

6

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Horry County
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Case No. 2015-CP-26-05573

RECEIVED
JUL 30 2019
SC Court of Appeals

K.A. Diehl and Associates, Inc.,

Respondent,

v.

James Perkins, Colleen Franke a/k/a Colleen Franke Perkins,
Mark Dos Santos, Nancy Moore, William Moore, Steven Dame
and Errol Dos Santos,

Defendants,

Of whom Mark Dos Santos is the

Appellant.

RECORD ON APPEAL

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Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

K.A. DIEHL and ASSOCIATES, INC.,

Plaintiff/Third-Party Defendant,

vs.

James Perkins, Colleen Franke, a/k/a
Colleen Franke Perkins, Mark Dos Santos,
Nancy Moore, William Moore, Steven
Dame, and Errol Dos Santos,

Defendants/Third-Party Plaintiffs,

and Jeff Richardson,

Third-Party Plaintiff,

vs.

Ocean Front Spa Horizontal Property
Regime, Inc., The Myrtle Beach Resort
Homeowners Association, Inc., Phil Cox,
Bill Cameron, Walter Jordan, Ralph Jump,
Stanley Jordan, Ray Coghill, and Wayne
Urban,

Third-Party Defendants.

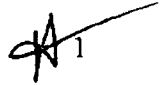
IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-26-05573

CONSENT ORDER

FILED
HORRY COUNTY
2016 JAN -8 PM 12:44

THIS MATTER comes before the court on Plaintiff K.A. Diehl and Associates, Inc. motion to dismiss Counterclaims asserted by the Defendants James Perkins, Colleen Franke, Nancy Moore, William Moore, Mark dos Santos, Errol dos Santos, and Steven Dame and to dismiss the Third-Party Complaint against Third-Party Defendant, K.A. Diehl and Associates, Inc., asserted by Defendants James Perkins, Colleen Franke, Nancy Moore, William Moore, Mark dos Santos, Errol dos Santos, and Steven Dame and Third-Party Plaintiff Jeffrey Richardson dated October 26, 2015. Further, this matter comes before the court on Third-Party

 1

Defendants' Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowner's Association, Inc., Phil Cox, Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and Wayne Urban motion to dismiss the Third-Party Complaint filed by Third-Party Plaintiffs James Perkins, Colleen Franke, Nancy Moore, William Moore, Mark dos Santos, Errol dos Santos, Steven Dame and Jeffrey Richardson dated November 20, 2015.

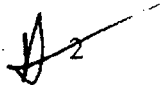
The parties have resolved the motions agreeing to following terms:

(1) Defendants James Perkins, Colleen Franke, Nancy Moore, William Moore, Mark dos Santos, Errol dos Santos, and Steven Dame agree to dismiss without prejudice their counterclaims against K.A. Diehl and Associates, Inc.;

(2) The parties agree that the Defendants James Perkins, Colleen Franke, Nancy Moore, William Moore, Mark dos Santos, Errol dos Santos, and Steven Dame are granted leave to amend their answer dated September 23, 2015 to assert amended counterclaims within thirty (30) days;

(3) Third-Party Plaintiffs James Perkins, Colleen Franke, Nancy Moore, William Moore, Mark dos Santos, Errol dos Santos, Steven Dame and Jeffrey Richardson agree to dismiss without prejudice their Third-Party Complaint against Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowner's Association, Inc., Phil Cox, Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, Wayne Urban, and K.A. Diehl and Associates, Inc.;

(4) Defendants James Perkins, Colleen Franke, Nancy Moore, William Moore, Mark dos Santos, Errol dos Santos, and Steven Dame agree to file any counterclaims against K.A. Diehl

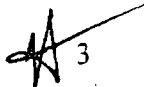
 2

and Associates, Inc. separate from the derivative shareholder claims set forth in the Third-Party Complaint;

(5) Plaintiff and Third-Party Defendant, K.A. Diehl and Associates, Inc., and Third-Party Defendants Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowner's Association, Inc., Phil Cox, Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, Wayne Urban, and K.A. Diehl and Associates, Inc., agree to toll the statute of limitations for thirty (30) days, preserving the original filing date of any claims formerly asserted against them (and as may have been asserted against them in accordance with Rule 15, SCRCF) on the condition that any such claims are filed in an Amended Answer and a separate action on or before Monday February 8, 2016. Should Defendants and/or Third-Party Plaintiffs fail to file such claims on or before February 8, 2016, there shall be no tolling and any new filing date(s) shall be applicable for purposes of the statute(s) of limitations.

(6) Nothing contained herein shall serve as a waiver of the rights of Plaintiff and Third-Party Defendant, K.A. Diehl and Associates, Inc., and Third-Party Defendants Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowner's Association, Inc., Phil Cox, Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and Wayne Urban to move to dismiss the Defendants' new pleadings.

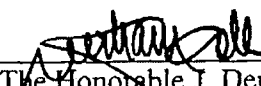
WHEREFORE, as all parties have consented to the above terms, the court Orders the following: (1) dismissal, without prejudice, of Defendants' counterclaims against Plaintiff; (2) dismissal, without prejudice, of Third-Party Plaintiffs' claims against Third-Party Defendants; (3) Defendants have until February 8, 2016, to amend the Answer to amend the counterclaims currently set forth therein; (4) Third-Party Plaintiffs have until February 8, 2016, to file a

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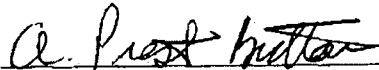
separate action for the claims currently set forth in the Third-Party Complaint herein; and (5) the statute of limitations is tolled for any claims formerly asserted or that could have been asserted in the Answer, Counterclaims and the Third-Party Complaint dated September 23, 2015 in accordance with the stipulations above.

IT IS SO ORDERED.

January 8, 2016

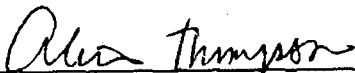

The Honorable J. Derham Cole
~~Chief Administrative Judge~~
Fifteenth Judicial Circuit

I SO CONSENT:



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Attorney for William Moore

A 5

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2605573**

KA Diehl and Associates Inc Julie Jeffords Moose	Jeff 3Rd Party Richardson	Jim Perkins Colleen Franke Perkins Nancy Moore Steven Dame 3Rd Party Ocean Front Spa Horizontal Property Regime Inc	Colleen Franke Mark Dos Santos William Moore Errol Dos Santos

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

Plaintiff's Motion to Enforce Settlement is continued.

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.

2157

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:

Alicia E. Thompson PO Box 336 Myrtle Beach, SC 29578
Henrietta U. Golding McNair Law Firm PO Box 336 Myrtle Beach, SC 29578
Julie Jeffords Moose Turner Padget Graham & Laney, P.A. PO Box 5478, 319 S. Irby Street Florence, SC 29502
Julie Jeffords Moose Turner Padget Graham & Laney, P.A. PO Box 5478, 319 S. Irby Street Florence, SC 29502

Andrew Preston Brittain 4614 Oleander Dr. Myrtle Beach, SC 29577-5736
Lucas James Asper 300 North Main Street, Suite 500 Greenville, SC 29601
Christian Stegmaier PO Box 12487 Columbia, SC 29211
Phillip Arthur Kilgore PO Box 2757 Greenville, SC 29602
Robert Walton Buffington PO Box 340 Charleston, SC 29402
Christopher William Nickels 126 Seven Farms Dr., Ste. 200 Charleston, SC 29492
G. Michael Smith Sr. PO Box 1740 Conway, SC 29528
Meghan Hazelwood Hall 1330 Lady Street 6Th Floor Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter – Natalie Dahl

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: KA Diehl and Associates Inc , plaintiff, et al VS Jim Perkins ,
defendant, et al
Case Number: 2015CP2605573
Type: Order/Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2018-01-05 11:36:43 page 3 of 3

ELECTRONICALLY FILED - 2018 Jan 05 11:41 AM - HORRY - COMMON PLEAS - CASE#2015CP2605573

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2605573

KA Diehl and Associates Inc	Jeff 3Rd Party Richardson	Jim Perkins Colleen Franke Perkins Nancy Moore Steven Dame 3Rd Party Ocean Front Spa Horizontal Property Regime Inc	Colleen Franke Mark Dos Santos William Moore Errol Dos Santos

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.
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☐ 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

Plaintiff's Motion to Enforce Settlement is granted and a formal order is to follow.

Defendant Mark Dos Santos's Motions to Be Relieved as Counsel as to Andrew Preston Brittain, Christian Stegmaier and Christopher Nickels are granted with this as a Statement of Judgment by the Court.

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)

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.**

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 2/17)

2157

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:

Alicia E. Thompson PO Box 336 Myrtle Beach, SC 29578
Henrietta U. Golding Mcnair Law Firm PO Box 336 Myrtle Beach, SC 29578
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Christopher William Nickels 126 Seven Farms Dr., Ste. 200 Charleston, SC 29492
G. Michael Smith Sr. PO Box 1740 Conway, SC 29528
Meghan Hazelwood Hall 1330 Lady Street 6Th Floor Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter – Grace Hurley

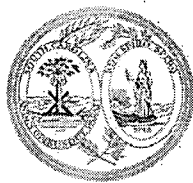
Renee N. Elvis - Clerk of Court

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: KA Diehl and Associates Inc , plaintiff, et al VS Jim Perkins ,
defendant, et al
Case Number: 2015CP2605573
Type: Order/Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2018-03-19 09:57:36 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

K. A. Diehl and Associates, Inc.,)

Plaintiff,)

vs.)

James Perkins, Colleen Franke a/k/a)
Colleen Franke Perkins, Mark Dos)
Santos, Nancy Moore, William Moore,)
Steven Dame and Errol Dos Santos,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-26-05573**ORDER GRANTING
PLAINTIFF'S MOTION TO
ENFORCE THE SETTLEMENT
AGREEMENT**

THIS MATTER COMES BEFORE THE COURT upon the Motion of the Plaintiff, K.A. Diehl and Associates, Inc., to enforce the settlement agreement dated May 1, 2017 in the above captioned action ("Settlement Agreement" attached as **Exhibit A**). The only Defendant that opposes the Motion is Mark dos Santos ("dos Santos").

The Court has reviewed the Settlement Agreement, held a hearing on the Motion, considered dos Santos' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of this action.

At the hearing, and in his legal memorandum, dos Santos asserted that the Settlement Agreement is unenforceable under SCRCF, Rule 43(k), because he was not present at the mediation and did not read the Settlement Agreement before his attorney signed on his behalf. The Settlement Agreement was signed with dos Santos's name with the statement that it was signed on his behalf with permission. Each of the three attorneys representing dos Santos also signed the Settlement Agreement. No evidence was presented that his permission was lacking or withdrawn. Furthermore, all Parties to this action, with the exception of dos Santos, personally signed the

Settlement Agreement and the corresponding release contemplated by the Settlement Agreement and drafted by dos Santos' attorney ("Release" attached as **Exhibit B**). Furthermore, a significant portion of the settlement terms have been performed.

First, the Court concludes that SCRCP Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel. Moreover, even if Rule 43(k) did apply, the Court finds that the Settlement Agreement complies with 43(k) in that all Parties signed the Settlement Agreement (personally or through a designated agent), as did the attorneys for dos Santos.

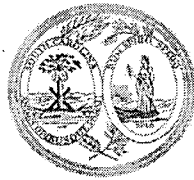
The Court further finds that the Settlement Agreement is the result of extensive negotiations following a lengthy period of contested litigation between the Parties. The Court finds that all Parties and their counsel attended and participated in the mediation conference resulting in the Settlement (in person or via telephone, by agreement of the Parties), which concluded with all Parties signing the Settlement Agreement (personally or through their designated agents).

Based on these findings, and for good cause shown,

IT IS ORDERED that the Plaintiff's Motion to enforce the Settlement Agreement is **GRANTED**.

IT IS SO ORDERED on this _____ of _____, 2017.

The Honorable William H. Seals, Jr.



Horry Common Pleas

Case Caption: KA Diehl and Associates Inc , plaintiff, et al VS Jim Perkins ,
defendant, et al
Case Number: 2015CP2605573
Type: Order/Approval Of Settlement

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2018-03-21 08:48:39 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CIRCUIT COURT

K. A. DIEHL AND ASSOCIATES, INC. V. JAMES PERKINS, ET AL.

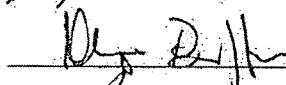
Docket No. 2015-CP-26-05573

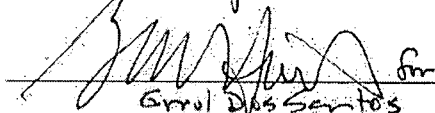
MEDIATED SETTLEMENT AGREEMENT

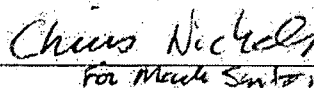
As a result of mediation, the parties have agreed as follows:

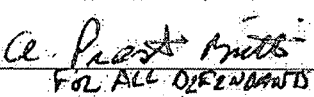
1. Defendants' insurers shall pay to Plaintiff the total sum of \$100,000.00 as soon as practicable, but no later than 20 days.
2. Ocean Front Spa ("OFS") shall pay Plaintiff \$5,000.00 for property management services through June 1, 2017 after which its property management services shall cease. OFS shall pay an additional \$10,000.00 to Plaintiff by June 10, 2017.
3. The existing maintenance personnel will be paid by OFS through Plaintiff through May 5, 2017, after which the existing maintenance personnel will no longer provide services to OFS.
4. Plaintiff shall transfer financial records and other documentation and assets to OFS by June 1, 2017, as required by South Carolina law and generally accepted property management standards
5. The parties will execute a mutual release releasing the other and the other's employees, agents, directors, members, officers, attorneys, insurers and related parties (but specifically excluding Allegiant as a "related party") from all claims and damages
6. The parties acknowledge that a more comprehensive mutual release will be executed incorporating the terms of this Agreement. The parties intend for this Agreement to be enforceable by the Court, and if any material term is omitted, the Court shall determine what is reasonable rather than voiding this Agreement.
7. All parties authorize their respective attorneys to execute a dismissal with prejudice.
8. The parties shall equally divide the costs of the mediation seven ways.


PRESIDENT, K. A. DIEHL & ASSOCIATES, INC.

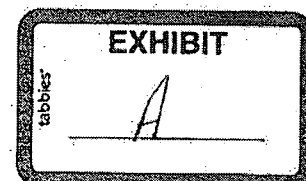

for William Moore (Hobby)


Emel Dos Santos


for Mark Smith


FOR ALL DEFENDANTS / TO Party 715

8
/



Nancy Moore

Callum Franke

Jeff Perkins

Ernesto de la Cruz

Mark Salas w/pen

May 1, 2017

Christa Skigman w/pen

William Moore

~~John~~

Jeff Meland w/pen

MA17-126

42

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
K.A. Diehl and Associates, Inc.,	)	Civil Action No.: 2015-CP-26-5573
	)	
Plaintiff,	)	
	)	
vs.	)	MUTUAL RELEASE IN FULL
	)	
James Perkins, Colleen Franke, a/k/a	)	
Colleen Franke Perkins, Mark Dos Santos,	)	
Nancy Moore, William Moore, Steven	)	
Dame, and Errol Dos Santos,	)	
	)	
Defendants.	)	

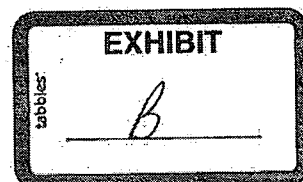
This Mutual Release In Full ("Release") is made by and amongst *Plaintiff K.A. Diehl and Associates, Inc.*, on the one hand, and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos*, on the other hand. *Plaintiff K.A. Diehl and Associates, Inc.* and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos* are collectively referred to herein as "the Parties."

WHEREAS, Plaintiff initiated the above captioned action against the above named Defendants. The above captioned action is referred to herein as "the Litigation."

WHEREAS, the Parties now wish to resolve all claims that were raised or could have been raised between them in the Litigation;

WHEREAS, the Parties deny the claims and allegations asserted against them in the Litigation and deny any wrongdoing related this Litigation;

WHEREAS, the Parties desire to avoid the expense, uncertainties, and risks of continued litigation between them and to fully, finally, and forever compromise and settle all claims



pertaining between them which were raised or could have been raised in the Litigation, whether known or unknown or hereinafter discovered.

NOW THEREFORE, in consideration of:

- (a) One Hundred Thousand and 00/100 (\$100,000.00), the amount paid by Defendants' insurers to Plaintiff in settlement of Plaintiff's claims against Defendants in this Litigation;
- (b) Five Thousand and 00/100 (\$5,000.00), the amount paid by Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. ("OFS") to Plaintiff for property management services through June 1, 2017, after which Plaintiff's property management services shall cease;
- (c) Ten Thousand and 00/100 (\$10,000.00), the additional amount paid by OFS to Plaintiff by June 10, 2017;
- (d) Transfer of financial records and other documentation and assets by Plaintiff to OFS by June 15, 2017, as required by South Carolina law and generally accepted property management standards;
- (e) the dismissal, with prejudice, of all claims and counterclaims that were brought or that could have been brought in the Litigation by and between the Parties;
- (f) the mutual covenants and releases set forth below; and
- (g) other good and valuable consideration as set forth herein, the receipt and sufficiency of which the Parties to this Release hereby acknowledge,

The Parties agree as follows:

1. The Parties, and any and all of their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors, for and in consideration of the

covenants and promises set forth above, the receipt and sufficiency of which is hereby acknowledged, hereby remise, release, acquit, hold harmless, and forever discharge one another (including their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors) and their insurers (including their third party claims administrators), of and from any and all past, present, and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental, special, consequential, statutory, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any kind whatsoever now existing or which may hereafter accrue relating this Litigation, whether known or unknown, discovered or undiscovered, and any losses or damages resulting from, or which may in any way be alleged to have resulted from the work or services provided by the Parties. It is the expressed intent of the Parties to fully, completely, and forever release each other from any and all claims now existing, having anything to do, in any way, with the allegations in this Litigation or any allegations of any losses or damages resulting from services provided by Plaintiff and from Defendants' actions, which resulted in this Litigation.

2. Each of the Parties hereby represents and warrants that they have not assigned or transferred or purported to assign or transfer to any person or entity not a signatory to this Release any claim or matter herein released, disclaimed, discharged, or terminated. In the event of any assignment or transfer of any claims for relief or other matters herein released, discharged, terminated, or disclaimed, the assigning or transferring party agrees to indemnify and hold harmless each other party, as well as any parent, affiliate, or subsidiary, from and against any liability or loss and for any cost or expense, including

attorneys' fees, or judgment or settlement arising out of or occasioned by any such assignment or transfer.

3. Notwithstanding any other provision, the Parties agree and acknowledge that this Release is a compromise of disputed claims and neither the existence of the Release, nor any recitals, terms, conditions, or other statements contained in it, nor the payment of the settlement amount to Plaintiff shall be construed as an admission of liability by or on the part of the Parties for any allegation or claim. The respective Parties do not admit, but instead expressly deny all liability for the claims asserted against them and the Parties enter into this settlement solely to avoid the expense, uncertainties, and risks of further litigation. Consequently, this Release shall not be admissible in the Litigation or in any other action, suit, or legal proceeding as evidence of any liability, culpability, or fault of or on the part of the Parties.
4. The undersigned Parties declare and represent that they have read this Release and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that the instrument contains the entire agreement between the Parties hereto and that the terms of this instrument are contractual and not mere recitals; and further, that if any paragraph or part of this Release is found void or unenforceable, the remainder of this Release shall not be affected.
5. This instrument shall be binding on all the undersigned Parties' successors in interests, heirs, purchasers, and assignees.
6. This Release shall be construed in accordance with the laws of the State of South Carolina.

7. The Parties agree to cooperate so as to effectuate the dismissal of this Litigation and all such claims as may have been alleged in the Litigation amongst or between them, including but not limited to the filing of a stipulation of dismissal with prejudice of the same.
8. This Release represents the entire agreement between the Parties with respect to the subject matters contained herein. Neither this Release nor any provision hereof may be changed, waived, discharged, or terminated orally. This Release may be modified or amended only by a written agreement executed by the Parties.
9. Each signatory acknowledges that he or she is authorized to execute this Release on behalf of the respective party, that the party has fully read this Release, that the party understands all the terms and conditions set forth herein, and that the party is entering into this Release voluntarily and without promise or benefit other than as set forth herein.
10. The Parties represent and declare that in executing this Release they relied solely upon their own judgment, belief, and knowledge, and that they have had ample opportunity to consult with legal counsel of their choice concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other Party or by any person representing any of such other Party.

Additionally, as it relates to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc., and K.A. Diehl and Associates, Inc.:

1. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. is not a party to the subject litigation; nevertheless Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. the sum of Five Thousand and 00/100 (\$5,000.00) for property management services through June 1, 2017;
2. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. an additional sum of Ten Thousand and 00/100 (\$10,000.00) by June 10, 2017;
3. In consideration for the above payments, K.A. Diehl and Associates, Inc. will cease its property management services and maintenance services at Ocean Front Spa on June 1, 2017. Additionally, K.A. Diehl and Associates, Inc. shall transfer all financial records and other documentation and assets in its possession to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. by June 15, 2017, as required by South Carolina law and generally accepted property management standards.
4. The agreements articulated above in the preceding the paragraphs are extent of the agreements between Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. and K.A. Diehl and Associates, Inc. as it pertains to the instant case.

IN WITNESS WHEREOF, the undersigned have executed this document on the
respective dates noted.

YOU ARE MAKING A FINAL SETTLEMENT

READ BEFORE SIGNING

The Undersigned state they have carefully read the foregoing Release, know the contents
thereof, accept these terms, agree to abide by them, and sign the same as their own free act.

[Signature Pages to Follow]

WE HAVE READ THE FOREGOING RELEASE AND THE FOREGOING LIMITED AGREEMENT WITH MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.

WITNESSES:

K.A. DIEHL AND ASSOCIATES, INC.:

Madison A Cragg
John S. Boselli

By: John S. Boselli
Its: PRESIDENT

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared K.A. DIEHL AND ASSOCIATES, INC., By: John S. Boselli, Its: President, who being duly sworn, deposed and said that K.A. DIEHL AND ASSOCIATES, INC. is Plaintiff in the foregoing matter, is a signator to the foregoing matter as it pertains to its limited agreement with MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC., that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument on behalf of K.A. DIEHL AND ASSOCIATES, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
10 day of June, 2017

Madison A Cragg
Notary Public for South Carolina - Delaware
My Commission expires: 06/01/2020

MADISON A. CRAGG
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires June 1, 2020

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Carl Frank
Angela C. Gonzalez

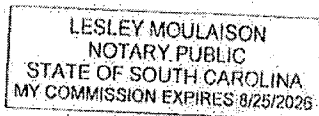
James Perkins
JAMES PERKINS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared JAMES PERKINS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
23 day of October, 2017

Lesley Moulaison
Notary Public for South Carolina
My Commission expires: 8/25/2026



I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Angela C. Gonzalez
Jim Perkins

Colleen Franke
COLLEEN FRANKE,
A/K/A COLLEEN FRANKE PERKINS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared COLLEEN FRANKE, A/K/A COLLEEN FRANKE PERKINS, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
23 day of October, 2017

Lesley Moulaison
Notary Public for South Carolina
My Commission expires: 8/25/2026

LESLEY MOULAISON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 8/25/2026

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

MARK DOS SANTOS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared MARK DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Amy Neuschaefer
Angel C. Gonzalez

Nancy Moore
NANCY MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared NANCY MOORE, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
24th day of October, 2017

Lesley Moulaison
Notary Public for South Carolina
My Commission expires: 8/25/2026

LESLEY MOULAISON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 8/25/2026

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Amy Z. Neuse
Angela C. Gomez

William A. Moore
WILLIAM MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared WILLIAM MOORE, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter; that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
24th day of October, 2017.

Lesley Moulaison
Notary Public for South Carolina
My Commission expires: 8/25/2026

LESLEY MOULAISON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 8/25/2026

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Julius Kelly
[Signature]

[Signature]
STEVEN DAME

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared STEVEN DAME, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
14th day of June, 2017

[Signature]
Notary Public for South Carolina
My Commission expires: 9/16/2026



I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

[Signature]
[Signature]

[Signature]
ERROL DOS SANTOS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared ERROL DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this

11th day of July, 2017.

[Signature]
Notary Public for South Carolina

My Commission expires: 6/26/2018

CYNTHIA R. PHILLPOTTS
Notary Public State of New York
No. 01PH6146723
Qualified in Suffolk County
Commission Expires June 26, 2018

WE HAVE READ THE FOREGOING LIMITED AGREEMENT WITH K.A. DIEHL & ASSOCIATES, INC.

WITNESSES: MYRTLE BEACH RESORT,
OCEAN FRONT SPA PROPERTY REGIME, INC.

By: _____

Its: _____

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.,
By: _____, Its: _____, who being duly sworn, deposed and said that MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC. is a signator to the foregoing matter as it pertains to its limited agreement with K.A. Diehl & Associates, Inc., that (s)he has read the foregoing instrument and is familiar with the contents thereof, that (s)he executed the foregoing instrument on behalf of MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2605573

ELECTRONICALLY FILED - 2018 Oct 09 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605573

KA Diehl and Associates Inc	Jeff 3Rd Party Richardson	Jim Perkins Colleen Franke Perkins Nancy Moore Steven Dame 3Rd Party Ocean Front Spa Horizontal Property Regime Inc	Colleen Franke Mark Dos Santos William Moore Errol Dos Santos
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

Defendant's Motion/Reconsider.
MOTION DENIED

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.

	2157	10/8/2018
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:

Alicia E. Thompson PO Box 336 Myrtle Beach, SC 29578
Henrietta U. Golding Mcnair Law Firm PO Box 336 Myrtle Beach, SC 29578
Julie Jeffords Moose Mcangus GOUDELOCK & COURIE,
 LLC PO Box 12519, Capitol Station Columbia, SC 29211-2519
Julie Jeffords Moose Mcangus GOUDELOCK & COURIE,
 LLC PO Box 12519, Capitol Station Columbia, SC 29211-2519

Lucas James Asper 300 North Main Street, Suite 500
 Greenville, SC 29601
Phillip Arthur Kilgore PO Box 2757 Greenville, SC 29602
Robert Walton Buffington PO Box 340 Charleston, SC 29402
G. Michael Smith Sr. PO Box 1740 Conway, SC 29528
Meghan Hazelwood Hall 1330 Lady Street 6Th Floor
 Columbia, SC 29201
Jackson H. Daniel III 40 Calhoun St., Ste. 400 Charleston, SC 29401
Perry McPherson Buckner IV PO Box 993 Charleston, SC 29402
John Joseph Owens PO Box 993 Charleston, SC 29402
Donald Jay Davis Jr. PO Box 993 Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

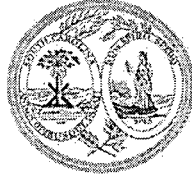
Renee N. Elvis - Clerk of Court

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-Fileers 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: KA Diehl and Associates Inc , plaintiff, et al VS Jim Perkins ,
defendant, et al
Case Number: 2015CP2605573
Type: Order/Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2018-10-08 20:25:40 page 3 of 3

ELECTRONICALLY FILED - 2018 Oct 09 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605573

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K.A. Diehl and Associates, Inc.,

Plaintiff,

v.

James Perkins, Colleen Franke, a/k/a Colleen
Franke Perkins, Mark Dos Santos, Nancy Moore,
William Moore, Steven Dame, and Errol Dos
Santos.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2015-CP-26-

5513

SUMMONS

(JURY TRIAL DEMANDED)

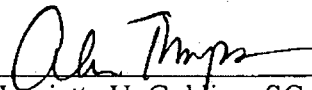
HORRY COUNTY
2015 JUL
PH12:52
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorneys, McNair Law Firm, P.A., P.O. Box 336, Myrtle Beach, South Carolina 29578, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint. Your Answer must be in writing and signed by you or by your attorney and you must state your address or address of your attorney, if signed by your attorney.

SIGNATURE BLOCK – NEXT PAGE

McNAIR LAW FIRM, P.A.



Henrietta U. Golding, SC Bar #2173
Alicia E. Thompson, SC Bar # 77056
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: (843) 444-1107
Fax: (843) 444-4729
Email: hgolding@mcnair.net
athompson@mcnair.net

Attorneys for the Plaintiff
K.A. Diehl and Associates, Inc.

Myrtle Beach, South Carolina
July 23, 2015

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

K.A. Diehl and Associates, Inc.,

Plaintiff,

v.

James Perkins, Colleen Franke a/k/a Colleen Franke
Perkins, Mark Dos Santos, Nancy Moore, William
Moore, Steven Dame, and Errol Dos Santos.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2015-CP-26-

5573

COMPLAINT

(JURY TRIAL DEMANDED)

HORRY COUNTY
2015 JUL 23 PM 12:53
CLERK OF COURT

The Plaintiff, K.A. Diehl & Associates, Inc. (hereinafter "K.A. Diehl"), complaining of Defendants, James Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Do Santos (collectively referred to hereinafter as "**Defendants**"), would respectfully show unto this Court as follows:

FIRST CAUSE OF ACTION
(Defamation)

1. K.A. Diehl is a corporation organized and existing pursuant to the laws of the State of South Carolina and is the association management company for Myrtle Beach Resort Homeowners Association, Inc. (hereinafter referred to as "**MBR Association**"), the master association for Myrtle Beach Resorts located in Horry County, South Carolina, and Myrtle Beach Resort, Ocean Front Spa Horizontal Property Regime, Inc. (hereinafter referred to as "**OFS Association**"), a subordinate association for a Myrtle Beach Resort condominium.

2. Upon information and belief, Defendant James Perkins is a resident of Nevada and an owner of real property located in Myrtle Beach Resort in Horry County, South Carolina.

3. Upon information and belief, Defendant Colleen Franke a/k/a Colleen Franke Perkins is a resident of Nevada and an owner of real property located in Myrtle Beach Resort in Horry County, South Carolina.

4. Upon information and belief, Defendant Mark Dos Santos is a resident of Georgia and an owner of real property located in Myrtle Beach Resort in Horry County, South Carolina.

5. Upon information and belief, Defendant Nancy Moore is a resident of Horry County, South Carolina and an owner of real property located in Myrtle Beach Resort in Horry County, South Carolina.

6. Upon information and belief, Defendant William Moore is a resident of Horry County, South Carolina and an owner of real property located in Myrtle Beach Resort in Horry County, South Carolina.

7. Upon information and belief, Defendant Steven Dame is a resident of Horry County, South Carolina and an owner of real property located in Myrtle Beach Resort in Horry County, South Carolina.

8. Upon information and belief, Defendant Errol Dos Santos is a resident of New York and an owner of real property located in Myrtle Beach Resort in Horry County, South Carolina.

9. This civil action arises out of the Defendants' defamatory statements and unlawful conduct against K.A. Diehl related to its management of the MBR Association and OFS Association in Horry County, South Carolina.

10. This Honorable Court has jurisdiction over the parties and the subject matter of this lawsuit.

11. Myrtle Beach Resort is a mixed use development located on oceanfront property in Myrtle Beach, South Carolina. This Resort is comprised of several horizontal property regimes that contain residential and commercial units.

12. The real property that is comprised of Myrtle Beach Resort is restricted by the Declaration of Covenants, Conditions, and Restrictions for Myrtle Beach Resort Homeowners' Association, Inc. filed in the Horry County, South Carolina Register of Deeds Office (hereinafter referred to as "**Declaration**").

13. The MBR Association is the master association for Myrtle Beach Resort and governs its members pursuant to the Declaration and the Bylaws of the MBR Association.

14. K.A. Diehl has been the association management company for the MBR Association since 2005.

15. The MBR Association and K.A. Diehl entered into an association management agreement dated November 14, 2014 with a three (3) year term beginning on January 1, 2015, whereby K.A. Diehl agreed to assist the MBR Association in fulfilling its duties pursuant to the Declaration and its Bylaws.

16. K.A. Diehl also entered into association management agreements with Myrtle Beach Resort Horizontal Property Regime, Inc., Myrtle Beach Resort The 5 Seasons Centre Council of Co-Owners, Inc., and the OFS Association, subordinate associations in the Myrtle Beach Resort, for three (3) year terms beginning in 2015.

17. Defendant Nancy Moore is a member of the OFS Association Board of Directors.
18. Defendant James Perkins is a member of the OFS Association Board of Directors and served on the MBR Association Board of Directors from April, 2014 through April, 2015.
19. Myrtle Beach Resorts Vacations has a contract with the MBR Association to manage rentals and sales of Myrtle Beach Resorts units.
20. Allegiant Food and Beverage, LLC rents commercial space from the MBR Association and provides food and beverage services to the MBR Association and its members.
21. In the Spring 2015, Defendants Mark Dos Santos and Steven Dame submitted their nominations for election to the Board of Directors of the OFS Association.
22. On or about March 17, 2015 and March 28, 2015, Defendant Nancy Moore solicited Glen "Rusty" Magill, K.A. Diehl community manager for the MBR Association and OFS Association, to terminate his employment with K.A. Diehl and to become an OFS Association employee to serve in the capacity of community manager.
23. On or about April 20, 2015, Defendants James Perkins and Nancy Moore solicited Glen "Rusty" Magill to terminate his employment with K.A. Diehl and to become an OFS Association employee to serve in the capacity of community manager.
24. During the March, 2015 and April, 2015 above solicitations, Nancy Moore and James Perkins stated that, if Mark Dos Santos and Steven Dame were elected to the OFS Association Board of Directors, they would vote in favor of terminating K.A. Diehl's contract and hiring Glen "Rusty" Magill as an OFS Association employee to serve as the property manager.
25. Defendants Nancy Moore and James Perkins were attempting to solicit Glen "Rusty" Magill's assistance in electing defendants Mark Dos Santos and Steven Dame for their

benefit, to control the OFS Association Board of Directors, and in violation of K.A. Diehl's contract with the OFS Association.

26. Furthermore, if elected as directors, Defendants Mark Dos Santos, Steven Dame, Nancy Moore and James Perkins planned to terminate K.A. Diehl's contract with the OFS Association.

27. Glen "Rusty" Magill declined the solicitations by Defendants Nancy Moore and James Perkins and advised that their behavior was inappropriate.

28. In April, 2015, Mark Dos Santos and Steven Dame were not elected to the OFS Association Board of Directors.

29. On June 10, 2015, K.A. Diehl, by and through its chief executive officer, Jack Boselli, sent a memorandum to Walter Jordan and the members of the OFS Association Board of Directors providing notice that it violated the non-solicitation provision in the contract, by and through board members Nancy Moore and James Perkins. The June, 2015 Memorandum is attached hereto as Exhibit "A".

30. On or about June, 2015, Defendants published false accusations regarding K.A. Diehl, the MBR Association, the OFS Association, and its vendors on www.change.org and www.facebook.com.

31. The Defendants circulated a petition on www.change.org (hereinafter referred to as "**Petition**"). The Petition is attached hereto as Exhibit "B". The Petition was signed by each of the Defendants and was further circulated by email and/or posted to social media pages, such as www.facebook.com.

32. The aforesaid Petition includes the following false statements and/or accusations regarding K.A. Diehl:

- a. "Failure to bill Allegiant Food and Beverage, LLC utilities for a period of four years amounting in excess of \$60,000.00";
- b. "Failing to procure realistic bids for contracts";
- c. "Negligent hiring of managers by KA Diehl";
- d. "Charging homeowners overtime for Watchmen Services in contravention of contract provisions";
- e. "Failing to properly monitor or account for funds paid to Watchmen Services";
- f. "Interested parties involved in the election process";
- g. "Failing to properly report proxy votes prior to election";
- h. "Failing to provide homeowners their due portion of commission for real estate sales";
- i. "Failing to abide by the master deed and by-laws as it relates to providing board members with information and other such protocol";
- j. "Undisclosed conflicts of interest between board members and vendors".

33. With respect to the false accusations set forth in the aforesaid Petition, the Defendants were aware that Allegiant Food and Beverage, LLC entered into a payment plan with MBR Association for the payment of utilities as set forth in the agreement dated January 28, 2015 between MBR Association and Allegiant Food and Beverage, LLC (hereinafter referred to as "**Allegiant Agreement**"). The January 28, 2015 MBR Association Agreement with Allegiant Food and Beverage, LLC is attached hereto as Exhibit "C".

34. The Defendants had access to the Allegiant Agreement posted to the MBR Association website.

35. The false statement set forth in Paragraph 32(c) herein refers to Glen "Rusty" Magill and was made in retaliation of his denial of Defendants' Nancy Moore's and James Perkins' March, 2015 and April, 2015 solicitations and reporting the improper solicitations to the Plaintiff.

36. Although the Petition was directed at the MBR Association, the Defendants allegations regarding the election were related to the OFS Association properly held election, whereby defendants Mark Dos Santos and Steven Dame were defeated, and was sent in an effort to control the OFS Association Board and to retaliate against K.A. Diehl.

37. The Petition further stated that the issues were "talked over with KA Diehl" and the Defendants "did not receive answers"; however, K.A. Diehl, the MBR Association, and the OFS Association fully and completely responded to the Defendants repeated, bad faith requests for information and provided evidence that their accusations were false.

38. After the Petition was circulated, Defendant Errol Dos Santos posted in the comments section under the Petition on www.change.org that "I am very concerned about the horrible way K.A. Diehl is running our investment here. Also some board members forgiving payments of a vendor to the HOA. We need a clean sweep of all guilty people here, K.A. Diehl and vendors."

39. Defendant Errol Dos Santos is the father of Defendant Mark Dos Santos, and the statements were made as a result of Mark Dos Santos' lost election.

40. Defendants participated in a Facebook group on www.facebook.com in order to circulate the above referenced defamatory statements about K.A. Diehl, the MBR Association, the OFS Association, and its vendors.

41. The Defendant Steven Dame published the contents of the Petition to Walter Jordan, President of OFS Association, which included the same defamatory statements set forth in Paragraph 32 herein, by an email dated July 6, 2015, and copied Defendants James Perkins, Colleen Franke a/k/a Colleen Franke Perkins, William Moore, and Nancy Moore. The email from Steven Dame dated July 6, 2015 to Walter Jordan and Walter Jordan's response is attached hereto as Exhibit "D".

42. In the July 6, 2015 email, Defendant Steven Dame demanded that Walter Jordan resign as President of OFS Association.

43. Upon information and belief, Defendant Steven Dame circulated the Petition to Walter Jordan and demanded his resignation for his own benefit.

44. The Defendant Colleen Franke a/k/a Colleen Franke Perkins sent an email dated July 7, 2015 to OFS Association members stating the following "Last year over Sixty Thousand Dollars was found unbilled and unpaid form our onsite vendor MBRV. Why they were unbilled is question for our management company since that was part of its duties. That's a e-mail for another time. . . The refusal to allowing the audit makes me believe there is more to be found. . . An audit will plug any holes that may have been drilled in our bucket." The email from Colleen Franke a/k/a Colleen Franke Perkins dated July 7, 2015 is attached hereto as Exhibit "E".

45. The July 7, 2015 email from Defendant Colleen Franke a/k/a Colleen Franke Perkins was sent in bad faith and with knowledge of its falsity, as her husband, James Perkins, director of MBR Association, negotiated and signed the Allegiant Agreement that was posted to the MBR Association website.

46. The Defendant Mark Dos Santos sent an email dated July 7, 2015 to several MBR Association members that stated "Ballot stuffing (voter fraud)—we have information that

suggest that there was ballot stuffing during the election, and that board members were/are made aware of this, yet have still done nothing about it. Interference, voting fraud, etc. serves to undermine our democratic process and ability to vote out incumbents . . . Despite every opportunity we have given the board members & vendors to take corrective action and to do the right thing, unfortunately they have failed to resolve the issues within the resort." The email from Mark Dos Santos dated July 7, 2015 is attached hereto as Exhibit "F".

47. The Defendant Mark Dos Santos stated in his July 7, 2015 email to the members of the MBR Association that K.A. Diehl fraudulently conducted the OFS Association election.

48. Defendant Mark Dos Santos acted with malice and with knowledge of its falsity when he sent the July 7, 2015 email, as he made the statements in attempt to challenge the properly held election.

49. On July 10, 2015, the Defendant Colleen Franke a/k/a Colleen Franke Perkins sent an email to the MBR Association and OFS Association members implying that K.A. Diehl improperly conducted an election of the OFS Association Board of Directors. The email from Colleen Franke a/k/a Colleen Franke Perkins dated July 10, 2015 is attached hereto as Exhibit "F".

50. The July 10, 2015 email was sent in bad faith and in an effort to assist Mark Dos Santos and Steven Dame in challenging the properly conducted OFS Association election.

51. The Defendants' statements regarding K.A. Diehl as referenced in Paragraphs 30 through 50 are false and defamatory.

52. The Defendants' defamatory statements regarding K.A. Diehl are unprivileged.

53. The Defendants published the above referenced statements to third parties, including but not limited to, the MBR Association's Board of Directors, members, and its attorneys.

54. The above referenced statements were published by the Defendants to the public at large, by posting the statements on www.change.org and www.facebook.com.

55. The statements were published with knowledge that the statements were false, or with reckless disregard of the falsity of the statements at the time they were made, as the MBR Association and K.A. Diehl provided the Defendants with information that proved the falsity of the Defendants' statements and/or the Defendants failed to verify the accuracy of the statements before they were made.

56. The written statements are actionable per se, because they allege impropriety and inadequacy in performing a trade or profession and accusations of criminal conduct, and accordingly, damages are presumed as a matter of law.

57. Nonetheless, to the extent that any of the statements are not actionable per se, they were published with actual or implied malice in an effort to damage the reputation of K.A. Diehl, as form of retaliation, and to interfere with the K.A. Diehl's management agreement.

58. The statements were circulated as a method of retaliating against K.A. Diehl, the MBR Association, and the OFS Association, because defendants Mark Dos Santos and Steven Dame lost the properly held election for the Board of Directors.

59. Furthermore, the statements were circulated as an effort to retaliate against K.A. Diehl's employee, Glen "Rusty" Magill, for refusing to assist the Defendants in electing Mark Dos Santos and Steven Dame.

60. The Defendants published the false and defamatory statements with malice, as it was an attempt to improperly interfere with K.A. Diehl's contract with the MBR Association, the OFS Association, and/or the other Myrtle Beach Resort subordinate associations.

61. As a proximate result thereof, K.A. Diehl suffered legally presumed damages, as well as special damages, including but not limited to, delay, disruption, pecuniary loss, damage to reputation, and loss of good will.

62. By reason of the above wrongful acts of the Defendants, K.A. Diehl is entitled to recover actual damages from the Defendants and punitive damages in order to deter such actions by the Defendants in the future.

SECOND CAUSE OF ACTION
(Tortious Interference with a Contractual Relationship)

63. The allegations set forth in the preceding Paragraphs are incorporated herein and made part and parcel of this cause of action.

64. K.A. Diehl and the MBR Association entered into an association management agreement dated November 14, 2014 for a three (3) year term commencing January 1, 2015.

65. The Defendants, by and through their attorney, published false statements to the MBR Association's Board of Directors, members, and attorneys attacking the reputation of K.A. Diehl.

66. K.A. Diehl has also entered association management agreements with third party associations, including the OFS Association and the other Myrtle Beach Resort subordinate associations.

67. The Defendants posted false statements impeaching the reputation and credibility of K.A. Diehl on websites such as www.change.org and www.facebook.com and email

communications to members of the MBR Association, the OFS Association, and the other Myrtle Beach Resort subordinate associations.

68. The Defendants intentionally, willfully, and wantonly communicated false, incriminating, and damaging untruths about K.A. Diehl to its existing clients, including but not limited to, the MBR Association, the OFS Association, and the other Myrtle Beach Resort subordinate associations.

69. Defendants' intentional interference with K.A. Diehl's existing contractual relationships caused or will cause K.A. Diehl to suffer damages, to lose clients, profits, goodwill, and reputation.

70. The Defendants intentionally, willfully, and wantonly interfered with K.A. Diehl's existing contractual relationships, not based on any legitimate purpose, but for the express and sole goal of exacting retribution on and harming K.A. Diehl's business, and as a result, K.A. Diehl is entitled to actual, consequential, and punitive damages.

THIRD CAUSE OF ACTION

(Intentional Interference with Prospective Contractual Relations)

71. The allegations set forth in the preceding Paragraphs are incorporated herein and made part and parcel of this cause of action.

72. K.A. Diehl maintains prospective contractual relationships and legitimate, reasonable expectations of entering into valid, binding contracts with a number of potential clients.

73. The Defendants intentionally, willfully, wantonly, and with reckless disregard for the prospective contractual relationships of K.A. Diehl interfered with the prospective contractual relationships between K.A. Diehl and these entities by posting false statements online on www.change.org and www.facebook.com and other websites.

74. The Defendants intentionally, willfully, and wantonly communicated false, incriminating, and damaging untruths about K.A. Diehl to these prospective clients.

75. Defendants' intentional interference with K.A. Diehl's prospective contractual relationships, upon information and belief, caused K.A. Diehl to lose clients, profits, goodwill, and reputation.

76. The Defendants intentionally, wantonly, and willfully interfered with K.A. Diehl's prospective contractual relationships, not based on any legitimate purpose, but for the express and sole goal of exacting retribution on and harming K.A. Diehl, and as a result, K.A. Diehl is entitled to actual, consequential, and punitive damages.

FOURTH CAUSE OF ACTION
(Civil Conspiracy)

77. The allegations set forth in the preceding Paragraphs are incorporated herein and made part and parcel of this cause of action.

78. The Defendants combined together and acted in concert in an attempt to damage K.A. Diehl's business and reputation.

79. The purpose of the conspiracy was to terminate K.A. Diehl's contracts with the MBR Association, the OFS Association, and third party associations.

80. The conspiracy has caused K.A. Diehl special damages.

81. By reason of the above actions of the Defendants, K.A. Diehl is entitled to recover the damages from the Defendants and an amount of punitive damages sufficient to deter such actions by the Defendants in the future.

FIFTH CAUSE OF ACTION
(Permanent Injunction)

82. The allegations set forth in the preceding Paragraphs are incorporated herein and made part and parcel of this cause of action.

83. K.A. Diehl will suffer irreparable harm unless Defendants are ordered to cease the dissemination of any defamatory statements regarding K.A. Diehl through any form of media or communications, including but not limited to, newspapers, blogs, websites, social media websites, billboards, television stations, any other media outlets, electronic messages, emails, or facsimile transmissions.

84. K.A. Diehl will suffer irreparable harm unless Defendants are enjoined from contacting any existing or prospective clients of K.A. Diehl for the purpose of disseminating defamatory statements regarding K.A. Diehl.

85. If an injunction is not granted, the Defendants could destroy the reputation, existing contractual relationships, and business prospects of K.A. Diehl.

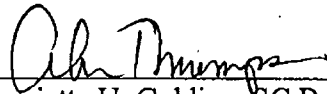
86. K.A. Diehl maintains no adequate remedy at law to prevent Defendants from disseminating untruths regarding K.A. Diehl, and to the extreme detriment of K.A. Diehl, an award of money damages alone will not remedy the harm to the goodwill and reputation that will continue to be suffered by K.A. Diehl.

87. K.A. Diehl is entitled to an order enjoining the Defendants from publishing defamatory statements regarding K.A. Diehl to its existing and prospective clients and to the public at large through various forms of media and communications, as well as the monetary damages sought in the above causes of action.

WHEREFORE, K.A. Diehl prays that this Honorable Court inquire into the matters set forth herein and grant the following:

- A. A Judgment against the Defendants for the damages sought in the First through Fourth Causes of Action;
- B. An Order granting K.A. Diehl a permanent injunction enjoining the Defendants' unlawful conduct as set forth in the Fifth Cause of Action;
- C. Any and all such other and further relief as this Court deems just and proper.

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Attorneys for Plaintiff K.A. Diehl & Associates, Inc.

Myrtle Beach, South Carolina
July 23, 2015

ORIGINAL

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

K.A. DIEHL and ASSOCIATES, INC.,

Plaintiff,

vs.

James Perkins, Colleen Franke, a/k/a
Colleen Franke Perkins, Mark Dos Santos,
Nancy Moore, William Moore, Steven
Dame, and Errol Dos Santos,

Defendants.

**IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT**

Civil Action No.: 2015-CP-26-05573

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT AND
COUNTERCLAIMS**

FILED
Horry County
2016 FEB -2 AM 11:47
JULIE HIGGINS
CLERK OF COURT
S-WARD

NOW COMES COUNSEL THOMAS C. BRITTAIN, PRESTON BRITTAIN, CHRISTIAN STEGMAIER, ROBERT BUFFINGTON, and CHRISTOPHER NICKELS on behalf of the Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, (hereinafter referred to as "Defendant or Defendants" collectively), answering Plaintiffs' Complaint and responding with defenses to the same and bringing Counterclaims.

GENERAL DENIAL

Defendants deny each and every allegation contained in the complaint set forth by Plaintiffs and demand strict proof thereof. Any such paragraphs or allegations not specifically admitted in this answer are hereby denied.

1. Defendants admit the allegations contained in paragraphs 1 - 8 of Plaintiff's complaint.
2. As to paragraph 9 of Plaintiff's complaint, Defendants deny defamatory statements and unlawful conduct and demand strict proof thereof. Defendants admit K.A. Diehl's action

relates to its management of the MBR Association and OFS Association in Horry County, South Carolina.

3. Defendants admit the allegations contained in paragraphs 10.
4. Defendants admit the allegations contained in paragraph 11, specifically that there are there are four regimes.
5. Defendants admit the allegations contained in paragraph 12.
6. Defendants deny that the allegations in paragraph 13 that relate to the scope of the Master Board's governance. Specifically, Defendants admit that the Master Board governs the common areas, but denies any additional government of the property and such other allegations contained in paragraph 13 relating to the same. Defendant admits the remaining allegations contained in paragraph 13 not related to the Master Board's authority.
7. Defendants admit to the allegations contained in paragraphs 14 and 15.
8. Defendants have insufficient knowledge to either admit or deny the allegations as set forth in paragraph 16 of Plaintiff's complaint.
9. Defendants admit the allegations contained in paragraph 17 of Plaintiff's complaint.
10. Defendants admit the allegations contained in paragraph 18, but deny the nomenclature of "MBR Association Board of Directors" and admit to Perkins' service on the "Master Board Association."
11. Defendants admit the allegations of paragraph 19-21, but deny the nomenclature of "MBR Association Board of Directors."
12. Defendants deny the allegations set forth in paragraph 22 of Plaintiff's complaint and demand strict proof thereof.

13. Defendants deny the allegations set forth in paragraph 23 of Plaintiff's complaint and demand strict proof thereof.
14. Defendants deny the allegations set forth in paragraph 24 of Plaintiff's complaint and demand strict proof thereof.
15. Defendants deny the allegations set forth in paragraph 25 of Plaintiff's complain and demand strict proof thereof.
16. Defendants deny the allegations set forth in paragraph 26 of Plaintiff's complaint and demand strict proof thereof.
17. Defendants deny the allegations set forth in paragraph 27 of Plaintiff's complaint and demand strict proof thereof.
18. Defendants admit the allegations contained in paragraph 28 of Plaintiff's complaint.
19. Defendants admit the allegations contained in paragraph 29 of Plaintiff's complaint.
20. Defendants deny the allegations set forth in paragraph 30 of Plaintiff's complaint and demand strict proof thereof.
21. Defendants deny in part and admit in part the allegations set forth in paragraph 31 of Plaintiff's complaint. Defendants admit that the "petition" was available on "www.change.org" and a private facebook page but deny the remaining allegations contained in paragraph 31 of Plaintiff's complaint and demand strict proof thereof.
22. Defendants deny in part and admit in part the allegations contained in paragraph 32 of Plaintiffs' complaint. Defendants admit that the words contained in sub-section A-J were used; but denies that they were "statements or false allegations."

23. Defendants admit in part and deny part the allegations contained in paragraph 33 of Plaintiff's complaint. Defendants deny that the accusations set forth in the aforesaid Petition were false.
24. Defendants lack sufficient knowledge to admit or deny the allegations contained in paragraph 34 Plaintiff's complaint.
25. Defendants deny in part and admit in part the allegations contained in paragraph 35 of Plaintiffs' complaint. Defendants admit the allegations contained in 32(c) includes Glen "Rusty" Magill, but denies the remaining allegations and demand strict proof thereof.
26. Defendants deny in part and admit in part the allegations contained in paragraph 36 of Plaintiffs' complaint. Defendants admit the election issues were related to the OFS election, but deny the remaining allegations and demand strict proof thereof.
27. Defendants deny the allegations set forth in paragraph 37 of Plaintiff's complaint and demand strict proof thereof.
28. Defendants admit the allegations contained in paragraphs 38 of Plaintiff's complaint.
29. Defendants deny in part and admit in part the allegations contained in paragraph 39 of Plaintiffs' complaint. Defendants admit familial relation, but deny the remaining allegations and demand strict proof thereof.
30. Defendants deny in part and admit in part the allegations contained in paragraph 40 of Plaintiffs' complaint. Defendants admit they participated in a limited Facebook group page to discuss concerns and share information, but deny that said purpose was "in order to circulate the above referenced defamatory statements about K.A. Diehl, the MBR Association, the OFS Association, and its vendors" and further deny any remaining allegations and demand strict proof thereof.

31. Defendants admit in part and deny in part the allegations contained in paragraph 41 of Plaintiff's complaint. Specifically, Defendants admit that Dame sent an email containing the contents of the petition which contained the concerns of the homeowners and that Perkins, Franke, and William and Nancy Moore were copied to the same. Defendants deny any receipt of response from Walter Jordan.
32. Defendants admit the allegations contained in paragraphs 42 of Plaintiff's complaint.
33. Defendants deny the allegations set forth in paragraph 43 of Plaintiff's complaint and demand strict proof thereof.
34. Defendants admit the allegations set forth in paragraph 44 of Plaintiff's complaint.
35. Defendants deny in part and admit in part the allegations contained in paragraph 45 of Plaintiffs' complaint. Defendants admits knowledge of Allegiant Agreement but deny "bad faith" further deny any remaining allegations and demand strict proof thereof.
36. Defendants admit the allegations set forth in paragraph 46 of Plaintiff's complaint.
37. Defendants deny the allegations set forth in paragraph 47 of Plaintiff's complaint and demand strict proof thereof.
38. Defendants deny the allegations set forth in paragraph 48 of Plaintiff's complaint and demand strict proof thereof.
39. Defendants admit in part and deny in part the allegations set forth in paragraph 49 of Plaintiff's complaint. Defendants deny allegations pertaining to "implying" and "improperly" but admit the remaining allegations including the contents of the email.
40. Defendants deny the allegations set forth in paragraph 50 of Plaintiff's complaint and demand strict proof thereof.

41. Defendants deny the allegations set forth in paragraph 51 of Plaintiff's complaint and demand strict proof thereof.
42. Defendants deny the allegations set forth in paragraph 52 of Plaintiff's complaint and demand strict proof thereof. Further that such allegations seek conclusions of law.
43. Defendants admit in part and deny in part the allegations contained in paragraph 53 of the Plaintiff's complaint. Specifically, defendants deny that any communications were "statements," but admit issues were raised in the form of seeking answers to the Master Board, certain "members," and to their counsel. Defendants deny the remaining allegations set forth in paragraph 53 of Plaintiff's complaint and demand strict proof thereof.
44. Defendants deny the allegations set forth in paragraph 54 of Plaintiff's complaint and demand strict proof thereof.
45. Defendants deny the allegations set forth in paragraph 55 of Plaintiff's complaint and demand strict proof thereof.
46. Defendants deny the allegations set forth in paragraph 56 of Plaintiff's complaint and demand strict proof thereof.
47. Defendants deny the allegations set forth in paragraph 57 of Plaintiff's complaint and demand strict proof thereof.
48. Defendants deny the allegations set forth in paragraph 58 of Plaintiff's complaint and demand strict proof thereof.
49. Defendants deny the allegations set forth in paragraph 59 of Plaintiff's complaint and demand strict proof thereof.

50. Defendants deny the allegations set forth in paragraph 60 of Plaintiff's complaint and demand strict proof thereof.
51. Defendants deny the allegations set forth in paragraph 61 of Plaintiff's complaint and demand strict proof thereof.
52. Defendants deny the allegations set forth in paragraph 62 of Plaintiff's complaint and demand strict proof thereof.
53. As to paragraph 63, Defendants hereby incorporate each and every allegation and denial contained within the proceeding paragraphs as if set forth herein verbatim.
54. Defendants admit the allegations set forth in paragraph 64 of Plaintiff's complaint.
55. Defendants deny in part and admit in part the allegations contained in paragraph 65 of Plaintiffs' complaint. Defendants admit they "published" "through their attorney" questions and raised concerns to MBR Association and the Board, but deny publishing "false statements" or "attacking" the reputation of K.A. Diehl and demand strict proof thereof. Further Defendants deny any other allegations contained in paragraph 65 and demand strict proof thereof.
56. Defendants deny in part and admit in part the allegations contained in paragraph 66 of Plaintiffs' complaint. Defendants deny such other boards are "subordinate" and admit all other allegations contained herein.
57. Defendants deny the allegations set forth in paragraph 67 of Plaintiff's complaint and demand strict proof thereof.
58. Defendants deny the allegations set forth in paragraph 68 of Plaintiff's complaint and demand strict proof thereof.

59. Defendants deny the allegations set forth in paragraph 69 of Plaintiff's complaint and demand strict proof thereof.
60. Defendants deny the allegations set forth in paragraph 70 of Plaintiff's complaint and demand strict proof thereof.
61. As to paragraph 71, Defendants hereby incorporate each and every allegation and denial contained within the proceeding paragraphs as if set forth herein verbatim.
62. Defendants deny the allegations set forth in paragraph 72 of Plaintiff's complaint and demand strict proof thereof.
63. Defendants deny the allegations set forth in paragraph 73 of Plaintiff's complaint and demand strict proof thereof.
64. Defendants deny the allegations set forth in paragraph 74 of Plaintiff's complaint and demand strict proof thereof.
65. Defendants deny the allegations set forth in paragraph 75 of Plaintiff's complaint and demand strict proof thereof.
66. Defendants deny the allegations set forth in paragraph 76 of Plaintiff's complaint and demand strict proof thereof.
67. As to paragraph 77, Defendants hereby incorporate each and every allegation and denial contained within the proceeding paragraphs as if set forth herein verbatim.
68. Defendants deny the allegations set forth in paragraph 78 of Plaintiff's complaint and demand strict proof thereof.
69. Defendants deny the allegations set forth in paragraph 79 of Plaintiff's complaint and demand strict proof thereof.

70. Defendants deny the allegations set forth in paragraph 80 of Plaintiff's complaint and demand strict proof thereof.
71. Defendants deny the allegations set forth in paragraph 81 of Plaintiff's complaint and demand strict proof thereof.
72. As to paragraph 82, Defendants hereby incorporate each and every allegation and denial contained within the proceeding paragraphs as if set forth herein verbatim.
73. Defendants deny the allegations set forth in paragraph 83 of Plaintiff's complaint and demand strict proof thereof.
74. Defendants deny the allegations set forth in paragraph 84 of Plaintiff's complaint and demand strict proof thereof.
75. Defendants deny the allegations set forth in paragraph 85 of Plaintiff's complaint and demand strict proof thereof.
76. Defendants deny the allegations set forth in paragraph 86 of Plaintiff's complaint and demand strict proof thereof.
77. Defendants deny the allegations set forth in paragraph 87 of Plaintiff's complaint and demand strict proof thereof.
78. The Defendants deny the relief requested in the prayer for relief and any other such allegations contained therein and demand strict proof thereof.

FOR A FIRST DEFENSE
(TRUTH)

79. Defendants hereby incorporate each and every allegation, and denial, contained within the proceeding paragraphs as if set forth herein verbatim.
80. Defendants assert the defense of truth.

81. Defendants assert that to the extent such iterations are proved by Plaintiff to meet the criteria of "published statements," that such statements are true, including, but not limited to: 1) failure to invoice Allegiant for utilities amounting to \$60,000.00; 2) negligent hiring of Glen "Rusty" Magill; 3) failure to procure multiple insurance broker bids, 4) a familial relationship between K.A. Diehl's former CEO and the then broker of ADP Barlow.

82. Further, that Plaintiff knew the truth of the purported statements at the time Plaintiff filed said action.

FOR A SECOND DEFENSE
(QUALIFIED PRIVILEGE / GOOD FAITH)

83. Defendants hereby incorporate each and every allegation and denial contained within the proceeding paragraphs as if set forth herein verbatim.

84. Defendants assert the defense of good faith or privilege.

85. Defendants "alleged statements" were communications made in good faith regarding subject matter which Defendants have an interest in.

86. Defendants further allege such mitigating circumstances: Plaintiff's contract with MBRHOA remains unaffected; no harm to Plaintiff; prior negative reputations/comments about K.A. Diehl are obtainable online (<http://reviews.birdeye.com/diehl-k-a-associates-826602368>) (printed out and attached as "Attachment A") online activities are private or intended for private use; K.A. Diehl made no effort to remove any postings; and the filing of suit by K.A. Diehl is for the ulterior purpose of intimidating individuals and preventing dissemination of truth.

FOR A THIRD DEFENSE
(FAILURE TO MITIGATE)

87. Defendants hereby incorporate each and every allegation, and denial, contained within the proceeding paragraphs as if set forth herein verbatim.

88. Defendants assert Plaintiff failed to mitigate damages.

FOR A FOURTH DEFENSE
(FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION)

89. Defendants hereby incorporate each and every allegation, and denial, contained within the proceeding paragraphs as if set forth herein verbatim.

90. Defendants assert Plaintiff failed to state sufficient facts to constitute a cause of action pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE
(CONTRACTING PARTY/AGENT)

91. Defendants hereby incorporate each and every allegation, and denial, contained within the Answer as if set forth herein verbatim.

92. Defendants assert that they are, in their capacity as homeowners, the contracting party of the agreements between KA Diehl and OFS, and between KA Diehl and the Master Board.

93. Defendants assert that as contract parties they cannot be sued for interfering with their own current or prospective contract.

94. Defendants reserve the right to amend and add defenses.

I.
COUNTERCLAIMS
FACTUAL ALLEGATIONS

95. Defendants hereby incorporate each and every allegation, and denial, contained within the proceeding paragraphs as if set forth herein verbatim.

96. Defendants Nancy and William Moore own Units 403, 106, and 511 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.
97. Defendants Jim Perkins and Colleen Franke own Units 109, 201, 251, 301, 304, 305, 421 and 546 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.
98. Defendant Steven Dame owns Units 328 and 330 at Ocean Front Spa and is, pursuant to the Master Deed and/or ByLaws, a member of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

99. Defendant Mark Dos Santos owns Unit #101 at Ocean Front Spa and is, pursuant to the Master Deed and/or ByLaws, a member of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

100. Defendant Errol Dos Santos owns Unit 322 at Ocean Front Spa and is, pursuant to the Master Deed and/or ByLaws, a member of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

101. That upon information and belief Plaintiff K.A. Diehl entered into an agreement with the Myrtle Beach Resort Homeowners' Associations, Inc., (hereinafter referred to as "MBRHOA", "Master Board" or "Master Association"), to serve as the resort property manager.

102. That upon information and belief, K.A. Diehl initially, in 2007, managed Renaissance Tower, Ocean Front Spa, Five Seasons, and Myrtle Beach Resort HPR, and the Myrtle Beach Resort HOA which encompassed all regimes and the Master Board.

103. That upon information and belief the management agreement between K.A. Diehl and MBRHOA was modified in December of 2012.

104. Upon information and belief, the December 2012 agreement included modifications one of which was a two year term with an auto-renewal.
105. That, upon information and belief, the management agreement was modified in 2014.
106. That, upon information and belief, pursuant to the 2014 management agreement, K.A. Diehl is required to: manage accounts; manage contracts with vendors; procure competitive bids using multiple brokers for insurance; procure competitive bids for security and manage common areas; receive, review and approve invoices; and advise the Board on administrative tasks such as elections.
107. That the individual homeowners pay assessments that fund the MBRHOA for the purpose of providing services for the common elements. That the MBRHOA is tasked with procuring insurance, maintaining common areas, providing cable, etc. as is more fully set forth in the Master Deed.
108. That the homeowners, including the defendants that have been subjected to plaintiff's SLAPP suit, pay assessments through their regimes to the MBRHOA which provides funds to acquire the services of K.A. Diehl.
109. That the agreements between the MBRHOA and K.A. Diehl are for the benefit of the homeowners.
110. That, upon information and belief, K.A. Diehl continues to manage OFS, subject to the 2014 management contract.
111. That, upon information and belief, pursuant to said agreement, K.A. Diehl is required to: prepare an annual budget; administer insurance and other contracts; manage accounts, and such other tasks as enumerated in the agreement.

112. That, upon information and belief, the individual homeowners pay assessments that fund the OFS HOA for the purpose of providing services for the common elements. That the OFS Board is tasked with procuring insurance, maintaining common areas, providing cable, etc. as is more fully set forth in the Association Master Deed and Bylaws.

113. That upon information and belief, K.A. Diehl owes a duty of care to the individual homeowners.

114. That, upon information and belief, the homeowners, including the defendants that have been subjected to plaintiff's SLAPP suit, pay assessments through their regimes to the OFS which provides funds to acquire the services of K.A. Diehl.

115. That, upon information and belief, the agreements between the OFS and K.A. Diehl are for the benefit of the homeowners.

CONFLICT ALLEGATIONS

116. That in April of 2014 defendant Jim Perkins was elected to serve on the MBRHOA.

117. That Jim Perkins and Nancy Moore serve as Directors on the OFS Board.

118. That during Perkins term of service on the MBRHOA, he learned of information which led him to believe that there was a business relationship between board member Phil Cox and the largest vendor – Allegiant Food and Beverage, LLC (hereinafter "Allegiant" or "Allegiant Food and Beverage") / Myrtle Beach Resort Vacations (hereinafter "MBRV").

119. That upon information and belief, certain OFS / MBRHOA members maintain business relationships with MBRV.

120. That upon information and belief, several MBRHOA board members revised the Allegiant Food and Beverage vendor agreement in October of 2013, signing said agreement before a vote by the MBRHOA board of directors.
121. That upon information and belief, the agreement granted to Allegiant Food and Beverage to maintain the commercial lease for a period of six years before the Board would even consider other vendor bids. Further, that during the final year of the agreement, when bids are permitted, Allegiant Food and Beverage gets a right of first refusal.
122. That the conflict of interest subject matter was eventually raised at a board meeting and discussed with counsel, Sam Stathos, who identified a conflict and opined that directors with such conflict, including Phil Cox should refrain from voting on Allegiant and MBRV matters (Attachment "B" Attorney Stathos Letter).
123. That despite Attorney Stathos' opinion letter, Phil Cox refused to abstain from voting on MBRV related matters.
124. Upon information and belief, the following OFS and Master Board directors have or had during their term of service a contractual relationship with MBRV:
- a. Master Board: Phil Cox, and Stanley Jordan;
 - b. OFS Board: Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill.

INVOICE ALLEGATIONS

125. That in May of 2014, Jim Perkins, in his capacity as a director sought out the agreements between Allegiant Food and Beverage and the MBRHOA, and so obtained a copy of the same. (Attachment "C" Allegiant Food and Beverage Agreement).

126. That the agreement clearly required vendor Allegiant Food and Beverage to pay for utilities.
127. That defendant Jim Perkins discovered that K.A. Diehl had failed to invoice Allegiant Food and Beverage utilities.
128. That the failure to invoice Allegiant Food and Beverage utilities was an egregious error that would have cost the homeowners approximately \$60,000.00, if Jim Perkins had not discovered the same and required action for repayment of the full amount.
129. That upon information and belief, Allegiant Food and Beverage, through owner Bobby Jones, began reimbursing the utilities immediately after Perkins's discovery, but had only paid approximately \$30,000.00 of the approximately \$60,000.00 owed to MBRHOA. (See Attachment "D").
130. That the MBRHOA board directors discussed KA Diehl and the Master Boards' failure to invoice Allegiant and during the meeting directors Phil Cox and Wayne Urban initially voted to forgive the debt rather than seek to recoup the lost funds.
131. That ultimately the MBRHOA voted to pursue the funds, such that an agreement with Allegiant was reached. That Allegiant is scheduled to repay the remaining funds over a period of years, and that such reimbursement is presumably ongoing.
132. That neither KA Diehl or MBRHOA disclosed this failure to invoice to the homeowners at large until the individual defendants shared their concerns.
133. That upon information and belief, K.A. Diehl attempted to address the matter by blaming the mistake on unclear language from the previous commercial lease agreement.
134. That, upon information and belief, the November 2009 Commercial Lease Agreement between MBRHOA and Allegiant Food and Beverage is clear. That, upon

information and belief, it contains a section "3. Utilities" that states "Tenant [Allegiant] shall arrange and pay for the use of utilities...including, but not limited to, water, electricity, gas, sewer and telephone." (Attachment "E" November 2009 Commercial Lease Agreement).

135. That upon information and belief, KA Diehl failed to invoice MBRV for its portion of the improper gate passes. That the improper gate passes created a \$280,000.00 tax upon the homeowners per year for the last two years.
136. That upon information and belief, despite admitting this error, K.A. Diehl sued the individual defendants who brought this truth to light.

DISCLOSURE ALLEGATIONS

137. That several homeowners began asking questions about KA Diehl's management of the property and about MBRHOA's failure to investigate concerning information.
138. That defendant, Mark Dos Santos, was among those who began to seek information from both the MBRHOA and from K.A. Diehl. That defendant, Mark Dos Santos, specifically requested the contracts between the MBRHOA and its numerous vendors.
139. That defendant, Mark Dos Santos, sent numerous emails to the plaintiff inquiring about important matters.
140. That upon information and belief, the defendant, Mark Dos Santos, and others, received negative responses to include: threats of suit, and vendors' rights pamphlets.
141. That upon information and belief, at the April 2015 OFS annual meeting, a non-defendant homeowner, Alan Bolton, requested that the OFS Board permit a financial audit.

142. That upon information and belief, the OFS Board agreed that they would vote to support such an audit, but failed to do so.
143. That upon information and belief, defendant William Moore requested in writing a financial audit.
144. That the individual Defendants, through counsel, requested a financial audit of the records of the corporation.
145. That Defendants, through counsel, sent letters to the MBRHOA and to OFS board seeking investigation and action.
146. That upon information and belief, directors from the MBRHOA and OFS provided these letters to KA Diehl rather than providing the financial audit.
147. That shortly thereafter, KA Diehl brought suit against the individual homeowner defendants.

INSURANCE ALLEGATIONS

148. That upon information and belief, since 2008 K.A. Diehl has been obligated to procure insurance for the MBRHOA and all four regimes.
149. That upon information and belief, K.A. Diehl failed to procure competitive insurance broker bids relying instead solely upon ADP Barlow Insurance Co.
150. That upon information and belief, former CEO of K.A. Diehl, Rob Barlow, was at the time married to the owner of ADP Barlow Insurance, Robin Barlow.
151. That upon and belief, the failure to procure competitive bids cost the homeowners substantial money, and thus, the individual defendants ascertainable sums of money annually.

152. That upon information and belief the relationship between K.A. Diehl and ADP Barlow Insurance was eventually disclosed to OFS and the Master Board, but not to the homeowners at large.
153. Upon information and belief, when the property management contracts were reconfigured in December of 2012, K.A. Diehl's disclosure of the relationship did not obviate its contractual and ethical obligation to procure competitive bids and comparable brokerage fees.
154. Upon information and belief, the OFS master deed and bylaws requires the board to seek three year bids, not annual bids. That K.A. Diehl and OFS acquired annual bids.
155. That upon information and belief, K.A. Diehl's failure to utilize multiple brokers to procure competitive bids subjected homeowners to higher premiums and broker fees and charges.

COMMISSIONS / RENTALS ALLEGATIONS

156. That defendant Nancy Moore, serving as Treasurer of the Ocean Front Spa, learned information that led her to believe that certain sales commissions were not being properly accounted for or paid.
157. That K.A. Diehl was responsible to insure that the sales commissions were properly accounted for and paid.
158. That upon information and belief, MBRV is required to pay to MBRHOA 2% rental commissions or a base rate in the event 2% of the rental commissions does not exceed the base rate.
159. That upon information and belief, MBRHOA has the right to request rental commission income from MBRV, but that it has failed obtain the same.

160. That upon information and belief, K.A. Diehl has not requested the rental commission income from MBRV on behalf of MBRHOA.
161. That upon information and belief, the financial statements prepared by KA Diehl reflect 2% rental income paid monthly by MBRV.
162. That upon information and belief, MBRV does not actually pay 2% rental income, but instead pays the base rate.
163. That upon information and belief, 2% of MBRV's rental commissions would exceed the base rate. That regardless of whether the rental commissions actually exceed the same, K.A. Diehl and MBRHOA were negligent in not pursuing information regarding the same.

SECURITY SERVICES

164. That upon information and belief, K.A. Diehl provides security services through Watchmen Services.
165. That upon information and belief, in December of 2009, K.A. Diehl retained itself to provide certain security services at the resort.
166. That upon information and belief, the signatures of the security services agreement contain only K.A. Diehl employees and agents. (Attachment "F" Security Services Agreement 2009)
167. That upon information and belief, pursuant to the agreement, K.A. Diehl is required to provide qualified employees to secure the resort and operate the front gate, which includes collecting parking fees.
168. That upon information and belief, there is an inherent conflict of interest with K.A. Diehl's management of the property and provision of security services.

169. That upon information and belief, the compensation schedule permits K.A. Diehl's Chief of Security to effectually determine whether MBRHOA or K.A. Diehl is responsible for Watchmen Security employee overtime.
170. That upon information and belief, in 2013 security services cost over \$400,000.00.
171. That upon information and belief, in 2013 the MBRHOA paid for over 700 hours of employee overtime. (Attachment "G" Watchmen Services Payment Information 2013).
172. That upon information and belief, KA Diehl maintains an unreliable system for logging employee hours.
173. That upon information and belief, KA Diehl maintains an unreliable system for collection of parking fees.
174. That upon information and belief K.A. Diehl has hired employees that are not qualified.
175. That upon information and belief, the Master Board has permitted K.A. Diehl to maintain involvement in the security service bidding process or permitted K.A. Diehl to view competitors' bids.
176. That upon information and belief, K.A. Diehl has usurped this opportunity to insure that Watchmen Services obtains the contract.

NEGLIGENT HIRING ALLEGATIONS

177. That K.A. Diehl hired Rusty Magill to serve as manager for OFS HOA.
178. That upon information and belief, North Carolina Bankruptcy Court thoroughly examined Rusty Magill's management of a beach condominium rental business. In so

doing, the Court found, among other unfortunate findings, that Magill had "grossly mismanaged" the business. (Attachment "H", US Bankruptcy Court Order, Eastern District of North Carolina).

179. That several of the individual defendants, having learned of this information, questioned K.A. Diehl about whether the Rusty Magill whom KA Diehl had hired was in fact the same Rusty Magill whom had been discussed in bankruptcy Order.
180. That several of the individual defendants learned from Rusty Magill that K.A. Diehl had advertised and procured Rusty Magill through a Craigs List posting.
181. That several of the individual defendants questioned KA Diehl's hiring process.
182. That upon information and belief, KA Diehl initially ignored the inquiries, and has never adequately addressed the decision to hire Rusty Magill.
183. That upon information and belief, KA Diehl has failed to hire qualified security personnel.
184. That upon information and belief, K.A. Diehl employed Joseph M. Depace whom had previously pled guilty to receiving stolen property, a 3rd degree crime. (Attachment "I").
185. That upon information and belief, Joseph M. Depace was recently arrested for impersonating law enforcement. (Attachment "J").
186. That several defendants, in good faith, have sought information and explanations from K.A. Diehl and the MBRHOA about the above matters.
187. That the defendants continued to ask questions, hired counsel, created a private Facebook page, and blog to begin a dialogue with other homeowners who were concerned about the allegations above and other such allegations.

188. That upon information and belief, K.A. Diehl, in an effort to quiet the defendants, and to prevent dissemination and further discovery of the truth sued the defendants for defamation, civil conspiracy, tortious interference with contractual relationships and interference with prospective contractual relationships.
189. That upon information and belief, K.A. Diehl in filing said suit abused the process of the South Carolina courts.
190. That upon information and belief, K.A. Diehl's failure to obtain competitive bids for the purpose of usurping the business opportunity for a sister company or company owned by a spouse, was a deceptive practice that affects the individual defendants and the public, at large, and thus violated the South Carolina Unfair Trade Practices Act.

FOR A FIRST COUNTERCLAIM/CAUSE OF ACTION
(ABUSE OF PROCESS AGAINST PLAINTIFF KA DIEHL BY INDIVIDUAL DEFENDANTS)

191. Defendants hereby incorporate each and every allegation, and denial, contained within the proceeding paragraphs as if set forth herein verbatim.
192. That the defendants made good faith efforts to inquire about perceived failures and misconduct regarding the operation of Myrtle Beach Resorts. In so doing, the defendants raised the concerns contained in paragraphs 115 - 188 to OFS and MBRHOA property management company, K.A. Diehl.
193. That Plaintiff failed to respond appropriately to Defendants' inquiries, and threatened to sue one or more of the Defendants. That such threat to use the system was for the purpose of intimidating the Defendants in an effort to prevent them from disseminating the truth.

194. That upon information and belief, K.A. Diehl became aware of the defendants' intention to file a derivative action on behalf of MBRHOA against K.A. Diehl. That K.A. Diehl then filed suit seeking to intimidate defendants and cause them to hire counsel for the purpose of attempting to make said derivative suit financially impracticable for defendants.
195. Further, K.A. Diehl filed this suit for the purpose of intimidating all other homeowners and to prevent such other homeowners from participating in defendants future action against it, and to prevent them from engaging in conversation about the failures or misconduct of K.A. Diehl and the Master Board.
196. That upon information and belief, both K.A. Diehl and MBRHOA posted the lawsuit to make an example of the individual defendants and further intimidate any other homeowners that would question K.A. Diehl's practices.
197. That recently a homeowner having been apprised of one of the myriad of issues regarding operation and management of MBRHOA replied to defendant Mark Dos Santos, "be careful, we are not allowed to question anything, you might get sued!!!!!!!!!!!" (Please see Attachment "K").
198. That in January of 2016, the defendants began to engage with the homeowners again via email despite the intimidation by K.A. Diehl, and that around the same time, it became known to K.A. Diehl that the claims against the defendants were covered by insurance – such that it was no longer a financial strain upon them.
199. That shortly after witnessing defendants' communications with homeowners and that all defendants had insurance coverage, K.A. Diehl, having learned that is ulterior motives were no longer being served, sought to negotiate a resolution.

200. That after the filing of the action against defendants K.A. Diehl evidenced the misuse of the process when one of its employees acknowledged to defendant Mark Dos Santos that there was really only one statement that was even potentially actionable. Specifically, that the according to K.A. Diehl's own employee, the only inaccurate or potentially defamatory remark was that "Rusty Magill filed bankruptcy."
201. That K.A. Diehl's suit against the individual defendants is for an ulterior purpose.
202. That K.A. Diehl's suit against the individual defendants sought to financially harm defendants, intimidate defendants, intimidate others, and thereby prevent disclosure of facts to the other homeowners.
203. That K.A. Diehl's Complaint alleges that defendants' allegation that K.A. Diehl failed to invoice Allegiant Food and Beverage was untrue and defamatory. That K.A. Diehl alleges so in bad faith, knowing that it failed to invoice Allegiant Food and Beverage for utilities.
204. That the truth of this fact is beyond contest.
205. That K.A. Diehl's complaint against the individual defendants is replete with fabrications and trumped up causes of action.
206. That K.A. Diehl has not suffered any harm or damage as result of the individuals conduct, but that even if such had occurred, it would not substantiate an action against these individual homeowners.
207. That K.A. Diehl filed suit not to pursue damages but to quiet the individual defendants to prevent their speech regarding matters of great importance to the homeowners.

208. That as a result of Plaintiff K.A. Diehl's conduct, defendants have suffered actual damages including frustration, emotional distress, embarrassment, loss of time, and attorney fees.

209. That the defendants are entitled to receive actual and punitive damages resulting from plaintiff's abuse of process.

FOR A SECOND COUNTERCLAIM/CAUSE OF ACTION
(VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT
INDIVIDUAL DEFENDANTS VS K.A. DIEHL)

210. Defendants hereby incorporate each and every allegation, and denial, contained within the proceeding paragraphs as if set forth herein verbatim.

211. That, upon information and belief, K.A. Diehl's performance of its contract with the MBRHOA is for the benefit of the individual homeowners at the resort.

212. That, upon information and belief, each of the individual defendants, sued by K.A. Diehl, owns at least one unit at MBR, and that at least one such unit is contained within OFS.

213. That upon information and belief, K.A. Diehl's former CEO, Robert Barlow, is married to Robin Barlow. That Robin Barlow owned ADP Barlow Insurance at the time it brokered insurance for MBRHOA and the all Myrtle Beach Resort property regimes.

214. That upon information and belief, the two companies have shared office space or operated out of the same building, and have shared a web presence (insert website).

215. That pursuant to its agreement with MBRHOA, K.A. Diehl was to procure competitive insurance bids for the common areas of the resort.

216. That pursuant to its agreement with OFS, K.A. Diehl was to procure competitive insurance bids for the OFS HOA.

217. That upon information and belief, K.A. Diehl knew there were better rates but failed to procure the same.
218. Upon information and belief, Renaissance Tower used CWS Insurance to procure insurance and procured the same for tens of thousands of dollars less.
219. That K.A. Diehl knew this and failed to offer the same to Five Seasons and Myrtle Beach Resort Horizontal Property Regimes.
220. That upon information and belief, as a result of the familial relationship, K.A. Diehl consistently used one broker – ADP Barlow Insurance.
221. Upon information and belief, as a result of the failure to procure bids from other brokers, MBRHOA paid higher premiums for a period of years and higher brokerage fees.
222. That upon information and belief, such was a material breach of the agreement.
223. Upon information and belief, this same practice was utilized for the independent regimes until the Renaissance Tower discovered that the premiums were not competitive, and changed insurance brokers.
224. Upon information and belief, the Renaissance Tower, through broker CWS Insurance obtained comparative insurance for lower cost and brokerage rates than the other regimes that acquired insurance through ADP Barlow.
225. That K.A. Diehl, upon information and belief, did not disclose this relationship to the homeowners.
226. That upon information and belief, the OFS Board and MBRHOA directors failed to disclose this relationship to the homeowners.

227. That upon information and belief, K.A. Diehl manages over 120 properties throughout the country including 40 in the State of South Carolina.
228. That upon information and belief, K.A. Diehl's conduct relating to procuring competitive insurance bids affects the public interest.
229. That upon information and belief, K.A. Diehl's conduct relating to procuring competitive insurance bids is capable of repetition and upon information and belief would have been repeated in 2014 if not for Nancy Moore and Jim Perkins.
230. That K.A. Diehl's conduct relating to procuring competitive insurance bids proximately harmed the individual defendants by inflating the amount of homeowner dues each owed.
231. That K.A. Diehl's conduct relating to procuring competitive insurance bids proximately caused harm to the individual defendants as members of the MBRHOA and OFS HOA in that each individual homeowner paid dues for the purpose of contracting with K.A. Diehl for its services, including this particular service.
232. That the individual unit owners possess 15 units between them and therefore paid a finite amount of dues collectively for a period of approximately 7 years.
233. That upon information and belief, and as shall be further substantiated during the course of discovery, a portion of said funds was utilized to pay for the procurement of insurance and for the services of K.A. Diehl.
234. That upon information and belief, the violation of the South Carolina Unfair Trade Practices Act was a willful and knowing violation such that defendants are entitled to treble damages.

235. That the defendants are entitled to receive actual damages, including special and consequential damages, and treble damages and such other damages permissible under the statute.

FOR A THIRD COUNTERCLAIM

(Civil Conspiracy against K.A. Diehl)

236. That the defendants hereby incorporate the preceding allegations, and denials, as if set forth herein verbatim.

237. That upon information and belief, K.A. Diehl has conspired with several board of directors serving on MBRHOA and several board of directors serving on OFSHOA for the purpose of harming defendants.

238. That upon information and belief, K.A. Diehl and a majority of directors of MBRHOA and a majority of directors of OFSHOA are so intertwined that K.A. Diehl controls them both.

239. That upon information and belief, at a board meeting, several OFS directors inquired about suing defendant Mark Dos Santos for harassment. Further upon information, counsel advised the board that they could not sue a homeowner for simply asking questions. Upon information and belief, such board members were not happy with counsel's advice.

240. Upon information and belief, shortly thereafter K.A. Diehl brought suit against defendants for matters arising out of the inquiries by Mark Dos Santos.

241. That upon information and belief, K.A. Diehl, several of MBRHOA / OFSHOA directors and agents have conspired to prevent the defendants from gaining records of the OFS HOA and MBRHOA, including financial records.

242. Further, they have acted in concert to prevent the disclosure of records, relationships amongst board members and vendors, accounts and accounting information, failures to seek competitive bids, and such other information as discovery may reveal.
243. That the relationship between K.A. Diehl and the MBRHOA / OFS is improperly mutually beneficial in that, these boards continue to grant to K.A. Diehl business contracts without legitimate consideration of other management companies, including security services (where K.A. Diehl entered into a contract signing both for it and the board), in exchange for protection of the board members' misconduct.
244. That upon information and belief, defendants Jim Perkins and Nancy Moore discovered that K.A. Diehl was providing kickbacks to certain board members to include the provision of free storage space.
245. That upon information and belief, the storage space issue was litigated with respect to the "A" building, and deemed improper, but that the practice continued with some of the other boards' directors.
246. That prior to the filing of the suit, K.A. Diehl interfered with OFS elections, and effectively the MBRHOA board.
247. That as result of this relationship, the boards and K.A. Diehl, concerned of the disclosure of truth conspired to injure and harm defendants by filing this suit, and depriving defendants of information.
248. Further that after filing the lawsuit, K.A. Diehl and the master board have continually deprived OFS treasurer Nancy Moore of the ability to perform her duty as duly elected treasurer. That the deprivation of this right includes preventing Moore from possessing relevant financial information.

249. That they have done the same to Jim Perkins, OFS board member.

250. That as result of the combination of K.A. Diehl and the OFS and MBR board directors, the defendants have suffered special damages to include attorney fees, costs, and such other damages as jury may determine.

FOR A FOURTH COUNTERCLAIM

(Breach of Fiduciary Duty)

251. That Defendants incorporate each and every allegation contained in this Answer, and denials, as if set forth herein verbatim.

252. That upon information and belief, K.A. Diehl owes to each individual homeowner, including Defendants, a duty of care. That this duty of care is of a fiduciary nature.

253. That the conduct and omissions as alleged in the preceding paragraphs including: insurance procurement, security procurement, hiring of staff, abuse of process, conspiratorial conduct, and such other failures as more specifically set forth above, breach said duty, and are the direct and proximate cause of damages to the defendants.

254. That defendants are entitled to recover such damages against K.A. Diehl in an amount to include actual and punitive damages.

FOR A FIFTH COUNTERCLAIM

(NEGLIGENCE)

255. That Defendants incorporate each and every allegation contained in this Answer, and denials, as if set forth herein verbatim.

256. That upon information and belief, K.A. Diehl owes to each individual homeowner, including Defendants, a duty of care.

257. That the conduct and omissions as alleged in the preceding paragraphs including: insurance procurement, security procurement, hiring of staff, abuse of process, conspiratorial conduct, and such other failures as more specifically set forth above, breach said duty owed to the Defendants and are the direct and proximate cause of damage to the defendants.

258. That the conduct, as more fully set forth above, was wanton and reckless.

259. That defendants are entitled to recover such damages against K.A. Diehl in an amount to include actual and punitive damages.

FOR A SIXTH COUNTERCLAIM

(FRAUD)

260. That defendants hereby incorporate each and every allegation contained in the Answer, including denials, as if set forth herein verbatim.

261. That K.A. Diehl is responsible to the homeowners by and through K.A. Diehl's interaction with MBRHOA. Further, that K.A. Diehl is responsible to the homeowners, and these individual defendants, by and through its interaction with OFS.

262. That K.A. Diehl is required to perform its obligations and duties in good faith, and to promote the best interest of the homeowners.

263. That K.A. Diehl has exploited its relationship with MBRHOA and OFS and has harmed the defendants.

264. That K.A. Diehl represented itself as a reputable company that would deal fairly and procure competitive bids and provide proper staff.

265. That K.A. Diehl's representations were false.

266. That K.A. Diehl's representations were material, and that K.A. Diehl and its agents knew of the falsity of such statements or recklessly disregarded its truth. That K.A. Diehl had knowledge of facts and a duty to reveal said facts to the defendants.
267. That to the extent K.A. Diehl informed OFS or MBRHOA that it had a relationship with ADP Barlow, K.A. Diehl did not divulge that utilizing ADP Barlow would cost individual homeowners money.
268. That K.A. Diehl may be liable to these individual defendants because it had knowledge that the hearer of the statement would rely upon its statements and impact the homeowners, including defendants.
269. That K.A. Diehl intended that the hearer of the statements act upon said statements to include: not procuring competitive insurance bids; not procuring competitive management bids; and not procuring competitive security bids.
270. That the hearers of said statements have relied upon said statements as evidenced by: having purchased insurance with ADP Barlow; maintaining management agreements with K.A. Diehl; and hiring Watchmen Services (K.A. Diehl affiliate) to provide security services.
271. That upon information and belief, MBRHOA and OFS, and the defendants were ignorant of the truth of the falsity of the statements, and had right to rely upon said statements, and did, in fact, rely upon such statements.
272. That the defendants have been consequently and proximately injured by way of higher regime fees.

PRAYER FOR RELIEF

WHEREFORE, Defendants Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, hereby pray unto this honorable court for the following relief: (1) dismissal of KA Diehl's claims against them; (2) for an award of actual, punitive, and special damages against KA Diehl together with attorney fees and costs; and (3) for such other and further relief as justice may require.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

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On behalf of Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos

JANUARY 29, 2016
Myrtle Beach, SC

RESPECTFULLY SUBMITTED,

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RESPECTFULLY SUBMITTED,

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ATTORNEYS FOR DEFENDANTS
JAMES PERKINS AND NANCY MOORE

RESPECTFULLY SUBMITTED,

HAYNESWORTH, SINKLER, BOYD, P.A.

By: Robert W. Buffington by A. Preston Hall
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ATTORNEY FOR WILLIAM MOORE

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2015-CP-26-05573

K.A. Diehl and Associates, Inc.,)

Plaintiff,)

vs.)

James Perkins, et al.,)

Defendants.)

Transcript of Record

March 12, 2018

B E F O R E:

Honorable William Seals
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Henrietta U. Golding, Esquire
Attorney for Plaintiff

Andrew Preston Brittain, Esquire
Attorney for Defendant,
Mark Dos Santos

Christopher William Nickels, Esquire
Attorney for Defendant,
Mark Dos Santos

Christian Stegmaier, Esquire
Attorney for Defendants,
Steven Dame, Colleen Franke a/k/a Colleen Franke Perkins,
Nancy Moore, James Perkins and Mark Dos Santos

Phillip Arthur Kilgore, Esquire
Attorney for Bill Cameron, Ray Coghill, Phil Cox,
Stanley Jordan, Walter Jordan, Ralph Jump,
Ocean Front Spa Horizontal Property Regime, Inc.,
The Myrtle Beach Resort HOA, Inc., and Wayne Urban

J. Joseph Owens, Esquire
Attorney for Mark Dos Santos

Jackson H. Daniel, III, Esquire
Attorney for Mark Dos Santos

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

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1 (On the record, March 12, 2018.)

2 THE COURT: K.A. Diehl versus Jim Perkins.

3 MR. STEGMAIER: Good morning, sir.

4 THE COURT: Good morning.

5 MR. NICKELS: Good morning, Your Honor.

6 MR. STEGMAIER: Christian Stegmaier of Collins and Lacy.

7 THE COURT: All right.

8 MR. NICKELS: I'm Chris Nickels from Clawson and Staubes.

9 THE COURT: Uh-huh.

10 MR. BRITTAIN: Preston Brittain from the Brittain Law
11 Firm.

12 THE COURT: All right.

13 MR. STEGMAIER: You may remember, sir, when we were
14 together on January 3rd when we had the inclement weather this,
15 this motion -- initially, the motion to enforce was set and we
16 had sought a continuance based on the necessity to withdraw
17 due to conflict. One of the clients we represent in this
18 matter, the Defendant Mark Dos Santos, ended up having a
19 conflict with the remainder of the people that we represented
20 through a Philadelphia insurance policy. Those individuals
21 include James Perkins, Colleen Franke, Nancy Moore, Steven
22 Dame, and there are two other Defendants, William Moore that's
23 represented by Mr. Smith, and then Mr. Dos Santos, Sr., Errol
24 Dos Santos is represented by Mr. Buffington. Vice versa, I
25 apologize. I apologize, but with regard to Mr. Dos Santos in

1 relation to the remainder of the, the Defendants that we
2 represent under the Philadelphia insurance policy those other
3 clients maintain that there's a resolution. Mr. Dos Santos
4 does not, and of course, there's a motion that's pending
5 before the Court for the Plaintiff's motion to consolidate.
6 By virtue of that conflict, we are --

7 MS. GOLDING: I think it's a motion to compel settlement.

8 MR. STEGMAIER: Oh, motion to compel settlement. By
9 virtue of that conflict, we're constrained to have to
10 withdraw, and we filed that motion. Additionally, Mr. Dos
11 Santos has made it clear to me through no uncertain terms
12 expressly through written communication that I am not to
13 represent his interests. So for those reasons, sir, we'd
14 respectfully request the, the ability to withdraw as it
15 relates to Mr. Dos Santos and the remainder of the parties.

16 MS. GOLDING: I think, I think the record needs to
17 reflect that the, the motion to enforce the settlement in the
18 2015 case was filed prior to the motions to withdraw.
19 However, I believe it would be appropriate for those -- for
20 this Court to hear the motions to withdraw first since Mr. Dos
21 Santos has retained counsel pursuant to the Court's order that
22 was issued in January.

23 THE COURT: All right.

24 MR. STEGMAIER: As Ms. Golding points out, you -- and you
25 might recall, too, as well, you had given Mr. Dos Santos 60

1 days to get new counsel. He's represented by two separate
2 counsel under two separate insurance policies and those
3 lawyers are here and prepared to move forward.

4 THE COURT: All right. I'm going to grant you your
5 motion unless somebody objects.

6 MR. STEGMAIER: Thank you, sir.

7 MS. GOLDING: There's three motions, Your Honor.

8 THE COURT: All right.

9 MR. NICKELS: Yeah. Chris Nickels, Clawson and Staubes,
10 Your Honor, would request the same relief. If you need
11 further explanation I'm prepared to give you additional --

12 THE COURT: I don't need it. Any, any objections from
13 anybody in that regard?

14 MS. GOLDING: None, none from the --

15 THE COURT: All right.

16 MR. BRITTAIN: Your Honor, Mr. Brittain, on the same, on
17 the same point, I represent all seven of them. I probably
18 have the most direct conflict and request the same relief,
19 Your Honor.

20 THE COURT: All right. I'll grant all those motions.

21 MR. NICKELS: All right.

22 MR. BRITTAIN: Thank you.

23 THE COURT: All right. All right. Any other motions?

24 MS. GOLDING: I have one motion, Your Honor, and it's a
25 motion to enforce settlement. Your Honor, this motion was

1 filed in October of 2017, and it's made on behalf of the
2 Plaintiff in the 2015 case, which is K.A. Diehl and
3 Associates, Inc. This Plaintiff had commenced a lawsuit in
4 2015 against a number of individuals who are homeowners at
5 Myrtle Beach Resort. Some of those individuals were also
6 directors or board members of a sub-regime there called Ocean
7 Front Spa.

8 At -- this case, 2015 case, was mediated in May of 2016.
9 This -- no. It's 2017. Excuse me, Your Honor. This case,
10 the 2015 case was mediated with four other cases, and those
11 four cases I refer to involved 2016 cases. So there were five
12 cases that were mediated on May 1, and the mediator was Karl
13 Folkens. These five cases were mediated altogether
14 simultaneously because of the similar parties all being
15 involved in one way or another and because it was all based
16 upon similar facts and circumstances with respect to the
17 management and control of the Myrtle Beach Resort. The Myrtle
18 Beach Resort, Your Honor, is, is close to the south end of
19 Myrtle Beach, and I believe there are five sub-regimes in that
20 resort.

21 As I stated, the mediation occurred on May 1. Karl
22 Folkens was the mediator. The mediation went on for 11 and a
23 half hours, Your Honor. The mediation resulted in the
24 settlement of all five cases. There were two settlement
25 agreements in these five cases. One settlement agreement was

1 for the 2016 four actions and Mr. Kilgore, who's even here
2 today, he was there. He represented primarily and prepared
3 the 2016 agreement, which was signed by all. Then there was
4 the one case, my case, the 2015 agreement which was also a
5 written mediation settlement agreement was prepared. This
6 mediated settlement agreement, Your Honor, is Exhibit Five in
7 our motion and memorandum in support of enforcement. This
8 mediated settlement agreement was -- had the names of all the
9 individuals that were parties. The lawyers signed. The
10 Defendants' lawyers in the 2015 case signed, as well as all
11 the parties. It is -- this mediated settlement agreement,
12 though, Your Honor, the dispute lies with one individual, Mark
13 Dos Santos. He was not present at the mediation in person.
14 However, he participated in the mediation via telephone. He
15 participated throughout the 11 and a half hours. At this
16 mediation, Mr. Santos was represented by three lawyers,
17 Christian Stegmaier, Preston Brittain and Chris Nickels. The
18 mediated settlement agreement was signed by all three of those
19 lawyers, not only in their capacity as legal counsel but also
20 with permission from Mr. Santos. The mediated settlement
21 agreement where Mr. Santos signs it has Mark Santos with
22 permission. Also, Christian Stegmaier signed it for Mr.
23 Santos with permission. The other Defendants all signed they
24 were present, including Mr. Santos' father. He was present
25 and he signed.

1 Following the mediated settlement agreement, the terms of
2 the agreement started to be enforced, with the terms being,
3 number one, Defendants' insurers shall pay to Plaintiff the
4 total sum of \$100,000 as soon as practicable. Today we have
5 received 80 of the \$100,000.

6 The second item in the mediated settlement agreement was
7 Ocean Front Spa shall pay the Plaintiff 5,000 for property
8 management services through June 1, an additional 10,000 by
9 June 10th, 2017. Those two payments, \$15,000 was made.

10 The third item, the existing maintenance personnel will
11 be paid through May 5 and afterwards they will no longer
12 provide services, which K.A. Diehl did. They removed those
13 individuals from Ocean Front Spa as of May 5. Unfortunately,
14 some of them had to be let go because there were not other
15 jobs for them.

16 The fourth item, Plaintiff K.A. Diehl will transfer
17 medical [sic] records and other documents and assets to Ocean
18 Front Spa. All the transfer of information and documentation
19 was done.

20 The fifth item was the parties will execute a mutual
21 release releasing the other parties. This release was
22 prepared by Christian Stegmaier. A few changes were made by
23 the various lawyers, and then this release was then signed by
24 all the individuals in this settlement agreement except Mark
25 Santos.

1 The full release, the full release that was signed by all
2 I would like to present to the Court showing all the
3 signatures, Your Honor.

4 THE COURT: All right. Thank you.

5 MS. GOLDING: And the reason it was not attached to my
6 motion to compel because it was finally -- I received it only
7 after the motion, but you will note that this document as I
8 represented and as shown in the emails attached to our motion
9 was prepared by Mr. Stegmaier, Mark Santos' attorney, and was
10 signed by all the individuals except for Mr. Mark Santos.

11 Then the sixth agreement, which is similar to the fifth,
12 that all the parties will acknowledge that a mutual release
13 will be prepared, a more comprehensive. Obviously, that was
14 done.

15 The seventh document is all parties authorize their
16 respective attorney to execute a dismissal with prejudice. No
17 attorney has opposed and said they would not sign an executed
18 dismissal of prejudice, and the fifth [sic] item is the
19 parties shall equally divide the costs of the mediation seven
20 ways. That was done as well.

21 So, Your Honor, the only thing in this mediated
22 settlement agreement that was not done was Mark Santos signed
23 the document I gave to you, the mutual release agreement.
24 However, Mark Santos signed the mediated settlement agreement
25 because his attorney, Preston Brittain, signed Mark Santos

1 with permission and Christian Stegmaier signed his name with
2 permission. There has been no affidavit or sworn statement
3 presented to this Court stating that these two attorneys did
4 not have the permission of Mark Dos Santos to sign this
5 mediated settlement agreement on May 1.

6 With respect to the -- as I stated, the law is clear, if
7 your attorney has the authority to sign for you that you have
8 given that attorney, that agent express authority to contract,
9 and that is binding and that the attorney was bound by that
10 authorization, and therefore, that authorization is binding,
11 and he is obligated to sign the complete document.

12 Your Honor, once Mr. Santos signs the mutual release in
13 full then the \$100,000 payment of which we have 80, the
14 remaining 20 will be paid by the insurance companies. The
15 only reason that has not been paid today is that these
16 insurance companies have internal policies, and that's Mike
17 Smith and Mr. Buffington, that require a complete release
18 signed by all before that \$20,000 can be released.

19 So, Your Honor, the first basis is that this settlement
20 agreement has been signed by Mr. Santos is that Mr. Santos
21 authorized his agents to sign, and there is no affidavit
22 presented to this Court contradicting that authorization. So
23 the settlement agreement has been signed.

24 The second ground, Your Honor, for enforcement is part,
25 more than part performance, and I've gone through all those

1 factors. The seven, the eight factors in the settlement
2 agreement all have been done except one individual out of the
3 seven individuals has not signed the mutual release.

4 The third basis, Your Honor, is, is Rule 43(k). Now, new
5 counsel for Mr. Santos, Mr. Daniel, submitted a memorandum,
6 I'm sorry you had to work Saturday, and I received it Sunday,
7 and his entire analysis is based on Rule 43(k). I do not
8 think -- he did not address that his client authorized an
9 agent to sign. He did not address partial performance. No
10 supplemental -- no affidavits of any kind were presented.
11 Under Rule 43(k), under the principle that -- under the fact
12 that the principal authorized the agent to sign, we have fully
13 complied with Rule 43(k). As the Court confirmed the
14 settlement in the 2016 cases, Your Honor, we ask that this
15 Court also confirm this settlement in the 2015 case. Thank
16 you, Your Honor.

17 THE COURT: All right. Yes, sir.

18 MR. STEGMAIER: Judge, briefly, just a point of
19 clarification, I don't think it's material, but I want to, I
20 want to make it abundantly clear that with regard to the
21 mediated settlement agreement that was executed on the evening
22 of the mediation, I did not execute it. Mr., Mr. Brittain
23 executed it. He executed my signature with my, with my
24 permission to as well.

25 THE COURT: All right.

1 MR. STEGMAIER: I just want to make that clear.

2 MS. GOLDING: Okay. Thank you. I didn't know that.

3 THE COURT: All right. Mr. Daniel.

4 MR. DANIEL: Thank you, Your Honor. Jack Daniel here on
5 behalf of Mark Dos Santos, just newly retained, been on the
6 case a little over two weeks now, getting familiar with the
7 facts.

8 MR. OWENS: Joe Owens here, Young, Clement, Rivers. We
9 took over for Mr. Stegmaier on behalf of the Philadelphia
10 policy.

11 THE COURT: All right.

12 MR. DANIEL: And if -- Your Honor, did you, did you get
13 the brief that we submitted?

14 THE COURT: I did.

15 MR. DANIEL: I can -- I've got hard copies here. I just
16 want to make sure you have it --

17 THE COURT: I've got it.

18 MR. DANIEL: -- if you want to review it.

19 Position is really simple. Although I don't have an
20 affidavit for Mark Dos Santos, I think it's clear based on
21 some prior briefs submitted in some other matters, it's
22 abundantly clear that he does oppose this settlement, and he's
23 a party in this case, and Rule 43 I would take the position
24 and submit to the Court that it's a bright-line rule, and the
25 requirements there they exist for a reason, and it's not just

1 a technical rule that, that needs to be, you know, followed,
2 you know, just over form, over -- there's substantive reasons
3 why you have to go about a settlement one of three or four
4 different ways. There's, as submitted in the brief, there's
5 three ways that you can do it where you essentially get court
6 approval, you submit something to the court either in the form
7 of a consent order or you, you come to court and have a
8 hearing and, and put it on the record, and someone like Your
9 Honor signs off on a settlement. There's no dispute that
10 didn't happen here. What did happen is that mediation took
11 place. Some very respected lawyers, great lawyers were there
12 and, and a, a very well-respected mediator was there. Doesn't
13 change the fact though that my client, Mark Dos Santos, did
14 not sign this settlement agreement once he had an opportunity
15 to.

16 The last requirement or the last way under the rule that
17 you can have a binding settlement, and it's a, it's a newer, a
18 newer method as of 2009 that, that our courts have, have put
19 in place. Rather than coming into court or submitting
20 something to someone like Your Honor you can do it by reducing
21 the agreement into writing, but the language in the rule is
22 clear, and it says that for a settlement to be enforceable
23 when you've got a lawsuit it has to be signed by the parties
24 and their counsel, and that's not superfluous, that's not
25 language that was, that was put in there, you know, just

1 without, without any thought. The party and the lawyer, both
2 groups, you have to have the litigant and the lawyer sign, and
3 I think there are compelling reasons why you have to do that
4 when you, when you have a case where there's -- could be
5 significant consequences. Someone's got retained counsel
6 certainly what our courts are saying is they, they recognize
7 the fact that you need to have your lawyer look over a
8 document, a settlement agreement, and make sure that the
9 lawyer's in agreement with what the potential repercussions
10 could be before the client signs off on it, but the client,
11 just as importantly, should be given a chance to read a
12 settlement agreement, to review it, to process it, to
13 understand what it means before they sign, and I think, I
14 think that's what the rule is meant to accomplish, and the
15 best way of achieving a settlement that's clear to all parties
16 and that all retained counsel is comfortable with is by having
17 both sets of both, both people involved, the lawyer and the
18 client sign off, and here in this situation we've got, you
19 know, there may be 15, 16 parties that signed this agreement,
20 but we've got one person who's a party in this action that
21 didn't sign the settlement agreement and clearly opposes it.
22 I would point out that I've been retained. I want to just
23 make it clear on the record as Defense counsel I'm defending
24 Mr. Dos Santos on the claims raised by K.A. Diehl. I've made
25 it clear to him that I'm not representing him on any

1 counterclaims, but in checking through the matter as best I
2 could tell there are at least two counterclaims that appear to
3 still be pending, one for civil conspiracy and one for unfair
4 trade practices, and if Mr. Dos Santos feels that he did not
5 get a result that he wanted through the mediation and the deal
6 that was proposed on those counterclaims, it's my obligation
7 to argue here today in front of you, Your Honor, to ensure
8 that those claims are preserved and that he has a right to
9 pursue the result he does want. I think it's a bright-line
10 rule. Mark Dos Santos is opposed to the settlement. He never
11 signed the mutual release. He never signed any settlement
12 agreement as it relates to this matter, and for that reason
13 his claim should be preserved and he should be allowed to
14 pursue the case as he sees fit.

15 THE COURT: All right. Yes, sir.

16 MR. OWENS: Just a couple additional points, Your Honor,
17 in regards to the counterclaims, Young, Clement, Rivers take
18 the same position as Mr. Daniel's firm, and, and then in terms
19 of, of Rule 43, this -- like Mr. Daniel said, it is, it is a
20 recent 2009 addition to the rule. One could draw the
21 inference that it was because of the ambiguity in regards to
22 some of this case law on whether the attorney has, you know,
23 the ability to sign on behalf of the client, which previous
24 case law indicated was, was there was -- it was -- it went
25 both ways, but, but in a lot of cases that the attorney did

1 have apparent authority, at least, to sign on behalf of a
2 client. Here they, they amended the rule in 2009. We, we
3 contend the language is plain and unambiguous. Your Honor is
4 aware of all the statutory -- I mean, excuse me, the case law
5 in regards to plain and unambiguous rules and statutes. We
6 think -- and in regards to the lack of a, of an affidavit that
7 is true, but we -- but like Mr. Daniel said, we would, we
8 would state that it's abundantly clear that Mr. Dos Santos
9 objects to this settlement hearing, I mean, excuse me,
10 settlement, and he contends he didn't quite fully understand
11 the settlement at the time, more reasons than that regarding
12 -- in terms of why he doesn't think the settlement is fair and
13 represents his interests, and basically, Your Honor, and, and
14 specifically in regards to the Philadelphia policy, you know,
15 I, again, I don't know if it's material or not, but, but Mr.
16 Brittain signed on behalf of Mr. Stegmaier, who signed on
17 behalf of our client in regards to that policy so.

18 THE COURT: What part of the agreement did he not
19 understand? I mean, if he was there by phone for 11 and a
20 half hours it seems to me he ought to have a grip on what's
21 going on.

22 MR. DANIEL: Your Honor, you raised a good point. I, I
23 really can't speak to that as someone who wasn't there. I
24 mean, I would stand by, you know, our law on that as far as
25 mediation and what's confidential. You know, that would --

1 if, if he chooses to waive that at some point I, I could, you
2 know, submit an affidavit. What I, what I do know and what I,
3 what I'm comfortable communicating to Your Honor is that he
4 doesn't feel like the amount of money that would be paid on
5 any of his claims was, was sufficient for what happened.

6 THE COURT: Did he object at the mediation? Did he
7 object at the mediation?

8 MR. DANIEL: Your Honor, I, I can't -- I really can't
9 speak to that, but I know that what I can say and am
10 comfortable saying to the Court is that once he saw this --
11 the written documents, the written settlement agreements as
12 proposed, he has objected to the terms of settlement.

13 THE COURT: All right. Anything you need to add to it?
14 I think I've heard enough.

15 MS. GOLDING: Nothing further, Your Honor. Thank you.

16 THE COURT: All right. I'll take it under advisement and
17 I'll let you know something this week.

18 MS. GOLDING: Thank you, Your Honor.

19 MR. DANIEL: Yes, Your Honor.

20 MR. OWENS: Thank you, Judge.

21 THE COURT: Thank you.

22 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of K.A. Diehl and Associates, Inc. versus James Perkins, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 12, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley, CVR-CM-M
Official Reporter

December 10, 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2015-CP-26-05573

K.A. DIEHL AND
ASSOCIATES, INC.,

Plaintiff,

Transcript of Record

vs.

October 8, 2018

JAMES PERKINS, COLLEEN
FRANKE, A/K/A COLLEEN
FRANKE PERKINS, MARK DOS
SANTOS, NANCY MOORE,
STEVEN DAME, AND ERROLL
DOS SANTOS,

Defendants.

B E F O R E:

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Henrietta U. Golding, Esquire
Attorney for Plaintiff

Jackson H. Daniel, III, Esquire
John Joseph Owens, Esquire
Attorneys for Defendants

Kay H. Richardson
Circuit Court Reporter

I N D E X

OCTOBER 8, 2018

Pg.

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E X H I B I T S

No.

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(No exhibits were marked or admitted.)

1 (OCTOBER 8, 2018 - 9:46 A.M.)

2 THE COURT: I'm ready whenever you are.

3 MR. DANIEL: Your Honor, Jack Daniel here on behalf of
4 Mark Dos Santos. This is the matter of K.A. Diehl, the
5 plaintiff in the case. There were several other lawsuits that
6 were filed. The subject matter was it's an HOA claiming
7 defamation. Other causes of action, our client Mr. Dos Santos
8 had counterclaims as well.

9 I'll be very brief. It's fully briefed, Your Honor. I
10 think our motion to reconsider, we've actually fully stated
11 our position, but it's Mr. Dos Santos' position in this that
12 the settlement was something that he did not agree to, he did
13 not agree to the material of the terms of the settlement.
14 This is, if you recall, a situation where all parties were
15 present at the mediation. Our client attended by phone. But,
16 once he actually saw the settlement agreement as proposed, he
17 objected to a number of the terms and has maintained that he
18 was opposed to the settlement that Plaintiff contends was
19 reached at the mediation. It's just our position that Rule
20 43(k) is a bright-line rule that requires both the attorney
21 and a party, the attorney's client, to sign the agreement, any
22 kind of agreement before it's binding unless you submit a
23 settlement through other avenues such as putting it on the
24 record in court. And the other ways that you can have a
25 binding settlement agreement, Mr. Dos Santos could be bound to

1 do so, but none of those other circumstances apply here. So,
2 he maintains that he did not agree to the material terms of
3 the settlement that K.A. Diehl has proposed. And he also -- I
4 would point out, Your Honor, that the fact that a mediation
5 took place that he may've attended by phone is not really
6 clear indication that he authorized anyone to sign this
7 agreement.

8 THE COURT: All right.

9 MR. DANIEL: That's all I have.

10 THE COURT: All right.

11 Ms. Golding?

12 MS. GOLDING: Thank you, Your Honor. Good morning, Your
13 Honor.

14 THE COURT: Good morning.

15 MS. GOLDING: This is a mediation that occurred on May 1,
16 2017. The mediation involved a number of lawsuits. At this
17 mediation, there were, I believe, at least 10 parties present,
18 at least five lawyers present. Our mediator was Karl Folgens.
19 The mediation lasted 40 -- excuse me -- 14 hours. Mr. Santos,
20 Mark Dos Santos, the moving party in this matter, was the only
21 individual not present, the only party not present. When the
22 mediation commenced, Mr. Folgens inquired of all, do they
23 agree that Mr. Dos Santos can attend by phone. All agreed and
24 Mr. Dos Santos said that was fine. So, the mediation
25 proceeded. At the end of the mediation that night, there was

1 a written agreement that was typed up, Your Honor, and this is
2 a document -- an agreement that was part of our memorandum.
3 It is a mediated settlement agreement. In this mediated
4 settlement agreement, Your Honor, each of the defendants
5 signed this agreement, including Mark Dos Santos. How did Mr.
6 Dos Santos sign the agreement? It was signed by his lawyer.
7 It has Mark Dos Santos with permission. I believe it was
8 Christian Stegmaier, one of three lawyers representing Mr. Dos
9 Santos at that mediation. He was the one that put down Mark
10 Dos Santos with permission.

11 Your Honor, with respect to all the terms in the
12 agreement, there were eight specific terms. The eighth one
13 being that all parties had to sign a mutual release. All
14 parties have signed that mutual release except Mark Dos
15 Santos. The other terms in the agreement, such as a \$5,000
16 payment, for property management existing personnel be
17 reassigned, the plaintiff transfer financial records, there's
18 other little items that were done, all have been completed.
19 All we ask is that Mr. Dos Santos sign the mutual release,
20 which he agreed to on the phone that day and which is lawyers
21 agreed to.

22 Thank you, Your Honor.

23 RULING OF THE COURT:

24 THE COURT: All right. I'm gonna deny the motion. If
25 you'll prepare me a short order?

1 MS. GOLDING: I will. Thank you, Your Honor.

2 THE COURT: Thank you all.

3 MR. DANIEL: Thank you, Judge.

4 COURT REPORTER: Counsel, may I get your names again,
5 please?

6 MR. DANIEL: Jack Daniel.

7 MR. OWENS: Joe Owens.

8 COURT REPORTER: Thank you.

9 (ADJOURNED - 9:51 A.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the motion hearing held in the case of K.A. Diehl and Associates, Inc. v. James Perkins, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on October 8, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

January 17, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CIRCUIT COURT

K. A. DIEHL AND ASSOCIATES, INC. V. JAMES PERKINS, ET AL.
Docket No. 2015-CP-26-05573

JAMES PERKINS, ET AL. V. K.A. DIEHL AND ASSOCIATES, ET AL.
Docket No. 2016-CP-26-00744

PROOF OF ADR

1. Alternative Dispute Resolution (ADR) was conducted in the form of: **Mediation**
2. The neutral was: **Karl A. Folkens.**
3. The ADR was conducted on **May 1, 2017.**
4. As a result of ADR, these cases should be considered (please check one):
☒ Fully Settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties.
☐ Partially Settled, with agreement of the parties on the following issues:
☐ At an impasse.
☐ In need of further ADR. I ☐ am / ☐ am not willing to mediate this case further.
I recommend that ADR resume as of:
☐ Continued to (Date):
5. Plaintiffs ☒ were/ ☐ was not present.
Defendants ☒ were/ ☐ were not present individually (through representatives).
6. Other participants were:
☒ Lawyers for parties: *Henrietta U. Golding, Esq., Alicia E. Thompson, Esq., A. Preston Brittain, Esq., Christopher W. Nickels, Esq., Christian Stegmaier, Esq., Robert W. Buffington, Esq., Phillip A. Kilgore, Esq. & G. Michael Smith, Esq.*
☒ Representatives for insurance carrier: *Hugh Spears, Chubb; Eva Jane Ammons, Nationwide; Lori Barns, Philadelphia Insurance Company*
☐ Guardian ad Litem:
☐ Experts:
☐ Others:
7. Choice of the mediator was by:
☒ Stipulation
☐ Court Order
8. The total number of hours spent in ADR was: **16.5 hours, plus travel.**
9. Further comments of the neutral: **None.**

May 1, 2017

S/ Karl A. Folkens
KARL A. FOLKENS, Mediator
P. O. Box 6139, Florence, SC 29502-6139
(843) 665-0100; FAX (843) 665-0500

MA17-126

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CIRCUIT COURT

K. A. DIEHL AND ASSOCIATES, INC. V. JAMES PERKINS, ET AL.
Docket No. 2015-CP-26-05573

JAMES PERKINS, ET AL. V. K.A. DIEHL AND ASSOCIATES, ET AL.
Docket No. 2016-CP-26-00744

JIM PERKINS, COLLEEN FRANKE, ET AL. V. OCEAN FRONT SPA HORIZONTAL PROPERTY
REGIME, INC., ET AL.
Docket No. 2016-CP-26-00673

JIM PERKINS, COLEEN FRANKE, ET AL. V. THE MYRTLE BEACH RESORT HOMEOWNERS
ASSOCIATION, INC., ET AL.
Docket No. 2016-CP-26-00674

JIM PERKINS, COLEEN FRANKE, ET AL. V. K. A. DIEHL AND ASSOCIATES, INC., ET AL.
Docket No. 2016-26-00743

AMENDED PROOF OF ADR

1. Alternative Dispute Resolution (ADR) was conducted in the form of: **Mediation.**
2. The neutral was: **Karl A. Folkens.**
3. The ADR was conducted on **May 1, 2017.**
4. As a result of ADR, these cases should be considered (please check one):
☒ Fully Settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties
☐ Partially Settled, with agreement of the parties on the following issues:
☐ At an impasse.
☐ In need of further ADR. I ☐ am / ☐ am not willing to mediate this case further.
I recommend that ADR resume as of:
☐ Continued to (Date):
5. Plaintiffs ☒ were/ ☐ was not present.
Defendants ☒ were/ ☐ were not present individually (through representatives).
6. Other participants were:
☒ Lawyers for parties: *Henrietta U. Golding, Esq., Alicia E. Thompson, Esq., A. Preston Brittain, Esq., Christopher W. Nickels, Esq., Christian Stegmaier, Esq., Robert W. Buffington, Esq., Phillip A. Kilgore, Esq. & G. Michael Smith, Esq.*
☒ Representatives for insurance carrier: *Hugh Spears, Chubb; Eva Jane Ammons, Nationwide; Lori Barns, Philadelphia Insurance Company*
☐ Guardian ad Litem:
☐ Experts:
☐ Others:

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7. Choice of the mediator was by:

 X Stipulation
 Court Order

8. The total number of hours spent in ADR was: *16.5 hours, plus travel.*

9. Further comments of the neutral: *None.*

May 1, 2017

MA17-126

S/ Karl A. Folkens

KARL A. FOLKENS, Mediator

P. O. Box 6139, Florence, SC 29502-6139

(843) 665-0100; FAX (843) 665-0500

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

K. A. Diehl and Associates, Inc.,)

Plaintiff,)

vs.)

James Perkins, Colleen Franke a/k/a)
Colleen Franke Perkins, Mark Dos)
Santos, Nancy Moore, William Moore,)
Steven Dame and Errol Dos Santos,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-26-05573**PLAINTIFF K.A. DIEHL AND
ASSOCIATES, INC.'S
MOTION TO ENFORCE
SETTLEMENT**

Plaintiff, K.A. Diehl and Associates, Inc. ("Plaintiff"), by and through the undersigned counsel, hereby moves to require the Defendants James Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos (collectively hereinafter "Defendants") to comply fully with the mediated Settlement Agreement dated May 1, 2017.

The following are undisputed facts that support the Plaintiff's motion:

- Plaintiff, as the property management company for Myrtle Beach Resort Homeowners Association, Inc. ("MBRHOA") and Myrtle Beach Resort, Oceanfront Spa Horizontal Property Regime, Inc. ("OFS"), initiated the above captioned action ("2015 Action") against the Defendants, owners of units in the Oceanfront Spa Horizontal Property Regime in Myrtle Beach Resort, asserting causes of action for defamation and interference with contractual relationships.
- Defendants asserted counterclaims in the above action as well as claims in Civil Action Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744

(collectively hereinafter “2016 Actions”) against Plaintiff, OFS, and MBRHOA based on the same factual allegations.

- On March 26, 2017, Karl A. Folkens, the parties’ choice of mediator, confirmed that a mediation in the 2015 Action and the 2016 Actions was scheduled to occur on May 1, 2017. Exhibit A.
- Karl A. Folkens, Esq. is one of the most experienced and well-respected mediators in South Carolina.
- On May 1, 2017, Defendants and their counsel were physically present with the exception of Mark Dos Santos. His absence was not anticipated. At the commencement of the mediation, the parties agreed mediation could proceed in Santos’ absence, conditioned upon his participation by telephone and his counsel having settlement authority.
- All parties and their counsel attended the May 1 mediation conference, either in person or via telephone, and participated in the mediation.
- Mark Dos Santos actively participated in the mediation conference via telephone—during joint sessions with all parties and closed sessions with only Defendants.
- After a 15 hour mediation, involving extensive arms-length negotiations between parties and their counsel, the parties reached a resolution of all claims in the 2015 Action and 2016 Actions.
- In accordance with ADR Rule 6(f), Mediator Karl Folkens ensured that the parties reduced their agreement to writing. The agreement in the 2015 Action (“Agreement”) was signed by all the parties. Exhibit B. A separate agreement was entered in the 2016 Actions (“2016 Actions Agreement”). Exhibit C. The Agreement and the 2016 Actions Agreement were intended to settle all claims in the cases with finality.

- Due to Mark Dos Santos being physically absent, Mr. Dos Santos' counsel executed the Agreement on his behalf as his duly authorized agent, with the Agreement making clear that Mark Dos Santos was signing through the actions of his counsel-agent.
- Before signing on behalf of Mark Dos Santos, his counsel orally read the operative provisions of the Agreement to him over the telephone.
- Defendants' counsel presented mediator Folkens and Plaintiff's counsel the Agreement, signed by or for all Defendants.
- Several weeks after the mediation, on May 22, 2017, Defendants' counsel sent a draft mutual release contemplated by the Agreement for the parties' execution. Exhibit D.
- On May 24, 2017, the undersigned counsel notified the non-jury coordinator that motions scheduled for a hearing on June 19, 2017 in the 2015 Action were moot and could be removed from the non-jury roster due to the settlement reached at mediation. All counsel for the parties were copied on the May 24, 2017 email. Exhibit E.
- Counsel for the Defendants confirmed that the release and the stipulation of dismissal were approved and ready for execution on June 8, 2017. Exhibit F.
- Based on the parties' negotiated settlement agreement, memorialized by the Agreement and the 2016 Actions Agreement, mediator Folkens filed an Amended Proof ADR form in the 2015 Action and 2016 Actions, making clear that all parties were present and that all claims were "[f]ully settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties." Exhibit G.
- The Defendants, Plaintiffs in the 2016 Actions, attempted to withdraw from the agreement in those cases. Despite the Defendants' refusal to comply with the terms of the 2016 Actions Agreement, an Order was entered enforcing that agreement. Exhibit H.

The material terms of the mediated Agreement in the 2015 Action reached on May 1, 2017 were as follows:

1. Defendants' insurers shall pay to Plaintiff a sum of \$100,000.00 as soon as practicable, but no later than 20 days.
2. Ocean Front Spa shall pay Plaintiff \$5,000.00 for property management services through June 1, 2017 after which its property management services shall cease. OFS shall pay an additional \$10,000.00 to Plaintiff by June 10, 2017.
3. Plaintiff shall transfer all financial records and other documentation and assets to OFS by June 1, 2017, as required by South Carolina law and generally accepted property management standards.
4. The parties will execute a mutual release releasing the other and the other's employees, agents, directors, members, officers, attorneys, insurers and related parties (but specifically excluding Allegiant as a "related party") from all claims and damages.
5. The parties acknowledge a more comprehensive mutual release will be executed incorporating the terms of this Agreement. The parties intend for this Agreement to be enforceable by the Court, and if any material term is omitted, the Court shall determine what is reasonable rather than voiding this Agreement. (emphasis added).
6. All parties authorize their respective attorneys to execute a dismissal with prejudice.

Exhibit B.

In reliance of the mediated settlement agreement reached on May 1, 2017, Plaintiff, to its extreme detriment and prejudice: 1) withdrew its motion to amend the Complaint and did not proceed with scheduling depositions and serving written discovery requests on the Defendants; 2) turned over the management of OFS to a new property management company based on the Defendants' agreement to sign a release; and 3) executed the release proposed by the Defendants with revisions that were approved by all counsel for the parties.

Defendants have also performed, in part, under the Agreement. The carriers insuring a defense for Defendants Jim Perkins, Nancy Moore, Steve Dame, and Mark Dos Santos paid

settlement funds to Plaintiff's counsel in the amount of \$80,000.00. OFS has also paid the Plaintiff \$15,000.00 as contemplated by the Agreement.¹ Likewise, Counsel for Steven Dame indicated that Mr. Dame has signed the release. Despite this partial performance, Defendants have failed to deliver a copy of the fully executed release or the settlement funds from the carriers insuring the defense of William Moore and Errol Dos Santos.

Since May 1, 2017, counsel for the Plaintiff has corresponded with Defendants' counsel on numerous occasions requesting that the Defendants perform under the terms of the settlement agreement by executing the releases (drafted by the Defendants' attorneys) and paying the remaining settlement funds to Plaintiff. Exhibit I (emails, exclusive of attachments containing OFS confidential financial documents). In response, the Defendants raise baseless objections to the Plaintiff's transition of the management of OFS as a reason to withhold their signatures on the release. The Defendants' actions with respect to mediation and the settlement, thus, appear only to have been a transparent attempt to terminate Plaintiff's contract with the OFS. The Defendants did not engage in mediation and subsequent discussions regarding the performance of the terms of the settlement agreement in good faith, as they continue to manufacture bogus reasons for withholding their execution of the releases and the payment of funds contemplated by the Agreement.

This Court should grant the Plaintiff's Motion to Enforce the Settlement and award the Plaintiff costs and attorney's fees related to this motion.

¹ Although OFS is not a party to the litigation, Jim Perkins, Nancy Moore, and Steve Dame serve on the OFS board of directors and comprise a majority vote. As board members, they authorized payment on behalf of OFS to the Plaintiff for services provided in turning over the management of OFS, however, they have refused to sign the release of the Plaintiff as required by the Agreement.

I have conferred with counsel for the Defendants in good faith to attempt to resolve this Motion to Enforce the Settlement to no avail.

MCNAIR LAW FIRM, P.A.

s/ Alicia E. Thompson

Henrietta U. Golding, SC Bar #2173

Alicia E. Thompson, SC Bar 77056

Post Office Box 336

Myrtle Beach, South Carolina 29578-0336

(843) 444-1107 – Telephone

(843) 444-4729 – Facsimile

Email: hgolding@mcnair.net

athompson@mcnair.net

Attorneys for Plaintiff

Myrtle Beach, South Carolina
October 18, 2017

From: Karl Folkens <karl@folkenslaw.com>
Sent: Sunday, March 26, 2017 1:21 PM
To: Bobby Buffington; Christian Stegmaier; Henrietta Golding (HGolding@mcnair.net); Mike Smith; Kilgore, Phillip; Preston Brittain; cwn@cslaw.com; mhall@collinsandlacy.com; tommyb@brittainlawfirm.com
Cc: Alicia Thompson; Kathy Roberts
Subject: Mediation: K. A. Diehl and Associates, Inc. v. James Perkins, et al. - MA17-126
Attachments: Mediation Agreement and FAQ - 2016.pdf; Mediation Outline for Karl Folkens.doc

Dear Attorneys:

This letter will confirm that a mediation conference has been scheduled in the above-referenced case for May 1, 2017, beginning at 9:30 a.m. at McNair Law Firm, P.A., 2411 Oak Street, Suite 206, Myrtle Beach, SC.

You will receive a separate "calendar invite" e-mail confirming this date and time.

Attached is a proposed agreement to mediate which I will present for signing at the mediation conference. I also attach FAQ-Frequently Asked Questions. Please feel free to distribute these to your client.

My fee for mediation is \$400.00 per hour which will be evenly divided by the parties, unless otherwise agreed upon ahead of time.

Please send me copies of the Complaint, Answer, any Counterclaim and any additional information you would like for me to review. Also, please let opposing counsel and me know who will be present with you at the mediation.

I strongly urge you to have all persons necessary to effect a full and complete settlement attend the mediation session. For the purposes of an insurance company, I take the term "full authority" to mean a person with full policy limits authority or the authority up to the Plaintiff's last written demand, whichever is less.

Consistent with both state and federal rules governing the mediation process, a chief administrative judge has ruled that the term "full authority" is the

... ability, power, and freedom to make all decisions, including the ultimate decision to accept or reject a settlement proposal *without having to make a phone call or get approval from someone who is not present at the conference*. When a proposal is made during the course of the mediation process, and the person present must get permission from someone not participating in the conference in order to respond to the proposal, then "full authority" is lacking. [Emphasis added.]

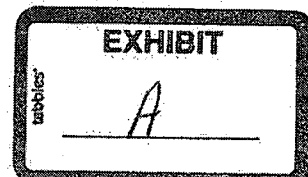
For the purposes of an individual, non-corporate party, I take the term "full authority" to mean the personal attendance of anyone in addition to the named party who would be necessary to consult in order to make a final decision, such as a spouse or other significant person.

If this will not occur, please let opposing counsel and me know immediately so that we may address this issue. As you know, the likelihood of success increases exponentially if everyone with full settlement authority participates in the mediation session. Also, the applicable ADR rules require such persons to personally attend the mediation.

Thank you for the opportunity to serve as mediator, and please do not hesitate to contact us if you have any questions about this mediation. For questions about scheduling, please contact my mediation coordinator, Nell Folkens, whose e-mail address is also set forth above.

Finally, we now offer a convenient on-line calendar availability system on our website. To schedule your next ADR event, please consider using this calendar at www.folkenslaw.com/mediation.html.

Yours very truly,



Karl

Karl A. Folkens
karl@folkenslaw.com
www.folkenslaw.com
843.665.0100



Confidential: The information contained in this message may be privileged and confidential and protected from disclosure. If the recipient of this message is not the intended person, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply email and delete all copies from your computer.

ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - Horry - COMMON PLEAS - CASE#2015CP2605573
ELECTRONICALLY FILED - 2017 Aug 07 4:05 PM - Horry - COMMON PLEAS - CASE#2016CP2600744

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CIRCUIT COURT

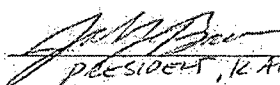
K. A. DIEHL AND ASSOCIATES, INC. V. JAMES PERKINS, ET AL.

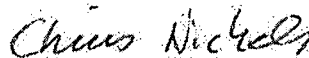
Docket No. 2015-CP-26-05573

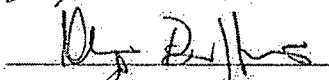
MEDIATED SETTLEMENT AGREEMENT

As a result of mediation, the parties have agreed as follows:

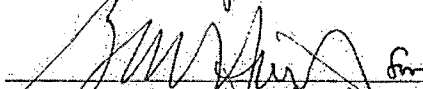
1. Defendants' insurers shall pay to Plaintiff the total sum of \$100,000.00 as soon as practicable, but no later than 20 days.
2. Ocean Front Spa ("OFS") shall pay Plaintiff \$5,000.00 for property management services through June 1, 2017 after which its property management services shall cease. OFS shall pay an additional \$10,000.00 to Plaintiff by June 10, 2017.
3. The existing maintenance personnel will be paid by OFS through Plaintiff through May 5, 2017, after which the existing maintenance personnel will no longer provide services to OFS.
4. Plaintiff shall transfer financial records and other documentation and assets to OFS by June 1, 2017, as required by South Carolina law and generally accepted property management standards.
5. The parties will execute a mutual release releasing the other and the other's employees, agents, directors, members, officers, attorneys, insurers and related parties (but specifically excluding Allegiant as a "related party") from all claims and damages.
6. The parties acknowledge that a more comprehensive mutual release will be executed incorporating the terms of this Agreement. The parties intend for this Agreement to be enforceable by the Court, and if any material term is omitted, the Court shall determine what is reasonable rather than voiding this Agreement.
7. All parties authorize their respective attorneys to execute a dismissal with prejudice.
8. The parties shall equally divide the costs of the mediation seven ways.

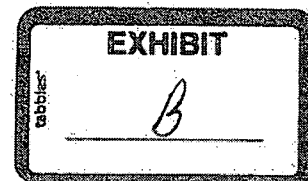

PRESIDENT, KADIEHL & ASSOCIATES, INC.


FOR MAUDE SANTI


FOR WILLIAM MOODY (HUBB)


FOR ALL DEFENDANTS / B. PERKINS


GERALD DAS SANTOS



Nancy Moore

William Frank

John Perkins

Ernesto Santos

Mark Salvo w/pen

Christa Skigman w/pen

William Moore

~~John~~

Jeff Melrod w/pen

May 1, 2017

MA17-126

42

Settlement Agreement

Civil Action Nos.: 2016-CP-26-00673, -00674, -00743, -00744

The following is a Settlement Agreement ("Agreement") between Plaintiffs Jim Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dames, Errol Dos Santos, and Jeffrey Richardson ("Plaintiffs") on the one hand and Defendants The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA"), Ocean Front Spa Horizontal Property Regime, Inc. ("OFS"), Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Ken Perkins, Ray Coghill, Ralph Jump, and Wayne Urban ("Defendants") on the other (Plaintiffs and Defendants hereafter referred to as the "Parties") to settle Civil Action Nos.: 2016-CP-26-00673, -00674, -00743, -00744, currently pending on the South Carolina Circuit Court in Horry County ("Settled Actions").

1. For good and valuable consideration, upon full execution and effectuation of this Agreement, in full satisfaction of the Settled Actions, and any other claims or charges Plaintiffs have, claim to have, or may have, against Defendants, including, without limitation, any claim for attorneys' fees or costs, Defendants agree to pay the gross amount of \$85,000.00 (the "Payment") in full satisfaction of any claims, charges or actions Plaintiffs have against Defendants.

- a) Defendants will, thirty (30) business days hereafter, pay to Plaintiffs and Plaintiffs' attorney the total sum of Fifteen Thousand Dollars (\$15,000.00) for the purposes of funding a binding arbitration of a declaratory judgment action to adjudicate whether the gate pass fee currently charged by MBRHOA is authorized under the governing MBRHOA documents and applicable law.
- b) Defendants will, thirty (30) business days hereafter, pay to The Board of Directors for the Myrtle Beach Resort Horizontal Property Regime ("A Building Board") and the Board of Directors for the Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime, ("Five Seasons Board") the total sum of Fifteen Thousand Dollars (\$15,000.00) for the purposes of defending a binding arbitration of a declaratory judgment action filed by Plaintiffs for the purpose of adjudicating whether the gate pass fee currently charged is authorized under the governing MBRHOA documents and applicable law.
- c) Arbitrator. Defendants will pay to Plaintiff's counsel the sum of \$5,000.00 to be held in trust by his law firm to pay to an arbitrator to resolve the arbitration set forth in the previous two paragraphs. In the event this amount does not fund the arbitration in full, the balance, if any, shall be paid by the attorneys receiving the sums set out in the two previous paragraphs.
- d) Defendants will, thirty (30) business days hereafter, pay "Brittain Law Firm" in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00), as payment for attorneys' fees and costs, such amount not being subject to income or employment tax withholding, but to be reported on a Form 1099.

2. The Parties hereto recognize that the Defendants do not admit any liability to Plaintiffs, or to anyone else because of, or growing out of, matters set forth in Plaintiffs' Amended Complaints in the Settled Actions. The Parties have agreed to settle any and all claims

Plaintiffs have asserted or may have asserted against Defendants in order to avoid further cost and inconvenience in moving forward with a trial.

3. MBRHOA and OFS will use their best efforts to have their respective By-Laws amended to require at least three bids to be received prior to the awarding of any contract which will exceed \$10,000.00 in value.

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

5. Within 15 days of receipt of the Payment, Plaintiffs' counsel shall file a stipulation of dismissal with prejudice in each of the Settled Actions.

6. Plaintiffs further acknowledge and agree that this Agreement extends to all claims of every kind and nature whatsoever, known or unknown, suspected or unsuspected, and Plaintiffs acknowledges they may hereafter discover facts in addition to or different from those which they know or believe to be true with respect to the subject matter of this Agreement, but it is their intention to hereby fully and finally settle and release all such matters as well and, in furtherance of that intention, the foregoing Release shall remain in effect as a full and complete release notwithstanding the discovery or existence of such additional or different facts.

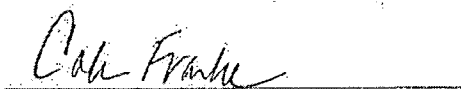
7. Plaintiffs agree that they will not make any statements, oral or written, which they know or reasonably should know to be a disparaging or negative comment about Defendants or their officers, directors, employees and agents, or otherwise detrimental to the reputation or goodwill of Defendants, and shall refrain from suggesting to anyone else that such disparaging, negative or detrimental comment be made, unless required by law. Defendants agree that they will not make any statements, oral or written, which they know or reasonably should know to be a disparaging or negative comment about Plaintiffs or their officers, directors, employees and agents, or otherwise detrimental to the reputation or goodwill of Plaintiffs, and shall refrain from suggesting to anyone else that such disparaging, negative or detrimental comment be made, unless required by law.

8. It is understood and agreed that Defendants expressly rely upon the promises, representations, and warranties made by Plaintiffs in this Agreement; that any breach of such promises, representations, and warranties would constitute a material breach of this Agreement; and that in the event of any such breach, Defendants shall be entitled to any and all of the following relief: (a) the immediate repayment to Defendants of the full Settlement Amount hereunder (b) the indemnification and hold harmless protection set forth above; (c) specific enforcement of all promises and undertakings made by Plaintiffs hereunder; and (d) all other relief and damages available at law or in equity.

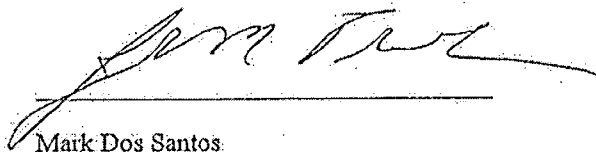
Agreed to this 1st Day of May, 2017.

Plaintiffs

Jim Perkins



Colleen Franke a/k/a Colleen Franke Perkins

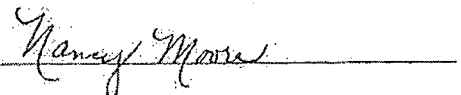


Mark Dos Santos

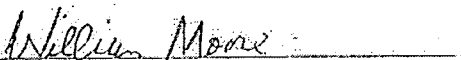


By his Attorney

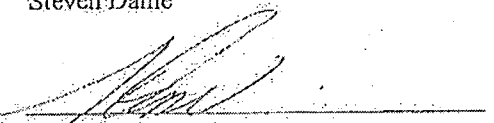
Nancy Moore



William Moore



Steven Dame



Errol Dos Santos

Errol Dos Santos

Jeffrey Richardson

A. Post B
By his Attorney

Defendants

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

[Signature]
By its Attorney

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

[Signature]
By its Attorney

Phil Cox

[Signature]

Bill Cameron

[Signature]
By his Attorney

Stanley Jordan

[Signature]
By his Attorney

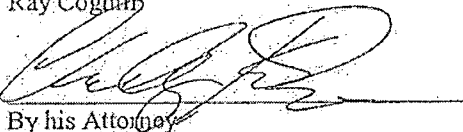
Walter Jordan

Walter Jordan

Ken Perkins

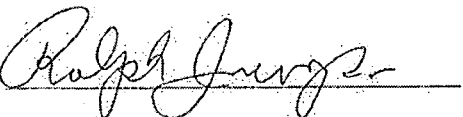


Ray Coghlin



By his Attorney

Ralph Jump



Wayne Urban



29682229.1

Thompson, Alicia

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Sent: Tuesday, May 23, 2017 11:09 AM
To: Golding, Henrietta; Thompson, Alicia
Subject: Draft Mutual Release
Attachments: 1948538.doc

Henri-

Attached is the proposed draft release. I, of course, invite your comments/questions/suggestions for revision. It's in circulation with the defendants right now. The only claims released in here are between your crew and ours. Did not include Phillip's dispute.

Awaiting my portion of the settlement draft from Phly. Will FedEx it to you upon my receipt.

CS

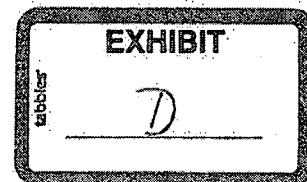
Christian Stegmaier

Direct: (803) 255-0454
 Main: (803) 256-2660
 Fax: (803) 771-4484
 Vcard: [download vcard](#)
 Web: www.collinsandlacy.com

1330 Lady Street, 6th Floor
 Columbia, SC 29201



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
K.A. Diehl and Associates, Inc.,	)	Civil Action No.: 2015-CP-26-5573
	)	
Plaintiff,	)	
	)	
vs.	)	MUTUAL RELEASE IN FULL
	)	
James Perkins, Colleen Franke, a/k/a	)	
Colleen Franke Perkins, Mark Dos Santos,	)	
Nancy Moore, William Moore, Steven	)	
Dame, and Errol Dos Santos,	)	
	)	
Defendants.	)	

This Mutual Release In Full ("Release") is made by and amongst *Plaintiff K.A. Diehl and Associates, Inc.*, on the one hand, and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos*, on the other hand. *Plaintiff K.A. Diehl and Associates, Inc.* and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos* are collectively referred to herein as "the Parties."

WHEREAS, Plaintiff initiated the above captioned action against the above named Defendants. The above captioned action is referred to herein as "the Litigation."

WHEREAS, the Parties now wish to resolve all claims that were raised or could have been raised between them in the Litigation;

WHEREAS, the Parties deny the claims and allegations asserted against them in the Litigation and deny any wrongdoing related this Litigation;

WHEREAS, the Parties desire to avoid the expense, uncertainties, and risks of continued litigation between them and to fully, finally, and forever compromise and settle all claims

pertaining between them which were raised or could have been raised in the Litigation, whether known or unknown or hereinafter discovered.

NOW THEREFORE, in consideration of:

- (a) One Hundred Thousand and 00/100 (\$100,000.00), the amount paid by Defendants' insurers to Plaintiff in settlement of Plaintiff's claims against Defendants in this Litigation;
- (b) Five Thousand and 00/100 (\$5,000.00), the amount paid by Ocean Front Spa ("OFS") to Plaintiff for property management services through June 1, 2017, after which Plaintiff's property management services shall cease;
- (c) Ten Thousand and 00/100 (\$10,000.00), the additional amount paid by Ocean Front Spa ("OFS") to Plaintiff by June 10, 2017;
- (d) Transfer of financial records and other documentation and assets by Plaintiff to Ocean Front Spa ("OFS") by June 1, 2017, as required by South Carolina law and generally accepted property management standards;
- (e) the dismissal, with prejudice, of all claims and counterclaims that were brought or that could have been brought in the Litigation by and between the Parties;
- (f) the mutual covenants and releases set forth below; and
- (g) other good and valuable consideration as set forth herein, the receipt and sufficiency of which the Parties to this Release hereby acknowledge,

The Parties agree as follows:

1. The Parties, and any and all of their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors, for and in consideration of the covenants and promises set forth above, the receipt and sufficiency of which is hereby

acknowledged, hereby remise, release, acquit, hold harmless, and forever discharge one another (including their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors) and their insurers (including their third party claims administrators), of and from any and all past, present, and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental, special, consequential, statutory, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any kind whatsoever now existing or which may hereafter accrue relating this Litigation, whether known or unknown, discovered or undiscovered, and any losses or damages resulting from, or which may in any way be alleged to have resulted from the work or services provided by the Parties. It is the expressed intent of the Parties to fully, completely, and forever release each other from any and all claims now existing, having anything to do, in any way, with the allegations in this Litigation or any allegations of any losses or damages resulting from services provided by Plaintiff and from Defendants' actions, which resulted in this Litigation.

2. Each of the Parties hereby represents and warrants that they have not assigned or transferred or purported to assign or transfer to any person or entity not a signatory to this Release any claim or matter herein released, disclaimed, discharged, or terminated. In the event of any assignment or transfer of any claims for relief or other matters herein released, discharged, terminated, or disclaimed, the assigning or transferring party agrees to indemnify and hold harmless each other party, as well as any parent, affiliate, or subsidiary, from and against any liability or loss and for any cost or expense, including

attorneys' fees, or judgment or settlement arising out of or occasioned by any such assignment or transfer.

3. Notwithstanding any other provision, the Parties agree and acknowledge that this Release is a compromise of disputed claims and neither the existence of the Release, nor any recitals, terms, conditions, or other statements contained in it, nor the payment of the settlement amount to Plaintiff shall be construed as an admission of liability by or on the part of the Parties for any allegation or claim. The respective Parties do not admit, but instead expressly deny all liability for the claims asserted against them and the Parties enter into this settlement solely to avoid the expense, uncertainties, and risks of further litigation. Consequently, this Release shall not be admissible in the Litigation or in any other action, suit, or legal proceeding as evidence of any liability, culpability, or fault of or on the part of the Parties.
4. The undersigned Parties declare and represent that they have read this Release and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that the instrument contains the entire agreement between the Parties hereto and that the terms of this instrument are contractual and not mere recitals, and further, that if any paragraph or part of this Release is found void or unenforceable, the remainder of this Release shall not be affected.
5. This instrument shall be binding on all the undersigned Parties' successors in interests, heirs, purchasers, and assignees.
6. This Release shall be construed in accordance with the laws of the State of South Carolina.

7. The Parties agree to cooperate so as to effectuate the dismissal of this Litigation and all such claims as may have been alleged in the Litigation amongst or between them, including but not limited to the filing of a stipulation of dismissal with prejudice of the same.
8. This Release represents the entire agreement between the Parties with respect to the subject matters contained herein. Neither this Release nor any provision hereof may be changed, waived, discharged, or terminated orally. This Release may be modified or amended only by a written agreement executed by the Parties.
9. Each signatory acknowledges that he or she is authorized to execute this Release on behalf of the respective party, that the party has fully read this Release, that the party understands all the terms and conditions set forth herein, and that the party is entering into this Release voluntarily and without promise or benefit other than as set forth herein.
10. The Parties represent and declare that in executing this Release they relied solely upon their own judgment, belief, and knowledge, and that they have had ample opportunity to consult with legal counsel of their choice concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other Party or by any person representing any of such other Party.

IN WITNESS WHEREOF, the undersigned have executed this document on the respective dates noted.

YOU ARE MAKING A FINAL SETTLEMENT

READ BEFORE SIGNING

The Undersigned state they have carefully read the foregoing Release, know the contents thereof, accept these terms, agree to abide by them, and sign the same as their own free act.

[Signature Pages to Follow]

WE HAVE READ THE FOREGOING RELEASE.

WITNESSES:

K.A. DIEHL AND ASSOCIATES, INC.:

By: _____

Its: _____

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared K.A. DIEHL AND ASSOCIATES, INC., By: _____, Its: _____, who being duly sworn, deposed and said that K.A. DIEHL AND ASSOCIATES, INC. is Plaintiff in the foregoing matter, that (s)he has read the foregoing instrument and is familiar with the contents thereof, that (s)he executed the foregoing instrument on behalf of K.A. DIEHL AND ASSOCIATES, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Henrietta U. Golding, Esquire
Alicia E. Thompson, Esquire
Attorney for Plaintiff

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

JAMES PERKINS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared JAMES PERKINS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Approved by:

A. Preston Brittain, Esquire
Attorney for James Perkins

Christian Stegmaier, Esquire
Attorney for James Perkins

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

COLLEEN FRANKE,
A/K/A COLLEEN FRANKE PERKINS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared COLLEEN FRANKE, A/K/A COLLEEN FRANKE PERKINS, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Approved by:

A. Preston Brittain, Esquire
Attorney for Colleen Franke, a/k/a Colleen
Franke Perkins

Christian Stegmaier, Esquire
Attorney for Colleen Franke, a/k/a Colleen
Franke Perkins

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

MARK DOS SANTOS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared MARK DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Approved by:

A. Preston Brittain, Esquire
Attorney for Mark dos Santos

Christian Stegmaier, Esquire
Attorney for Mark dos Santos

Approved by:

Christopher Nickels, Esquire
Attorney for Mark dos Santos

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

NANCY MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared NANCY MOORE, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Approved by:

A. Preston Brittain, Esquire
Attorney for Nancy Moore

Christian Stegmaier, Esquire
Attorney for Nancy Moore

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

WILLIAM MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared WILLIAM MOORE, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Approved by:

A. Preston Britain, Esquire
Attorney for William Moore

Robert W. Buffington, Esquire
Attorney for William Moore

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

STEVEN DAME

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared STEVEN DAME, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Approved by:

A. Preston Brittain, Esquire
Attorney for Steven Dame

Christian Stegmaier, Esquire
Attorney for Steven Dame

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

ERROL DOS SANTOS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared ERROL DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

Approved by:

Approved by:

A. Preston Brittain, Esquire
Attorney for Errol dos Santos

G. Michael Smith, Esquire
Attorney for Errol dos Santos

Thompson, Alicia

From: Thompson, Alicia
Sent: Wednesday, May 24, 2017 3:12 PM
To: 'cessnac@horrycounty.org'
Cc: bbuffington@hsblawfirm.com; Christian Stegmaier; 'msmith@thompsonlaw.com'; 'Preston Brittain'; cwn@cslaw.com; Meghan Hazelwood Hall; Tommy Brittain; Brown, Debbie; Golding, Henrietta (HGolding@mcnair.net); Koerner, Carole
Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Hi Cecilia:

The above captioned case has settled. Counsel are in the process of finalizing the stipulation of dismissal and the releases and the action should be dismissed shortly. Therefore, the motions scheduled on June 19, 2017 for a hearing are moot and can be removed from the non-jury roster.

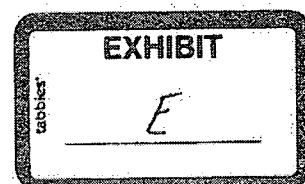
Thanks,

Alicia Thompson

M McNAIR
ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
 VCard | Bio URL | Website



Thompson, Alicia

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Sent: Thursday, June 08, 2017 2:42 PM
To: Thompson, Alicia
Cc: preston@brittainlawfirm.com; Mike Smith (MSmith@thompsonlaw.com); Chris Nickels (cnickels@clawsonandstaubes.com); Buffington, Bobby (bbuffington@hsblawfirm.com)
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744
Attachments: COLUMBIA-#1461025-v1-Stipulation_of_Dismissal_KA_Diehl.doc; COLUMBIA-#1461252-v4-Mutual_Release_KA_Diehl.doc

Per our telephone conference just now: Good to go.

We'll start circulating it on our end.

CS

From: Thompson, Alicia [mailto:AThompson@mcnair.net]
Sent: Thursday, June 8, 2017 2:34 PM
To: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Subject: FW: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Christian:

Are you good with the attached draft? I plan to send to Jack for execution, unless you tell me that there is an issue. We are a week away from the deadline for transition proposed, so it seems like the 15th makes sense based on the time.

Thanks,

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
 VCard | Bio URL | Website



From: Thompson, Alicia
Sent: Wednesday, May 31, 2017 5:03 PM
To: 'Christian Stegmaier' <cstegmaier@collinsandlacy.com>; bbuffington@hsblawfirm.com;
 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>;
 cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair

Henrietta <HGolding@mcnair.net>; Miranda Byrnside (miranda@brittainlawfirm.com) <miranda@brittainlawfirm.com>

Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Christian:

See attached two minor changes to paragraphs d and 3 (2nd) of the mutual release revising the date of the transfer of financial documents and other information to June 15, 2017. Information has been provided to the Board, however KA Diehl needs a few more days to fully transition everything to the Association.

Please let me know if you approve of the drafts of the release and stipulation attached so the documents can be executed by the parties.

Also, can everyone update us as to the status of the settlement funds?

Thanks,

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson

Shareholder

athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 946 5969 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

VCard | Bio URL | Website



From: Christian Stegmaier [<mailto:cstegmaier@collinsandlacy.com>]

Sent: Friday, May 26, 2017 10:46 AM

To: Thompson, Alicia <ATHompson@mcnair.net>; bbuffington@hsblawfirm.com; 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; Miranda Byrnside (miranda@brittainlawfirm.com) <miranda@brittainlawfirm.com>

Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Take 3.

CS

From: Thompson, Alicia [<mailto:ATHompson@mcnair.net>]

Sent: Friday, May 26, 2017 10:29 AM

To: Christian Stegmaier <cstegmaier@collinsandlacy.com>; bbuffington@hsblawfirm.com; 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; Miranda Byrnside (miranda@brittainlawfirm.com) <miranda@brittainlawfirm.com>

Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

I think the name is Myrtle Beach Resort, Ocean Front Spa Horizontal Property Regime, Inc. per the SC SOS website.

Thanks,

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 946 5969 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website



From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]

Sent: Friday, May 26, 2017 10:21 AM

To: Thompson, Alicia <ATHompson@mcnair.net>; bbuffington@hsblawfirm.com; 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; Miranda Byrnside (miranda@brittainlawfirm.com) <miranda@brittainlawfirm.com>

Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Take 2.

Preston, please confirm whether MBR Ocean Front Spa HBR, Inc. is the correct jural name for OFS. That's how it is listed on the MBRHOA webpage; however, I don't find that entity on the SC SOS website. We'll need to make a change if it's not correct.

CS

From: Thompson, Alicia [mailto:ATHompson@mcnair.net]

Sent: Thursday, May 25, 2017 9:26 AM

To: bbuffington@hsblawfirm.com; Christian Stegmaier <cstegmaier@collinsandlacy.com>; 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Meghan Hazelwood Hall <mhall@collinsandlacy.com>; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>

Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Hi all:

I am back from maternity leave, so I am taking up my role of moving things along (aka as bugging you). To that end, please make settlement checks payable to McNair Law Firm, P.A. The W-9 Form is attached.

Also attached is a proposed stipulation of dismissal with prejudice. Let me know if you have any changes to the stipulation.

Christian circulated the release earlier this week, and I understand he is making some changes requested of Henri. Christian, can you circulate that draft today?

I enjoyed working with all of you. Hopefully, our paths will cross again.

Thanks!

Alicia

MCNAIR ATTORNEYS

Alicia E. Thompson

Shareholder

athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 946 5969 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

VCard | Bio URL | Website



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Christian Stegmaier

Direct: (803) 255-0454

Main: (803) 256-2660

Fax: (803) 771-4484

Vcard: [download vcard](#)

Web: www.collinsandlacy.com

1330 Lady Street, 6th Floor
Columbia, SC 29201



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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K.A. Diehl and Associates, Inc.,

Plaintiff,

v.

James Perkins, Colleen Franke, a/k/a Colleen
Franke Perkins, Mark Dos Santos, Nancy Moore,
William Moore, Steven Dame, and Errol Dos
Santos.

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-26-05573

STIPULATION OF DISMISSAL WITH
PREJUDICE

The parties hereby stipulate that the claims asserted or that could have been asserted in the above captioned case are dismissed with prejudice, with each party bearing its own costs, in accordance with Rule 41 of the South Carolina Rules of Civil Procedure.

I SO STIPULATE AND CONSENT:

McNair Law Firm, P.A.

Ms. Alicia E. Thompson, Esquire
Ms. Henrietta U. Golding, Esquire
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578

Attorneys for Plaintiff K.A. Diehl and Associates, Inc.

Myrtle Beach, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

The Brittain Law Firm, P.A.

A. Preston Brittain, Esq.
Thomas C. Brittain, Esq.
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
(843)-449-8562
(843)-497-6124 (fax)

*Attorneys for Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins,
Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos.*

Myrtle Beach, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Clawson and Staubes, LLC

Mr. Christopher W. Nickels, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC | 29492-8144
Phone: 843 577 2026 | Fax: 843 722 2867 | Cell: 843 224 2406

Attorney for Defendant Mark Dos Santos

Charleston, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Collins and Lacy, P.C.

Christian Stegmaier, Esq.
Collins and Lacy, P.C.
1330 Lady Street, 6th Floor
Columbia, SC 29201
Main: (803) 256-2660 | Fax: (803) 771-4484

Attorney for Defendants Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Steven Dame, James Perkins and Nancy Moore

Columbia, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Haynsworth, Sinkler, Boyd, P.A.

Robert W. Buffington, Esq.
Haynsworth, Sinkler, Boyd, P.A.
P.O. Box 340
Charleston, SC 29402
T: (843) 626-5700

Attorney for Defendant William Moore

Myrtle Beach, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Thompson & Henry, P.A.

G. Michael Smith, Esq.
Thompson & Henry, P.A.
1300 Second Avenue, Third Floor
P.O. Box 1740
Conway, SC 29528
T: (843) 248-5741

Attorney for Defendant Errol Dos Santos

Conway, South Carolina
May _____, 2017

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT)

K.A. Diehl and Associates, Inc.,)

Civil Action No.: 2015-CP-26-5573)

Plaintiff,)

vs.)

MUTUAL RELEASE IN FULL)

James Perkins, Colleen Franke, a/k/a)

Colleen Franke Perkins, Mark Dos Santos,)

Nancy Moore, William Moore, Steven)

Dame, and Errol Dos Santos,)

Defendants.)

This Mutual Release In Full ("Release") is made by and amongst *Plaintiff K.A. Diehl and Associates, Inc.*, on the one hand, and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos*, on the other hand. *Plaintiff K.A. Diehl and Associates, Inc.* and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos* are collectively referred to herein as "the Parties."

WHEREAS, Plaintiff initiated the above captioned action against the above named Defendants. The above captioned action is referred to herein as "the Litigation."

WHEREAS, the Parties now wish to resolve all claims that were raised or could have been raised between them in the Litigation;

WHEREAS, the Parties deny the claims and allegations asserted against them in the Litigation and deny any wrongdoing related this Litigation;

WHEREAS, the Parties desire to avoid the expense, uncertainties, and risks of continued litigation between them and to fully, finally, and forever compromise and settle all claims

pertaining between them which were raised or could have been raised in the Litigation, whether known or unknown or hereinafter discovered.

NOW THEREFORE, in consideration of:

- (a) One Hundred Thousand and 00/100 (\$100,000.00), the amount paid by Defendants' insurers to Plaintiff in settlement of Plaintiff's claims against Defendants in this Litigation;
- (b) Five Thousand and 00/100 (\$5,000.00), the amount paid by Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. ("OFS") to Plaintiff for property management services through June 1, 2017, after which Plaintiff's property management services shall cease;
- (c) Ten Thousand and 00/100 (\$10,000.00), the additional amount paid by OFS to Plaintiff by June 10, 2017;
- (d) Transfer of financial records and other documentation and assets by Plaintiff to OFS by June 15, 2017, as required by South Carolina law and generally accepted property management standards;
- (e) the dismissal, with prejudice, of all claims and counterclaims that were brought or that could have been brought in the Litigation by and between the Parties;
- (f) the mutual covenants and releases set forth below; and
- (g) other good and valuable consideration as set forth herein, the receipt and sufficiency of which the Parties to this Release hereby acknowledge;

The Parties agree as follows:

1. The Parties, and any and all of their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors, for and in consideration of the

covenants and promises set forth above, the receipt and sufficiency of which is hereby acknowledged, hereby remise, release, acquit, hold harmless, and forever discharge one another (including their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors) and their insurers (including their third party claims administrators), of and from any and all past, present, and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental, special, consequential, statutory, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any kind whatsoever now existing or which may hereafter accrue relating this Litigation, whether known or unknown, discovered or undiscovered, and any losses or damages resulting from, or which may in any way be alleged to have resulted from the work or services provided by the Parties. It is the expressed intent of the Parties to fully, completely, and forever release each other from any and all claims now existing, having anything to do, in any way, with the allegations in this Litigation or any allegations of any losses or damages resulting from services provided by Plaintiff and from Defendants' actions, which resulted in this Litigation.

2. Each of the Parties hereby represents and warrants that they have not assigned or transferred or purported to assign or transfer to any person or entity not a signatory to this Release any claim or matter herein released, disclaimed, discharged, or terminated. In the event of any assignment or transfer of any claims for relief or other matters herein released, discharged, terminated, or disclaimed, the assigning or transferring party agrees to indemnify and hold harmless each other party, as well as any parent, affiliate, or subsidiary, from and against any liability or loss and for any cost or expense, including

attorneys' fees, or judgment or settlement arising out of or occasioned by any such assignment or transfer.

3. Notwithstanding any other provision, the Parties agree and acknowledge that this Release is a compromise of disputed claims and neither the existence of the Release, nor any recitals, terms, conditions, or other statements contained in it, nor the payment of the settlement amount to Plaintiff shall be construed as an admission of liability by or on the part of the Parties for any allegation or claim. The respective Parties do not admit, but instead expressly deny all liability for the claims asserted against them and the Parties enter into this settlement solely to avoid the expense, uncertainties, and risks of further litigation. Consequently, this Release shall not be admissible in the Litigation or in any other action, suit, or legal proceeding as evidence of any liability, culpability, or fault of or on the part of the Parties.
4. The undersigned Parties declare and represent that they have read this Release and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that the instrument contains the entire agreement between the Parties hereto and that the terms of this instrument are contractual and not mere recitals, and further, that if any paragraph or part of this Release is found void or unenforceable, the remainder of this Release shall not be affected.
5. This instrument shall be binding on all the undersigned Parties' successors in interests, heirs, purchasers, and assignees.
6. This Release shall be construed in accordance with the laws of the State of South Carolina.

7. The Parties agree to cooperate so as to effectuate the dismissal of this Litigation and all such claims as may have been alleged in the Litigation amongst or between them, including but not limited to the filing of a stipulation of dismissal with prejudice of the same.
8. This Release represents the entire agreement between the Parties with respect to the subject matters contained herein. Neither this Release nor any provision hereof may be changed, waived, discharged, or terminated orally. This Release may be modified or amended only by a written agreement executed by the Parties.
9. Each signatory acknowledges that he or she is authorized to execute this Release on behalf of the respective party, that the party has fully read this Release, that the party understands all the terms and conditions set forth herein, and that the party is entering into this Release voluntarily and without promise or benefit other than as set forth herein.
10. The Parties represent and declare that in executing this Release they relied solely upon their own judgment, belief, and knowledge, and that they have had ample opportunity to consult with legal counsel of their choice concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other Party or by any person representing any of such other Party.

Additionally, as it relates to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc., and K.A. Diehl and Associates, Inc.:

1. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. is not a party to the subject litigation; nevertheless Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. the sum of Five Thousand and 00/100 (\$5,000.00) for property management services through June 1, 2017;
2. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. an additional sum of Ten Thousand and 00/100 (\$10,000.00) by June 10, 2017;
3. In consideration for the above payments, K.A. Diehl and Associates, Inc. will cease its property management services and maintenance services at Ocean Front Spa on June 1, 2017. Additionally, K.A. Diehl and Associates, Inc. shall transfer all financial records and other documentation and assets in its possession to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. by June 15, 2017, as required by South Carolina law and generally accepted property management standards.
4. The agreements articulated above in the preceding paragraphs are extent of the agreements between Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. and K.A. Diehl and Associates, Inc. as it pertains to the instant case.

IN WITNESS WHEREOF, the undersigned have executed this document on the respective dates noted.

YOU ARE MAKING A FINAL SETTLEMENT

READ BEFORE SIGNING

The Undersigned state they have carefully read the foregoing Release, know the contents thereof, accept these terms, agree to abide by them, and sign the same as their own free act.

[Signature Pages to Follow]

WE HAVE READ THE FOREGOING RELEASE AND THE FOREGOING LIMITED AGREEMENT WITH MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.

WITNESSES:

K.A. DIEHL AND ASSOCIATES, INC.:

By: _____

Its: _____

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared K.A. DIEHL AND ASSOCIATES, INC., By: _____, Its: _____, who being duly sworn, deposed and said that K.A. DIEHL AND ASSOCIATES, INC. is Plaintiff in the foregoing matter, is a signator to the foregoing matter as it pertains to its limited agreement with MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC., that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument on behalf of K.A. DIEHL AND ASSOCIATES, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

JAMES PERKINS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared JAMES PERKINS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

COLLEEN FRANKE,
A/K/A COLLEEN FRANKE PERKINS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared COLLEEN FRANKE, A/K/A COLLEEN FRANKE PERKINS, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE. ...

WITNESSES:

MARK DOS SANTOS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared MARK DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

NANCY MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared NANCY MOORE, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

WILLIAM MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared WILLIAM MOORE, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

STEVEN DAME

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared STEVEN DAME, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

ERROL DOS SANTOS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared ERROL DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

WE HAVE READ THE FOREGOING LIMITED AGREEMENT WITH K.A. DIEHL & ASSOCIATES, INC.

WITNESSES:

MYRTLE BEACH RESORT,
OCEAN FRONT SPA PROPERTY REGIME, INC.

By: _____

Its: _____

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.,
By: _____, Its: _____, who being duly sworn, depose and said that MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC. is a signator to the foregoing matter as it pertains to its limited agreement with K.A. Diehl & Associates, Inc., that (s)he has read the foregoing instrument and is familiar with the contents thereof, that (s)he executed the foregoing instrument on behalf of MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CIRCUIT COURT

K. A. DIEHL AND ASSOCIATES, INC. V. JAMES PERKINS, ET AL.
Docket No. 2015-CP-26-05573

JAMES PERKINS, ET AL. V. K.A. DIEHL AND ASSOCIATES, ET AL.
Docket No. 2016-CP-26-00744

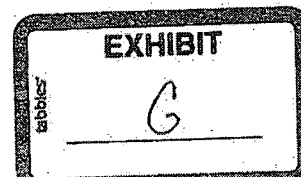
JIM PERKINS, COLLEEN FRANKE, ET AL. V. OCEAN FRONT SPA HORIZONTAL PROPERTY
REGIME, INC., ET AL.
Docket No. 2016-CP-26-00673

JIM PERKINS, COLEEN FRANKE, ET AL. V. THE MYRTLE BEACH RESORT HOMEOWNERS
ASSOCIATION, INC., ET AL.
Docket No. 2016-CP-26-00674

JIM PERKINS, COLEEN FRANKE, ET AL. V. K. A. DIEHL AND ASSOCIATES, INC., ET AL.
Docket No. 2016-26-00743

AMENDED PROOF OF ADR

1. Alternative Dispute Resolution (ADR) was conducted in the form of: **Mediation**.
2. The neutral was: **Karl A. Folkens**.
3. The ADR was conducted on **May 1, 2017**.
4. As a result of ADR, these cases should be considered (please check one):
☒ Fully Settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties.
☐ Partially Settled, with agreement of the parties on the following issues:
☐ At an impasse.
☐ In need of further ADR. I ☐ am / ☐ am not willing to mediate this case further.
☐ I recommend that ADR resume as of:
☐ Continued to (Date):
5. Plaintiffs ☒ were/ ☐ was not present.
 Defendants ☒ were/ ☐ were not present individually (through representatives).
6. Other participants were:
 - ☒ Lawyers for parties: *Henrietta U. Golding, Esq., Alicia E. Thompson, Esq., A. Preston Brittain, Esq., Christopher W. Nickels, Esq., Christian Stegmaier, Esq., Robert W. Buffington, Esq., Phillip A. Kilgore, Esq. & G. Michael Smith, Esq.*
 - ☒ Representatives for insurance carrier: *Hugh Spears, Chubb, Eva Jane Ammons, Nationwide, Lori Barns, Philadelphia Insurance Company*
 - ☐ Guardian ad Litem:
 - ☐ Experts:
 - ☐ Others:



7. Choice of the mediator was by:

 X Stipulation
 Court Order

8. The total number of hours spent in ADR was: *16.5 hours, plus travel.*

9. Further comments of the neutral: *None.*

May 1, 2017

S/ Karl A. Folkens.

KARL A. FOLKENS, Mediator

P. O. Box 6139, Florence, SC 29502-6139

(843) 665-0100; FAX (843) 665-0500

MA17-126

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Jim Perkins, Colleen Franke, a/k/a)
Colleen Franke Perkins, Mark Dos Santos,)
Nancy Moore, William Moore, Steven)
Dame, and Errol Dos Santos, and)
Jeffrey Richardson, on behalf of)
themselves and all other similarly situated,)

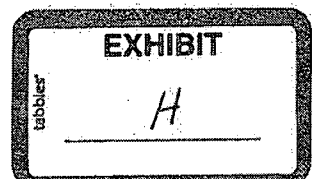
Plaintiffs,)

v.)

Civil Action No.: 2016-CP-26-00673

Ocean Front Spa Horizontal Property)
Regime, Inc., Bill Cameron, Walter Jordan,)
Ralph Jump, Stanley Jordan, Ray Coghill)
and John Doe past board directors of)
Ocean Front Spa Horizontal Property)
Regime, Inc.)

Defendants.)



STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) 15TH JUDICIAL CIRCUIT

COUNTY OF HORRY

)
) Jim Perkins, Colleen Franke, a/k/a
) Colleen Franke Perkins, Mark Dos Santos,
) Nancy Moore, William Moore, Steven
) Dame, Errol Dos Santos, and
) Jeffrey Richardson, on behalf of
) themselves and all other similarly situated,
)

Plaintiffs,

v.

Civil Action No.: 2016-CP-26-00674

)
) The Myrtle Beach Resort Homeowners
) Association, Inc., Phil Cox, Bill Cameron,
) Stanley Jordan, Walter Jordan, Wayne
) Urban, Ken Perkins, and John Doe past
) board directors of The Myrtle Beach
) Resort Homeowners Association, Inc.,
)

Defendants.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) 15th JUDICIAL CIRCUIT

)

Jim Perkins, Colleen Franke, a/k/a
Colleen Franke Perkins, Mark Dos Santos,
Nancy Moore, William Moore, Steven
Dame, and Errol Dos Santos, and
Jeffrey Richardson, individually in their
capacity as derivative shareholders,

)

)

)

)

)

)

)

)

Plaintiffs,

)

)

v.

)

)

Civil Action No.: 2016-CP-26-00743

K.A. Diehl and Associates, Inc., The
Myrtle Beach Resort Homeowners
Association, Inc., Phil Cox, Bill Cameron,
Stanley Jordan, Wayne Urban, Walter
Jordan, Ken Perkins, and John Doe past
board directors of The Myrtle Beach
Resort Homeowners Association, Inc.,

)

)

)

)

)

)

)

)

Defendants.

)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT

Jim Perkins, Colleen Franke, a/k/a
Colleen Franke Perkins, Mark Dos Santos,
Nancy Moore, William Moore, Steven
Dame, Errol Dos Santos, and
Jeffrey Richardson, individually in their
capacity as derivative shareholders of Ocean
Front Spa Horizontal Property Regime, Inc.,

Plaintiffs,

v.

Civil Action No.: 2016-CP-26-00744

Ocean Front Spa Horizontal Property
Regime, Inc., Walter Jordan, Ralph Jump,
Ray Coghill, John Doe past board
directors of Ocean Front Spa Horizontal
Property Regime, Inc., The Myrtle Beach
Resort Homeowners Association, Inc.,
Phil Cox, Bill Cameron, Stanley Jordan,
Wayne Urban, Ken Perkins, John Doe past
board directors of The Myrtle Beach
Resort Homeowners Association, Inc.,
and K.A. Diehl and Associates, Inc.,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO ENFORCE SETTLEMENT
AGREEMENT**

THIS MATTER IS BEFORE THE COURT upon the Motion of the Defendants in each
of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-
00743, and 2016-CP-26-00744) (collectively, the "Actions"): Defendants move for enforcement
of the Settlement Agreement in the Actions ("Settlement Agreement").¹

¹ Defendants also seek preliminary approval of the proposed class settlement described in the Settlement Agreement. The Court will issue a subsequent, separate order regarding such approval as described below.

The Court has reviewed the Settlement Agreement (**Exhibit A** to Defendants' Motion), has held a hearing on the Motion, has considered Plaintiffs' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of the Actions.

The Court finds that the Settlement Agreement is the result of extensive negotiations following a lengthy period of contested litigation between the Parties. The Court further finds that all Parties and their counsel attended and participated in the mediation conference resulting in the Settlement (in person or via telephone, by agreement of the Parties), which concluded with all Parties signing the Settlement Agreement (personally or through their designated agents).² Based on these findings, and for good cause shown,

IT IS ORDERED that Defendants' Motion to enforce the Settlement Agreement is **GRANTED**. Any party desiring to seek reconsideration of this Order shall file a motion explaining the basis for such reconsideration within ten (10) days after his/her/its counsel has received written notice of the entry of this Order. If such a motion for reconsideration is filed, the Court will resolve such motion before entering a subsequent order regarding the Court's approval of the proposed class settlement.

IT IS SO ORDERED on this _____ of _____, 2017.

The Honorable William H. Seals, Jr.

² The Court concludes that SCRCP Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel. Moreover, even if Rule 43(k) did apply, the Court finds that the Settlement Agreement complies with Rule 43(k) in that all Parties signed the Settlement Agreement (personally or through their designated agents), as did their attorneys.



Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa Horizontal Property
Regime Inc , defendant, et al
Case Number: 2016CP2600744
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2017-09-28 12:14:55 page 6 of 6

ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - HORRY - COMMON PLEAS - CASE#2016CP2605573
ELECTRONICALLY FILED - 2017 Sep 29 11:53 AM - HORRY - COMMON PLEAS - CASE#2016CP2600744

Thompson, Alicia

From: Thompson, Alicia
Sent: Thursday, May 25, 2017 9:26 AM
To: 'bbuffington@hsblawfirm.com'; 'Christian Stegmaier'; 'msmith@thompsonlaw.com'; 'Preston Brittain'; 'cwn@cslaw.com'; 'Meghan Hazelwood Hall'; 'Tommy Brittain'; Brown, Debbie; 'Golding, Henrietta (HGolding@mcnair.net)'
Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744
Attachments: W9 Form.pdf; COLUMBIA-#1461025-v1-Stipulation_of_Dismissal_KA_Diehl.doc

Hi all:

I am back from maternity leave, so I am taking up my role of moving things along (aka as bugging you). To that end, please make settlement checks payable to McNair Law Firm, P.A. The W-9 Form is attached.

Also attached is a proposed stipulation of dismissal with prejudice. Let me know if you have any changes to the stipulation.

Christian circulated the release earlier this week, and I understand he is making some changes requested of Henri. Christian, can you circulate that draft today?

I enjoyed working with all of you. Hopefully, our paths will cross again.

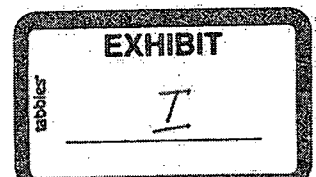
Thanks!

Alicia

M McNAIR
 ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
 VCard | Bio URL | Website



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K.A. Diehl and Associates, Inc.,

Plaintiff,

v.

James Perkins, Colleen Franke, a/k/a Colleen
Franke Perkins, Mark Dos Santos, Nancy Moore,
William Moore, Steven Dame, and Errol Dos
Santos.

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-26-05573

**STIPULATION OF DISMISSAL WITH
PREJUDICE**

The parties hereby stipulate that the claims asserted or that could have been asserted in the above captioned case are dismissed with prejudice, with each party bearing its own costs, in accordance with Rule 41 of the South Carolina Rules of Civil Procedure.

I SO STIPULATE AND CONSENT:

McNair Law Firm, P.A.

Ms. Alicia E. Thompson, Esquire
Ms. Henrietta U. Golding, Esquire
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578

Attorneys for Plaintiff K.A. Diehl and Associates, Inc.

Myrtle Beach, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

The Brittain Law Firm, P.A.

A. Preston Brittain, Esq.
Thomas C. Brittain, Esq.
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
(843)-449-8562
(843)-497-6124 (fax)

*Attorneys for Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins,
Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos*

Myrtle Beach, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Clawson and Staubes, LLC

Mr. Christopher W. Nickels, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC | 29492-8144
Phone: 843 577 2026 | Fax: 843 722 2867 | Cell: 843 224 2406

Attorney for Defendant Mark Dos Santos

Charleston, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Collins and Lacy, P.C.

Christian Stegmaier, Esq.
Collins and Lacy, P.C.
1330 Lady Street, 6th Floor
Columbia, SC 29201
Main: (803) 256-2660 | Fax: (803) 771-4484

Attorney for Defendants Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Steven Dame, James Perkins and Nancy Moore

Columbia, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Haynsworth, Sinkler, Boyd, P.A.

Robert W. Buffington, Esq.
Haynsworth, Sinkler, Boyd, P.A.
P.O. Box 340
Charleston, SC 29402
T: (843) 626-5700

Attorney for Defendant William Moore

Myrtle Beach, South Carolina
May _____, 2017

I SO STIPULATE AND CONSENT:

Thompson & Henry, P.A.

G. Michael Smith, Esq.
Thompson & Henry, P.A.
1300 Second Avenue, Third Floor
P.O. Box 1740
Conway, SC 29528
T: (843) 248-5741

Attorney for Defendant Errol Dos Santos

Conway, South Carolina
May _____, 2017

Thompson, Alicia

From: Thompson, Alicia
Sent: Friday, May 26, 2017 10:29 AM
To: 'Christian Stegmaier'; bbuffington@hsblawfirm.com; 'msmith@thompsonlaw.com'; Preston Brittain; cwn@cslaw.com; Tommy Brittain; Brown, Debbie; Golding, Henrietta; Miranda Byrnside (miranda@brittainlawfirm.com)
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

I think the name is Myrtle Beach Resort, Ocean Front Spa Horizontal Property Regime, Inc. per the SC SOS website.

Thanks,

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
 VCard | Bio URL | Website



From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]
Sent: Friday, May 26, 2017 10:21 AM
To: Thompson, Alicia <ATHompson@mcnair.net>; bbuffington@hsblawfirm.com; 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; Miranda Byrnside (miranda@brittainlawfirm.com) <miranda@brittainlawfirm.com>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Take 2.

Preston, please confirm whether MBR Ocean Front Spa HBR, Inc. is the correct jural name for OFS. That's how it is listed on the MBRHOA webpage; however, I don't find that entity on the SC SOS website. We'll need to make a change if it's not correct.

CS

From: Thompson, Alicia [mailto:ATHompson@mcnair.net]
Sent: Thursday, May 25, 2017 9:26 AM
To: bbuffington@hsblawfirm.com; Christian Stegmaier <cstegmaier@collinsandlacy.com>; 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Meghan Hazelwood Hall <mhall@collinsandlacy.com>; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie

<dbrown@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>

Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Hi all:

I am back from maternity leave, so I am taking up my role of moving things along (aka a's bugging you). To that end, please make settlement checks payable to McNair Law Firm, P.A. The W-9 Form is attached.

Also attached is a proposed stipulation of dismissal with prejudice. Let me know if you have any changes to the stipulation.

Christian circulated the release earlier this week, and I understand he is making some changes requested of Henri. Christian, can you circulate that draft today?

I enjoyed working with all of you. Hopefully, our paths will cross again.

Thanks!

Alicia

M McNair
ATTORNEYS

Alicia E. Thompson

Shareholder

athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 946 5969 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

VCard | Bio URL | Website



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Christian Stegmaier

Direct: (803) 255-0454

Main: (803) 256-2660

Fax: (803) 771-4484

Vcard: [download vcard](#)

Web: www.collinsandlacy.com

1330 Lady Street, 6th Floor
Columbia, SC 29201

Collins & Lacy
ATTORNEYS AT LAW

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Thompson, Alicia

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Sent: Wednesday, May 31, 2017 11:59 PM
To: Thompson, Alicia
Cc: bbuffington@hsblawfirm.com; msmith@thompsonlaw.com; Preston Brittain; cwn@cslaw.com; Tommy Brittain; Brown, Debbie; Golding, Henrietta; Miranda Byrnside (miranda@brittainlawfirm.com)
Subject: Re: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744
Categories: DM, #1470987 : 063741 : 00003 : ATHOMPSO

Thanks. Will make changes and send back.

My carrier confirmed check is in route.

CS

On May 31, 2017, at 11:04 PM, Thompson, Alicia <AThompson@mcnair.net> wrote:

Christian:

See attached two minor changes to paragraphs d and 3 (2nd) of the mutual release revising the date of the transfer of financial documents and other information to June 15, 2017. Information has been provided to the Board, however KA Diehl needs a few more days to fully transition everything to the Association.

Please let me know if you approve of the drafts of the release and stipulation attached so the documents can be executed by the parties.

Also, can everyone update us as to the status of the settlement funds?

Thanks,

Alicia

M McNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843-443-3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843-444-1107 Main | 843-946-5969 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website



From: Christian Stegmaier [<mailto:cstegmaier@collinsandlacy.com>]
Sent: Friday, May 26, 2017 10:46 AM
To: Thompson, Alicia <AThompson@mcnair.net>; bbuffington@hsblawfirm.com; msmith@thompsonlaw.com <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGGolding@mcnair.net>; Miranda Byrnside <miranda@brittainlawfirm.com> <miranda@brittainlawfirm.com>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Take 3.

CS

From: Thompson, Alicia [<mailto:AThompson@mcnair.net>]
Sent: Friday, May 26, 2017 10:29 AM
To: Christian Stegmaier <cstegmaier@collinsandlacy.com>; bbuffington@hsblawfirm.com; msmith@thompsonlaw.com <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGGolding@mcnair.net>; Miranda Byrnside <miranda@brittainlawfirm.com> <miranda@brittainlawfirm.com>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

I think the name is Myrtle Beach Resort, Ocean Front Spa Horizontal Property Regime, Inc. per the SC SOS website.

Thanks,

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
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To: Thompson, Alicia <AThompson@mcnair.net>; bbuffington@hsblawfirm.com; msmith@thompsonlaw.com <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGGolding@mcnair.net>; Miranda Byrnside <miranda@brittainlawfirm.com> <miranda@brittainlawfirm.com>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Take 2.

Preston, please confirm whether MBR Ocean Front Spa HBR, Inc. is the correct jural name for OFS. That's how it is listed on the MBRHOA webpage; however, I don't find that entity on the SC SOS website. We'll need to make a change if it's not correct.

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Sent: Thursday, May 25, 2017 9:26 AM
To: bbuffington@hsblawfirm.com; Christian Stegmaier <cstegmaier@collinsandlacy.com>; 'msmith@thompsonlaw.com' <msmith@thompsonlaw.com>; Preston Brittain <preston@brittainlawfirm.com>; cwn@cslaw.com; Meghan Hazelwood Hall <mhall@collinsandlacy.com>; Tommy Brittain <tommyb@brittainlawfirm.com>; Brown, Debbie <dbrown@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>
Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2016-CP-26-0744

Hi all:

I am back from maternity leave, so I am taking up my role of moving things along (aka as bugging you). To that end, please make settlement checks payable to McNair Law Firm, P.A. The W-9 Form is attached.

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Christian circulated the release earlier this week, and I understand he is making some changes requested of Henri. Christian, can you circulate that draft today?

I enjoyed working with all of you. Hopefully, our paths will cross again.

Thanks!

Alicia

M McNAIR
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athompson@mcnair.net | 843 443 3058 Direct

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Christian Stegmaier

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Main: (803) 256-2660
Fax: (803) 771-4484
Vcard: [download vcard](#)
Web: www.collinsandlacy.com

1330 Lady Street, 6th Floor
Columbia, SC 29201



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<COLUMBIA-#1461025-v1-Stipulation_of_Dismissal_KA_Diehl.doc>

<COLUMBIA-#1461252-v4-Mutual_Release_KA_Diehl.doc>

Thompson, Alicia

From: Thompson, Alicia
Sent: Tuesday, June 06, 2017 12:48 PM
To: 'Christian Stegmaier'
Cc: 'Nancy Moore (nancyl.moore@outlook.com)'; 'preston@brittainlawfirm.com'; 'Golding, Henrietta (HGolding@mcnair.net)'
Subject: RE: KAD/OFS

Christian:

2 corrections—

1. The BB&T account is being closed and FSR will let William Douglas know when the check arrives and make arrangements for delivery upon receipt.
2. The alliance reserve account is \$114,000.00.

Jack was working based off his memory in order to quickly respond to your email this morning, but he confirmed these two items with FSR's controller. Sorry for the confusion.

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
 VCard | Bio URL | Website



From: Thompson, Alicia
Sent: Tuesday, June 06, 2017 11:32 AM
To: 'Christian Stegmaier' <cstegmaier@collinsandlacy.com>
Cc: Nancy Moore (nancyl.moore@outlook.com) <nancyl.moore@outlook.com>; preston@brittainlawfirm.com; Golding, Henrietta (HGolding@mcnair.net) <HGolding@mcnair.net>
Subject: RE: KAD/OFS

Christian:

According to my client, the accounts had to be reconciled. FSR will write 2 checks today: \$50k for operating and +/- \$140k for reserves that can be picked up at FSR's Murrells Inlet office at 4:00 today.

The North State Bank and BOI Bank accounts have been closed and they are sending checks to FSR. Those checks can be picked up when they arrive at FSR's office or FSR can simply mail them to William Douglas. Let me know OFS' preference.

Nancy has signature authority on the BB&T and South Atlantic Bank accounts.

William Douglas has not repeatedly asked FSR for funds or documents. In fact, they advised FSR that it does not want the HOA's documents until the 15th.

Let me know if you have any questions.

Alicia

MCNAIR

ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
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Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website



From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]
Sent: Tuesday, June 06, 2017 10:27 AM
To: Thompson, Alicia <ATHompson@mcnair.net>
Cc: Nancy Moore (nancyl.moore@outlook.com) <nancyl.moore@outlook.com>; preston@brittainlawfirm.com
Subject: KAD/OFS

Alicia-

Nancy just called me to advise OFS is approaching dire straits concerning access to money. Per her, FSR has not released enough to cover OFS' expenses. Moreover, OFS doesn't have access to the bank account info yet. She relates that William Douglas has been repeatedly asking for it. What's the story/deal? Please advise. OFS and its new management needs to be able to get to its \$\$\$.

CS

Christian Stegmaier

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Main: (803) 256-2660
Fax: (803) 771-4484
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Thompson, Alicia

From: Thompson, Alicia
Sent: Monday, June 19, 2017 8:51 AM
To: 'Mike Smith'
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Thank you. Any progress on your client's execution of the release?

M McNAIR
 ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
 VCard | Bio URL | Website



From: Mike Smith [mailto:MSmith@thompsonlaw.com]
Sent: Friday, June 16, 2017 6:51 PM
To: Thompson, Alicia <ATHompson@mcnair.net>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

He seems to. He has the mediation doc, but I am hoping that the release signed by the Plaintiff will suffice.

G. Michael Smith
 Thompson & Henry, P.A.
 1300 Second Avenue, Third Floor
 Post Office Box 1740
 Conway, SC 29526 (29528)
 Telephone: 843-248-5741
 Fax: 843-248-5112
 Cell: 843-222-2951

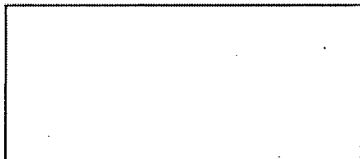
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From: Thompson, Alicia [mailto:ATHompson@mcnair.net]
Sent: Wednesday, June 14, 2017 8:52 AM
To: Mike Smith <MSmith@thompsonlaw.com>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Just saw this...does your carrier need a fully executed release? We have the signed settlement agreement from mediation..

Thanks,



Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 946 5969 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website



From: Mike Smith [mailto:MSmith@thompsonlaw.com]
Sent: Wednesday, June 14, 2017 7:11 AM
To: Thompson, Alicia <ATHompson@mcnair.net>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

My carrier needs a signed settlement agreement before we can issue the check. Please send the agreement, and I will send the check.

G. Michael Smith
Thompson & Henry, P.A.
1300 Second Avenue, Third Floor
Post Office Box 1740
Conway, SC 29526 (29528)
Telephone: 843-248-5741
Fax: 843-248-5112
Cell: 843-222-2951

CONFIDENTIALITY WARNING:

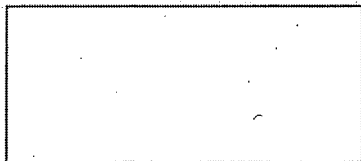
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From: Thompson, Alicia [mailto:ATHompson@mcnair.net]
Sent: Monday, June 12, 2017 10:22 AM
To: Brown, Debbie <dbrown@mcnair.net>; 'cstegmaier@collinsandlacy.com' <cstegmaier@collinsandlacy.com>; 'bbuffington@hsblaw.com' <bbuffington@hsblaw.com>; Mike Smith <MSmith@thompsonlaw.com>; 'preston@brittainlawfirm.com' <preston@brittainlawfirm.com>; 'mhall@collinsandlacy.com' <mhall@collinsandlacy.com>; 'cwn@cslaw.com' <cwn@cslaw.com>; 'tommyb@brittainlaw.com' <tommyb@brittainlaw.com>
Cc: 'phillip.kilgore@odnss.com' <phillip.kilgore@odnss.com>; Golding, Henrietta <HGolding@mcnair.net>; 'Miranda@brittainlaw.com' <Miranda@brittainlaw.com>; Tenna Turman <TTurman@thompsonlaw.com>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Folks: We received settlement funds from Chris Nickels' and Christian Stegmaier's office. Can the remaining parties provide an update as to the status of settlement funds?

Please also send your clients' signatures on the release at your earliest convenience.

Thanks,



Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 946 5969 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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From: Brown, Debbie

Sent: Monday, June 12, 2017 10:13 AM

To: 'cstegmaier@collinsandlacy.com' <cstegmaier@collinsandlacy.com>; 'bbuffington@hsblaw.com' <bbuffington@hsblaw.com>; G. Michael Smith (msmith@thompsonlaw.com) <msmith@thompsonlaw.com>; 'preston@brittainlawfirm.com' <preston@brittainlawfirm.com>; 'mhall@collinsandlacy.com' <mhall@collinsandlacy.com>; 'cwn@cslaw.com' <cwn@cslaw.com>; 'tommyb@brittainlaw.com' <tommyb@brittainlaw.com>

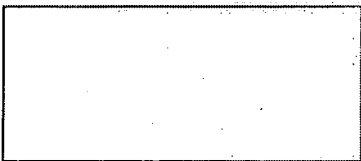
Cc: 'phillip.kilgore@odnss.com' <phillip.kilgore@odnss.com>; Thompson, Alicia <ATHompson@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; 'Miranda@brittainlaw.com' <Miranda@brittainlaw.com>; 'TTurman@thompsonlaw.com' <TTurman@thompsonlaw.com>

Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Dear Counsel:

Attached please find a copy of the Mutual Release in Full signed by the Plaintiff in the above referenced matter.

Sincerely,
Debbie Brown



Debbie Brown
Litigation Paralegal
DBrown@mcnair.net | 843 444 1107 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 202 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 235 4235 Fax
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Thompson, Alicia

From: Thompson, Alicia
Sent: Wednesday, June 21, 2017 1:07 PM
To: Preston Brittain
Subject: FW: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573
Attachments: Mutual Release in Full signed by Plaintiff.pdf

Preston: Pursuant to our call, please see attached the Release approved by Christian Stegmaier on behalf of Mark Dos Santos and his other clients.

MCNAIR
ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
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From: Brown, Debbie
Sent: Monday, June 12, 2017 10:13 AM
To: 'cstegmaier@collinsandlacy.com' <cstegmaier@collinsandlacy.com>; 'bbuffington@hsblaw.com' <bbuffington@hsblaw.com>; G. Michael Smith (msmith@thompsonlaw.com) <msmith@thompsonlaw.com>; 'preston@brittainlawfirm.com' <preston@brittainlawfirm.com>; 'mhall@collinsandlacy.com' <mhall@collinsandlacy.com>; 'cwn@cslaw.com' <cwn@cslaw.com>; 'tommyb@brittainlaw.com' <tommyb@brittainlaw.com>
Cc: 'phillip.kilgore@odnss.com' <phillip.kilgore@odnss.com>; Thompson, Alicia <Athompson@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; 'Miranda@brittainlaw.com' <Miranda@brittainlaw.com>; 'TTurman@thompsonlaw.com' <TTurman@thompsonlaw.com>
Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

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Sincerely,
 Debbie Brown

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 Litigation Paralegal
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Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT,
K.A. Diehl and Associates, Inc.,	)	Civil Action No.: 2015-CP-26-5573
Plaintiff,	)	
vs.	)	MUTUAL RELEASE IN FULL
James Perkins, Colleen Franke, a/k/a	)	
Colleen Franke Perkins, Mark Dos Santos,	)	
Nancy Moore, William Moore, Steven	)	
Dame, and Errol Dos Santos,	)	
Defendants.	)	

This Mutual Release In Full ("Release") is made by and amongst *Plaintiff K.A. Diehl and Associates, Inc.*, on the one hand, and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos*, on the other hand. *Plaintiff K.A. Diehl and Associates, Inc.* and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos* are collectively referred to herein as "the Parties."

WHEREAS, Plaintiff initiated the above captioned action against the above named Defendants. The above captioned action is referred to herein as "the Litigation."

WHEREAS, the Parties now wish to resolve all claims that were raised or could have been raised between them in the Litigation;

WHEREAS, the Parties deny the claims and allegations asserted against them in the Litigation and deny any wrongdoing related this Litigation;

WHEREAS, the Parties desire to avoid the expense, uncertainties, and risks of continued litigation between them and to fully, finally, and forever compromise and settle all claims

pertaining between them which were raised or could have been raised in the Litigation, whether known, or unknown or hereinafter discovered.

NOW THEREFORE, in consideration of:

- (a) One Hundred Thousand and 00/100 (\$100,000.00), the amount paid by Defendants' insurers to Plaintiff in settlement of Plaintiff's claims against Defendants in this Litigation;
- (b) Five Thousand and 00/100 (\$5,000.00), the amount paid by Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. ("OFS") to Plaintiff for property management services through June 1, 2017, after which Plaintiff's property management services shall cease;
- (c) Ten Thousand and 00/100 (\$10,000.00), the additional amount paid by OFS to Plaintiff by June 10, 2017;
- (d) Transfer of financial records and other documentation and assets by Plaintiff to OFS by June 15, 2017, as required by South Carolina law and generally accepted property management standards;
- (e) the dismissal, with prejudice, of all claims and counterclaims that were brought or that could have been brought in the Litigation by and between the Parties;
- (f) the mutual covenants and releases set forth below; and
- (g) other good and valuable consideration as set forth herein, the receipt and sufficiency of which the Parties to this Release hereby acknowledge,

The Parties agree as follows:

1. The Parties, and any and all of their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors, for and in consideration of the

covenants and promises set forth above, the receipt and sufficiency of which is hereby acknowledged, hereby remise, release, acquit, hold harmless, and forever discharge one another (including their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors) and their insurers (including their third party claims administrators), of and from any and all past, present, and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental, special, consequential, statutory, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any kind whatsoever now existing or which may hereafter accrue relating this Litigation, whether known or unknown, discovered or undiscovered, and any losses or damages resulting from, or which may in any way be alleged to have resulted from the work or services provided by the Parties. It is the expressed intent of the Parties to fully, completely, and forever release each other from any and all claims now existing, having anything to do, in any way, with the allegations in this Litigation or any allegations of any losses or damages resulting from services provided by Plaintiff and from Defendants' actions, which resulted in this Litigation.

2. Each of the Parties hereby represents and warrants that they have not assigned or transferred or purported to assign or transfer to any person or entity not a signatory to this Release any claim or matter herein released, disclaimed, discharged, or terminated. In the event of any assignment or transfer of any claims for relief or other matters herein released, discharged, terminated, or disclaimed, the assigning or transferring party agrees to indemnify and hold harmless each other party, as well as any parent, affiliate, or subsidiary, from and against any liability or loss and for any cost or expense, including

attorneys' fees, or judgment or settlement arising out of or occasioned by any such assignment or transfer.

3. Notwithstanding any other provision, the Parties agree and acknowledge that this Release is a compromise of disputed claims and neither the existence of the Release, nor any recitals, terms, conditions, or other statements contained in it, nor the payment of the settlement amount to Plaintiff shall be construed as an admission of liability by or on the part of the Parties for any allegation or claim. The respective Parties do not admit, but instead expressly deny all liability for the claims asserted against them and the Parties enter into this settlement solely to avoid the expense, uncertainties, and risks of further litigation. Consequently, this Release shall not be admissible in the Litigation or in any other action, suit, or legal proceeding as evidence of any liability, culpability, or fault of or on the part of the Parties.
4. The undersigned Parties declare and represent that they have read this Release and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that the instrument contains the entire agreement between the Parties hereto and that the terms of this instrument are contractual and not mere recitals, and further, that if any paragraph or part of this Release is found void or unenforceable, the remainder of this Release shall not be affected.
5. This instrument shall be binding on all the undersigned Parties' successors in interests, heirs, purchasers, and assignees.
6. This Release shall be construed in accordance with the laws of the State of South Carolina.

7. The Parties agree to cooperate so as to effectuate the dismissal of this Litigation and all such claims as may have been alleged in the Litigation amongst or between them, including but not limited to the filing of a stipulation of dismissal with prejudice of the same.
8. This Release represents the entire agreement between the Parties with respect to the subject matters contained herein. Neither this Release nor any provision hereof may be changed, waived, discharged, or terminated orally. This Release may be modified or amended only by a written agreement executed by the Parties.
9. Each signatory acknowledges that he or she is authorized to execute this Release on behalf of the respective party, that the party has fully read this Release, that the party understands all the terms and conditions set forth herein, and that the party is entering into this Release voluntarily and without promise or benefit other than as set forth herein.
10. The Parties represent and declare that in executing this Release they relied solely upon their own judgment, belief, and knowledge, and that they have had ample opportunity to consult with legal counsel of their choice concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other Party or by any person representing any of such other Party.

Additionally, as it relates to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc., and K.A. Diehl and Associates, Inc.:

1. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. is not a party to the subject litigation; nevertheless Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. the sum of Five Thousand and 00/100 (\$5,000.00) for property management services through June 1, 2017;
2. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. an additional sum of Ten Thousand and 00/100 (\$10,000.00) by June 10, 2017;
3. In consideration for the above payments, K.A. Diehl and Associates, Inc. will cease its property management services and maintenance services at Ocean Front Spa on June 1, 2017. Additionally, K.A. Diehl and Associates, Inc. shall transfer all financial records and other documentation and assets in its possession to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. by June 15, 2017, as required by South Carolina law and generally accepted property management standards.
4. The agreements articulated above in the preceding the paragraphs are extent of the agreements between Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. and K.A. Diehl and Associates, Inc. as it pertains to the instant case.

IN WITNESS WHEREOF, the undersigned have executed this document on the respective dates noted.

YOU ARE MAKING A FINAL SETTLEMENT

READ BEFORE SIGNING

The Undersigned state they have carefully read the foregoing Release, know the contents thereof, accept these terms, agree to abide by them, and sign the same as their own free act.

[Signature Pages to Follow]

WE HAVE READ THE FOREGOING RELEASE AND THE FOREGOING LIMITED AGREEMENT WITH MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.

WITNESSES:

K.A. DIEHL AND ASSOCIATES, INC.:

Madison A Cragg
John J. Boselli

By: John J. Boselli
Its: PRESIDENT

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared K.A. DIEHL AND ASSOCIATES, INC., By: John J. Boselli, Its: President, who being duly sworn, deposed and said that K.A. DIEHL AND ASSOCIATES, INC. is Plaintiff in the foregoing matter, is a signator to the foregoing matter as it pertains to its limited agreement with MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC., that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument on behalf of K.A. DIEHL AND ASSOCIATES, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
10 day of June, 2017

Madison A Cragg
Notary Public for South Carolina ~~Delaware~~
My Commission expires: 06/01/2020

MADISON A. CRAGG
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires June 1, 2020

Thompson, Alicia

From: Thompson, Alicia
Sent: Thursday, June 22, 2017 1:01 PM
To: Christian Stegmaier
Cc: Preston Brittain
Subject: FW: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573
Attachments: Mutual Release in Full signed by Plaintiff.pdf

Christian:

Thank you for calling me yesterday to assure that all of your clients intend to comply with the settlement agreement in the above case. As a follow up to our call, when do you expect to receive all of your clients' signatures on the release? Even though we have a fully executed settlement agreement in the case, some of the other carriers are waiting on the release to be signed before sending the settlement funds due to Dos Santos' position in the derivative actions. Mike at least has indicated that to be the case. Please let me know the status when you have a chance.

Have a safe trip back from Florida.

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson
 Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
[VCard](#) | [Bio URL](#) | [Website](#)



From: Brown, Debbie
Sent: Monday, June 12, 2017 10:13 AM
To: 'cstegmaier@collinsandlacy.com' <cstegmaier@collinsandlacy.com>; 'bbuffington@hsblaw.com' <bbuffington@hsblaw.com>; G. Michael Smith (msmith@thompsonlaw.com) <msmith@thompsonlaw.com>; 'preston@brittainlawfirm.com' <preston@brittainlawfirm.com>; 'mhall@collinsandlacy.com' <mhall@collinsandlacy.com>; 'cwn@cslaw.com' <cwn@cslaw.com>; 'tommyb@brittainlaw.com' <tommyb@brittainlaw.com>
Cc: 'phillip.kilgore@odnss.com' <phillip.kilgore@odnss.com>; Thompson, Alicia <ATHompson@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; 'Miranda@brittainlaw.com' <Miranda@brittainlaw.com>; 'TTurman@thompsonlaw.com' <TTurman@thompsonlaw.com>
Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Dear Counsel:

Attached please find a copy of the Mutual Release in Full signed by the Plaintiff in the above referenced matter.

Sincerely,
Debbie Brown

M McNAIR
ATTORNEYS

Debbie Brown
Litigation Paralegal
DBrown@mcnair.net | 843 444 1107 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 202 | Myrtle Beach, SC 29577
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ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - Horry - COMMON PLEAS - CASE#2015CP2605573

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

K.A. Diehl and Associates, Inc.,)

Plaintiff,)

vs.)

James Perkins, Colleen Franke, a/k/a)
Colleen Franke Perkins, Mark Dos Santos,)
Nancy Moore, William Moore, Steven)
Dame, and Errol Dos Santos,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-26-5573

MUTUAL RELEASE IN FULL

This Mutual Release In Full ("Release") is made by and amongst *Plaintiff K.A. Diehl and Associates, Inc.*, on the one hand, and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos*, on the other hand. *Plaintiff K.A. Diehl and Associates, Inc.* and *Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos* are collectively referred to herein as "the Parties."

WHEREAS, Plaintiff initiated the above captioned action against the above named Defendants. The above captioned action is referred to herein as "the Litigation."

WHEREAS, the Parties now wish to resolve all claims that were raised or could have been raised between them in the Litigation;

WHEREAS, the Parties deny the claims and allegations asserted against them in the Litigation and deny any wrongdoing related this Litigation;

WHEREAS, the Parties desire to avoid the expense, uncertainties, and risks of continued litigation between them and to fully, finally, and forever compromise and settle all claims

pertaining between them which were raised or could have been raised in the Litigation, whether known or unknown or hereinafter discovered.

NOW THEREFORE, in consideration of:

- (a) One Hundred Thousand and 00/100 (\$100,000.00), the amount paid by Defendants' insurers to Plaintiff in settlement of Plaintiff's claims against Defendants in this Litigation;
- (b) Five Thousand and 00/100 (\$5,000.00), the amount paid by Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. ("OFS") to Plaintiff for property management services through June 1, 2017, after which Plaintiff's property management services shall cease;
- (c) Ten Thousand and 00/100 (\$10,000.00), the additional amount paid by OFS to Plaintiff by June 10, 2017;
- (d) Transfer of financial records and other documentation and assets by Plaintiff to OFS by June 15, 2017, as required by South Carolina law and generally accepted property management standards;
- (e) the dismissal, with prejudice, of all claims and counterclaims that were brought or that could have been brought in the Litigation by and between the Parties;
- (f) the mutual covenants and releases set forth below; and
- (g) other good and valuable consideration as set forth herein, the receipt and sufficiency of which the Parties to this Release hereby acknowledge,

The Parties agree as follows:

1. The Parties, and any and all of their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors, for and in consideration of the

covenants and promises set forth above, the receipt and sufficiency of which is hereby acknowledged, hereby remise, release, acquit, hold harmless, and forever discharge one another (including their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors) and their insurers (including their third party claims administrators), of and from any and all past, present, and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental, special, consequential, statutory, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any kind whatsoever now existing or which may hereafter accrue relating this Litigation, whether known or unknown, discovered or undiscovered, and any losses or damages resulting from, or which may in any way be alleged to have resulted from the work or services provided by the Parties. It is the expressed intent of the Parties to fully, completely, and forever release each other from any and all claims now existing, having anything to do, in any way, with the allegations in this Litigation or any allegations of any losses or damages resulting from services provided by Plaintiff and from Defendants' actions, which resulted in this Litigation.

2. Each of the Parties hereby represents and warrants that they have not assigned or transferred or purported to assign or transfer to any person or entity not a signatory to this Release any claim or matter herein released, disclaimed, discharged, or terminated. In the event of any assignment or transfer of any claims for relief or other matters herein released, discharged, terminated, or disclaimed, the assigning or transferring party agrees to indemnify and hold harmless each other party, as well as any parent, affiliate, or subsidiary, from and against any liability or loss and for any cost or expense, including

attorneys' fees, or judgment or settlement arising out of or occasioned by any such assignment or transfer.

3. Notwithstanding any other provision, the Parties agree and acknowledge that this Release is a compromise of disputed claims and neither the existence of the Release, nor any recitals, terms, conditions, or other statements contained in it, nor the payment of the settlement amount to Plaintiff shall be construed as an admission of liability by or on the part of the Parties for any allegation or claim. The respective Parties do not admit, but instead expressly deny all liability for the claims asserted against them and the Parties enter into this settlement solely to avoid the expense, uncertainties, and risks of further litigation. Consequently, this Release shall not be admissible in the Litigation or in any other action, suit, or legal proceeding as evidence of any liability, culpability, or fault of or on the part of the Parties.
4. The undersigned Parties declare and represent that they have read this Release and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that the instrument contains the entire agreement between the Parties hereto and that the terms of this instrument are contractual and not mere recitals; and further, that if any paragraph or part of this Release is found void or unenforceable, the remainder of this Release shall not be affected.
5. This instrument shall be binding on all the undersigned Parties' successors in interests, heirs, purchasers, and assignees.
6. This Release shall be construed in accordance with the laws of the State of South Carolina.

7. The Parties agree to cooperate so as to effectuate the dismissal of this Litigation and all such claims as may have been alleged in the Litigation amongst or between them, including but not limited to the filing of a stipulation of dismissal with prejudice of the same.
8. This Release represents the entire agreement between the Parties with respect to the subject matters contained herein. Neither this Release nor any provision hereof may be changed, waived, discharged, or terminated orally. This Release may be modified or amended only by a written agreement executed by the Parties.
9. Each signatory acknowledges that he or she is authorized to execute this Release on behalf of the respective party, that the party has fully read this Release, that the party understands all the terms and conditions set forth herein, and that the party is entering into this Release voluntarily and without promise or benefit other than as set forth herein.
10. The Parties represent and declare that in executing this Release they relied solely upon their own judgment, belief, and knowledge, and that they have had ample opportunity to consult with legal counsel of their choice concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other Party or by any person representing any of such other Party.

Additionally, as it relates to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc., and K.A. Diehl and Associates, Inc.:

1. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. is not a party to the subject litigation; nevertheless Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. the sum of Five Thousand and 00/100 (\$5,000.00) for property management services through June 1, 2017;
2. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. an additional sum of Ten Thousand and 00/100 (\$10,000.00) by June 10, 2017;
3. In consideration for the above payments, K.A. Diehl and Associates, Inc. will cease its property management services and maintenance services at Ocean Front Spa on June 1, 2017. Additionally, K.A. Diehl and Associates, Inc. shall transfer all financial records and other documentation and assets in its possession to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. by June 15, 2017, as required by South Carolina law and generally accepted property management standards.
4. The agreements articulated above in the preceding paragraphs are extent of the agreements between Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. and K.A. Diehl and Associates, Inc. as it pertains to the instant case.

IN WITNESS WHEREOF, the undersigned have executed this document on the respective dates noted.

YOU ARE MAKING A FINAL SETTLEMENT

READ BEFORE SIGNING

The Undersigned state they have carefully read the foregoing Release, know the contents thereof, accept these terms, agree to abide by them, and sign the same as their own free act.

[Signature Pages to Follow]

WE HAVE READ THE FOREGOING RELEASE AND THE FOREGOING LIMITED AGREEMENT WITH MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.

WITNESSES:

K.A. DIEHL AND ASSOCIATES, INC.:

Madison A Cragg
John J. Boselli

By: John J. Boselli
Its: PRESIDENT

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared K.A. DIEHL AND ASSOCIATES, INC., By: John J. Boselli, Its: PRESIDENT, who being duly sworn, deposed and said that K.A. DIEHL AND ASSOCIATES, INC. is Plaintiff in the foregoing matter, is a signator to the foregoing matter as it pertains to its limited agreement with MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC., that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument on behalf of K.A. DIEHL AND ASSOCIATES, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
10 day of June, 2017

Madison A Cragg
Notary Public for South Carolina - Delaware
My Commission expires: 06/01/2020

MADISON A. CRAGG
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires June 1, 2020

Thompson, Alicia

From: Thompson, Alicia
Sent: Thursday, June 29, 2017 4:36 PM
To: 'Christian Stegmaier'
Cc: Golding, Henrietta
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Hi Christian:

Did Ms. Moore provide the list of the financials that she believes are missing? I haven't heard anything since we spoke on Tuesday.

Thanks,

Alicia

MCNAIR
ATTORNEYS

Alicia E. Thompson
 Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843 946 5969 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
[VCard](#) | [Bio URL](#) | [Website](#)



From: Christian Stegmaier [<mailto:cstegmaier@collinsandlacy.com>]
Sent: Tuesday, June 27, 2017 2:14 PM
To: Thompson, Alicia <ATHompson@mcnair.net>
Cc: Golding, Henrietta <HGolding@mcnair.net>
Subject: Re: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

I have forwarded your email along with your direction. Stand by.

CS

On Jun 27, 2017, at 2:12 PM, Thompson, Alicia <ATHompson@mcnair.net> wrote:

Hey Christian:

Thanks for giving me a call back. I think we were disconnected.

I followed up with Jack, and he said that he has produced all OFS records to William Douglas/OFS on a CD. I have also looked at the OFS financial records during the discovery process in the various cases, and they are complete and well organized. Please ask Nancy Moore to send a bullet point list of any

documents that she believes are missing to FSR and attach any records that appear to be blank. As an aside, FSR does not have an obligation to create new documents—the company only has an obligation to turn over existing records.

Also, we discussed this, but my client is frustrated and believe that this a delay tactic.

Thanks,

Alicia

M C N A I R
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 946 5969 Fax
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From: Christian Stegmaier [<mailto:cstegmaier@collinsandlacy.com>]
Sent: Tuesday, June 27, 2017 10:38 AM
To: Thompson, Alicia <ATHompson@mcnair.net>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Negative. I am hoping to get them this week. However, an issue I'm dealing with right now is the fact that Nancy has surveyed the 2 CDs of financials and tells me there are many that are missing and that what exists is in less than ideal shape. I haven't reviewed anything and am just getting this from her. She's got a call into William Douglas to see what it has. I told her that you/me/her may need to set up a call sometime later this week go over whatever deficiencies that apparently exist and see what we can do to cure them. She's out West this week; otherwise, I'd suggest setting up a face-to-face meeting.

CS

From: Thompson, Alicia [<mailto:ATHompson@mcnair.net>]
Sent: Monday, June 26, 2017 3:44 PM
To: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Cc: Preston Brittain <preston@brittainlawfirm.com>; Golding, Henrietta <HGolding@mcnair.net>
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Hi Christian:

Have you received any signatures from your clients on the release?

Many thanks,

Alicia

ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - Horry - COMMON PLEAS - CASE#2015CP2605573

M McNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

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Mailing Post Office Box 336 | Myrtle Beach, SC 29578

VCard | Bio URL | Website



From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]

Sent: Friday, June 23, 2017 9:43 AM

To: Thompson, Alicia <ATHompson@mcnair.net>

Cc: Preston Brittain <preston@brittainlawfirm.com>; Golding, Henrietta <HGolding@mcnair.net>

Subject: Re: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

I appreciate your attention on this. Thank you very much.

CS

On Jun 23, 2017, at 9:36 AM, Thompson, Alicia <ATHompson@mcnair.net> wrote:

Christian:

According to my client, all invoices for OFS were sent to FSR's attention at the MBRHOA office. They were scanned to FSR's accounts payable department and paid through May 31, 2017 (the last date that FSR managed OFS). Any invoice received after May 31, 2017 is put in an envelope and Nancy Moore is telephoned to provide notice to pick it up. My understanding is that she is delivering the invoices to William Douglas.

The last payment made to Grand Strand Water was made before the due date on May 15, 2017. The next payment is not due until June 15, 2017.

As for the check for \$14,500 for the balance of OFS' funds (less the \$500 held in the Alliance Bank account to pay the outstanding invoice), it was cut yesterday and mailed to William Douglas.

Let me know if you have any other questions.

Alicia

M McNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29578
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From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]
Sent: Thursday, June 22, 2017 6:53 PM
To: Thompson, Alicia <ATHompson@mcnair.net>
Cc: Preston Brittain <preston@brittainlawfirm.com>; Golding, Henrietta <HGolding@mcnair.net>
Subject: Re: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Alicia-

Please let me know that the additional money in First Services' control gets released. Per a Nancy Moore, OFS is getting past due invoices such as Grand Strand water and she thinks more will come. FSR stopped paying bills for OFS to some vendors in early May. There is still no word on the remaining funds.

CS

On Jun 22, 2017, at 6:17 PM, Christian Stegmaier <cstegmaier@collinsandlacy.com> wrote:

Thanks.

CS

On Jun 22, 2017, at 3:07 PM, Thompson, Alicia <ATHompson@mcnair.net> wrote:

Christian: My client received the full \$15,000. Disregard the statement below about waiting on the \$5,000.

Thanks,

M McNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office: Founders Centre, 2411 Oak Street | Suite 206 |
843 444 1107 Main | 843 946 5969 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website



From: Thompson, Alicia
 Sent: Thursday, June 22, 2017 2:42 PM
 To: 'Christian Stegmaier'
 <cstegmaier@collinsandlacy.com>
 Cc: 'Preston Brittain' <preston@brittainlawfirm.com>;
 'Golding, Henrietta' (<HGolding@mcnair.net>'
 <HGolding@mcnair.net>
 Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Christian:

Jack responded that FSR reconciled the operating account and there is one remaining outstanding check #1205 in the amount of \$366 written on 5/30/17 to Dr. Antonio Paat, for an association fee reimbursement post sale of his condominium. It was also paid by the buyer. FSR will write a check to William Douglas today, less \$500 to be left in the operating account until check #1205 clears. FSR will then pay any balance to William Douglas.

Also, I made an assumption that was incorrect—FSR has received the \$10,000 check. It is waiting on \$5,000 from OFS.

Alicia

MCNAIR
 ATTORNEYS

Alicia E. Thompson
 Shareholder
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 |
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 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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From: Thompson, Alicia
 Sent: Thursday, June 22, 2017 1:21 PM
 To: 'Christian Stegmaier'
 <cstegmaier@collinsandlacy.com>
 Cc: Preston Brittain <preston@brittainlawfirm.com>;
 Golding, Henrietta (<HGolding@mcnair.net>'
 <HGolding@mcnair.net>

Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Hey Christian:

I will definitely follow up on this issue. However, has OFS paid the \$5,000 and \$10,000 owed by June 1st and June 10th as set forth in the settlement agreement?

If not, it would be great if you could ask OFS to cut a check to McNair to be held in trust for that amount.

Alicia

M McNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843 443 3058 Direct

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From: Christian Stegmaier
[mailto:cstegmaier@collinsandlacy.com]
Sent: Thursday, June 22, 2017 1:13 PM
To: Thompson, Alicia <ATHompson@mcnair.net>
Cc: Preston Brittain <preston@brittainlawfirm.com>
Subject: Re: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

I have spoken with my crew since you and I spoke. I advised them I needed executed releases re the first party claim by next week to wrap this up. It has, however, been brought to my attention that First Services has not released the final \$15,000 (approx) to William Douglas. Can you look into that? It's a source of difficulty for them.

Thanks.

CS

On Jun 22, 2017, at 1:02 PM, Thompson, Alicia <ATHompson@mcnair.net> wrote:

Christian:

Thank you for calling me yesterday to assure that all of your clients intend to comply with the settlement agreement in the above case. As a follow up to our call, when do you expect to receive all of your clients' signatures on the release? Even though we have a fully executed settlement agreement in the case, some of the other carriers are waiting on the release to be signed before sending the settlement funds due to Dos Santos' position in the derivative actions. Mike at least has indicated that to be the case. Please let me know the status when you have a chance.

Have a safe trip back from Florida.

Alicia

MCNAIR

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From: Brown, Debbie
Sent: Monday, June 12, 2017 10:13 AM
To: 'cstegmaier@collinsandlacy.com'
<cstegmaier@collinsandlacy.com>;
'bbuffington@hsblaw.com'
<bbuffington@hsblaw.com>; G.
Michael Smith
(msmith@thompsonlaw.com)
<msmith@thompsonlaw.com>;
'preston@brittainlawfirm.com'
<preston@brittainlawfirm.com>;
'mhall@collinsandlacy.com'
<mhall@collinsandlacy.com>;
'cwn@cslaw.com' <cwn@cslaw.com>;

'tommyb@brittainlaw.com'
<tommyb@brittainlaw.com>
Cc: 'phillip.kilgore@odnss.com'
<phillip.kilgore@odnss.com>;
Thompson, Alicia
<AThompson@mcnair.net>; Golding,
Henrietta <HGolding@mcnair.net>;
'Miranda@brittainlaw.com'
<Miranda@brittainlaw.com>;
'TTurman@thompsonlaw.com'
<TTurman@thompsonlaw.com>
Subject: K.A. Diehl & Associates v.
James Perkins et al., Civil Action No.
2015-CP-26-5573

Dear Counsel:

Attached please find a copy of the
Mutual Release in Full signed by the
Plaintiff in the above referenced
matter.

Sincerely,
Debbie Brown

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Debbie Brown
Litigation Paralegal
DBrown@mcnair.net | 843 444 1107 Direct

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<Mutual Release in Full signed by
Plaintiff.pdf>

Christian Stegmaier

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Fax: (803) 771-4484
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Web: www.collinsandlacy.com

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Columbia, SC 29201



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Thompson, Alicia

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Sent: Friday, July 07, 2017 8:18 AM
To: Thompson, Alicia
Subject: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

From Nancy Moore:

Christian,

Below is a list of what FSR needs to send to William Douglas. There is one very important file they need to set up the Homeowner's accounts. In the files sent on cd's it is entitled "Digital Filing Cabinet". This contains a list of all homeowners but the data is missing. Also, there is no list of accounts that have been turned over for collection to Attorney Shawn Cranford. William Douglas needs this also. These two along with all the others listed below need to be sent.

List of items missing, compiled on June 28, 2017

These do not belong to OFS but are included on our CD of files

2009 – Blackmoor Notice

Blackmoor Proxie absentee ballots

Blackmoor Ballot cover letter

Missing:

Annual Meeting - Practice AMM – this is blank

AP:

2010 July - Dec missing

2016 Feb – Dec missing

2017 All missing

Delinquencies:

2011 Feb – Dec missing

2012 Only have June – all others missing

2013 Only have June – all others missing

2014 Missing Jan – May

2016 Jan, Mar & Aug missing

2017 Missing Jan – May

Digital Filing Cabinet: This is homeowner's financials – these are all blank

Financials:

2009 missing Jan – June

2010 Jan. only have Check Register, Combined Balance Sheet, Income Statement and Reserve Income statement No G/L

February same as January

2011 No G/L for Jan & Aug

2017 – no financials on cd's

William Douglas needs a list of the delinquent accounts that have been turned over to Shawn Granford for collection.

Christian Stegmaier

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Thompson, Alicia

From: Thompson, Alicia
Sent: Monday, July 10, 2017 11:53 AM
To: 'Christian Stegmaier'
Subject: RE: Do you have time for a call at 10.00. I have told our people we need to wrap things up this week. Want to talk about this additional documentation I emailed you about on Friday.
Attachments: 170707 Ltr Brittain from Kilgore re refusal to honor settlement agreement.pdf

Hi Christian:

Thanks for speaking with me today regarding the settlement of the KA Diehl v. Perkins case. I understand that Steve Dame has signed the release, and that the Moores and the Perkins are on vacation, and that they plan to sign and return their executions of the release upon their return and after KA Diehl has responded to Ms. Moore's questions regarding transition of the management of the OFS. You have also said that, even though Mr. Dos Santos has taken the position in the derivative actions that he will not honor the settlement agreement reached in those cases, Mr. Dos Santos will be complying with the terms of the settlement in the above case. Preston Brittain has confirmed the same to me as well.

As you requested, see attached the letter from Phillip Kilgore to Preston Brittain as to Mr. Dos Santos' failure to comply with the terms of the derivative actions. Please let me know if you need anything else.

Alicia

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 athompson@mcnair.net | 843 443.3058 Direct

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From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]
Sent: Monday, July 10, 2017 10:42 AM
To: Thompson, Alicia <ATHompson@mcnair.net>
Subject: RE: Do you have time for a call at 10.00. I have told our people we need to wrap things up this week. Want to talk about this additional documentation I emailed you about on Friday.

Thanks. I will be calling shortly. Have to put out a fire.

From: Thompson, Alicia [mailto:ATHompson@mcnair.net]
Sent: Monday, July 10, 2017 10:41 AM
To: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Subject: RE: Do you have time for a call at 10.00. I have told our people we need to wrap things up this week. Want to talk about this additional documentation I emailed you about on Friday.

Hi Christian:

I reached out to Jack Boselli, and he indicated that most of the items on Ms. Moore's list were on the CD. He is preparing a response indicating which file folder the information can be found, and forwarding a few minor items that were not included. Hopefully, this response will be finalized by today, if not by tomorrow.

Please let me know if you still need to have a call today. I am available any time before 2:15 pm.

Alicia

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From: Thompson, Alicia

Sent: Monday, July 10, 2017 9:17 AM

To: 'Christian Stegmaier' <cstegmaier@collinsandlacy.com>

Subject: RE: Do you have time for a call at 10:00. I have told our people we need to wrap things up this week. Want to talk about this additional documentation I emailed you about on Friday.

Yes. I will look for your call.

M McNAIR
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From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]

Sent: Monday, July 10, 2017 8:40 AM

To: Thompson, Alicia <ATHompson@mcnair.net>

Subject: Do you have time for a call at 10:00. I have told our people we need to wrap things up this week. Want to talk about this additional documentation I emailed you about on Friday.

Christian Stegmaier

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ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - HARRY - COMMON PLEAS - CASE#2015CP260573

Thompson, Alicia

From: Thompson, Alicia
Sent: Monday, July 10, 2017 12:23 PM
To: 'Christian Stegmaier'
Cc: Golding, Henrietta (HGolding@mcnair.net); Brown, Debbie
Subject: FW: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573
Attachments: OFS GL FEB, 2010.pdf; OFS GL JAN, 2010.pdf; 1-11 MBR-OFS Detail GL.pdf; 8-11 MBR
OFS Detail GL.pdf; OFS Collections Update-From S. Cranford.xlsx

Categories: DM, #1580311 : 063741 : 00001 : ATHOMPSO

Christian: See below First Service Residential's responses to Ms. Moore's list in green. Most of the financials are in folders on the CD's provided to William Douglas. Attached are a few items that were not included. Additional emails to follow with a few other documents.

Annual Meeting - Practice AMM – this is blank - - this folder should be deleted. All of the Annual Meeting information is located in the Annual Meeting folder and outlined per year

AP:

2010 July - Dec missing the information in the Jan-June folders is miscellaneous. Invoices were not scanned in 2010. The originals should be at the resort. I have asked an associate to locate them and they will be provided to William Douglas when located.

2016 Feb – Dec missing this information can be found in the Accounts Payable/AP/2010 folder

2017 All missing this information can be found in the Accounts Payable/AP/2017 folder

Delinquencies:

2011 Feb – Dec missing this information can be found in the Financials Folder Per Year and Month

2012 Only have June – all others missing this information can be found in the Financials Folder Per Year and Month

2013 Only have June – all others missing this information can be found in the Financials Folder Per Year and Month

2014 Missing Jan – May this information can be found in the Financials Folder Per Year and Month

2016 Jan, Mar & Aug missing this information can be found in the Financials Folder Per Year and Month

2017 Missing Jan – May this information can be found in the Financials Folder Per Year and Month

Digital Filing Cabinet: This is homeowner's financials – these are all blank these folders were set up to add correspondence but were never used. They should be deleted

Financials:

2009 missing Jan – June this information will be e-mailed separately in (2) e-mails

2010 Jan. only have Check Register, Combined Balance Sheet, Income Statement and Reserve Income statement No G/L

February same as January GL's for January and February, 2010 are attached.

2011 No G/L for Jan & Aug GL's for January and August, 2011 are attached.

2017 – no financials on cd's this information can be found in the Financials Folder Per Year and Month

William Douglas needs a list of the delinquent accounts that have been turned over to Shawn Cranford for collection. See attached - It is the responsibility of William Douglas to reach out to the Association's attorney, Shaun Cranford to be updated on the accounts he has in collection. Shaun Cranford was advised of the management change and said he would reach out to William Douglas.

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Thompson, Alicia

From: Thompson, Alicia
Sent: Monday, July 10, 2017 12:23 PM
To: Christian Stegmaier
Cc: Golding, Henrietta (HGolding@mcnair.net); Brown, Debbie
Subject: FW: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573
Attachments: 01 09 OFS AP Dist.pdf; 01 09 OFS AR.pdf; 01 09 OFS BS.pdf; 01 09 OFS RES IS.pdf; 01-09 OFS IS.pdf; 02 09 OFS AP Dist.pdf; 02 09 OFS AR.pdf; 02 09 OFS BS.pdf; 02 09 OFS RES IS.pdf; 02-09 OFS IS.pdf; 03 09 OFS AP Dist.pdf; 03 09 OFS AR.pdf; 03 09 OFS BS.pdf; 03 09 OFS IS.pdf; 03 09 OFS RES IS.pdf

Categories: DM, #1580310 : 063741 : 00001 : ATHOMPSO

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Thompson, Alicia

From: Thompson, Alicia
Sent: Monday, July 10, 2017 12:24 PM
To: 'Christian Stegmaier'
Cc: Golding, Henrietta (HGolding@mcnair.net); Brown, Debbie
Subject: FW: K/A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573
Attachments: 04 09 OFS AP Dist.pdf; 04 09 OFS BS.pdf; 04 09 OFS IS.pdf; 04 09 PFS AR.pdf; 05 09 OFS AP Dist.pdf; 05 09 OFS AR.pdf; 05 09 OFS BS.pdf; 05 09 OFS IS.pdf; 05 09 OFS RES IS.pdf; 06 09 OFS RES IS.pdf; 06 09 OFS AP Dist.pdf; 06 09 OFS AR.pdf; 06 09 OFS IS.pdf; 0409 OFS RES IS.pdf; Jan-June 09 OFS GL.pdf
Categories: DM, #1580309 : 063741 : 00001 : ATHOMPSO

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Thompson, Alicia

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Sent: Monday, July 10, 2017 12:51 PM
To: Thompson, Alicia
Cc: Golding, Henrietta; Brown, Debbie
Subject: RE: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

Emails received.

I have forwarded all of them to Nancy Moore, who is in California, for her review and response as soon as practicable.

Stand by.

I appreciate your assistance.

CS

From: Thompson, Alicia [mailto:AThompson@mcnair.net]
Sent: Monday, July 10, 2017 12:24 PM
To: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Cc: Golding, Henrietta <HGolding@mcnair.net>; Brown, Debbie <dbrown@mcnair.net>
Subject: FW: K.A. Diehl & Associates v. James Perkins et al., Civil Action No. 2015-CP-26-5573

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 athompson@mcnair.net | 843 443 3058 Direct

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Christian Stegmaier

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ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - Horry - COMMON PLEAS - CASE#2015CP2605573

Thompson, Alicia

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Sent: Wednesday, July 12, 2017 8:11 AM
To: Thompson, Alicia

Can you call my cell when you get in? 803-467-9699.

CS

Christian Stegmaier
Direct: (803) 255-0454
Main: (803) 256-2660
Fax: (803) 771-4484
Web: <http://www.collinsandlacy.com>

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Thompson, Alicia

From: Thompson, Alicia
Sent: Wednesday, July 12, 2017 11:27 AM
To: 'Christian Stegmaier'
Cc: Golding, Henrietta (HGolding@mcnair.net); Brown, Debbie
Subject: FW: K.A. Diehl (Perkins)
Attachments: Emails.pdf; Motion to Amend Complaint.pdf
Categories: DM; #1585874 : 063741 : 00003 : ATHOMPSO

Christian:

Thanks for your phone call this morning. I understand that Mr. Dame has returned his signature on the release and that your other clients are in the process of executing the release and returning their signatures to you.

During our call, you requested a copy of the Plaintiff's motion to amend with exhibits (reflecting Defendants' actionable per se statements) and the emails that were circulated during the mediation. Attached are copies for your convenience.

We look forward to receiving the fully executed release in short order. Let me know if you need anything else.

Thank you,

Alicia

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ATTORNEYS

Alicia E. Thompson
 Shareholder
 athompson@mcnair.net | 843.443.3058 Direct

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Thompson, Alicia

From: Thompson, Alicia
Sent: Thursday, July 20, 2017 4:43 PM
To: 'Christian Stegmaier'
Cc: Golding, Henrietta (HGolding@mcnair.net)
Subject: BB&T Market Market Account
Attachments: 05-17 MBR OFS Bank Stmt & Recons.pdf.pdf; BB&T Close Account Check 6-6-17.pdf

Christian:

The last statement is from May, 2017. See attached.

The account was closed in June and the attached check was sent to OFS.

The amount of the check is consistent with the bank statement.

This should resolve any concerns of your clients regarding OFS transition. As I understand that this was the only issue holding up the execution of the release, please ask your clients to sign and return to me as soon as possible.

Alicia

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athompson@mcnair.net | 843 443 3058 Direct

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Thompson, Alicia

From: Thompson, Alicia
Sent: Friday, July 21, 2017 10:05 AM
To: 'Christian Stegmaier'
Cc: Brown, Debbie
Subject: FW: June bank statement for MBR Ocean Front Spa
Attachments: MBR Ocean Front Spa 6-17.pdf; ATT00001.htm

Christian: My client reached out to BB&T for the June statement yesterday. See attached.

Alicia

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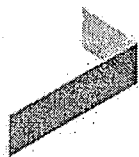
From: Jack Boselli, AMS, CMCA, PCAM [<mailto:Jack.Boselli@fsresidential.com>]
Sent: Friday, July 21, 2017 9:59 AM
To: Thompson, Alicia <ATHompson@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>
Subject: Fwd: June bank statement for MBR Ocean Front Spa

Thank you and have a great day!

Jack Boselli, CMCA, AMS, PCAM
 President
 FirstService Residential, AAMC
 An Accredited Association Management Company
 Cell - 484-459-1130
 Fax - 843-652-2190
 E-Mail - Jack.Boselli@FSResidential.com

Begin forwarded message:

From: Lynn Wheeler <lynn.wheeler@fsresidential.com>
Date: July 21, 2017 at 9:56:26 AM EDT
To: "Jack Boselli, AMS, CMCA, PCAM" <Jack.Boselli@fsresidential.com>
Subject: Fw: June bank statement for MBR Ocean Front Spa



FirstService

RESIDENTIAL

LYNN WHEELER

Controller

11822 Hwy 17 Bypass S., Murrells Inlet, SC 29576

Direct 843-652-7240

Email Lynn.Wheeler@fsresidential.com

www.fsresidential.com

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From: Couch, William <WCouch@BBandT.com>
Sent: Friday, July 21, 2017 9:28 AM
To: Lynn Wheeler
Subject: RE: June bank statement for MBR Ocean Front Spa

Good morning Lynn, attached is the statement. Let me know if you need anything else.

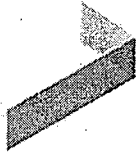
From: Lynn Wheeler [<mailto:lynn.wheeler@fsresidential.com>]
Sent: Thursday, July 20, 2017 4:43 PM
To: Couch, William
Subject: June bank statement for MBR Ocean Front Spa

Hi Will

Will you do me a favor and send me a copy of the last bank statement for Myrtle Beach Resort Ocean Front Spa# 0005223045857? It should be June since I closed it on the 6th.

The new management company has requested it.

Thank you!



FirstService

RESIDENTIAL

LYNN WHEELER
Controller

11822 Hwy 17 Bypass S., Murrells Inlet, SC 29576
Direct 843-652-7240
Email Lynn.Wheeler@fsresidential.com
www.fsresidential.com

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Thompson, Alicia

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Sent: Tuesday, August 08, 2017 3:52 PM
To: Thompson, Alicia
Subject: Have not forgotten about you. Will call you at 0900 tomorrow with update.

Christian Stegmaier

Direct: (803) 255-0454
Main: (803) 256-2660
Fax: (803) 771-4484
Vcard: [download vcard](#)
Web: www.collinsandlacy.com

1330 Lady Street, 6th Floor
Columbia, SC 29201



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ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - Horry - COMMON PLEAS - CASE#2015CP2605573

Thompson, Alicia

From: Natalia V. Ertseva-Thomas <nertseva@collinsandlacy.com>
Sent: Tuesday, August 22, 2017 10:29 AM
To: Thompson, Alicia
Cc: Preston Brittain; Christian Stegmaier
Subject: 1832-104: K.A. Diehl v. James Perkins, et al.
Attachments: Thompson (request).pdf

The attached is being sent on behalf of Christian Stegmaier.

Attached please find a copy of the letter that is also being mailed to your office today. Thank you,

Natalia V. Ertseva-Thomas
Senior Paralegal

Direct: (803) 255-0482
Main: (803) 256-2660
Fax: (803) 771-4484
Vcard: [download vcard](#)
Web: www.collinsandlacy.com

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Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

August 22, 2017

VIA U.S. MAIL AND ELECTRONIC MAIL

Alicia E. Thompson, Esquire
McNair Law Firm, PA
Post Office Box 336
Myrtle Beach, SC 29578-0336

Re: K.A. Diehl and Associates, Inc. v. James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos
Civil Action No. 2015-CP-26-5573
Claim No. PHCO15080916718
C&L File No. 001832-00104

Dear Alicia:

Pursuant to Paragraph 4 of the Mediated Settlement Agreement and Paragraph 3 of page 6 of the Receipt and Release, Nancy Moore, as president of the Ocean Front Spa Board of Directors respectfully requests the following materials be produced and forwarded to Preston Brittain, counsel to the OFS Board at your/your client's earliest opportunity. A survey of the materials produced by KA Diehl/First Services to date reveal they have not yet been produced. They are materials to which the OFS Board is entitled:

1. Statements from all banks through June 30, 2017, which had OFS money in them to demonstrate the transfers made in June. Please have K.A. Diehl/First Services instruct the banks to mail the bank statements directly from the bank to William Douglas Management. Our clients advise us they want copies of bank statements. Our clients want originals from the banks.
2. Lock Box lists from the bank showing the detail list of homeowners that have made their HOA payments during K.A. Diehl's tenure as the management company to OFS.
3. All email addresses of OFS homeowners in K.A. Diehl/First Services' possession. William Douglas has only received about 70 email addresses out of the 267 homeowners

Alicia E. Thompson, Esquire
August 22, 2017
Page 2

Additionally, our clients request written affirmation by Mr. Boselli confirming that K.A. Diehl/First Services has provided all records to OFS and its new management company. He should know what constitutes the galaxy of materials in K.A. Diehl/First Services' possession regarding OFS and whether all of these materials have been produced. Preferable, this written affirmation should come in the form of an affidavit.

Thank you for your time and attention. This request is being made in an effort to complete settlement between our clients and yours. By copy of this letter, we are including Nancy Moore, Jim Perkins, and Steve Dame, all of whom are our clients and members of the current OFS Board of Directors.

Respectfully,

/s Christian Stegmaier

Christian Stegmaier

CS/

cc (via email only):

Preston Brittain, Esquire
Nancy Moore
Jim Perkins
Steve Dame

Thompson, Alicia

From: Brown, Debbie
Sent: Friday, August 25, 2017 4:15 PM
To: 'cstegmaier@collinsandlacy.com'
Cc: Thompson, Alicia; 'preston@brittainlawfirm.com'; 'cnickels@clawsonandstaubes.com'; 'bbuffington@hsblawfirm.com'; G. Michael Smith (msmith@thompsonlaw.com); 'Kilgore Phillip'; 'nertseva@collinsandlacy.com'
Subject: K.A. Diehl and Associates, Inc. v. James Perkins, et al.; Case No: 2015-CP-26-05573
Attachments: 170825 Ltr to Stegmaier in response to letter dated 8-22-17.pdf; OFS Owner List.xls; Resident Transaction Report MBR OFS Jenark.pdf; FirstService Residential-OFS Transition of Records Letter 8.24.17.pdf
Categories: DM, #1633656 : 063741 : 00001 : ATHOMPSO

Mr. Stegmaier:

Attached please find a letter and enclosures from Alicia Thompson with regard to the above-referenced matter.

Sincerely,
 Debbie Brown

MCNAIR
 ATTORNEYS

Debbie Brown
 Litigation Paralegal
 DBrown@mcnair.net | 843 443 30617 Direct

McNair Law Firm, P.A.
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
 843 444 1107 Main | 843-235 4235 Fax
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578
 VCard | Website



MCNAIR
ATTORNEYS

Alicia Thompson

athompson@mcnair.net
T (843) 443-3058

August 25, 2017

VIA EMAIL - cstegmaier@collinsandlacy.com

Christian Stegmaier, Esq.
COLLINS & LACY, P.C.
1330 Lady Street, 6th Floor (29201)
P. O. Box 12487
Columbia, SC 29211

RE: *K.A. Diehl and Associates, Inc. v. James Perkins et al.*
Civil Action No.: 2015-CP-26-05573
Our Client Matter Nos.: 063741.00001 & 00002

Dear Christian:

I am in receipt of your letter dated August 22, 2017 asserting that my client, K.A. Diehl and Associates, Inc., has not fully complied with Paragraph 4 of the Settlement Agreement and Paragraph 3 of the Release. Your letter states that the Myrtle Beach Resort, Oceanfront Spa Horizontal Property Regime, Inc. ("OFS") has not received all financial records and other documentation and assets that are required to be transferred by South Carolina law and generally accepted property management standards.

As reflected in our continuous written correspondence over the last several months, my client has repeatedly provided OFS all of the aforementioned records; some of the documents have been sent multiple times. Even though the standard for many property management companies is to only produce hard copy documentation in a transition, my client has given the OFS and its property management company all electronic files in its possession related to the OFS. My client's obligations under the terms of the Settlement Agreement have been fully met for several months.

Nevertheless, in good faith effort to resolve any concerns that your client has regarding transition, and in order to avoid a costly Motion to Compel, I have enclosed records that were provided to your clients on a C.D. that was sent to William Douglas shortly after the mediation in this case. Those records include: 1) the OFS Owner listing that includes over 200 e-mail addresses; 2) the Resident Transaction File that contains all of the charges and lock box payment for each owners' account.

As to the bank statements and reconciliations, all were produced to OFS that are in my client's possession. North State Bank and Alliance Bank do not

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Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

Christian Stegmaier, Esq.
August 25, 2017
Page 2.

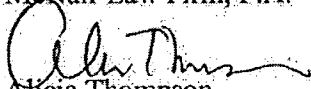
provide originals; they only forward electronic statements. Those electronic statements were provided to your client through June, 2016. If your client requires additional copies of the bank statements, OFS should be able to access records directly from the banking institution.

Finally, enclosed is a letter from Jack Boselli confirming that all OFS documents have been provided to OFS and its management company.

I trust that this letter addresses all of your clients concerns regarding the OFS transition, which was completed nearly 3 months ago. I appreciate your client's partial performance in transmitting settlement funds owed. However, your clients and the other Defendants have not signed the releases, nor have we received the total settlement funds owed. If the Defendants do not fully perform within 15 days, we will have no choice but to proceed with a Motion to Compel Settlement and seek attorneys' fees and costs incurred in connection with the motion.

Sincerely,

McNair Law Firm, P.A.

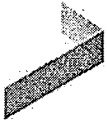

Alicia Thompson

AET/db

Enclosure

cc: A. Preston Brittain, Esq. (via email - preston@brittainlawfirm.com)
Christopher W. Nickels, Esq. (via email - cnickels@clawsonandstaubes.com)
Robert W. Buffington, Esq. (via email - rbuffington@hsblawfirm.com)
G. Michael Smith, Esq. (via email - gsmith@thompsonlaw.com)
Phillip Kilgore, Esq. (via email - Phillip.Kilgore@ogletreedeakins.com)

1633285v1



FirstService
RESIDENTIAL

August 24, 2017

Ms. Alicia E. Thompson
Shareholder
McNair Law Firm, P.A.
Founders Center
2411 Oak Street
Suite 206
Myrtle Beach, SC 29577

RE: Ocean Front Spa - Transition of Financial and Administrative Records

Dear Alicia,

By writing this letter, I am confirming that K.A. Diehl & Associates, Inc./FirstService Residential has provided all records to Ocean Front Spa and its new management company.

Please let me know if you have any questions.

Thank you and have a great day!

Jack Boselli
President
Jack.Boselli@FSResidential.com

11822 Highway 17S ByPass
Murrells Inlet, SC 29576
Tel 800.310.0326
www.fsresidential.com

Thompson, Alicia

From: Thompson, Alicia
Sent: Sunday, August 27, 2017 11:34 AM
To: 'Christian Stegmaier'; Brown, Debbie
Cc: 'preston@brittainlawfirm.com'; 'cnickels@clawsonandstaubes.com'; 'bbuffington@hsblawfirm.com'; G. Michael Smith (msmith@thompsonlaw.com); 'Kilgore, Phillip'; Natalia V. Ertseva-Thomas
Subject: RE: K.A. Diehl and Associates, Inc. v. James Perkins, et al., Case No: 2015-CP-26-05573

Christian: We received settlement funds from your carrier and Chris Nickel's carrier. We have not received settlement funds from Mike Smith or Bobby Buffington yet.

Alicia

M McNAIR
ATTORNEYS

Alicia E. Thompson
Shareholder
athompson@mcnair.net | 843.443.3058 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 946 5969 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website



From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]
Sent: Friday, August 25, 2017 4:22 PM
To: Brown, Debbie <dbrown@mcnair.net>; Thompson, Alicia <ATHompson@mcnair.net>
Cc: 'preston@brittainlawfirm.com' <preston@brittainlawfirm.com>; 'cnickels@clawsonandstaubes.com' <cnickels@clawsonandstaubes.com>; 'bbuffington@hsblawfirm.com' <bbuffington@hsblawfirm.com>; G. Michael Smith (msmith@thompsonlaw.com) <msmith@thompsonlaw.com>; 'Kilgore, Phillip' <Phillip.Kilgore@ogletree.com>; Natalia V. Ertseva-Thomas <nertseva@collinsandlacy.com>
Subject: RE: K.A. Diehl and Associates, Inc. v. James Perkins, et al., Case No: 2015-CP-26-05573

Re: your notation in your correspondence re: payment of settlement funds, please double check and ensure that McNair is in possession of \$40,000 paid by Philadelphia. Please advise.

Thanks,

CS

From: Brown, Debbie [mailto:dbrown@mcnair.net]
Sent: Friday, August 25, 2017 4:15 PM
To: Christian Stegmaier <cstegmaier@collinsandlacy.com>
Cc: Thompson, Alicia <ATHompson@mcnair.net>; 'preston@brittainlawfirm.com' <preston@brittainlawfirm.com>; 'cnickels@clawsonandstaubes.com' <cnickels@clawsonandstaubes.com>; 'bbuffington@hsblawfirm.com'

<bbuffington@hsblawfirm.com>; G. Michael Smith (msmith@thompsonlaw.com) <msmith@thompsonlaw.com>;
 'Kilgore, Phillip' <Phillip.Kilgore@ogletree.com>; Natalia V. Ertseva-Thomas <nertseva@collinsandlacy.com>
Subject: K.A. Diehl and Associates, Inc. v. James Perkins, et al., Case No: 2015-CP-26-05573

Mr. Stegmaier:

Attached please find a letter and enclosures from Alicia Thompson with regard to the above-referenced matter.

Sincerely,
 Debbie Brown

MCNAIR
 ATTORNEYS

Debbie Brown
 Litigation Paralegal
 DBrown@mcnair.net | 843 443 30617 Direct

McNair Law Firm, P.A.
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Christian Stegmaier

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 Web: www.collinsandlacy.com

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Thompson, Alicia

From: Thompson, Alicia
Sent: Thursday, August 31, 2017 5:22 PM
To: 'Christian Stegmaier'
Subject: FW: Jim Perkins case: 2016-CP-26-00673, 00674, 00743

Christian:

As a follow up to our call, see below. Chris Nickels called today asking for an update, and I have forwarded him this email as well.

Thanks,

Alicia

M McNAIR
 ATTORNEYS

Alicia E. Thompson
 Shareholder
athompson@mcnair.net | 843 443 3058 Direct

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 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
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 VCard | Bio URL | Website



From: Seals, William Law Clerk (Tamara Boyer) [<mailto:wsealslc@sccourts.org>]
Sent: Wednesday, August 30, 2017 6:54 PM
To: preston@brittainlawfirm.com; lucas.asper@ogletreedeakins.com; phillip.kilgore@odnss.com; Golding, Henrietta <HGolding@mcnair.net>; Thompson, Alicia <ATHompson@mcnair.net>
Subject: Jim Perkins case: 2016-CP-26-00673, 00674, 00743

Counselors:

After careful consideration Judge Seals has decided to grant Defendants' Motions to Enforce Settlement and Consolidated Motion For Preliminary Approval of Settlement.

Mr. Asper, would you be so kind as to draft a brief order reflecting Judge Seals' ruling and email it to me? I will electronically file the order for Judge Seals' signature.

Please do not hesitate to let me know if you have any questions or concerns.

Thank you,

Tamara

Tamara F. Boyer
Law Clerk to the Honorable William H. Seals, Jr.
Circuit Court Judge, At-Large, Seat 6
103 North Main Street
Marion, South Carolina
Ph: (843) 423-0446 | Cell: (803) 521-5549 | Fax: (843) 423-0535

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ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - HORRY - COMMON PLEAS - CASE#2015CP2605573

**Thompson, Alicia**

**From:** Thompson, Alicia  
**Sent:** Tuesday, August 08, 2017 3:54 PM  
**To:** 'Christian Stegmaier'  
**Subject:** RE: Have not forgotten about you. Will call you at 0900 tomorrow with update.

OK. I have a call at 10 am, but I can be available around 9:00. Talk to you then.

**M McNAIR**  
 ATTORNEYS

Alicia E. Thompson  
 Shareholder  
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.  
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577  
 843 444 1107 Main | 843 946 5969 Fax  
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578  
 VCard | Bio URL | Website



**From:** Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]  
**Sent:** Tuesday, August 08, 2017 3:52 PM  
**To:** Thompson, Alicia <ATHompson@mcnair.net>  
**Subject:** Have not forgotten about you. Will call you at 0900 tomorrow with update.

Christian Stegmaier

Direct: (803) 255-0454  
 Main: (803) 256-2660  
 Fax: (803) 771-4484  
 Vcard: [download vcard](#)  
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**Thompson, Alicia**

**From:** Thompson, Alicia  
**Sent:** Friday, September 08, 2017 11:09 AM  
**To:** 'preston@brittainlawfirm.com'; 'Christian Stegmaier'  
**Cc:** 'Golding, Henrietta (HGolding@mcnair.net)'  
**Subject:** RE: June bank statement for MBR Ocean Front Spa

Folks: I followed up with Will Couch as well. I called the Surfside Branch, and it directed me to 843-652-5000. He is out until Monday.

My client also pointed out that, if BB&T stated that Ms. Davis is not entitled to access account information, the bank would not have represented that the statement is inaccurate. There are some inconsistencies in Ms. Davis' story.

Thanks,

Alicia

**M McNAIR**  
ATTORNEYS

Alicia E. Thompson  
 Shareholder  
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.  
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577  
 843 444 1107 Main | 843 946 5969 Fax  
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578  
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**From:** Thompson, Alicia  
**Sent:** Friday, September 08, 2017 10:59 AM  
**To:** 'preston@brittainlawfirm.com' <preston@brittainlawfirm.com>; 'Christian Stegmaier' <cstegmaier@collinsandlacy.com>  
**Cc:** Golding, Henrietta (HGolding@mcnair.net) <HGolding@mcnair.net>  
**Subject:** FW: June bank statement for MBR Ocean Front Spa

Preston and Christian: Please see below an email chain reflecting that BB&T forwarded the June, 2017 bank statement attached and previously provided to you. Will Couch, a Market Leader at BB&T, directly forwarded the statement to my client. Please reach out to Will Couch and confirm the accuracy of the BB&T statement. He works at the Surfside Branch of BB&T.

<https://www.linkedin.com/in/william-couch-26368a13/>

Branch/ATM at SURFSIDE BEACH  
 112 HIGHWAY 17-S  
 SURFSIDE BEACH, SC 29575-6069  
 843-839-5409

Also, my client pointed out that the bank statements and financial statements reconcile.

After you have spoken to Mr. Couch, please let me know if Ms. Davis' question has been answered.

Alicia

**M McNAIR**  
ATTORNEYS

Alicia E. Thompson  
Shareholder  
athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.  
Myrtle Beach Office Founders' Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577  
843 444 1107 Main | 843 946 5969 Fax  
Mailing Post Office Box 336 | Myrtle Beach, SC 29578  
VCard | Bio URL | Website



---

**From:** Jack Boselli, AMS, CMCA, PCAM [mailto:Jack.Boselli@fsresidential.com]  
**Sent:** Friday, September 08, 2017 10:51 AM  
**To:** Thompson, Alicia <ATHompson@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>  
**Subject:** Fwd: June bank statement for MBR Ocean Front Spa

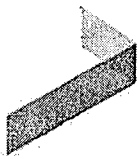
Thank you and have a great day!

Jack Boselli, CMCA, AMS, PCAM  
President, South Carolina  
FirstService Residential, AAMC  
An Accredited Association Management Company  
Cell - 484-459-1130  
Fax - 843-652-2190  
E-Mail - [Jack.Boselli@FSResidential.com](mailto:Jack.Boselli@FSResidential.com)

Begin forwarded message:

**From:** Lynn Wheeler <lynn.wheeler@fsresidential.com>  
**Date:** September 8, 2017 at 10:31:14 AM EDT  
**To:** "Jack Boselli, AMS, CMCA, PCAM" <Jack.Boselli@fsresidential.com>  
**Subject:** Fw: June bank statement for MBR Ocean Front Spa





## FirstService

RESIDENTIAL

LYNN WHEELER  
Controller

11822 Hwy 17 Bypass S., Murrells Inlet, SC 29576  
Direct 843-652-7240  
Email [Lynn.Wheeler@fsresidential.com](mailto:Lynn.Wheeler@fsresidential.com)  
[www.fsresidential.com](http://www.fsresidential.com)

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---

**From:** Couch, William <[WCouch@BBandT.com](mailto:WCouch@BBandT.com)>  
**Sent:** Friday, July 21, 2017 9:28 AM  
**To:** Lynn Wheeler  
**Subject:** RE: June bank statement for MBR Ocean Front Spa

Good morning Lynn, attached is the statement. Let me know if you need anything else.

---

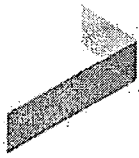
**From:** Lynn Wheeler [<mailto:lynn.wheeler@fsresidential.com>]  
**Sent:** Thursday, July 20, 2017 4:43 PM  
**To:** Couch, William  
**Subject:** June bank statement for MBR Ocean Front Spa

Hi Will

Will you do me a favor and send me a copy of the last bank statement for Myrtle Beach Resort Ocean Front Spa# 0005223045857? It should be June since I closed it on the 6th.

The new management company has requested it.

Thank you!



## FirstService

RESIDENTIAL

LYNN WHEELER  
Controller

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ELECTRONICALLY FILED - 2017 Oct 18 4:04 PM - Horry - COMMON PLEAS - CASE#2015CP2605573

**Thompson, Alicia**

**From:** Thompson, Alicia  
**Sent:** Friday, September 08, 2017 10:59 AM  
**To:** 'preston@brittainlawfirm.com'; 'Christian Stegmaier'  
**Cc:** Golding, Henrietta (HGolding@mcnair.net)  
**Subject:** FW: June bank statement for MBR Ocean Front Spa  
**Attachments:** MBR Ocean Front Spa 6-17.pdf, ATT00001.htm

Preston and Christian: Please see below an email chain reflecting that BB&T forwarded the June, 2017 bank statement attached and previously provided to you. Will Couch, a Market Leader at BB&T, directly forwarded the statement to my client. Please reach out to Will Couch and confirm the accuracy of the BB&T statement. He works at the Surfside Branch of BB&T.

<https://www.linkedin.com/in/william-couch-26368a13/>

Branch/ATM at SURFSIDE BEACH  
 112 HIGHWAY 17 S  
 SURFSIDE BEACH, SC 29575-6069  
 843-839-5409

Also, my client pointed out that the bank statements and financial statements reconcile.

After you have spoken to Mr. Couch, please let me know if Ms. Davis' question has been answered.

Alicia

**M McNAIR**  
 ATTORNEYS

Alicia E. Thompson  
 Shareholder  
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.  
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577  
 843 444 1107 Main | 843 946 5969 Fax  
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578  
 VCard | Bio URL | Website



**From:** Jack Boselli, AMS, CMCA, PCAM [mailto:Jack.Boselli@fsresidential.com]  
**Sent:** Friday, September 08, 2017 10:51 AM  
**To:** Thompson, Alicia <ATHompson@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>  
**Subject:** Fwd: June bank statement for MBR Ocean Front Spa

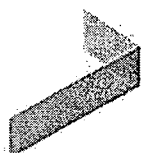
Thank you and have a great day!

Jack Boselli, CMCA, AMS, PCAM  
 President, South Carolina

FirstService Residential, AAMC  
An Accredited Association Management Company  
Cell - 484-459-1130  
Fax - 843-652-2190  
E-Mail - [Jack.Boselli@FSResidential.com](mailto:Jack.Boselli@FSResidential.com)

Begin forwarded message:

**From:** Lynn Wheeler <[lynn.wheeler@fsresidential.com](mailto:lynn.wheeler@fsresidential.com)>  
**Date:** September 8, 2017 at 10:31:14 AM EDT  
**To:** "Jack Boselli, AMS, CMCA, PCAM" <[Jack.Boselli@fsresidential.com](mailto:Jack.Boselli@fsresidential.com)>  
**Subject:** Fw: June bank statement for MBR Ocean Front Spa



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**LYNN WHEELER**  
Controller

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[www.fsresidential.com](http://www.fsresidential.com)

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---

**From:** Couch, William <[WCouch@BBandT.com](mailto:WCouch@BBandT.com)>  
**Sent:** Friday, July 21, 2017 9:28 AM  
**To:** Lynn Wheeler  
**Subject:** RE: June bank statement for MBR Ocean Front Spa

Good morning Lynn, attached is the statement. Let me know if you need anything else.

---

**From:** Lynn Wheeler [<mailto:lynn.wheeler@fsresidential.com>]  
**Sent:** Thursday, July 20, 2017 4:43 PM

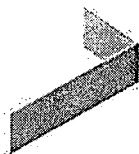
**To:** Couch, William  
**Subject:** June bank statement for MBR Ocean Front Spa

Hi Will

Will you do me a favor and send me a copy of the last bank statement for Myrtle Beach Resort Ocean Front Spa# 0005223045857? It should be June since I closed it on the 6th.

The new management company has requested it.

Thank you!



**FirstService**

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**Thompson, Alicia**

**From:** Thompson, Alicia  
**Sent:** Friday, September 08, 2017 10:12 AM  
**To:** 'preston@brittainlawfirm.com'  
**Cc:** 'Christian Stegmaier'  
**Subject:** FW: June bank statement for MBR Ocean Front Spa  
**Attachments:** MBR Ocean Front Spa 6-17.pdf; ATT00001.htm

Preston: As a follow up to our conversation from yesterday, please see attached the BB&T June, 2017 statement previously provided to Christian Stegmaier on July 21, 2017.

**M McNAIR**  
 ATTORNEYS

Alicia E. Thompson  
 Shareholder  
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.  
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577  
 843 444 1107 Main | 843 946 5969 Fax  
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578  
 VCard | Bio URL | Website



**From:** Thompson, Alicia  
**Sent:** Friday, July 21, 2017 10:05 AM  
**To:** 'Christian Stegmaier' <cstegmaier@collinsandlacy.com>  
**Cc:** Brown, Debbie <dbrown@mcnair.net>  
**Subject:** FW: June bank statement for MBR Ocean Front Spa

Christian: My client reached out to BB&T for the June statement yesterday. See attached.

Alicia

**M McNAIR**  
 ATTORNEYS

Alicia E. Thompson  
 Shareholder  
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.  
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577  
 843 444 1107 Main | 843 946 5969 Fax  
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578  
 VCard | Bio URL | Website



**Thompson, Alicia**

**From:** Thompson, Alicia  
**Sent:** Friday, September 15, 2017 10:15 AM  
**To:** Preston Brittain; 'Christian Stegmaier'  
**Cc:** Golding, Henrietta (HGolding@mcnair.net); Brown, Debbie  
**Subject:** FW: #Secure# MB Resort Ocean Spa stmt  
**Attachments:** MB Spa 6-17 stmt.pdf

Preston and Christian:

Please see an email from Will Couch, Market Leader and Vice President of BB&T, attaching the June, 2017 statement for OFS Association. During my call with him, he indicated that Nancy Davis can have direct access to account information if she provides him with minutes of OFS association meetings reflecting that she was elected to the board of directors and appointing her as president.

This should resolve any other concerns that you have regarding the BB&T account. Please have your clients sign the releases as soon as possible. We will be proceeding with a motion next week.

Alicia

**MCNAIR**  
ATTORNEYS

Alicia E. Thompson  
 Shareholder  
 athompson@mcnair.net | 843 443 3058 Direct

McNair Law Firm, P.A.  
 Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577  
 843 444 1107 Main | 843 946 5969 Fax  
 Mailing Post Office Box 336 | Myrtle Beach, SC 29578  
 VCard | Bio URL | Website



**From:** Couch, William [mailto:WCouch@BBandT.com]  
**Sent:** Friday, September 15, 2017 10:08 AM  
**To:** Thompson, Alicia <ATHompson@mcnair.net>  
**Subject:** #Secure# MB Resort Ocean Spa stmt

Alicia,

Attached is the last statement on the account. Please let me know if you have any further questions.

**William R. Couch**

Branch Banking & Trust Company  
 Market Leader | Assistant Vice President

656 Sunnyside Avenue | P.O. Box 2960  
 Murrells Inlet, SC 29576  
 Tel 843.652.5005 | Fax 843.652.5011

[WCouch@BBandT.com](mailto:WCouch@BBandT.com)

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|                                          |   |                                   |
|------------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS      |
|                                          | ) |                                   |
| COUNTY OF HORRY                          | ) | FIFTEENTH JUDICIAL CIRCUIT        |
|                                          | ) |                                   |
| K.A. Diehl and Associates, Inc.,         | ) | Civil Action No.: 2015-CP-26-5573 |
|                                          | ) |                                   |
| Plaintiff,                               | ) |                                   |
|                                          | ) |                                   |
| vs.                                      | ) | <b>DEFENDANT MARK DOS SANTOS'</b> |
|                                          | ) | <b>MOTION FOR CONTINUANCE</b>     |
|                                          | ) |                                   |
| James Perkins, Colleen Franke, a/k/a     | ) |                                   |
| Colleen Franke Perkins, Mark Dos Santos, | ) |                                   |
| Nancy Moore, William Moore, Steven       | ) |                                   |
| Dame, and Errol Dos Santos,              | ) |                                   |
|                                          | ) |                                   |
| Defendants.                              | ) |                                   |

Defendant Mark dos Santos respectfully moves for a continuance of the hearing scheduled for January 3, 2018, on Plaintiff K.A. Diehl and Associates, Inc.'s Motion to Enforce Settlement in the instant case.

Defendant Mark dos Santos seeks to oppose the motion while the other Defendants do not, as evinced by, inter alia, their respective execution of the Receipt and Release in the case at bar. In addition to Defendant Dos Santos, the undersigned counsel Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Nancy Moore, and Steven Dame under the same policy of insurance; accordingly, a conflict under the rules governing the practice of law in South Carolina, which in turn arguably precludes the undersigned counsel from appearing and advocating the position of any of the Defendants who are his firm's clients.

Additionally, Defendant Mark dos Santos opposes Judge Seals hearing this motion. The undersigned counsel has advised Defendant Mark dos Santos that he will not prosecute a desired motion to recuse. This circumstance creates another conflict, which is arguably not reconcilable for purposes of the January 3, 2018, hearing.

Defendant Mark dos Santos seeks to retain outside counsel to advocate the above-stated positions and therefore respectfully requests the Court continue Plaintiff's Motion to Enforce Settlement past the January 3, 2018, term of court.

The undersigned counsel has advised Plaintiff's counsel, the other defendants' counsel, co-counsel for Defendant Dos Santos (via a different policy of insurance, Christopher W. Nickels, Esquire) and Defendant Dos Santos' personal counsel (A. Preston Brittain, Esquire) of the motion. Plaintiff's counsel advises she is in opposition to the motion. Attorneys Brittain and Nickels consent to and join the motion. At the time of filing, the undersigned had not received a response from Attorney Robert W. Buffington, counsel to Defendant William Moore, or Attorney G. Michael Smith, counsel to Defendant Errol Dos Santos.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/Christian Stegmaier  
CHRISTIAN STEGMAIER  
SC Bar No.: 68648  
[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)  
STEPHANIE L. MASCELLA  
SC Bar No.: 102546  
[smascella@collinsandlacy.com](mailto:smascella@collinsandlacy.com)  
1330 Lady Street, Sixth Floor (29201)  
Post Office Box 12487  
Columbia, SC 29211  
(803) 256-2660 (voice)  
(803) 771-4484 (fax)

ATTORNEYS FOR DEFENDANTS  
JAMES PERKINS, COLLEEN FRANKE,  
A/K/A COLLEEN FRANKE PERKINS,  
MARK DOS SANTOS, NANCY MOORE,  
WILLIAM MOORE, STEVEN DAME

**MOTION FOR CONTINUANCE**

Columbia, South Carolina  
January 2, 2018

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K.A. Diehl and Associates, Inc.,

Plaintiff,

vs.

James Perkins, Colleen Franke, a/k/a

Colleen Franke Perkins, Mark Dos Santos,

Nancy Moore, William Moore, Steven

Dame, and Errol Dos Santos,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-26-5573

**NOTICE OF MOTION AND MOTION TO  
BE RELIEVED AS COUNSEL FOR  
DEFENDANT MARK DOS SANTOS**

To: HENRIETTA U. GOLDING, ESQUIRE, AND ALICIA E. THOMPSON, ESQUIRE,  
COUNSEL FOR PLAINTIFF

Christian Stegmaier, Stephanie L. Mascella, and the firm of Collins & Lacy, P. C. respectfully move this Court for an Order to be relieved as counsel for Defendant Mark dos Santos in this action. Defendant Mark Dos Santos consents to this motion. Defendant Mark Dos Santos remains defended by co-counsel, Christopher Nickels, Esquire, of Clawson & Staubes, of Charleston.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

s/Christian Stegmaier

CHRISTIAN STEGMAIER

SC Bar No.: 68648

cstegmaier@collinsandlacy.com

STEPHANIE L. MASCELLA

SC Bar No.: 102546

smascella@collinsandlacy.com

1330 Lady Street, Sixth Floor (29201)

Post Office Box 12487

Columbia, SC 29211

(803) 256-2660 (voice)

(803) 771-4484 (fax)

ATTORNEYS FOR DEFENDANTS  
JAMES PERKINS, COLLEEN FRANKE,  
A/K/A COLLEEN FRANKE PERKINS,  
MARK DOS SANTOS, NANCY MOORE,  
WILLIAM MOORE, STEVEN DAME

**MOTION TO BE RELIEVED AS  
COUNSEL FOR DEFENDANT MARK  
DOS SANTOS**

Columbia, South Carolina  
January 26, 2018

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

K.A. Diehl and Associates, Inc.,  
Plaintiff,

vs.

James Perkins, Colleen Franke a/k/a  
Colleen Franke Perkins, Mark Dos Santos,  
Nancy Moore, William Moore, Steven  
Dame, and Errol Dos Santos,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL  
CIRCUIT

CASE NO.: 2015-CP-26-5573

**MOTION TO BE RELIEVED AS  
COUNSEL**

Petitioner Christopher W. Nickels of CLAWSON and STAUBES, LLC, attorney for above named Defendant, Mark Dos Santos, hereby moves before this honorable Court for Order relieving him of representation as attorney for Defendant, Mark Dos Santos. This Motion is made on the grounds that a conflict of interest exists in the defense of the client.

Therefore, the Petitioner, Christopher W. Nickels of CLAWSON and STAUBES, LLC., hereby moves this Court to relieve him as counsel for the Defendant.

CLAWSON and STAUBES, LLC

*s/Christopher W. Nickels*

---

Christopher W. Nickels  
Bar No.: 68601  
126 Seven Farms Drive, Suite 200  
Charleston, South Carolina 29492-8144  
Phone: (843) 577-2026  
Fax: (843) 722-2867  
Email: cwn@cslaw.com  
Attorney for Defendant Mark Dos Santos

Charleston, South Carolina  
February 13, 2018

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

K.A. DIEHL and ASSOCIATES, INC.,

Plaintiff,

vs.

James Perkins, Colleen Franke, a/k/a  
Colleen Franke Perkins, Mark Dos Santos,  
Nancy Moore, William Moore, Steven  
Dame, and Errol Dos Santos,

Defendants.

IN THE COURT OF COMMON PLEAS  
15<sup>TH</sup> JUDICIAL CIRCUIT  
Civil Action No.: 2015-CP-26-05573

**NOTICE OF MOTION AND  
MOTION TO BE RELIEVED  
AS COUNSEL FOR DEFENDANTS**

**TO: THE HONORABLE COURT, PLAINTIFF and Its ATTORNEY ALICIA E. THOMPSON, ESQ., and NAMED DEFENDANTS:**

The undersigned counsel, A. Preston Brittain, Esq., hereby moves this court for an Order Relieving him as Counsel for the above-named Defendants James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol dos Santos, based on a concurrent conflict of interest according to South Carolina Rules of Professional Conduct Rule 1.7(a)(1) - a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client.

The undersigned counsel has communicated with clients and it has been determined that there is a disagreement among the Defendants with the settlement of this action. As such, the undersigned counsel has a conflict interest and must withdraw.

WHEREFORE, Undersigned counsel seeks an Order from the Honorable Court relieving him of counsel for Defendants, James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol dos Santos with respect to this action.

Respectfully submitted,

THE BRITTAIN LAW FIRM, P.A.

s/A. Preston Brittain

A. Preston Brittain, Esq.

SC Bar # 73707

4614 Oleander Drive

Myrtle Beach, SC 29577

(843)-449-8562

(843)-497-6124 (fax)

*Attorney for Defendants*

Myrtle Beach, South Carolina  
February 14, 2018

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K.A. DIEHL AND ASSOCIATES, INC.,

Plaintiff,

v.

JAMES PERKINS, COLLEEN FRANKE,  
A/K/A COLLEN FRANKE PERKINS,  
MARKS DOS SANTOS, NANCY MOORE,  
WILLIAM MOORE, STEVEN DAME, AND  
ERROL DOS SANTOS.

Defendant.

) IN THE COURT OF COMMON PLEAS  
) THE FOURTEENTH JUDICIAL CIRCUIT  
) CASE NO.: 2015-CP-26-05573  
)  
)  
)**DEFENDANT MARK DOS SANTOS'**  
**MEMORANDUM IN OPPOSITION TO**  
**K.A. DIEHL'S MOTION TO**  
**ENFORCE SETTLEMENT**

Defendant Mark dos Santos, by and through his undersigned counsel, submits the following Memorandum in Opposition to Plaintiff K.A. Diehl and Associates, Inc.'s (hereinafter "Plaintiff" or "K.A. Diehl") Motion to Enforce Settlement. As argued herein, Plaintiff's motion should be denied because the fundamental requirements to bind Defendant Mark dos Santos to the proposed settlement were not met and he opposes the settlement agreement Plaintiff seeks to enforce against him.

**FACTUAL AND PROCEDURAL BACKGROUND**

The parties in this case held mediation for this case and four others in one day. The mediation was held on May 1, 2017. The mediation went forward despite the known absence of several parties and adjusters involved in the five cases.<sup>1</sup> Mediation concluded at roughly 11:45 P.M. with an alleged agreement, which was reduced to writing and signed only by the following parties: K.A. Diehl (by its president), James Perkins, Colleen Franke, Nancy Moore, and Errol dos Santos. Defendants Mark dos Santos and Steve Dame did not actually sign the agreement.

<sup>1</sup> Mediation proceeded without objection from the Plaintiff, despite the absence of Defendant Mark dos Santos. See Plaintiff K.A. Diehl's Motion to Enforce Settlement at 2.



(See Mediation Settlement Agreement, attached as Exhibit A). Two attorneys purportedly signed on behalf of Mark dos Santos and one attorney signed on behalf of Steve Dame. (See *id.*) Notably, Defendant Mark dos Santos did not receive a copy of the agreement until sometime after the mediation. Defendant Mark dos Santos, upon reading this agreement and a separate agreement pertaining to the other cases previously mentioned, sought clarification of certain provisions from counsel. Thereafter, Plaintiff filed its motion to enforce the agreement, which Defendant Mark dos Santos opposes.

### **LEGAL STANDARD AND RELEVANT AUTHORITY**

#### **I. SCRPC 43(k) and the Standard for Interpreting the Rule.**

Pursuant to South Carolina Rule of Civil Procedure 43(k):

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.

SCRPC 43(k), like former Circuit Court Rule 14 upon which it is based, is “intended to prevent disputes as to the existence and terms of agreements regarding pending litigation.” *Ashfort Corp. v. Palmetto Constr. Grp.*, 318 S.C. 492, 493-94, 458 S.E.2d 533, 534 (1995) (citing *Ex parte Pearson*, 79 S.C. 302, 60 S.E. 706 (1908)). Importantly, “[i]n interpreting the meaning of the SCRPC, the Court applies the same rules of construction used to interpret statutes.” *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006) (citing *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27(2003)). Thus, “[i]f a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) (citation omitted). “What a legislature says in the text of a statute is considered the best

evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Accordingly, “[w]here the terms of the statute are clear, the court must apply those terms according to their literal meaning.” *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) (citation omitted).

## II. Application of SCRCP 43(k) by South Carolina Appellate Courts.

In *Farnsworth*, a plaintiff who had sued a defendant corporation for breach of contract and negligence authorized her counsel to offer and accept \$22,000.00 to settle her case against the defendant. 367 S.C. at 636, 627 S.E.2d at 725. Based on his client’s authority, the plaintiff’s counsel sent a signed letter offering to settle the plaintiff’s claim for \$22,000.00, which the defendant’s counsel subsequently signed and accepted on the defendant’s behalf. *Id.* Soon thereafter, the plaintiff notified the defendant “that she was rescinding the agreement” because she decided that she wanted to proceed to trial instead. *Id.* In response, the defendant filed a motion to compel the plaintiff to comply with the purported settlement agreement, which the circuit court granted. *Id.*

However, on appeal, the Supreme Court of South Carolina reversed the circuit court’s decision on the motion to compel, finding that the plaintiff was entitled to rescind the purported settlement agreement and that “[t]he circuit court, therefore, ordered [the plaintiff] to comply with an agreement that did not exist.” *Id.* at 637, 627 S.E.2d at 725. In its opinion, the Supreme Court rejected the defendant’s argument that the purported settlement was an “admitted” agreement that was exempt from SCRCP 43(k), and instead re-affirmed prior South Carolina case law holding that “Rule 43(k) applies to settlement agreements.” *Id.* at 637, 627 S.E.2d at

726 (citing *Ashfort Corp.*, 318 S.C. at 494, 458 S.E.2d at 534). The Supreme Court further explained that in analyzing the applicability of SCRCP 43(k) to settlement agreements, “the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the [rule]’s operation.” *Id.* at 638, 627 S.E.2d at 726 (quoting *State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2003)).

Accordingly, “[b]ecause Rule 43(k) plainly applies to all settlement agreements signed by counsel,” the Supreme Court explained that “an agreement is non-binding until a condition [of SCRCP 43(k)] is satisfied” and “[u]ntil a party is bound, she is entitled to withdraw her assent.” *Id.* at 637-38, 627 S.E.2d at 725-26. In other words, notwithstanding the fact that there was “no dispute that [the plaintiff] authorized her attorney to offer th[e] settlement,” and that the parties implicitly admitted it was duly executed, the Supreme Court still found that the plaintiff was entitled to withdraw her assent unless and until the purported agreement *between counsel* was either: (1) “reduced to the form of a consent order . . . signed by counsel and entered in the record;” (2) “reduced to the form of a . . . written stipulation signed by counsel and entered in the record;” or (3) “made in open court and noted upon the record.” *See id.* at 637, 627 S.E.2d at 725-26; Rule 43(k), SCRCP.<sup>2</sup> Ultimately, because none these conditions of SCRCP 43(k)

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<sup>2</sup> Notably, the Supreme Court did not analyze a fourth condition of the current SCRCP 43(k) because it was not part of the rule at the time of the *Farnsworth* opinion. However, in 2009, SCRCP 43(k) was amended to make it clear that a settlement agreement can also be binding if it is “reduced to writing *and* signed by the parties *and* [signed by] their counsel.” Rule 43(k), SCRCP (emphasis added); *see also* Note to 2009 Amendments to Rule 43(k), SCRCP (“The amendment to Rule 43(k) provides a settlement agreement is also binding if the agreement is reduced to writing *and* signed by the parties *and* their counsel.”) (emphasis added). Thus, even where the parties signed the agreement, SCRCP 43(k) still applies. *See Price v. Inv’rs Title Ins. Co.*, No. 2011-UP-359, 2011 S.C. App. Unpub. LEXIS 424, at \*7 (Ct. App. June 30, 2011) (Although not explicitly discussing the application of Rule 43(k) to agreements signed by the parties rather than their attorneys, *Buckley* indicates that where the parties signed the agreement, Rule 43(k) applies. Relying on *Ashfort* and *Buckley*, we find Rule 43(k) applies to the settlement agreement entered into by the Prices and Investors’ counsel.”).

had been met, the Supreme Court remanded the case to the circuit court for a trial and held that “[a]s soon as [the defendant] received notice of rescission, the letter signed by [the plaintiff’s] counsel ceased representing an agreement.” *Farnsworth*, 367 S.C. at 637, 639, 627 S.E.2d at 725-26.

### III. South Carolina Law Mandates Strict Compliance With SCRPC Rule 43(k)

Substantial compliance with Rule 43(k) is insufficient as a matter of law. In fact, our Supreme Court has continually emphasized that “Rule 43(k)’s terms are mandatory.” *See Buckley v. Shealy*, 370 S.C. 317, 322 n.2, 635 S.E.2d 76, 78 (2006) (citing *Farnsworth*, 367 S.C. at 638, 627 S.E.2d at 726); *see also Preyer v. Dockery*, No. 2017-UP-359, 2017 S.C. App. Unpub. LEXIS 385, at \*4 n.3 (Ct. App. Sep. 27, 2017) (“[W]e note that when dealing with settlement agreements, Rule 43(k), SCRPC’s requirements must be strictly observed.”) (citing Rule 43(k), SCRPC): The exacting standards of Rule 43(k) cannot be satisfied where material portions of the rule are ignored and treated as optional by the parties. Indeed, our courts have recognized that substantial compliance does not merit enforcement of a supposed settlement agreement on seemingly every opportunity that has been afforded. *See e.g., Buckley*, 370 S.C. at 322 (prohibiting the enforcement of the alleged settlement agreement despite the fact that money had actually changed hands between the parties for six years.)

### ARGUMENT AND ANALYSIS

It is undisputed that Defendant Mark dos Santos did not attend mediation in person. The mediation was attended by his attorneys, acting on his behalf. When an attorney acts on behalf of a client that is party to a civil action in this state there are only four methods by which the attorney may enter an agreement that has binding effect on his client. None of those four

methods—which are clearly identified and addressed in SCRCP 43(k)—were followed as it concerns Defendant Mark dos Santos and the settlement Plaintiff seeks to enforce.

**I. Neither a Consent Settlement Order nor a Written Stipulation was Entered into the Record.**

An attorney may bind his client pursuant to SCRCP 43(k) by submitting a consent order and entering the order into the court's record. As is evident from a reading of Plaintiff's Motion to Enforce, the parties in this case did not present a consent settlement order to the court. This never happened because Defendant Mark dos Santos objected to the proposed settlement before a consent order could be submitted and recorded. Likewise, the parties' attorneys have not submitted a signed stipulation and entered it on the record. Defendant Mark dos Santos, through one of his attorneys, has opposed the settlement arrangement reached at mediation for all five cases.<sup>3</sup> Defendant Mark dos Santos maintains that he was opposed to this settlement upon first becoming clear of its conditions. However, even if he understood and consented to the terms of the settlement as currently proposed, the result would be the same. A party can withdraw consent to a settlement when the settlement has not become binding. *Smith v. Fedor*, Op. No. 5523, 2017 W.L. 566985 (Ct.App. filed November 22, 2017) (“[U]ntil a party is bound, she is entitled to withdraw her assent”).

**II. The Purported Settlement was Not Made in Open Court and was Never Noted on the Record.**

There has not been a consent agreement nor a mutual submission of the proposed settlement terms provided to the court in this matter. Furthermore, there has been no settlement

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<sup>3</sup> See Plaintiff's Memorandums in opposition to settlement in the related action *Perkins, et al v. Ocean Front Spa Horizontal Prop. Reg., Inc.*, Civ. Act. No. 2016-CP-26-00673. Those memorandums were filed by Defendant Mark dos Santos' attorney in that case. As the arguments raised in those memorandums have a direct bearing on the pending motion, Defendant Mark dos Santos incorporates those memorandum by reference.

hearing or conference in open court. While SCRCP 43(k) does allow attorneys to bind their clients—*i.e.*, the parties—to an oral settlement agreement, the purported agreement will not be binding unless it is “made in open court and noted on the record.” *See* Rule 43(k), SCRCP. In the matter *sub judice*, this condition was not satisfied because (1) Defendant Mark dos Santos did not agree to the proposed settlement; and (2) his opposition to the proposed settlement was known well before any such a hearing could be scheduled or take place. Accordingly, this condition of SCRCP 43(k) was not satisfied and the proposed settlement agreement is not binding under this provision.

### **III. Defendant Mark dos Santos Never Signed an Agreement.**

As set forth above, the express terms of SCRCP 43(k) provide three means by which attorneys can bind their clients to a settlement under the rule. Each of those three means involves some form of a mutual submission of settlement terms to the court followed by the court’s approval of those terms—whether by review of the written conditions of settlement or, after a hearing, in which terms of settlement have been presented in open court and noted on the record. In this case, none of those three “court approval” scenarios have occurred. Rather, Plaintiff is seeking to enforce an agreement against a party based on a document that the party did not sign and that was procured at a mediation he did not personally attend.

Because the court has not approved a settlement in this case, and because express terms have not been agreed to by Defendant Mark dos Santos, the only plausible method by which this Defendant could be bound to the proposed settlement agreement would be pursuant to the fourth condition codified in SCRCP 43(k). The fourth condition was incorporated into SCRCP 43(k) via the 2009 amendments to the South Carolina Rules of Civil Procedure, and it is the only means by which a written settlement agreement that has not been submitted and approved, in

some form, by the Court can be given binding effect. Under the plain language of the rule addressing this fourth method, a written settlement agreement can only become binding—without being submitted to the court—if it is “signed by the parties *and* their counsel.” Rule 43(k), SCRCP (emphasis added). This fourth condition of SCRCP 43(k) strictly requires the parties to sign the purported settlement agreement before they may be bound to its terms. The requirement that each party to the lawsuit sign the agreement appears absolute, as the rule clearly specifies the plural term “parties.” Any contrary reading or half-hearted application of this express requirement that *all* parties sign would unnecessarily create a significant potential for abuse. If only one party’s signature could create a settlement agreement binding his adversaries, litigants could simply submit orders and agreements unilaterally and have them enforced by the courts despite the fact that the other party to the action was never given a fair opportunity to review, accept, and mutually decide upon the express terms of a given agreement. This was not the intention of SCRCP 43(k). Therefore, the proposed settlement should not be enforced against Defendant Mark dos Santos.

The requirements of SCRCP 43(k) are not a mere formality. Our appellate courts have recognized the strict application of the requirements of this rule. *See Buckley v. Shealy*, 370 S.C. 317, 322, 635 S.E.2d 76, 78, at n.2 (2006) (“Rule 43(k)’s terms are mandatory[.]”). The plain requirements of SCRCP 43(k) are to either to present clear and mutually agreed upon settlement terms to the court and to have the parties’ agreement approved without objection among settling parties; or alternatively, to reach a binding settlement without the courts involvement provided that both the parties and their attorneys sign a written agreement. Ultimately, for a litigant to be bound solely by a written agreement under SCRCP 43(k), the agreement must be signed by both himself *and* his counsel. If, as Plaintiff proposes, attorneys could simply sign and bind their

clients to settlement agreements without the parties' signatures affixed thereto, SCRCP 43(k) would not require by its plain language that the agreement be "signed by the parties *and* their counsel." Rule 43(k), SCRCP (emphasis added). Simply put, absent the court's approval, both groups—the litigants and lawyers—are required to sign settlement agreements before they can have binding effect on the parties to a civil action in this state.

#### **IV. SCRCP 43(k) Applies to the Present Circumstances.**

While Plaintiff may potentially argue that this settlement agreement was somehow excepted from the requirements of SCRCP 43(k) because it was entered into by the parties themselves, not by counsel, that position would be misplaced and inconsistent with South Carolina law. Although there may be situations in which a party can settle without meeting the requirements of Rule 43(k), those excepted situations do not exist here. For example, this is not a case involving *pro se* litigants. This lawsuit has been a fully and aggressively contested matter. All of the parties in this case have been represented by counsel. In cases like this one, where parties have retained counsel in a contested litigation, the policies supporting the need to satisfy SCRCP 43(k) are clear. A party that is represented by counsel in a lawsuit should not generally sign agreements or communicate with adverse parties in the lawsuit without the involvement of their counsel. *See, e.g.*, Rule 4.2, RPC, Rule 407, SCACR. The requirement that a party's attorney sign a settlement agreement under SCRCP 43(k) exists to protect against one party making an end-run around the attorney of an adverse party that has legal representation. The requirement that a represented litigant personally sign a settlement agreement is arguably even more important. A party should be given a full opportunity to review and fully comprehend the terms of any proposed settlement agreement before that agreement is enforced and his claims are extinguished. Requiring that each and every party sign a settlement agreement is the best



means of ensuring that persons involved in a lawsuit are aware and understand the terms of their settlement(s) before their case is over and their claims are released. Therefore, strict adherence to the requirement that a party must sign before being bound by a settlement is the best means of achieving that goal.

### CONCLUSION

Defendant Mark dos Santos did not sign the mediation agreement Plaintiff contends constitutes a settlement for this case. Further, he was not present in-person for mediation of this case. The risk of binding a party to an agreement that he did not understand and holding him to conditions and terms of which he may not have been aware greatly outweighs the need to unilaterally push through a settlement for the benefit of certain parties that believe an agreement was reached and that the case should be resolved. SCRCP 43(k) is an essential rule in our court system. It is meant to protect litigants like Defendant Mark dos Santos from the very issue that now exist in this action. The Plaintiff's motion to enforce should be denied because it would render SCRCP 43(k) meaningless and force this Defendant to be bound by the terms of an agreement he opposes, written in a document that he never signed. Based the foregoing, Defendant Mark dos Santos respectfully requests Plaintiff Motion to Enforce Settlement be denied.

Respectfully submitted,

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|                                  |   |                                         |
|----------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS            |
|                                  | ) |                                         |
| COUNTY OF HORRY                  | ) | FIFTEENTH JUDICIAL CIRCUIT              |
|                                  | ) |                                         |
| K.A. DIEHL AND ASSOCIATES, INC., | ) | CASE NO. 2015-CP-26-05573               |
|                                  | ) |                                         |
|                                  | ) |                                         |
| PLAINTIFFS,                      | ) |                                         |
|                                  | ) |                                         |
| vs.                              | ) |                                         |
|                                  | ) | <b>DEFENDANT MARK DOS SANTOS'</b>       |
|                                  | ) | <b>MOTION TO ALTER OR AMEND</b>         |
| JAMES PERKINS, COLLEEN           | ) | <b>JUDGMENT PURSUANT TO RULE 59(E),</b> |
| FRANKE, A/K/A COLLEEN FRANKE     | ) | <b>SCRPC</b>                            |
| PERKINS, MARK DOS SANTOS,        | ) |                                         |
| NANCY MOORE, WILLIAM MOORE,      | ) |                                         |
| STEVEN DAME, AND ERROL DOS       | ) |                                         |
| SANTOS,                          | ) |                                         |
|                                  | ) |                                         |
| DEFENDANTS.                      | ) |                                         |

THE DEFENDANT, Mark Dos Santos (hereinafter "Mr. Dos Santos" or "this Defendant"), by and through his undersigned counsel, hereby respectfully moves pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and requests that this Honorable Court alter, amend, and/or reconsider and vacate the Order Granting Plaintiff's Motion to Enforce the Settlement Agreement (the "Order") dated and filed March 21, 2018. *See* Order, attached hereto as **Exhibit 1**. This Defendant received notice of the Court's entry of the Order the same day, and the present Motion is timely made. This Motion is based on the following grounds.

**I. RULE 43(K), SCRPC APPLIES TO THE SETTLEMENT AGREEMENT**

The Order "concludes that SCRPC Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel." This Defendant respectfully submits this Court erred in so holding.

As described in this Defendant's Memorandum in Opposition to Plaintiff's Motion to Enforce Settlement (attached hereto as **Exhibit 2** and incorporated by reference), it is well settled

in South Carolina that all settlement agreements are governed by the requirements set forth in Rule 43(k), SCRCP. *See Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006) (“Because Rule 43(k) plainly applies to all settlement agreements signed by counsel, we find no merit in [the defendant’s] argument that the rule does not apply in this case.”); *Ashfort Corp. v. Palmetto Const. Grp., Inc.*, 318 S.C. 492, 494, 458 S.E.2d 533, 534 (1995) (“In our opinion, Rule 43(k) is applicable to settlement agreements.”); *Buckley v. Shealy*, 370 S.C. 317, 635 S.E.2d 76 (2006); *Smith v. Fedor*, 809 S.E.2d 612 (S.C. Ct. App. 2017), *reh’g denied* (Feb. 26, 2018); *see also, Price v. Investors Title Ins. Co.*, No. 2011-UP-359, 2011 WL 11735003, at \*2 (S.C. Ct. App. June 30, 2011) (holding that Rule 43(k)’s requirements also apply to settlement agreements signed by the parties to an action in their own capacities to overturn the defendant’s argument that Rule 43(k) only applies to agreements between counsel.).

As further support that all settlement agreements are governed by the strict requirements of Rule 43(k), the standard South Carolina “Form 4 Judgment in a Civil Case” provides only four methods by which a civil action can be dismissed: “[1] Rule 12(b), SCRCP; [2] Rule 41(a), SCRCP (Vol. Nonsuit); [3] **Rule 43(k), SCRCP (Settled)**; [4] Other.” (emphasis added). *See* Form 4, attached hereto as **Exhibit 3**.

Accordingly, Rule 43(k) unequivocally applies to the Settlement Agreement and this Court should properly apply the strict requirements of the Rule to hold that the Settlement Agreement is unenforceable as a matter of law.

## II. THE ORDER IMPROPERLY APPLIED THE REQUIREMENTS OF RULE 43(K) TO THE SETTLEMENT AGREEMENT

This Honorable Court's Order additionally ruled that "even if Rule 43(k) did apply, [] the Settlement Agreement complies with Rule 43(k) in that all Parties signed the Settlement Agreement (personally or through a designated agent), as did the attorneys for dos Santos." Again, this Defendant respectfully submits this Court erred in so holding.

Rule 43(k) provides, in relevant part, as follows:

No agreement between counsel affecting the proceedings in an action shall be binding unless [1] reduced to the form of a consent order or [2] written stipulation signed by counsel and entered in the record, or [3] unless made in open court and noted upon the record, or [4] **reduced to writing and signed by the parties and their counsel.**

Rule 43(k), SCRCP (emphasis added).

As set forth, the express terms of Rule 43(k) provide four methods by which parties to a civil action can be bound to the terms of a settlement agreement. Neither a consent settlement order nor a written stipulation was entered into the record; moreover, the purported settlement was not made in open court and noted on the record. Accordingly, the Order properly contemplates that only the final method of ratification (*i.e.*, "reduced to writing and signed by the parties and their counsel") could be used to effectuate the Settlement Agreement in this case. However, the Order improperly applies the unambiguous language of the rule in holding that the Settlement Agreement is valid and enforceable despite the absence of Mr. Dos Santos' signature and his consent to the contents of the same.

### A. Attorney Execution Alone Is Insufficient Under Rule 43(k)

The Rule 43(k) provision allowing for a settlement agreement to be valid only if signed by a party *and* his counsel was incorporated into the rule via a 2009 amendment to the South

Carolina Rules of Civil Procedure. The very purpose of this amendment was to expressly bolster the standards of effectuating a legal settlement. This fourth condition of Rule 43(k) strictly and unambiguously requires all parties to sign the purported settlement agreement before they may be bound to its terms. Any contrary reading or half-hearted application of this express requirement that *all parties* sign would unnecessarily create a significant potential for abuse and negates our Supreme Court's unambiguous intent. Permitting only an attorney to read and sign a settlement agreement rather than both the attorney and his client can lead to situations in which the client's understanding of the purported terms of a settlement is misaligned with its true meaning and/or ramifications, despite the attorney's diligent and best efforts to relay the consequences of the settlement to his client. This was not the intention of Rule 43(k) and the 2009 amendment was enacted to place mediation settlement agreements on stronger footing by adding additional prerequisites for enforcement. While this Defendant would not disagree that pre-2009 language was not as supportive of his position herein, the statutory amendments are dispositive on the issue *sub judice* and Plaintiff's Motion must fail as a matter of law.

To be sure, an attorney's execution "on behalf of his client" is not only insufficient under the exacting mandates of Rule 43(k), it also adds no presumption of validity otherwise because an attorney's role is, by definition, one of agency alone. That is to say, an attorney's signature "on behalf of his client" is superfluous because any legal counsel is always and only executing documents on his or her client's behalf when present at mediation. This Court should give no credence to an attorney's consent alone to a purported settlement agreement without the additional signature of the client.

### **B. Strict Compliance Must Be Found In Order To Recognize A Valid Settlement Under Rule 43(k)**

South Carolina courts do not recognize any substantial compliance exception when examining the enforceability of settlements. To the contrary, our Supreme Court has continually emphasized that “Rule 43(k)’s terms are mandatory.” *Buckley*, 370 S.C. 317, 322 n.2, 635 S.E.2d 76, 78 (citing *Farnsworth*, 367 S.C. at 638, 627 S.E.2d at 726); *see also Carlson v. Dockery*, No. 2015-000680, 2017 WL 4810806, at \*1 (S.C. Ct. App. Sept. 27, 2017)(Citing Rule 43(k): “[W]e note that when dealing with settlement agreements, Rule 43(k), SCRCP’s requirements must be strictly observed.”). The exacting standards of Rule 43(k) cannot be satisfied where material portions of the rule are ignored and treated as optional. There are no equitable considerations which are relevant to the issues before this Court and this Court should only consider the explicit directives of Rule 43(k).

### **C. Partial Performance Has No Bearing On Enforceability**

This Honorable Court also found that the alleged settlement agreement should be deemed valid because a portion of its terms had previously been performed. Our appellate courts have addressed this precise scenario and found that partial performance does not merit a finding of validity for an otherwise invalid settlement. *See e.g., Buckley*, 370 S.C. at 322 (prohibiting the enforcement of the alleged settlement agreement despite the fact that money had actually changed hands between the parties for six years.).

Ultimately, for a litigant to be bound solely by a written agreement under Rule 43(k), the agreement must be signed by both the client *and* his counsel. If, as Plaintiff proposes, attorneys could simply sign and bind their clients to settlement agreements without the parties’ signatures affixed thereto, Rule 43(k) would not require by its plain language that the agreement be “signed by the parties *and* their counsel.” Rule 43(k), SCRCP (emphasis added). Accordingly, the

purported Settlement Agreement is unenforceable as a matter of law under Rule 43(k) and Mr. Dos Santos should not be bound by its provisions.

**III. THE COURT'S ORDER ERRANTLY RULED THAT DEFENDANT'S LACK OF PRESENCE  
WAS ASSERTED AS GROUNDS FOR INVALIDITY AND IMPROPERLY CITES TO A LACK  
OF EVIDENCE AS GROUNDS FOR ENFORCING THE AGREEMENT**

This Honorable Court's Order mistakenly found that this Defendant's basis for arguing that the Settlement Agreement is unenforceable under Rule 43(k) is "because [Mr. Dos Santos] was not present at the mediation and did not read the settlement Agreement before his attorney signed on his behalf." While these are uncontested facts not disputed by the undersigned, they are neither the sole nor the most important basis for the Settlement Agreement's invalidity nor were they ever represented as such. Instead, the Settlement Agreement is primarily unenforceable under Rule 43(k) because Mr. Dos Santos never signed it and thus cannot be bound by its terms. This Defendant has not and did not attempt to use his absence as a legal ground for invalidity.

In the same vein, the Court's Order ruled that "[n]o evidence was presented that [Mr. Dos Santos'] permission was lacking or withdrawn [when his attorneys signed the Settlement Agreement on his behalf]." This Defendant would assert that such a finding is improper and cannot be held against him. First, such a finding is not relevant under Rule 43(k). Second, due to the strict confidentiality provisions set forth in Rule 8(a) of the South Carolina Alternative Dispute Resolution Rules, this Defendant might very well be prohibited from submitting as much. To the extent this Court would require such evidence before issuing any final ruling, (whether in the form of an affidavit submitted by Mr. Dos Santos describing his recollection and understanding of the events and negotiations that took place during the mediation or live

testimony concerning the same), the undersigned would request leave of this Honorable Court to provide such evidence. *See* Rule 8(a), SC R ADR.<sup>1</sup>; *In Re Anonymous*, 283 F.3d 627 (4<sup>th</sup> Cir. 2002). Otherwise, this Defendant would request that the Court's Order be amended so as to remove any lack of such evidence as grounds for enforcing the settlement.

#### **CONCLUSION**

For the reasons stated herein, this Honorable Court should alter, amend and/or reconsider and vacate the Order Granting Plaintiff's Motion to Enforce the Settlement Agreement pursuant to Rule 59(e), SCRP and find that the Settlement Agreement is unenforceable as it is not in compliance with the strict requirements of Rule 43(k), SCRCF.

**[SIGNATURE BLOCK ON FOLLOWING PAGE]**

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<sup>1</sup> *See also William Huck & Dianne Huck, Respondents, v. Oakland Wings, LLC d/b/a Wild Wing Cafe, Civil Site Envtl., Inc., Oakland Properties, LLC, Chandler Constr. Servs., Inc., Avtex Commercial Properties, Inc., Defendants, Of Whom Avtex Commercial Properties, Inc. is the Appellant.*, No. 2015-002025, 2017 WL 8676998, at \*2 (S.C. Ct. App. July 19, 2017).



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*Attorneys for the Defendant Mark Dos Santos*

Charleston, South Carolina

Dated: March 31, 2018

# Exhibit 3

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF \_\_\_\_\_  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. \_\_\_\_ CP-\_\_\_\_\_

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ 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

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
|                                              |                                          | \$                                                          |
|                                              |                                          | \$                                                          |
|                                              |                                          | \$                                                          |

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.

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**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.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Horry County  
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2015-CP-26-05573

**RECEIVED**

NOV 13 2018

SC Court of Appeals

K.A. Diehl and Associates, Inc.,

Respondent,

v.

James Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark dos Santos,  
Nancy Moore, William Moore, Steven Dame and Errol dos Santos,

Defendants,

Of whom Mark dos Santos is

Appellant.

**NOTICE OF APPEAL**

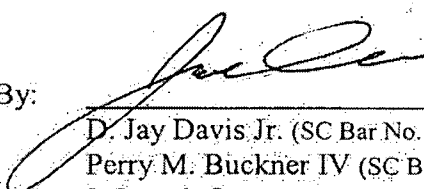
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Charleston, South Carolina 29401  
(843) 577-4000

*Attorneys for Appellant*

Appellant, Mark dos Santos, hereby appeals the orders of the Honorable William H. Seals Jr. filed March 21, 2018 (Order Granting Plaintiff's Motion to Enforce the Settlement Agreement),<sup>1</sup> and October 9, 2018 (Form 4 denying Defendant/Appellant's Rule 59(e) motion in regard to the March 21, 2018, order). Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on October 9, 2018.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

D. Jay Davis Jr. (SC Bar No. 12084)  
Perry M. Buckner IV (SC Bar No. 100031)  
J. Joseph Owens (SC Bar No. 102794)  
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Charleston, South Carolina 29401  
(843) 577-4000

*Attorneys for Appellant*

Charleston, South Carolina

Dated: 11/8/18

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<sup>1</sup> Because this order was entered on motion of Plaintiff, K.A. Diehl and Associates, Inc., which motion, though opposed by Appellant only, was not joined by any other party, Appellant has (as reflected in the above caption) identified Plaintiff as the only Respondent to this appeal. Out of an abundance of caution, however, in case the Court should determine any other Defendant(s) should be named Respondent(s), as reflected in the accompanying Proof of Service, Appellant is serving all Defendants with a copy of this Notice of Appeal.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Horry County  
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Case No. 2015-CP-26-05573

**RECEIVED**

NOV 13 2018

SC Court of Appeals

K.A. Diehl and Associates, Inc.,

Respondent,

v.

James Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark dos Santos,  
Nancy Moore, William Moore, Steven Dame, and Errol dos Santos,

Defendants,

Of whom Mark dos Santos is,

Appellant.

**PROOF OF SERVICE**

YOUNG CLEMENT RIVERS, LLP  
D. Jay Davis Jr. (SC Bar No. 12084)  
Perry M. Buckner IV (SC Bar No. 100031)  
J. Joseph Owens (SC Bar No. 102794)  
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*Attorneys for Appellant*

I, J. Joseph Owens, of Young Clement Rivers, LLP, counsel for Appellant, Mark dos Santos, do hereby certify that I have served the **Notice of Appeal** on the above-named Respondent (and all other parties to this action) by depositing a copy of the same in the United States Mail, postage prepaid, on November 8, 2018, addressed as follows to all counsel of record:

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William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson*



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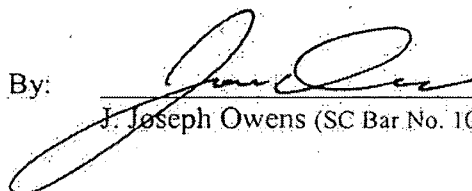
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*Attorney for James Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Nancy Moore, William Moore, Steven Dame*

I further certify that a copy of this **Notice of Appeal** is this day, November 8, 2018, being electronically filed with the lower court.

YOUNG CLEMENT RIVERS, LLP

By:

  
J. Joseph Owens (SC Bar No. 102794)

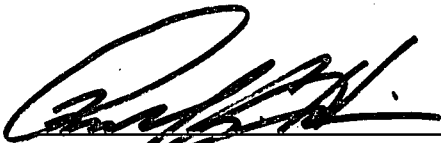
Charleston, South Carolina

Dated: 11/8/18

The undersigned counsel for Appellant certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court, and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,

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*Attorneys for Appellant*

Charleston, South Carolina

Dated: 7/29/19

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JUL 30 2019  
SC Court of Appeals