests that this Court grant its Petition for a Writ of Certiorari.

Respectfully submitted,

Daniel F. Blanchard, III (SC Bar 65342)
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

R. Britton Kelly (SC Bar 73741)
KELLY LAW FIRM, LLC
180 Spring Street
Charleston, SC 29403
(843) 991-4128 telephone
britt@kellylawsc.com
ATTORNEYS FOR PETITIONER

September 4, 2018.

[4] The doctrine of joint and several liability allows a plaintiff to sue all defendants jointly in one suit or individually in separate suits and when a judgment is rendered in the plaintiff's favor in a suit against multiple defendants who are jointly and severally liable, the plaintiff may collect that judgment from one defendant or divide the award between some or all defendants. See 18 S.C. JUR. Negligence § 51 (2016) (citing cases).

RECEIVED

SEP 07 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Judge

Court of Common Pleas Case No. 2015-CP-08-00547
Appellate Case No. 2018-001385

COKERS COMMONS HOMEOWNER'S ASSOCIATION, INC., . . . *Respondent,*

v.

PARK INVESTORS, LLC; CCT RESERVE, LLC, F/K/A HARRIS STREET, LLC; AND WHIPPLE DEVELOPMENT CORPORATION, ... *Defendants.*

Of which WHIPPLE DEVELOPMENT CORPORATION is the . . . *Petitioner.*

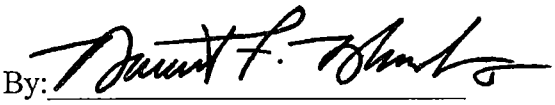
PROOF OF SERVICE

I certify that I have served the Reply in Support of Petition for a Writ of Certiorari on the Respondent by mailing copies to its attorneys of record on September 4, 2018 via first-class mail, postage prepaid, and addressed as follows:

Brent S. Halversen, Esquire
Halversen & Associates, LLC
751 Johnnie Dodds Boulevard, Suite 200
Mt. Pleasant, SC 29464

Michael A. Timbes, Esquire
Thomas J. Rode, Esquire
Thurmond, Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401

ROSEN, ROSEN & HAGOOD, LLC

By: 

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
ATTORNEYS FOR PETITIONER

September 4, 2018.