

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2015-CP-10-05463

**RECEIVED**

OCT 04 2019

**SC Court of Appeals**  
Respondent,

The Boathouse at Breach Inlet, LLC, by and through its member,  
Laurence O. Stoney, Jr. ....

v.

Richard S.W. Stoney, individually and as member-manager of  
The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC

and

Theodore Stoney, Jr., individually and as Trustee for Richard Stoney, Jr. and Gregory G.  
Holmes, Third-Party Intervenors,

of whom

Richard S. W. Stoney is ..... Appellant.

**REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS APPEAL**

The Boathouse at Breach Inlet, LLC, by and through its member, Laurence O. Stoney, Jr.  
("the Boathouse"), files this brief reply in further support of its motion to dismiss the appeal  
filed in this matter by Defendant, Richard S.W. Stoney ("Richard Stoney"). This case has  
already been pending for nearly four years. All the Boathouse seeks is a chance to proceed to a  
ruling on the merits from which any party would be free to appeal.

The orders attached to the notice of appeal are interlocutory. They do not involve the merits, do not strike any claim or defense, do not affect a substantial right, and do not deprive any party of a mode of trial to which they are entitled. Accordingly, this appeal must be dismissed.

**1. The trial court did not grant the motion to bifurcate.**

On March 29, 2018, Defendants filed a motion to bifurcate this action under SCRCP 42(B). Specifically, Defendants asked the Court to issue “an order bifurcating *discovery and trial* of this case into two phases.” (Motion to Dismiss at Ex. 2, p. 1) (emphasis added). At the hearing on this motion, Defendants requested a “first phase” of bifurcated discovery on standing only, followed by a trial on standing that would be set not later than May 2019. (November 9, 2018 Hearing Trans., p. 17, excerpted at Ex. 1). Defendants envisioned this first phase of discovery and subsequent trial would then be followed by a “second phase” of discovery on liability and damages, and ultimately followed by a trial on the phase two issues. *Id.* This motion and the suggested timeline was entirely consistent with Richard Stoney’s pattern of delay throughout this litigation and his repeated efforts to stonewall discovery on the merits.

The Boathouse, on the other hand, urged the trial court to “set the standing issue for a hearing before year-end.” (Motion to Dismiss at Ex. 3, p. 23). At the hearing, the Boathouse further explained:

Your Honor, we would ask that you set this for a hearing as soon as practical [on] this issue. We are not opposed to having this issue heard. *We want to have a hearing on it, but we want to proceed [to] a trial on the merits.* This case has been pending too long.

(Ex. 1, p. 31) (emphasis added).

Bearing in mind each party’s requested relief, the trial court elected to conduct a hearing on standing before year-end. The trial court stated:

I think the best way to do it would be schedule a formal hearing. We will need to review everything and make some determination . . . well, this is not granting or denying . . . whether the person has or . . . doesn't have standing. We are going to review all of this and be in touch with you regarding what's next for this case. But I think what should be next is a hearing where we have time set aside for witnesses [during the week of December 10].

(Ex. 1, p. 39).

At no time did the trial court grant the motion to bifurcate this action into two distinct phases for purposes of discovery and trial. Instead, after conducting the preliminary hearing, the trial court set a date certain trial to hear the entire case that was to begin October 14, 2019. (Motion to Dismiss at Ex. 10).

Richard Stoney did not prevail as to any portion of his efforts to bifurcate this matter and delay a ruling on the merits before the trial court. Having been thwarted there, he filed this notice of appeal in hopes of a reprieve.

## **2. The trial court's rulings were preliminary.**

Instead of granting the motion to bifurcate, and as reflected in the trial court's order and the transcript for the hearing on the motion to reconsider, the trial court held a preliminary hearing on the issue of standing. The trial court had the discretion to do so pursuant to Rule 16, SCRCF, which provides trial courts with broad latitude to manage their cases and hold pre-trial hearings prior to a determination on the merits.

As previously noted by the Boathouse, the trial court's comments at the hearing on the motion to reconsider establish that the rulings were not final and were subject to change at trial. (Motion to Dismiss at 3-4, Ex. 6 (Tr. at p. 69 ("But, that's a finding that I made. So—but factors may exist that may cause that to change. I don't know. We didn't hear the entire case."); p. 74 ("—well, if it were a final order th[e]n I would do a form four and the case is over without any determination of any of the major issues . . . .")); p. 75 ("I was careful to couch my terms in that

way without reaching any findings on these issues, of course, sort of like when you have a bond hearing and someone is charged with murder and is trying to get out of jail. I say, I'm not sure whether you committed murder or not, but it – I'm not letting you out of jail because it appears you created an unreasonable risk of harm.”)).

Perhaps most telling is the discussion between the trial court and counsel at pages 64-75 of the June 14 hearing transcript. (Excerpted at Ex. 2). Those pages show unequivocally that the trial court found that standing is a “continuous” requirement that may change over the course of a case and that the trial court was reserving final judgment until it heard the entire case. Given this framework, the orders in questions were preliminary in nature and the trial court merely found that the Boathouse could proceed to trial on the merits.

Richard Stoney's argument that the trial court made final conclusions of law without making any final findings of fact is nonsensical. Why would the trial court decline to make findings of fact but then make final and binding conclusions of law?

**3. Under *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019), this appeal should be dismissed.**

Richard Stoney relies heavily on *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). The reasoning and standards applied in *Stone* support dismissal here. As an initial matter, “[t]he provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’” *Id.* at 295, 826 S.E.2d at 870.

In *Stone*, unlike in this case, the family court granted a motion to bifurcate and issued a “Final Order” on the claim seeking a declaratory judgment on the issue of whether a couple was common-law married. There, the ruling that there was a marriage finally resolved the declaratory judgment claim and was not subject to change even though the case had not been

fully resolved (the claims for divorce and equitable distribution remained). Unlike the declaratory judgment that there was a marriage in *Stone*, the trial court here correctly observed that standing is “continuous” and that “factors may exist that may cause [its findings] to change. . . . We didn’t hear the entire case.” (Ex. 2 at p. 69).

In finding the “Final Order” was appealable, the Supreme Court in *Stone* was careful to limit its holding to the particular circumstances presented in that case as follows:

*We emphasize the particular circumstances that lead to our holding today, in keeping with our practice of narrowly construing section 14-3-330. In bifurcating the issues, the family court recognized the central importance of the common-law marriage determination, without which the other causes of action could not proceed. The court conducted an extensive trial on this sole issue, and the vast majority of the evidence adduced likely will not be relevant during any future proceedings for divorce and equitable distribution. While the subsequent proceedings are separate from the common-law marriage trial (by nature of the bifurcation), the existence of a marriage clearly involves the merits of those issues. Thus, our holding as to appealability would apply only where, following a bifurcated hearing, a claim or defense has been finally determined.*

*Id.* at 295–96, 826 S.E.2d at 870 (emphasis added; citations omitted). Here, there has been no formal bifurcation, nor has there been any final determination. Instead, as stated in the trial court’s order, it held a “preliminary hearing” and merely made “preliminary findings of fact.” (Motion to Dismiss at Ex. 4).

As previously argued, this ruling is more analogous to denial of summary judgment motion than to a ruling on the merits. The order states that it is preliminary on its face and the trial court did not make any certification of finality pursuant to Rule 54(b), SCRCP. The trial court did not “weigh the evidence,” but instead acknowledged that evidence existed on certain points. (*See* Motion to Dismiss at Ex. 4, “without making any findings of fact, the Court finds credible evidence . . .”). Again, this is similar to the language commonly used in denying a summary judgment motion.

This lack of finality means that the orders do not involve the merits for purposes of S.C. Code Ann. § 14-3-330(1). In addition, the orders do not affect a substantial right for purposes of S.C. Code Ann. § 14-3-330(2). Given the lack of finality, the orders do not strike any part of Richard Stoney's answer. In this case, any party will remain free to appeal following a decision on the merits, including on the issues of standing and laches.

In addition, there is not a mode of trial issue—the parties do not dispute that a derivative action is equitable in nature and not subject to a jury trial. *Pelfrey v. Bank of Greer*, 270 S.C. 691, 244 S.E.2d 315 (1978). No individual claims have been brought. Thus, there is no scenario under which a party has been deprived of a mode of trial to which it was entitled, and therefore this argument does not present a basis for allowing this appeal to proceed. *See Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975) (holding an order of reference is not immediately appealable unless it denies a party a mode of trial to which it is entitled).

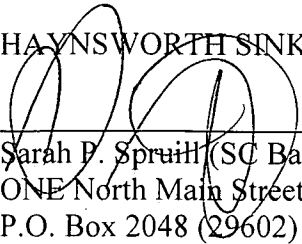
### CONCLUSION

The notice of appeal in this action is simply Richard Stoney's latest attempt to delay a determination on the merits of this action, which has been pending since October 2015. The appeal should be promptly dismissed so this case can proceed to trial.

Richard Stoney's suggestion in footnote 5 of his return highlights again his commitment to delay. He would rather fully brief and argue this appeal (even in the event that the orders are not appealable) than proceed to trial on the merits. As the Supreme Court recently reiterated in *Stone*, the appealability statute is construed narrowly to avoid piecemeal appeals. The Boathouse has waited long enough for its day in court. It simply asks that this Court dismiss this appeal so that the case can be tried.

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, P.A.



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ATTORNEYS FOR RESPONDENT

October 4, 2019

# EXHIBIT 1

1 STATE OF SOUTH CAROLINA )  
 ) Court of Common Pleas  
 2 COUNTY OF CHARLESTON ) Case No. 2015-CP-10-5463  
 )  
 3 )  
 4 THE BOATHOUSE AT BREACH INLET, )  
 LLC, by and through its member, )  
 Laurence O. Stoney, Jr. )  
 5 )  
 Plaintiff, )  
 6 )  
 vs. ) Transcript of Record  
 7 )  
 RICHARD S.W. STONEY, )  
 8 individually and as )  
 member-manager of THE BOATHOUSE )  
 9 AT BREACH INLET, LLC, and CREW )  
 CAROLINA, LLC, )  
 10 )  
 Defendants. ) DATE: November 9, 2018  
 11 )

12  
 13 B E F O R E:  
 14 THE HONORABLE CLIFTON NEWMAN

15  
 16 A P P E A R A N C E:  
 17 STAFFORD JOHN MCQUILLIN, III, TYLER GILLIAM and  
 SCOTT BARNES  
 Attorneys for the Plaintiff  
 18  
 CAPERS G. BARR, III  
 19 Attorney for the Defendants, Crew Carolina  
 and Richard S.W. Stoney  
 20  
 GEORGE J. KEFALOS,  
 21 Attorney for Defendants Gregory Holmes, Richard S.W.  
 Stoney, Theodore D. Stoney  
 22

23 **Original transcript ordered by:**  
**Haynsworth Sinkler Boyd, P.A.**  
 24  
 25 Karen V. Andersen, RMR, CRR  
 Circuit Court Reporter

1           We are not asking you to rule there. But we are  
2 suggesting that on that basis, it makes sense and it would be  
3 more efficient, Judge, we would suggest, that the Court set a  
4 trial, or we will call it a hearing if that would suit the  
5 plaintiff, but a hearing with witnesses, on the standing issue  
6 during the first quarter of 2019, March, April, May, somewhere  
7 in there. Set it. We will get ready for it. We will do  
8 discovery. If they want, we can set a backup trial date six  
9 months after that if the Court rules against us on the standing  
10 issue. But we believe judicial economy and efficiency would be  
11 best protected there.

12           And, finally, Your Honor, neither of the parties in  
13 this case have formally yet identified an expert witness after  
14 all this time, after spending \$47,000. Now, I know who their  
15 accountant is and they probably know who my accountant is. But  
16 that's why I say I take an issue with my friends who claim that  
17 they have been diligently and aggressively prosecuting this  
18 case. It just hasn't been so. They have been sitting on their  
19 hands. I've been sitting on my hands as well. I don't deny  
20 that.

21           But I'm reminded of a story that another lawyer once  
22 told me. And that other lawyer happened to be named Stoney.  
23 His name is Laurence Stoney. Now, this is another Stoney who  
24 is Richard's first cousin and Laurence's first cousin, not a  
25 brother -- it's Randell. Randell, I apologize. Thank you.

1 that Richard was robbing Peter to pay Paul?

2 No question.

3 In this interoffice, he had six or seven companies  
4 going on and he was taking money from the only profits he had,  
5 which was The Boathouse at Breach Inlet?

6 Correct.

7 And he shouldn't have been doing that?

8 And here's the answer: He had different owners. And  
9 if you are taking an owner at The Boathouse at Breach Inlet and  
10 he was taking money from the Boathouse at Breach Inlet to  
11 subsidize another company, those partners were different. I  
12 mean, somebody, the Boathouse, is getting ripped off on that  
13 deal.

14 And so, Your Honor, we would ask that you set this for  
15 a hearing as soon as practical, this issue. We are not opposed  
16 to having this issue heard. We want to have a hearing on it,  
17 but we want to proceed on a trial on the merits. This case has  
18 been pending too long. Thank you

19 THE COURT: All right. Mr. Barr.

20 MR. BARR: May it please the Court. Your Honor, my  
21 friend has thrown a lot in front of us here because he says,  
22 this is really not a hearing on the merits, but here's my  
23 argument on the merits.

24 This is not a hearing on the merits. The simple  
25 motion that we have before Your Honor is let's set a hearing

1           And I think the best way to do it would be to schedule  
2 a formal hearing. We will need to review everything and make  
3 some determination as to what our findings -- well, this is not  
4 granting or denying on the issue of Rule 23 on properly  
5 derivative case or whether the person has or hasn't -- doesn't  
6 have standing. We are going to review all of this and be in  
7 touch with you regarding what's next for this case. But I  
8 think what should be next is a hearing where we have time set  
9 aside for witnesses all during the week that we are here.

10           We just found out about this medical mal case. I was  
11 about to say that y'all would be first up during that week and  
12 then we get a notice from the clerk that they have this medical  
13 mal case. Of course, it's Ken Suggs and Henry Grimball and all  
14 of them. If it goes to a trial, we will be lucky to do it in a  
15 week's time. But things happen with cases. And a lot of  
16 medical malpractice cases are getting resolved these days. And  
17 we promised Justin Lucy and company that we will have motion  
18 hearings that week of December 10th as well. Their motions are  
19 motions to compel and the type of motions that will not take  
20 more than a few hours to hear. And we will be here all that  
21 week.

22           MR. KEFALOS: Your Honor, excuse me, I'm looking at my  
23 calendar. I have plans to be out of town 10th, 11th and 12th  
24 of that week, if we can postpone any hearing until later in the  
25 week.

## EXHIBIT 2



1 going to come back in December, after that day, then  
2 they filed a motion for a hearing.

3 Your Honor had set a hearing. We were there  
4 physically. Your Honor said we're going to come back  
5 the week of December the 10th and that was based on our  
6 motion to bifurcate. So after that event, they then  
7 filed a motion for a hearing, Your Honor had already  
8 set the hearing.

9 So I don't know why they filed it except it  
10 certainly confuses the record. But, certainly it was  
11 our expectations that we had a trial with finality  
12 before you and we would like to ask you to reach that  
13 conclusions so at least we know what we have  
14 accomplished and what we did not.

15 *THE COURT:* All right.

16 *MR. BARR:* Thank you again, Your Honor.

17 *THE COURT:* All right. Mr. Barr, certainly in  
18 Rule 23 to bring any type of derivative action the  
19 party must have -- the shareholder must have standing,  
20 the requirement of standing must be continuous, the  
21 classes can be certified, decertified, many things can  
22 happen from the time standing is established versus  
23 something else happens with that standing.

24 What is the significance to you with the term  
25 preliminary finding of standing versus final

1 determination of standing? What's the significance of  
2 this?

3 MR. BARR: Well, to try a little play on words,  
4 the significance is that it makes it insignificant.

5 THE COURT: All right.

6 MR. BARR: In other words, what we sought was the  
7 separate trials. For efficiency, let's separate the  
8 two. Clearly there is no question about the derivative  
9 cases are devisable into two stages, standing and  
10 liability.

11 THE COURT: Right.

12 MR. BARR: And, if it's standing -- no standing,  
13 you don't need to get to the liability.

14 THE COURT: If you have no standing, you can't be  
15 in Court. You can't maintain the action.

16 MR. BARR: Correct. That's exactly right. That's  
17 exactly right.

18 THE COURT: So the first thing you're questioning,  
19 you're questioning the notion that Stoney has  
20 standing---

21 MR. BARR: ---yes, sir---

22 THE COURT: ---Lawrence Stoney has standing. And,  
23 I have determined that he does have standing. And,  
24 your next concern on the standing issue is that if I  
25 determined -- I have determined that he has standing as

1 a preliminary matter so that he can maintain the  
2 action, your next term -- your next concern is that it  
3 must be more definitively---

4 MR. BARR: ---that's really not my case, Judge.  
5 Counsel here -- Mr. McQuillin, the Plaintiff, is  
6 arguing that Your Honor did not reach that decision  
7 with finality and therefore the issue of standing --  
8 your conclusion that he has standing might be revisable  
9 at the liability stage of the case. That's what he's  
10 arguing.

11 THE COURT: Well, is standing ever reached with  
12 finality?

13 MR. BARR: Yes. Why would it not be?

14 THE COURT: Well, I have had many cases where  
15 these homeowner lawsuits where someone has standing to  
16 represent the corporations and then they go into  
17 bankruptcy so before they sell their property and they  
18 can no longer be a class representative, so the  
19 distinction between class representation with standing  
20 versus any other person with standing. Of course, this  
21 is a derivative action and not a class action.

22 MR. BARR: We're dealing with a class of one.

23 THE COURT: Correct.

24 MR. BARR: Primarily.

25 THE COURT: I understand.

1           MR. BARR: And, what could -- even if something  
2 catastrophic, Lord forbid, should happened to Mr.  
3 Stoney, Lawrence Stoney---

4           THE COURT: ---so a class of one versus a single  
5 shareholder derivative action or is it the same?

6           MR. BARR: It's the same.

7           THE COURT: Okay.

8           MR. BARR: It's the same. The rule says that the  
9 Plaintiff must fairly and adequately represent the  
10 interest of the members similarly situated. Well, what  
11 Lawrence is saying is, I'm the only member situated  
12 here who has not gotten distributions, so therefore I  
13 am a class of one. So he is not representing any other  
14 members similarly situated.

15           It's interesting because in the Cusnicki(sp)  
16 which we cited. I didn't argue it. Which is the  
17 Pennsylvania case saying that a class of one cannot be  
18 sustained. Interesting to what the Court says is just  
19 read Rule 23.1---

20           THE COURT: ---yes, I was reading it as you were  
21 talking---

22           MR. BARR: ---and, it says -- it speaks in the  
23 plural. It says the representative must be capable of  
24 representing the shareholders plural similarly  
25 situated. So Csunicki(sp) says -- I don't think the

1 rules support a class of one lawsuit---

2 *THE COURT:* ---clearly the analysis is the same as  
3 determining a class representative and a class action  
4 that all the factors, numerosity---

5 *MR. BARR:* ---I think it's a little different---

6 *THE COURT:* ---all the various things---

7 *MR. BARR:* ---no, I don't think that's correct. I  
8 think it's different.

9 *THE COURT:* All right.

10 *MR. BARR:* I think the factors are as cited in the  
11 -- I can't remember the name of the case right now --  
12 but, the Federal Court decision that Your Honor cites  
13 Morrison versus -- yes, those are the factors. Those  
14 factors are not unique to single member classes. Those  
15 factors -- you remember the eight factors, those are  
16 the factors as to whether that person can qualify and  
17 make fairly -- can objectively represent the interest  
18 of members similarly situated.

19 In one of those factors is what support did  
20 they have for the other stockholders, we talk about it.  
21 The other is whether they are pursuing it vindictively  
22 and there are cases in the country where a class member  
23 as a putative Plaintiff has not been allowed to act  
24 because his suit was vindictive purely to vindicate a  
25 case against the other members as opposed to the---

1           *THE COURT:* ---well, we disagree with my finding  
2 on that issue because I found that there was a  
3 legitimate purpose in bringing the action, that is to  
4 -- on behalf of the corporation not on behalf of  
5 himself individually. That whatever personal problems  
6 that might exist because you Plaintiff, a lot of things  
7 in the record, there is a lot of discord going on.

8           But, the fact of the matter, the ability to  
9 make an election. I know that you disagree with that.

10          *MR. BARR:* Yes, Your Honor.

11          *THE COURT:* But, that's a finding that I have  
12 made. So -- but factors may exist that may cause that  
13 to change. I don't know. We didn't hear the entire  
14 case.

15          *MR. MCQUILLIN:* Your Honor's point is very well  
16 taken that standing at -- I wish I had though of this  
17 and briefed this issue -- standing is never decided  
18 with finality. And, a perfect example in a derivative  
19 case like this, is in order to maintain a derivative  
20 action, you've got to be a member of the company. And,  
21 so if Mr. Stoney decides to sell his membership  
22 interest, he lacks standing.

23          *THE COURT:* It's a continuous---

24          *MR. MCQUILLIN:* ---yes, correct. And, then number  
25 two, if he decides look, I'm sick of pursuing this

1 lawsuit. He calls his cousin, Richard, says, Richard,  
2 I want to get in on the gravy train, too. Use  
3 Boathouse funds to buy me a boat, and we will be good.  
4 He no longer fairly and adequately represent the  
5 interest of the company.

6 So standing is not decided with finality until  
7 this case gets through to a trial on the merits. Your  
8 Honor is exactly right, this was a preliminary non  
9 final hearing on the issue of standing and subjected to  
10 amendment or addition at the trial.

11 *THE COURT:* And, now, we've been here two days on  
12 that issue, December and here again. Is the objective  
13 not to be a trial on the merits? Is there not to be a  
14 -- well, from your perspective it cannot be a trial on  
15 the merits maintained by Lawrence Stoney?

16 *MR. BARR:* That's correct. I think -- it's our  
17 position that he is pursuing this out of a personal  
18 vindictive animosity against Richard Stoney and because  
19 at it's basis is -- this was driven at least at the  
20 beginning, it was driven by his interest in recovering  
21 his distributions and now the cost of the case has  
22 driven it out of settlement. But, that's exactly  
23 correct, Your Honor.

24 *THE COURT:* Well, but that's a determination I've  
25 made and I -- you know, you argue that and you pointed

1 to a transcript---

2 MR. BARR: ---yes, sir---

3 THE COURT: ---for here and there. And, of  
4 course, I listened to it for two days and determined  
5 based on what's in the order, that he can maintain  
6 against the corporation.

7 MR. BARR: Correct. I understand that, Your  
8 Honor, and I am hopefully respectfully asking you to  
9 reconsider that for reasons that I've argued.

10 THE COURT: Yes, sir.

11 MR. BARR: And, that is the reasons in the record  
12 that perhaps the Court overlooked or did not recall  
13 between the date of the trial and when you finally got  
14 this proposed order.

15 THE COURT: Well, I am asking you, but I am really  
16 sort of addressing counsel as well. Of course, I need  
17 to make clear what I meant in the order. The order  
18 speaks for itself even though the contents and the  
19 findings you may disagree, but the order says what it  
20 says.

21 I know that counsel submitted a propose order  
22 much of which I disagree with. I don't like orders  
23 that read like law school term papers and with all of  
24 these cases and everything. Those cases speak for  
25 themselves as well, but even though they may be a

1 reference to a case, I don't need to -- I mean, clearly  
2 know everything that was said in another case.

3 *MR. BARR:* Yes, sir.

4 *THE COURT:* That's just part of it. I wanted to  
5 clear that I wasn't making any final determination on  
6 any issue other than the preliminary issue of standing  
7 and that the fact that this problem is within the  
8 corporation has been going on for a long time, he is  
9 not barred by laches from maintaining the action.

10 Now, I guess that order was what, 25 pages  
11 maybe 22 pages?

12 *MR. BARR:* I think you parceled it down to 13.

13 *THE COURT:* Thirteen, all right.

14 *MR. BARR:* The original may have been that long.

15 *THE COURT:* Yeah, probably started out longer than  
16 that. But, I think the order speaks for itself. I  
17 don't believe that Judges need to issue an order and  
18 then issue another order saying what I mean by the  
19 order.

20 *MR. BARR:* I don't disagree with that.

21 *THE COURT:* Either the order -- either the motion  
22 for reconsideration---

23 *MR. BARR:* ---I'd like for the -- of course, the  
24 order does say something different, but I understand  
25 Your Honor---

1           *THE COURT:* ---and, I understand from your  
2 perspective both of you are asking me for something.

3           *MR. BARR:* Yes, sir.

4           *THE COURT:* You want me to reconsider and reverse  
5 myself because I haven't considered all the factors in  
6 the Larson case and because of certain things in the  
7 record that should have lead them to a different  
8 conclusion and all of those things.

9           A lot of class actions cases and I have  
10 confirmed that someone is a class representative can  
11 confirmed the case as a class action and then later  
12 decertify the class -- I rule that person does not  
13 adequately represent the class in many things.

14           And, this case is a 2015 cause now four years  
15 and counting and we are still on the issue of whether  
16 or not Lawrence Stoney can maintain the action as a  
17 derivative action. That's a -- there are many other  
18 things that's going on that's related to the issues.  
19 What you think? I will give counsel a chance to say  
20 whatever you want to say?

21           *MR. MCQUILLIN:* Thank you, Your Honor, other than  
22 standing is never reached with finality in particularly  
23 in the context of a class action. We are here in a  
24 class of one. The derivative action Plaintiff still  
25 has to fairly and adequately represent the interest of

1 the company throughout the term of the litigation. He  
2 has to always be a member of the company to bring a  
3 derivative action.

4 Those are factors. They are subject to change.  
5 Factors and new evidence can surface during the course  
6 of discovery that could ultimately result in the Court  
7 making an additional amended, modified, ruling in the  
8 final ruling at the trial on the merits.

9 And, we're not asking the Court to modify it's  
10 order. We agree with Your Honor, your order is clear  
11 on it's face. It makes preliminary findings of facts  
12 and states that it's a preliminary hearing.

13 The reason that we are before Your Honor today  
14 talking about this, is Defendants in their motion to  
15 reconsider say that they have no choice but to treat  
16 Your Honor's order as a final order. And, so all we're  
17 asking is that you clarify for the Defendants that it  
18 was not that because otherwise 30 days from now we are  
19 going to be getting a notice of appeal and this  
20 thing---

21 *THE COURT:* ---well, if it were a final order than  
22 I would do a form four and the case is over without any  
23 determination of any of the major issues which is any  
24 issue of liability it manages.

25 *MR. BARR:* Well, if -- that's assuming you granted

1 our motion there is a final finding no standing.

2 *THE COURT:* No standing.

3 *MR. BARR:* Right.

4 *THE COURT:* If there is no standing, then no one  
5 representing -- maintaining any action against the  
6 corporation and the case would be over. That's not  
7 obviously not what I determined.

8 Well, first of all, I didn't -- but, I was  
9 careful to couch my terms in that way without reaching  
10 any findings on these issues, of course, sort of like  
11 when you have a bond hearing and someone is charged  
12 with murder and is trying to get out jail. I say, I'm  
13 not sure whether you committed the murder or not, but  
14 it -- I'm not letting you out to jail because it  
15 appears that you created unreasonable risk of harm --  
16 and I guess that Defendant will say well, the Judge  
17 thinks I'm a big risk and I don't want him to be the  
18 Judge on my case.

19 It's a balance that you have to walk in all of  
20 these situations. You know, so I made a finding on  
21 what appeared to be based on what I heard understanding  
22 that I have not heard the case. Certainly I understand  
23 that with regards to Hollerback(sp) affidavit he was  
24 here and ready and prepared to testified and though you  
25 disagree with part of his -- I guess, all of his

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2015-CP-10-05463

**RECEIVED**

OCT 04 2019

**SC Court of Appeals**

The Boathouse at Breach Inlet, LLC, by and through its member,  
Laurence O. Stoney, Jr. .... Respondent,

v.

Richard S.W. Stoney, individually and as member-manager of  
The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC

and

Theodore Stoney, Jr., individually and as Trustee for Richard Stoney, Jr. and Gregory G. Holmes,  
Third-Party Intervenors,

of whom

Richard S. W. Stoney is ..... Appellant.

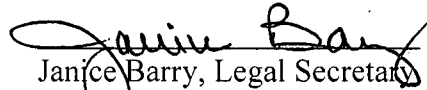
**PROOF OF SERVICE**

I certify that I have served the Respondent The Boathouse at Breach Inlet, LLC, by and through its member, Laurence O. Stoney, Jr.'s Reply in Further Support of Motion to Dismiss Appeal on all attorneys of record by depositing copies of the same in the United States Mail, postage prepaid, on October 4, 2019, addressed to:

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October 3, 2019

**RECEIVED**

OCT 04 2019

**SC Court of Appeals**

**HAND DELIVERED**

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

Re: The Boathouse at Breach Inlet, LLC, by and through its member, Laurence O. Stoney, Jr. v. Richard S.W. Stoney, individually and as member-manager of The Boathouse at Breach Inlet, LLC, et al.; C.A. No.: 2015-CP-10-05463

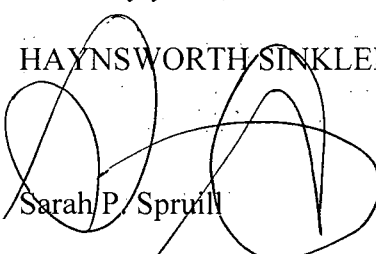
Dear Ms. Kitchings:

Our firm represents Respondent The Boathouse at Breach Inlet, LLC, by and through its member, Laurence O. Stoney, Jr., in the above-referenced matter. Enclosed herewith for filing is an original and seven (7) copies each of our Reply in Further Support of Motion to Dismiss Appeal regarding the above-referenced case together with a Proof of Service. Please file the originals and return clocked copies to me via my courier.

Thank you for your assistance.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/jmb  
Enclosures

cc: Capers G. Barr, III  
George J. Kefalos  
Robert E. Stepp  
Benjamin R. Gooding  
Scott Y. Barnes (via email only)  
Stafford J. McQuillin III (via email only)  
Tyler K. Gilliam (via email only)