

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Edgar W. Dickson

Circuit Court Judge

**RECEIVED**  
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SC Court of Appeals

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Appellate Case No.: 2018-00826

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COLLETON RIVER PLANTATION CLUB, INC.....Appellant,

vs.

JENNIFER L. HOLMES.....Respondent.

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**FINAL BRIEF OF RESPONDENT**

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November 1, 2018.

Respectfully submitted,

By: Terry A. Finger

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## STATEMENT OF THE ISSUES ON APPEAL

1. IS IT REASONABLE AND FAIR FOR THE COURT TO EXERCISE PERSONAL JURISDICTION OVER RESPONDENT WHEN THE 2012 INDIANA DISSOLUTION SETTLEMENT AGREEMENT VESTED TITLE OF THE COLLETON RIVER LOT IN THE RESPONDENT'S EX-HUSBAND AND THE EX-HUSBAND HAD FULL DOMINION AND CONTROL OF THE LOT AND PAID ALL COSTS, INCLUDING DUES TO THE APPELLANT, UNTIL HIS DEATH ON MAY 26, 2016?
2. DID THE RESPONDENT HAVE ANY INTEREST IN THE SUBJECT PROPERTY AFTER THE DIVORCE DECREE VESTED 100% TITLE IN CHARLES B. HOLMES?

## STATEMENT OF THE CASE

Appellant, Colleton River Plantation Club, Inc., commenced this action on December 9, 2016 seeking to collect Homeowner Association fees from the Respondent, Jennifer L. Holmes,

The Respondent filed a Motion to Dismiss on January 17, 2017. The Motion was filed under S.C.R.C.P. Rule 12(b)(2) alleging that the Court did not have jurisdiction over the Respondent. The Motion stated:

1. The Respondent was not a resident and citizen of Beaufort County or the State of South Carolina;
2. The Respondent was divorced from Charles B. Holmes on August 12, 2012;
3. Pursuant to the Dissolution Settlement Agreement and Divorce Decree, Charles B. Holmes was granted all right, title, and interest in the Colleton River property which is the subject of the lawsuit;
4. Charles B. Holmes assumed full ownership and control of the property and paid all dues, assessments, and taxes until the time of his death on May 26, 2016;
5. Charles B. Holmes apparently refused to record the deed which was mandated by the parties' Divorce Decree; and

6. Respondent did not have a legal or equitable interest in the subject property.

The Circuit Court, after argument of counsel, granted the Motion to Dismiss by Order dated July 10, 2017. Thereafter, the Appellant filed a Motion for Reconsideration on July 19, 2017 and an Amended and Restated Motion for Reconsideration on July 20, 2017.

Without any additional oral arguments, the Circuit Court denied the Motion for Reconsideration by Order dated April 6, 2018 and a Notice of Appeal was then filed by the Appellant on May 2, 2018.

### **STATEMENT OF FACTS**

In June, 1991, a developer recorded a Declaration of Covenants for the property known as Colleton River Plantation. The Appellant, Colleton River Plantation, Inc., is the Homeowners Association that is entitled to collect dues and assessments from Owners within Colleton River Plantation. The original Declaration of Covenants has been amended several times since 1991.

The Respondent and her late husband, Charles B. Holmes, acquired title to an undeveloped lot in Colleton River Plantation for Twenty-Four Thousand and No/100 (\$24,000.00) Dollars by deed recorded on August 2, 2010 in the Office of the Register of Deeds for Beaufort County. Charles B. Holmes and the Respondent took title as Tenants in Common.

Charles B. Holmes and the Respondent entered into a Dissolution Settlement Agreement and Divorce in Hamilton County, Indiana on July 25, 2012. The Dissolution Settlement Agreement specifically stated that Charles B. Holmes had all right and title to the Colleton River lot free and clear of any claim of the Respondent. The Dissolution

Settlement Agreement further stated that Charles B. Holmes was “responsible for all mortgage debt, expenses and taxes associated with [the Colleton River lot] and shall hold wife harmless there from. [Charles B. Holmes] shall individually be responsible for the payment of the Homeowner Association Facilities Fees for the Colleton River Property from his personal funds until such time as there is a transfer of title.”

Although Charles B. Holmes never recorded a deed from the Respondent, he assumed full ownership of the subject property and paid all Homeowner Association dues until the time of his death on May 26, 2016. Thereafter, the dues became delinquent and the Appellant filed a lawsuit against the Respondent. The Appellant has not sued Charles B. Holmes or his Estate.

#### STANDARD OF REVIEW

The Complaint filed by the Appellant specifically seeks to have the case heard on a non-jury basis. This case is an action seeking money damages for breach of a Restrictive Covenant and is an action at law. In an action at law to be tried without a jury, the Findings of Fact of a judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge’s findings. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E. 2d 773 (1976).

#### ARGUMENTS

- I. **THE COURT CORRECTLY RULED THAT THERE WAS NO PERSONAL JURISDICTION OVER THE RESPONDENT DUE TO THE FACT THE 2012 INDIANA DISSOLUTION SETTLEMENT AGREEMENT AND DIVORCE VESTED TITLE OF THE COLLETON RIVER LOT IN THE RESPONDENT’S EX-HUSBAND AND THE EX-HUSBAND HAD FULL DOMINION AND CONTROL OF THE LOT AND PAID ALL COSTS, INCLUDING DUES TO THE APPELLANT, UNTIL HIS DEATH ON MAY 26, 2016.**

The Lower Court has made specific Findings of Fact, all of all which have support in the documentation and evidence given to the Lower Court. The factual findings 1 through 6 are, for the purposes of this appeal, deemed to be conclusive facts.

Since 2012, the Respondent had no reason to believe that she had any further involvement with the Colleton River lot under any set of circumstances. There is no question that the Dissolution Settlement Agreement and Divorce Decree from Indiana is entitled to full faith and credit in South Carolina under the “Full Faith and Credit Clause” of the U.S. Constitution. *Hamilton v. Patterson*, 236 S.C. 487, 115 S.E.2d 68 (1960).

As stated by the Appellant in its Initial Brief, there is a two-prong test to see if due process concerns are met under the law requiring requisite minimum contacts. The two prongs are:

1. Do minimum contacts grant the Court the power to adjudicate an action?;
- and
2. Is the exercise of jurisdiction reasonable or fair?

In this case, the Respondent had no contacts with South Carolina after the Divorce and the exercise of jurisdiction is not reasonable or fair. The Respondent, through a valid Divorce in the State of Indiana, no longer had any right, title, or interest in the subject property from and after 2012. After the death of her ex-husband in 2016, the Respondent is sued by the Appellant. The Appellant does not sue her ex-husband who, under the Divorce Decree, owned 100% of the lot. The ex-husband paid all assessments to the Appellant prior to his death.

**II. THE RESPONDENT HAD NO INTEREST IN THE SUBJECT PROPERTY AFTER THE DIVORCE DECREE VESTED 100% TITLE IN THE RESPONDENT'S EX-HUSBAND, CHARLES B. HOLMES.**

The Appellant does not contest the fact that the Order from the Illinois Superior III Court divests the Respondent of any title interest in the property. Rather, the Appellant argues that no deed was recorded until after the litigation was brought. Under the Second Amended and Restated Declaration of Covenants, Article II, Section 5, an "Owner" is defined as a person entitled to membership. It is clear from the Divorce Decree that the Respondent was not entitled to the membership at Colleton River Plantation. Without such an entitlement, the Respondent could not be an Owner and is not subject to any dues or assessments. The only question to be resolved is whether the Respondent retained any "legal" ownership interest in the subject lot. The Appellant concedes in its Initial Brief that the equitable title is no longer with the Respondent, but states that in the absence of Charles B. Holmes recording a deed, the legal interest remains with the Respondent.

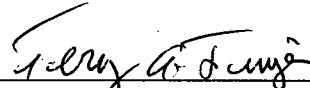
Unquestionably, under the Divorce Decree, both the legal and the equitable interest in the subject property belong to Charles B. Holmes. Charles B. Holmes was a Tenant in Common under the original deed and received the balance of the property under the parties' Divorce Decree. The Appellant chose not to sue the "Owner" under its own Covenants. Under its own Covenants, the only person/individual responsible for the dues and assessments is Charles B. Holmes, not the Respondent.

**CONCLUSION**

The Respondent requests that the trial Court's Orders be affirmed, the Respondent be awarded her responsible attorneys' fees associated with this appellate proceeding, and for any further relief this Honorable Court deems just and proper.

November 1, 2018

Respectfully submitted,

By:  \_\_\_\_\_

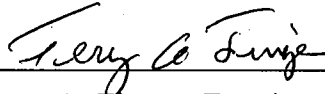
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**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Respondent's Final Brief has been served on the Appellant that the Respondent's Final Brief complies with Rule 211(b), S.C.A.C.R.

November 1, 2018

Respectfully submitted,

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