

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2019-001446
Case No. 2018-CP-22-00961

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SC Court of Appeals

The Gulfstream Café, Inc., ... Respondent,

v.

Palmetto Industrial Development, LLC, ... Appellants.

RECORD ON APPEAL – VOLUME I OF III

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-22-00961

The Gulfstream Café, Inc.,)
))
Plaintiffs.)

v.)

J. Mark Lawhon, Individually, and)
Palmetto Industrial Development LLC,)
))
Defendants.)

ORDER GRANTING TEMPORARY
RESTRAINING ORDER

FILED
CLERK OF COURT
2016 NOV 17 AM 10:37

THIS MATTER was submitted to the Court on November 16, 2016, upon Plaintiff The Gulfstream Café, Inc.'s Motion for Temporary Restraining Order pursuant to Rule 65(b). Plaintiff The Gulfstream Café, Inc. (hereafter "Plaintiff") is represented by George W. Redman, III, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., and posits that by and through the facts set forth in Plaintiff's Verified Complaint, and exhibits thereto, Affidavit of Bond, along with Plaintiffs' Memorandum in Support of Motion, immediate and irreparable injury, loss, and damage is being unilaterally inflicted upon Plaintiff by the Defendants as Defendants have blocked access to Plaintiff's Parking Lot, and that irreparable damages will continue unless this Restraining Order is Issued. Plaintiff further asserts that the sudden and unexpected loss of access to parking would lead to the loss of its entire business, and prays for this Court to maintain the status quo which has peaceably existed since 1986, for the duration of the pendency of this Action.

THC

NOW, THEREFORE, based upon the plaintiff's verified complaint, motion for temporary restraining order and memorandum in support of said motion, it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiff's motion for temporary restraining order is **GRANTED** as follows:

A. Defendants J. Mark Lawhon, individually, and Palmetto Industrial Development, LLC, and any and all individuals, entities, contractors or others acting in concert with Defendants, are hereby enjoined and prohibited from, *inter alia*, taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use their Parking Lot, including but not limited to, immediately stopping and enjoining Defendants from obstructing the Parking Lot via fencing, signage, or placing any materials whatsoever on any portion of the Parking Lot, or in any other way whatsoever obstructing the Parking Lot in any way;

B. with the filing of this order, the plaintiff shall post with the clerk of court cash or surety in the amount of \$250.00 as required by Rule 65(c), SCRCF;

C. pursuant to Rule 65(b), SCRCF, this temporary restraining order shall expire 10 days from the date of this order unless extended by court order or consent of the parties.

AND IT IS SO ORDERED at 9:30 a.m. this 17th day of November, 2016.


Benjamin H. Culbertson
Resident Circuit Court Judge

Georgetown, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-22-00961

The Gulfstream Café, Inc.,)
))
Plaintiffs,)

v.)

J. Mark Lawhon, Individually, and)
Palmetto Industrial Development LLC,)
))
Defendants.)

ORDER GRANTING EXTENSION OF
TEMPORARY RESTRAINING ORDER

FILED
GEORGETOWN COUNTY
2016 NOV 23 PM 12:59
CLARA Y. WHITE
CLERK OF COURT

Plaintiff The Gulfstream Café, Inc. filed its Verified Complaint and Motion for Temporary Restraining Order on November 16, 2016. This Court granted Plaintiff's Motion and issued the Order Granting Temporary Restraining Order dated November 17, 2016, specifically restraining Defendants as set forth therein and, pursuant to Rule 65 of the *South Carolina Rules of Civil Procedure*, expiring within ten (10) days thereafter.

Pursuant to Rule 65(b) of the *South Carolina Rules of Civil Procedure*, Plaintiff now moves this Court for an Order extending the Temporary Restraining Order for a like period of ten (10) days or until Plaintiff's Motion for Temporary injunction may be heard, whichever shall first occur. Counsel for the Plaintiff informs the Court that there has been partial compliance with the prior Order, during which time the Parties involved have conducted discussions and continue to work to exchange information. Due to the holiday week, a hearing on Plaintiff's Motion for a Temporary Injunction will not be possible prior to the expiration of the Order.

For the foregoing reasons, this Court finds and concludes that, pursuant to Rule 65 of the *South Carolina Rules of Civil Procedure*, the Temporary Restraining Order entered here in on November 17, 2016 shall be and hereby is extended ~~for a period of ten (10) days, or until Plaintiff's Motion for Temporary Injunction may be heard, whichever shall occur first, for good cause shown.~~ *until 10:00 a.m. on December 5, 2016. The Motion for Temporary Injunction is scheduled for hearing at 9:30 am on 12/5/2016.*

IT IS SO ORDERED!

Benjamin H. Culbertson

The Honorable Benjamin H. Culbertson
Chief Administrative Judge,
Fifteenth Judicial Circuit

Georgetown, South Carolina

November 23, 2016. *at 11:56 am.*

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2016CP2200961**

Gulfstream Cafe Inc		J Mark Lawhon	Palmetto Industrial Development LLC
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. Non-suited); ☐ 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: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED
2016 DEC - 7 PM 4:24
ALMA Y. WHITE
CLERK OF COURT
GEORGETOWN COUNTY, SC

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

Motion for Temporary Injunction, ~~Taken Under Adversement~~ *is granted.*
Attorney Redman is to prepare a formal order.

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.

Myron T. Culbertson
Circuit Court Judge

2148
Judge Code

Dec. 5, 2016
Date

For Clerk of Court Office Use Only

This judgment was entered on Dec 7, 2016, and a copy mailed first class or placed in the appropriate attorney's box on Dec 9, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

George W. Redman III PO Box 357 Myrtle Beach, SC 29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

Henrietta Golding

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Grace Hurley

Queenie Selane, Deputy

Alma Y. White - Clerk of Court

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.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2016-CP-22-00961
	)	
The Gulfstream Café, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING
	)	TEMPORARY INJUNCTION
J. Mark Lawhon, Individually, and	)	
Palmetto Industrial Development LLC,	)	
	)	
Defendants.	)	
_____	)	

THIS MATTER was before the Court on December 5, 2016, upon Plaintiff The Gulfstream Café, Inc.'s Motion for a Temporary Injunction. At the hearing, Plaintiff The Gulfstream Café, Inc. (hereafter "Plaintiff") was represented by George W. Redman, III, Esquire, and Holly M. Lusk, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Defendants J. Mark Lawhon, Individually, and Palmetto Industrial Development LLC (hereafter "Defendants") were represented by Henrietta U. Golding, Esquire, of The McNair Law Firm. The record before the Court included Plaintiff's Verified Complaint with Exhibits, Memoranda of the Parties with Exhibits, the Affidavits of Linda Barnaba and Jef Kirk on behalf of Plaintiff, as well as the Affidavits of Mark Lawhon and Chris Lawhon on behalf of Defendants.

After the careful consideration of this Matter, the record before the Court, argument of counsel, and in the interest of equity, this Court finds and concludes that Plaintiff's Motion should be and hereby is **GRANTED, WITH CONDITIONS**, as more fully set forth below.

PROCEDURAL HISTORY

The Gulfstream Café, Inc. filed its Verified Complaint in this Action on November 16, 2016 asserting causes of action against Defendants for: (1) Intentional Interference with Easement Rights, (2) Trespass and Nuisance, and (3) Forcible Entry and Detainer. Plaintiff also filed a Motion for a Temporary Restraining Order seeking immediate injunctive relief pursuant to Rule 65 of the South Carolina Civil Procedure, a Memorandum in Support of Motion for a Temporary Restraining Order, and deposited Bond with the Clerk of Court in the amount of \$250.00. On November 17, 2016, at 9:30 A.M., this Honorable Court entered its Order granting Plaintiff's Motion for a Temporary Restraining Order, providing:

Defendants...and any and all individuals, entities, contractors or others acting in concert with Defendants, are hereby enjoined and prohibited from, inter alia, taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use their Parking Lot, including but not limited to, immediately stopping and enjoining Defendants from obstructing the Parking Lot via fencing, signage, or placing any materials whatsoever on any portion of the Parking Lot, or in any other way whatsoever obstructing the Parking Lot in any way.

On November 23, 2016, the Court entered an Order extending the a Temporary Restraining Order until the hearing on Plaintiff's Motion for Temporary Injunction.

BRIEF STATEMENT OF FACTS

Plaintiff has owned and operated a restaurant known as The Gulfstream Café ("Gulfstream Café"), located in Murrells Inlet, South Carolina since 1986. The real property adjoining Gulfstream Café is part of a Planned Unit Development generally referred to as the Marlin Quay Marina. Through a series of conveyances of the Parking Lot adjoining Plaintiff's restaurant, Plaintiff was expressly granted a series of perpetual easements for the use of the Parking Lot. The recorded perpetual easement attached to Plaintiff's Verified Complaint and Memorandum in Support of the Motion expressly states:

[A] non-exclusive perpetual easement appurtenant to the premises of the Grantee hereinafter described for the full and free right of ingress and egress on, over and across the following described property of the Grantor, together with the rights of vehicular parking on and vehicular and pedestrian access to, all in accordance with all governmental rules, regulations, ordinances or laws, the premises of the Grantor hereinafter described, and also for the purpose of maintenance, repair, alteration and/or improvements to the [Gulfstream Café's] hereinafter described property. It is anticipated by the parties that while they will each have joint and non-exclusive use at all times of the area covered by this easement that the Grantor will utilize the premises primarily during the daytime regular business hours of Grantor and the [Gulfstream Café] will utilize the premises primarily in the evening regular business hours of [the Gulfstream Café].

A non-exclusive right of ingress, egress and vehicular parking over, across ... Lots 3, 4, and 5 of Tract 3 on that certain Plat entitled Survey of Marlin Quay Marina Horizontal Property Regime, Garden City Point, prepared by Surtech, Inc. dated May 21, 1985, revised November 27, 1985, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, said plat being expressly incorporated herein by reference.

In August 2014, Defendant Palmetto purchased portions of the Marlin Quay Marina, including the Parking Lot, subject to Plaintiff's perpetual easement rights of record. In November 2016, Defendants initiated a construction project demolishing an existing building (hereinafter, the "Marina Building"), and installing a fence that the Plaintiff alleges blocked Plaintiff's access to the Parking Lot. Other construction containers and materials were placed directly upon the Parking Lot as well. Plaintiff alleges that at no time prior to the initiation of the construction activities was it notified that construction activities would block access to the Parking Lot, nor provided any written construction plans or details. Defendants allege that Plaintiff was informed about the construction, that the Plaintiff consented to the use of the Parking Lot, and waited to bring this Action until after the Marina Building was demolished. After the a Temporary Restraining Order was served upon Defendants on November 18, 2016, Defendants removed the fence blocking Plaintiff's access to and use of the Parking Lot.

Defendants have a permit from Georgetown County to: (1) demolish the Marina Building, and (2) to install pilings into the Parking Lot that potentially would be used to support the new building. At the time of the December 5, 2016 hearing, the Defendants did not have a building permit to build the new building. Defendant's construction plans were made available to Counsel for Plaintiff on Tuesday, November 22, 2016.

According to Plaintiff, Defendant's plans indicate that a new building would be placed over the Parking Lot. Plaintiff alleges the proposed construction would significantly, if not completely, block the Parking Lot. Plaintiff also asserts that the finished building would impermissibly encroach upon, interfere with, and overburden its easement rights, as well as impermissibly and prejudicially reconfigure the Parking Lot contrary to the configuration depicted in the plat publicly recorded with the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, as said plat was expressly incorporated by reference.

LEGAL STANDARD

"A plaintiff's entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation." *FOC Lawshe v. International Paper*, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002). A Plaintiff seeking a temporary injunction generally must demonstrate that it meets each of the three following criteria: (1) that absent the restraint, the Plaintiff may possibly suffer irreparable harm; (2) that the Plaintiff is likely to succeed on the merits of the action; and (3) that the Plaintiff has an inadequate remedy at law. *Id.* The court must review each of these factors, and balance them against the interests of the party being restrained. *LeFurgy v. Long Cove Club Owners Assn., Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994). "The sole object of a temporary injunction is to preserve the subject of

controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.” *County Council of Charleston v. Felkel*, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964).

1. Irreparable Harm

A temporary injunction may be issued to protect property rights, including those acquired under an easement. *AJG Holdings, et al. v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)(Injunction issued to preserve rights under subdivision restrictive covenants where the ability to call police or money damages would not protect right to peaceable enjoyment); *See Id. Transcontinental*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969)(Temporary injunction prohibited construction over an easement); *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)(Enjoining reconfiguration of non-exclusive parking easement as depicted on publicly recorded plat).

South Carolina courts also have held the potential loss of a business would constitute an irreparable harm. *Peek v. Spartanburg Regional Healthcare System*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). In *Peek*, the Plaintiff sought to protect her privilege to provide services to the Defendant hospital when the hospital contracted with another company to provide its own anesthesiologists. *Id.* Defendant hospital terminated Plaintiff when she failed to become employed by the new company. *Id.* Thereafter, Plaintiff filed a breach of contract action and moved for a restraining order to prevent her termination during the pendency of her case. *Id.* The trial court granted a temporary injunction, which the hospital appealed. *Id.* On appeal, the Court of Appeals upheld the temporary injunction, holding, in pertinent part:

Peek has lived and practiced anesthesiology for fourteen years. During this time Peek built a patient referral base, which fueled her professional practice. The loss of privileges at the Hospital would lead to the loss of her patient referral base, which would, in turn, lead to the loss of her professional practice. The complete loss of a professional practice can be an irreparable harm.

Id. at 455, 37.

Comparable to the *AJG Holdings*, *Transcontinental*, *Xanadu*, and *Peek* cases, Plaintiff presents sufficient facts that it could be irreparably harmed if a temporary injunction is not granted to prevent Defendants from blocking Plaintiff's access to its Parking Lot as per the recorded plat at Plat Book 6 at Page 214. Plaintiff has built a restaurant that has operated in the Murrells Inlet area for over thirty (30) years. Plaintiff's business is dependent upon its ability to provide convenient and safe access and parking for its staff, commercial vendors, and invitees. Defendants' construction upon the Parking Lot could interfere with Plaintiff's right to peaceably use its property rights without interruption, and could irreparably be detrimental to the operation and reputation of the Plaintiff's restaurant. Therefore, this Court finds and concludes that an injunction is proper to prevent irreparable harm to Plaintiff's business and property rights.

2. Likelihood of Success

In order to satisfy the Court's requirement that the Plaintiff demonstrate a likelihood of success on the merits of its claim, Plaintiff only needs to make a *prima facie* showing of entitlement to relief based upon the allegations set forth in its Verified Complaint. *Compton v. South Carolina Dept. of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). The South Carolina Supreme Court held that where an easement has been expressly granted, said grantor "must be held during the continuance of the easement to have abandoned every use of the land except such as might be made consistent with the reasonable enjoyment of the easement granted." *Faulkenberry v. Norfolk Southern Ry. Co.*, 349 S.C. 318, 325, 563 S.E.2d 644, 648 (2002)(citing *Marion County Lumber Co. v. Tilghman Lumber Co.*, 75 S.C. 220, 55 S.E. 337 (1906) (Dominant estate cannot materially

interfere with the use and enjoyment of a servient estate's easement)). The Verified Complaint alleges and attaches photographic evidence depicting Defendants' construction fence blocking access to the Parking Lot. Therefore, Plaintiff has demonstrated *prima facie* causes of action for intentional interference by Defendants with Plaintiff's Easement rights.

As to future construction and possible reconfiguration of the Parking Lot, Plaintiff's Easement expressly incorporates a plat with a depiction and configuration of the Parking Lot, which is recorded with Georgetown County records in Plat Book 6 at Page 214.—Accordingly, Plaintiff alleges that Defendants cannot constrain or narrow the boundaries of Plaintiff's easement. *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)(Holding that where an easement references and incorporates a plat depicting an easement, said easement cannot be constrained to any degree).

Pursuant to the facts set forth on the record in this matter, Plaintiff has set forth *prima facie* causes of action for relief against Defendants and has a likelihood of success on the merits.

3. **No Adequate Remedy At Law**

An adequate remedy at law is one which “is certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity.” *Nutt Corp. v. Howell Road, LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011). The South Carolina Supreme Court has held that temporary injunctions are proper when protecting property rights acquired under an easement. *AJG Holdings, et al. v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)_(Injunction issued to preserve rights under subdivision restrictive covenants where the ability to call police or money damages would not protect right to peaceable enjoyment); *Transcontinental*, 252 S.C. at 481; *See also D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904) (holding that where a plaintiff had an established right of way to real property, a temporary injunction, during the pendency of litigation, was proper to preserve the plaintiff's rights). Therefore, an injunction during

the pendency of this Action is appropriate to preserve Plaintiff's right to its easement.

Additionally, there is also no legal remedy to completely and sufficiently protect Plaintiff against the harm that would result to its longstanding business if Defendants resume blocking all access to the Parking Lot. As set forth above, the *Peek* Court specifically held, there is no adequate remedy for actions that will cause the loss of a business. *Peek*, 367 S.C. 450, 457, 626 S.E.2d 34, 38. If Defendants are permitted to resume and/or continue blocking Plaintiff's parking, Plaintiff's employees, vendors, and invitees will not be able to safely access the restaurant, and Plaintiff would therefore face the risk of the loss of its entire business during the pendency of this action. Here, as was the case in *Peek*, injunctive relief is a better remedy than monetary damages because it allows Plaintiff to remain in business as it has for thirty (30) years. *See Id.*

4. **Bond Requirement of Rule 65, SCRPC**

Rule 65(c) of the *South Carolina Rules of Civil Procedure* provides, "no temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." On November 16, 2016, The Gulfstream Café, Inc. filed its Verified Complaint with a Motion for a Temporary Restraining Order and deposited Bond with the Clerk of Court in the amount of \$250.00. The Affidavits of Mark Lawhon and Chris Lawhon on behalf of Defendants both indicate that Plaintiff will lose \$180,000.00 if installation of the pilings is enjoined, and over \$4,000 per day if construction of the new building is enjoined. As a result, Defendants assert that if a Temporary Injunction is granted, Plaintiff should post a bond in the amount of \$2,000,000.00.

As of the hearing date, Defendants had a permit to demolish the Marina Store and to install pilings into the Parking Lot. While the Marina Store has been demolished, Plaintiff asserts the installation of pilings will interfere with Plaintiff's Easement rights both during construction and

after, as they may result in the elimination of parking spaces and require reconfiguration of the Parking Lot.

Counsel for Defendants asserted that installation of the pilings will not unreasonably interfere with Plaintiff's use of the Parking Lot in any respect because cars can park between them, and the installation of the pilings will only take four (4) days during which time only sixteen (16) parking spaces would be inaccessible. Defendants assert that the Parking Lot has sixty-one (61) parking spaces, and since this is not the Plaintiff's busy season, the use of sixteen (16) parking spaces for four (4) days will not materially or unreasonably interfere with the Plaintiff's non-exclusive easement rights.

CONCLUSION

This Court finds and concludes Plaintiff will suffer irreparable harm should Defendants be allowed to interfere with Plaintiff's Easement rights during the pendency of this action. And therefore, it is **ORDERED, ADJUDGED, AND DECREED** that:

1. Defendants J. Mark Lawhon, Individually, Palmetto Industrial Development, LLC, and any and all others acting in concert with the aforementioned Defendants, are hereby temporarily restrained and enjoined from interfering with Plaintiff's perpetual easement rights to use the Parking Lot, which is the subject of this Action, provided however, Defendants shall have four (4) days to complete all construction work for which permits were issued prior to the commencement of this Action;
2. During the four (4) day construction period referenced in No. 1 hereinabove, Defendants shall not interfere with the use of more than sixteen (16) parking spaces covered under Plaintiff's easement;
3. Prior to construction, Defendants shall provide written notice to Plaintiff of the four (4) days when construction will be ongoing and identify the sixteen (16) parking spaces which may

be affected by the construction;

4. After the four (4) day construction period, Defendants are temporarily restrained and enjoined from interfering with any of Plaintiff's perpetual easement rights;
5. This temporary injunction is conditioned upon Plaintiff increasing the bond from the \$250.00 currently on with the Clerk of Court, and posting additional cash or surety with the Clerk of Court, to the amount of \$5,000.00;
6. Should Defendants obtain permits for the construction of its building, then Defendants may seek an increase of the bond posted by Plaintiff;
7. This temporary injunction shall remain in effect pending the trial of this case unless otherwise terminated or modified by Court Order; and,
8. Nothing contained in this Order shall have precedential value at the trial of this case. The grant of this temporary injunction is NOT a ruling that either party will ultimately prevail in this case.

IT IS SO ORDERED by this Court on December 5, 2017, notwithstanding the Court's failure to sign this order until August 24, 2017.

Honorable Benjamin H. Culbertson
Judge, Fifteenth Judicial Circuit

Georgetown, South Carolina

August 24, 2017.



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al
Case Number: 2016CP2200961
Type: Order/Temporary Injunction

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2017-08-24 10:29:22 page 11 of 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2016-CP-22-00961
	)	
The Gulfstream Café, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED ORDER GRANTING
	)	TEMPORARY INJUNCTION
J. Mark Lawhon, Individually, and	)	
Palmetto Industrial Development LLC,	)	
	)	
Defendants.	)	
_____	)	

THIS MATTER was before the Court on December 5, 2016, upon Plaintiff The Gulfstream Café, Inc.’s Motion for a Temporary Injunction. At the hearing, Plaintiff The Gulfstream Café, Inc. (hereafter “Plaintiff”) was represented by George W. Redman, III, Esquire, and Holly M. Lusk, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Defendants J. Mark Lawhon, Individually, and Palmetto Industrial Development LLC (hereafter “Defendants”) were represented by Henrietta U. Golding, Esquire, of The McNair Law Firm. The record before the Court included Plaintiff’s Verified Complaint with Exhibits, Memoranda of the Parties with Exhibits, the Affidavits of Linda Barnaba and Jef Kirk on behalf of Plaintiff, as well as the Affidavits of Mark Lawhon and Chris Lawhon on behalf of Defendants.

After the careful consideration of this Matter, the record before the Court, argument of counsel, and in the interest of equity, this Court finds and concludes that Plaintiff’s Motion should be and hereby is **GRANTED, WITH CONDITIONS**, as more fully set forth below.

PROCEDURAL HISTORY

The Gulfstream Café, Inc. filed its Verified Complaint in this Action on November 16, 2016 asserting causes of action against Defendants for: (1) Intentional Interference with Easement Rights, (2) Trespass and Nuisance, and (3) Forcible Entry and Detainer. Plaintiff also filed a Motion for a Temporary Restraining Order seeking immediate injunctive relief pursuant to Rule 65 of the South Carolina Civil Procedure, a Memorandum in Support of Motion for a Temporary Restraining Order, and deposited Bond with the Clerk of Court in the amount of \$250.00. On November 17, 2016, at 9:30 A.M., this Honorable Court entered its Order granting Plaintiff's Motion for a Temporary Restraining Order, providing:

Defendants...and any and all individuals, entities, contractors or others acting in concert with Defendants, are hereby enjoined and prohibited from, inter alia, taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use their Parking Lot, including but not limited to, immediately stopping and enjoining Defendants from obstructing the Parking Lot via fencing, signage, or placing any materials whatsoever on any portion of the Parking Lot, or in any other way whatsoever obstructing the Parking Lot in any way.

On November 23, 2016, the Court entered an Order extending the a Temporary Restraining Order until the hearing on Plaintiff's Motion for Temporary Injunction.

BRIEF STATEMENT OF FACTS

Plaintiff has owned and operated a restaurant known as The Gulfstream Café ("Gulfstream Café"), located in Murrells Inlet, South Carolina since 1986. The real property adjoining Gulfstream Café is part of a Planned Unit Development generally referred to as the Marlin Quay Marina. Through a series of conveyances of the Parking Lot adjoining Plaintiff's restaurant, Plaintiff was expressly granted a series of perpetual easements for the use of the Parking Lot. The recorded perpetual easement attached to Plaintiff's Verified Complaint and Memorandum in Support of the Motion expressly states:

[A] non-exclusive perpetual easement appurtenant to the premises of the Grantee hereinafter described for the full and free right of ingress and egress on, over and across the following described property of the Grantor, together with the rights of vehicular parking on and vehicular and pedestrian access to, all in accordance with all governmental rules, regulations, ordinances or laws, the premises of the Grantor hereinafter described, and also for the purpose of maintenance, repair, alteration and/or improvements to the [Gulfstream Café's] hereinafter described property. It is anticipated by the parties that while they will each have joint and non-exclusive use at all times of the area covered by this easement that the Grantor will utilize the premises primarily during the daytime regular business hours of Grantor and the [Gulfstream Café] will utilize the premises primarily in the evening regular business hours of [the Gulfstream Café].

A non-exclusive right of ingress, egress and vehicular parking over, across ... Lots 3, 4, and 5 of Tract 3 on that certain Plat entitled Survey of Marlin Quay Marina Horizontal Property Regime, Garden City Point, prepared by Surtech, Inc. dated May 21, 1985, revised November 27, 1985, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, said plat being expressly incorporated herein by reference.

In August 2014, Defendant Palmetto purchased portions of the Marlin Quay Marina, including the Parking Lot, subject to Plaintiff's perpetual easement rights of record. In November 2016, Defendants initiated a construction project demolishing an existing building (hereinafter, the "Marina Building"), and installing a fence that the Plaintiff alleges blocked Plaintiff's access to the Parking Lot. Other construction containers and materials were placed directly upon the Parking Lot as well. Plaintiff alleges that at no time prior to the initiation of the construction activities was it notified that construction activities would block access to the Parking Lot, nor provided any written construction plans or details. Defendants allege that Plaintiff was informed about the construction, that the Plaintiff consented to the use of the Parking Lot, and waited to bring this Action until after the Marina Building was demolished. After the a Temporary Restraining Order was served upon Defendants on November 18, 2016, Defendants removed the fence blocking Plaintiff's access to and use of the Parking Lot.

Defendants have a permit from Georgetown County to: (1) demolish the Marina Building, and (2) to install pilings into the Parking Lot that potentially would be used to support the new building. At the time of the December 5, 2016 hearing, the Defendants did not have a building permit to build the new building. Defendant's construction plans were made available to Counsel for Plaintiff on Tuesday, November 22, 2016.

According to Plaintiff, Defendant's plans indicate that a new building would be placed over the Parking Lot. Plaintiff alleges the proposed construction would significantly, if not completely, block the Parking Lot. Plaintiff also asserts that the finished building would impermissibly encroach upon, interfere with, and overburden its easement rights, as well as impermissibly and prejudicially reconfigure the Parking Lot contrary to the configuration depicted in the plat publicly recorded with the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, as said plat was expressly incorporated by reference.

LEGAL STANDARD

"A plaintiff's entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation." *FOC Lawshe v. International Paper*, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002). A Plaintiff seeking a temporary injunction generally must demonstrate that it meets each of the three following criteria: (1) that absent the restraint, the Plaintiff may possibly suffer irreparable harm; (2) that the Plaintiff is likely to succeed on the merits of the action; and (3) that the Plaintiff has an inadequate remedy at law. *Id.* The court must review each of these factors, and balance them against the interests of the party being restrained. *LeFurgy v. Long Cove Club Owners Assn., Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994). "The sole object of a temporary injunction is to preserve the subject of

controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.” *County Council of Charleston v. Felkel*, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964).

1. Irreparable Harm

A temporary injunction may be issued to protect property rights, including those acquired under an easement. *AJG Holdings, et al. v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)(Injunction issued to preserve rights under subdivision restrictive covenants where the ability to call police or money damages would not protect right to peaceable enjoyment); *See Id. Transcontinental*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969)(Temporary injunction prohibited construction over an easement); *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)(Enjoining reconfiguration of non-exclusive parking easement as depicted on publicly recorded plat).

South Carolina courts also have held the potential loss of a business would constitute an irreparable harm. *Peek v. Spartanburg Regional Healthcare System*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). In *Peek*, the Plaintiff sought to protect her privilege to provide services to the Defendant hospital when the hospital contracted with another company to provide its own anesthesiologists. *Id.* Defendant hospital terminated Plaintiff when she failed to become employed by the new company. *Id.* Thereafter, Plaintiff filed a breach of contract action and moved for a restraining order to prevent her termination during the pendency of her case. *Id.* The trial court granted a temporary injunction, which the hospital appealed. *Id.* On appeal, the Court of Appeals upheld the temporary injunction, holding, in pertinent part:

Peek has lived and practiced anesthesiology for fourteen years. During this time Peek built a patient referral base, which fueled her professional practice. The loss of privileges at the Hospital would lead to the loss of her patient referral base, which would, in turn, lead to the loss of her professional practice. The complete loss of a professional practice can be an irreparable harm.

Id. at 455, 37.

Comparable to the *AJG Holdings*, *Transcontinental*, *Xanadu*, and *Peek* cases, Plaintiff presents sufficient facts that it could be irreparably harmed if a temporary injunction is not granted to prevent Defendants from blocking Plaintiff's access to its Parking Lot as per the recorded plat at Plat Book 6 at Page 214. Plaintiff has built a restaurant that has operated in the Murrells Inlet area for over thirty (30) years. Plaintiff's business is dependent upon its ability to provide convenient and safe access and parking for its staff, commercial vendors, and invitees. Defendants' construction upon the Parking Lot could interfere with Plaintiff's right to peaceably use its property rights without interruption, and could irreparably be detrimental to the operation and reputation of the Plaintiff's restaurant. Therefore, this Court finds and concludes that an injunction is proper to prevent irreparable harm to Plaintiff's business and property rights.

2. Likelihood of Success

In order to satisfy the Court's requirement that the Plaintiff demonstrate a likelihood of success on the merits of its claim, Plaintiff only needs to make a *prima facie* showing of entitlement to relief based upon the allegations set forth in its Verified Complaint. *Compton v. South Carolina Dept. of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). The South Carolina Supreme Court held that where an easement has been expressly granted, said grantor "must be held during the continuance of the easement to have abandoned every use of the land except such as might be made consistent with the reasonable enjoyment of the easement granted." *Faulkenberry v. Norfolk Southern Ry. Co.*, 349 S.C. 318, 325, 563 S.E.2d 644, 648 (2002)(citing *Marion County Lumber Co. v. Tilghman Lumber Co.*, 75 S.C. 220, 55 S.E. 337 (1906) (Dominant estate cannot materially

interfere with the use and enjoyment of a servient estate's easement)). The Verified Complaint alleges and attaches photographic evidence depicting Defendants' construction fence blocking access to the Parking Lot. Therefore, Plaintiff has demonstrated *prima facie* causes of action for intentional interference by Defendants with Plaintiff's Easement rights.

As to future construction and possible reconfiguration of the Parking Lot, Plaintiff's Easement expressly incorporates a plat with a depiction and configuration of the Parking Lot, which is recorded with Georgetown County records in Plat Book 6 at Page 214.—Accordingly, Plaintiff alleges that Defendants cannot constrain or narrow the boundaries of Plaintiff's easement. *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)(Holding that where an easement references and incorporates a plat depicting an easement, said easement cannot be constrained to any degree).

Pursuant to the facts set forth on the record in this matter, Plaintiff has set forth *prima facie* causes of action for relief against Defendants and has a likelihood of success on the merits.

3. No Adequate Remedy At Law

An adequate remedy at law is one which “is certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity.” *Nutt Corp. v. Howell Road, LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011). The South Carolina Supreme Court has held that temporary injunctions are proper when protecting property rights acquired under an easement. *AJG Holdings, et al. v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009) (Injunction issued to preserve rights under subdivision restrictive covenants where the ability to call police or money damages would not protect right to peaceable enjoyment); *Transcontinental*, 252 S.C. at 481; *See also D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904) (holding that where a plaintiff had an established right of way to real property, a temporary injunction, during the pendency of litigation, was proper to preserve the plaintiff's rights). Therefore, an injunction during

the pendency of this Action is appropriate to preserve Plaintiff's right to its easement.

Additionally, there is also no legal remedy to completely and sufficiently protect Plaintiff against the harm that would result to its longstanding business if Defendants resume blocking all access to the Parking Lot. As set forth above, the *Peek* Court specifically held, there is no adequate remedy for actions that will cause the loss of a business. *Peek*, 367 S.C. 450, 457, 626 S.E.2d 34, 38. If Defendants are permitted to resume and/or continue blocking Plaintiff's parking, Plaintiff's employees, vendors, and invitees will not be able to safely access the restaurant, and Plaintiff would therefore face the risk of the loss of its entire business during the pendency of this action. Here, as was the case in *Peek*, injunctive relief is a better remedy than monetary damages because it allows Plaintiff to remain in business as it has for thirty (30) years. *See Id.*

4. Bond Requirement of Rule 65, SCRPC

Rule 65(c) of the *South Carolina Rules of Civil Procedure* provides, "no temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." On November 16, 2016, The Gulfstream Café, Inc. filed its Verified Complaint with a Motion for a Temporary Restraining Order and deposited Bond with the Clerk of Court in the amount of \$250.00. The Affidavits of Mark Lawhon and Chris Lawhon on behalf of Defendants both indicate that Plaintiff will lose \$180,000.00 if installation of the pilings is enjoined, and over \$4,000 per day if construction of the new building is enjoined. As a result, Defendants assert that if a Temporary Injunction is granted, Plaintiff should post a bond in the amount of \$2,000,000.00.

As of the hearing date, Defendants had a permit to demolish the Marina Store and to install pilings into the Parking Lot. While the Marina Store has been demolished, Plaintiff asserts the installation of pilings will interfere with Plaintiff's Easement rights both during construction and

after, as they may result in the elimination of parking spaces and require reconfiguration of the Parking Lot.

Counsel for Defendants asserted that installation of the pilings will not unreasonably interfere with Plaintiff's use of the Parking Lot in any respect because cars can park between them, and the installation of the pilings will only take four (4) days during which time only sixteen (16) parking spaces would be inaccessible. Defendants assert that the Parking Lot has sixty-one (61) parking spaces, and since this is not the Plaintiff's busy season, the use of sixteen (16) parking spaces for four (4) days will not materially or unreasonably interfere with the Plaintiff's non-exclusive easement rights.

CONCLUSION

This Court finds and concludes Plaintiff will suffer irreparable harm should Defendants be allowed to interfere with Plaintiff's Easement rights during the pendency of this action. And therefore, it is **ORDERED, ADJUDGED, AND DECREED** that:

1. Defendants J. Mark Lawhon, Individually, Palmetto Industrial Development, LLC, and any and all others acting in concert with the aforementioned Defendants, are hereby temporarily restrained and enjoined from interfering with Plaintiff's perpetual easement rights to use the Parking Lot, which is the subject of this Action, provided however, Defendants shall have four (4) days to complete all construction work for which permits were issued prior to the commencement of this Action;
2. During the four (4) day construction period referenced in No. 1 hereinabove, Defendants shall not interfere with the use of more than sixteen (16) parking spaces covered under Plaintiff's easement;
3. Prior to construction, Defendants shall provide written notice to Plaintiff of the four (4) days when construction will be ongoing and identify the sixteen (16) parking spaces which may

be affected by the construction;

4. After the four (4) day construction period, Defendants are temporarily restrained and enjoined from interfering with any of Plaintiff's perpetual easement rights;
5. This temporary injunction is conditioned upon Plaintiff increasing the bond from the \$250.00 currently on with the Clerk of Court, and posting additional cash or surety with the Clerk of Court, to the amount of \$5,000.00;
6. Should Defendants obtain permits for the construction of its building, then Defendants may seek an increase of the bond posted by Plaintiff;
7. This temporary injunction shall remain in effect pending the trial of this case unless otherwise terminated or modified by Court Order; and,
8. Nothing contained in this Order shall have precedential value at the trial of this case. The grant of this temporary injunction is NOT a ruling that either party will ultimately prevail in this case.

IT IS SO ORDERED by this Court on December 5, 2016, notwithstanding the Court's failure to sign this order until August 24, 2017.

Honorable Benjamin H. Culbertson
Judge, Fifteenth Judicial Circuit

Georgetown, South Carolina

August 24, 2017.



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al

Case Number: 2016CP2200961

Type: Order/Temporary Injunction

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2017-08-25 15:18:21 page 11 of 11

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2200961

Gulfstream Cafe Inc		J Mark Lawhon	Palmetto Industrial Development LLC
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 Pages 2 and 3 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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

See pages 2 and 3.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

Circuit Court Judge

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:

George W. Redman III PO Box 357 Myrtle Beach, SC 29578
Simon H Bloom Bloom Sugarman LLP 977 Ponce De Leon Ave., Ne Atlanta, GA 30306
Ariel D Zion Bloom Sugarman LLP 977 Ponce De Leon Ave., Ne Atlanta, GA 30306

Henrietta U. Golding Mcnair Law Firm PO Box 336 Myrtle Beach, SC 29578
David J. Mills PO Box 1469 Pawleys Island, SC 29585

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Alma Y. White - Clerk of Court

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.

Plaintiff's Motion For Contempt is PARTIALLY GRANTED. The defendant is held in criminal contempt for willful violation of the prior court order by interfering with the plaintiff's easement during the fishing tournament held in May, 2017, and for calling law enforcement to evict the plaintiff's window washer on two separate occasions. The defendant is not held in contempt for placing 3 orange cones in the parking area. No sanctions are imposed for the contempt committed during the fishing tournament. However, for the contempt in evicting the plaintiff's window washer on two separate occasions, the defendant J. Mark Lawhon is sentenced as follows:

The defendant is sentenced to 30 days in jail or payment of a \$3000.00 fine (\$1500.00 for each eviction). The defendant shall have until 12:00 noon on 10/13/2017 to pay the said fine, plus all applicable costs, to the Georgetown County Clerk of Court. If the fine is not paid by 12:00 noon on 10/13/2017, the defendant shall report to the Georgetown County Detention Center by 5:00 p.m. on 10/13/2017 to serve his sentence. If the defendant chooses, he may serve his 30-day sentence on weekends.

If defendant pays fine, the defendant shall provide proof of payment to the plaintiff by 10/20/2017.

Plaintiff's Motion To Compel seeking discovery responses from defendant is GRANTED to the following extent:

Plaintiff's attorneys and defendants' attorney shall meet within 14 days.

The parties shall obtain a court reporter to transcribe the meeting with each party paying ½ of the court reporter fees.

The attorneys shall go over all of plaintiff's discovery, item by item, identifying what is requested, what has been produced (with evidence of production) and what remains outstanding. Outstanding discovery shall be produced by defendant at the meeting with each party paying ½ the cost of copying. If a requested material does not exist, defendant shall acknowledged on the record that the material does not exist.

Defendant J. Mark Lawhon's individual financial records shall be produced. Defendant's objection to the production of said records is DENIED.

Plaintiff's Motion to Quash defendants' subpoena for plaintiff's deposition is DENIED. However, the plaintiff's deposition shall not be taken for at least 30 days after the discovery meeting set forth above.

Plaintiff's Motion To Compel production of subpoenaed documents from Georgetown County is DENIED.

Defendants' Motion to Amend Answer and Counterclaim is GRANTED by consent of the parties.

Defendants' Motion to Reconsider Terms of the Temporary Injunction is PARTIALLY GRANTED to the extent that the defendant is permitted to use no more than 12 parking spaces in the easement area during the fishing tournament held each May and October.

Plaintiff's Motion to Amend Terms of Temporary Injunction permitting defendants' use of a portion of the easement for 4 days to drive pilings is DENIED.



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al

Case Number: 2016CP2200961

Type: Order/Form 4

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2017-09-28 13:21:26 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2200961

Gulfstream Cafe Inc

J Mark Lawhon

Palmetto Industrial
Development LLC

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

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: See page 2 for Order Granting Permanent Injunction.

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)
Gulfstream Café	J. Mark Lawhon	\$1000.00
Gulfstream Café	Palmetto Industrial Development LLC	\$1000.00

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

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

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

Circuit Court Judge

2129
Judge Code

6/04/2018
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:

George W. Redman III PO Box 357 Myrtle Beach, SC 29578
Simon H Bloom Bloom Sugarman LLP 977 Ponce De Leon Ave., Ne Atlanta, GA 30306
Adam D Nugent 977 Ponce De Leon Ave Ne Atlanta, GA 30306

Henrietta U. Golding Mcnair Law Firm PO Box 336 Myrtle Beach, SC 29578
David J. Mills PO Box 1431 Charleston, SC 29402
Daniel J. MacDonald Parkway Office Plaza 1107 48Th Avenue North, Suite 210 Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Grace Hurley

Alma Y. White - Clerk of Court

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.

Based on the case law of this state, the facts as presented at this trial, and the jury's verdict, a permanent restraining order is issued with the following terms. The Defendants are enjoined from preventing the Plaintiff from enjoying the right granted to it in the recorded nonexclusive joint easement. The Defendants are restrained and may not expand the outside boundaries of any new building beyond those previously used. The Court is specifically not talking about height, only the outside boundaries.



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al

Case Number: 2016CP2200961

Type: Order/Form 4

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2018-06-11 17:11:03 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

The Gulfstream Café, Inc.,)
Plaintiff,)

v.)

J. Mark Lawhon, Individually, and)
Palmetto Industrial Development, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2016-CP-22-00961

VERDICT FORM

PLAINTIFF'S CLAIM

1. Interference with Easement

☒ We, the jury, by unanimous decision find for the Plaintiff on its claim of interference with its easement.

OR

☐ We, the jury, by unanimous decision find for the Defendants.

If you found for the Plaintiff, set forth the amount of damages, if any:

\$

~~0~~ \$1000.00 0.00

Please proceed to Question 2

DEFENDANTS' CLAIMS

2. Trespass as to Plaintiff's Trash Dumpster

☐ We, the jury, by unanimous decision find for the Defendants on their claim of trespass.

OR

☒ We, the jury, by unanimous decision find for the Plaintiff.

If you found for the Defendants, set forth the amount of damages, if any.

\$ _____

Please proceed to Question 3

3. Breach of Easement as to Equally Sharing Costs of Proper Maintenance and Upkeep

☐ We, the jury, by unanimous decision find for the Defendants on their claim of Breach of Easement.

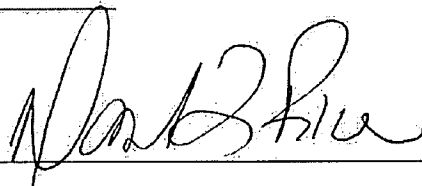
OR

☒ We, the jury, by unanimous decision find for the Plaintiff.

If you found for the Defendants, set forth the amount of damages, if any.

\$ _____

Foreperson:



June 11, 2018
Georgetown, SC

**WHEN YOU HAVE REACHED A VERDICT, KNOCK ON THE DOOR
AND NOTIFY THE BAILIFF**

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

The Gulfstream Café, Inc.,)
Plaintiff,)

v.)

J. Mark Lawhon, Individually, and)
Palmetto Industrial Development, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2016-CP-22-00961

VERDICT FORM

ON THE ISSUE OF PUNITIVE DAMAGES, WE, THE JURY, BY UNANIMOUS
DECISION, FIND FOR

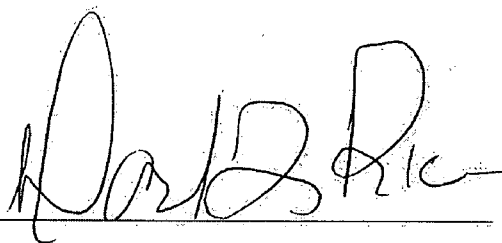
☐ The Plaintiff, in the amount of, if any.

\$ _____

OR

☒ For the Defendant.

Foreperson:



June 11, 2018
Georgetown, SC

**WHEN YOU HAVE REACHED A VERDICT, KNOCK ON THE
DOOR AND NOTIFY THE BAILIFF**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CIVIL ACTION NO. 2016-CP-22-00961
The Gulfstream Café, Inc.,	)	
	)	
Plaintiff,	)	
	)	ORDER GRANTING PLAINTIFF'S
vs.	)	MOTION TO ALTER OR AMEND
	)	THE JUDGMENT
J. Mark Lawhon, Individually, and	)	
Palmetto Industrial Development,	)	
LLC,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Plaintiff The Gulfstream Café, Inc.'s Motion to Alter or Amend the Judgment. On June 12, 2018, the Court entered a Permanent Injunction in the above case. On June 22, 2018, Plaintiff filed the instant Motion to Alter or Amend pursuant to South Carolina Rule of Civil Procedure 59(e). Based upon the filings in this matter, the arguments of counsel, and the entire record at trial, the Court enters the following order.

South Carolina Rule of Civil Procedure 59(e) permits a party to file a motion to alter or amend the judgment. The purpose of Rule 59(e) is to enable a party to request that the Court reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). As with other motions under Rule 59, a motion to alter or amend is addressed to the sound discretion of the trial court. See Brinkley v. South Carolina Dept. of Corrections, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009)

Having reviewed Plaintiff's Motion to Alter or Amend, Defendants' response, the record in this case, and having considered the arguments of the parties, the Court finds

that the parties are unclear as to the order of the Court entered on June 12. As a result, the Court exercises its discretion to amend the Permanent Injunction. The following, amended Permanent Injunction is hereby entered.

Based on the case law of this state, the facts presented at this trial, and the jury's verdict, a permanent restraining order is issued with the following terms. The Defendants are enjoined from preventing the Plaintiff from enjoying the right granted to it in the recorded nonexclusive joint easement. The Defendants are restrained and may not expand the outside boundaries of any new building beyond those previously used. The outside boundaries specifically are the outside boundaries of the old building, which was depicted on the 1985 Plat recorded at Plat Book 6, Page 214 of the Georgetown County real property records and was demolished by Defendants in November 2016. The outside boundaries do not include any outbuildings, fixtures, concrete pads, dumpsters, or other accessories. As a result, any new building must be located on the same footprint as the old building. The Court is specifically not talking about height, only the outside boundaries.

SO ORDERED this ____ day of July, 2018.

Steven H. John
Resident Circuit Judge
Fifteenth Judicial Circuit

At Chambers, SC



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al

Case Number: 2016CP2200961

Type: Order/Amend

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2018-07-27 11:49:15 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP2200961

Gulfstream Cafe Inc
PLAINTIFF(S)

J Mark Lawhon et al
DEFENDANT(S)

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.
- ☐ **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:

As to the Defendants' Motion to Alter or Amend the Court's Formal Order Dated July 27, 2018, the Court's ruling is as follows. The Court hereby denies the Motion to Alter or Amend as filed by Defendants and reaffirms the July 27, 2018 order in its entirety, without amendment or alteration.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/14/2018 .

Simon H Bloom for Gulfstream Cafe Inc
Adam D Nugent for Gulfstream Cafe Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al

Case Number: 2016CP2200961

Type: Order/Electronic Form 4

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2018-11-14 11:55:25 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP2200961

Gulfstream Cafe Inc
PLAINTIFF(S)

J Mark Lawhon et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

As to Plaintiff's Motion For Contempt, the Court's ruling is as follows. The Court finds that Defendants have engaged in criminal contempt of court by deliberate and intentional acts by placement of a golf cart which interfered with the proper use of the non-exclusive easement in this matter and was in direct violation of the Court's previous order. Therefore, the Court hereby imposes a fine in the sum of \$5,000 to be paid by November 21, 2018 by 5:00 pm to the Georgetown County Clerk of Court's Office.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/14/2018 .

Simon H Bloom for Gulfstream Cafe Inc
Adam D Nugent for Gulfstream Cafe Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al
Case Number: 2016CP2200961
Type: Order/Electronic Form 4

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2018-11-14 11:56:25 page 3 of 3

The South Carolina Court of Appeals

The Gulfstream Cafe, Inc., Respondent,

v.

J. Mark Lawhon, Individually, and Palmetto Industrial
Development, LLC, Appellants.

Appellate Case No. 2018-002213

The Honorable Steven H. John
Georgetown County
Trial Court Case No. 2016CP2200961

FILED
GEORGETOWN COUNTY, S.C.
2018 FEB 25 PM 1:27
ALMA Y. WHITE
CLERK OF COURT

ORDER

It appears that Appellants wish to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Henrietta U. Golding, Esquire
James Keith Gilliam, Esquire
George W. Redman, III, Esquire
Adam D. Nugent, Esq, Esquire
Simon H. Bloom, Esq, Esquire

FILED

February 1, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	CIVIL ACTION NO. 2016-CP-22-00961
The Gulfstream Café, Inc.,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING DEFENDANTS'
vs.	)	MOTION TO ALTER OR AMEND
	)	THE COURT'S ORDER DATED
J. Mark Lawhon, Individually, and	)	NOVEMBER 14, 2018
Palmetto Industrial Development,	)	
LLC,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Defendants' Motion to Alter or Amend the Court's Order Dated November 14, 2018. On that date, the Court entered an Order finding Defendants in criminal contempt of Court for engaging in deliberate and intentional acts that interfered with Gulfstream's use of the non-exclusive easement in direct violation of the Court's Permanent Injunction entered on June 12, 2018, and modified on July 27, 2018. On November 28, 2018, Defendants filed the instant Motion to Alter or Amend pursuant to South Carolina Rule of Civil Procedure 59(e). At about the same time, the Defendant filed an appeal of the Court's Order dated November 14, 2018. That appeal has now been dismissed by the Defendant and the Court can now address this motion. Based up on the filings in this matter, the arguments of counsel, and the entire record at trial, the Court enters the following order.

South Carolina Rule of Civil Procedure 59(e) permits a party to file a motion to alter or amend the judgment. The purpose of Rule 59(e) is to enable a party to request that the Court reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). As with other motions under Rule

59, a motion to alter or amend is addressed to the sound discretion of the trial court. See Brinkley v. South Carolina Dept. of Corrections, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). Notably, Rule 59(g) requires that a motion to alter or amend be provided to the judge within 10 days after filing.

Having reviewed Plaintiff's Motion to Alter or Amend, Defendants' response, the record in this case, and having considered the arguments of the parties, the Court hereby denies Defendants' Motion to Alter or Amend on the following grounds.

First, Defendants filed their Motion to Alter or Amend on November 28, 2018, but they did not submit that motion to the Court until December 21, 2018. Because Defendants did not submit the Motion within the 10-day timeframe required by Rule 59(g), the Motion is untimely, and the Court is empowered to deny the Motion on that basis alone. Gallagher v. Evert, 353 S.C. 59 (2002).

Even considering the merits of Defendants' Motion, the Court finds that the evidence supports a finding of contempt beyond a reasonable doubt. The evidence made clear that Defendants willfully, voluntarily, and intentionally disobeyed the Court's Permanent Injunction by interfering with the easement at issue in the present case. This conduct occurred on several occasions during the summer of 2018. Further, the Court finds that the contempt sanction of \$5,000 to be reasonable in light of the nature of Defendants' conduct and the fact that Defendants were previously held in contempt in this case.

Accordingly, Defendants' Motion to Alter or Amend the Court's Order Dated November 14, 2018 is hereby DENIED.

SO ORDERED this ____ day of _____, 2019.

ELECTRONICALLY FILED - 2019 Aug 07 10:02 AM - GEORGETOWN - COMMON PLEAS - CASE#2016CP2200961

The Honorable Steven H. John
Resident Circuit Court Judge
Fifteenth Judicial Circuit



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al

Case Number: 2016CP2200961

Type: Order/Other

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2019-08-07 09:27:02 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

The Gulfstream Café, Inc.

Plaintiff(s)

vs.

J. Mark Lawhon, Individually, et al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 22- 00961

Submitted By: George W. Redman, III
Address: Bellamy Law Firm, PO Box 357,
Myrtle Beach, SC 29578

SC Bar #: 72365
Telephone #: 843-448-2400
Fax #: 843-448-3022
Other:
E-mail: gredman@bellamylaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☒ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature:

Date: November 16, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (06/2015)

Page 1 of 2

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-22-00961

The Gulfstream Café, Inc.,

Plaintiff,

v.

J. Mark Lawhon, Individually, and
Palmetto Industrial Development LLC,

Defendants.

SUMMONS

ALMA Y. WHITE
CLERK OF COURT

2016 NOV 16 PM 4:26

FILED
GEORGETOWN COUNTY, S.C.

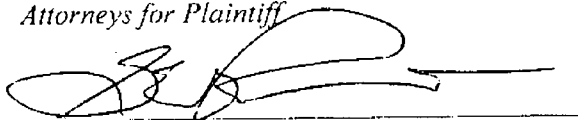
TO: THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all 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 judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

Post Office Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400

Attorneys for Plaintiff


George W. Redman, III

Myrtle Beach, South Carolina
November 16, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2016-CP-22-00961
	)	
The Gulfstream Café, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	VERIFIED COMPLAINT
	)	
J. Mark Lawhon, Individually, and	)	
Palmetto Industrial Development, LLC,	)	
	)	
Defendants.	)	

FILED
GEORGETOWN COURT N.S.C.
2016 NOV 16 PM 4:27
ALMA Y. WHITE
CLERK OF COURT

Plaintiff The Gulfstream Café, Inc. (hereinafter "Plaintiff"), complaining of J. Mark Lawhon, Individually, and Palmetto Industrial Development, LLC, (hereafter sometimes referred to collectively as "Defendants"), would respectfully show and allege unto this Honorable Court as follows:

JURISDICTION

1. Plaintiff is a corporation existing, organized, and doing business in Georgetown County, within the State of South Carolina.
2. Upon information, knowledge and belief, Defendant J. Mark Lawhon (Lawhon), is an individual who owns and controls property and various ongoing business interests within Georgetown County, South Carolina, and as such, has acted in his individual capacity, and on behalf of those entities of which he controls, has taken and authorized intentional, malicious, and reckless tortious acts as set forth herein.

3. Upon information and belief, Palmetto Industrial Development, LLC ("Palmetto"), is a South Carolina entity which owns and operates property situate in Georgetown County, South Carolina.
4. This Action involves Defendants' intentional, malicious, and reckless trespass and forcible entry and detainer unto and over Plaintiff's interest in certain real property, as well as the damages which continue to be inflicted upon Plaintiff.
5. Based upon the foregoing, and as is more specifically set forth herein, this Honorable Court is the appropriate venue and has jurisdiction over the Parties to and the Subject Matter of this Action.
6. Plaintiff will suffer immediate and irreparable injury, loss, and damage if Defendants' actions as set forth herein are not immediately enjoined.

FACTUAL ALLEGATIONS

7. Plaintiff owns and operates a well-known and firmly-established fine dining establishment known as The Gulfstream Café, Inc., with a physical address of 1536 S. Waccamaw Drive, Murrells Inlet, South Carolina 29576.
8. The real property adjoining the restaurant is part of a development commonly referred to as the Marlin Quay Marina, with improvements and amenities including condominiums, a marina, boat slips, as well as a number of parking lots.
9. The Marlin Quay Marina development did include a "Marina Club & Snack Bar" which generally supported marina related activities, however, said Snack Bar was recently demolished.

10. The real property between the Snack Bar and the Gulfstream Café is comprised of a parking lot (the "Parking Lot") with multiple accesses onto Waccamaw Drive, and is particularly shown as Lots 3, 4, and 5 of Tract 3 on that certain Plat entitled Survey of Marlin Quay Marina Horizontal Property Regime, Garden City Point, prepared by Surtech, Inc. dated May 21, 1985, revised November 27, 1985, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 214. (See Exhibit B)
11. The Marlin Quay Marina property, including the Parking Lot, was previously owned by The Marlin Quay Company, a South Carolina General Partnership.
12. On or around July 1, 1983, The Marlin Quay Company sold the Marlin Quay Marina property, including the Parking Lot, to the Marlin Quay Marina Corporation, by way of that certain Deed recorded on September 1, 1983, in Georgetown County Deed Book 211 at Page 1141.
13. On February 25, 1986, The Marlin Quay Marina Company conveyed to The Gulfstream Café, Inc., a 25,366 square foot portion of the Marlin Quay Marina property, specifically identified as "Marsh Area, Tract A and Tract B" on that certain plat publicly recorded with Georgetown County at Plat Book 6, Page 438.
14. On February 25, 1986, The Marlin Quay Marina Company also expressly granted three (3) non-exclusive appurtenant easements to utilize the Parking Lot to The Gulfstream Café, Inc., its Successors and Assigns, each of which was publicly recorded in Georgetown County Deed Book 234 at Pages 790, 797, and 803.

15. In 1990, the Marlin Quay Marina Corporation again expressly granted and conveyed a perpetual non-exclusive easement for the use of the Parking Lot to The Gulfstream Café, its successors and assigns, as set forth in that certain Agreement of Easement and Consent to and Joinder of Mortgagee to Granting of Easement ("Easement") publicly filed with the Georgetown County in Deed Book 382, Pages 217 to 226 (attached hereto and incorporated herein verbatim as Exhibit A).
16. The Easement expressly provides that The Gulfstream Café perpetually and currently enjoys the following rights:

...non-exclusive perpetual easement from Marlin Quay Marina Corporation to The Gulfstream Café, Inc. for the purpose of ingress and egress and vehicular parking on, over and across that certain real property of Marlin Quay Marina Corporation, which is more fully described herein below, by owners, agents, employees, servants, visitors, guests and invitees of The Gulfstream Café, Inc.

....

Marlin Quay Marina Corporation, ... (the "Grantor"), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto The Gulfstream Café, Inc., its successors and assigns (the "Grantee") a non-exclusive perpetual easement appurtenant to the premises of the Grantee hereinafter described for the full and free right of ingress and egress on, over and across the following described property of the Grantor, together with the rights of vehicular parking on and vehicular and pedestrian access to, all in accordance with all governmental rules, regulations, ordinances or laws, the premises of the Grantor hereinafter described, and also for the purpose of maintenance, repair, alteration and/or improvements to the Grantee's hereinafter described property. It is anticipated by the parties that while they will each have joint and non-exclusive use **at all times** of the area covered by this easement that the Grantor will utilize the premises primarily during the daytime regular business hours of Grantor and the Grantee will utilize the premises primarily in the evening regular business hours of Grantee. (*emphasis added*).

17. The Easement provides that the Parking Lot subject to Plaintiff's perpetual easement rights is specifically described as follows:

A non-exclusive right of ingress, egress and vehicular parking over, across and on all those certain pieces, parcels or tracts of land situate, lying and being in the Garden City area of the County of Georgetown, State aforesaid, and being more particularly shown as Lots 3, 4, and 5 of Tract 3 on that certain Plat entitled Survey of Marlin Quay Marina Horizontal Property Regime, Garden City Point, prepared by Surtech, Inc. dated May 21, 1985, revised November 27, 1985, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, said plat being expressly incorporated herein by reference.

A copy of the Plat referenced above, with markups depicting the approximate location of The Gulfstream Café and the Parking Lot, is attached hereto and incorporated herein verbatim as Exhibit B, (hereinafter the "Parking Lot Plat").

18. On or around September 11, 1992, the Marlin Quay Marina Corporation, by and through the Master in Equity, conveyed the Marlin Quay property, including the Parking Lot, to Marlin Point Corporation, as evidenced by that certain Deed publicly filed with the Georgetown County in Deed Book 486, Page 181.
19. On or around December 12, 1996, the Marlin Point Corporation conveyed the Marlin Quay property, inclusive of the Parking Lot, to Reel Crazy Charters, Inc., as evidenced by that certain Deed publicly filed with Georgetown County in Deed Book 737, page 199.
20. On or around the 20th of August, 2014, Defendant Palmetto Industrial Development, LLC, purchased the Marlin Quay Marina property, inclusive of the

Parking Lot. from Reel Crazy Charters, Inc., as evidenced by that certain Deed publicly filed with the Georgetown County in Deed Book 2421, Page 267.

21. Defendant purchased the Marlin Quay Marina subject to The Gulfstream Café's perpetual easement rights to utilize the Parking Lot to the full extent set forth in the Easement, inclusive of all areas specifically depicted in the Parking Lot Plat.
22. On or about February 7, 2007, the Marlin Quay Marina Owners' Association initiated construction activity to make improvements upon and within the Marlin Quay Marina which included dredging of the marina.
23. The 2007 construction activities required exclusive use of the Parking Lot.
24. In recognition of Plaintiff's non-exclusive perpetual easement right to use the Parking Lot, the Marlin Quay Marina Owners' Association and The Gulfstream Café, Inc. entered into a written agreement acknowledging Plaintiff's Easement rights and that the obstruction of Plaintiff's rights would need to be mitigated by locating additional parking, as well as some measure of payment for damages that would inevitably be caused by and through inadequate or inconvenient parking.
25. On or around the second week of November 2016, Defendants have again initiated a construction project involving the Marlin Quay Marina, and have completely obstructed access to the Parking Lot by The Gulfstream Café, Inc.
26. Defendants have put up signage, fences, and barricades to block Plaintiff's access to the Parking Lot. (See Exhibit C, Photographs of Defendants' Actions).
27. Defendants have placed large construction materials upon the Parking Lot.

28. Upon information and belief, Defendants have begun a construction project where the Plans call for improvements which will permanently interfere with Plaintiff's rights to use the Parking Lot.
29. Defendant J. Mark Lawhon, individually, and on behalf of other entities he owns and or controls, has taken additional action to prevent invitees and vendors of The Gulfstream Café, Inc. from accessing the restaurant via the parking lot by parking his car in one access to the Parking Lot.
30. At no time prior to the initiation of the construction activities was anyone from The Gulfstream Café, Inc. notified that constructions activities were about to take place.
31. As a result of the Defendants completely blocking the parking lot, the owners, employees, guests, invitees, and vendors are unable to access The Gulfstream Café, Inc.
32. As a result of Defendants' construction activities, Plaintiff will incur immediate irreparable damages to its ongoing operations, as well as permanent and severe damage to the good will of The Gulfstream Café, Inc.

FOR A FIRST CAUSE OF ACTION
(Intentional Interference with Easement Rights)

33. Each and every allegation set forth in this Complaint, specifically including but not limited to each and every factual assertion set forth above, is realleged and incorporated into this cause of action as if it was repeated verbatim herein.

34. Defendants have breached and violated their obligations set forth within the above publicly recorded perpetual Easement, as is more specifically set forth above, and as may be further discovered during the pendency of this Action.
35. Plaintiff is entitled to judgment against the Defendants for breach of agreement for all actual, special, and consequential damages available at law.

FOR A SECOND CAUSE OF ACTION
(Trespass and Nuisance)

36. Each and every allegation set forth in this Complaint, specifically including but not limited to each and every factual assertion set forth above, is realleged and incorporated into this cause of action as if it was repeated verbatim herein.
37. Plaintiff has a valid and legal right to use of and possession of the Parking Lot to the fullest extent set forth in the Easement, and to the full boundaries as depicted in the Parking Lot Plat.
38. Defendants and others have intentionally obstructed Plaintiff's right to access and utilize the Parking Lot, and said entry and obstruction is without Plaintiff's permission and was intentional and in reckless disregard of Plaintiff's rights.
39. As set forth above, Defendants' intentional and reckless entry upon and complete obstruction of Plaintiff's property rights has and will cause significant damage to Plaintiff.

40. Defendants' intentional and reckless entry upon and complete obstruction of Plaintiff's property rights has and will continually and unreasonably interfere with Plaintiff's use and enjoyment of its rights in the Parking Lot.
41. Plaintiff prays for and is entitled to all actual, consequential, and incidental damages incurred as a result of Defendants' wrongful, reckless and intentional conduct as set forth above, as well as punitive damages, attorney fees and costs.
42. Plaintiff prays for immediate, temporary, and permanent injunctive relief to prevent Defendants from obstruction of Plaintiff's rights.

FOR A THIRD CAUSE OF ACTION

(S.C. Code §15-67-410 et seq., Forcible Entry and Detainer and Waste)

43. Each and every allegation set forth in this Complaint, specifically including but not limited to each and every factual assertion set forth above, is realleged and incorporated into this cause of action as if it were repeated verbatim herein.
44. South Carolina Code §15-67-410 expressly provides:

If any person be put out or disseized of any lands or tenements in forcible manner or put out peaceably and be afterwards holden out with strong hand, or after such entry, any feoffment or discontinuance in any wise thereof be made to defraud and take away the right of the possessor, the party grieved in this behalf shall have an action against such disseizor.
45. As set forth above, Defendants have actually and forcibly disseized Plaintiff of access to the Parking Lot, to which it has a perpetual lawful right of quiet and peaceable use and enjoyment.

46. As set forth above, Plaintiff has suffered damages as a result of Defendants' actions, and pursuant to South Carolina Code Section 15-67-410 *et seq.*, Plaintiff is entitled to an award of treble damages, and to be put in possession of the Parking Lot immediately.
47. Plaintiff hereby sues Defendants pursuant to South Carolina Code Section 15-67-410, for the immediate and peaceable return of the Parking Lot.
48. Plaintiff has sued Defendants for the immediate return of possession of the parking lot, and Plaintiff hereby further sues Defendants for the fair-market rental value of Plaintiff's interest in the Parking Lot for every day Defendants obstruct the Property.
49. As set forth herein, Plaintiff hereby prays for an Order from this Court instructing Defendants to immediately deposit with the Clerk of Court, and on a monthly basis thereafter for the pendency of this Action, the entire fair-market rental value of the Parking Lot.
50. Plaintiff is entitled to and prays for an Order from this Court expressly charging Defendants with all costs incurred related to necessary removal of any debris or alleged improvements, including costs, expenses, fines, damages, and service fees as may be required to retake the Parking Lot.
51. Plaintiff has suffered and believes it is entitled to an award of and for actual, incidental, consequential, and treble damages inflicted as a proximate result of Defendants' actions.

52. Pursuant to South Carolina Code Section 15-67-410 *et seq.*, Plaintiff is entitled to an award of treble damages, to be put in possession of the Parking Lot.

WHEREFORE. Plaintiff, having complained of Defendants, hereby pray for the following relief:

- a. An Order of this Honorable Court granting the relief under the Causes of Action set forth above as to Plaintiff's actual, incidental and consequential damages, fair market rental value, all costs and fees, including but not limited to punitive or treble damages and prejudgment interest;
- b. Plaintiff prays for immediate, temporary, and permanent injunctive relief to prevent Defendants from obstruction of Plaintiff's rights.
- c. Any and all other relief which is deemed just and proper by this Honorable Court and the trier of fact.

Respectfully submitted,

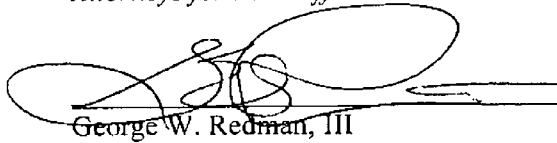
**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

Post Office Box 357

Myrtle Beach, SC 29578-0357

(843) 448-2400

Attorneys for Plaintiff



George W. Redman, III

Myrtle Beach, South Carolina

November 16, 2016.

EW16CP-22-00961

EXHIBIT A

EXHIBIT A

04347

BOOK 382, PAGE 217

FILED
BETTY L. WILLIAMS
CLERK
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STATE OF SOUTH CAROLINA } AGREEMENT OF EASEMENT AND
COUNTY OF GEORGETOWN } CONSENT TO AND JOINDER OF MORTGAGE
TO GRANTING OF EASEMENT

WHEREAS, Marlin Quay Marina Corporation did on the 11th day of December, 1985, execute and deliver a Note in the amount of Six Hundred Thousand and no/100 (\$600,000.00) Dollars to First Union National Bank and secured the same by Mortgage and Security Agreement, said Mortgage being recorded in the Office of the Clerk of Court for Georgetown County in Real Estate Mortgage Book 225 at Page 209; and

WHEREAS, Marlin Quay Marina Corporation granted three (3) easements to The Gulfstream Cafe, Inc. which easements were recorded in the Office of the Clerk of Court for Georgetown County in Deed Book 234 at Pages 790, 797 and 803; and

WHEREAS, the parties acknowledge that there may be discrepancies in the rights granted to The Gulfstream Cafe, Inc., and Marlin Quay Marina Corporation and The Gulfstream Cafe, Inc. therefore desire that Marlin Quay Marina Corporation grant a non-exclusive perpetual easement from Marlin Quay Marina Corporation to The Gulfstream Cafe, Inc. for the purposes of ingress and egress and vehicular parking on, over and across that certain real property of Marlin Quay Marina Corporation, which is more fully described herein below, by owners, agents, employees, servants, visitors, guests and invitees of The Gulfstream Cafe, Inc., and Marlin Quay Marina Corporation and The Gulfstream Cafe, Inc. further desire to clarify the intent of the parties in the granting of all of the easements described above, and First Union

National Bank desires to consent to and join in the granting of said easement hereinafter described;

NOW THEREFORE, for and in consideration of the sum of One and No/100 (\$1.00) Dollar and the covenants and conditions expressed herein, the receipt and sufficiency of which is hereby acknowledged, Marlin Quay Marina Corporation, a corporation duly organized pursuant to the laws of the State of South Carolina (the "Grantor"), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto The Gulfstream Cafe, Inc., its successors and assigns (the "Grantee") a non-exclusive perpetual easement appurtenant to the premises of the Grantee hereinafter described for the full and free right of ingress and egress on, over and across the following described property of the Grantor, together with the rights of vehicular parking on and vehicular and pedestrian access to, all in accordance with all governmental rules, regulations, ordinances or laws, the premises of the Grantor hereinafter described, and also for the purpose of maintenance, repair, alteration and/or improvements to the Grantee's hereinafter described property. It is anticipated by the parties that while they will each have joint and non-exclusive use at all times of the area covered by this easement that the Grantor will utilize the premises primarily during the daytime regular business hours of Grantor and the Grantee will utilize the premises primarily in the evening regular business hours of Grantee. The property of the

Grantor subject to this non-exclusive perpetual easement is more fully described as follows:

A non-exclusive right of ingress, egress and vehicular parking over, across and on all those certain pieces, parcels or tracts of land situate, lying and being in the Garden City area of the County of Georgetown, State aforesaid, and being more particularly shown as Lots 1, 4, and 5 of Tract 3 on that certain Plat entitled Survey of Marlin Quay Marina Horizontal Property Regime, Garden City Point, prepared by Surtech, Inc. dated May 21, 1985, revised November 27, 1985, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, said plat being expressly incorporated herein by reference.

The Grantor acquired the aforescribed property by virtue of that certain Deed from Marlin Quay Company, a South Carolina General Partnership, dated July 1, 1983 and recorded on September 1, 1983 in the office of the Clerk of Court for Georgetown County in Deed Book 211 at Page 1141.

The property of the Grantee to which this easement is appurtenant is more fully described as follows:

All those certain pieces, parcels, areas or tracts of land identified as Marsh Area, Tract A and Tract B on that certain survey for Marlin Quay Company, Garden City Point dated August 27, 1985, revised January 24, 1986, surveyed and mapped by Surtech, Incorporated and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 438.

It is expressly understood and agreed by Marlin Quay Marina Corporation and the Gulfstream Cafe that as part of the consideration for this conveyance, both parties shall be equally responsible for the maintenance and upkeep of the aforementioned easement area and shall equally share the costs associated with its proper maintenance and upkeep to insure that it is satisfactory for the uses and purposes intended herein.

It is further understood and acknowledged by the parties hereto that the Grantor herein gave a Mortgage in favor of First Union National Bank, said Mortgage having been recorded in the Office of the Clerk of Court for Georgetown County in Mortgage Book 225 at Page 209, and covering certain real property of the Grantor herein, a portion of which real property is covered by the grant of the easement herein (the "Mortgage"). First Union National Bank consents to and joins in the aforesaid grant of easement from Marlin Quay Marina Corporation to The Gulfstream Cafe, Inc. upon and pertaining to that portion of the property covered by the aforescribed Mortgage lien of First Union National Bank, and First Union National Bank specifically and expressly subordinates its aforesaid Mortgage lien to the easement granted herein; provided, however, that First Union National Bank makes no representations or warranties as to the validity of the documents creating the easement; and provided, further, that said Mortgage in all respects shall remain in full force and effect and be unaffected hereby except as set forth hereinabove:

Together with all and singular the rights, members, hereditaments and appurtenances to the above-described easement belonging, or in anywise incident or appertaining:

To have and to hold, all and singular, the above-described easement and to the said The Gulfstream Cafe, Inc., its successors and assigns forever:

And the said Marlin Quay Marina Corporation does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, the said easement unto the said Gulfstream Cafe, its successors and assigns, against itself and its successors and assigns and all others whomever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 12th day of April, in the year of our Lord One Thousand Nine Hundred and Eighty and in the Two Hundred and Thirteenth Year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

[Signature]

Nancy L. Rowe
(as to Marlin Quay
Marina Corporation)

MARLIN QUAY MARINA CORPORATION
a South Carolina Corporation
(Corporate Seal)

By: [Signature]
Its: [Signature]

Attest: [Signature]
Its: [Signature]

WITNESSES:

[Signature]

Conita A. Britton
(as to The Gulfstream Cafe,
Inc.)

The Gulfstream Cafe, Inc.
a South Carolina Corporation
(Corporate Seal)

By: [Signature]
Edward A. Cobb, Jr.
President

Attest: [Signature]
Its: [Signature]

BOOK 382 PAGE 222

WITNESSES:

Marcia Conits

Angela Luv Huskey
(as to First Union
National Bank)

FIRST UNION NATIONAL BANK

By: Deborah M. Miller
Its: Vice President

Attest: Deborah M. Miller
Its: Assistant Secretary



BOOK 382 PAGE 223

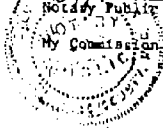
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) PROBATE

PERSONALLY appeared before me the undersigned witness
and made oath that (s)he saw the within named First Union National
Bank , by and through its duly authorized officers, sign,
seal and as its act and deed, deliver the within written
Agreement of Easement and Consent To and Joinder of Mortgages to
Granting of Easement; and that deponent with the other witnesses
whose name is subscribed above witnessed the execution thereof.

Maica Corra

SWORN TO before me this
April 1990
12th day of August, 1988.

Julia H. Alexander (L.S.)
Notary Public for South Carolina
North
My Commission Expires: 10-9-1990



BOOK 382 PAGE 224

STATE OF SOUTH CAROLINA)
Horry) PROBATE
COUNTY OF GEORGETOWN)

PERSONALLY appeared before me the undersigned witness
and made oath that (s)he saw the within named The Gulfstream
Cafe, Inc., by and through its duly authorized officers, sign,
seal and as its act and deed, deliver the within written
Agreement of Easement and Consent To and Joinder of Mortgages to
Granting of Easement; and that deponent with the other witnesses
whose name is subscribed above witnessed the execution thereof.

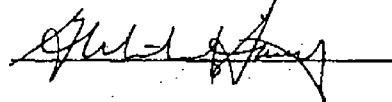
Annella C. Britton

SWORN TO before me this
14th day of May, 1990
day of May, 1990
Annella C. Britton (L.S.)
Notary Public for South Carolina
My Commission Expires: 4-25-96

BOOK 382 PAGE 225

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Marlin Quay Marina Corporation, by and through its duly authorized officers, sign, seal and as its act and deed, deliver the within written Agreement of Easement and Consent To and Joinder of Mortgagee to Granting of Easement; and that deponent with the other witnesses whose name is subscribed above witnessed the execution thereof.



SWORN TO before me this
11/15 day of June, 1998.
J. M. D. Pove (L.S.)
Notary Public for South Carolina
My Commission Expires: 6-9-98

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BETTY L. WILLIAMS
CCCP & GS

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TELETYPE
BOOK 322 PAGE 317
Charles J. Overton
Deputy Corp

Marlin Quay Marina Corp

to

Bulfinch Cape Inc

Recorded this 6th day of

June A.D. 1920

In Book Page

Charles J. Overton
Auditor, Georgetown Co. S. C.

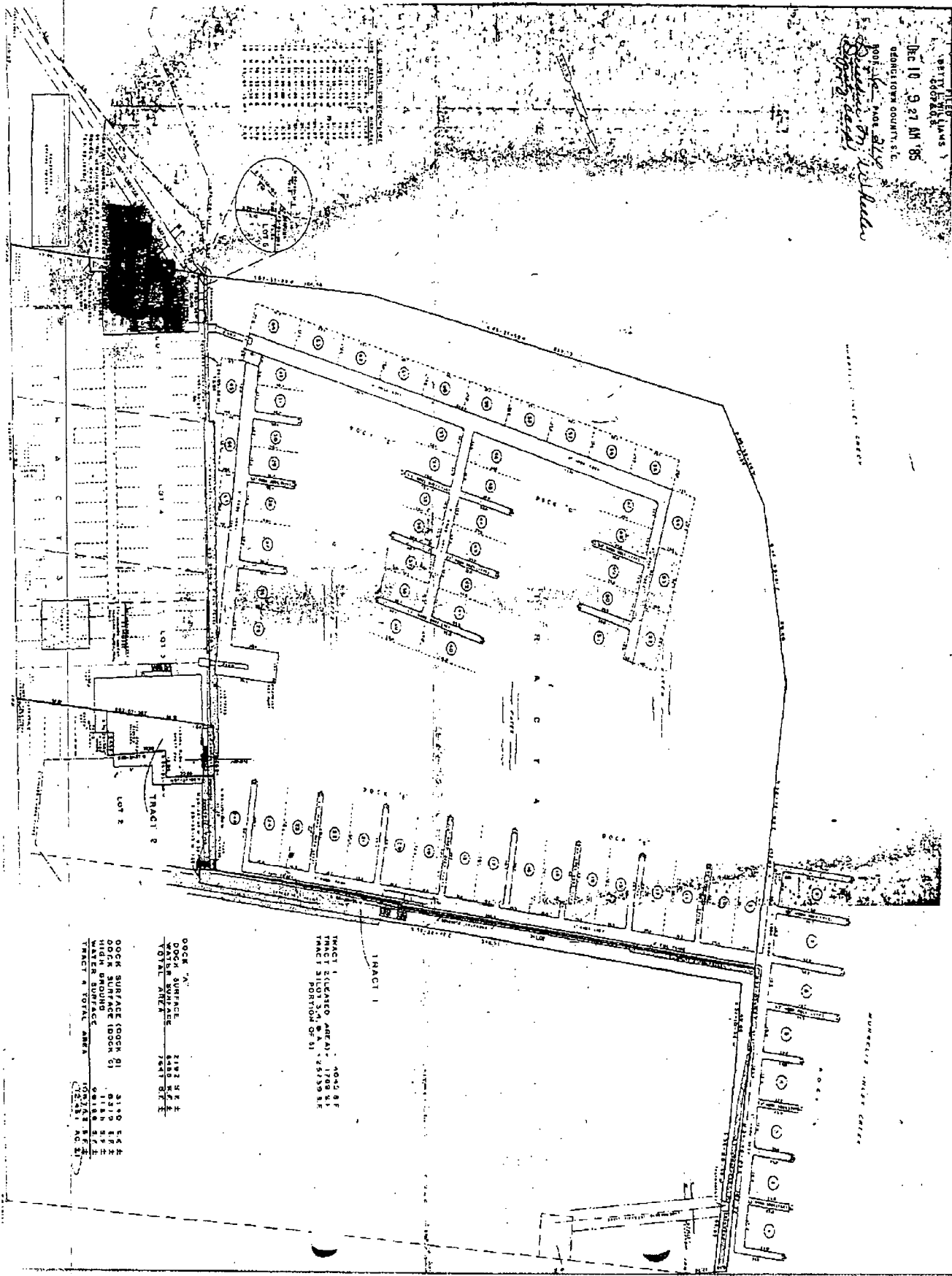
COUNTY PARCEL # 41-129-53

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EXHIBIT B

EXHIBIT B

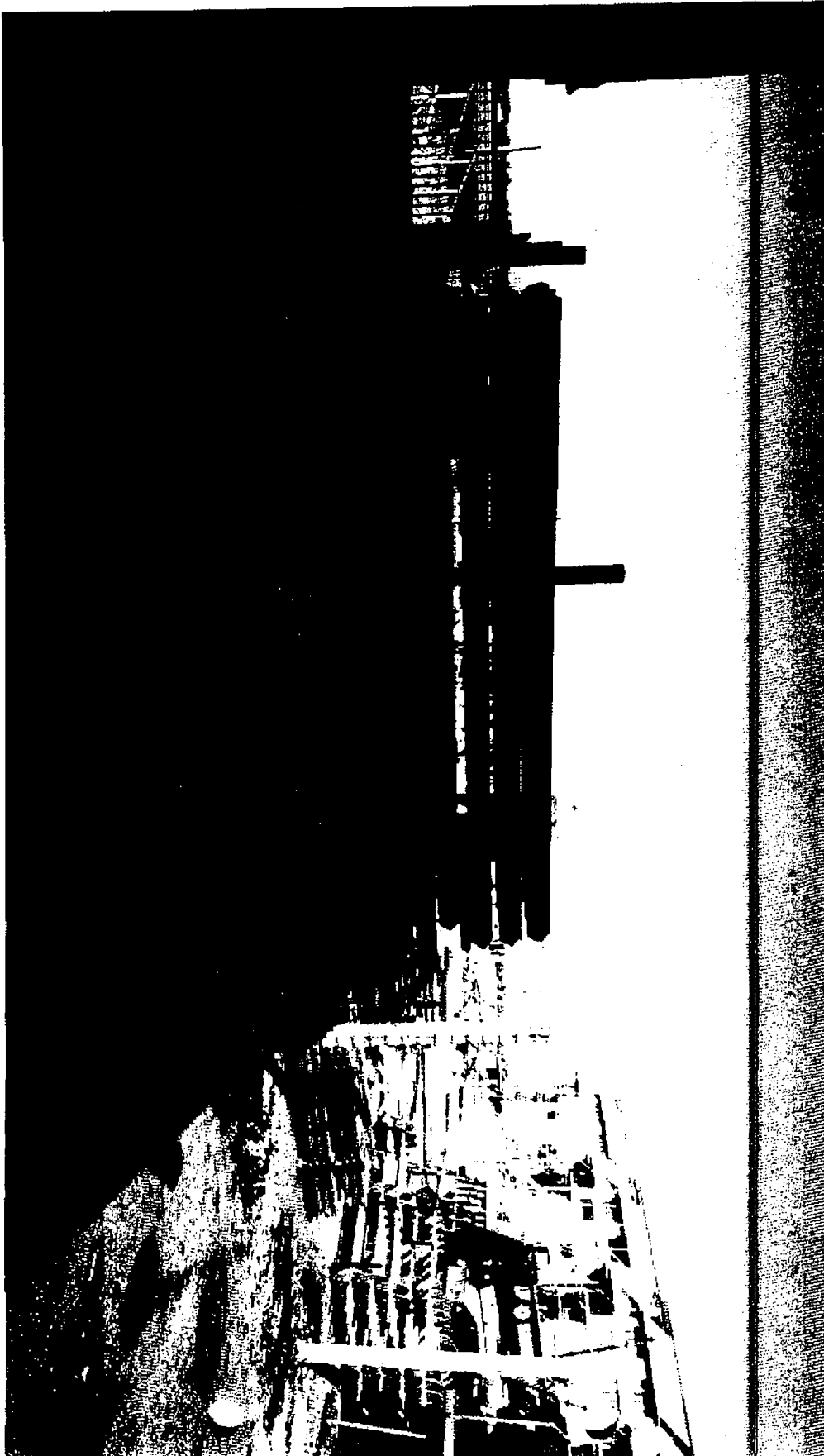


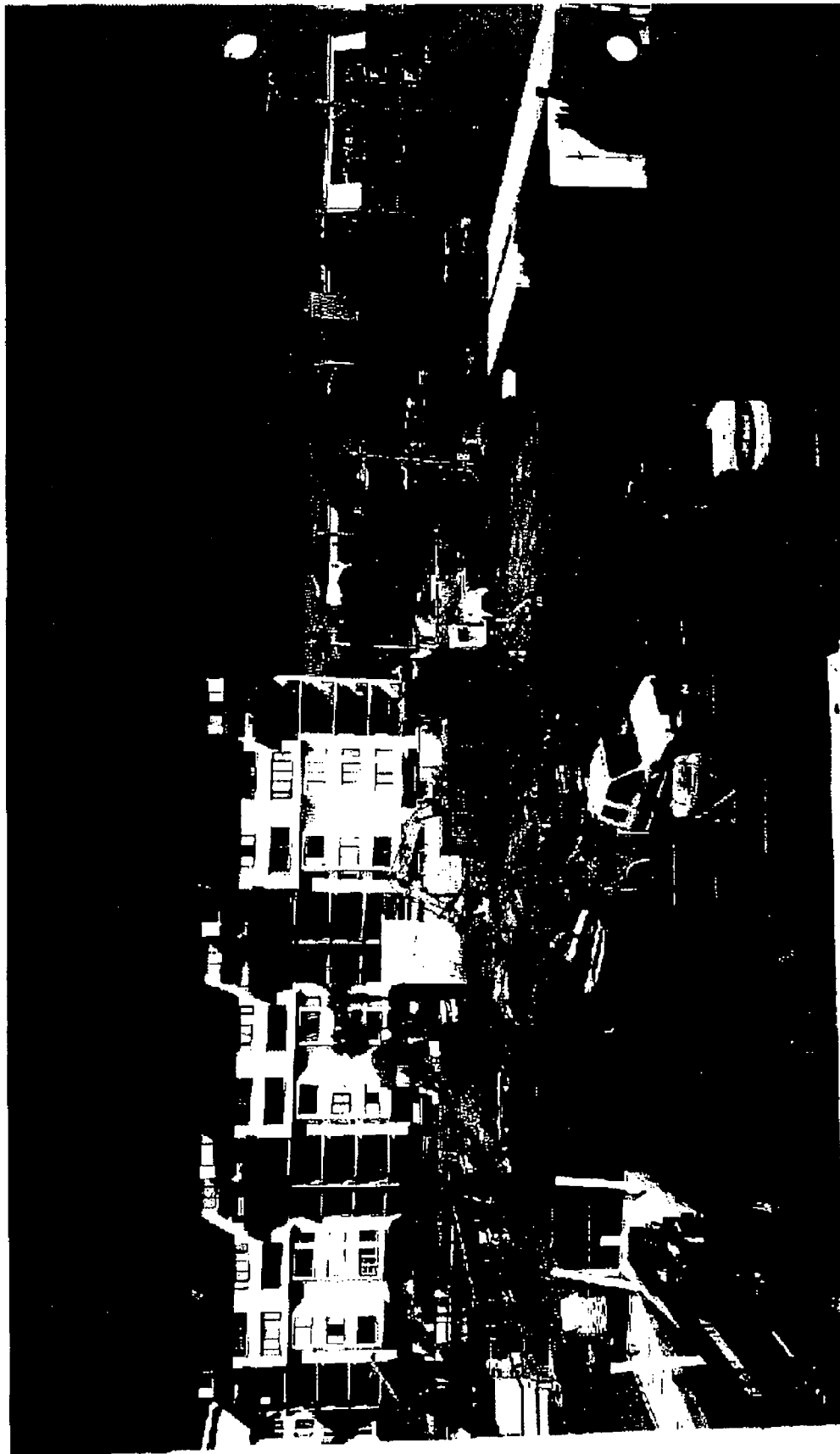
2016 CP 22-00961

EXHIBIT C

EXHIBIT C







STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2016-CP-22-00961
	)	
The Gulfstream Café, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS' AMENDED
	)	ANSWER AND COUNTERCLAIMS
	)	(JURY TRIAL)
J. Mark Lawhon, Individually, and	)	
Palmetto Industrial Development, LLC,	)	
	)	
Defendants.	)	
	)	

The Defendants J. Mark Lawhon and Palmetto Industrial Development, LLC (hereinafter "Defendants"), answering the Complaint, would respectfully show and allege unto this Honorable Court as follows:

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified, or qualified is denied.
2. The allegations of Paragraph 1 are admitted.
3. The allegations of Paragraph 2 are denied.
4. The allegations of Paragraph 3 are admitted.
5. The allegations of Paragraphs 4, 5 and 6 are denied.
6. In answering Paragraph 7, it is admitted that Plaintiff owns and operates a restaurant known as the Gulfstream Café at 1536 S. Waccamaw Drive in Murrells Inlet, South Carolina. The remaining allegations are denied.
7. In answering Paragraph 8, it is admitted that condominiums, boat slips, a fuel dock, parking lots, and other improvements are located on multiple parcels of real property in the vicinity of 1536 S. Waccamaw Drive in Murrells Inlet, South Carolina, and that one or more of

such parcels and the improvements thereon are commonly referred to collectively as "Marlin Quay Marina." The remaining allegations are denied.

8. In answering Paragraph 9, it is admitted that Marlin Quay Marina Bar & Grill, LLC operated a restaurant in a building located at Marlin Quay Marina and that said restaurant was demolished in November 2016. The remaining allegations are denied.

9. In answering Paragraph 10, it is admitted that a parcel of real property owned by Defendant Palmetto Industrial Development, LLC ("Palmetto") is contiguous with property owned by Plaintiff ("Plaintiff's Property") and said property appears as Lots 3, 4, and 5 on the Plat recorded in Plat Book 6 at 214 in the office of the Clerk of Court for Georgetown County. It is further admitted that the property owned by Palmetto ("Palmetto's Property") is currently used, in part, for vehicular parking. The remaining allegations are denied.

10. The allegations in Paragraphs 11 thru 20 are based upon matters of public record and so long as such allegations are consistent with the publically recorded documents referenced therein, the allegations are admitted.

11. In answering Paragraph 21, the terms and conditions of any easements granted to the Plaintiff are set forth in said easements and are governed by applicable South Carolina law.

12. In answering Paragraph 22, it is admitted that dredging of the Marlin Quay Marina basin occurred during 2007. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations therein and therefore deny the same.

13. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 23 and 24 and therefore deny the same.

14. In answering Paragraph 25, it is admitted that Defendant Palmetto engaged in demolition activities on its Property in November 2016. The remaining allegations are denied.

15. In answering Paragraph 26, it is admitted that Defendant Palmetto installed temporary safety-related signage, fencing, and warning devices on portions of its Property before and during demolition activities in November 2016. The remaining allegations are denied.

16. The allegations of Paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 are denied.

17. In answering Paragraph 37, it is admitted that Plaintiff has only those rights to the Parking Lot which are set forth in the document recorded in Georgetown County Deed Book 382 at Pages 217 through 226 and which bears the caption "Agreement of Easement and Consent to and Joinder of Mortgagee to Granting of Easement." The remaining allegations are denied.

18. The allegations of Paragraphs 38, 39, 40, 41, 42, and 43 are denied.

19. In answering Paragraph 44, it is admitted that S.C. Code Ann. § 15-67-410 contains the quoted language. The remaining allegations are denied.

20. The allegations of Paragraphs 45, 46, 47, 48, 49, 50, 51, and 52 are denied.

SECOND DEFENSE
(Unclean Hands)

21. The above allegations and defenses are incorporated herein by reference and made a part and parcel hereof.

22. Between May 2015, and October 31, 2016, Palmetto informed Plaintiff of Palmetto's plans for demolition and construction through numerous conversations with Plaintiff's agents.

23. Between May 2015, and October 31, 2016, Plaintiff, through its agents, contributed input and suggestions which Palmetto incorporated into its plans for demolition and construction.

24. Between May 2015 and November 15, 2016, Plaintiff, approved of, endorsed, and encouraged Palmetto to perform the demolition and construction.

25. On November 15, 2016, Plaintiff, through its Director of Operations Linda Barnaba, in reference to the demolition and construction, told Palmetto the following:

- “you’re making a lot of improvements, you know, to the marina which, you know, we are super-excited about.”;
- “I’m so glad that you called, Mr. Lawhon, because we, you know, the timing is not bad for us. You know, the last time I guess it was Mr. Stone, they did the dredging. It was unfortunate for us. It was just bad timing because it was the middle of the summer which was during our peak season. So right now it’s not, you know, it’s not the worst time in the world for us.”;
- “It’s just the two holidays that, you know, that we’re concerned about. And that’s really we’re looking at about like a three-week period of time. So I mean if – you picked a good time, you know, to do this, and I’m sure that you were really considerate, you know, making that decision.”
- “I’m the best neighbor in the world.”
- “there’s really enough pie to go around, absolutely enough, you know.”;
- “. . . it sounds to me like, you know, it’s going to be a great partnership. I mean it’s -- I really appreciate you calling me back, and I appreciate the fact that we’re willing to sit down and, you know, take a look at this. And I’m super-excited.”

26. Plaintiff’s claims are barred in whole or in part by Plaintiff’s Unclean Hands.

THIRD DEFENSE
(Waiver, Estoppel, Laches)

27. The above allegations and defenses are incorporated herein by reference and made a part and parcel hereof.

28. Palmetto, and its predecessors in title, have properly used, regularly and frequently, for the past twenty to thirty years without objection or interference, Palmetto's Property including the Parking Lot for non-parking activities including but not limited to construction, fishing tournaments, and charity events.

29. Upon information and belief, Plaintiff has repeatedly, over many years, used the Parking Lot for non-parking purposes during the past twenty to thirty years.

30. Plaintiff's claims are barred in whole or in part by the doctrines of Waiver, Estoppel, and Laches.

FOURTH DEFENSE
(Consent)

31. The above allegations and defenses are incorporated herein by reference and made a part and parcel hereof.

32. Plaintiff's claims are barred in whole or in part because Plaintiff consented to Palmetto's actions including but not limited to Palmetto's use of the Parking Lot for construction activities and the erection of a building above portions of the Parking Lot.

FIFTH DEFENSE
(Failure to State a Claim, Rule 12(b)(6), SCRCP, as to
Plaintiff's First Cause of Action for Intentional Interference
with Easement Rights, and
Second Cause of Action for Trespass and Nuisance)

33. The above allegations and defenses are incorporated herein by reference and made a part and parcel hereof.

34. As "Intentional Interference with Easement Rights" is not a separate cause of action in South Carolina, Plaintiff's First Cause of Action fails to state a claim.

35. Plaintiff alleges in Paragraph 20 of the Complaint that Defendant Palmetto owns the real property on which Plaintiff alleges Defendant trespassed.

36. As one cannot trespass on one's own property, Plaintiff's Second Cause of Action fails to state a claim for Trespass.

37. Plaintiff's claims for Trespass and Intentional Interference with Easement Rights fail to state the elements needed for such claims.

SIXTH DEFENSE AND FIRST COUNTERCLAIM
(Forcible Entry and Detainer)

38. The above allegations and defenses are incorporated herein by reference and made a part and parcel hereof.

39. Palmetto possess Palmetto's Property in fee simple.

40. Defendant Palmetto made demand on Plaintiff to remove the sign, grease trap, backflow preventer, trash dumpster, water hookup and portions of a storage building currently situated on Defendant Palmetto's property but Plaintiff refused and continues to occupy said Defendant's property.

41. Plaintiff holds Palmetto out of Palmetto's Property with strong hand.

42. By its conduct described above, Plaintiff disseized Palmetto of Palmetto's Property.

43. Plaintiff's conduct violates S.C. Code Ann. § 15-67-410 et seq.

44. As a result of Plaintiff's wrongful conduct, Palmetto suffered and continues to suffer harm.

45. Palmetto is entitled to compensatory, incidental, consequential, special, and punitive damages.

46. Palmetto is entitled to treble damages as provided by S.C. Code Ann. § 15-67-420.

47. Palmetto is entitled to an Order of the Court requiring the Plaintiff to remove from the Defendant Palmetto's property the Plaintiff's sign, grease trap, backflow preventer, trash dumpster, water hookup and that portion of the storage building on said Defendant's property.

SEVENTH DEFENSE AND SECOND COUNTERCLAIM
(Trespass)

48. The above allegations, defenses, and counterclaims are incorporated herein by reference and made a part and parcel hereof.

49. Palmetto is in legal possession of its Property.

50. Due to Plaintiff's failure to remove its personal property from Defendant Palmetto's property, the Plaintiff's storage building, advertising sign, grease trap, backflow preventer, trash dumpster and water hookup constitute a continuing trespass.

51. As a result of Plaintiff's wrongful conduct, Palmetto suffered, and continues to suffer, harm including physical harm to Palmetto's Property and to Palmetto's personal property situated thereon.

52. Palmetto is entitled to compensatory, incidental, consequential, special, and punitive damages.

53. In addition, Palmetto is entitled to Mandatory Injunction ordering Plaintiff to remove all the aforesaid from Defendant's property, as well as a Permanent Injunction enjoining Plaintiff from erecting structures on Palmetto's Property in the future.

EIGHTH DEFENSE AND THIRD COUNTERCLAIM
(Declaratory Judgment, S.C. Code Ann. § 15-53-10 et seq.;
Permanent Mandatory Injunction)

54. The above allegations, defenses and counterclaims are incorporated herein by reference and made a part and parcel hereof.

55. The document recorded in Georgetown County Deed Book 382 at Pages 217 through 226 bearing the caption "Agreement of Easement and Consent to and Joinder of Mortgagee to Granting of Easement," ("Grant of Easement") clearly and unambiguously limits Plaintiff's right to use the Parking Lot to the specific purposes of ingress, egress, vehicular parking, maintenance, and repair.

56. The Grant of Easement clearly and unambiguously provides that Plaintiff's right to use the Parking Lot is non-exclusive.

57. The Grant of Easement does not contain any express limitations on Defendants' use of the Parking Lot.

58. The Grant of Easement does not convey to Plaintiff any rights to air, sunshine, view, or breezes nor any rights to erect and maintain structures thereon.

59. Defendant Palmetto is entitled to a Judgment declaring that the aforesaid easement granted to Plaintiff by the Grant of Easement ("Plaintiff's Easement") (1) does not extend vertically more than 13'6" from the surface of the ground, (2) does not inhibit or restrict in any way Defendants' right and ability to build a structure in the airspace above Plaintiff's Easement, (3) may be used by Plaintiff exclusively for the specific purposes of ingress, egress, vehicular parking, maintenance, and repair as set forth in the Grant of Easement, (4) does not entitle Plaintiff to a specific number of parking spaces, (5) entitles Plaintiff only to such parking as may be available, even if the amount of available parking is zero at any given time, and (6) does not entitle Plaintiff to maintain any structures or personal property thereon.

60. Defendant Palmetto is entitled to an Order of this Court vacating the Court's Order Granting Temporary Injunction and awarding Defendant damages resulting from Defendant having been wrongfully enjoined from November 17, 2016 through the present.

61. The Grant of Easement clearly and unambiguously provides that “both parties shall be equally responsible for the maintenance and upkeep of the aforementioned easement area and shall equally share the costs associated with its proper maintenance and upkeep to insure that it is satisfactory for the uses and purposes intended herein.”

62. Upon information and belief, during 2014, 2015, and 2016, Plaintiff has not timely paid its equal share of the costs as required by the Grant of Easement.

63. Defendant Palmetto is entitled to a Permanent Mandatory Injunction requiring Plaintiff to timely pay its equal share of the costs of maintaining Plaintiff’s Easement as required by the Grant of Easement in the future.

64. Defendant Palmetto is entitled to a judgment against the Plaintiff for damages in the amount of Plaintiff’s share of the costs of maintaining Plaintiff’s Easement from August 20, 2014 through the present, together with legal interest thereon.

NINTH DEFENSE AND FOURTH COUNTERCLAIM
(Promissory Estoppel)

65. The above allegations, defenses and counterclaims are incorporated herein by reference and made a part and parcel hereof.

66. The Plaintiff, thru its agents, actively encouraged, represented, and promised the Defendant Palmetto that the improvements to the Defendant Palmetto’s property were needed and welcomed. Further, that the time for the construction of the improvements to commence was appropriate and consistent with the Plaintiff’s business.

67. In addition to the above representations and promises made by the Plaintiff, the Plaintiff, over the many years it has operated the Gulfstream Café, has, through its conduct, representations, and promises, permitted and utilized the use of the Parking Lot, or portions thereof, for activities unrelated to parking, ingress, and egress.

68. The Defendant Palmetto relied on the representations, conduct and promises when it undertook the necessary acts needed for construction improvements, such as the hiring of an architect, preparation of drawings, demolition of the Restaurant and Marine Shop, as well as other related activities.

69. The Defendant's reliance on the representations, conduct and promises of the Plaintiff was reasonable, foreseeable and expected.

70. As a result of the Plaintiff's representations, conduct and promises, and the Defendant's reliance thereon, the Defendant Palmetto has been damaged in that the said Defendant expended thousands of dollars in preparing for construction and demolishing the Restaurant and Marina Shop.

71. As a result, the Defendant Palmetto is entitled to an award of actual, compensatory, and punitive damages, as well as legal interest on its actual and compensatory damages, against the Plaintiff.

TENTH DEFENSE AND FIFTH COUNTERCLAIM
(Breach of Easement)

72. The above allegations, defenses and counterclaims are incorporated herein by reference and made a part and parcel hereof.

73. The Plaintiff breached its obligations of good faith and dealing by attempting to usurp the Defendant Palmetto's rights to its property, by interfering with Palmetto's property rights, by abusing its rights under the Easements alleged in its Complaint, and by attempting to enlarge its easement rights to the detriment of the Defendant Palmetto.

74. As a result of Plaintiff's breach of the easement agreement, the Defendant Palmetto is entitled to the payment of the monthly rental value of Plaintiff's use of Defendant Palmetto's property for its use of said property which is beyond the uses permitted under the

easements, together with legal interest thereon, as well as an order of the Court directing the Plaintiff to completely remove any and all obstructions Plaintiff erected on Defendant Palmetto's property as well as fully restore those portion of Defendant's property used by the Plaintiff.

WHEREFORE, having fully answered the Complaint, Defendants pray for the following:

- a. The Complaint be dismissed with prejudice;
- b. An award against the Plaintiff to the Defendant Palmetto of actual, compensatory, consequential, punitive, and treble damages, together with legal interest thereon, resulting from Plaintiff's Forcible Entry and Detainer;
- c. An award against the Plaintiff to the Defendant Palmetto for actual, compensatory, consequential, and punitive damages, together with legal interest thereon, to the Defendant Palmetto resulting from Plaintiff's promises;
- d. An Order of the Court restoring Palmetto to possession of Palmetto's Property;
- e. An award to Palmetto of compensatory, incidental, consequential, special, and punitive damages resulting from Plaintiff's Trespass;
- f. A Mandatory Injunction ordering Plaintiff to remove all obstructions that the Plaintiff erected on Defendant Palmetto's Property, as well as a Permanent Injunction enjoining Plaintiff from erecting any structures on Palmetto's Property in the future;
- g. A Judgment declaring that the easement granted to Plaintiff by the Grant of Easement ("Plaintiff's Easement") (1) does not extend vertically more than 13'6" from the surface of the ground, (2) does not inhibit or restrict in any way Defendant Palmetto's right and ability to build a structure in the airspace above Plaintiff's Easement, (3) can be used by Plaintiff exclusively for the specific purposes of ingress, egress, vehicular parking, maintenance, and

repair as set forth in the Grant of Easement, (4) does not entitle Plaintiff to a specific number of parking spaces, and (5) entitles Plaintiff only to such parking as may be available, even if the amount of available parking is zero at any given time;

h. An Order vacating the Court's Order Granting Temporary Injunction, and awarding Defendant Palmetto damages resulting from said Defendant being wrongfully enjoined from November 17, 2016 through the present;

i. A Permanent Mandatory Injunction requiring Plaintiff to timely pay its equal share of the costs of maintaining Plaintiff's Easement as required by the Grant of Easement in the future;

j. An award to the Defendant Palmetto for damages, together with legal interest, for Plaintiff's share of the costs of maintaining Plaintiff's Easement from August 20, 2014 through the present, and the monthly rental value, together with legal interest, for Plaintiff's sign, grease trap, backflow preventer, and water hookup which continues to occupy Defendant Palmetto's real property; and

k. For such other and further relief as this Court may deem just and proper.

McNAIR LAW FIRM, P.A.

s/Henrietta U. Golding

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Attorneys for the Defendants

Myrtle Beach, South Carolina
October 2, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2016-CP-22-00961

Gulfstream Café, Inc.,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	December 5, 2016
	)	
J. Mark Lawhon, individually,	)	
and Palmetto Industrial	)	
Development LLC,	)	
	)	
Defendants.	)	

B E F O R E:

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

George W. Redman, III, Esquire
Attorney for Plaintiff

Henrietta U. Golding, Esquire
Attorney for Defendants

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, December 5, 2016.)

2 THE COURT: This is the case of -- this is case number
3 2016-CP-22-961, Gulf Stream Café, Inc. versus J. Mark Lawhon,
4 L-A-W-H-O-N, individually and Palmetto Industrial Development
5 LLC. The matter is before the Court on a motion seeking a
6 temporary injunction. Please give the court reporter your
7 names and who you represent.

8 MR. REDMAN: Good morning, Your Honor. George Redman,
9 Bellamy Law Firm on behalf of the Plaintiff Gulf Stream Café,
10 Inc.

11 THE COURT: All right.

12 MS. GOLDING: Good morning, Your Honor. Henrietta
13 Golding with McNair Law Firm on behalf of all the Defendants.

14 THE COURT: All right. Mr. Redman, this is your motion?

15 MR. REDMAN: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. REDMAN: Thank you, Your Honor. Let me at the outset
18 say on behalf of my client thank you for devoting time to this
19 matter in the past and again this morning on such short
20 notice. Again, George Redman on behalf of the Plaintiff the
21 Gulf Stream Café, Inc., and we filed this lawsuit back on
22 November 16th of this year. It concerned a parking lot and our
23 written perpetual non-exclusive easement to use that parking
24 lot and the, the lawsuit was started soon after a fence was
25 erected blocking my client's access to that parking lot.

1 Now, I submitted a memo to Your Honor via e-mail on
2 Friday, and I, I don't know if you had a copy, too, or not,
3 but if I may approach, Your Honor, this copy has tabs.

4 THE COURT: All right.

5 MR. REDMAN: And has color pictures and is much more
6 easier to work with.

7 The memo indicated that the Defendants were not in
8 compliance with a judge's -- with the Court's order of
9 November 17th. The order said fairly clearly, very clearly
10 remove -- cease and desist from blocking access to any of the
11 parking lot, remove the fencing and remove the construction
12 materials. On this Friday, and I'll go through it, this
13 Friday the final amount of construction containers, which were
14 blocking the 13 parking spaces in between the road and the
15 parking lot and in front of the restaurant, those were moved
16 Friday afternoon at the same time I submitted the memo.

17 I'd like to divide my argument into three sections,
18 first, to give the Court a little bit of background as to the
19 parking lot and the property that is involved, and then what
20 we knew before the TRO was issued, and the tremendous amount
21 of information that we've learned since the TRO was issued,
22 which would go to the argument of what should be enjoined and
23 how, how long it should be enjoined. In this case, forgive
24 me, Your Honor, my, my arts and craft was --

25 THE COURT: Well, now, did --- as far as how long, this

1 is a temporary injunction. It's just going to be enjoined
2 until you go to trial.

3 MR. REDMAN: Correct.

4 THE COURT: And so this is to determine whether we
5 maintain the status quo, how much of a bond must be posted in
6 case I issue a TR, I mean, an injunction when I shouldn't or
7 fail to issue one when I should. So I mean as far as the
8 duration it's till it goes to trial.

9 MR. REDMAN: Absolutely, Your Honor. You're absolutely
10 correct.

11 THE COURT: Okay.

12 MR. REDMAN: You're absolutely correct. There are a
13 couple of issues which I'll address with that, but now with me
14 today is the general manager, the operating partner, Jef Kirk,
15 and Linda Barnaba who is the director of operations for the
16 restaurants for this group in the area, including the Gulf
17 Stream Café.

18 Now, the Gulf Stream Café is in the Marlin Quay Marina
19 area, and the Marlin Quay Marina area in 1982 was developed as
20 a PUD, a planned unit district, for Georgetown County. It's
21 one of the first ones that Georgetown County had. It involves
22 a number of -- and it's incorporated by a or created by an
23 ordinance of the County. The, the four parties who are
24 essentially involved in this are all shown on a plat which is
25 -- this is the same plat, Plat Book 6, page 24. It's -- it

1 depicts the property involved. The, the four parties -- first
 2 off, let me start it's obviously around a marina. The marina
 3 was created as a, as a horizontal property regime. The boat
 4 slips are essentially condos and have been individually deeded
 5 out. There are 62 to 67 of them. The marina owners
 6 association and this, this plat is the same one referenced in
 7 all of our easements. It's Exhibit B in our complaint. It's
 8 Exhibit B on the memorandum in front of Your Honor, also. The
 9 marina -- most folks are, are fairly familiar with it, is out
 10 front. They have an easement over and across this parking
 11 lot. I've outlined the parking lot in blue here, and the
 12 little red line there shows they have a 30 foot non-exclusive
 13 easement across that parking lot, and it's important. That's
 14 how the marina owners association, they're not part of this
 15 lawsuit. They're not here today, but that easement is, is
 16 important for them because they have to -- if they have to
 17 pull the docks out to do dredging and somebody needs to pull a
 18 boat out, boat motor out, that's how you can drive the crane
 19 over there, pick it up out of the water and put it on the road
 20 and drive it away. They also have the right to park in there.
 21 There are, again, 67 of them.

22 The -- they are currently over there right now. We're
 23 working on an agreement where they're over there repairing the
 24 seawall. They are using some of our parking spots or the
 25 parking spots of this parking lot. Pursuant to our consent

1 the agreement was that they would provide some alternative
 2 parking that our valets could run the cars over there while
 3 this is going on. Now, the alternative parking that I
 4 mentioned is with a condominium association. There's a couple
 5 of high-rises over there. The condominium owners, they don't
 6 have any easements to this parking lot, but they are adjacent,
 7 and they're really not involved in this lawsuit except for as
 8 to the marina store, and the marina store was purchased by the
 9 Defendants and along with the title to the parking lot itself.
 10 They, they are the fee simple owners to it, and the Defendant,
 11 Mr. Lawhon, and through his corporation owns about 19 boat
 12 slips in there, also.

13 Now, the condominium owners association was ancillary,
 14 involved on the side because the marina store when he
 15 purchased it half of it was on the parking lot side of the
 16 property which he owned, and the other half of the building
 17 was on the condominium owners' property, less than ideal.
 18 When the project was started up that way it was not a big
 19 deal, at least it wasn't anticipated it would be a big deal.
 20 There was a 99-year lease, a dollar a year where the condo
 21 association would rent this, build -- half of the building to
 22 the prior owners.

23 Now, there was a bankruptcy in 1992, and the condominium
 24 owners took the opportunity to somehow, I'm not sure about the
 25 details, but that lease was terminated, and in its place a

1 very expensive lease was put in place for the marina store
2 would have to pay that on a yearly basis, and there was a lot
3 of disagreement over that. So this was not the ideal
4 situation when the Defendants bought this property in August
5 of 2014.

6 Now, there -- the store is currently not there. One can
7 surmise one of the reasons he did that was to get rid of the
8 lease and not have to rent half of his building and that's
9 understandable. Now, there have been -- we learned after the
10 discovery that the -- well, before the lawsuit we could see
11 that the building was torn down. We had never seen their
12 permits. We had never seen their plans. There's talk of --
13 there were a lot of conversations with the general manager of
14 the restaurant about parking, about construction plans. By
15 and large those did not happen. There was no sharing of what
16 the specific plans were to build, how the parking lot was
17 going to be used. They were never told that the parking lot
18 would be completely inaccessible before that fence was erected
19 right before the Thanksgiving holiday. These plans and when
20 they were going to demolish was never shared. Now, they went
21 and got a permit, and they got a permit, this is very
22 important, to, to demolish that building and to put up piers,
23 foundation for a new building. That's it. They didn't get a
24 permit to build their entire building which you would -- which
25 you -- I would recommend to someone before you go demolish

1 your building make sure you get a permit to everything you're
2 going to do and get it approved. That didn't happen. They
3 got a permit to demolish and for piers only, and they went
4 ahead and demolished it as quick as they could to end that
5 lease so they don't have to pay anymore lease, lease payments
6 to it. So when they did that that was a surprise to us, and
7 we had never seen their plans and didn't know what their plans
8 were. So they don't have a permit to build the building that
9 they seek to build right now.

10 Now, the restaurant, the Gulf Stream Café, there was a
11 relationship in this PUD when it was established, a plan that
12 the marina would have a fine dining establishment, and it has
13 served as that establishment for three decades, and I think
14 they do a good job over there. The marina store was
15 contemplated that -- the marine store was contemplated as to
16 support the operations of the marina with charters and all of
17 the things that they do over there. Over time it grew a
18 little bit into a snack bar and it did have a bar, an evening
19 bar where you could go over there and had a few seats and it
20 was very small where you could go over there at night and you
21 could sit down and have a snack if you wanted to. So I don't
22 want to say that it was just a marina store and it was never a
23 restaurant. It did morph a little bit, very little bit, and
24 over the 30 years that the restaurant has been in operation
25 the marina store and the Gulf Stream Restaurant, which I've

1 highlighted in yellow there, have shared use to that parking
2 lot, and on April 2nd, 1986, when the Gulf Stream Café
3 purchased that property they owned fee simple to this and the
4 marsh and all the property to the south of it, at the same
5 time they were granted three written easements, very similar,
6 each very similar to the 1990 easement four years later that
7 is attached to our complaint and our memorandum as Exhibit A.
8 That easement, all three of those easements, this -- the
9 parking lot is, is, is Lots Three, Four and Five of Tract
10 Three, and I have a drawing of the parking lot I guess is
11 helpful to -- I'm not sure if it's big enough for Your Honor
12 there. It's a little wrinkled from the rain this morning, but
13 it shows essentially this is the boundary of the easement.
14 All three of those first plats, the same day they bought the
15 property reference Lots Three, Four and Five. One easement
16 was done for each lot, and they were a little bit ambiguous at
17 the time. They specifically said you are allowed to use this
18 as a parking lot, the parties were, except for the pink area
19 in the lot obvious where the marina bar and snack bar, and
20 that's what it's called, is located. Said you obviously can't
21 park there but everywhere else as shown on this plat, publicly
22 recorded you can park there. It said that they had full and
23 free access at all times, and it said that this was the -- one
24 of the ambiguities that the marina store would have primary
25 use. It was understood that the intent was the marina store

1 would have primary operations or primary use in the daytime,
2 and the easement, the next sentence said that the Gulf Stream
3 Café which property abuts this property line, there is no
4 setback here, they will have primary use in the evening. So
5 later on in 1990 apparently there was some concern over that
6 language and a few other issues and that language was resolved
7 in the 1990 easement. It said, and I'll read briefly, this is
8 page two of our memo and it was in the complaint and is
9 attached that the easement offers full and free rights of
10 ingress and egress on, over and across together with the
11 rights of vehicular parking on and vehicular and pedestrian
12 access to this parking lot, that each party will have joint
13 and non-exclusive use at all times of the area covered by this
14 easement, that the grantor will utilize the premises primarily
15 during the regular business hours of grantor, that's the
16 marina store, and the Gulf Stream Café will utilize the
17 premises primarily in the evening regular business hours of
18 the Gulfstream Café. That's always been four to ten p.m.
19 except for in wintertime they close an hour earlier. They,
20 they have a Sunday brunch, and it goes on to say this non-
21 exclusive rights of ingress, egress and vehicular parking over
22 and across Lots Three, Four and Five of Track Three are shown
23 in Plat Book Six at Page 214. It's extremely important and
24 I'll go to the legal research why that's so important, that it
25 shows, this plat shows each parking spot. Importantly on here

1 it also shows an access. Over here on this corner of the
2 restaurant there is a loading dock, and there are no parking
3 lots, parking spots there that would block access to that
4 loading dock, and so this configuration in the parking lots
5 are shown of public record.

6 Now, 20, 28 of the 30 years there has been cooperation --
7 there's -- as, as to this parking lot. There have been
8 fishing tournaments take up Thursday through Sunday I believe.
9 I'm not an avid fisherman, but I've seen the Facebook posts
10 that they have that show that the large chunk -- section of
11 the parking lot is blocked off for a long time and everybody
12 works around that, and likewise, they have Santa -- a brunch
13 with Santa coming up. That's understood that during the
14 daytime the Gulf Stream Café is going to have a large crowd of
15 families coming in there. Those type of things have been
16 going on for 28 years without a problem. The only thing
17 that's changed in those last two years is who owns the
18 property of the marina store now.

19 Now, when that fence went up it was a surprise, and Ms.
20 Barnaba sent Mr. Kirk over there to say, talk to them and say,
21 "Okay. We want you to go talk to them, work this out because
22 along the lines of, of another experience we had." In 2007
23 there was a dredging project for the marina. During that they
24 was -- part of that was done during the prime season. So it
25 was a real problem for the restaurant and they were going to

1 need -- the marina association was going to need to pull every
2 dock out and pull it on the parking lot. They came to an
3 agreement in 2007, a written agreement. Mr. Lawhon was not
4 there, and his company was not there yet, but that agreement
5 said that, "Okay. You agree that during the time you're going
6 to shut this parking lot off we'll get some signage to let the
7 public know we're still open. We'll get some valets, and
8 we'll secure some alternative parking so the valets can go
9 there. We will keep access open to the extent we can, that we
10 won't pursue our easement rights, and you'll pay a use fee for
11 that parking lot for that time." That was in writing and, and
12 agreed to and they worked through that agreement. The marina
13 owners association, I can tell you this, was not that pleased
14 that they had to pay to use the parking lot during that time,
15 but I can also tell you that the restaurant was not pleased to
16 be practically shut down during that time either, and their
17 financial statements show a moderate loss during that time,
18 but that they came to that agreement and although they had the
19 right to pursue those losses nothing ever was done about that.
20 So with that agreement, knowledge of that agreement Ms.
21 Barnaba sends Mr. Kirk to speak with him via telephone, and
22 the response was, "No way. You're not going to push me around
23 like that." So that conversation, that one did happen, and
24 when it -- that conversation and this is supported by our
25 affidavits, when it didn't go very well is when I started

1 diving into what the documents say here. I said, "Before I go
2 to the Court and ask the Court for emergency help here I want
3 you to call him up and say you've got an easement and offer to
4 share it with him," because we're two weeks before
5 Thanksgiving holiday. This is the off season, but they do a
6 lot of business for Thanksgiving and then there are events
7 planned for the Christmas period of time, too. They're
8 critical for this time of year, and they do a good job at it.
9 So she had that -- she called over there in the middle of the
10 week, got a call back two days later after hours and that
11 conversation immediately she said -- Mr. Lawhon said he was
12 intimately familiar with the easement, intimately familiar
13 with the 2007 agreement. Ms. Barnaba said, "We need that
14 access open. We don't have anywhere to park. We're busy and
15 we're having problems."

16 Through the rest of that conversation Mr. Lawhon and I'm
17 glad they put it on the affidavit because it shows the
18 proposals that he was suggesting at that time. The proposal
19 was not to open up the parking lot and give them access. It
20 was sometime in the future to build a parking lot south of the
21 restaurant on top of the marsh. The other solution was to,
22 "Have your customers park on the road and we will have
23 Georgetown County take down those no parking signs and we'll
24 have the law enforcement, I've talked to them, they're willing
25 to turn a blind eye to this while we -- until the parking lot,

1 eventually we'll solve it somehow." Well, as unlikely as you
2 are to get a parking lot placed on top of a wetland, it's
3 equally as bad idea to have people parking out on that road.
4 As a matter of a fact it was the subject of two lawsuits
5 brought by the estates of, of two motorcyclists who were
6 killed because of that exact problem. There was cars parked
7 out on the roadway there, the car couldn't see when they were
8 pulling out to Waccamaw Drive, pulled out in front of two
9 motorcyclists and they died and brought an action against a
10 number of people, including the restaurant there. So is --
11 this what we're talking about here, this parking and the
12 ability to have it here, it's important for safety reasons.
13 You can stand on the edge of the marina here and throw a rock
14 to the ocean. There's just not a lot of land there. It's
15 very critical. So that conversation she did not say, she did
16 not say, "You need to get off that parking lot. I sent a very
17 nice person over there to say tell them you have an easement
18 and tell him -- offer to take him a copy of it," and she did
19 that, and there was no solution, and despite having a recorded
20 easement to that, Thanksgiving day reservations of 888 people,
21 the same for Christmas, there was no other option than to
22 bring this. Now, that's, that's what we, we knew before the
23 lawsuit. Importantly, we had not seen any plans whatsoever as
24 to what they meant to demolish, what they planned to put up,
25 what they had a permit for and when they had a permit for. We

1 just knew that they were told that they were going to do some
2 things over here. It was never told them that the parking was
3 going to be blocked off.

4 Now, what we learned after the lawsuit. The lawsuit was
5 filed on November 16th. The restraining order was granted on
6 the morning of the 17th, was served the afternoon of the 17th
7 and on Friday it was a little bit of animosity was, on the
8 site that the -- they pulled down the fence. They made a
9 portion of the parking lot available, and at that time there
10 was an incident where they went down to see what was going on,
11 a hammer was thrown right in front of them, some cursing and
12 staring them down and, you know, that happened. There was
13 some anger there. We're not focusing on that right now.

14 Pat Henry -- I'm sorry, Dan Stacy at that point he called
15 and said, "George, we obviously have a disagreement as to an
16 easement," and I said, "You've got this order. You need to
17 open it up because we've got the holiday season here and we've
18 got a weekend where the restaurant is going to be busy."
19 He said, "Okay. We're done what we can on that Friday." They
20 moved the fence down, which was a substantial fence. You had
21 to pull it out of the asphalt. They curled it up and put --
22 to where they could reasonably on Friday, and Dan said "Let's
23 meet Monday morning." "Yes. Let's meet."

24 We met Monday morning. Pat Henry, we met in his condo
25 above the marina on that day, and, and the -- Mr. Lawhon and

1 his son were there, also, at which time I said, "You know, if
2 you want the restaurant to agree to anything, show them what's
3 going on. I can't tell them to agree or not agree if I don't
4 know what's going on."

5 The next day was Tuesday before the, the -- that day was
6 Monday morning. Monday afternoon went. I didn't see any
7 plans. Tuesday morning went. I didn't see any plans. That's
8 when we started calling over to say, "This restraining order
9 expires on Sunday. We're not able to work -- time is getting
10 short. It's the holiday." I said, "Dan, send those plans or
11 I'm going to contact the Court and ask to extend this TRO." I
12 started -- I contacted the Court at that time to extend the
13 TRO just until -- keep in mind, I hadn't heard anything from
14 the McNair Law Firm whatsoever. On Tuesday afternoon after I
15 had contacted the Court Dan Stacy sent over some plans. For
16 the first time we had seen these plans. We -- I forwarded
17 them immediately to, to my clients for their review. We were
18 told at that time that, that they did not have a permit to
19 build a building, they only had a permit to demolish and do
20 the piles. It seemed like not the exact -- best way to go
21 about this, but the plans show a building which was extremely
22 surprising to us. It wasn't built over here on the side or
23 even attempt to keep it on the side for the first time and I
24 kept the boundaries the same here so you can see where the,
25 the pin was on the line. Now the proposed building is right

1 on top of the easement and it's much bigger and it re-changes
2 the configuration of the parking lot, and we said, "Okay.
3 First off," and we've -- I've heard in that meeting say,
4 "George, it shouldn't matter. It's on stilts. You got more
5 parking than you did before. It's the same size it was
6 before, same uses we had before are going to be in that
7 restaurant." That was all said. We don't believe any of that
8 to be the truth, and this is -- it is troublesome, and this is
9 the type of thing that should be handled by the Georgetown
10 permitting in the first instance, and when I went over there
11 to talk to them last week they were surprised to find out that
12 there wasn't an agreement with us because they were told there
13 was an agreement with us. Our easement was not shared with
14 them, but I can assure you it has been shared with them now.
15 They are the people in my mind to consider who -- how many
16 parking spaces are there instead of having the Court count
17 them and pictures with numbers on them or is this building
18 bigger or not. This is an 11,000 square foot building, Your
19 Honor, much bigger than the 3, 4 or 5,000 that the PUD
20 authorized to begin with. This right here puts parking spots
21 right over the delivery access to the restaurant, meaning
22 deliveries would have to go through the front door potentially
23 during working hours when they come in. This right here, Your
24 Honor, creates a dead end. So you drive in this parking lot,
25 and you think there might be a spot 10 or 15 down there, you

1 drive down there, oops, you're stuck. There are some huge
2 problems with this, let alone the fact that they don't even
3 have a permit to build that building yet. So that -- all of
4 those problems exist in our plan, and aside from that, I said,
5 you know, "What -- is there a solution to parking down there?
6 If there is, I don't know it. Tell me what it would be."
7 That has not come up yet. There are work-arounds that are
8 temporary, I believe, but I'm not sure that the PUD can be
9 amended to do this.

10 Now, Mr. Jefferies from McNair contacted me Wednesday
11 afternoon before Thanksgiving. 4:54 I got an e-mail from him,
12 said, "We're counsel of record." Your Honor had granted a
13 restraining -- an extension of the restraining order so it
14 wouldn't expire over the weekend just prior to that, and it
15 was shared with Dan Stacy and Lane. Now, that same afternoon,
16 that Wednesday, we learned that they had submitted for the
17 first time a full set of plans to build the entire building
18 that Wednesday. That was a surprise to us, just like the
19 County was surprised to find we had an easement.

20 That is where we are, Your Honor. They finally got off
21 the parking lot. Up until Thursday of last week, as shown by
22 the pictures, and the very last picture on our memorandum
23 shows what you would see if you were a customer driving down
24 Waccamaw Drive. You would see a construction container with a
25 sign on it said do not enter, and it wasn't blocked off but

1 the 13 spaces were gone and those construction containers
2 stayed for the entire duration of the -- Your Honor's TRO
3 right in between the road and the site of the restaurant. Not
4 only does that block these parking spots here, people driving
5 by, their customers are saying, "Well, I don't know what's
6 going on. Are they open? Is there a parking -- is there a
7 problem?" And they received e-mails saying that, "Please take
8 care of us. We know there's parking or construction issues
9 over there. I'm not sure what those are," but there were
10 customers who were concerned. That was just corrected on this
11 Friday. It was not -- the order was not, despite my e-mails
12 saying, "You need to comply with the judge's order and you
13 haven't and you're hurting our restaurants." So now, once
14 again, they have demolished their building, yes. They did it
15 before they had a permit to finish or to even complete the new
16 one. We did not know that they would do that, and what -- in
17 addition to what we need to enjoin, Your Honor, we need to
18 enjoin the construction period. There has to be some -- they
19 cannot park -- take away this parking spot legally, nor can
20 they -- to do the construction to begin with, and in the
21 second instance, they're not legally -- it's legally
22 impermissible to reconfigure the parking lot however they
23 think they would like to and they're saying to grant more
24 spaces. Well, we don't believe that is the case if you design
25 it properly.

1 Now, the courts, switching to legally, the courts have
2 said for the purpose of an injunction we, we've identified the
3 Peek case that says shutting down a business during pending
4 litigation is properly enjoinable, but in the case of property
5 rights the courts have held that temporary injunctions are
6 proper to protect their legal rights, and there are two cases
7 I'd like to point out, Your Honor, which are --

8 THE COURT: Excuse me for interrupting for just a second.

9 MR. REDMAN: Yes.

10 (Clerk and Court confer.)

11 ***** OFF THE RECORD *****

12 (On the record.)

13 THE COURT: All right. Mr. Redman, go ahead.

14 MR. REDMAN: I am just about to finish up, Your Honor.
15 Ms. Lusk is going to join me up here. She went to Conway this
16 morning instead of --

17 THE COURT: All right.

18 MR. REDMAN: But she wrote the brief for, for Your Honor.
19 Switching gears to factually to legally justifications for our
20 argument. Now, when somebody grants an easement the
21 Faulkenberry case stands for the promise -- the premise that
22 the owner of the dominant estate cannot materially interfere
23 with the use and enjoyment of the servient estate's easement.
24 Owners must be held during continuance of easement to have
25 abandoned every use of land except such as may -- might be

1 made consistent with the reasonable enjoyment of the easement.

2 Now, there are two cases that are on point. One of them
3 is -- I didn't see counsel's brief until this morning. Your
4 Honor, I have two cases if I can hand them up. I don't know
5 if you'll review them or not, but the -- they seem to be on
6 point for important issues. The first is AJG Holdings versus
7 Dunn. This was a Georgetown case when Mayor Scoville was
8 arguing for the -- his case for a temporary injunction after a
9 trial. The trial court said no, a temporary injunction wasn't
10 appropriate in this case. This was a case where they were
11 trying to use, enjoin use of a building from being used as a
12 commercial bed and breakfast. There were restrictions from a
13 subdivision that said no commercial use. The court said,
14 first off property rights need to be preserved, that the
15 opposing side said, "Well, if they make too much noise you can
16 call the police. If later on we can get a monetary damages
17 against them, too. So injunction is not appropriate." The
18 Court said, "No. The injunction is appropriate in that case,"
19 and that call -- ability to call the -- call the cops on
20 criminal as -- and to ask for damages at the end does not
21 preserve property rights." The other case is the Xanadu case.
22 Xanadu Horizontal Property Regime versus Ocean Walk Horizontal
23 Property Regime down in the Hilton Head area, I believe. This
24 was where two non-exclusive easement owners, both of them as
25 we have here non-exclusive rights to a parking lot. In this

1 case, the parties said that they wanted to add more parking
2 spots I guess under the guise that probably allow more
3 intensive use, and they said that you're -- shouldn't complain
4 about this injunction because it doesn't materially interfere
5 because you're going to get more parking spots at the end of
6 the day, not less, and the trial court said, "We agree with
7 that," and the Supreme Court said, no, that was erroneous as a
8 matter of law and reversed them because the easement referred
9 to a plat which particularly described those parking lots and
10 said you are not allowed to restrict, alter or change what has
11 been granted in that easement to any extent, and that's
12 exactly what we're being told. We don't believe that the
13 configuration is appropriate for public use. So the Xanadu
14 case says we're entitled to that parking lot as it is shown.
15 If they want to build on it they have the area that the, the
16 first easements which are still valid say you can build on it.

17 Now, I'd like to talk just briefly about bond, Your
18 Honor. I see for the first time in their memo they are asking
19 for a \$2 million bond if this Court were to agree to an
20 injunction. First off, where they have no building permit to
21 build this building in place, we think a very small bond is
22 appropriate, certainly no more than \$1000 because they have no
23 legal right whatsoever to build what they seek to build. As a
24 matter of a fact, they seek to put piers into the parking lot
25 for a building they might not be able to build eventually. We

1 might be saving them money. If they are allowed to put those
2 piers up there and then they have to take them down, that
3 interferes with the use. So during the period of time that
4 they don't have a building permit, and this is what I've said
5 for how long it should be, during that period of time
6 certainly a nominal bond is absolutely appropriate. Now, the
7 affidavits say that the pier or the marina store makes \$4000 a
8 day. There's no saying, "Well, that's gross, that's net and
9 here are our expenses and here's" -- there's just no way for
10 us to verify. We highly doubt that it makes \$4000 a day, but
11 we don't believe that the Court in this juncture is going to
12 be in a position to set the bond based upon what their actual
13 business losses like might be. We would like a chance to see
14 something that would verify that, tax return or some financial
15 statements. So if they ever do get a permit maybe at that
16 time it would be appropriate for them to move to adjust the
17 amount of the bond, saying, "Judge, now we've got a permit.
18 Georgetown County says you can build over the easement and
19 manipulate the easement or they're not concerned with it." I
20 can't imagine they're not going to be concerned with it, but
21 until they get that permit we're not talking about a situation
22 where they would be entitled to a bond of any amount, let
23 alone \$2 million. They -- the four -- \$4000 a day that they
24 say they earn there's no seasonal adjustments to that.
25 There's -- and there's also an obligation to mitigate damages.

1 Sure, they've demolished their store. I would have never
2 recommended demolishing your business until you have a permit
3 to complete the new one. I think that was a misstep, and we
4 didn't have any part in that, but while this lawsuit goes on,
5 the restaurant is busy mitigating their damages and paying for
6 it. They've put up signs that said complimentary -- they have
7 put a sign up by the road, "We're open." We put a sign up
8 saying complimentary valet service. They have to go to the
9 neighboring buildings, the management groups and say, "Can we
10 rent your parking over there," and then the valets have to
11 take it over there and, and they're paying for that right now
12 on their own. Just likewise, they would -- should be required
13 under a bond analysis to mitigate their own damages, put up --
14 yourself up a temporary business there and do your fishing and
15 do everything that you can do to the extent you can until the
16 court can look and say, "Are you allowed to take this written
17 easement and turn it," and, and that's our argument here
18 today, Your Honor, is we have a written agreement. I don't
19 think there's any -- a written easement. I don't think
20 there's any dispute about that at all, and what we're talking
21 about is not just convenient parking. We're talking about
22 parking that is absolutely required for a restaurant that's
23 been in business in good standing for 30 years. We're talking
24 about a situation where if this parking lot is gone employees
25 -- invitees they're either going to go somewhere else or

1 they're likely to park on this road and walk out there and be
 2 in a dangerous situation that we don't want them to be in. We
 3 are sorry this situation is what it is, but we're, we're
 4 disappointed that that fence went up before any agreement was
 5 in place, and I'd like to reserve, I know Your Honor is
 6 extremely busy, and thank you for letting me take so much time
 7 this morning, but if there is -- if they are to obtain any
 8 possession of the parking lot I'd like to talk about the cost,
 9 reasonable rental value of that space during the time, but
 10 until they have a building permit, a nominal bond is
 11 absolutely appropriate, and if later on they want to move and
 12 adjust that bond based on some other set of facts that isn't
 13 before this Court, then we would like some discovery so that
 14 each side can verify what their harm is being caused here.
 15 That's it, Your Honor. Thank you, Your Honor.

16 THE COURT: All right. Ms. Golding.

17 MS. GOLDING: Thank you, Your Honor.

18 I think I need to address something first is that Mr.
 19 Redman continued to reference the fact that we have no
 20 building permit. We obtained a foundation permit and a
 21 demolition permit, and that's because that's the normal
 22 customary way that construction projects proceed. You don't
 23 get a building permit. You get your foundation permit. You
 24 get your demolition permit.

25 THE COURT: Can you get a building permit simultaneously?

1 MS. GOLDING: Well, we submitted that -- generally, that
2 -- it's my understanding that that doesn't occur. The
3 architect, Steve Goggans, that's what he recommended, and in
4 fact, I received a note from my client said the County
5 recommended that we proceed this way.

6 THE COURT: So, I mean, even -- so they could demolish a
7 building and never be able to rebuild it?

8 MS. GOLDING: Well, we've now submitted the plans, too.

9 THE COURT: But yeah, you've submitted the plans but it's
10 not guaranteed to be permitted. So conceivably you could
11 demolish a building and never be able to build back?

12 MS. GOLDING: Conceivably, but according to the architect
13 that, that's highly, highly unlikely. We just followed what
14 the architect and the County told us to do, Your Honor.

15 THE COURT: Okay.

16 MS. GOLDING: That's what we did, and so, I mean, with
17 respect to this matter. This -- the legal criteria is, number
18 one, they have to establish it's no irreparable harm, and the
19 cases that were cited like the Felkel case in their memorandum
20 saying, "We -- we're going to have irreparable harm," and the
21 court says you look at that, but in that case there was no
22 harm on the other side. In this case there is immense harm
23 that will incur to the Defendants as set forth in the
24 affidavits. The discussion with the Plaintiffs started in May
25 of 2015. Those are set forth in the Defendant's affidavits.

1 In the Plaintiff's affidavits and complaint, they denied any
2 discussion until this morning when Mr. Redman says, "We had
3 general conversations." Well, it was much more than general
4 conversations. The Plaintiff had full knowledge that they
5 were building a building, and in fact, the telephone call that
6 Mr. Lawhon had with Linda Barnaba specifically stated that --
7 she stated, this telephone call was the day before the
8 litigation started, the complaint was filed, "You're making a
9 lot of improvements, you know, to the marina, which, you know,
10 we are super excited about." That in and of itself tells you
11 they knew what was going on, and they have misled this Court
12 by saying, "We have no knowledge." In fact, the general
13 manager, Mr. Kirk, he was the one that assisted Chris Lawhon,
14 the son of Mark Lawhon, in placing the fence at that time, and
15 that was the first part of November. There were 61 parking
16 places. Three of those parking places were designated for
17 marina parking, marina store parking. That has been there for
18 years and years and years. Now with the plans, the new
19 construction there will be 67 spaces. The Plaintiffs contend,
20 "We don't know, that's, you know, we don't know that's going
21 to happen." That's what the architect put in the plans, Your
22 Honor.

23 THE COURT: But they hadn't been approved.

24 MS. GOLDING: No, sir.

25 THE COURT: Okay.

1 MS. GOLDING: They haven't been approved but those -- but
2 that's what they want to do and that's -- I -- we sincerely
3 believe that is what's going to occur. The architect --

4 THE COURT: Can you guarantee to the Court that that will
5 occur?

6 MS. GOLDING: Well, I'm told that that has been approved,
7 the parking has been approved, but Mr. Goggans is not going to
8 prepare plans out of the air that don't conform with the
9 building code. I mean, that's just not going to -- he's not
10 going to do that. He's a certified architect. He's done
11 many, many construction projects in this area. There will be
12 no loss of any kind in the parking, whether it's going to be
13 61, which we now have, or 62 or 67 as the plan shows. There
14 will be no loss of any parking contrary to the allegation in
15 the verified complaint. The building, it's the exact same
16 square footage as the building that existed there, exact same.
17 The dimensions used in this drawing, I went around to look at
18 it, do not appear correct at all, but is the exact square
19 footage that will be utilized.

20 THE COURT: The same place or moved?

21 MS. GOLDING: There'll be a little bit of a difference in
22 the location of the building, Your Honor.

23 THE COURT: Where is it going to be located, over the
24 easement?

25 MS. GOLDING: A small portion of it will be over the

1 easement. Yes.

2 THE COURT: How much is a small portion?

3 MS. GOLDING: I don't know, Your Honor. We have the -- I
4 don't know that, Your Honor. Yeah.

5 THE COURT: All right. Go ahead. That's fine. Go
6 ahead.

7 MS. GOLDING: One of the exhibits I believe -- we've
8 provided them the drawings. Dan Stacy provided the drawings
9 before we became involved, Your Honor, and they are attached
10 in the e-mail that Mr. Stacy sent to Mr. Redman which is
11 Exhibit C, and those drawings are attached, Your Honor.

12 THE COURT: Okay.

13 MS. GOLDING: But I think the Court, you know, we owned
14 the property, Your Honor. We granted permission per the
15 easement to park. The easement does not restrict the owner's
16 rights to do what it wants with the property as long as we do
17 not interfere with the parking rights. They -- the Plaintiff
18 doesn't have a right to say, "No. You can't do it," if it
19 doesn't interfere with the parking rights.

20 THE COURT: So you're not interfering with their parking
21 rights?

22 MS. GOLDING: No, sir.

23 THE COURT: So they can park -- use those parking spaces
24 now?

25 MS. GOLDING: Yes, sir.

1 THE COURT: Okay.

2 MS. GOLDING: Absolutely. You know, the only parking
3 places that are being used right now, and I think this is
4 somewhat ironic, is by the marina's association, Your Honor.
5 This is correspondence. I'm going to give you some e-mails
6 that were sent yesterday afternoon by Mr. Redman and Mr. Pat
7 Henry. Here is --

8 THE COURT: So, I mean, I'm -- what I'm saying, I'm
9 looking here on Plaintiff's Exhibit C to their memorandum.
10 None of these containers, fences or other construction --

11 MS. GOLDING: The containers are not there.

12 THE COURT: -- things are taking up any of the parking
13 spaces in the easement?

14 MS. GOLDING: Correct, Your Honor. Containers -- the,
15 the building was demolished. That was the marina store and
16 restaurant, which, by the way, had 70 seats, and has had 70
17 seats for the last few years contrary to what Plaintiff says.
18 I think they said a few, and this marina store, Your Honor,
19 was using parking, was, I mean.

20 THE COURT: And I understand that. It's just they've
21 submitted some photographs like this container and this sign
22 saying --

23 MS. GOLDING: Right.

24 THE COURT: -- do not enter, authorized personnel only.
25 You --

1 MS. GOLDING: That's all gone because that was -- that
2 occurred during the demolition in which Mr. Kirk had full
3 knowledge of.

4 THE COURT: So you're not wanting to put that back?

5 MS. GOLDING: No, sir.

6 THE COURT: Okay. All right. Go ahead.

7 MS. GOLDING: Absolutely not. Those containers will not
8 go back.

9 THE COURT: All right.

10 MS. GOLDING: And in that telephone conversation that was
11 -- that is attached to my client's affidavit, Ms. Barnaba
12 acknowledged the fencing and the containers were needed for
13 the demolition. That's what they were there for, and that the
14 safety, it was -- the, the fences were up for the safety
15 during the demolition process.

16 THE COURT: Well, let me -- well, let me ask you this
17 then, if your argument is that you're not interfering with any
18 of the parking area under the easement, then what is the harm
19 to your people if I grant the temporary injunction if you're
20 not, in other words, just let them keep using it for what
21 they're using it for. You're saying you're not interfering
22 with their use of it. So why not let's just go ahead and put
23 a temporary injunction in place so you can continue with the
24 status quo the way it is now.

25 MS. GOLDING: No, sir, Your Honor. I don't think that a

1 temporary injunction is, is, number one, warranted under the
2 facts nor, nor warranted under the law.

3 THE COURT: Well, the thing -- the problem I'm having,
4 Ms. Golding, is you're saying you're not violating their use
5 of the easement. They're asking for a temporary injunction
6 that says you do not interfere with their use of the easement.
7 So if you're acknowledging, "We're not interfering with their
8 use of the easement," they're asking that you not interfere
9 with their use of the easement, let's get a temporary
10 injunction that says you get what you want and you keep doing
11 what you're doing now because there's no interference.

12 MS. GOLDING: Because they're going to contend, I mean,
13 we use the easement, Your Honor.

14 THE COURT: You use it for the, for the rights that you
15 have under the easement.

16 MS. GOLDING: No, sir. We are owners, Your Honor.. We're
17 not limited to using it for parking.

18 THE COURT: You're -- you're limited to using it in a way
19 that is not interfering with their use of it.

20 MS. GOLDING: Correct. They have --

21 THE COURT: And you're saying you're not interfering with
22 their use of it, and you're saying you're not going to
23 interfere with their use of it. So what is the problem with
24 granting the preliminary injunction?

25 MS. GOLDING: Because they have a right -- they're

1 wanting all of the parking lot. They don't have all of the
2 parking lot. We use many of those spaces with our business,
3 and we have a right to use those spaces. They have plenty of
4 parking right now, Your Honor, and as the --

5 THE COURT: But I mean, let -- but I mean --

6 MS. GOLDING: If, if you put an injunction in place
7 you're telling us that we can't use some of this area for
8 activity that was previously used by, by the marina store that
9 they never --

10 THE COURT: If they don't have an easement over it I
11 can't.

12 MS. GOLDING: No, sir. Because we're not unreasonably
13 interfering with their parking. They've got 15 to 18 parking
14 places on one side of the building that's not on this parking
15 lot and they have and other than in the busy season, Your
16 Honor, they don't use all of our parking lot. Well, they
17 don't use all of our parking lot at any time because --

18 THE COURT: I'm just talking about the parking spaces
19 that are in the easement granted to the Plaintiff.

20 MS. GOLDING: Right. And those are 61 spaces, Your Honor.

21 THE COURT: And you're not interfering with their use of
22 any of those 61 spaces?

23 MS. GOLDING: No. We're not interfering with their use
24 to park, Your Honor.

25 THE COURT: Okay.

1 MS. GOLDING: Because, because they don't have an
2 exclusive right to use each and every one of the 61 spaces,
3 Your Honor. We had the marina store. We've got the
4 association, and right now they grant -- they permitting what,
5 16 of those spaces to the marina association for construction
6 which is in those e-mails yesterday between Mr. Redman and Pat
7 Henry. There's 16 spaces --

8 THE COURT: Well, let me ask you this.

9 MS. GOLDING: -- that they haven't sued them for which is
10 being used for construction being conducted by the marina
11 association.

12 THE COURT: Because they've got some agreement worked out
13 with them.

14 MS. GOLDING: No. They don't. Right here these e-mails
15 show -- these were yesterday's e-mails.

16 THE COURT: All right.

17 MS. GOLDING: Show there's no agreement

18 THE COURT: I'm, I'm getting -- I'm getting confused
19 here. You've got an easements for 61 parking spaces of which
20 the Plaintiff has the non-exclusive use and the Defendant is
21 the owner.

22 MS. GOLDING: There's not 61 spaces identified in the
23 easement, Your Honor. There -- just have an easement for
24 parking.

25 THE COURT: And it doesn't specify the area? It doesn't

1 make reference to this plat?

2 MS. GOLDING: No. It, it identifies the parking lot, but
3 it doesn't identify the number of spaces.

4 THE COURT: Okay. But it's -- it identifies on this
5 plat, what is it, lots --

6 MR. REDMAN: Three, Four and Five of Tract Three.

7 MS. GOLDING: Exhibit A shows the --

8 THE COURT: Yeah. Three, Four and Five.

9 MS. GOLDING: Exhibit A to our memo shows the, shows the
10 parking lot with the 61 spaces, Your Honor.

11 THE COURT: Okay.

12 MS. GOLDING: And this may be somewhat clearer.

13 THE COURT: But I mean, on their, on their plat it's Lots
14 Three, Four and Five on the survey at Page 6 -- at Book 6,
15 Page 214.

16 MS. GOLDING: Yes, sir.

17 THE COURT: Okay. All right.

18 MS. GOLDING: And the photo I just handed, that, that is
19 a copy of Exhibit A to, to our memo, Your Honor.

20 THE COURT: All right. Go ahead.

21 MS. GOLDING: Okay. Going back to the document I just
22 handed to the Court, Your Honor, these are e-mails that were
23 going on late yesterday. Mr. Henry replied at 10:02. He
24 says, "We've got approximately 67 slips in the marina, and I
25 think we'd be entitled to use 16 to spend \$300,000. We also

1 have the permission and blessing of Mr. Lawhon to use 16
2 spaces." He says, "I again emphasize to you the marina is not
3 going to pay for valet parking." This is construction going
4 on right now with the marina association. Pat Henry is the
5 president of that association. There is no written agreement,
6 Your Honor. They're, they're letting him use the 16 spaces.
7 We had 13 spaces we were utilizing for the demolition of the
8 construction, Your Honor. Still, there were plenty of spaces
9 for them to have parking. We have taken away the containers.
10 There is no fence. The only need for the containers and the
11 fence were for demolition of the building, and the Plaintiffs
12 knew we were demolishing the building, and they knew we were
13 demolishing the building so we can build another building for
14 a restaurant and marina store the exact same size. What they
15 want to do here is they refer to this 2007 agreement in which
16 they entered into when the marina seawalls were being, were
17 being built or rebuilt, Your Honor, and for which they
18 received \$100,000, or something in that neighborhood. That's
19 what this whole lawsuit is about, to hold us up to try to say,
20 "We want a big chunk of change from you before we'll agree,"
21 and Your Honor, the facts on it, you could read the
22 statements, the transcription of the telephone call between
23 Mr. Lawhon and Linda Barnaba. You know, they're excited about
24 the project. They want it to go on. "This is only going to
25 be a great improvement. You're doing this at the right time

1 of the season," Your Honor. I mean, it -- it's, it's
2 unbelievable and then the next day they file a lawsuit. So
3 with respect to the irreparable harm, Your Honor, now we have
4 no business building. We demolished it. They knew we were
5 going to. They knew we were going to build it and it's going
6 to be ready in the spring to conduct the business. Now we
7 don't have that, that building. That's extreme irreparable
8 harm.

9 THE COURT: Well, but I mean, even if I deny it you don't
10 have a building.

11 MS. GOLDING: We're going to start --

12 THE COURT: If I deny their request for a preliminary
13 injunction you're not going to have a building till spring.

14 MS. GOLDING: But we have to construct it.

15 THE COURT: Okay. And so when is construction going to
16 start?

17 MS. GOLDING: Right now because we have to put in the
18 pilings.

19 THE COURT: Okay. So you're putting in the pilings now.
20 Okay. Go ahead.

21 MS. GOLDING: Okay. So, so in addition to not having the
22 building, which they knew we were going to do -- which they
23 had full knowledge we were going to do, there are -- we have
24 monies that are spent on financing, architectural fees. We
25 had the litany of the expenses is set forth in the affidavit

1 of Mr. Lawhon. It is -- we will have, compared to the
2 Plaintiff, we will have lost all our business. The Plaintiff
3 has -- alleges they have lost a certain amount which I don't
4 believe that is correct because in the telephone call she
5 said, "This is the right time to do it," and Your Honor, what
6 -- they have also through Mr. Redman's statement have
7 permitted events and have never had problems. Every year,
8 Your Honor, there -- every year, two times a year there's a
9 fishing tournament. We had photographs from last year's
10 fishing tournament and the year before. You'll see tents on
11 that. Now Mr. Redman said there are other activities being
12 done, egg -- Easter egg hunt or things like that that have
13 blocked off portions of the parking, you know. So clearly,
14 Your Honor, the irreparable harm is to the Defendant, not the
15 Plaintiff. The balance of the equities is to the Plaintiff,
16 not Defendant. The survival or who's got the best side to --
17 as to the merits of the case, it's with the Defendants and not
18 the Plaintiff. Each element we can establish that they
19 weren't locked in to 61 spaces. The, the easement has they're
20 entitled to parking, the marina store is entitled to parking,
21 the marina is entitled to parking. So that doesn't mean that
22 they can bar us completely from parking.

23 THE COURT: No. But they can bar you from constructing
24 over it, but you're saying you're not going to be building
25 over any of the parking spaces.

1 MS. GOLDING: Yes, sir. There's -- the plans have some
2 construction over some of the parking areas. Yes, sir.

3 THE COURT: So how are you going to do that if they've
4 got an easement to that area you're going to build over?

5 MS. GOLDING: Well, they don't have an easement in, in
6 the air, air, Your Honor.

7 THE COURT: Oh, so it's going -- so they'll -- the
8 parking'll still be there?

9 MS. GOLDING: Oh, yes. Absolutely.

10 THE COURT: Okay.

11 MS. GOLDING: Yeah. Now, and the Plaintiffs then say
12 they have no adequate remedy at law. They've got a cause of
13 action for monies due. They, they classify it as rent. They
14 claim they have loss of income. Clearly, there is an adequate
15 remedy at law with respect to any loss of, loss of income.
16 They have placed, before the lawsuit, in early November, Your
17 Honor, when Mr. Kirk and Mr. Lawhon went outside and placed a
18 fence, they put some signs up open for business along Waccamaw
19 Drive. You know, that's what they did, and they did that with
20 the assistance of the Defendants. I really don't know why the
21 Plaintiffs did such a flip-flop and why they now say they'll
22 be irreparably harmed because for one and a half years they
23 had full knowledge of what was going on. They assisted. They
24 told Chris, especially, "This is going to be great. Our
25 business will be better, your business will, just an absolute

1 improvement."

2 THE COURT: Well, somebody is just definitely misleading
3 the Court.

4 MS. GOLDING: Yes, sir. I agree.

5 THE COURT: I don't know which side's lying but
6 somebody's lying and I don't know which side.

7 MR. REDMAN: Your Honor --

8 MS. GOLDING: Go to the, Your Honor, go to the telephone
9 --

10 MR. REDMAN: If I can reply?

11 THE COURT: No. No. Nope. I'll give you a chance to
12 respond.

13 MR. REDMAN: Okay. Thank you.

14 MS. GOLDING: Go to the --

15 THE COURT: But I'm just -- I'm getting two completely
16 conflicting stories and I need to caution each side that
17 somebody is intentionally misleading the Court, which can
18 carry contempt to the parties. So I'm going to leave it at
19 that. Go ahead, Ms. Golding.

20 MS. GOLDING: Your Honor, thank you, Your Honor. The
21 telephone call between Mr. Lawhon, Mark Lawhon and Linda
22 Barnaba a day before the lawsuit was filed and the motion was
23 filed, I set forth at least seven salient statements she made.
24 One, "You're making a lot of improvements, you know, to the
25 marina. You know, we are super excited." Two, "I'm so glad

1 you called, Mr. Lawhon, because, you know, we know the timing
 2 is not bad for us. You know, the last time I guess it was Mr.
 3 Stone. They did the dredging. It was unfortunate for us. It
 4 was just bad timing because it was the middle of the summer
 5 which was during our peak season. So right now it's not, you
 6 know, it's not the worst time in the world for us." The third
 7 statement, "It's just the two holidays that, you know, that
 8 we're concerned about, and that's really we're looking at
 9 about a three-week period of time. So, I mean, if you pick a
 10 good time, you know, to do this, and I'm sure you'll really
 11 consider it, you know, making that decision." The fourth
 12 statement, "I'm the best neighbor in the world." The fifth
 13 statement, "There's really enough pie to go around, absolutely
 14 enough, you know." The sixth statement, "It sounds to me
 15 like, you know, it's going to be a great partnership. I mean,
 16 it's -- I really appreciate you calling back and I appreciate
 17 the fact that we're willing to sit down, and you know, take a
 18 look at this. I'm super excited," and the seventh statement,
 19 "I look forward to seeing you then on Friday." That telephone
 20 conversation concluded with them meeting at noon on Friday.
 21 Instead, the next day the lawsuit was filed. There was no
 22 meeting. Also, during this telephone conversation, I didn't
 23 quote it, Mr. Lawhon told this lady that, "We have our
 24 attorney, Dan Stacy." So they knew their attorney was Dan
 25 Stacy. So, Your Honor, all the factors necessary for a TRO

1 favor the Defendants and not the Plaintiff. As, as the
2 statements show this is the best time in the world to do the
3 construction. There's plenty of parking for everybody, and
4 they're not going to be damaged. Thank you, Your Honor.

5 THE COURT: All right. Mr. Redman.

6 MR. REDMAN: Briefly, Your Honor, I -- there is one
7 permit that had been granted by Georgetown County for
8 construction. That was the permit for them to demolish the
9 building they have and to put up pilings for a new building.
10 They do not have a permit to finish the construction or to
11 start on the construction of that building on top of the
12 pilings. There --

13 THE COURT: Well, let me ask you this, Mr. Redman. They
14 say they're not interfering with any of the parking at all.
15 Identify with me which parking is being interfered with.

16 MR. REDMAN: The -- if I may, Your Honor, the parking
17 that is going to be interfered with -- at first they said,
18 "Oh, we're not going to interfere with it," and I have no idea
19 where that came from because it was quickly followed with,
20 "We're going to begin construction," and they're going to
21 begin construction of a building that is 100 percent, not a
22 little bit, 100 percent on top of the easement.

23 THE COURT: But according to Ms. Golding, though, at no
24 time -- at any point in time during construction, during the
25 preparation that there will never be any interference with the

1 Plaintiff's parking on this property.

2 MR. REDMAN: I don't know how that can be accurate, Your
3 Honor. I'm looking at Exhibit B, their plans, which is the
4 exact same document saying that 100 percent, I'm sorry, 100
5 percent, not a little bit, 100 percent of this new building
6 and every piling that supports it goes onto, into, over,
7 across our easement.

8 THE COURT: Well, and she says that's inaccurate because
9 -- she's saying that the square footage of their building is
10 identical to the existing one, it's just moved over a little.

11 MR. REDMAN: It's not moved over a little. It's moved
12 over and completely configured. This right here was a --

13 THE COURT: No. But she's saying that that's not the
14 case. I mean, I, I haven't seen the plans that Dan Stacy sent
15 over, but one of -- somebody -- either that's exaggerated or
16 Ms. Golding's not giving me the correct account.

17 MR. REDMAN: Can I approach the Court and give you my
18 example and show you how it is their plans --

19 THE COURT: Is this what Dan Stacy provided to you?

20 MR. REDMAN: This is -- it is almost 100 percent, almost.

21 THE COURT: I want to see what Dan Stacy -- have you got
22 what Dan Stacy gave you?

23 MR. REDMAN: I got it out in the truck and this is a cut
24 from it. It is this.

25 THE COURT: Okay. Yeah, but --

1 MS. GOLDING: It's attached to Exhibit C, Your Honor, in
2 my memorandum.

3 THE COURT: Okay. Let me see because she's saying that
4 you've misled by exaggerating the size of the building.

5 MR. REDMAN: Not at all, Your Honor. There are three
6 floors, 5000 square foot per floor.

7 THE COURT: Three floors, 5000 -- that's 15 -- well, is
8 their original building -- she said the original building was
9 -- it's the same size as the original building is what she's
10 telling me.

11 MR. REDMAN: Your Honor, that's what we're saying. We
12 don't believe that that is accurate and that's not the plans
13 they showed. The first floor has no square footage under it
14 because it's on pilings.

15 MS. GOLDING: Your Honor, with respect to the pylons that
16 have to be put on, Georgetown has approved the square footage,
17 Your Honor. That had to be --

18 THE COURT: Yeah. But, but I'm getting --

19 MR. REDMAN: No. No.

20 THE COURT: -- back to you told me that it's the same
21 size building that will not --

22 MS. GOLDING: Absolutely, and Georgetown would not let
23 the building get larger in square footage.

24 THE COURT: But it does take up the majority of that
25 frontage space where the old one didn't.

1 MS. GOLDING: It does not take -- Your Honor, it will not
2 inhibit any of the parking.

3 THE COURT: I understand your argument on that, Ms.
4 Golding, but you told me in your argument that this is
5 basically replacing what existed just moving it over a little,
6 the same size building, not interfering with any parking.

7 MS. GOLDING: Correct.

8 THE COURT: Not going to interrupt their business --

9 MS. GOLDING: Correct.

10 THE COURT: -- in any way shape or form, but -- and that
11 his dimensions were inaccurate. Well, now that I'm looking at
12 what Dan Stacy submitted, it doesn't look that it's that
13 inaccurate.

14 MS. GOLDING: Well, he's saying, Your Honor, and I
15 haven't looked at this but just a couple of minutes.

16 THE COURT: Well, you told me you looked at it.

17 MS. GOLDING: Right. Just a couple of minutes ago.

18 THE COURT: Right.

19 MS. GOLDING: I did. Your Honor, with the -- it's the
20 exact same square footage. Georgetown would not permit any
21 additional square footage period.

22 THE COURT: Okay.

23 MS. GOLDING: It's the exact same.

24 THE COURT: But you will admit that the new construction
25 is over existing parking spaces --

1 MS. GOLDING: Yes, sir.

2 THE COURT: -- that were not heretofore covered?

3 MS. GOLDING: That's correct, Your Honor.

4 THE COURT: Okay. And so when they construct that
5 portion, it is going to cease their ability to use those
6 parking spaces?

7 MS. GOLDING: No, sir. It's not.

8 THE COURT: So they're going to be able to park in those
9 spaces while construction is going on over them?

10 MS. GOLDING: May I -- Your Honor, in order to get the
11 pylons in, which will take four days --

12 THE COURT: Okay.

13 MS. GOLDING: -- that we will need to utilize 16 spaces.

14 THE COURT: Okay.

15 MS. GOLDING: That is now -- we have the pylon
16 foundation. That we can do within four days weather
17 permitting. I don't know how weather affects that --

18 THE COURT: Okay.

19 MS. GOLDING: -- but we need 16 spaces. Just as the
20 marina association, the construction they're doing right now
21 for a short period of time with respect to their construction,
22 they need a number of spaces. This is the time of the year to
23 do it.

24 THE COURT: Okay.

25 MS. GOLDING: We're not going to do it on Christmas Day.

1 I mean, we're not going to block their holiday restaurant
2 activities, but after the pylons are put in we won't be using
3 any parking spaces during the construction because they will
4 be parking under it.

5 THE COURT: So how do you build a building on top of the
6 pilings and allow cars to park underneath while the
7 construction is going on?

8 MS. GOLDING: This is what our contractor has told us,
9 Your Honor, and the architect.

10 THE COURT: Okay. All right. Mr. Redman, go ahead.

11 MR. REDMAN: Georgetown has not approved the square
12 footage of this building. They haven't --

13 MS. GOLDING: They have.

14 MR. REDMAN: They've, they've, they've allowed pylons to
15 go in and that's it. Somebody has looked at something and
16 told them something, there is no permit to build this
17 building. Now, during the construction of the pylons, Your
18 Honor, there has been no exaggeration at all. We were shocked
19 to find that 100 percent of the building is on the parking
20 spot, and we would object to going forward on a building that
21 has not been permitted, Your Honor. We're somewhat amiss at
22 how their plans -- if I may, one final clarification as to the
23 seawall, the last picture of my memorandum, Your Honor, shows
24 what we were looking at Thursday afternoon when there are
25 construction containers up there. I told Pat Henry, I said,

1 "Pat, we actually need parking. If you will move that, if
2 those are moved, we can work something out with you and to get
3 that seawall replaced." That is the marina owners association
4 doing that work of which Mr. Lawhon owns 19 slips. So the
5 seawall is going forward. That's not for us. That has
6 nothing to do with us. We just worked out an agreement. So
7 the -- while that agreement is in place they have assured us
8 16 spaces that we would be able to access. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 MS. GOLDING: Your Honor, just the square footage has
12 been approved by -- you see by Georgetown County. We can't go
13 forward with the foundation and the pylons without the square
14 footage being approved and it's exact same square footage,
15 Your Honor.

16 MR. REDMAN: Your Honor --

17 THE COURT: Okay. And the problem I'm having is they're
18 saying you're going to interfere with their parking. You're
19 saying you're not going to interfere with their parking. So
20 what difference does a preliminary injunction make because
21 they get what they want. You're not interfering with their
22 parking, and so I don't understand why we're even here if
23 everybody's -- if they're saying, "Don't interfere with our
24 parking," and you say, "We're not going to."

25 MS. GOLDING: That's why we -- well, that's why we're

1 here is because they say we are and this is the right season
2 to do the construction work per --

3 THE COURT: So why not grant a preliminary injunction
4 that just --

5 MS. GOLDING: No, sir.

6 THE COURT: -- says don't interfere with their use of the
7 parking area?

8 MS. GOLDING: Because, Your Honor, they're going to say
9 when we use these 16 spaces over four days for the pylons that
10 we're interfering.

11 MR. REDMAN: They are going to do the construction on it,
12 the parking lot and they're going to block the parking lot.

13 MS. GOLDING: See what I mean, Judge?

14 MR. REDMAN: We, we are not --

15 THE COURT: Okay.

16 MR. REDMAN: -- we are perfectly okay with them parking
17 on it, just the same as we can park on it because that's what
18 the rights that everyone has. If their customers park there,
19 the easement says primarily during the daytime, but you have
20 free and open access all the time. So they're -- during the
21 construction and afterward they seek to interfere with our
22 easement and in the -- in ways that is impermissible
23 absolutely, and it -- as long as this lawsuit -- until all
24 this has set it out, there is nothing from Georgetown that
25 says there is any approval. I beseech the Court and counsel

1 to prove that that statement is true. They have not -- there
2 is no formal approval of that square footage whatsoever. I
3 went over there and I talked to them. I looked for it. As an
4 officer of the court that approval does not exist. That --

5 THE COURT: How do they approve it? Do they approve it
6 --

7 MR. REDMAN: When you get a building permit.

8 MS. GOLDING: Can I, can I offer --

9 THE COURT: Okay.

10 MS. GOLDING: -- my, my witness?

11 THE COURT: No. I mean, is there a building permit that
12 approves the square footage?

13 MS. GOLDING: For the foundation for use of -- and the
14 pylons that the County has to approve the square footage to,
15 to approve the foundation. We, we presented -- the foundation
16 and pylons have been approved, Your Honor.

17 THE COURT: All right. Has the foundation and pylons
18 been approved?

19 MR. REDMAN: Yes. And that has no bearing on whether the
20 building itself and the parking lot configuration will
21 eventually be approved.

22 THE COURT: Okay.

23 MR. REDMAN: There is no approval of the square footage
24 or anything related to that building because they don't have a
25 permit.

1 MS. GOLDING: The parking lot's already been approved
2 when we have the foundation, when we have that, the parking
3 lots have been approved, Your Honor, but you see, this is what
4 Mr. Redman is saying that we can only use it for parking.
5 We're the owners. What we can't do is limit interfering with
6 their parking and that's why we picked this part of the season
7 and the marina association is doing that, too, Your Honor.

8 THE COURT: But I mean, what difference does the season
9 make if you're not going to interfere with their parking at
10 all in any way, shape or form? It doesn't matter when you do
11 it or how you do it. You're not interfering with their
12 parking.

13 MS. GOLDING: Oh, yes, it -- yes, it does, Your Honor,
14 because during the busy season, during the summer season,
15 they, they have a lot more guests, their patrons, their dining
16 guests will use a lot more parking.

17 THE COURT: Oh, so there are some spaces that are going
18 to be unavailable for use during this time?

19 MS. GOLDING: Your Honor, like I said, the pylons for the
20 four days, and --

21 THE COURT: Okay.

22 MS. GOLDING: -- you know, it's not that they're not
23 going to -- they will, will not during this period,
24 construction period of time will be using each and every 40 --
25 61 spaces, Your Honor.

1 THE COURT: I understand that, but Ms. Golding, your
2 argument is leading me to believe that at no point in time
3 will there ever be any space that will be unavailable to the
4 Plaintiff as a result of this construction. That is the
5 impression you're trying to make to the Court. Now, it's a
6 simple question, are there parking spaces that exist now that
7 will not be available for use by the Plaintiff during the
8 construction period?

9 MS. GOLDING: We know of at least 16 parking spaces that
10 will be needed for the pylon and -- pylon and foundation
11 construction for, for over a four-day period. Those 16 spaces
12 are at the front of where the marina is -- the, the -- not on
13 the Waccamaw Drive section, on the water side.

14 THE COURT: Okay. And then once that, those are put in
15 place, if they get a permit to build a building and they start
16 construction, those 16 spaces will be available to the
17 Plaintiff during that time of construction?

18 MS. GOLDING: Yes. Once we get that pylon in and that
19 should be four days approximately.

20 THE COURT: Okay. So you're talking about for four days
21 it will interfere with the Plaintiff's use of 16 spaces and
22 that's all?

23 MS. GOLDING: Yes, sir. You know, we can't -- what
24 happens if there's a weather day in there, you know, I, you
25 know, I can't say just four days, but at this point in time

1 that's what we've been told by the contractor with respect to
2 putting in the pylons and, and that's why, Your Honor, this is
3 as the, as the Plaintiff's representative, this is the perfect
4 time in the, in the recorded --

5 THE COURT: Okay.

6 MS. GOLDING: -- because it's slow.

7 THE COURT: All right. Anything further?

8 MR. REDMAN: Your Honor, that four days it would block it
9 and it would block it thereafter with the pylons sticking out
10 of the middle of the parking lot.

11 THE COURT: They're saying it's not, and if they have
12 totally misled the Court and lied to the Court then you're
13 going to have certain recourse. You can come back before the
14 Court and you can get a copy of this transcript and say,
15 "Judge, this is where they've told us that at the most we were
16 going to lose 16 spaces for four days, and that was not true."
17 That's, that's the problem. I mean, you all are asking me to
18 be Solomon here and decide who's telling the truth and who's
19 not telling the truth because I don't know how long it's going to
20 take. I don't know how many spaces they're going to take up.
21 I don't know if they're going to get approval for their
22 building.

23 MR. REDMAN: But you do know, Your Honor, that they do
24 not have a building permit to build that building that will go
25 on top of those pylons.

1 THE COURT: I agree. And they can't build that building
2 until they get that permit. The question I'm deciding is can
3 they go ahead and drive their pilings in anticipation of that
4 or and if they don't get the permit then they got to pull the
5 pilings back up.

6 MR. REDMAN: Let me pose this, Your Honor. If it takes
7 four days what is the harm in saying, "Okay. Let's hold off
8 until you get a set of permit -- a building permit to build
9 this thing," because that is not a scenario that is in front
10 of the Court. The only scenario is are putting in these
11 pylons along the front going to interfere with an easement.
12 Absolutely. When they drill them in there, absolutely, and
13 afterwards are those things going to be stuck out of the
14 ground during that time?

15 THE COURT: Well, I mean, if they get a permit for the
16 building are you still going to be seeking a permanent
17 injunction to cease --

18 MR. REDMAN: Yes.

19 THE COURT: -- construction?

20 MR. REDMAN: Yes.

21 THE COURT: Okay.

22 MR. REDMAN: But that is when -- that is when the bond
23 argument should change, Your Honor.

24 THE COURT: Okay. All right. I've heard enough. I'll
25 take it under advisement and let you know. All right.

1 MS. GOLDING: Thank you, Your Honor.

2 MR. REDMAN: As far as the use of the parking lot until
3 Your Honor rules, should just, just for parking only until
4 Your Honor rules?

5 THE COURT: Everybody goes at their own peril. If they
6 use it and interfere and they got to remove it, so be it. If
7 -- I just -- I don't know what to tell you because I don't
8 know who's misleading the Court. Somebody's lying to the
9 Court, and I don't know who. So I'm going to try to figure it
10 out. All right.

11 MS. GOLDING: Thank you, Your Honor.

12 MR. REDMAN: Thank you, Your Honor.

13 THE COURT: Thank you.

14 Ms. Golding, hold up for one second.

15 MS. GOLDING: Yes, sir.

16 THE COURT: All right. Before we go, let's go back on
17 the record. If I grant the preliminary injunction let me hear
18 your argument on the bond.

19 MS. GOLDING: Yes, sir. I mean, we have already expended
20 thousands of dollars.

21 THE COURT: But you don't get compensated for what you've
22 expended.

23 MS. GOLDING: Right.

24 THE COURT: The question is is what kind of damage are
25 you going to suffer basically for four days loss of

1 construction time if I grant -- if I -- if I grant a
2 preliminary injunction when I should not have what is the
3 damages that you're going to sustain and how do you arrive at
4 that?

5 MS. GOLDING: We have contracts that are already signed
6 for the construction work, Your Honor. It will be a
7 significant delay with respect to opening up the building. So
8 as Mr. Lawhon says in his affidavit, you know, it could -- it
9 will be hundreds of thousands of dollars, Your Honor.

10 THE COURT: Well, that's all under the presumption that
11 you're going to get the approval for the building, there's no
12 construction delays and things of that nature, but as we stand
13 right now if I just hold everything in place?

14 MS. GOLDING: We're going to lose our contract, our
15 contractor because everybody's busy now, Your Honor. Mr.
16 Everhart was doing some, some work. There's -- he's got
17 plenty of work everywhere. We're going to lose the pile-
18 driver. I don't know the dollar amount with the pilings.
19 \$180,000, Your Honor. We're going to lose that ability to go
20 forward with that. That's what's going to happen.

21 THE COURT: Well, I mean, basically at this juncture
22 that's all you're going to lose; correct, is the ability to go
23 forward with the pilings?

24 MS. GOLDING: With the pylons, \$180,000.

25 THE COURT: Because that's all you're permitted for is

1 180,000 to drive the pilings?

2 MS. GOLDING: And we have activities already planned for
3 next season. That won't happen, that we have commitments,
4 contractual commitments for.

5 THE COURT: Okay. Are you going to still have those if
6 the County denies the building permit and doesn't approve the
7 building?

8 MS. GOLDING: No, sir. We can't. We can't.

9 THE COURT: Okay.

10 MS. GOLDING: It's impossible.

11 THE COURT: Okay. So all of this is still subjective? I
12 mean, that's another thing I'm going to have to decide is how
13 much of your damages is sustained as a result of their actions
14 in getting the preliminary injunction. Well, if you don't
15 have a building permit, I mean, and let's say the County comes
16 along and doesn't approve the building permit, well, then that
17 hasn't been -- the preliminary injunction hasn't created that
18 damage.

19 MS. GOLDING: Okay. Well, we have -- according to my
20 client we have received verbal for the building permit. We've
21 got some mechanical stuff that, that is being -- that is going
22 through at this time, but their architect and the County have
23 assured that we're getting a building permit, Your Honor.

24 THE COURT: Okay. Who assured him?

25 MS. GOLDING: Our architect. Who the County?

1 MR. LAWHON: Boyd, the, the, the planning we've already
2 went -- I'm sorry. Can I speak, sir?

3 THE COURT: No. Speak with your attorney because that's,
4 that's part of the problem I'm -- I mean, you all are leading
5 the Court to believe that this is a guarantee that the County
6 is going to approve it, you're going to get the buildings
7 approved and it's going to be up and there's not going to be
8 any delays.

9 MS. GOLDING: Yes, sir.

10 THE COURT: They're leading me to believe that there is
11 no way the County is going to approve a building over an
12 easement that -- so.

13 MS. GOLDING: They've already approved it by the pylon
14 and foundation, Your Honor.

15 THE COURT: Okay.

16 MS. GOLDING: Over the building, as over the -- up in the
17 air. That's already been approved.

18 THE COURT: All right. All right. So what are your
19 damages?

20 MS. GOLDING: Well, we have the pylon contract for
21 \$180,000. Then we have contracts following, following
22 immediately after that, Your Honor. The construction contract
23 itself is \$2 million. We're going to be -- if we can't do the
24 pylon now, we're a good possibility of losing the contractor
25 which will delay everything, made the -- I mean, it's just

1 going to be horrible as a practical matter, Your Honor.

2 THE COURT: So what are you asking for as a bond?

3 MS. GOLDING: \$2 million.

4 THE COURT: Okay. All right. That's all I need to get
5 on the record. All right.

6 MS. GOLDING: Thank you.

7 THE COURT: I'll take it under advisement.

8 MS. GOLDING: Thank you, Your Honor.

9 MR. REDMAN: Thank you.

10 (Adjourned.)

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1 C E R T I F I C A T E

2

3 I, the undersigned, Grace L. Hurley, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete Transcript
6 of Record of the Hearing held in the case of Gulfstream Café,
7 Inc. versus J. Mark Lawhon, individually, and Palmetto
8 Industrial Development LLC, held in the Court of Common Pleas
9 for Georgetown County, Georgetown County Courthouse,
10 Georgetown, South Carolina, on December 5, 2016.

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

13

14

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16

17

Grace L. Hurley, CVR-CM-M

18

Official Reporter

19

20

21

22

23

24

25 January 9, 2017.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2016-CP-22-00961

THE GULFSTREAM CAFE,)

Plaintiff,)

vs.)

J. MARK LAWHON,)
INDIVIDUALLY, AND)
PALMETTO INDUSTRIAL)
DEVELOPMENT LLC,)

Defendants.)

Transcript of Record

September 28, 2017

B E F O R E:

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

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<u>No.</u>	<u>ID</u>	<u>EV</u>

(No exhibit were marked or admitted.)

1 SEPTEMBER 28, 2017 - 9:51 A.M.

2 BY THE COURT:

3 THE COURT: All right. Next is 2016-CP-22-961. This is
4 the case of the Gulfstream Café, Inc. versus J. Mark Lawhon,
5 L-A-W-H-O-N, individually, and Palmetto Industrial
6 Development, LLC, case number 2016-CP-22-961.

7 I've got before me on the roster, a motion for contempt,
8 a motion to compel, a motion to compel, a motion to amend
9 answer and counterclaims, a motion to reconsider, and a motion
10 to alter or amend temporary injunction.

11 Please give the court reporter your names and who you
12 represent?

13 MR. REDMOND: Good morning, Your Honor. George Redmond
14 from Bellamy Law Firm, representing the plaintiff, The
15 Gulfstream Café, Inc. With me today is Mr. Simon Bloom from
16 Atlanta, pro hac counsel, from Bloom & Sugarman, and his
17 partner is Mr. Adam Nugent is sitting behind me.

18 THE COURT: All right.

19 MS. GODLING: Good morning, Your Honor, I'm Henrietta
20 Golding and I, together with John Connell, represent the
21 defendants, Your Honor.

22 THE COURT: All right.

23 MR. MILLS: Judge, I'm David Mills, M-I-L-L-S. I
24 represent the non-party subpoena recipient, Georgetown County,
25 which is not a party to this action. I believe, I believe, if

1 I've got the sequence right, I'm involved in the second of the
2 six motions.

3 MR. BLOOM: I think it's the third, Your Honor.

4 THE COURT: Okay. All right. Now, are any of these
5 motions dispositive of the other or what order do we want to
6 take them in?

7 MR. BLOOM: Your Honor -- good morning, Simon Bloom on
8 behalf of the plaintiffs. No, they are not dispositive of any
9 of each other and the order in which Your Honor has them down
10 on the roster is certainly adequate.

11 MOTION FOR CONTEMPT:

12 THE COURT: All right. First is the motion for contempt
13 filed by the plaintiff. Let me hear from you on that?

14 MR. BLOOM: Yes, sir. Your Honor, I have a notebook for
15 the Court's reference. May I approach?

16 THE COURT: All right. Thank you.

17 MR. BLOOM: Judge, where is the best place to put this
18 easel so Your Honor can see?

19 THE COURT: Right here in front of me, I guess.

20 MR. BLOOM: That's fine.

21 THE COURT: All right.

22 MR. BLOOM: Thank you, Your Honor, may it please the
23 Court. Like I said during the announcement, my name is Simon
24 Bloom and I have the honor and pleasure of representing
25 Gulfstream Inc. We are here on our motion for contempt of

1 this Court's order.

2 Your Honor, there is no more important function in the
3 administration of justice than to ensure that their orders are
4 obeyed. That's a per curiam opinion under *State vs.*
5 *Bevilacqua* from 1994 from the Supreme Court. There, in this
6 case, has been a clear, willful, intentional, undisputed
7 violation of this Court's injunction, which was entered
8 December 5th, 2016, prohibiting the defendants from
9 interfering with my client's easement rights over their
10 neighbors' parking lot. The neighbors are the defendants in
11 this case.

12 There has been some concern expressed by Your Honor in
13 prior hearings about the importance of parking and the
14 importance of this apparent neighbor blood feud, if you will.
15 This restaurant cannot operate without parking. The only
16 parking that it has besides a very few spots that are on its
17 property are the spots that are provided by this easement that
18 was entered in 1984 between the predecessor owner of the
19 servient estate. Your Honor entered an order after -- Your
20 Honor first entered and Your Honor may, if you'd like to
21 refresh your recollection, I provided a notebook that contains
22 the salient documents, the first of which is your November
23 17th, ex parte TRO, which enjoins and prohibits the defendants
24 from interfering with our easement. And then Your Honor may
25 recall in December on December 5th, 2016, Your Honor had an

1 evidentiary hearing whereby the merits for an injunction were
2 argued by my colleague, Mr. Redmond, for the plaintiffs and by
3 Ms. Golding for the defendants, where Your Honor held that the
4 injunction -- the injunctive relief was to be granted and Your
5 Honor may recall that you gave them a little carve out of four
6 days to, to sink pilings to start their construction of their
7 redevelopment project. And I'll go into as many facts as Your
8 Honor wishes to refresh Your Honor's recollection about the
9 case.

10 THE COURT: I recall all of this case to ad nauseam. I
11 can tell you that. Go ahead.

12 MR. BLOOM: And I will not -- I will nauseate anymore.

13 THE COURT: All right.

14 MR. BLOOM: Other than to say, we are here on this
15 injunction and a clear violation of the injunction. You've
16 got the TRO in November; you said don't interfere with the
17 easement. You entered a December 5th, 2016 order, a Form 4
18 Order, as well as, email to Mr. Redmond that says don't
19 interfere with the easement but you can have four days to do
20 your pilings.

21 Form 4, email, and then we provided Your Honor with a
22 more formal order. And in that order, Your Honor entered just
23 this last month, a seven or eight-page order, which is
24 contained here as the August 25th order that Your Honor
25 signed.

1 THE COURT: All right.

2 MR. BLOOM: And most importantly about that order, not
3 only does it say don't interfere with the easement, it also
4 says on the last page that there was some delay in getting it
5 signed and the Court said that it is so ordered by this Court
6 on December 5th, 2016, notwithstanding the Court's failure to
7 sign this order until August 24th, 2017. Nunc pro tunc, I
8 think is the Latin, but Your Honor clearly made this more
9 formal order effective back in December 5, 2016.

10 The reason I go through this a little bit more
11 exhaustively than otherwise is because there's been some
12 contention in the defendants' papers that there was no order
13 in place, which is a specious argument to say the least. TRO
14 November, Form 4 order December 5th, email saying I want the
15 rest of it to read like this December 7th, and then an order
16 that says this is effective back to December 5th. That should
17 dispose of that silly argument.

18 The order is very clear, don't interfere with the parking
19 access, parking access and other easement rights that are
20 contained in that easement for the benefit of my client, the
21 plaintiffs. It couldn't have been any clearer. Your Honor
22 entered that order, and so let's turn to the violations.

23 There are three categories of violations, Your Honor,
24 that need to be dealt with. The first category is this
25 fishing tournament. And Your Honor may have become familiar

1 with the papers in that regard, but the defendants host a
2 fishing tournament every year and the fishing tournament -- in
3 conjunction with the fishing tournament, they put up this big
4 tent, this big tent in the parking lot, they have boats, like
5 display boats on trailers in the parking lot, they have
6 vendors with their own tents in the parking lot; it's a big
7 deal and they basically take up most, if not all, of the
8 parking lot. This is a problem because if you take up 75
9 percent of the parking lot, that eliminates 75 percent of our
10 parking spaces.

11 THE COURT: But now, they've been doing that fishing
12 tournament for a number of years, correct?

13 MR. BLOOM: Yes, they have.

14 THE COURT: All right. And your client has never
15 objected to it until this construction incident came up,
16 correct?

17 MR. BLOOM: Not exactly. Number one, they -- we have to
18 be specific -- these folks that own that property have not
19 been doing it for 30 years; they've only owned the property
20 since 2014. So, their predecessors had been doing the
21 tournament for a very long time. Yes, our clients had
22 cooperated with the prior owners for a very long time to try
23 to work together to the, the imposition of the tournament less
24 burdensome, yes.

25 Next, the easement hasn't been amended. The statute of

1 frauds requires an amendment to the easement. Verbal consent
2 does not allow them to amend the easement and the commonsense
3 point, Your Honor, is getting to is, why all of a sudden is
4 this a problem? It's a problem because they started
5 constructing a redevelopment project on the property, put up
6 construction fences, required us to run down here and get an
7 ex parte TRO and sue them.

8 THE COURT: All right. Okay.

9 MR. BLOOM: That is a game changer, Your Honor.

10 THE COURT: Okay.

11 MR. BLOOM: And the legal implications of that should be
12 clear. It doesn't matter whether I told him they could jump
13 off my roof for 30 years unless and until there's a legal
14 modification of the rights, one party vis-a-vis the other; it
15 doesn't matter whether it's good neighboring or bad
16 neighboring is irrelevant. Once we had to file a lawsuit, the
17 good neighboring concept goes right out the window.

18 So, the first category of these infringements and
19 violations of Your Honor's order is the fishing tournament.
20 They took -- they took and put up tents for two separate
21 weekends. They conducted the fishing tournament in our
22 parking lot. They had boats on display, vendor tents, tons of
23 folks. I think I read somewhere that there were 100 boats in
24 these fishing tournaments. So, therefore, you can extrapolate
25 on your own, Your Honor, how many folks are associated with a

1 100 boats.

2 This happened on two separate weekends in May. I believe
3 it's the weekend of May 10th and the weekends of May 17th.
4 They are four days each, each weekend. The first weekend they
5 started to set up, the weather was bad, they postponed the
6 tournament to the following weekend. They reset up again, put
7 all the stuff in the parking lot, blocked 75 percent of the
8 parking lot.

9 This is an interesting parallel to the -- to the case we
10 offered in our papers of *Jennings v. Jennings*. This was a
11 criminal contempt case. The cite is contained in our papers.
12 The Court in that case found criminal contempt, fined -- this
13 was a 1943 case, Your Honor. Strike that, this was a 1919
14 case. It was an old case. It's all still good law. The
15 Court said, I'm gonna fine you \$20 or 15 days in jail. What
16 was happening there, there was a fence on the plaintiffs
17 property, had a gate on the fence where there was a road that
18 went through it, and said I want to have the gate there but I
19 don't want anybody to leave the gate open, because if you
20 leave the gate open all the animals will come in and eat my
21 crops. The neighbor left the gate open. The Court found that
22 that was in violation of its order saying don't interfere with
23 the gate and with the road, and hit him with a \$20 fine and,
24 and -- and/or jail.

25 In this case, you've got a very similar clear ordinance

1 that says don't interfere with their parking. And yet, after
2 three or four letters, weeks earlier from my law firm that
3 said, hey, we understand you guys are gonna do a tournament --
4 fishing tournament, we've seen it on your website or social
5 media. You can't interfere with our parking. There's an
6 order from Judge Culbertson that says, don't interfere with
7 our parking. We got rigmarole back and forth, lawyer letter
8 exchange and what not, but they said they were gonna do it
9 anyway and they did it anyway. We gave them opportunity after
10 opportunity to come to the table and try to negotiate
11 something that would be neighborly, but we said in the end,
12 you can't park -- you can't interfere with our parking rights
13 on that easement, number one, because of the easement; more
14 importantly, because there's an order in place, which is
15 distinguishable from all the cases that they offer. They try
16 to impose some reasonableness condition, that the interference
17 must be unreasonable. That would be true if we were proving the
18 underlying count of interference with an easement, but that's
19 not what I'm here to do. I'm here to show that they violated
20 a court order that said, don't interfere with the easement.
21 So, there is no reasonableness element.

22 If Your Honor wanted to say don't unreasonably interfere
23 with the easement, Your Honor could've said so. But in three
24 separate opportunities, Your Honor said, don't interfere with
25 the easement. That's the first category.

1 Second category is -- is a sillier category, but it is
2 just as problematic, and that is like any other restaurant
3 owner that's on the water and not saltwater, we need to have
4 our windows washed ever once in a while. So, we have a window
5 washer that we contract with that comes down, and this time it
6 was in May of this year, to wash the windows. We go -- that
7 contractor has to go back behind the restaurant, which is on
8 the water side on the north side, to wash the windows. Well,
9 darned if our good neighbors didn't call the sheriff down
10 there and say, sheriff, they're trespassing on my property,
11 kick them off, and kicked them off the property. They didn't
12 do it once; they did it twice because we had someone --
13 because saltwater is not real good on paint. They had -- in
14 June, they had -- we had a painter up there painting the
15 outside of the restaurant. They called the sheriff again and
16 had the sheriff kick them off the property again and told them
17 they were -- excuse me -- trespassing and, and violating
18 whatever criminal ordinance they could come up with.

19 So, this precisely the type of interference that the
20 Court prohibits them from doing with an order that says, don't
21 interfere with their parking, don't interfere with their
22 maintenance, don't interfere with their ability to improve
23 their own property. And Your Honor says, where is that
24 contained? Your Honor, if you look through my notebook,
25 you'll come to the easement section. There's a tab called the

1 survey of the easement. This is -- this is important, so I
2 want to take just a minute to do it, to go through it with
3 you. There's a section that says survey of the easement; it's
4 got some yellow and green. If Your Honor can see, the orange
5 shows their property, the neighbors -- the defendants'
6 property, and the easement is over all of their property,
7 which is Lot 5, and you'll see some orange that goes down the
8 left side of the page, that's behind our building. That's
9 where the window washers and the painters were. So, it was,
10 yes, on property that they owned but it was on property over
11 which we had an easement.

12 THE COURT: For parking?

13 MR. BLOOM: Not just -- I appreciate you saying that.
14 Segue to the next point. The next tab contains the easement
15 language. The easement language, not only gives us an
16 easement for parking, but also on Page 2, which is both 382,
17 Page 218, allows us with right to vehicular parking on and
18 vehicular and pedestrian access, too, all in accordance with
19 all governmental rules, regulations, ordinances or laws, the
20 premises of the grantor hereinafter described, and also for
21 the purpose of maintenance, repair, alteration and/or
22 improvements of the grantee's hereinafter described property.

23 This is game, second match for the defendants, Your
24 Honor. They are intentionally, willfully, ignoring not only
25 the easement, which is recorded and been in place for over 30

1 years, but they're also ignoring and defying Your Honor's
2 Order, which says, don't interfere with the easement rights.

3 The third category, the violation of Your Honor's order.

4 For some reason and this is not disputed, Dr. Lawhon or Mr.

5 Lawhon or whomever on the defendant's side, put cones in

6 various parking spaces in the parking lot, prohibiting people

7 from parking there. Again, what don't they understand about

8 Your Honor's order that says, don't interfere with the

9 easement rights, including the parking. And those pictures,

10 Your Honor, that show the various violations. You've got,

11 starting with the May 2017, have the photos of the tent going

12 up, then you've got the survey of the easement, the easement

13 language, and then you've got the photos, the last tab is the

14 photos of the cones. And so, Your Honor should have the

15 complete picture now, figuratively and literally, of the three

16 types of violations of your Court's order. An accidental

17 mistake or an accidental violation of your order, we wouldn't

18 be standing here. But repeated violations of the order -- I

19 mean, how does that conversation go between lawyer and client.

20 We're gonna have this fishing tournament. Well, but the order

21 says you can't interfere with the parking. Well, I don't care

22 what the order has to say. How does that go? There is a

23 clear order in place, everybody knows about and has known

24 about for almost a year that says don't interfere with the

25 parking easement, with the easement, period. And yet, they do

1 so anyhow. We didn't have to give them notice that they were
2 gonna violate the order, but we did so anyway. Not once, not
3 twice, but four or five times that said, don't do this; you're
4 going to violate the order.

5 It's even more surprising, when I read back through the
6 -- I wasn't here for your hearing, Your Honor, December 5th of
7 last year. But Your Honor says on Pages 41 and 54, you
8 admonish the defendants. You say, one of you, you being the
9 defendants or plaintiffs, aren't telling me the truth; you
10 said this. And you say, you know that your remedy is to come
11 back here for contempt. Your Honor had contempt on the mind
12 back in December of 2016 and you actually used the words and
13 told these parties, watch your step. And yet, still with that
14 admonition from the bench, with four or five letters from me,
15 with the orders, three different types of -- three iterations
16 of the same order and the easement itself, they still commit
17 these various violations in clear defiance of Your Honor's
18 order, which apparently runs in the family. Because in three
19 different, three motions from now, you're gonna hear another
20 motion argued by Mr. Redmond, that is about Dr. Lawhon's son
21 and his entities clear refusal to honor Your Honor's order to
22 produce documents. You're gonna hear about a motion for
23 contempt where Your Honor enters an order that says yeah,
24 produce the stuff, and they still don't produce the stuff.
25 So, we've had to file another motion for contempt. At some

1 point, I don't know what it's gonna take from the bench to
2 rectify this clear flouting of this Court's authority. But I
3 have an idea what it might take and so let's talk about the
4 remedy.

5 We've talked about several cases contained in our papers
6 that condone, authorize, empower, a Circuit Court Trial Judge
7 to have pretty wide discretion over the types of contempt and
8 the types of remedies that the Court can order. And, Your
9 Honor, not telling you anything you don't already know. You
10 have wide discretion over this. You can include fines,
11 attorneys' fees, payments of compensation to the other side,
12 and incarceration. And all of those -- I should say, in
13 addition to that, you can also address their pleadings and
14 striking answers on -- obviously that's a discovery remedy,
15 but it's an available remedy for the Court. So, what are the
16 things that really hurt a litigant? Those are the things.
17 Those are all on the table for this matter. Again, if this
18 was some accidental, I just stumbled over into your parking or
19 I left a car there, it was -- the battery was dead too long
20 and took a -- that's one thing. That's not what we have here.
21 We have willful, intentional violations of Your Honor's order.

22 So, this restaurant has roughly \$70,000 of sales a week
23 on the conservative side. So, there is some basis for the
24 numbers I'm about to offer. But, Your Honor, in order to
25 remedy, both remedy, deter, and punish, all three, we suggest

1 that the Court enter an order requiring the defendants,
2 jointly and severally, to pay to the plaintiffs \$40,000. That
3 breakdown -- breaks down as follows. \$10,000 for the cones,
4 which took parking spaces for two whole weeks in August;
5 \$5,000 each for the painting -- the painter incident and the
6 window washer incident -- so, now we're at 20,000 -- and then
7 10,000 for each weekend of the tents and the boats and the
8 vendor tents and the fishing tournament, which totals up to
9 \$40,000. So, \$40,000 in a remedial payment from defendants to
10 the plaintiff.

11 Second element of the remedy is and it needs to be that
12 or 21 days in jail, with 14 to serve, the seven on the backend
13 would be suspended if assuming good behavior; 14 to serve,
14 seven on the backend suspended for good behavior. So, it's
15 one of those or the other; Your Honor cannot order both.

16 THE COURT: I'm assuming you are asking that the
17 incarceration be J. Mark Lawhon?

18 MR. BLOOM: Yes, sir.

19 THE COURT: Okay. All right. Go ahead.

20 MR. BLOOM: So, you've got 40 grand or -- Your Honor
21 can't do both; it's got to be either the remedial payment or
22 the jail time. And then, once you've picked one of those, and
23 then the award of the attorneys' fees that we've had to incur,
24 that my client's incurred in the amount of \$34,000 for my firm
25 and \$3,000 for Mr. Redmond's firm for having to deal with this

1 -- this nonsense for the past 10 months.

2 THE COURT: So, a total of 37,000?

3 MR. BLOOM: Yes, sir.

4 THE COURT: Okay.

5 MR. BLOOM: We have -- we have supplied the Court with an
6 affidavit from me attaching our invoices. We keep detailed
7 invoices of every time entry with a narrative. It has some
8 redactions for attorney/client privilege materials, but that
9 has been submitted and filed with the Court and served on the
10 other side. I'm happy to speak about any and all of those
11 entries at Your Honor's leisure. Hopefully, that won't be
12 necessary, but this is not a small deal; this is not an
13 accidental, oops, I made a mistake. If it was one thing, I
14 can understand that. And I know Your Honor deals with folks
15 not always listening to your orders, but this is a repeated
16 practice by these defendants to ignore and flout and openly
17 disregard Your Honor's order, prohibiting them from
18 interfering with our easement. As a result, I ask the Court
19 to find the defendants in civil or criminal contempt, you can
20 do either, and to provide the remedies that I have laid out;
21 \$40,000, joint severally liable of the defendants to be paid
22 to the plaintiffs, or 21 with 14 to serve, and attorneys' fees
23 of \$37,000.

24 In reading these cases, I read -- I read another, what I
25 thought was a pretty insightful quote. In the *Griffin Grading*

1 case, Judge Stilwell says, the orders of the trial court are
2 not Shakespearean in nature: full of sound and fury signifying
3 nothing. I ask the Court to honor that and to award the
4 remedies I've asked.

5 THE COURT: All right.

6 Ms. Golding?

7 MS. GOLDING: Thank you, Your Honor. First of all, Your
8 Honor, I'm going to address the legal matters with respect to
9 whether or not there was an order in existence and then I'm
10 going to go into the real facts.

11 Unfortunately, what was presented to you, there were
12 false facts presented to you that was not based upon any
13 affidavit presented to this Court today. And I wanted to
14 advise the Court of that misstatement of facts that was just
15 presented to you.

16 Your Honor, with regard to the contempt issue, the
17 primary issue this Court has to determine, is was there an
18 order in existence. You issued a temporary restraining order
19 in November. That was extended until December 5, 2016. So,
20 on December 5, 2016, the order issued by this Court expired.
21 We then had the hearing on December 5. During that hearing
22 and at the end of the hearing, you ordered, you directed, you
23 made a ruling directing a preparation of a proposed order.
24 Your Honor, that was a ruling. You then issued a Form 4. The
25 Form 4, specifically directed Mr. Redmond to provide the

1 proposed order. That Form 4, did not set forth any facts, did
2 not set forth any basis for the TRO that is required by Rule
3 65. So, the Form 4 cannot be considered as an order of this
4 Court restraining, because it did not comply with Rule 65.

5 THE COURT: So, there was no restraining order in effect
6 or no injunction from December ---

7 MS. GOLDING: There was no injunction. However ---

8 THE COURT: So, whenever a Court issues an injunction
9 from the bench, it does not go into effect until an order is
10 signed?

11 MS. GOLDING: That's correct. That is the law in South
12 Carolina. Primarily, it is *Bayne v. Bass*, and I have that
13 cited in our memorandum.

14 THE COURT: Yes.

15 MS. GOLDING: And in the memorandum ---

16 THE COURT: So, if I tell your client right now going out
17 the door, don't do this, that's unenforceable until I sign an
18 order that tells him don't do this?

19 MS. GOLDING: For a temporary restrain -- for a
20 restraining order in this case, yes, sir.

21 THE COURT: I disagree with that.

22 MS. GOLDING: No, sir, Your Honor. Please ---

23 THE COURT: I understand your argument, but if I order it
24 from the bench, it is an order.

25 MS. GOLDING: Right.

1 THE COURT: Now, I formalize it with a written order, but
2 if I tell a party not to do something, they can't go out and
3 do it just because I have not signed an order.

4 MS. GOLDING: Yes, sir, Your Honor. Your Honor, and the
5 defendants did not violate your oral ruling.

6 THE COURT: All right. Well, move on to that, but don't
7 say that there was no injunction in place.

8 MS. GOLDING: I have to, Your Honor, because that's the
9 case law in South Carolina.

10 THE COURT: So, you're saying that from the time I said
11 that there was an injunction in place until I signed that
12 order, there was no injunction in place, even though I had
13 ordered that from the bench?

14 MR. GOLDING: That's correct, Your Honor.

15 THE COURT: Okay. Well, I disagree with that.

16 MS. GOLDING: Right. And I'll just cite you, I have the
17 cases cited. There are a number of cases in the memorandum I
18 presented, but one is *Bayne v. Bass* and it specifically
19 states, until in writing and filed with the Court, it is of no
20 effect. It must be reduced to writing, it must be signed by
21 the Judge, must be recorded.

22 Aside from that, Your Honor, the defendants have abided
23 by your oral ruling. We have stopped -- we stopped
24 construction. We have not used any portion of the parking lot
25 for construction. The whole impetus behind the plaintiff was

1 to stop construction of a restaurant because it was a
2 competition. We stopped construction of the restaurant; we
3 have not used any portion of that parking lot for any
4 construction whatsoever.

5 With respect to the fishing tournament, Your Honor, that
6 was in May and we have another one in October. Those May
7 fishing tournaments, October fishing tournaments have been
8 going on for over 30 years, Your Honor. At the hearing on
9 December 5, Mr. Redmond told the Court, on Page 12 of the
10 transcript, now, 20 -- 28 of the years there has been
11 cooperation. There has been fishing tournaments taking up
12 Thursday through Sunday. I've seen the Facebook posts. A
13 section of the parking lot is blocked off for a long time and
14 everyone works around that. That was stated by Mr. Redmond on
15 the December 5, 2017. With respect to the fishing tournament
16 in May that occurred, Your Honor, the May fishing tournament,
17 there was on May 20, which is a -- which was a Saturday, May
18 20 from 8:30 to May 21, the Sunday, there were seven -- excuse
19 me -- there were 12 parking spaces blocked with a tent, only
20 twelve. This gentleman here told the Court there was 75
21 percent. That is inaccurate and there is no affidavit that
22 states that at all. There was only 10 to 12 spaces that were
23 used for the tent.

24 The first day of the tournament was May 11. There were
25 12 parking places that were used. May 11 was a Thursday. The

1 tent came down the next day, Friday morning. Then on May 20,
2 the tent went up, came down the next day. The affidavits
3 reference or state that the tent went up on Mother's Day. No,
4 it was not up at all on Mother's Day; it was not up on any
5 holiday. In May, we had a tent up two different times for 21
6 hours, taking 12 spaces out of the 66 that are available.
7 And, Your Honor, all that is in affidavits before the Court.
8 The Gulfstream has always, as set forth in the affidavits of
9 Mark Lawhon, the Gulfstream, since Mr. Lawhon became an owner
10 through Palmetto, has been involved in the golf tournament.
11 Never objected. They have provided the buffet line, they
12 provided electricity. It has never been a problem. These are
13 golf tournaments that have been going on for 30 years. We
14 have the affidavit of Pat Henry, Your Honor, who is the
15 president of the Marlin Quay Marina Association. The Marina
16 Association has all the -- the owners of all the boats are
17 members of the Marina Association. The Marina Association is
18 not part of the defendants. That is completely different.
19 And Pat Henry, an attorney in Conway, is president of that.
20 He, in his affidavit, states that these tournaments in May and
21 October have been going on for over 30 years.

22 THE COURT: Okay. You're saying golf tournaments, but
23 they're fishing tournaments?

24 MS. GOLDING: I'm sorry, yeah, fishing tournaments have
25 been going on for over 30 years.

1 THE COURT: And you're saying that the defendant doesn't
2 have anything to do with those; it's the Marlin Quay.

3 MS. GOLDING: On, no, sir, we do. We put up the tent.

4 THE COURT: Okay. You put up the tent.

5 MS. GOLDING: Yes, sir, we do.

6 THE COURT: I gotcha.

7 MS. GOLDING: And we are the sponsor of the fishing
8 tournament. But the gentlemen over here said there were 100
9 boats; we don't have anything to do -- the hundred boats are
10 in the marina, Your Honor, and that's by boat slips and that's
11 governed -- that's dictated by the Marina Association.

12 With respect to the tournament, we are the sponsors as
13 are -- in the affidavits, we have -- we show there's probably
14 20, 25 sponsors. There's banks, there's fishing gears and
15 things of that nature. And the tournament, all the money, the
16 proceeds from the tournament go to a charity and the charity
17 has been the Garden City Chapel. The charity in this October
18 tournament is the Garden City Chapel. The proceeds from the
19 sale of hamburgers and hot dogs, the, the net after and the
20 proceeds from the fishing tournament, and that's been the
21 charity. And for 30 years, Your Honor, these tournaments have
22 been held, they've had no issues or problems and they would
23 take up 12 parking spaces. So, that's with respect to the
24 fishing tournaments and we've had one -- the fishing
25 tournament that was in May -- and technically, it was May 11

1 for 24 hours and May 20 for 24 hours.

2 Then with respect to the cones, Your Honor, the
3 affidavits we presented the cones, Your Honor, there were
4 three cones. I got a letter August 25 from Plaintiff's
5 counsel. That's Friday on August 25, complaining of the
6 cones. On August 26, the next day, two of the cones were
7 gone. The cones were put up simply because -- to assist the
8 traffic flow, because people were going in the traffic flow
9 area and causing disturbances. The cones were not on a
10 designated parking place. So, we took two cones away, Your
11 Honor, and the third cone still is there today because it
12 marks the area where there is a metal cap over a gas tank that
13 is in need of repair. It is a danger. So, that cone is still
14 there over that metal gas cap. This is all in the affidavits,
15 Your Honor, we presented to the Court.

16 That metal cap, if cars and trucks drive over it, will
17 fall in. So, we have that cone there. We're getting that
18 repaired in November, Your Honor. It will take two weeks.
19 The parking lot area has to be excavated, the cement up.

20 So, Your Honor, I just can't believe that the plaintiff
21 is bringing this matter up about the cones. I got the letter
22 on August 25. We removed two of the cones the next week. I
23 sent Monday, the letter to Plaintiff's counsel saying we've
24 removed the two cones. I gave them the reasons why, just with
25 traffic flow and that one cone had to remain because of the

1 safety of people in their vehicles. I'm just apologizing to
2 this Court. I think it's absolutely ridiculous that the
3 plaintiff has brought that up.

4 The issue with respect to the windows, Your Honor, there
5 was a misunderstanding but it didn't affect the parking lot,
6 and that occurred and it will not occur again. The
7 misunderstanding with respect because the window -- they were
8 using our property to, not park or anything of that nature,
9 but they had some outside storage area that is on our
10 property, which is part of the lawsuit that we're seeking
11 removal, and they were using the outside storage shed, which
12 is on our property, which shouldn't be there, and we're
13 seeking that removal. And so, we apologize, Your Honor, but
14 at that point in time, it was understood that outside storage
15 area was not part of the plaintiff's easement area.

16 So, Your Honor, with regard to the facts, the cones, did
17 this attorney stand up and tell you there were just three
18 cones? Did he stand up and tell you that August 25, I got a
19 letter that very day and the cones were removed the next day,
20 except for one? Did he tell you that one cone has to be there
21 for safety? No. Did he tell you -- he told the Court that 75
22 percent of the parking lot was being blocked by the tents.
23 That is inaccurate. There is nothing in any affidavit, other
24 than 10 to 12 parking lots are used for a short period of time
25 for the tents. That's the only evidence before the Court.

1 Nothing about 75 percent.

2 Then he goes into the remedies. He said \$40,000 in,
3 excuse me, I think he said \$70,000 of sales a week and
4 conservative. Your Honor, there is nothing in the evidence,
5 nothing has been presented in any affidavit. In fact, Your
6 Honor, the affidavits presented by the plaintiff, say nothing
7 about any monetary damages whatsoever.

8 The bottom line is, Your Honor, the, the Order that you
9 issued in December related to construction. The fishing
10 tournaments have been going on for 30-plus year. The
11 defendant -- the plaintiffs, for at least three years, had
12 been cooperative with the defendants that bought the property
13 and never have objected to the fishing tournaments.

14 In closing, Your Honor, the evidence is clear. We have
15 not intentionally violated any court order. We have abided by
16 your court order and we have not intentionally violated it.
17 In fact, the very opposite, we have stayed away, we have
18 attempted to at all times, not complain about Gulfstream. We
19 have many issues with Gulfstream. They have a sign taking up
20 a parking lot; they have a shed taking part of the parking
21 lot; they have trucks all the time that park in areas that
22 aren't in any parking spaces, but those are issues we're going
23 to present at the trial of this case. And I think that's when
24 the issue should be presented. Thank you, Your Honor.

25 THE COURT: All right. Anything in reply?

1 MR. BLOOM: Yes, please, Your Honor. Please don't take
2 it from me about what the facts are. It's a lot easier,
3 simply to look at the record, which is why I've provided Your
4 Honor with this notebook. Your Honor is 100 percent right and
5 I listened really hard for Ms. Golding's description of what
6 the elements of an enforceable order in *Bayne v. Bass*;
7 recorded -- I'm sorry -- reduced to writing, signed, and
8 recorded. Just look at the tab where your Form 4 is, Your
9 Honor. Your Form 4 is reduced to writing, it says in the
10 middle, order information, motion for temporary injunction is
11 granted. Attorney Redmond is to prepare a formal order. So,
12 that's number two, element satisfied. And on the next page
13 Your Honor signed it. And on the first page, I highlighted
14 where it was filed and recorded. So, even under her own case
15 of *Bayne v. Bass*, you have an enforceable order in place when
16 Your Honor issued the Form 4.

17 Second, there is nowhere, nowhere in any of the three
18 orders, the TRO, the Form 4 or Your Honor's more detailed
19 formal order entered in August, effective December, that
20 limits the prohibition to construction activities. Nowhere,
21 it doesn't exist in the language of the order. Everybody that
22 can read knows that and should know it, and I would hate to
23 represent anything to the contrary to this Court, because it's
24 in black and white. The motivations, goals, intent have
25 nothing to do with what the black and white on the page says.

1 It says, do not interfere with the easement rights. It
2 doesn't say, don't interfere by doing construction activities;
3 it says, don't interfere.

4 Next, 30 years cooperation is all irrelevant. It simply
5 does not have any legal effect on whether they violated the
6 Order.

7 Next, the cones, don't take my word for it, just look at
8 the tab that says photos of cones. Ms. Golding had the
9 audacity to say that it doesn't take up a parking space; look
10 at the first picture. It's two cones in a parking space.
11 Don't listen to me, just look at the evidence, which was all
12 competent evidence admitted through affidavit and
13 authenticated through affidavit. I guess they admit that they
14 violated Your Honor's order with respect to the painter and
15 the window washer. It has nothing to do with sheds or storage
16 houses; it has to do with this neighbor getting ticked off
17 about whatever was going on between he and his other neighbor
18 and calling the police, because some innocent vendor was up on
19 a ladder, cleaning the windows. Just think about that. The
20 sheriff shows up and comes up to that poor vendor and says,
21 you got to get out of here. That's neighborly conduct?
22 That's an innocent infringement or violation of the order?
23 No, it was done intentionally; it was done to harass the
24 plaintiffs; it was done to strut their stuff about the
25 easement and an easement that they now admit, apparently they

1 hadn't read very carefully, because it clearly, on the second
2 page, says that we may use that easement to maintain and
3 improve our property. They've admitted to these violations. I
4 don't care if it was 10 parking spaces or 20 parking spaces
5 for three days or one day or eight hours, the order says, do
6 not interfere with the easement. It is that clear. It is as
7 clear as if you in a domestic case Your Honor said, Jimmy, you
8 need to pay \$50 to Mary by tomorrow at 5:00 P.M. And the
9 violation is just as grotesque in this case, if not more,
10 especially when they involve getting the sheriff to come
11 harass vendors.

12 All the statutory case law requirements for Your Honor to
13 find civil or criminal contempt have been met. They've been
14 met in spades and they've been met, not just with one
15 violation but with three categories of multiple day
16 violations, and we iterate our request.

17 Thank you.

18 RULING OF THE COURT:

19 THE COURT: All right. All right. I find my ruling is
20 that the defendant is in contempt of court for violation of
21 the order. The fishing tournament, yes, he took up too many
22 parking spaces, but I'm not gonna issue any sanctions for the
23 fishing tournament. It had been in effect so long. I find
24 that there is no contempt for placing the cones. I've looked
25 at the pictures. It looks like it is a half of a parking

1 space and the other one is covering something. The window
2 washers, I find that that is a willful violation of the
3 Court's order. I'm gonna order that the -- all right.

4 The defendant, J.M. Lawhon is sentenced to 30 days or
5 payment of a fine in the amount of \$3,000. He can serve the
6 30 days on the weekend commencing 5 o'clock P.M. on October
7 13th, or he can pay the \$3,000 fine to the Clerk of Court by
8 12 o'clock noon on October 13th. So, by October 13th, 12
9 o'clock noon, he has to pay the \$3,000 plus any applicable
10 costs and surcharges that go with that to the Clerk of Court
11 or report to the Georgetown County Detention Center at 5
12 o'clock P.M. to serve a 30-day sentence, or he can serve it on
13 the weekends from Friday to Sunday. All right?

14 MR. BLOOM: Your Honor, with the matter of attorney's
15 fees?

16 THE COURT: No, I'm not gonna award any attorney's fees.

17 All right. So, that's contempt for the fishing
18 tournament, contempt for the window washer, no sanctions for
19 the fishing tournament, sanctions for the window washer, no
20 contempt for the cones.

21 All right. Now, let's see, next we have a motion to
22 compel by the plaintiff.

23 MOTION TO COMPEL:

24 MR. REDMOND: That is correct, Your Honor. We have two
25 motions to compel. Mr. Bloom spoke of a motion, another

1 motion for contempt that has been filed against Mr. Chris
2 Lawhon. That is pending, but not scheduled to be heard today.
3 The next two motions are motions for contempt that I had
4 filed.

5 THE COURT: Motions to compel.

6 MR. REDMOND: I'm sorry. I'm sorry. Motions to compel
7 that we have filed in regard to discovery. I apologize to the
8 Court for being here on a discovery motion. I can assure you,
9 it was not my choice. I'm going to speak just a little bit
10 about the discovery practices that we've had to endure. We
11 believe it is discovery abuse. Now, this action began back in
12 November of last year with a -- the fencing going up. We were
13 over here to get a TRO from Your Honor, but we did not know
14 what the plans were. We had no idea; we hadn't seen them
15 before. So, I sent a subpoena over to Mr. Goggins, the
16 architect for SGA Architecture, and that was done on the 17th
17 of November last year.

18 MS. GOLDING: Your Honor, may I ask the Court if -- I'm
19 sorry to interrupt, but is this the motion to compel involving
20 Georgetown County?

21 MR. REDMOND: No, that one is number three on my list.

22 MS. GOLDING: Okay.

23 MR. REDMOND: This is a motion to compel against the
24 defendants in regard to a request for production of
25 interrogatories.

1 MS. GOLDING: Okay. And, Your Honor, Mr. Redmond stated
2 at the beginning that there was another motion for contempt.
3 That is not in this case at all.

4 MR. REDMOND: Yes, it is. Yes, ma'am. But that's not
5 scheduled to be heard today, regardless. We're here talking
6 about -- we're here to talk about our motion to compel
7 discovery responses from the defendants in regard to the
8 interrogatories and requests for production that we issued in
9 January and February of this year.

10 THE COURT: All right. Tell me what you requested and
11 what they have not complied with?

12 MR. REDMOND: I do have a cheat sheet here that I wrote
13 as soon as we received their initial responses. I have an
14 email -- back talking about the subpoena that was issued to
15 Mr. Goggins, we received -- we discovered an email which said,
16 my attorney has sent you a copy of an objection, Mr. Goggins,
17 it will take the Judge two months to hear that, don't produce
18 any documents. So, in that case, the hearing was scheduled on
19 the 26th of this year and the documents were produced on the
20 25th, the day before.

21 Now, we served discovery January and February and that --
22 depositions were set to be taken and they -- the documents
23 weren't produced until we filed a motion to compel and then,
24 the day after that motion was filed, again documents are
25 finally produced. About 3,300 pages were produced in April of

1 that year. So, we moved -- we had moved for con -- to compel
2 complete responses. We have received nothing. We also moved
3 -- there was a deposition pending and counsel was insisting
4 upon a deposition, so we moved for a protective order and to
5 quash that deposition until we received discovery. That day
6 we received the 3300 pages. And I looked at -- there was an
7 email exchange and I followed up with a formal letter, so that
8 we could walk through just exactly what the issues were in
9 short order.

10 The first issue, and there was no response to this letter
11 of May 16 until this week, nothing. I said we have these
12 issues; we have these issues, please address them so that we
13 don't have to bother the Court. Nothing until last Friday,
14 September 22nd, these documents arrived. And so, I got to
15 cuddle up with them and try to review them in short order and
16 represent to the Court whether or not these requests were --
17 requests for clarification were satisfied or not. They were
18 not. And this is the pertinent reason. We asked for
19 correspondence going back and forth. They produced about 700
20 pages of emails previously. Those emails, when I wrote to Ms.
21 Golding, said they're illegible. They were printed so there
22 are white lines through them, and I can show Your Honor if you
23 would like. They also -- there were some of them that were
24 omitted. There were blank pages that were unexplained. There
25 were attachments which were not attached. So, I wrote all --

1 that was our problem with those emails. This, all but the 30
2 pages at the bottom, is emails. They were apparently
3 transmitted to Ms. Golding's office and her secretary printed
4 them out very nicely on 8 1/2 by 10 pages. And the
5 attachments are printed also. So, it took care of those
6 issues. But it was -- so, it was essentially the same
7 documents again that they had produced before.

8 The problem with it this time, is -- is multiple. First
9 off, you only have to go about two pages in and you see that
10 these documents are shuffled. Meaning there's an email from
11 2015, the next one is an email from 2017, and the next one is
12 an email from 2016. I'm embarrassed to present that to the
13 Court but that goes all the way through all of those documents
14 and it's created a, a, a real trouble for me to figure out
15 what they produced before and what they produced now, but they
16 produced the same thing.

17 Another problem with this is the attachments. These are
18 architectural drawings that are full-sized documents and when
19 they're printed out like this, I cannot read them. No one can
20 read them or see what's going on, and that's why my -- in my
21 May 16th letter, I said, send us them in their native format.
22 Send us the email, that way we will have an electronic PDF
23 file of the documents just like they do -- just like they did
24 in practice every day. When their architect is sending them
25 the large documents, they blow them up and shrink them down,

1 they send them to -- the architect sends them to their
2 clients. The architect sends them to the county that way,
3 email, that's how it's done. So, I said, send them that way.
4 That way I can read them, that way I can get the attachments,
5 that way I can see everything, and it will be so simple for
6 you to do. Instead of that, we have received in their
7 discovery objections are that you already have them or you can
8 go get them. You subpoenaed Mr. Goggins and you subpoenaed
9 the Georgetown County to get the plans and permits and you
10 already got those, so you don't need them from us.

11 Well, the problem with that is that it has been very
12 difficult to get compliance with the -- from Georgetown County
13 and from Mr. Goggins, and it's been very expensive. I've got
14 three checks. I had to pay \$600 to Mr. Goggins, his
15 architects, to get a copy of the plans. I had to pay \$250 for
16 Georgetown County. I've got that check. I don't even have
17 their plans yet. I was supposed to have them a month ago, but
18 I got to go take a check for 250 over to the printers. I've
19 got to pay the McNair Law Firm, who is representing Georgetown
20 County, \$60 for copies of them also. Instead of him just
21 producing the emails. I have to talk about it.

22 Now in the courts, there has been case law that says, if
23 you're objecting on discovery, telling somebody else that they
24 have to go get it somewhere else, that objection has been so
25 widely rejected, that in most instances making it -- and those

1 are -- it's a federal case cite here talking about the same
2 objections. But that's what we're dealing with here and this
3 is what I would like. I would like, as far as the emails, one
4 more problem with them, Your Honor, there is not an email in
5 here past February 15th of this year and that's incredibly
6 important, because the Rule 26 says that these interrogatories
7 and requests for production are deemed to continue from the
8 time of service until the time of trial and they shall be
9 promptly transmitted to the other party. Rule 33 says the
10 same thing. Our instructions in discovery say the same thing.
11 It has never happened. So, there is a plethora of planning,
12 correspondence going back and forth with the county, a permit
13 was sought. We don't know the status of that exactly yet.
14 But all of that has gone on and our discovery requests clearly
15 covered that information.

16 So, what we would like is we would like correspondence,
17 documents, and documents provided to correspondence with
18 plaintiffs, that in any way involves the Marlin Quay Marina
19 Planned Unit Development from the date the defendants owned or
20 acquired the property until the current date. And the same
21 request was sent and to discovery. And so, we would like --
22 the first instance is the emails, all of these emails in their
23 native format with the plans attached so that we can just have
24 them. We would also like, as a matter of sanction on this,
25 from Rule 37, we would like them to pay that thousand dollars

1 that my client had to pay because they said, go get these
2 somewhere else. You already got them from somebody else.
3 That's unfair, unnecessary, and burdens this Court here today
4 because of that request.

5 The next issue is financial information. When they were
6 here in December, they said, Judge, we are gonna be damaged if
7 you enter an injunction and, and they represented a certain
8 amount that they would make per day, and I requested in
9 discovery any proof of that. I wanted complete financial --
10 compiled financial statements, tax returns inclusive of all
11 schedules and worksheets for the years defendants owned and
12 acquired the property interest within the Marlin Quay. And
13 then, any document which would in any way support the
14 allegation that they have suffered \$4,000 in damages today and
15 they have a list, this is their requests -- our requests for
16 production, Number 1, 2, and 3, and Number 3 specifically
17 talks about all the items that they say they've been damaged.
18 We wanted some backup information from that. And we didn't
19 receive anything in April, and on the 22nd, what we received
20 was a -- this is what we received, four pages. I guess this
21 is meant to talk about the financial statements that they're
22 going to provide to us, but it's a three -- four, four pages
23 of a tax return with all but one line marked out. And we
24 don't think that is compliance at all. We think that is
25 unfair and the burden on our client and the Court. We think

1 that compiled financials are required, not individual
2 receipts, and complete tax returns and all the schedules that
3 go with them.

4 The next issue was an issue in regard to maintenance and
5 upkeep of the parking lot. Our client is supposed to pay,
6 pursuant to the easement, half of that. We asked for specific
7 documents which would support the invoice that they sent to
8 us. There are about 20 pages in here, which look like that
9 might've been an attempt to comply with that. There's nothing
10 for this year or 2016 in there, but if they will verify that
11 is all they have or produce that information, that's what we
12 need, Your Honor.

13 THE COURT: Well, what makes you think that that isn't
14 all they have? You asked for it, they gave it to you, and why
15 are you saying that's not all of it?

16 MR. REDMOND: Well, I would just like to know one way or
17 the other whether that's it, because we've been here a year
18 and, if they say that's it, I will accept that that's it.

19 THE COURT: But I mean, why not do that on every single
20 request, when you get it in, say, okay, tell me is that all?
21 I mean, why did you -- why did you pick out the maintenance
22 and upkeep of the parking lot to question whether or not they
23 have turned everything over to you as opposed to other
24 discovery requests?

25 MR. REDMOND: Because, in that case, they sent us a bill,

1 which we cannot -- it's absurdly large and if they ---

2 THE COURT: Oh, a bill from who to who?

3 MR. REDMOND: From the defendant to the plaintiff, to
4 Gulfstream Café.

5 THE COURT: Saying that the plaintiff owes ---

6 MR. REDMOND: \$15,000 as a round number, an example, for
7 the maintenance and upkeep of the parking lot.

8 THE COURT: I see. Okay.

9 MR. REDMOND: We just want to know, have you given us all
10 the invoice and backup information for that because, from what
11 they've produced right now, they haven't and that's our ---

12 THE COURT: So, in other words, you're telling me the
13 plaintiff is responsible for half of the maintenance and
14 upkeep of the parking lot?

15 MR. REDMOND: Yes, yes.

16 THE COURT: They paid that cost to the defendant?

17 MR. REDMOND: They are trying to.

18 THE COURT: Okay.

19 MR. REDMOND: They have tried.

20 THE COURT: The defendant just sent them a blank a bill
21 saying you owe me \$15,000?

22 MR. REDMOND: It was a very large bill and it was not
23 supported, from what we can tell. We paid what we
24 acknowledged as due, and the rest -- my letter to Ms. Golding
25 is I'm holding this money in escrow as part of this lawsuit

1 for the Court to determine how much is owed on this. Until I
2 see some backup documentation or we can resolve this on our
3 own. It's an element of the lawsuit, Your Honor.

4 THE COURT: Okay. So, the bill doesn't itemize ---

5 MR. REDMOND: No.

6 THE COURT: --- what the \$15,000 charges is for?

7 MR. REDMOND: No.

8 THE COURT: Okay.

9 MR. REDMOND: It does not.

10 THE COURT: All right. I follow you. Go ahead.

11 MR. REDMOND: Okay. The next issue is our requests for
12 production as for the list of employees and contractors that
13 have been employed at the -- that the defendants have employed
14 at the facilities for the two-and-a-half, three years that
15 they've been there. Their response was, upon request, we will
16 provide that information. It has not been provided yet.

17 The requests for production, Number 1, of February said
18 -- asked for a copy of all documents provided to or obtained
19 by defendants during the closing of their purchase of the
20 property, and they responded that, that the requested document
21 has been requested and will be provided, and we don't have it
22 -- we don't have it yet.

23 The final item was written in a separate email, it took
24 me a long time to compile the information that we were seeking
25 or to review the information that had been sent to us in

1 regard to there's a request for telephone/cell phone records
2 and written or electronic communications, text messages and
3 emails were requested. In response to the text messages, no
4 copies of any text messages were sent from the defendants'
5 side whatsoever. Although we know they frequently communicate
6 that way, instead we have over a thousand pages of documents,
7 which I discussed or raised with Ms. Golding in my letter, of
8 -- of calls, ingoing, outgoing, and it says usage for 8.43E+09
9 was on there. It's basically indecipherable trying to figure
10 out what that was. So, we would request copies of all text
11 messages in regard to the Marlin Quay Marina activities from
12 the defendants.

13 And the final point I will make is that on March 3rd of
14 this year, a consent protective order was put in front of Your
15 Honor for the purpose of acknowledging, both sides
16 acknowledging, hey, some sensitive financial information,
17 communication are going to go back and forth. If any party
18 wants to mark it confidential, it shall be deemed confidential
19 by order of the Court and you signed that order March 3rd,
20 2016. So, we have freely given them our financials, our text
21 messages, our emails, everything. You won't see -- there is
22 no motion coming back the other way. Instead, we're -- we're
23 just seeing on three separate occasions, no compliance, a
24 hearing scheduled. Oh, I'm gonna comply at the last minute.
25 No compliance, a deposition scheduled, I'm going to produce

1 something at the last minute. Here we are today, Your Honor,
2 one week ago today. This should have been done in May and it
3 should have been talked about after -- okay, how about
4 February to September? How about fixing all of these other
5 issues?

6 So, those are the issues on our first motion to compel,
7 Your Honor.

8 THE COURT: All right.

9 Ms. Golding?

10 MS. GOLDING: Thank you, Your Honor.

11 With respect to the documents, Your Honor, we have -- we
12 have complied with their document requests. The -- I was two
13 days late. I said I'd have the documents April the 2nd. I
14 was two days late; they were given April 4th. We provided
15 4,000 documents. We Bates stamped the documents.

16 With respect to the correspondence, primarily the emails,
17 Your Honor, Mr. Redmond, in his letter, indicated that there
18 were some emails that had some lines through them. So, what
19 we did is, we got all the emails. We were having problems
20 with our computer at our office as far as transmitting
21 everything and that took some time. But I was able to get all
22 the emails; we just decided to get them all on thumb drives
23 with all the attachments. We obtained that. It was over 800
24 pages and then we had to Bates stamp, but none of those emails
25 had any type of lines in it. There were a few that did and

1 they were all provided, Your Honor. So, he has all the
2 emails, he has all the attachments, Your Honor.

3 Then he talked about financial information, Your Honor.
4 I objected to providing tax returns and financial statements,
5 Your Honor. This lawsuit, Mr. Mark Lawhon is individually
6 involved in. He is only -- he is the owner of the defendant,
7 Palmetto, Your Honor. Palmetto is the one that owns the
8 parking lot area and was a restaurant and bar, but it's not
9 there because it was demolished. Palmetto leased the
10 restaurant and bar to Marlin Quay Restaurant & Bar. Palmetto
11 doesn't have any income other than the rental income that was
12 coming from the restaurant and bar. Palmetto doesn't employ
13 individuals. In the answer and counterclaims, we asserted --
14 I filed a motion, I believe it was early August to amend our
15 counterclaims. I had initially in the answer and
16 counterclaims, said all defendants are seeking consequential
17 damages. That was changed -- it was an oversight on my part,
18 Your Honor. It was changed only to Palmetto. And damages, as
19 they received a lease agreement back in April, is \$4,000 a
20 month. Mr. Lawhon has absolutely nothing to do, as far as his
21 tax returns, his financial statements, he's not seeking
22 damages in this case, and his role, he is the owner of
23 Palmetto. So, I objected to providing any financial
24 information with respect to Mr. Lawhon.

25 With respect to Palmetto, we've provided the Palmetto

1 part of the tax return, simply because it was requested, and
2 it showed a loss, but the only damage items that we have as of
3 this date, Your Honor, is the \$4,000 a month rental. And the
4 plaintiff has had that lease agreement, I believe, since
5 April.

6 With respect to the closing, Your Honor, I believe I --
7 that -- all the closing documents were provided to me by Mr.
8 McLain out of Florence. I've then Bates stamped them all,
9 sent them over to Mr. Redmond. If I'm not mistaken, he's had
10 those since May.

11 THE COURT: And see, that's where the Court -- I don't
12 know.

13 MS. GOLDING: I know.

14 THE COURT: He's saying he doesn't have them. He
15 requested them; he doesn't have them. You said, I gave them
16 to him.

17 MS. GOLDING: Yes, sir.

18 THE COURT: I don't know.

19 MS. GOLDING: He has them all, Your Honor.

20 THE COURT: Somebody -- again, somebody is lying to the
21 Court.

22 MS. GOLDING: He has -- Mr. Redmond has all of the
23 closing documents I received from Mr. McLain.

24 THE COURT: Does he have all of the closing documents
25 regarding the purchase of this property?

1 MS. GOLDING: Yes, sir.

2 THE COURT: Okay.

3 MS. GOLDING: Mr. McLain represented to me that that's
4 what it was, and I gave them all to Mr. Redmond, I believe it
5 was in May.

6 THE COURT: Okay. Well, I don't know which one of you is
7 telling the truth, but one of you isn't.

8 MS. GOLDING: Okay.

9 THE COURT: And I don't know which one is not.

10 MS. GOLDING: Then Mr. Redmond asked for in his requests
11 for production of documents, he asked for a list of employees
12 and contractors. There is no such document. I mean, we're
13 not, under requests for production of documents, we're not
14 required to create documents. But I advised, we don't have
15 employees. The closing documents -- the cell phone records,
16 he has all our cell phone records. If I'm not mistaken, he
17 does not have the text messages because we cannot get it. We
18 have tried to get the text messages; they are not recoverable.

19 Your Honor, in his motion, he is seeking -- I had the
20 deposition, a 30(b)(6) deposition of the plaintiff scheduled
21 probably four or five times. The plaintiff's counsel just
22 unilaterally stopped the depositions. They said, we are not
23 coming. Even in Mr. Redmond's letter, the ---

24 THE COURT: Well, he's saying it was because you hadn't
25 produced the discovery and he didn't want to take the

1 deposition without having the discovery.

2 MS. GOLDING: Well, I had produced, Your Honor, all the
3 discovery. I had made objections. Some of the discovery with
4 the emails, which of course none of the emails have anything
5 to do with the plaintiff or the plaintiff's officers to
6 testify. None of our discovery were with respect to the
7 plaintiffs. As far as the emails and the plans and
8 specifications, that's how we got them. You know, they have
9 sent subpoenas to the county. In fact, they have sent
10 subpoenas to Mr. Goggins and they've gotten all that
11 information. We got it by the emails. We gave it the same
12 way we had gotten it.

13 I would respectfully request this Court to direct an
14 order requiring the plaintiffs to -- they made a motion to
15 quash the deposition, that's part of this motion to compel,
16 and I would ask the Court deny that and direct that the
17 plaintiff appear at a deposition, which I have been trying to
18 take since March.

19 Thank you, Your Honor.

20 THE COURT: Anything in reply?

21 MR. REDMOND: Very briefly, Your Honor. This is the same
22 thing. We wrote the letter in May 16th to Ms. Golding's
23 office, and July of 2017, to Ms. Golding's office. There was
24 no letter writing back saying you've got that; go look at
25 these numbers of the documents. That didn't happen, because

1 we didn't get those documents. There was no correspondence,
2 no response to the May 16th letter.

3 And the argument that, well, Palmetto is the only one at
4 issue here, Your Honor, is misleading, because Mr. Lawhon owns
5 all of the entities that run the marina store over there. The
6 rules provide that he is not only to provide the technical
7 documents, which only belong to a certain entity that we have
8 sued; that's not what the rule said. The rule says he is to
9 produce everything that is in his custody or control. He owns
10 both of the entities over there and has the ability to send
11 the information over there. Them sending us to go elsewhere,
12 like with Mr. Goggins' office, we just had to -- we're --
13 there's another motion we had to compel to get those documents
14 and we just got them last week. So, it has been a real
15 struggle to get everything.

16 As far as financials from Mr. Lawhon personally, they are
17 relevant to the extent that they are intermingled with
18 Palmetto Development and his company that runs the restaurant
19 over there. Those are critical for verifying what they assert
20 their damages are, as well as our punitive damages claim for
21 their intentional torts.

22 And we are happy to schedule a deposition after the
23 documents are provided as requested.

24 MS. GOLDING: Your Honor, just for your information,
25 there is another lawsuit between the Marlin Quay Restaurant &

1 Bar and Gulfstream, and that has to do with the revenues of
2 that -- of that entity. That entity operates the restaurant
3 and bar and that is another lawsuit completely. They did --
4 Plaintiff did receive significant documents with respect to
5 sales of the restaurant but, I believe, Your Honor, Mr.
6 Lawhon's financials -- he's not seeking any damages in this
7 case. It has nothing to do with any of the claims.

8 Thank you, Your Honor.

9 RULING OF THE COURT:

10 THE COURT: All right. Well, I don't know. You say you
11 produced; you say you haven't. The only thing is, Mr.
12 Lawhon's personal financials. So, I am going to order that
13 the attorneys meet within the next 14 days. You are to get a
14 court reporter so everything is transcribed. Each party shall
15 pay one-half of the court reporter's fees. Plaintiff will go
16 down individually in your discovery show the defense attorney
17 what you say you have requested that has not been produced or
18 what you've -- information you've requested that has not been
19 produced.

20 The defendant have all -- everything at this meeting with
21 you. You are going to have to -- y'all are going to have to
22 jointly agree on a place to meet that's gonna have a copy
23 machine, a conference area for the court reporter, and y'all
24 can spread everything out. So, that you can say, point blank
25 say, this is when and where I produced it. If you can't find

1 it, have a copy machine there so you can make the copies then.
2 If there's any copying costs, that's to be split between the
3 parties.

4 I'm going to require that Mr. Lawhon produce his personal
5 financials. It's confidential. I don't know whether it's
6 relevant in this case or not. Just, I think it is
7 discoverable. Whether or not it's relevant and can be used
8 evidentiary, I don't know, but I think it is discoverable.
9 So, I am denying the defendants objection to that.

10 Once you get this together, you're gonna have it
11 transcribed. If there's anything still outstanding, then you
12 can come back with the Court and, at least then, we'll have a
13 transcript and -- where y'all went down item by item. I hate
14 to make you go through this, but I don't know. You're saying
15 they never produced something; they're saying they did produce
16 something. The only way I know is to get in a meeting, get
17 y'all together and go down it item by item and have a court
18 reporter transcribe it. Each party shall pay one-half of the
19 court -- one-half of the cost of getting the transaction
20 transcribed so that, when you come back before the Court, the
21 Court can review it and see, because y'all are asking me to
22 make a decision as to which one of y'all is telling the truth
23 and which one of you isn't, and I don't know. So ---

24 MR. REDMOND: As to the emails in the native format, Your
25 Honor, the fact that they would not produce those and required

1 us to go to third parties and get full-size copy of the plat.
2 I show Your Honor a check where I had to pay \$1,000 to get
3 what they could have just zipped right on over to me. That is
4 not a he said/she said thing, Your Honor. That is we need the
5 emails, we should've been given them in the native format. We
6 shouldn't have had to go try to figure out where else we can
7 get your documents other than you. We did never got -- we
8 only got these size documents period, and we had to pay \$1,000
9 to go get all the other full-size documents.

10 THE COURT: Well, that's a cost of litigation. If you
11 prevail, you can submit it as a post-trial motion and recoup
12 it as costs in the lawsuit.

13 All right. Anything else on that?

14 All right. Now the second motion to compel?

15 MS. GOLDING: Your Honor, the only other matter with that
16 was part of their motion was to quash the deposition of the
17 plaintiff.

18 THE COURT: Well, y'all are gonna be meeting within the
19 next 14 days. So, within 14 days -- when is your deposition
20 scheduled?

21 MS. GOLDING: Your Honor, it's not scheduled any more. I
22 scheduled it five different times, but they ---

23 MR. REDMOND: There's been no correspondence since I
24 wrote her a letter in May asking to deal with these discovery
25 issues.

1 THE COURT: Okay.

2 MR. BLOOM: Judge, maybe propose 21 days after we have
3 this meeting, we can have the deposition. We have no problem
4 with what the Court has proposed. We just want to get the
5 discovery stuff resolved.

6 THE COURT: All right. So, since y'all are meeting
7 within the next 14 days, I mean, I'll deny -- who brought --
8 you brought the motion to quash ---

9 MR. REDMOND: Yes.

10 THE COURT: --- the deposition.

11 MR. REDMOND: The prior deposition, yes.

12 THE COURT: Okay. I'm going to deny that but order that
13 the deposition cannot be held, 21 days?

14 MR. BLOOM: After the -- after the ---

15 THE COURT: Well, let's say -- all right. All right.
16 Plaintiff shall submit to the depositions within 30 days after
17 this 14-day meeting, whenever y'all get that together. Okay?

18 MR. REDMOND: Yes, sir, Your Honor.

19 MR. BLOOM: The parties will submit so we can go ahead
20 and get everybody's ---

21 MS. GOLDING: No, sir, Your Honor. I'd like to go ahead
22 and try to get the plaintiff.

23 THE COURT: All right. If that's -- we'll go ahead and
24 deal with that, just the plaintiffs.

25 All right. Now, the second motion to compel?

1 MOTION TO COMPEL:

2 MR. REDMOND: Your Honor, we moved -- this is in regard
3 to a subpoena that was sent to Georgetown County in order to
4 compel documents, correspondence, from them in between the
5 defendants and their agents and Georgetown County. We sent a
6 subpoena to them on December 6th, and again on February 21 of
7 this year. In response to that, Mr. David Mills also of
8 McNair Law Firm, responded by producing some documents on
9 February 23rd and March 8 with a privilege log. And the
10 documents in the privilege log are what we seek in this motion
11 to compel. And the reason we seek those documents is because
12 Georgetown County is a non-party to this action, was a non-
13 party subpoena for documents. When Mr. Mills -- when
14 Georgetown County hired Mr. Mills, the same law firm as the
15 defendant, he has acquired information as to not only the
16 documents they produced but also the confidential information
17 that was withheld. The law of professional rules of ethics
18 impute knowledge from Mr. Mills to the McNair Law Firm, which
19 Ms. Golding is a member of the McNair Law Firm, and this is
20 our -- our -- we believe that -- that action, imputing the
21 knowledge to Ms. Golding and that knowledge that Ms. Golding
22 has is also likewise imputed to her client, that they have
23 waived the attorney/client privilege and have done so
24 voluntarily. And the law states that ---

25 THE COURT: Well, what privilege were they asserting,

1 attorney/client privilege?

2 MR. REDMOND: Attorney/client privilege, Your Honor.

3 THE COURT: Okay. All right.

4 MR. REDMOND: And that that specific communication has
5 been disclosed. It must also be disclosed to the other
6 parties in this action, since it was disclosed to -- by
7 imputation to Mr. Lawhon. Now, this -- the basis for this is
8 found in the ethical rules. Rule 1.10 talks about imputation
9 of conflicts of interest. Now, that rule specifically applies
10 to conflicts between lawyers in the same firm, and not
11 necessarily lawyers on the other side, but it still -- the
12 whole premise of that rule is that Court's frequently
13 recognize a presumption that confidential information is
14 shared freely among members of a firm. The law presumes that.
15 The real or potential ability of tainted lawyers to misuse
16 confidential information requires that they be conflicted and
17 that they are tainted. Now, courts impute disqualification
18 for one attorney to an affiliated attorney on the presumption
19 that confidences travel within a firm. Now, the comment to
20 the Rule 1.10 states that -- exactly that, that there is a
21 premise that a firm of lawyers is essentially one lawyer. So,
22 Georgetown County has essentially transmitted their privileged
23 information to Dr. Lawhon through that. And the rule says you
24 can -- Mr. Mills can represent Georgetown County at the same
25 time Henrietta is, Ms. Golding is representing Dr. Lawhon, the

1 defendant in this action. The rule doesn't prevent it. If
2 their clients agree to it, they can undertake that
3 representation. But the rule states that -- that they
4 shouldn't do it, and it's up to them whether they want to do
5 it, but they shouldn't do it where questions of client loyalty
6 or protection of confidential information are presented and
7 that's from Comment 3 there. So, what is essentially going on
8 is that the Court's duty and job is to assure a fair trial at
9 the end of the day, and we have a party with access to
10 confidential information of a third party that has been
11 partially waived. These communications are highly relevant.
12 In other words, it goes exactly to what was the intent of Mr.
13 Lawhon. Was he ---

14 THE COURT: What is it you're asking for though; what did
15 you subpoena?

16 MR. REDMOND: I'm asking for the documents withheld by
17 Mr. Mills on the privilege logs, when he responded on behalf
18 ---

19 THE COURT: What were they?

20 MR. REDMOND: They were email correspondence between the
21 staff attorney and the individual agents of the planning
22 department and zoning department and the county administrator
23 with Georgetown County.

24 THE COURT: I see. Okay.

25 MR. REDMOND: So, those were all disclosed to McNair Law

1 Firm, and those communications are relevant as to Dr. Lawhon's
2 intent and, and the motivations that he had. Now, what
3 they're saying is that in their reply memorandum is that,
4 well, we've set up a screen. We have assured our clients that
5 we're not gonna share information amongst each other and,
6 therefore, our clients have agreed to it, and we're fine with
7 it, and you should be fine with it, too. But what that
8 analysis overlooks is the fact that the attorney/client
9 privilege has been waived. And therefore, we are entitled to
10 that communication and they can't, although they can have a
11 joint representation under the facts as they have it, their
12 waiver of the attorney/client privilege applies, and they
13 cannot accept -- ask us to consent to that. It's a strict
14 rule of vicarious imputation.

15 THE COURT: All right. And that, you say that's a rule
16 or is that an appellant decision that says when you have two
17 defendants -- or you have a defendant and a non-party
18 represented by the same firm, there is a waiver; where are you
19 getting that argument?

20 MR. REDMOND: That is in Rule 1.10.

21 THE COURT: Okay.

22 MR. REDMOND: And the Rule 1.10 talks about can the
23 McNair Law Firm represent both of these parties, and under
24 what circumstances -- what should they do to make their
25 representation of these two parties okay? And the rule says

1 that, in the comments, Comment 3, that yes, you can represent
2 multiple people involved in the same thing but, if there is
3 confidential information that is shared, there's a danger that
4 it will be disclosed and any privilege will be waived and
5 that's what happened here. When they undertook their joint
6 representation ---

7 THE COURT: Well you're saying that the joint
8 representation implies a share, and they're saying that there
9 was no share?

10 MR. REDMOND: And the appearance of an impropriety is
11 what governs in this case.

12 THE COURT: Okay.

13 MR. REDMOND: The fact that it exists. And the courts
14 don't determine whether it -- whether it has actually happened
15 or not. The potential that it can happen means the law
16 presumes that it does happen and that's why you should avoid
17 this type of situation or at least be very careful and get
18 informed consent from your client that, hey, any confidential
19 information you have, if I represent you, then that knowledge
20 is imputed to Ms. Golding's client and it will be waived.

21 THE COURT: All right.

22 MR. REDMOND: Thank you, Your Honor.

23 THE COURT: All right.

24 MR. MILLS: Your Honor, David Mills for the county.

25 THE COURT: Yes, sir.

1 MR. MILLS: Where Mr. Redmond muddles the Rule 1.10
2 analysis with his imputation of conflicts theory, is his use
3 of the term joint representation. It's not what's happened
4 here. The county is not a party. The county did not ask to
5 be invited to this blood feud, to use counsel's term. We're a
6 non-party. We got a subpoena. I have represented the county
7 for a decade. The county attorney retained me to respond to
8 that subpoena. There is no joint representation. I do not
9 represent Dr. Lawhon or Palmetto Industrial. Ms. Golding
10 doesn't represent the county. There is no conflict. There is
11 no confidentiality to be imputed from me to Ms. Golding, from
12 Ms. Golding to Mr. Lawhon. It didn't happen. It couldn't
13 have happened. It's both factually and legally incorrect.
14 You have no -- the Court asked about a legal opinion. This --
15 this motion has been pending in its initial form since March
16 or April. I'm still waiting to see the case law that supports
17 the position of imputation by imputation. There is a clear
18 line of demarcation here between a non-party responding to a
19 subpoena and joint representation where one law firm and its
20 lawyers represent two parties and set up screens.

21 One thing I will agree with him on, that the internal
22 screen that we set up, wasn't necessary. It's belt and
23 suspenders. We didn't have to do that, because there's no
24 confidences to be shared. We have no interest. We have no
25 stake in the outcome of this litigation. So, that's the legal

1 flaw in this imputation theory. It's not under Rule 1.10 and
2 it's certainly not in the case law. The one case cited in
3 support of the plaintiffs' motion is a 1984 divorce case where
4 a lawyer was sending his correspondence to his client/wife and
5 her daddy. And even then, the Court said that's not enough to
6 constitute a waiver of the attorney/client privilege.

7 So, I understand the stakes here, Judge. This is quite
8 serious, because what they want to do is break through the
9 privilege between County Attorney Wesley Bryant and his staff,
10 that planning staff or the county administrator. So, they
11 want to break through the attorney/client privilege or,
12 failing that, the remedy they seek is disqualification of our
13 law firm. I can't represent the county and Ms. Golding can't
14 represent the defendants. Short of a dismissal with
15 prejudice, that's about as extreme a remedy as a court -- a
16 court could order. So, the stakes are very high. There is no
17 factual basis because I have submitted an affidavit to the
18 Court that says, I haven't shared anything with Ms. Golding.
19 She got the documents after Mr. Redmond got them. We don't
20 communicate about that. I don't need her help in responding
21 to my client's subpoena, and she certainly doesn't need my
22 help in representing and discharging her duties to her client.
23 So, it's incorrect legally and factually. There has been no
24 disclosure to neither Ms. Golding or by imputation to her
25 client.

1 THE COURT: All right.

2 Ms. Golding, any position?

3 MS. GOLDING: I just want to confirm that I have not
4 received anything that was constituted any confidential
5 information. There is a wall, a screen that was implemented
6 before this motion. The only documentation I've received is
7 the exact same documentation Mr. Redmond's received.

8 THE COURT: All right.

9 Anything in reply?

10 MR. BLOOM: Just one, Your Honor. Let me see if I can
11 crystalize the ---

12 MS. GOLDING: Your Honor, only one attorney can speak on
13 behalf with respect to this motion.

14 THE COURT: Well, I'm gonna allow one to argue and then
15 if -- if you want to do the reply. I'm just not gonna allow
16 multiple arguments and then multiple replies, but if you want
17 to do the reply, I'll allow you to do that.

18 MR. BLOOM: Mine will be the lone reply from our side of
19 the aisle, Your Honor.

20 THE COURT: All right. Go ahead.

21 MR. BLOOM: The crystalized point is this. If a third
22 party discloses privileged correspondence, which necessarily
23 had to happen here, when the county said, we're gonna withhold
24 these five, 10, 15 documents, because we believe they're
25 privileged. McNair Law Firm, we'd like you to respond to the

1 subpoena and take the position that these documents are
2 privileged. Therefore, McNair Law Firm has to look at the
3 documents and see the privileged communication. That is the
4 crystalized point of this dispute. It is once the McNair Law
5 Firm views the privileged document, views the privileged
6 communication, in the course of responding to the subpoena and
7 preparing the privilege log, which it did in this case. In
8 order to prepare the privilege log, Mr. Mills had to read the
9 attorney/client communication between county attorney and
10 agent of the county attorney. That is the key here to where
11 the privilege was waived and it -- and the county could've
12 sent this question to any of the fine law firms in Georgetown
13 County and said, law firm number 1, you do the response to the
14 subpoena, therefore there will be no question about preserving
15 the privilege of those documents that were being withheld.
16 The argument is not complicated, and it's not muddled. It is
17 once those privileged communications are provided to a third
18 party, in this case, the McNair Law Firm, the McNair Law Firm,
19 who was acting as an agent of the defendants in this case.
20 So, this imputation concept is not such a far-fetched concept
21 for the Court's consideration. Because once it comes into the
22 McNair Law Firm, Chinese wall or no Chinese wall, the McNair
23 Law Firm is the law firm that represents the defendants and
24 that access to that confidential and privileged information is
25 available, whether actually or constructively, available to

1 the defendants, and that is the issue that we ask the Court to
2 pierce that attorney/client privilege with respect to the
3 documents requested.

4 RULING OF THE COURT:

5 THE COURT: All right. All right. I'm going to deny the
6 motion. I think that there is properly asserted
7 attorney/client privilege with regards to Georgetown County,
8 which is a non-party. Based upon Mr. Mills' assertion, there
9 is no disclosure to the defendant in this case or defendants'
10 counsel, even though they are within the same firm, it is a
11 large firm, but I'm gonna deny the motion.

12 All right. Now, we have motion to amend answer and
13 counterclaim?

14 MOTION TO AMEND ANSWER AND COUNTERCLAIM:

15 MS. GOLDING: Yes, sir, Your Honor. I filed a motion, it
16 was on July the 17th, Your Honor. And before I filed the
17 motion ---

18 MR. BLOOM: Your Honor, we have no opposition to this
19 motion. We stipulate. We can move on.

20 MS. GOLDING: I had asked for that stipulation back in
21 the first part of July and they denied consent at that time.

22 Thank you, Your Honor.

23 RULING OF THE COURT:

24 THE COURT: All right. I'll grant the motion to amend
25 answer and counterclaim by consent.

1 All right. Motion to reconsider; is this what I've got
2 under advisement now or is this another one?

3 MOTION TO RECONSIDER:

4 MS. GOLDING: This is a motion to reconsider that I had
5 filed with respect to the injunction you ordered, Your Honor,
6 the temporary injunction.

7 THE COURT: Okay.

8 MS. GOLDING: And the primary basis for that is, Your
9 Honor -- well, on the basis on a reconsideration, Your Honor,
10 we have -- the first one is that the injunction is being used
11 by the plaintiff to alter the activities that have regularly
12 occurred over the past 30 years. The second basis is the
13 proposed construction is normal and reasonable interference..
14 The third is that the plaintiff will not suffer irreparable
15 harm. And the fourth is that the plaintiff has an adequate
16 remedy at law.

17 Your Honor, I'm going to with respect -- I have all those
18 bases but I'm gonna argue with respect to the -- the manner in
19 which the plaintiff is using the injunction. I'm gonna ask
20 this Court to amend the injunction to permit the two fishing
21 tournaments in May and in October. As the affidavits have set
22 forth, we would like to have a tent on 10 to 12 spaces. We
23 are limiting the activities to at least to have the minimum
24 interference possible, Your Honor. And we request that
25 because when this ---

1 THE COURT: I understand. Is there any objection to the
2 October tournament using 10 to 12 spaces?

3 MR. BLOOM: If I may consult with my client, Your Honor.

4 THE COURT: All right.

5 MR. BLOOM: Your Honor, I need to clarify. Is this the
6 only relief that the defendants are requesting on this motion?

7 MS. GOLDING: No, sir. Your Honor, as I said, I have
8 four grounds for this Court to reconsider its temporary
9 injunction. They're all set forth in the memorandum. I
10 understand ---

11 THE COURT: Okay. Just sit down and let her argue her
12 motion. Go ahead.

13 MS. GOLDING: Your Honor, well, with respect to the first
14 ground was, we would like to Court structure the order that it
15 doesn't affect the fishing tournaments, Your Honor.

16 The second ground, Your Honor, is that there's not
17 irreparable harm, and the third ground is there's an adequate
18 remedy at law.

19 The case law is replete with the fact that, you know,
20 injunctions are drastic remedies. This injunction is stopping
21 any type of renovation of the -- and construction of the
22 marina restaurant and bar.

23 THE COURT: Yeah, but he bought this with an existing
24 easement and he knew the easement was in place and he knew
25 that, by law, the plaintiffs had the right to this parking

1 area ---

2 MS. GOLDING: Yes, sir, Your Honor.

3 THE COURT: --- to use it.

4 MS. GOLDING: Yes, sir.

5 THE COURT: And I understand his argument, but what
6 you're wanting me to do now -- I understand that it might be
7 difficult, but he knew that when he undertook this endeavor
8 that this easement was there.

9 MS. GOLDING: And what I'm saying, Your Honor, is that
10 the plaintiff has an adequate remedy at law, Your Honor. They
11 have -- they say it's interfering with their restaurant
12 business. The adequate remedy at law is monetary damages.
13 Your Honor, this is not a situation in which an injunction
14 should be granted, because the plaintiff can seek monetary
15 relief and he is seeking monetary relief in this lawsuit, Your
16 Honor. They essentially have sued for breach of an easement
17 and they are seeking monetary relief and that is the reason
18 that the injunction should not be granted. And I'm not gonna
19 go any further in arguing that. I understand the Court's
20 ruling. But primarily, what I'm seeking today is with regard
21 to the fishing tournaments, Your Honor.

22 THE COURT: All right.

23 MR. BLOOM: I really don't know what to say. I don't
24 think I've ever said that in the history of my practice. Is
25 the motion still alive or is Your Honor ---

1 THE COURT: She's asking me to do away with the temporary
2 injunction.

3 MR. BLOOM: Yes.

4 THE COURT: Because she's saying there's an adequate
5 remedy at law.

6 MR. BLOOM: Well, if Your Honor wishes to hear all the
7 reasons why Your Honor entered this injunction in the first
8 place, there is absolutely positively nothing new that Ms.
9 Golding has offered the Court to consider that wasn't offered
10 to the Court on December 5th, 2016. So, we stand on all the
11 very well-articulated and legally accurate arguments that Mr.
12 Redmond made back then. And as far as anything new, we know
13 of nothing new that would warrant Your Honor's reconsideration
14 of the order that was entered in December. I'm gonna save the
15 Court the nauseam and rest on those arguments.

16 THE COURT: All right. Anything in reply?

17 MS. GOLDING: Nothing, Your Honor.

18 RULING OF THE COURT:

19 THE COURT: All right. I'm going to partially grant the
20 motion to reconsider to the extent that the defendant may use
21 up to 12 spaces for the fishing tournaments.

22 MR. BLOOM: Your Honor, can we -- with respect, could we
23 identify on the plat which spaces?

24 THE COURT: No, no. They can pick any 12 they want.

25 MR. BLOOM: For how long?

1 THE COURT: For the duration of the fishing tournament.
2 You've got 60-something parking spaces out there. They can
3 use 12 of them for a fishing tournament.

4 MR. BLOOM: Your Honor, with respect, their -- if you
5 look at their website, the Marlin Quay Fishing Tournament
6 website, I was sent these pictures this morning, and I just
7 ask the Court to consider this before -- before ruling,
8 officially ruling and ruling officially. And if I may just
9 approach to show a picture of what it looks like from their
10 website.

11 THE COURT: No, sir.

12 MR. BLOOM: It doesn't take up 12 spots; it takes up half
13 or more of the parking lot.

14 THE COURT: Well, I'm telling them they can use up to 12
15 spots. If they use more than 12 spots, take your picture,
16 come back, and hold them in contempt again.

17 MR. BLOOM: Will Your Honor hold them in contempt again
18 if they do that?

19 THE COURT: I'm going to prejudge whether or not they're
20 in contempt or not in contempt, but that's your avenue.

21 MR. BLOOM: But some of Your Honor's orders they take
22 seriously and some they don't. I'd just like to know if we
23 could ask for liquidated damages if they violate the 12-space
24 rule, Your Honor.

25 THE COURT: No, I'm not gonna pre -- I'm not gonna grant

1 you here at this hearing today.

2 MR. BLOOM: Yes, sir. Thank you.

3 THE COURT: All right. Anything else?

4 MS. GOLDING: No, sir, Your Honor, not from the
5 defendants.

6 THE COURT: All right. All right. Anything else on this
7 case?

8 MOTION TO MODIFY INJUNCTION:

9 MR. BLOOM: Yes, Your Honor, there's one final motion
10 that -- that we filed that asked the Court to modify that
11 injunction further to take out the carve out that Your Honor
12 allowed for the pilings for four days. If they're not
13 intending to put -- to -- to sink the pilings -- you remember
14 that whole issue, they said we want to put pilings in ---

15 THE COURT: Right.

16 MR. BLOOM: We'd ask that be removed from the order.
17 That's what our final motion is, that we ask if Your Honor ---

18 THE COURT: When did you file that motion?

19 MR. BLOOM: Months ago.

20 THE COURT: Dang, I don't know why it didn't make it on
21 here. Oh, I see it. Motion to -- I see. All right. All
22 right. So, you want me to delete the -- from the temporary
23 injunction their ability to use four parking spaces to drive
24 -- I mean, yeah, what was it?

25 MR. BLOOM: Sixteen.

1 THE COURT: Sixteen spaces for four days to drive
2 pilings.

3 MR. BLOOM: Yes, sir.

4 THE COURT: Okay.

5 MR. BLOOM: Yes, sir.

6 MS. GOLDING: Your Honor, at this time, you know, we have
7 not commenced construction. I can't tell the Court what's
8 gonna happen with construction. So, I would request that to
9 stay in the order.

10 THE COURT: Okay.

11 MR. BLOOM: Your Honor, they know what they're intending
12 to do. You don't just wake up in the morning and decide to
13 start driving pilings. Either they have an initial immediate
14 intent to drive pilings or they don't. I don't think this is
15 an issue that should take up too much of the Court's time, but
16 if they don't intend to drive pilings or do any construction,
17 then there's no harm to them of Your Honor taking out that
18 carve out. You've already made us submit to your concession
19 by allowing them to do the tent for 12 spaces twice for the
20 next year.

21 RULING OF THE COURT:

22 THE COURT: All right. I'm gonna deny your motion.

23 MR. BLOOM: Thank you, Your Honor.

24 THE COURT: I'm going to leave it in. Anything else?

25 MR. BLOOM: No, sir.

1 THE COURT: All right.

2 ADJOURNED - 11:53 P.M.

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

October 27, 2019.

1 spell your full name for the record, please.

2 MS. GOLDING: May I approach the bench, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. GOLDING: Thank you, Your Honor.

5 (Whereupon, a bench conference is held in the presence,
6 but out of the hearing of the jury.)

7 THE COURT: Go ahead, sir.

8 MR. KIRK: My name is Jeffrey Kirk. It's J-E-F-F-R-E-Y,
9 K-I-R-K.

10 THE COURT: Go ahead, Mr. Nugent.

11 DIRECT EXAMINATION

12 BY MR. NUGENT:

13 Q Good afternoon, Mr. Kirk. Could you introduce yourself
14 to the jury?

15 A Yes. My name is Jef Kirk. I am a manager at CentraArchy
16 Restaurant Group. I manage the Gulfstream Café.

17 Q And where do you live, Mr. Kirk?

18 A Live in Georgetown County.

19 Q How long have you lived in Georgetown County?

20 A Since 2011.

21 Q What part of the county do you live in?

22 A I live in Pawleys Island mainland.

23 Q And tell us about your educational background.

24 A I graduated high school in 1995. I joined the U.S. Navy
25 about three weeks later. I served upon the USS Cleveland for

1 four years in the -- I did two tours in the Persian Gulf. I
2 was honorably discharged in 1999. Upon discharge I used my GI
3 Bill to pursue an interest in commercial diving. I became an
4 underwater welder for a few years.

5 Q And when did you start working in the restaurant
6 industry?

7 A It's probably in 2002 or three.

8 Q And where did you start working?

9 A I worked at the Hotel Del Coronado in San Diego,
10 California.

11 Q Did you eventually begin working for a restaurant in the
12 Myrtle Beach area?

13 A I did.

14 Q And what restaurant was that?

15 A It was Carolina Roadhouse. I began there in 2005.

16 Q What was your position when you began at Carolina
17 Roadhouse?

18 A I, I was a server.

19 Q And how long have you been manager at the Gulfstream
20 Café?

21 A Since 2013.

22 Q What are your job responsibilities at Gulfstream?

23 A My job responsibilities are to manage the profitability
24 of the restaurant. I have three managers that report directly
25 to me. I also supervise about 50 to 70 staff, depending on

1 the season.

2 Q And who do you report to at CentraArchy?

3 A I report directly to Linda Barnaba. She's the director
4 of operations.

5 Q How frequently do you communicate with Ms. Barnaba?

6 A There is no set schedule. We communicate as needed.

7 Q And do you report everything that happens at Gulfstream
8 to her?

9 A Everything that's important or unusual.

10 Q And how do you go about reporting events to Ms. Barnaba?

11 A Through email, through phone call or as she drops in
12 every now and then.

13 Q Are you familiar with the Marlin Quay Marina area?

14 A Yes. I am. That's the area where Gulfstream is located.

15 Q I'm going to ask you to look what has been marked as
16 Plaintiff's Exhibit Five.

17 MR. NUGENT: May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. NUGENT:

20 Q And we'll put Exhibit Five up on the screen so you can
21 look at it as well. Let's look at the second picture on
22 Exhibit Five.

23 A Okay.

24 Q Do you recognize what's shown in that picture?

25 A Yes. I do. That's the Marlin Quay area.

1 Q Could you point out what is in the Marlin Quay area?

2 A There's Gulfstream Café, which is located towards the
3 bottom of the page. There's the parking lot. To the left of
4 the parking lot are the boat slips and the marina. The Marlin
5 Quay Bar and Ship Store is located above that directly near
6 the pool and the pool belongs to the condominiums which sit
7 above there.

8 Q The Marlin Quay Marina Store, could you describe what
9 that is?

10 A The Marlin Quay Marina Store was -- it's a one and a half
11 story building. It was a ship store and a snack bar.

12 Q And did you ever go inside the Marlin Quay Marina Store?

13 A Yes. I did.

14 Q I'm going to ask you to look at what has marked as
15 Exhibit Number 17, and I'm going to give you a paper copy but
16 they'll be up on your screen as well if you'd like to look at
17 them. Let's look first at what is marked at the bottom as
18 page quad 042. It'll also be up on your screen, Mr. Kirk, if
19 that's easier for you to look at.

20 A Okay.

21 Q And could you describe for the jury what you see in that
22 picture?

23 A I see the original Marlin Quay building.

24 Q Let's look at the top photo. What's on the top floor of
25 the building?

- 1 A Top floor is the bar area.
- 2 Q And on the bottom floor?
- 3 A It's the ship store.
- 4 Q Looking, and is there a deck area outside the top floor?
- 5 A There is a deck area. It was set up with maybe three
- 6 tables and maybe 12 chairs or so.
- 7 Q Okay. Twelve chairs on the deck area at the old snack
- 8 bar; is that right?
- 9 A That's, that's what I recall.
- 10 Q And looking at the bottom photo, I want you to look at
- 11 the door on the right-hand side. It's a black door. Do you
- 12 see that?
- 13 A Yes. I do.
- 14 Q And do know what was behind that black door?
- 15 A That was the kitchen. It was a very tiny kitchen.
- 16 Q And where was the eating area at the Marlin Quay Store
- 17 and Snack Bar?
- 18 A Up the stairs and through the, the double doors.
- 19 Q Did you ever see food being served in the kitchen to
- 20 patrons upstairs?
- 21 A Yes.
- 22 Q How would that occur?
- 23 A It was brought out in usually plastic or to go and it was
- 24 brought up the stairs and brought to the, to the bar.
- 25 Q Okay. So just to make sure I understand, food was

1 prepared in the kitchen downstairs and then brought upstairs
2 using to go boxes?

3 A Yes.

4 Q And I'm actually going to create a little chart just so
5 we can make sure we've got all the characteristics of this
6 building, if you'll indulge me a moment to grab my pen, and
7 hopefully my handwriting will be legible, but why don't we
8 talk about some of the things you just testified to. All
9 right. So in the old Marlin Quay Store and Snack Bar how many
10 stories were there?

11 A It was one and a half stories.

12 MS. GOLDING: I'm sorry. I can't see what you're doing, Adam.

13 THE COURT: If you would like to stand up, Ms. Golding, and
14 move to the --

15 MS. GOLDING: Thank you. I appreciate it.

16 THE COURT: -- to the side or in some --

17 MS. GOLDING: I appreciate it.

18 THE COURT: -- area that'll allow you to see it I'll be glad
19 for you to do that.

20 MS. GOLDING: Okay. Thank you.

21 Q And, Mr. Kirk, I'm going to have you turn to what is
22 marked as Tungsten quad 014, and it's on the screen if that's
23 easier for you to look at. Do you recognize what's in that
24 photograph?

25 A Yes. That's the ship store after the Lawhons purchased

- 1 it.
- 2 Q That's, that's the ship store?
- 3 A Yes. It is.
- 4 Q And where was that located in the old building?
- 5 A On the bottom floor.
- 6 Q Let's turn to Tungsten quad 030. Do you see that on your
- 7 screen, Mr. Kirk?
- 8 A Yes. I do.
- 9 Q And what is depicted in those photographs?
- 10 A That is the kitchen, there's a microwave, one fryer, a
- 11 commercial griddle, and a reach-in cooler with some storage
- 12 shelves.
- 13 Q And did you ever see this kitchen with your own eyes?
- 14 A Yes.
- 15 Q And how would you compare this kitchen to say the one at
- 16 your own house?
- 17 A It's about the same size.
- 18 Q Okay. Was it a large kitchen, a small kitchen?
- 19 A It was a small kitchen.
- 20 Q All right. Let's write small kitchen up here. Let's go
- 21 to what has been marked as Tungsten quad 032. It should be on
- 22 your screen, Mr. Kirk. Let's look at the bottom photograph
- 23 and tell the jury what that shows.
- 24 A That's the upstairs bar area.
- 25 Q And did you ever visit the upstairs bar?

- 1 A Yes.
- 2 Q Okay. Let's look at the following page, quad 033. What
- 3 do those photographs show?
- 4 A That's, again, the bar area.
- 5 Q And finally quad 034, also -- is that also the bar area?
- 6 A That is also the bar area. It had about 40 or so chairs.
- 7 Q Okay. So the bar area upstairs had about 40 chairs?
- 8 A Yes.
- 9 Q And you said previously that the deck outside had
- 10 approximately 12 seats; is that right?
- 11 A That's correct.
- 12 Q All right. Let's write that on the chart, and what kind
- 13 of storage, what kind of hours was the Marlin Quay Store and
- 14 Bar open?
- 15 A The Marlin Quay was open during the -- the ship store was
- 16 open during the day as early as 6:00 o'clock in the morning.
- 17 Usually three or 4:00 o'clock in the afternoon it would close
- 18 down. The hours at the bar were pretty inconsistent. When
- 19 the Stones were in it there really were no set hours. It was
- 20 very inconsistent on whether or not they'd be open or closed.
- 21 Q Okay. And you said the Stones. Who are the Stones?
- 22 A The Stones were the owners before the Lawhons purchased
- 23 the building.
- 24 Q Okay. And so when the Stones owned the snack bar you
- 25 said the bar hours were pretty inconsistent; is that correct?

1 A That's correct.

2 Q Did you have a -- did Gulfstream have a good relationship
3 with the Stones?

4 A Yes.

5 Q And let's talk about the parking situation at Gulfstream.
6 Can you explain to the jury what the parking situation is
7 like?

8 A The parking situation is very difficult. It definitely
9 limits -- the present parking situation limits the capability
10 of, of our restaurant. It's very small. There is nowhere
11 else to park other than the parking lot for our staff and, and
12 our guests. It's extremely crowded down in that area.

13 MS. GOLDING: Excuse me. Are you finished with this now?

14 MR. NUGENT: I am finished with the chart, yes, Ms.
15 Golding.

16 MS. GOLDING: Thank you.

17 BY MR. NUGENT:

18 Q Is there anywhere in the area to park other than the
19 parking lot that's next to the Gulfstream building?

20 A No.

21 Q And describe what is in the area other than the
22 Gulfstream building and the parking lot?

23 A The area there's a marsh that borders two sides of the
24 restaurant. The other side's bordered by the parking lot.

25 Across the street are, are houses.

1 Q And how many seats are at Gulfstream?

2 A There are 200 seats.

3 Q Okay. And how many spots are there in the parking lot?

4 A Seventy-seven total.

5 Q And how does that work fitting 200 patrons into 77
6 parking spaces?

7 A It's, it's very difficult to do.

8 Q Okay. And are there times when you see people circling
9 the parking lot unable to park?

10 A Absolutely. Usually someone's pulling out and someone's
11 waiting, two, two or three cars are waiting to pull in.

12 Q Before this lawsuit started, what did you know about
13 Gulfstream's rights to use the parking lot?

14 A I knew that we were entitled to use the parking lot at
15 night.

16 Q Did you know anything else about it?

17 A No.

18 Q Do you know who purchased the parking lot and the snack
19 bar in 2014?

20 A Yes. It was Mark Lawhon.

21 Q And when did you meet Mark Lawhon?

22 A I met him on Thanksgiving of, of -- Thanksgiving of 2014.
23 His family and himself were working on the -- there on the bar
24 area. They were painting. They were putting up new
25 decorations. They were planning on resurfacing the bar, and I

1 went over and introduced myself and brought them, brought them
2 some Thanksgiving dinner platters.

3 Q You brought them Thanksgiving dinner from Gulfstream over
4 to the snack bar?

5 A Yes. We do like a set platter that day, and it was
6 getting towards the middle of the night. So I decided to go
7 over and introduce myself because I saw the whole family
8 there.

9 Q And you said Mark Lawhon was there. Was his son, Chris
10 Lawhon, also there?

11 A Yes. Yes.

12 Q Did you talk to Mark and Chris Lawhon when you brought
13 over Thanksgiving dinner?

14 A Yes. I did.

15 Q And what did you talk about with them?

16 A Chris was very excited about getting involved with the
17 business. He mentioned he was watching a lot of the TV show
18 Bar Rescue to get some pointers, and he was just very excited
19 about fixing the place up.

20 Q And did you ever hear from Mark Lawhon about repaving the
21 parking lot?

22 A Yes.

23 Q And tell the jury about what happened.

24 A I received an email in January of 2015. It was early
25 January, just months after I met him, and he was inquiring on

1 who to speak to as far as repaving, the lights and general
2 maintenance of the parking lot.

3 MS. GOLDING: Your Honor, I believe the email would speak
4 -- would be the best evidence. I don't recall I've ever seen
5 that email.

6 MR. NUGENT: Your Honor, he's free to testify about it.

7 THE COURT: I, I appreciate that. It was already
8 mentioned in these proceedings. Without objection, I'm going
9 to allow it at this time. You may continue.

10 MS. GOLDING: Okay.

11 BY MR. NUGENT:

12 Q What did you do when you learned that Mark Lawhon was
13 looking to discuss repaving the parking lot?

14 A He was referred to Greg Greenbaum.

15 Q Okay. And do you know if he and Greg Greenbaum actually
16 met?

17 A I believe so. I, I do not know exactly, but I was told
18 shortly later to get some --

19 MS. GOLDING: Your Honor, I'm going to object. If he was
20 told that'd be hearsay.

21 THE COURT: All right. You can't say what you were told
22 or what you understand, has to be of your own knowledge or
23 your own experience.

24 A Yes, Your Honor.

25 THE COURT: Go ahead.

1 Q Mr. Kirk, how often did you see Mark and Chris Lawhon
2 after Thanksgiving of 2014?

3 A I saw Chris maybe 10 to 15 times and Mark maybe 15, 20
4 times or so.

5 Q And where did you see Mark and Chris Lawhon?

6 A Most of our, our interactions were in the parking lot.

7 Q Okay. And how did you come across them in the parking
8 lot?

9 A Just in, in passing, coming and going. Our -- the
10 dumpsters are located right next to Gulfstream, so usually
11 when they're taking out trash or just passing through the
12 parking lot.

13 Q Okay. You said the dumpsters are located right next to
14 Gulfstream. Could you explain that?

15 A Correct. Right outside of, of the Gulfstream's back
16 loading dock there is a door that swings open and the
17 dumpsters are located right under the door.

18 Q So there's two dumpsters. Does one belong to Gulfstream?

19 A Correct.

20 Q And the other dumpster, does it belong to the snack bar?

21 A Yes.

22 Q Okay. What did you talk about with Mark and Chris Lawhon
23 when you saw them in the parking lot?

24 A It was basic small talk. We talked about some of Mark's
25 ideas with the water taxi, providing fresh catch on, on the

1 dock and fishing and weather and just basic small talk most of
2 the time.

3 Q Did Mark Lawhon ever mention building a parking pier over
4 the marsh to you?

5 A Yes. He did.

6 Q And what did you tell him when he mentioned that?

7 A He wanted to build a parking pier that was south of
8 Gulfstream over the marsh. I told him that that was above my
9 pay grade and I don't make those decisions and you have to
10 contact Mr. Greenbaum and we'd pass it up our chain of
11 command.

12 Q Did you have any problems with the Lawhons after they
13 purchased the property but prior to 2016?

14 A No.

15 Q Did Mark Lawhon ever tell you he was planning to build a
16 new building in the Marlin Quay area?

17 A One time.

18 Q So one time he told you. What did he say that one time?

19 A It was in June of 2015, and I went over there to discuss
20 another issue, and I was in the ship store and he told me that
21 the renovation is becoming too expensive and they have decided
22 just to rebuild the building.

23 Q You said renovations. What did you know about any
24 renovations?

25 A I just knew they were working on it a lot. They were.

1 painting. They were constantly putting -- they put new floors
2 in. They were just pretty much re-facing the whole building,
3 and he said it was getting too pricey. So they're just going
4 to rebuild it.

5 Q Okay. Did he tell you anything else about rebuilding the
6 building?

7 A No.

8 Q Did he tell you how big the new building was going to be?

9 A No.

10 Q Did he tell you where it was going to be located?

11 A No. I just assumed it was in the same spot.

12 Q Did Mark Lawhon show you any drawings or plans for the
13 new building?

14 A No.

15 Q And I'm not talking now just about the conversation you
16 mentioned in 2015. Did he ever show you any drawings or plans
17 for the new building?

18 A No.

19 Q Did he ever tell you at any point in time how big the new
20 building would be?

21 A No.

22 Q Did he ever tell you at any point in time where the new
23 building would be located?

24 A No. He did not.

25 Q Did you ever have any conversations with Chris Lawhon

1 about a new building at Marlin Quay?

2 A Yes. There was one conversation in October -- well, it
3 was in fall of 2015, and we were standing outside the building
4 in the parking lot. We were looking at it. He was telling me
5 that the new building would be elevated to the height of 13
6 feet, and then we started talking about why it'd be elevated
7 and hurricane laws and how new buildings have to be, there's
8 the certain codes, and the conversation just moved on from
9 there.

10 Q And other than telling you the building would be
11 elevated, did Chris Lawhon tell you anything else about the
12 new building?

13 A No.

14 Q Did he tell you where the new building would be located?

15 A No. He did not.

16 Q Did Chris Lawhon ever talk to about putting a boardwalk
17 in the Marlin Quay area?

18 A No.

19 Q And did Chris Lawhon ever show you any drawings or plans
20 or any sort of rendering of a proposed new building?

21 A No. He did not.

22 Q What happened in November 2016 with the parking lot?

23 A That is when the parking lot became completely blocked
24 off.

25 Q Let's talk about the first thing you saw in the parking

1 lot on November 2016. Can you tell the jury what you saw?

2 A It was November 1st. When I showed up to work I saw
3 construction material along with yellow tape blocking a
4 section of the parking lot off.

5 Q And what did you do when you saw these construction
6 materials and the yellow tape in the parking lot?

7 A I took a photo of it and reported it to Linda Barnaba
8 through --

9 Q And did you create this report of this event to Ms.
10 Barnaba?

11 A Yes. I composed it in an, in an email at that time.

12 Q And was this report created in the course of your regular
13 business activities?

14 A Yes. It was.

15 Q Was it your regular practice to create these kinds of
16 reports?

17 A Yes.

18 Q And was this report created at or, at or around the time
19 of the events recorded in this email?

20 A Yes.

21 MR. NUGENT: Your Honor --

22 BY MR. NUGENT:

23 Q Mr. Kirk, I'm going to hand what has been marked. Exhibit
24 -- Plaintiff's Exhibit 19.

25 MR. NUGENT: May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 MS. GOLDING: Your Honor, we have an objection to the
3 exhibit. Does the Court want to take that up at this time?

4 THE COURT: All right. Well, let's get him to identify
5 it first and get the court reporter to mark it for
6 identification and then we'll do that.

7 MS. GOLDING: Thank you, Your Honor.

8 BY MR. NUGENT:

9 Q Mr. Kirk, do you recognize Exhibit 19?

10 A Yes. I do.

11 Q And what is Exhibit 19?

12 A It's an email that I sent to Mrs. Barnaba with an
13 attached picture of what the parking lot condition looked like
14 on November 1st.

15 Q Is this the email you just mentioned you testified that
16 you created after you saw the parking lot with the
17 construction materials and the yellow tape in it?

18 A Yes.

19 MR. NUGENT: Your Honor, tender Exhibit 19.

20 THE COURT: All right. And there's an objection to that,
21 Ms. Golding?

22 MS. GOLDING: Yes, sir.

23 THE COURT: All right. Mr. Foreman, ladies and
24 gentlemen, why don't you go to your jury room for just a
25 minute so I can talk about this more fully, please. Thank

1 you.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: Yes, ma'am, Ms. Golding.

5 MS. GOLDING: Exhibit 19 is dated Friday, November the
6 11th, Your Honor, and he's --

7 THE COURT: Go ahead.

8 MS. GOLDING: -- he's testified that, that the photograph
9 was something he took on November -- is -- excuse me. I'm
10 looking at the wrong exhibit. I apologize, Your Honor. It's
11 dated November 10, 2016. He said that this is a photograph he
12 took on November 1 when he saw the materials, if I heard it,
13 and the email refers to November 2. Under -- it's, it's
14 clearly hearsay. The Plaintiff has not established the
15 appropriate contract, communications with Linda Barnaba to
16 defeat hearsay under the business exception rule, was not kept
17 in the course of Gulfstream's regular conduct of business
18 activities, and he testified already he does not have regular
19 communications with Linda Barnaba.

20 MR. NUGENT: Your Honor, may I respond?

21 THE COURT: You may.

22 MR. NUGENT: Your Honor, this is absolutely a business
23 record under Rule 803(b)(6). Mr. Kirk testified that it was
24 his regular pattern or practice to notify Ms. Barnaba via
25 email of significant events that occurred in the parking lot.

1 He absolutely created this in the regular course of his duties
2 as manager, and this email recounts several events occurring
3 in the early November 2016 timeframe, and under South Carolina
4 law where there are events that are continuing or unfolding it
5 is appropriate for a business record to be created at or
6 around the time when it captures a series of those preceding
7 events. It is clearly a business record and comes in under
8 that hearsay exception.

9 THE COURT: All right. I find this to be a proper
10 exception. I do find it to be a business record. The witness
11 initially testified his place in the chain of command that he
12 reports to Ms. Barnaba and he stated that he reports to her on
13 important matters or unusual matters and he reports to her
14 either by email, phone call or in person. He further
15 testified as to this particular exhibit that it was created in
16 the normal course of his business duties and business
17 operations and was within his duties and obligations to do so.
18 Therefore, I'm going to allow Plaintiff's 19 in evidence over
19 the objection of the Defendant.

20 Ask the jury to come back in, please.

21 (Plaintiff's Exhibit Number 19 admitted into evidence and
22 appropriately marked.)

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 THE COURT: All right. Mr. Nugent, you may continue.

1 MR. NUGENT: All right. Request permission to publish
2 Exhibit 19.

3 MR. BLOOM: It's up.

4 THE COURT: You may do so.

5 BY MR. NUGENT:

6 Q Mr. Kirk, this is the email that you sent to Ms. Barnaba
7 in early November 2016; correct?

8 A That's correct.

9 Q And in that email you recounted to her the obstructions
10 that happened on the parking lot in that part of November; is
11 that right?

12 A That's correct.

13 Q Let's look at the second page of the document, should be
14 up on your screen as well. Can you describe what's in that
15 photo?

16 A The photo is the section of the parking lot closest to
17 the seawall blocked off with tape and construction materials
18 in the parking lot. There's --

19 Q And what date did you take that photo?

20 A November 1st.

21 Q Did you know who put those materials on the parking lot
22 on November 1st?

23 A No.

24 Q And why did you take this photo?

25 A I took the photo because there was construction materials

1 in the parking lot. It was out of place, and I was concerned
2 that it was taking up parking.

3 Q Let's turn back to Exhibit Number 19. Did you talk to
4 Dr. Lawhon on November the 2nd?

5 A Yes. I did.

6 Q And what did he tell you?

7 A He informed me that he'd be taking off -- taping off the
8 parking, the parking lot, and he said he'd be taping it off
9 from the, the street towards, towards the seawall, and I told
10 him as long as I had access to the gate I just -- make, make
11 sure I had access. He didn't -- he never asked me for
12 permission. He told me what he was doing.

13 Q Okay. He told you about tape; is that right?

14 A Correct.

15 Q Were you concerned about tape being put up on the parking
16 lot?

17 A I was concerned about tape, but tape can be moved. So I
18 just knew it would be something we'd have to work around.

19 Q And did he tell you that a fence was going to be put up
20 on the parking lot?

21 A No. He did not.

22 Q And let's turn to -- I'm going to hand you what has been
23 marked as Exhibit Number 23. Do you recognize this document,
24 Mr. Kirk?

25 A Yes. I do.

1 Q And what is Exhibit 23?

2 A This is an email that I composed to Linda Barnaba.

3 Q And what did you include in the email that is Exhibit 23?

4 A I discussed when I saw -- I discussed on November 4th I
5 had no idea that the parking lot was going to be blocked off,
6 that the storage container was moved on November 3rd. When I
7 saw Dr. Lawhon on November 3rd after the tape was up I asked
8 him -- I informed him that we had a bus coming on Wednesday,
9 November 9th, and I asked him if we could move the tape so we
10 could accommodate the buses in the parking lot rather than
11 have them try to park in what was remaining. He assured me
12 that that would be no problem, there would be plenty of spaces
13 for the buses. He told me he had a house down the street
14 where we could do overflow parking, but he assured me that
15 parking wouldn't be an issue.

16 Q Okay. So just to make sure we recap, November 3rd you saw
17 Dr. Lawhon in the parking lot; correct?

18 A Yes.

19 Q And you asked him about the -- removing the tape so that
20 some buses could go to Gulfstream?

21 A Just so we could move the tape out of the way, pull the
22 buses in and then put the tape back so the buses had a place
23 to park. Yes.

24 Q How many customers were on those buses?

25 A They were full-size tour buses, like a regular tour bus

1 of -- yeah, it was a full-size regular bus.

2 Q And this is November 3rd. Did you have any other
3 conversations with Dr. Lawhon on November 3rd?

4 A Yes. I did.

5 Q And tell the jury about those other conversations.

6 A A few minutes later after I was walking through the
7 parking lot and Dr. Lawhon was leaving the parking lot towards
8 the south entrance of Gulfstream, he stopped in his car and
9 he, he said, "You know, hey, I really want to talk to somebody
10 about parking," and he started talking about his idea of the
11 parking pier and building the parking pier over the marsh, and
12 I told him again he'd have to speak with Mr. Greenbaum, and he
13 responded, "I don't want to speak with Mr. Greenbaum. I'd
14 like to speak with somebody else."

15 Q And on November 3rd why didn't you tell Dr. Lawhon that
16 you objected to the tape that was placed on the parking lot?

17 A I wanted to see what would happen. I mean, I should have
18 been more forceful, but in, in removing it, but tape can be
19 moved and he assured me that there would be space for parking.

20 Q Okay. And then on November 4th what happened in the
21 parking lot?

22 A The fence was constructed.

23 Q And did Dr. Lawhon tell you that he was going to put up
24 the fence?

25 A No.

- 1 Q Did you consent to Dr. Lawhon putting up the fence?
- 2 A No. I did not.
- 3 Q What did you do when you saw Dr. Lawhon installing the
- 4 fence?
- 5 A I immediately took pictures of what was going on and I
- 6 sent those pictures to Linda Barnaba.
- 7 Q Okay. And why did you send those pictures to Ms.
- 8 Barnaba?
- 9 A Because we were completely caught off guard, that fence
- 10 was going up and, you know, tape was one thing but a fence is
- 11 a permanent fixture that was blocking the whole parking lot.
- 12 Q Did you know how long the fence was going to be there
- 13 when you saw it up?
- 14 A No. We did not.
- 15 Q And in Exhibit 23, did you create that email as part of
- 16 your regular business activities?
- 17 A Yes. I did.
- 18 Q And was it your regular pattern or practice to create
- 19 emails such as Exhibit 23?
- 20 A Yes. It is.
- 21 Q And was that email created at or around the time of the
- 22 activities recorded in the email?
- 23 A Yes. It was.
- 24 MR. NUGENT: Your Honor, tender Exhibit 23.
- 25 THE COURT: Objection?

1 MS. GOLDING: Same objection, the email was November the
2 18th some 12 days supposedly after this conversation, can't be
3 business exception.

4 THE COURT: All right. Very good. I find it to be a
5 proper exception to the business records or a business records
6 exception and reaffirm the Court's prior ruling on the other
7 exhibit and I'm allowing 23 in evidence.

8 (Plaintiff's Exhibit Number 23 entered into evidence and
9 appropriately marked.)

10 BY MR. NUGENT:

11 Q Let's talk about the fence. You said that you saw the
12 fence go up on November the 4th. I'm going to ask you to look
13 at what has been marked as Exhibit Number Seven, and it's
14 going to show up on your screen, Mr. Kirk. You can describe
15 to the jury what you see in Exhibit Seven.

16 A That was the installed fence. That's a photograph of the
17 north entrance. You can see the warning signs, danger, no
18 trespassing, authorized personnel only. There's also some
19 rolled up fence off to the left that they would secure the
20 parking lot when no one was there or there was nobody
21 supervising the site.

22 Q And let's look at the second page of Exhibit Number
23 Seven. Could you describe what you see in Exhibit Seven?

24 A That shows the storage containers along South Waccamaw
25 Drive. It also shows the construction material in the

1 foreground. The backhoe in the back was the site of the old
2 Marlin Quay building and the fence that runs along South
3 Waccamaw Drive.

4 Q The storage containers on the right-hand side of the
5 photograph, did you consent to them being placed on the
6 parking lot in that location?

7 A No. They were there when I showed up for work.

8 Q Okay. You showed up for work on what day, November 3rd?

9 A November 3rd, yes.

10 Q November 3rd; is that right?

11 A Correct.

12 Q Okay. You showed up for work on November 3rd and those
13 storage containers were already there?

14 A Correct.

15 Q And did Dr. Lawhon come to you and ask you after the
16 fact, "Hey, is it okay if I put these storage containers
17 there?"

18 A He, he told me they were there.

19 Q Okay.

20 A And he told me that he was going to run tape from those
21 to the seawall.

22 Q When he told you that the containers were already sitting
23 there?

24 A Correct.

25 Q Okay. And he didn't ask you if it was okay to have those

1 storage containers in that location?

2 A No. He just told me that that's where they were going.

3 Q And on the left-hand side of Exhibit Seven do you see
4 those white items with sort of some holes sticking up? Do you
5 know what those items are?

6 A Yes. That's the, the, the, the deck. Those are the
7 stairs going up to the bar and the other -- it's -- I believe
8 that's the stairs and that's the patio for, for the old Marlin
9 Quay Snack Bar deck.

10 Q Just to make sure I understand you, those white items
11 were the, the decking stairs of the snack bar after it had
12 been demolished?

13 A Yes.

14 Q Okay. Those decking stairs were moved from the side of
15 the snack bar and put down in the parking lot closer to the
16 Gulf Stream Restaurant; correct?

17 A Yes.

18 Q And let's look at the third photograph in Exhibit Seven.
19 Do you see the fence in that photograph?

20 A Yes. I do.

21 Q Okay. And is that the location of the, of the fence that
22 Dr. Lawhon put up?

23 A Yes. It is.

24 Q Does that match the location of the tape that he put up?

25 A In that, in that location, yes.

1 Q Okay. And let's look at the final photograph in Exhibit
2 Number Seven, and do you know who took this photograph?

3 A I believe it was Linda Barnaba.

4 Q Okay. Linda took this photograph. Did you see what's
5 depicted in the photograph?

6 A The current photograph?

7 Q In, in this photograph you're looking at, this last?

8 A That's the -- of what was left over of the available
9 parking that we had at Gulfstream.

10 Q Okay. So the Gulfstream's parking is depicted in this
11 last page of Exhibit Number Seven?

12 A Correct. Those were the spots that were left.

13 Q Do you have any authority to consent to anything
14 regarding the parking lot at Gulfstream?

15 A No. I do not.

16 Q Who makes those decisions?

17 A Mr. Greenbaum.

18 Q And have you told Dr. Lawhon that before?

19 A Yes. I have.

20 Q What did you do when you first saw the fence?

21 A I -- after I informed Mrs. Barnaba, she told me to set up
22 a meeting with Dr. Lawhon to find out what was going on and
23 how long it was going to be there. We were pretty caught off
24 guard by it, and try to find out what, what we were going to
25 do next.

- 1 Q Did you eventually have a phone call with Dr. Lawhon?
- 2 A Yes. I did.
- 3 Q And did you write an email about the phone call?
- 4 A Yes. I did.
- 5 Q Okay. And what day did the phone call occur?
- 6 A It was Friday, November 11th, 2016.
- 7 Q And what day did you write the email regarding the phone
- 8 call?
- 9 A At the same time.
- 10 Q And how many calls were there on November 11th with Dr.
- 11 Lawhon?
- 12 A Two.
- 13 Q And was it part of your regular business activities to
- 14 create documents such as the one regarding the phone call?
- 15 A Yes. It was.
- 16 Q Okay. And did you create that as part of your regular
- 17 course of business?
- 18 A Yes. I did.
- 19 Q I'm going to hand you, Mr. Kirk, what has been marked as
- 20 Plaintiff's Exhibit 22.
- 21 MS. GOLDING: May I approach the bench, Your Honor?
- 22 THE COURT: Yes, ma'am.
- 23 (Whereupon, a bench conference is held in the presence,
- 24 but out of the hearing of the jury.)
- 25 MS. GOLDING: We need to put it on the record.

1 THE COURT: Yes, ma'am. Yes, ma'am. We're going to do
2 that.

3 MS. GOLDING: Okay. Thank you.

4 THE COURT: Mr. Foreman, ladies and gentlemen, if you'd
5 go to your jury room for just a minute, please. Thank you.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right. First, have we marked one by the
9 court reporter?

10 MR. NUGENT: Your Honor, I was going to mark this.

11 THE COURT: All right. Let's go ahead and do that now.

12 MS. GOLDING: What is the number of that, Adam?

13 MR. BLOOM: 22.

14 MR. NUGENT: 22, Henri.

15 MS. GOLDING: Okay. Thank you.

16 THE COURT: All right. Your objection, Ms. Golding?

17 MS. GOLDING: Well, number one, I -- obviously, my
18 objection is under, under hearsay, and I do not believe it's,
19 it's under the business exception, but the sentence, "He has
20 connections from here to New York City," I think that's highly
21 prejudicial. It can be interpreted, you know, you know, I
22 hate to say this, but it can be interpreted in, in ways that,
23 that would be extremely deflamatory [sic] -- defamatory to my
24 client and the innuendos that can go from that. I, I think
25 the prejudicial effect is just by marking out that one

1 sentence, it's -- would, would alleviate that prejudicial
2 effect.

3 THE COURT: All right. Let me, let me have an
4 understanding, Mr. Nugent. If you could tell me how you
5 intend to explain that sentence because just as it sits, an
6 initial impression could be that there's some nefarious --

7 MS. GOLDING: Yeah.

8 THE COURT: -- import to it. So to alleviate that, and,
9 and I think it's an -- sad to say but probably an obvious one
10 that the jury might jump to if it is not further explained.
11 So how do you intend to explain that so that it does not set
12 forth some implication of nefarious intent?

13 MR. NUGENT: I, I certainly don't intend to have any
14 witness characterize that particular language. It's -- and if
15 you're asking me about the relevance of that I can certainly
16 go into it.

17 THE COURT: Yes, sir.

18 MR. NUGENT: The, the relevance of it is that this email
19 reflects -- it goes to the issue of what dealings were there
20 between Dr. Lawhon and Mr. Kirk or other individuals at
21 Gulfstream in this November timeframe, which is an issue in
22 this case regarding the circumstances of the fence being put
23 up, and what Mr. Kirk recounts in this email is that when he
24 told Dr. Lawhon that it was going to be necessary for Dr.
25 Lawhon to pay for parking while the parking lot was

1 obstructed, that Dr. Lawhon responded by issuing essentially
2 threats to Mr. Kirk regarding he wouldn't be bullied, he would
3 not pay under any circumstances, and then he goes on to try to
4 bully Mr. Kirk by telling him about connections that he has
5 from here to New York City. It absolutely goes to this issue
6 of what would have been the status of the communications, what
7 are the --

8 THE COURT: All right. Well, then, it, it -- that needs
9 to be explored with the witness that he is reporting as he
10 previously testified to, if there's unusual activities it's
11 his duty, job and responsibility to report that to his
12 superiors, and that's what he's doing, and he's putting it in
13 an accepted form that they use for their, for their business.
14 I think he's already said that, but I mean, but in that that
15 he is relaying that this was what he was told by Dr. Lawhon,
16 not that -- because as it exists, it, it appears to be some
17 statement out of the blue that everybody knows that Dr. Lawhon
18 has these contacts between here and New York City.

19 MR. NUGENT: Your Honor, and maybe we could fix this with
20 a little bit better redaction of this documents because if the
21 actual full document is read this is really a continuation of
22 his prior sentence, which was redacted.

23 THE COURT: But and which I don't know what that says.

24 MR. NUGENT: Yeah. I can -- right, and if I can -- to
25 read it --

1 THE COURT: I mean, you -- you've presented to me and
2 that's blacked out. So I've got no clue what that says.

3 MR. NUGENT: If you'd like I can read it to you right
4 now.

5 THE COURT: Sure. Yeah. That'd be great.

6 MR. NUGENT: That sentence and I'll read both sentences
7 together just so Your Honor can understand the context.

8 THE COURT: All right.

9 MR. NUGENT: The sentence that was redacted states, "He
10 also stated he knows and has just as much money as the
11 Greenbaums. He has connections from here to New York City."
12 With that context it's clear that Mr. Kirk was, in fact, just
13 relaying what was told to him by Dr. Lawhon. He simply put a
14 period right there after the word Greenbaums went. Perhaps a
15 different punctuation mark would have been appropriate.

16 THE COURT: All right. And, and I'm assuming it was
17 redacted based on some conversations you all have had with
18 opposing counsel and why was it, Ms. Golding, that you wanted
19 that redacted?

20 MS. GOLDING: Yes, sir, Your Honor. Your Court ruled
21 that we could not speak of the wealth of the Greenbaum family
22 and the, and the planes and everything, and I asked at that
23 time is that also applicable to any comments with regard to
24 the wealth of, of, of Mr. Lawhon and any statements that he
25 has money and the Court ruled, yes, that's correct, that

1 applies both ways.

2 THE COURT: All right. All right. I'm going to leave
3 the document as redacted, but -- and the witness cannot talk
4 about the redacted portion. Okay. But I am expecting you to
5 have the witness explain regarding the connections from New
6 York City, that he's reporting what was said to him by Dr.
7 Lawhon, "That, that I have connections between here and, and
8 New York City."

9 MR. NUGENT: Yes, Your Honor.

10 THE COURT: All right. Not talking about -- so that
11 there is at least some explanation, and it's not just left
12 there that, that the jury could jump to some conclusions that
13 aren't warranted, that they -- it's explained to them how it
14 came into being, these are words that were used by Dr. Lawhon.
15 All right.

16 MR. NUGENT: Thank you, Your Honor.

17 THE COURT: So with that, over the objection of counsel
18 for the Defense, I'm going to allow Plaintiff's 22 into
19 evidence as it is currently situated or as it is currently
20 presented to the Court. All right. Ask the jury to come back
21 in, please.

22 (Plaintiff's Exhibit Number 22 entered into evidence and
23 appropriately marked.)

24 (Whereupon, the following takes place in the presence of
25 the jury.)

1 THE COURT: You may continue, Mr. Nugent.

2 BY MR. NUGENT:

3 Q Mr. Kirk, I'm going to hand you what has been marked as
4 Plaintiff's Exhibit 22, and --

5 MR. NUGENT: Well, request permission to publish that
6 exhibit, Your Honor.

7 THE COURT: I've allowed 22 in evidence based upon our
8 discussion over the objection of Defense. You may proceed.

9 BY MR. NUGENT:

10 Q Okay. You've got Exhibit 22 in front of you, Mr. Kirk.
11 It's also up on the screen, and this is an email from November
12 11th, 2016; is that correct?

13 A That's correct.

14 Q And what did you describe in this email from November
15 11th?

16 A I described the two phone conversations I had with Dr.
17 Lawhon.

18 Q Okay. You had two conversations with him on November
19 11th. Why don't you tell the jury about the first call that
20 you had with him.

21 A The first conversation I had was at 10:21, and I called
22 to discuss the existing parking situation. He immediately
23 questioned whether the -- for a construction of the new lot
24 that he proposed us -- we build over the marsh south of
25 Gulfstream or it'd be for the existing situation. I told him

1 it was for our existing situation, at which point he let me
2 know that if we didn't want a lease from him we, we don't have
3 to.

4 Q And, and let me stop you right there --

5 A Yes.

6 Q -- just so I make sure we've got all that clear. You
7 told Dr. Lawhon you wanted to talk about the parking
8 situation; correct?

9 A Correct.

10 Q And then he mentioned something about leasing the parking
11 from Gulfstream, is that -- or Gulfstream leasing the parking
12 from him; is that right?

13 A He informed me that the lease stated he has all the
14 available parking.

15 Q Okay. And did you tell him that he needed to pay for
16 parking for Gulfstream while the fence was up?

17 A No. I had mentioned in the past that we've hired a valet
18 in the past and the Stone family had, had paid for the valet
19 service.

20 Q Okay. Was he agreeable to paying for valet service?

21 A No. He was not. He said he would absolutely not pay for
22 the valet service. He said he would not be bullied, we may be
23 able to bully the Marina Association and the Stone family, but
24 he would not be bullied.

25 Q Okay. And did he tell you anything else?

1 A Yes. He told me that he had connections from here to New
2 York City and he just wouldn't stand for it.

3 Q After that call, who did you talk to?

4 A I called Linda Barnaba.

5 Q Okay. And what did you tell Ms. Barnaba?

6 A I informed her that he was not willing to help us with
7 the resolution and paying for the valet and how -- well, how
8 he bragged about being well-connected.

9 Q Okay. And did you call Dr. Lawhon back?

10 A Yes. I did. I called him back at 10:46.

11 Q And what did you tell him in the call at 10:46?

12 A I informed him that a second phone call wouldn't be
13 necessary and he would be receiving a phone call from our
14 corporate office.

15 Q Okay. And when you told him that how did Dr. Lawhon
16 respond?

17 A He became extremely agitated. He raised his voice. He
18 started shouting about how the parking belongs to him, how
19 he'll make it so Gulfstream doesn't have any parking, that the
20 slip owners could fill the entire parking lot, that the grease
21 trap we have sits on his property and things are going to get
22 really ugly.

23 Q And what time was that second phone call with Dr. Lawhon?

24 A It was like 25 minutes after the first one at 10:46 a.m.

25 Q 10:46 a.m. is when that second phone call happens?

1 A That's correct.

2 Q And did anything happen in the parking lot immediately
3 after your phone call with Dr. Lawhon?

4 A Yes.

5 Q What happened?

6 A The -- a US Foods truck driver it -- got my attention and
7 told me to follow him into the parking lot.

8 MS. GOLDING: Your Honor, I'm going to make an objection
9 to anything the US truck driver would say. I think that's --

10 THE COURT: All right. Don't -- you can't say what the
11 individual told you, just what you did as a result of the
12 conversation.

13 A I walked down to the parking lot and observed the US
14 Foods truck being blocked by Dr. Lawhon's truck.

15 Q Okay. You saw the US Foods truck being blocked. US
16 Foods are they a delivery service?

17 A US Foods is a delivery service. They drive full-size
18 pickup trucks. It's the kind of semi you'd see on the street,
19 US Foods, Sysco, it's the same, same, same type of truck, but
20 it's a, it's a full-size truck, and being that the parking lot
21 was blocked off it made it impossible for him to back up to
22 our delivery gate or turn the truck around.

23 Q Okay. And you said Dr. Lawhon's vehicle was blocking the
24 US Foods truck. Did you personally see that?

25 A Yes. I did. I documented it through surveillance, and I

1 also had the driver of the US Foods truck write a statement.

2 Q Okay. And did you write an email regarding this incident
3 with the US Foods truck?

4 A Yes. I did.

5 Q And who did you send that email to?

6 A I sent it to Linda Barnaba, including the statement and
7 the pictures.

8 Q And why did you have the US Foods truck driver write a
9 statement?

10 A It's our practice in, in -- at the restaurant any
11 incident we have with a vendor or a guest or a staff member we
12 document the incident.

13 Q Okay. And did you create this email that you sent to Ms.
14 Barnaba at or around the time that this event happened?

15 A As it was happening.

16 Q Okay. And was this email created in the course of your
17 regular business activity?

18 A Yes.

19 Q And it was your regular -- was it your regular pattern or
20 practice to create this kind of email?

21 A Yes.

22 Q Mr. Kirk, I'm going to hand you what has been marked as
23 Exhibit Number 20. Do you recognize Exhibit 20, Mr. Kirk?

24 A Yes. I do. It's the email that I wrote outlining the
25 blocking of the US Foods driver.

1 Q And does it contain the photographs and written statement
2 that you just testified to?

3 A Yes. It does.

4 MR. NUGENT: Tender Exhibit 20, Your Honor.

5 THE COURT: Objection?

6 MS. GOLDING: Your Honor, if you see Exhibit 20, of
7 course, is the same objections, but the last document in
8 Exhibit 20, I believe that would be hearsay.

9 THE COURT: What say you about that?

10 MR. NUGENT: Your Honor, this is a classic example of a
11 present sense impression. This statement was taken
12 immediately at the time of the event by the US Foods truck
13 driver. It's dated that the event happened at 11:50. This
14 email attaching the statement was sent at 12:20. It's and the
15 email, which is already a business record, states that this
16 event occurred at 11:30. So we're talking a less than one
17 hour timeframe this statement from the food truck driver was
18 made, and as such, it is a present sense -- it's a present
19 sense impression.

20 THE COURT: I'm going to allow Exhibit 20 in its entirety
21 including that the last statement over the objection of the
22 Defense. You may proceed.

23 A Thank you, Your Honor.

24 (Plaintiff's Exhibit Number 20 admitted into evidence and
25 appropriately marked.)

1 MR. NUGENT: Publish it through -- Exhibit 20, Your
2 Honor.

3 THE COURT: You may do so.

4 BY MR. NUGENT:.

5 Q Mr. Kirk, you testified that Exhibit 20 is the email
6 regarding the US Foods truck being blocked. Let's look at the
7 second page, and it'll be up on your monitor as well. Do you
8 recognize what's shown in the second page of Exhibit 20?

9 A Yes. That's the US Foods truck. It's taken from our,
10 our deck area, and you can see towards the street between the
11 blue conex box and the sign Dr. Lawhon's SUV.

12 Q Okay. And what color was his SUV?

13 A It's a white SUV.

14 Q And if we go to the third and fourth page of the exhibit
15 are those photographs of Dr. Lawhon's SUV?

16 A Yes.

17 Q And did you take those photographs at the time that the
18 food truck driver was parked?

19 A Yes.

20 Q Said he was being blocked?

21 A Yes.

22 Q And let's go to the final page of Exhibit 20. Is this
23 the written statement that you took from the food truck
24 driver?

25 A Yes. It is.

1 Q Could you read that statement for the jury, please?

2 A [As read], "Around 11:50 a.m., I, Adrian Fowler, pull up
3 to Gulfstream for a delivery when a white guy pull up in a
4 truck and block my entrance for Gulfstream. I ask him if he
5 was planning on leaving his truck there because he's blocking
6 the dock. His answer was, yes, and that he were not going to
7 move his truck for me, to tell the other guy to call him if he
8 had a problem."

9 Q After this incident on November 11, did you make any
10 other attempts to contact the Lawhons about parking?

11 A No. I did not.

12 Q And why is that?

13 A Because I passed -- passed the situation on to Linda
14 Barnaba completely and I was told just to worry about running
15 the restaurant and do my job.

16 Q Now, the fence that was blocking the parking lot has been
17 taken down; is that right?

18 A On November 18th, I believe, yes.

19 Q Okay. And were you present when the fence was taken
20 down?

21 A Yes. I was.

22 Q Who was with you when the fence was removed?

23 A Linda Barnaba.

24 Q And did you see who was removing the fence?

25 A It was Chris and Mark Lawhon.

1 Q And did you have an encounter with Chris and Mark Lawhon
2 while they were taking down the fence on November 18th?

3 A Yes.

4 Q And tell the jury about that encounter.

5 A Linda and I were in the parking lot observing what was
6 going on or what the situation in the parking lot was. It was
7 a Friday night. So we were getting ready to open, and Chris
8 Lawhon was walking towards us, and as he was walking towards
9 us he puffed up and shouted at us, "Don't you f'ing look at
10 me." Linda and I were kind of taken aback by that. So we
11 moved off towards the side to stay out of their way. We
12 walked back towards the, towards the seawall in that area, and
13 Dr. Lawhon and Chris continued to walk towards us. So they
14 started taking the fence down. They were using hammers. They
15 had tools with them. As Linda and I backed away, we were
16 walking back towards our, our stair area, two, two hammers
17 fell directly at our feet overheads and landed right at our,
18 right at our side.

19 Q Okay. You said that hammers landed at your feet. Where
20 did those hammers come from?

21 A They came from Chris and Mark Lawhon.

22 Q And you said you were walking back towards Gulfstream
23 from the seawall; is that right?

24 A We had got out of their way as they were taking the fence
25 down, and as we were standing there the hammers landed at our

1 feet, yes, and then --

2 Q And where were Chris and Mark Lawhon standing when they
3 threw the hammers?

4 A They were standing behind us.

5 Q And when you say behind, were they closer to the seawall?

6 A They were closer to the seawall, yes.

7 Q Okay. So they were standing close to the seawall and you
8 were walking towards Gulfstream; is that correct?

9 A That's correct.

10 Q And the hammers landed at your feet?

11 A With, within two feet, yes.

12 Q And what kind of hammers were these?

13 A They were construction hammers.

14 Q When you say construction hammer, you mean something that
15 drives a nail into wood?

16 A A claw and -- claw, yes, a claw hammer.

17 Q And what did you do after Chris and Mark Lawhon threw the
18 hammers at you?

19 A We were pretty startled. I, I turned around, and I, I
20 saw Chris walking towards us glaring at us, and we just -- we,
21 we walked off. We were shocked at what happened, and we just
22 walked away immediately.

23 Q And this was November 18th; correct?

24 A This was November 18th, yes.

25 Q Okay. Are you aware of any other ways that Chris and

1 Mark Lawhon have interfered with the parking lot since
2 November 18th, 2016?

3 A There were quite a few occasions. They had called the
4 cops on our vendors.

5 Q Okay. You say they called the cops on your vendors.
6 Could you explain that to the jury?

7 A In May of two thousand and --

8 MS. GOLDING: Your Honor, it, it -- unless he has
9 personal knowledge, he does not have personal knowledge. He
10 can only testify as to what he has personal knowledge of.

11 THE COURT: Okay. How about further explore with the
12 witness what his basis of information is.

13 MR. NUGENT: Okay.

14 BY MR. NUGENT:

15 Q Mr. Kirk, you testified that Mark and Chris Lawhon called
16 the cops on vendors at Gulfstream. How do you know about this
17 incident?

18 A I was at Gulfstream. It was right after 4:00 o'clock in
19 May of 2017. We were open for business. There was guests in
20 the restaurant. I went downstairs and was greeted by a
21 Georgetown County Sheriff's Deputy who told me that he
22 received a complaint that our workers --

23 MS. GOLDING: Your Honor, I want to make an objection.
24 That's hearsay. They --

25 MR. NUGENT: Your Honor, this is not offered for the

1 truth of the matter asserted, just the mere fact that the
2 complaint was actually made.

3 THE COURT: I'm going to allow it.

4 MS. GOLDING: Okay.

5 BY MR. NUGENT:

6 Q Continue.

7 A The deputy said that a complaint was made that our --
8 some workers were trespassing on the Marlin Quay's property
9 behind the building and alongside of the building. I realized
10 that they were our painters.

11 Q Before you go there, I want to let you look at Exhibit
12 Number Five. We'll look at the second photograph, put it up
13 on your screen. Could you identify where those painters were
14 located at the time that the police were called?

15 A Yes. If you look at Gulfstream, between Gulfstream and
16 the water in that shadowed area right to the left of the boat
17 ramp, a little down further than that, yes, that area right
18 there, that's the, that's the seawall that runs along
19 Gulfstream. That's where the painters were touching up paint,
20 and then also right above that going towards South Waccamaw
21 that side also, they were doing work on that corner of the
22 building.

23 Q Okay. And what happened when the sheriff came over and
24 told you about the, the complaint about the painters?

25 A The painters had already left for the day. So the

1 sheriff deputy, he took my ID. He took my name down and got
2 all my information and told me I'd be, I'd be on the Marlin
3 Quay no trespass list.

4 Q Okay. This is May of 2017. Were there any other
5 occasions when the Lawhons called the sheriff regarding
6 anything at Gulfstream?

7 A A couple of weeks later in June of 2017 they were called
8 again on our window washers.

9 Q And what happened in June of 2017?

10 A Our window washers were doing what they do every month,
11 cleaning the windows, and they were on the other side of the
12 seawall, the same area the painters were on, and the Marlin
13 Quay had called the police on them, and --

14 MS. GOLDING: Your Honor, I just want to, again, just for
15 the record because this witness doesn't have personal
16 knowledge of any call.

17 THE COURT: All right. Again, I find it's not being set
18 forth for the truth of what is asserted but as to whether or
19 not complaints were made or activities of -- that were
20 occurring at the, at the location. I'm going to allow it.

21 Q Mr. Kirk, continue describing what happened on the second
22 occasion when the sheriff was called on the window washers
23 that were working at Gulfstream.

24 A So I went outside with the window washers and Mark
25 Lawhon, the -- we waited for the Georgetown County Sheriff's

1 Deputy to arrive once again.

2 Q Okay. And what happened after that?

3 A The Georgetown Sheriff Officer arrived. He was talking
4 to Chris and Mark Lawhon. They walked over. They greeted
5 myself and the window washers, took their identification and
6 said they would also be on a no trespass list and they
7 shouldn't be back there in that area.

8 Q And that area is on the seawall; is that right?

9 A That's correct. It's the seawall behind Gulfstream.

10 Q And how high is that seawall above the actual marsh or
11 the actual inlet?

12 A It's seven feet to the mud.

13 Q Okay. Are you aware of an incident involving cones in
14 the parking lot?

15 A Yes. I am.

16 Q Could you describe for the jury that incident?

17 A There was an occasion in August of 2017 I, through
18 surveillance cameras, I noticed Chris Lawhon had blocked the
19 -- several parking spots with orange utility cones. He put
20 them right next to our building in one corner and then a
21 couple of other cones blocking spots by the old Marlin Quay
22 site.

23 Q How long were these cones in place during August of 2017?

24 A From August 12th to August 25th.

25 Q How about in the last week, have there been any incidents

1 involving the Lawhons in the parking lot in the last week?

2 A Just last Friday I, I left Gulfstream at 9:30, and I
3 received a call shortly after 10:00 o'clock saying that one of
4 my servers had dumped glass into a dumpster that belonged to
5 Marlin Quay. The server only worked there for about two weeks
6 and was not really aware of the situation. I try to keep the
7 staff, you know, not really involved with any of this.

8 Q And just to back up, you said the server dumped glass
9 into the dumpster owned by Marlin Quay?

10 A That's correct. We have a small five-gallon glass bucket
11 for broken glass so it doesn't go in our trashcan, and he
12 dumped it in the unmarked trashcan that sits directly right,
13 right next to ours.

14 Q So instead of putting it in the Gulfstream trashcan he
15 accidentally put it in the one right next to Gulfstream's?

16 A That's correct.

17 Q Okay. And what happened after you learned about this
18 incident?

19 A Well, I viewed the surveillance camera. I saw Mark
20 Lawhon walk over there with a flashlight and then flag over
21 about five other guys. They confronted -- he demanded to
22 speak to a manager. My kitchen manager, who's an assistant
23 manager, went downstairs and Dr. Lawhon told him to get in the
24 trashcan and get the glass out.

25 Q Dr. Lawhon told your employee to get in the trashcan and

1 pull the glass out?

2 A That's correct.

3 Q Let's talk about the harm to Gulfstream. How was
4 Gulfstream harmed by the fence being installed in the parking
5 lot?

6 A Our lot was completely blocked off. So it affected us.
7 Without parking we can't generate sales. Without sales we
8 would collapse as a business.

9 Q How long was the fence in place?

10 A Thankfully, it was only for two weeks.

11 Q What about construction containers?

12 A They were there for a month.

13 Q Are you aware of any customers who decided not to go to
14 Gulfstream because of the parking situation?

15 A Yes. There were several people on a daily basis. I
16 would try to stand out front and monitor the parking situation
17 because it was very dangerous because cars could come in but
18 they, they couldn't come out. So if multiple cars pulled in
19 the parking lot there was nowhere for anyone to turn around.
20 So a lot of people would just, you know, holler and leave and
21 tell me, "See you next year." We, we rely on seasonal guests.
22 The people that come down to Gulfstream usually come the same
23 week every year. They have been for 30 years. So they're
24 like, "See you next year," or, "We're out of here." You know,
25 people don't generally tell, tell you why they're running off.

1 Q Are you aware of any parties that were canceled because
2 the fence was in place?

3 A We did. I had a party that was set up for Tidelands
4 Health. They had a party set for December.

5 Q And what happened with that party?

6 A They called me while the fence was up and inquired about
7 the parking situation, and ultimately cancelled their party.

8 Q Are you, are you now familiar with the plans that Dr.
9 Lawhon has for the building he wants to construct in the
10 Marlin Quay area?

11 A Yes. The most recent plans I saw were an 8500 square-
12 foot building with a rooftop deck, 360 seating capacity.
13 It's, it's big.

14 Q What about the kitchen in those plans?

15 A The kitchen is comparable to any commercial kitchen.
16 It's if not, if not bigger than Gulfstream it's the same size.

17 Q How does that kitchen compare to the kitchen that was in
18 the old snack bar?

19 A It's apples to oranges. It's the old, the old snack bar
20 kitchen was one that I'd find in my, in my house, and this is
21 a commercial grade kitchen.

22 Q And if we'd take a look at the -- I'm going to show you
23 the photograph to confirm -- this photograph that I've got in
24 my left hand this is of the old snack bar; is that right?

25 A That's correct.

1 Q And do you recognize the photograph that's in my right
2 hand?

3 A Those are the plans I observed for the new building.

4 Q And how would you compare these two buildings?

5 A One is a story and a half building with -- and the other
6 one is a four-story building with a rooftop deck and outdoor
7 seating and it's, it's a lot bigger than the original
8 building.

9 Q How would this proposed building by Dr. Lawhon impact
10 Gulfstream?

11 A To have two restaurants of that size competing for the
12 same parking spaces at the same time at night I don't think
13 either of them would be able to survive and have parking.

14 Q What would happen to Gulfstream if it lost 10 or 20
15 parking spaces?

16 A If we lost 10 to 20 parking spaces would impact us
17 greatly and we'd, we'd probably go under.

18 MR. NUGENT: Those are my questions, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, we're going
20 to stop for the day. I'll tell you it's outside of my
21 ordinary practice to split up direct and cross examination,
22 but long before I was assigned to hold this particular week of
23 court I had obligations elsewhere, and I intend to honor
24 those, and so, we're going to stop for the evening. We'll
25 resume tomorrow morning at 9:30 with the cross examination of

1 this witness, and again, as I told you, not researchers, not
2 investigators, don't look up anything, can't go visit the
3 site, can't talk to anybody about it, husband, wife,
4 boyfriend, girlfriend, person down the street, doesn't matter,
5 don't talk about it among yourselves till I give it to you at
6 the very end. So with that I'll see you back tomorrow
7 morning, 9:30. Thank you very much.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Mr. Kirk, you remain as a
11 witness. You may not have any discussions with your attorneys
12 about your testimony until you are done with cross-
13 examination. You understand that?

14 A Yes, Your Honor.

15 THE COURT: All right. Very good.

16 MS. GOLDING: Your Honor --

17 THE COURT: Anything other than that from the Plaintiff
18 at this time?

19 MR. BLOOM: No, sir.

20 MR. NUGENT: No, Your Honor.

21 THE COURT: From the Defense?

22 MS. GOLDING: Yes, sir, if you could direct the witness,
23 also, not to have any discussions about his testimony with
24 anyone on behalf of Gulfstream like Greg Greenbaum and Linda
25 Barnaba was here. I don't believe anybody should talk to him

1 and he should not review any documents, review his deposition,
2 anything of that nature.

3 THE COURT: Well, if he has on his own volition intends
4 or wants to look at something, I'm not going to prevent him if
5 it's his own idea and of his own volition he wants to look at
6 something. I'm not going to prevent him from doing so, but
7 you understand this is out of the ordinary. You would not be
8 allowed between direct and cross examination to go talk to
9 your employers or to the attorneys, and so we're going to
10 follow that procedure. You're not going to be able to
11 communicate with them nor can they communicate with you, but
12 for some reason you have access to some document and this is
13 of your own volition, you can't have any communication or
14 contact with anyone or anyone suggest it to you. You, you,
15 you're, you're on your own with that. You understand that?

16 A Yes, Your Honor.

17 THE COURT: All right. Very good. Thank you very much.

18 MS. GOLDING: Thank you.

19 THE COURT: I'll see you all tomorrow morning 9:30.

20 MS. GOLDING: Thank you, Your Honor

21 (Adjourned for day.)

22

23

24

25

1 (On the record, June 6, 2018. The following takes place
2 outside the presence of the jury.)

3 THE COURT: All right. Is the Plaintiff ready for the
4 jury to come in?

5 MR. BLOOM: Yes, sir.

6 THE COURT: Defense?

7 MS. GOLDING: Yes, sir. I have a couple of things,
8 though, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. GOLDING: First of all, Mr. Lawhon is, is, is ill.
11 His wife is very ill so that she couldn't be in attendance
12 today, and if, in fact, he has to get up and leave it's simply
13 because he's ill.

14 THE COURT: All right. I don't have any problem with
15 that. That's fine.

16 MS. GOLDING: Okay. Thank, Your Honor.

17 Your Honor, also, in the motions in limine there was
18 discussions with respect to fishing tournaments, and on cross
19 examination I'm going to be asking Mr. Kirk about fishing
20 tournaments, about how they, they were permitted by
21 Gulfstream, used the parking lot, and I think that's just
22 consistent with our position as to the, the use of the parking
23 lot between the parties and the consents and everything that
24 have gone on, and of course, he was the individual in his
25 deposition that testified he was the one that consented,

1 permitted all of that, and so I don't believe that's what the
2 intent was to completely exclude, but I think it's important
3 that I notify the Court that I will be discussing his approval
4 of the fishing tournaments, Your Honor, and the use of -- and
5 the fishing tournaments, the four fishing tournaments that
6 occurred while the Lawhons had the dock -- had the marina.

7 THE COURT: Yes, sir, Mr. Bloom.

8 MR. BLOOM: Your Honor excluded reference to fishing
9 tournaments. That means all reference to fishing tournaments.
10 That was the order in the motion in limine. I'm not sure
11 about ascribing intent to the motion in limine, but the motion
12 in limine sought to exclude reference to and mention of and
13 evidence of fishing tournaments. That was Your Honor's
14 ruling.

15 THE COURT: What is it that you expect to ask him, Ms.
16 Golding?

17 MS. GOLDING: Well, with respect to his authority, Your
18 Honor, that he was the one that received notification of the
19 fishing tournaments, he, he, he participated with the fishing
20 tournaments, he provided the koozies, the coupons for the
21 drinks. That was all with what he did with regard to -- with
22 -- in relationship to the Lawhons. There was never any
23 communication between the Lawhons and Mr. Greenbaum. It was
24 all with Jef Kirk with those four fishing tournaments, Your
25 Honor.

1 THE COURT: I'll allow you to ask some very limited
2 questions that establish that when those events took place
3 that they communicated with him and not with anyone else in
4 the chain of command, but I'm not going to allow you to go on
5 to go forward as to what was going on or what he was doing,
6 just to establish the fact that the issue of communication,
7 that they had -- if they needed something they went to him and
8 not somewhere else in the chain of command.

9 MS. GOLDING: Thank you, Your Honor.

10 THE COURT: All right.

11 MS. GOLDING: In -- with respect to that restriction,
12 Your Honor, I would like to proffer at some point the
13 testimony I expect to obtain from Jef Kirk with respect to the
14 fishing tournaments.

15 THE COURT: All right. Well, let's, let's get done with
16 his cross examination and any redirect, and then we'll give
17 the jury a break, and then you can do it at that point in
18 time.

19 MS. GOLDING: Thank you, Your Honor.

20 THE COURT: All right. All right. Ask the jury to come
21 in, please.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: All right. Mr. Kirk, if you would resume
25 the, the witness stand, please, sir, remembering, of course,

1 that you are under oath. Go ahead, Ms. Golding.

2 MS. GOLDING: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. GOLDING:

5 Q Good morning, Mr. Kirk.

6 A Good morning, Ms. Golding.

7 Q With respect to your position at Gulfstream, you've told
8 the jury that you were the operating partner for the
9 Gulfstream Café?

10 A No, ma'am. I said I was a manager for CentraArchy.

11 Q Okay.

12 A Who operates Gulfstream Café.

13 Q Okay. You don't recall signing an affidavit attesting to
14 the fact that you were operating partner for Gulfstream Café?

15 A I've signed many pieces of paper. I don't recall the
16 specific document.

17 Q You don't recall that? Okay. We'll get that affidavit
18 and show you, Mr. Kirk. So you won't deny here today that
19 you've signed an affidavit that you were operating partner for
20 Gulfstream Café?

21 A I won't deny. That's the title. It's the same as a
22 general manager.

23 Q Okay. Thank you. So and you've been this operating
24 partner for 2013; is that correct?

25 A That's correct.

1 Q Okay. And prior to that time you were at Gulfstream Café
2 in 2011; is that correct?

3 A That's correct.

4 Q And what was your position at Gulfstream Café in 2011?

5 A I was a senior manager for CentraArchy.

6 Q Okay. Were you there one year about?

7 A One or two years. It's -- I transferred around to a lot
8 of the different restaurants.

9 Q Okay. Now, the structure of the management at the
10 Gulfstream Café is you're the boss; is that correct?

11 A I'm a general manager, yes.

12 Q Okay. And then there's two managers under you, one being
13 a kitchen manager and one being a service manager?

14 A Currently I have three. I like to cross train my
15 managers into different positions.

16 Q Okay. Well, when I took your deposition in January 2018
17 you, you -- there were two managers; is that correct?

18 A That's correct. My other manager was on maternity leave,
19 and my other manager had broken his leg.

20 Q Okay. Now, the operating manager before you, before 2013
21 was who?

22 A Roseanne Handelsman [spelled phonetically].

23 Q Okay. And do you know how long she was the operating
24 manager before you?

25 A Maybe four years.

1 Q Okay. And she's still employed with CentraArchy; is she
2 not?

3 A CentraArchy, yeah. She's still employed there.

4 Q Okay. And in fact, she's in Myrtle Beach -- well, she's
5 in -- she's at the Surfside?

6 A Yes. That's correct.

7 Q Okay. And she's the floor manager there; is that
8 correct?

9 A I, I believe so.

10 Q Okay. And you've seen her and talked to her; is that
11 correct --

12 A I haven't seen her --

13 Q -- at party functions?

14 A I've saw her at our recent Christmas party, yes.

15 Q Okay. Okay. And when -- your communications with her
16 you didn't talk to her about this lawsuit; did you?

17 A No, ma'am.

18 Q Okay. Now, your working hours vary depending on the
19 season; is that right?

20 A Yes.

21 Q And what are your working hours from April till
22 September?

23 A It varies. I'm there as, as needed. Usually I work 11
24 to 9 or 12 to 10 or just work the volume of the shift.

25 Q Okay. And you testified in your deposition from April to

1 September your working hours is 12 p.m. to 10 p.m.; is that
2 correct?

3 A For the most part.

4 Q Okay. And then in October through March of each year
5 your working hours are 9 a.m. to 7 p.m.; is that right?

6 A It, it, it varies, but yes, for the most part.

7 Q Well, that's what you testified in your deposition when I
8 took it a few months ago; is it not correct?

9 A Okay.

10 Q Is it correct?

11 A Yeah. Yes.

12 Q Okay. And you also -- your boss is Linda Barnaba; is
13 that correct?

14 A Yes.

15 Q And she's been your boss since you took -- since you
16 became the general manager in 2013 till the present.

17 A Yes.

18 Q Okay. And how often do you communicate with Linda
19 Barnaba let's say on a weekly basis?

20 A It varies on what's going on. Sometimes I talk to her
21 every day. Sometimes I talk -- I don't talk to her all week.

22 Q Okay. Well, just, just give the jury an estimate. Let's
23 take a month, how often do you talk to Linda Barnaba on a
24 monthly basis?

25 A It would vary month to month. There's no exact number.

1 Q Okay. Well, you certainly have access to her cell phone;
2 is that right?

3 A Absolutely.

4 Q Okay. And you have access on email to Linda Barnaba; is
5 that correct?

6 A Yes.

7 Q Okay. And now, when you came there in 2013, the Marina
8 Store and Restaurant was owned by Charles Stone; is that
9 correct?

10 A That's correct.

11 Q Okay. And Charles Stone was operating the Marina Store
12 and Restaurant; is that correct?

13 A Michael Stone, his son, was.

14 Q Okay. And you, you saw Mr. Charles Stone there quite
15 often; did you not?

16 A I've seen him a couple of times.

17 Q Okay. Now, before the -- Mr. Lawhon, Mark Lawhon bought
18 the Marlin Quay Store and Restaurant, you, you were there at
19 least 10 to 20 times; is that right?

20 A I'd say so.

21 Q Okay. And most of the time you would go there after
22 work; is that right?

23 A Not all the time. I'd, I'd stop in occasionally for a
24 beer after work.

25 Q Okay. And so when you stop in the 10 or 20 times that

1 you stopped in for a beer after work, that means that it had
2 to be after 7:00 p.m. from October to March and after 10:00
3 p.m. from April to September; isn't that right?

4 A The hours are very consistent, and every time I went over
5 there wasn't for a beer after work. I'd go over there just to
6 say hello or walking around the parking lot as well.

7 Q Okay. Well, you would sometimes go there for a beer
8 after work; is that correct?

9 A That's correct, but my work hours vary. Sometimes I'm
10 there at six in the morning and I get off at four. Like today
11 is my -- generally that's when I'd be scheduled on a Wednesday
12 for inventory purposes. So it, it really varies.

13 Q So if you went there for a beer after work, a number of
14 times you went there for a beer after work was at night; is
15 that not correct?

16 A I, I don't really recall. You're asking me when I went
17 for a beer five years ago. It's hard to say.

18 Q But you testified it was a beer after work. That meant
19 your work; is that correct?

20 A That's correct.

21 Q Okay.

22 A But sometimes if my kitchen manager calls out early in
23 the morning, I -- there's no set -- I don't have set hours
24 necessarily.

25 Q And when you went there, when you went to the restaurant

1 after work, you knew they had beer because you consumed beer;
2 is that correct?

3 A I like beer, yes. I consume beer there.

4 Q And they also sold liquor there; is that correct?

5 A Very limited, yes.

6 Q But they had all the basic brands; did they not?

7 A Basic well brands, yes.

8 Q Okay. And, and you had a good relationship with Charles
9 Stone; did you not?

10 A I didn't talk to Charles Stone too much. I had a better
11 relationship with Michael Stone.

12 Q Well, did you not have a good relationship with Charles
13 Stone or not?

14 A The only conversation I really recall is him sitting on a
15 rocking chair out front. I went over and introduced myself to
16 him and said hello and that was about it.

17 Q Okay. And he sat a lot in that rocking chair up front;
18 did he not?

19 A I really only recall seeing him there maybe four times
20 since -- the time I worked there until he passed away.

21 Q Now, you told this jury yesterday, if I recall correctly,
22 that the kitchen at the Marina Store and Restaurant I think
23 you said was tiny and it was like your home kitchen; is that
24 correct?

25 A Yes, ma'am.

1 Q Okay. Do you have in your home kitchen a deep fryer like
2 there was in the restaurant at Marlin Quay?

3 A Not like the one in the restaurant but I do have a deep
4 fryer, yes.

5 Q Okay. Do you have in your own kitchen the grill with the
6 overhead like was in the restaurant?

7 A No.

8 Q Okay. So it wasn't like your kitchen like you told --
9 tried to tell this jury yesterday; was it?

10 A Size-wise, yes.

11 Q You're talking about square footage?

12 A Square footage and limited equipment.

13 Q Okay. Well, there is storage that they had at, at the
14 store and restaurant, Marlin Quay in the store and restaurant
15 that wasn't in the pictures. You know that.

16 A I'm not sure what storage that you're referring to.

17 Q Okay. So you never saw the storage at the Marlin Quay
18 Store and Restaurant?

19 A Which storage area are you referring to?

20 Q I'm asking you, did you see any storage rooms when you
21 went there?

22 A I believe there was a room with an ice machine.

23 Q Okay. Other than a room with an ice machine were there
24 -- was there any other storage that you saw?

25 A There was some lockers by the restrooms.

1 Q And, and that storage, are you including that to say that
2 storage is still as the size of your home restaurant -- of
3 your home kitchen?

4 A I'm not sure what storage you're referring to.

5 Q Well, you --

6 A I, I --

7 Q I'm referring to the storage --

8 A The one with the ice machine?

9 Q -- that you just testified about.

10 A The one with the ice machine?

11 Q Yeah.

12 A I'm not sure what the question is. Can you repeat it?

13 Q Certainly. Do you have that storage at your home
14 kitchen?

15 A I have a pantry, yes.

16 Q Okay. Does that pantry have the big ice machine that's
17 --

18 A No, no, ma'am. Just my, just my refrigerator.

19 Q Okay. Okay. Now, also there was an outside walk-in
20 freezer at the Marlin Quay Store and Restaurant; was there
21 not?

22 A I don't believe that was there when the Stones owned it.

23 Q Okay. Well, let's just say for the -- for this
24 questioning that it, that it came there with the Lawhons and
25 it -- and they installed it in November or before, sometime in

1 the fall of 2014?

2 A I --

3 Q Did you see that?

4 A I, I don't recall.

5 Q Okay.

6 A I don't know exactly what you're talking about.

7 Q But you're not denying that there was an outside walk-in
8 freezer by the Marlin Quay Store and Restaurant in 2015 and
9 2016; are you?

10 A The only outdoor feature I recall seeing they used for
11 bait. They had it plumbed for live minnows, and that's the
12 only box I recall seeing out there.

13 Q And that was that big storage that you saw behind the
14 building; is that right?

15 A It was a red box that I recall seeing.

16 Q Oh, red box. You didn't see where bait was frozen in the
17 walk-in freezer?

18 A I didn't really go over there very often to that area.

19 Q Okay. Okay. And since you didn't go over there -- that
20 plat that shows the area below -- also in 2015 and 2016 there
21 were containers outside the Marlin Quay Store and Restaurant;
22 were there not?

23 A Yes, ma'am.

24 Q Okay. Now, at no time from the time that Mr. Lawhon
25 bought the property at the end of August 2014 to November 17,

1 2016, did you ever make a complaint about the walk-in freezer
2 and the storage containers outside the Marlin Quay Store and
3 Restaurant?

4 A I was unaware of the walk-in freezer, but I, I didn't --
5 no, ma'am. I --

6 Q Never made, okay. Now, I understand, according to what
7 Mr. Greenbaum testified, he said that he came there in
8 sometime in late 2013, early 2014 to meet with Mr. Stone; do
9 you recall that?

10 A With Mr. Stone, no, I don't recall that.

11 Q Okay. You know that -- how about meet with Jim Allison?

12 A I thought it was Jim Allison, yes.

13 Q Okay. And you know Jim Allison is a realtor with Dunes
14 Realty?

15 A I know that now.

16 Q Okay. But you met Jim Allison at that time; did you not?

17 A No, ma'am. I did not.

18 Q Okay. Now, at that point in time when Mr. Greenbaum
19 came, Greg, he had his father with him; is that right?

20 A That's correct.

21 Q Okay. Did you see Greg Greenbaum and his father, Jerry
22 Greenbaum, at that time?

23 A Yes. I did.

24 Q Okay. And did you see them in the parking lot?

25 A Yes. I did.

1 Q Okay. Now, Linda Barnaba was not there at that time; was
2 she?

3 A No, ma'am.

4 Q Okay. So who was present with, with Greg Greenbaum and
5 Jerry Greenbaum other than Jim Allison? Anyone else?

6 A No one else.

7 Q Okay.

8 A That, that I recall. I don't remember.

9 Q Okay. Plaintiff's Exhibit Number Four, which is
10 introduced into evidence, I'm going to ask you -- ask that it
11 be put up, please. Do you see that in front of you, Mr., Mr.
12 Kirk?

13 A Yes. I do

14 Q Okay.

15 MS. GOLDING: Your Honor, may I go behind the witness to
16 point it out?

17 THE COURT: Yes, ma'am.

18 MS. GOLDING: Thank you, Your Honor.

19 BY MS. GOLDING:.

20 Q Mr. Kirk, excuse me.

21 A Which --

22 Q I'm just going to point something out to you.

23 A You go this side.

24 Q I'm going to point an area between the Marina Store and
25 Restaurant and the Waccamaw Drive area, this area right here.

- 1 Do you see that?
- 2 A Yes, Ms. Golding.
- 3 Q Okay. Now, the Gulfstream Café never --
- 4 THE COURT: Okay. And, and you've pointed it out, Ms.
- 5 Golding. Please go back and ask your questions.
- 6 MS. GOLDING: Okay. Thank you. I appreciate that.
- 7 THE COURT: Yes, ma'am.
- 8 BY MS. GOLDING:
- 9 Q Now, this area I've got highlighted in blue on Exhibit
- 10 Number Four, the Gulfstream Café never used that area for
- 11 deliveries; did it?
- 12 A For deliveries, no, ma'am.
- 13 Q Okay. And the Gulfstream, in fact, never used that area
- 14 to repair the Gulfstream building; did it?
- 15 A No, ma'am.
- 16 Q Okay. And the Gulfstream Café never used that area to
- 17 park the cars; did it?
- 18 A Not that I can call.
- 19 Q Okay. In fact, there are no parking spaces there; are
- 20 they?
- 21 A Now that I can see.
- 22 Q Okay. Thank you. Now, you met Mark Lawhon and Chris
- 23 Lawhon in you testified November 2014; is that right?
- 24 A That's correct.
- 25 Q Okay. And you know they had bought or Mark Lawhon had

1 bought the business in the latter part of August 2014; is that
2 right?

3 A That's correct.

4 Q Okay. And when you met with Mark Lawhon and Chris Lawhon
5 Chris told you he was really excited; is that right?

6 A Yes.

7 Q And you told this jury yesterday that Chris told you he
8 was really excited about getting to know the bar business; is
9 that right?

10 A That's correct.

11 Q Okay. Isn't it a fact that Chris told you that he was
12 really excited to get to know the restaurant and bar business?

13 A That's correct.

14 Q Okay. But you didn't tell the jury yesterday that he
15 said restaurant. You intentionally omitted that from the
16 jury; isn't that correct?

17 A I wouldn't say it's intentionally. I kind of have a lot
18 going on right now. I --

19 Q I'm sorry?

20 A There's a lot going on right now. I'm doing --

21 Q So but now you recall that Chris Lawhon the first time
22 you met him said he was really excited about getting to learn
23 the restaurant business and the bar business?

24 A After you reminded me, yes.

25 Q Okay. Now, you were at the Marlin Quay Restaurant when

1 it was being operated by his son, Chris Lawhon?

2 A I went there once, yes.

3 Q Okay. And you saw the menu that they had; is that
4 correct?

5 A I, I don't think I ever looked at the whole menu.

6 Q Okay. But you saw a menu there?

7 A They had, they had a menu, yes.

8 Q Okay. And you particularly saw a page on that menu; is
9 that correct?

10 A Yes.

11 Q Okay. Let's pull up Defendants' Exhibit 27. The menu
12 that you saw was handed to you by the cook?

13 A That's correct. His name was A.J.

14 Q Okay. And you saw the menu and then you gave it back to
15 the cook; is that right?

16 A Yes.

17 Q Okay.

18 MS. GOLDING: And with respect to Exhibit 27 we would
19 offer that as the menu, Your Honor.

20 THE COURT: Any objection?

21 MR. NUGENT: Objection, Your Honor. There's no
22 foundation, and it's also hearsay.

23 THE COURT: You can mark it for identification at this
24 point in time.

25 MS. GOLDING: Okay.

1 THE COURT: And substantiate it later. Thank you.

2 MS. GOLDING: Thank you, Your Honor.

3 BY MS. GOLDING:

4 Q Now, when you saw that menu and you saw that page called
5 favorites, did you -- is that what you saw?

6 A I'm not, I'm not sure. I'm not sure what you're talking
7 about.

8 Q Let me give you a paper copy of it. I'm going to hand
9 you for identification Defendants' Exhibit Number 27.

10 A Thank you.

11 Q Okay. When you received that menu you particularly
12 recall seeing the page called favorites; is that correct?

13 A Yes, ma'am.

14 Q Okay.

15 A Because we were talking -- he was talking about the, the
16 burger.

17 Q Okay. And the page called favorites -- may I have that
18 back?

19 A Sure. Absolutely.

20 Q -- that you recall, it had burgers, a shrimp poor boy,
21 mahi-mahi sliders, flounder, barbecue; is that correct?

22 A I was -- my attention was drawn to the burger. Like I
23 said, he handed it to me. I handed it right back. He was
24 talking about a new burger recipe he was coming up with. A.J.
25 worked for me for several years at different restaurants for

1 CentraArchy. So he was -- we were friendly with each other.

2 Q Okay. So A.J. is the cook that you talked to about --

3 and the cook that handed you the menu for the Marlin Quay

4 Marina; is that correct?

5 A He -- I believe he specifically had it open to the

6 Marlin Quay burger and was showing me the burger.

7 Q Okay.

8 A And saying how he's making it better.

9 Q Yeah.

10 A I mean, I was like --

11 Q And there are a number of items on page four as

12 favorites; are there not?

13 A On the menu, yes.

14 Q Okay. And you gave -- and when you saw the menu, and

15 that was, that was in 2015; is that right?

16 A I believe so, yeah.

17 Q Okay. And when you saw the menu in 2015 and you saw that

18 one page, you handed it back to the cook and said, "Cool";

19 did you not?

20 A Yes. That's pretty much what I said, yeah.

21 Q Okay. You didn't object or say, "Wait a minute, you

22 can't do this"; did you?

23 A He was discussing a seasoning on a burger, saying he put

24 French onion soup mix in the burger and was just excited about

25 a burger. So I, I didn't -- I was like, "Great. That's

1 great. Cool," and then I bought the burger later on.

2 Q Okay. Good. And then you didn't then contact Linda
3 Barnaba and say, "Wait a minute, they're opening a restaurant
4 over there, bad, bad, bad"; did you?

5 A No. He was just trying to sell me a cheeseburger.

6 Q Okay. Now, my question was you didn't contact Linda
7 Barnaba then and say, "Wait a minute, they've got a menu.
8 They're a restaurant, bad, bad, bad"; did you?

9 A I usually don't discuss my lunch with Linda. I, I did
10 not contact Linda about the menu.

11 Q Okay. And you didn't contact Linda's boss, George
12 Ogorek, about the menu; did you?

13 A About the burger, no.

14 Q Okay. Well, about the menu.

15 A Sure. I didn't really -- I just -- I dismissed the menu.

16 Q Okay.

17 A I, I looked at it for maybe a couple of seconds and said,
18 "Great, cool."

19 Q You dismissed the menu because in reality it was a
20 restaurant and has been a restaurant; isn't that correct?

21 A I, I mean, I guess so, yes, ma'am.

22 Q Okay. I think on direct examination you said to this
23 jury that you from the two years from November or the fall of
24 2014 to November 1, 2016, you communicated with the Lawhons or
25 Chris Lawhon five to ten times?

- 1 A Yeah. I'd say about maybe 10 times.
- 2 Q Okay. And that you communicated with Mark Lawhon during
- 3 that two-year period 10 to 20 times?
- 4 A Yes, ma'am.
- 5 Q Okay. So given those estimates then you, you were in
- 6 communication with them at least probably around 30 times;
- 7 isn't that right?
- 8 A Yes, ma'am.
- 9 Q Okay. Now, also you told the jury that when you
- 10 communicated with them that you just chitchat; is that right?
- 11 A A lot of time, yes.
- 12 Q Okay. And you told them that sometimes you would talk
- 13 about, you know, Gulfstream matters; is that right?
- 14 A I don't recall saying that.
- 15 Q Okay. But what I recall you didn't say is that you
- 16 talked to the Lawhons about the parking lot; isn't that a
- 17 fact?
- 18 A Once or twice, yes.
- 19 Q Okay. But you didn't tell that to the jury yesterday
- 20 that you talked to the Lawhons about the parking lot; isn't
- 21 that a fact?
- 22 A No, ma'am. I did say I talked to them about the parking
- 23 lot.
- 24 Q Oh, you did. Okay. Now, with these conversations that
- 25 you had with the Lawhons, in June of 2015 you knew they were

1 going to build a new building?

2 A Yes, ma'am.

3 Q Okay. And that June of 2015 that's over a year and a
4 half before they started construction?

5 A Yes, ma'am.

6 Q Okay. And you knew that the new building had to be 20
7 feet high?

8 A No, ma'am. I believe it was 13 feet off the ground.

9 Q Thirteen feet. But you knew it had to be high; is that
10 right?

11 A I believe that's to code, yes.

12 Q Okay. And you also knew that the building would be
13 something good for the area; is that correct?

14 A Anything other than what was there would have been better
15 for the area, yes.

16 Q Okay. In fact, I think you said it would bring -- this
17 new building was good for the area and bring value to the
18 area; is that right?

19 A Yes.

20 Q Now, since June of 2015 you've talked to Linda Barnaba
21 and told her about the new building; did you not?

22 A Yes.

23 Q Okay. You also had a discussion with Linda Barnaba's
24 boss George Ogorek about the plan for the new building; did
25 you not?

1 A No, ma'am.

2 Q Okay. Well, let me ask you this, when you -- you did
3 talk with George Ogorek in early 2016 about demolishing the
4 building and a new building being built?

5 A I believe he was already aware of the situation.

6 Q Okay. So there was some discussion with him?

7 A We were discussing the parking pad that Mark had proposed
8 building over the marsh.

9 Q Okay. And isn't it a fact George Ogorek was aware of the
10 plan to build a new building as of at least January 2016?

11 A I assumed he knew about it by the way he was speaking.

12 Q Okay. Thank you. Also the demolition of the building
13 and the new building that was a topic of conversation around
14 your restaurant; was it not?

15 A Yes.

16 Q Okay. And you say, and in fact all your employees asked
17 you what's going on next-door. They wanted to know and you
18 told them; did you not?

19 A I didn't tell them. I told them that they were
20 rebuilding instead of renovating.

21 Q Okay. In fact, in that community there were a lot of
22 people that were talking about the new building; is that not
23 correct?

24 A Sure. We're right next to the Marlin Quay Condominiums
25 and a lot of people have boat slips and have interest in the

1 area, absolutely.

2 Q In addition to knowing about the demolition of the Lawhon
3 building and the new building plans, you also knew about the
4 seawall construction?

5 A I never knew about any new building plans other than they
6 were going to rebuild rather than renovate.

7 Q So you never had any conversations with Chris Lawhon
8 about having a broad walk and joining that with Gulfstream?

9 A No, ma'am. There -- I -- no, ma'am. The first I heard
10 of it was yesterday.

11 Q Okay. The -- let's go back to my question though. The
12 seawall, you knew about that since at least also the summer of
13 2015, seawall construction?

14 A I didn't know any details about it. I knew we were not
15 going to repave the parking lot until the seawall work was
16 done, but Gulfstream had no involvement with that project.

17 Q Okay. And that seawall construction, that was for the
18 Marlin Quay Marina Owners Association; correct?

19 A Again, I have no idea who, who was responsible for that
20 project. It wasn't a Gulfstream project.

21 Q Okay. You know Pat Henry; don't you?

22 A I'd never met him in person, no, ma'am.

23 Q Oh, you don't. Okay. Now, let's go to November 1. On
24 November 1, you were working; were you not?

25 A Yes, ma'am.

1 Q Okay. And that was a Tuesday; right?

2 A Yes, ma'am.

3 Q Okay. And I think you said on November 1 you saw
4 construction material and a tape -- and tape up?

5 A That's correct.

6 Q Okay. Now, at that time that construction material
7 belonged to the contractor for the seawall; is that not
8 correct?

9 A I don't know who it belonged to, ma'am.

10 Q Well, did it concern you?

11 A It was in the parking lot with yellow tape around it. So
12 it concerned me. Yes, ma'am.

13 Q Okay. So this is something that concerns you enough to
14 go find out who put it on and who put the tape on; is that
15 right? Is that what you're telling this jury?

16 A No, ma'am. We knew that Marlin Quay was also planning on
17 demolishing their building. So I didn't know who, who the
18 material belonged to or where it came from. It was just in
19 the parking lot which is why I -- it concerned me and I
20 photographed it.

21 Q Okay. And that was on November 1, and I think you then
22 testified that -- did you see who put that construction
23 material on the --

24 A No, ma'am.

25 Q Okay. But subsequently you found out it belonged to the

1 Marina Association; did you not?

2 A Once they started building the seawall, yes.

3 Q Okay. You --

4 A I mean, that's what they were using.

5 Q You saw that construction material going down the seawall
6 going into the marsh area?

7 A Some of it.

8 Q Yes.

9 A There was more than just that though.

10 Q Yeah. And that basically alerted you that it wasn't Mark
11 Lawhon; didn't it? Isn't that?

12 A I'm not sure what the timeframe of them starting the
13 seawall construction was, ma'am. It wasn't November 1st.

14 Q Okay. So when you saw construction of the seawall you
15 don't remember when, when they started construction?

16 A I believe it was after the fence was already up.

17 Q Okay. And what date do you say the fence went up?

18 A November 4th.

19 Q Okay. So November 4th the fence went up. How soon after
20 was the seawall construction started?

21 A I'm, I'm not sure. My concern at that time was running
22 the restaurant and figuring out my parking situation. I
23 wasn't -- I, I didn't pay attention to when the seawall
24 construction started.

25 Q Oh, were they hiding the seawall construction that you

1 couldn't see it?

2 A No, ma'am. There was stuff all over the parking lot.

3 Q Okay. And so you say the seawall construction started
4 after Friday, November 4th?

5 A I said I'm not sure when the seawall construction
6 started. I believe it was after the fence was up.

7 Q Okay. And the fence went up on Friday, November the 4th?

8 A Correct.

9 Q Okay. Now, you were on the parking lot with Mark Lawhon,
10 Chris Lawhon and Mike Everhart on Thursday, November the 3rd;
11 were you not?

12 A I don't recall Mike Everhart.

13 Q Okay. Do you wear usually a white jacket when you're
14 working?

15 A No, ma'am.

16 Q You don't?

17 A No. I never wear.

18 Q Have you ever worn a white jacket when you're working?

19 A I've never worn a white jacket.

20 Q Okay. Let me ask you, were you on the parking lot on
21 November 3rd with Mark Lawhon and Chris Lawhon?

22 A With Mark Lawhon, yes.

23 Q Okay. Was Chris Lawhon there?

24 A Not that I recall.

25 Q Okay. And this was the day before the fence went up?

1 A That's correct.

2 Q Okay. Now, at that day the containers were already moved
3 from the Marlin Quay Store and Restaurant to several parking
4 or on parking spaces; is that correct?

5 A On November 3rd, yes, when I arrived to work the storage
6 containers were there.

7 Q Okay. Okay. And those containers, did you find out that
8 they held equipment and fixtures and everything from the
9 Marlin Quay Marina Store and Restaurant?

10 A I didn't know what was in the containers. I just knew
11 they were there and that's the day the tape was put up from
12 the containers to the seawall.

13 Q Now, were you on vacation anytime the two weeks before
14 November 1, 2016?

15 A I don't recall being on vacation, no, ma'am.

16 Q And in that two-week period of time did you not see the
17 Marlin Quay Marina Store and Restaurant being evacuated, the
18 inside, and the materials and equipment and everything being
19 put in the containers?

20 A Since they bought the building there was a lot of moving
21 parts. They were renovating. They were painting. They were
22 putting new floors in. So there was always a project going on
23 over there. So I -- it didn't -- really pay it any attention
24 if it, if it was.

25 Q So you knew there was activity the last week or two in

1 October 2016?

2 A There was always activity since they purchased it.

3 Q Okay. And by then, the last week in October 2016 you
4 knew they were demolishing the building and you'd known that
5 for over, over a year?

6 A Yes.

7 Q Okay. And you knew they were going to build a new
8 building and you knew that for over a year?

9 A Yes.

10 Q Okay. And but you can't tell this jury that you knew
11 they were putting -- they were filling up containers the last
12 week or two in October?

13 A I didn't know what they were doing, ma'am. I --

14 Q Okay. Okay. Well, how many conversations or
15 communications did you have with Chris Lawhon and Mark Lawhon
16 during these last two weeks in October 2016?

17 A At the time I wasn't logging my conversations with them.
18 I remember some conversations with Mark Lawhon during that
19 timeframe. I don't really recall many with Chris.

20 Q Okay. And do you remember the topic of the conversations
21 in those last two weeks in October 2016?

22 A In October, no.

23 Q Okay. Now, let me go to, I believe it is Plaintiff's
24 Exhibit Number 19. No. I first want to go to Plaintiff's
25 Exhibit 17. Can you pull up a photograph in Exhibit,

1 Plaintiff's exhibit -- okay. Good. Now, I think on that page
2 there are two photographs. Do you see that, Mr. Kirk?

3 A Yes.

4 Q Do you see both of the photographs?

5 A Yes. I do.

6 Q Okay. And these photographs are of the bar and
7 restaurant at Marlin Quay; is that correct?

8 A Yes. That's correct.

9 Q Okay. And you had seen these photographs before November
10 1 -- I mean, not -- excuse me. You had not seen the
11 photographs. You had been in this bar and restaurant before
12 November 1, 2016; had you not?

13 A Yes, ma'am.

14 Q Okay. And in fact, I think you said the first time you
15 went into this bar and restaurant was in the calendar year
16 2011; is that right?

17 A Yes, ma'am.

18 Q Okay. Thank you. Now let me go to Exhibit 19,
19 Plaintiff's 19 I believe it is. You have Plaintiff's 19?
20 Now, Plaintiff's 19 is an email dated November 10, 2016; is
21 that correct?

22 A Yes, ma'am.

23 Q And this email has attached a photograph that you said
24 you took on November 2.

25 A Yes, ma'am.

1 Q And this photograph is of construction, the second -- do
2 you see the second photograph and that's of construction
3 material that was on the parking lot?

4 A That was November 1st.

5 Q Oh, this was -- okay. So this was a photograph you took
6 on November 1st?

7 A Yes, ma'am.

8 Q Okay. And the first time you sent this photograph to
9 Linda Barnaba was on November 10; is that correct?

10 A No, ma'am. That's an image from a text message.

11 Q I'm sorry?

12 A That's an image from a text message.

13 Q Okay. But you don't have any text message shown here; do
14 you?

15 A I had them on my phone at the time, and I was just
16 gathering all the information. I believe in discovery we
17 submitted it with the text message stamp time.

18 Q So you sent a text message to Linda Barnaba?

19 A That's correct.

20 Q Okay. Let's go to text message, Ten, Plaintiff's Ten, I
21 believe, or -- now, do you also recall sending -- having some
22 text messages with Chris Lawhon?

23 A Yes, ma'am.

24 Q Okay. And those text messages were on Monday, November

25 7th

1 A Yes, ma'am.

2 Q Okay. And attached to the text message was a photograph;
3 is that correct?

4 A Yes, ma'am.

5 Q Okay.

6 MS. GOLDING: Your Honor, we would offer Plaintiff's
7 Exhibit Number Ten into evidence.

8 THE COURT: Objection?

9 MR. NUGENT: Objection, hearsay.

10 THE COURT: All right. Have the exhibit marked by the
11 court reporter for identification.

12 MS. GOLDING: It's already marked as Plaintiff's Exhibit
13 Ten, Your Honor.

14 THE COURT: All right. So where is it? Well, do you
15 have one?

16 MS. GOLDING: I have one right here.

17 THE COURT: All right. Then have it marked.

18 BY MS. GOLDING:

19 Q Let me hand you this Plaintiff's Exhibit Ten. Is this a
20 true and accurate copy of the text messages you had between
21 Chris Lawhon and yourself on Monday, November the 7th?

22 A They, they start on Monday, November 7th, yes.

23 Q Okay. And how many days does it cover?

24 A I think it's the 7th to about the 9th.

25 Q And is that a true and accurate copy of your text

1 messages with Chris Lawhon between November 7 and November 9th?

2 A Yes, ma'am.

3 MS. GOLDING: Your Honor, we would offer.

4 THE COURT: Could I see those?

5 A Yes, sir.

6 THE COURT: Thank you, and the objection is hearsay?

7 A Thank you, Your Honor.

8 MR. NUGENT: Your Honor, it is hearsay. She could use
9 the exhibit to refresh or to impeach Mr. Kirk, but it doesn't
10 go into evidence.

11 THE COURT: Why don't you ask him questions first as to
12 what those conversations were and what he said. Okay?

13 MS. GOLDING: Okay.

14 BY MS. GOLDING:

15 Q With respect to the text messages, which are marked
16 Plaintiff's Exhibit Number Ten, tell me the communications you
17 had in those text messages with Chris Lawhon.

18 A I text Chris Lawhon on November 7th saying when I spoke to
19 Mark last week requested -- he requested to speak with someone
20 regarding parking.

21 Q Please speak slower for the jury.

22 A Yes, ma'am. I said, "Hey, hey, Chris, when I" --

23 MR. NUGENT: Objection, Your Honor.

24 THE COURT: All right.

25 MR. NUGENT: She can't ask the witness to read the text

1 into evidence.

2 THE COURT: Exactly right. All right. And if you have
3 -- let's cover something else first. If you have a problem,
4 I'm talking to both of you all, with a witness as to
5 responding to your question or in any way that they're
6 answering, you address that to the Court. You do not, either
7 side, give directions to the witness. All right, sir. You
8 can use that document to refresh your memory. You must
9 testify without reading it.

10 A Yes, Your Honor.

11 THE COURT: Okay? So if you need to refer to it, you can
12 put it down and then answer the question. If you got to go
13 back to it, you can go back to it and look at it, put it down,
14 answer the question. Okay?

15 A Thank you, Your Honor.

16 THE COURT: Go ahead.

17 BY MS. GOLDING:

18 Q With this text message that you were having or these text
19 messages you were having with Chris Lawhon between November 9,
20 excuse me, between November 7 and 9, 2016, tell me the
21 communications or tell the jury the communications you were
22 having with Chris Lawhon.

23 A On November 7th the parking lot was blocked off. I --

24 Q Can you please speak a little slower?

25 A Yes, ma'am.

1 Q Thank you.

2 A On November 7 --

3 THE COURT: Again, ma'am, what did I just say? Don't
4 give directions to the witness.

5 MS. GOLDING: I apologize.

6 THE COURT: If you have a problem you address that with
7 the Court.

8 MS. GOLDING: Yes, sir.

9 THE COURT: Thank you. Go ahead, sir.

10 Q Please.

11 A On November 7th the parking lot was blocked off. As of
12 November 4th we reached out to Chris Lawhon because the parking
13 situation was becoming a huge issue. There was no place for
14 guests to park. Linda Barnaba instructed me to set up a
15 meeting with the Lawhons to discuss the parking, past, present
16 and future. I reached out on November 7th to Chris Lawhon
17 saying, "Hey, Chris, last week when I spoke with Mark he asked
18 to speak with somebody about parking. Linda Barnaba, my
19 director of operations, would like to get in touch with you."
20 So that's when we initiated setting up a meeting between our
21 corporate office and Mark Lawhon.

22 Q Did you have any discussion in this text message with
23 Chris Lawhon about the demolition of the building?

24 A Yes. He asked me how things were coming. I sent a photo
25 of, of the building being demolished, and he said, "That makes

1 me nervous," or something to that effect.

2 Q And did you have a response to that?

3 A My response was, "Yeah, I know what you mean."

4 Q And that was a very cordial text message communications
5 you had with Chris Lawhon.

6 A Yes, ma'am.

7 Q Okay. And at that time, on November the 7th through
8 November the 9th, the fence had been up since November the 4th;
9 had it not?

10 A Yes, ma'am.

11 Q And at no time during those communications with Chris
12 Lawhon in those text messages did you tell him, "We've got a
13 problem with these -- with the fence"; did you?

14 A I told him we wanted to discuss parking past, present and
15 future. The problem was not having parking and trying to find
16 a resolution to that.

17 Q My question was in those text messages you made no
18 reference to the fence; did you?

19 A No, ma'am.

20 Q Okay. You made no reference that there was a problem
21 with parking; did you?

22 A I said we wanted to discuss -- we wanted to discuss the
23 parking situation, yes.

24 Q But you did not say there was a problem; did you?

25 A No, ma'am. I should have been more forceful.

1 Q You did not say that Linda Barnaba asked you; did you?

2 A I said that she wanted to set up a -- or I said we were
3 going to set up a meeting with my director of operations, yes.

4 Q But in your text you said Mark Lawhon wanted to talk to
5 her; is that not correct?

6 A I said Mark requested to speak with somebody regarding
7 parking and that was the conversation I had with Mark on
8 November 3rd. When I referred him to speak with Mr. Greenbaum
9 he asked -- he said he'd like to speak with somebody else.

10 Q And in that text you did not say take down the fence; did
11 you?

12 A No, ma'am.

13 Q And you have not presented to your attorneys or I have
14 not been provided any text message you had with Linda Barnaba;
15 have you?

16 A I believe there is some text messages and some
17 screenshots of text messages in discovery. The only reason
18 that these are so big is because I'm not very computer savvy
19 and I ended up copying these to a Microsoft Word document and
20 being able to put them on a piece of paper. I -- not really
21 --

22 Q But you had text -- if I understand what you've
23 testified, you had text messages with Linda Barnaba before
24 November 7 through November 9?

25 A I'm sorry. Can you repeat that question?

1 Q Yes. If I understand your testimony to this jury, you
2 had text messages with Linda Barnaba before November 7th
3 through November 9 regarding the parking lot and the fence.

4 A That's correct.

5 Q Okay. Did you ever provide those text messages to
6 anybody?

7 A I believe I provided all the pictures and text messages I
8 have. The text message on November 1st might have been
9 followed up by a phone call. I mean, it's -- I didn't --
10 never imagined this would be here right now. So I --

11 Q Okay. So but you did save the text messages you had with
12 Chris Lawhon?

13 A I did save those, yes, because I was under instruction to
14 set up a meeting, yes.

15 Q There were no emails with Linda Barnaba about this
16 parking lot or the fence before November 10th; was there?

17 A There was emails regarding the parking lot and paving the
18 parking lot, and yes, yes, ma'am.

19 Q No. I'm talking about the fence and the construction
20 material on the parking lot.

21 A Can you repeat the question?

22 Q Certainly. There was no email before November 10, 2016,
23 to Linda Barnaba about the fence in the parking lot?

24 A I -- I'm not sure, ma'am.

25 Q In fact, your first email to Linda Barnaba about the

1 fence in the parking lot was November 10, 2016.

2 A I'm not sure without looking at my emails, ma'am.

3 Q Just to give the jury some, some aspect, some -- the
4 timing of this --

5 MR. NUGENT: Objection, Your Honor. I don't think we've
6 seen this.

7 THE COURT: All right. Have you shown that to opposing
8 counsel yet?

9 MS. GOLDING: No, no, Your Honor.

10 THE COURT: All right.

11 MS. GOLDING: It's just a calendar.

12 MR. BLOOM: That's fine after you told what it is.

13 THE COURT: All right. Go ahead.

14 BY MS. GOLDING:

15 Q Just to give some -- jury some -- you say on Tuesday,
16 November 1 you saw construction material; is that right?

17 A Yes, ma'am.

18 Q On November 4 you then saw the fence go up; right?

19 A Yes, ma'am.

20 Q And the first email to Linda Barnaba about the fence was
21 November 10. That's that Exhibit Nine.

22 A I -- like I said, I'd have to check my emails. I, I
23 don't recall off the top of my head when, when the emails were
24 sent, if that's what you -- I, I'm not sure.

25 Q Okay. Let me give you this email which is Plaintiff's

1 Exhibit 19.

2 A Yes. This one's marked November 10th.

3 Q Okay. Now, between November 1 and November 10 you never
4 asked the Lawhons to remove any fence; did you?

5 A No, ma'am. We were just trying to figure out the parking
6 situation. We were surprised by the fence and taken off guard
7 by it. We --

8 Q You were so surprised that you didn't put anything in
9 writing about it; isn't that correct?

10 A Well, I was speaking with her on the phone and November
11 3rd I was notified by Dr. Lawhon when we had a conversation
12 about the taping up, he assured me that we'd have plenty of
13 parking. He mentioned he had a lot down the street that we'd
14 be able to park at. I, I was waiting to see what our parking
15 situation was like and it was becoming evident on November 7th
16 when I reached out to Chris Lawhon that this was a huge issue.

17 Q And then the next week up to November the 17th you never
18 said anything to the Lawhons about moving the fence; did you?

19 A Ma'am, after November 11th when Dr. Lawhon blew up on me
20 on the telephone I was instructed just to worry about running
21 the restaurant and not be involved with this.

22 Q You say Dr. Lawhon blew up?

23 A Yes, ma'am. He got very agitated on the phone call on
24 November 2nd after I informed him.

25 Q Okay. In your email -- let me give you email 22. This

1 is Plaintiff's 22, email, the second paragraph, doesn't that
2 refer to this telephone conversation that you just told the
3 jury that Mark Lawhon blew up on you?

4 A Yes, ma'am.

5 Q Okay. You didn't word -- use the word blowup; did you?

6 A I said he became excited.

7 Q Okay. Excited. Thank you. I'll take those from you.

8 A Yes, ma'am.

9 Q Thank you. So getting back to my question, at no time
10 from November 1 to November 17 did you ever ask the Lawhons to
11 move the fence?

12 A No, ma'am.

13 Q Okay. Now, the first time you ever had any knowledge of
14 the -- of there being an easement was November 2016; is that
15 correct?

16 A That's correct.

17 Q Okay. On June 1, 2017, you received a letter from
18 Palmetto Industrial Development asking removal of the sign and
19 other items, other fixtures on the parking lot?

20 A Yes, ma'am. It was a certified letter.

21 Q Okay. And when you received that letter -- let me show
22 you. Is this a true and accurate copy of the letter that you
23 received?

24 A Yes, ma'am.

25 Q And this letter is -- when you received that letter that

1 -- did you then provide it to Linda Barnaba?

2 A Directly. Yes, ma'am.

3 Q Okay.

4 MS. GOLDING: Your Honor, we would offer --

5 MR. NUGENT: Excuse me, Your Honor, and Henri, what
6 exhibit are we talking about here?

7 MS. GOLDING: This is Plaintiff's, your Exhibit Number
8 Nine.

9 THE COURT: Are you offering that in evidence at this
10 time?

11 MS. GOLDING: Yes, sir. I was waiting.

12 THE COURT: Is there --

13 MS. GOLDING: Yes, sir. We would offer this letter into
14 evidence.

15 THE COURT: Is there objection to that?

16 MR. NUGENT: No objection, Your Honor.

17 THE COURT: All right. So Plaintiff's Nine is in
18 evidence without objection.

19 (Plaintiff's Exhibit Number Nine admitted into evidence
20 and appropriately marked.)

21 MS. GOLDING: Could we get Plaintiff's copy that hasn't
22 gotten the hole punch marks in it?

23 MR. BLOOM: I'm sorry. We don't have one without the
24 hole punch marks in it.

25 MS. GOLDING: Your Honor.

1 THE COURT: All right. Then fine. Just use the one you
2 got then. Thank you.

3 MS. GOLDING: Okay. Thank you, Your Honor.

4 BY MS. GOLDING:

5 Q You have before you on the screen a letter that you
6 received. Did you receive it on June 1, 2017?

7 A Yes, ma'am.

8 Q Okay. And in this letter it asks that the sign, the
9 Gulfstream Café sign be moved from the parking lot; did it
10 not?

11 A That's what it says, ma'am, yes.

12 Q Okay. And in fact, the Gulfstream Café sign sits on the
13 parking lot; is that correct?

14 A Yes, ma'am.

15 Q And before this letter of June 1, 2017, the parking lot
16 owner has never asked that the sign be removed; is that
17 correct?

18 A Yes, ma'am.

19 Q Okay. And in fact, the parking lot owners have always
20 permitted this sign on the parking lot prior to June 1, 2017.

21 A The parking -- the sign has always been there.

22 Q Okay. And it also asks that the grease trap and other
23 items be moved; is that correct?

24 A Yes, ma'am.

25 Q Okay. And this letter comes several weeks after a

1 fishing tournament held on the parking lot by the Lawhons; is
2 that right?

3 A Yes, ma'am. It also came a week after he called the
4 Georgetown County Sheriff's Office on my painters for
5 trespass.

6 Q And this letter, you sent out to Linda Barnaba?

7 A Directly.

8 Q Okay. And Greg Greenbaum got this letter; is that
9 correct?

10 A I was informing our attorney, George Redman, what was
11 going on with the letter, and he told me since I'm local, sign
12 for it. I didn't know why it had my name on it considering I
13 don't have --

14 MR. NUGENT: Object. Objection. Soliciting privileged
15 communications.

16 THE COURT: Just tell the jury what you did as a result
17 of your conversation, please, sir. Thank you.

18 Q As a result of your conversation with George Redman,
19 Gulfstream's attorney, what did you do?

20 A I signed for the certified letter, and I gave it directly
21 to Linda Barnaba.

22 Q Okay. And to this date have any of those structures that
23 are sitting on the parking lot been removed after the property
24 owner asked you to move it from the parking lot?

25 A No, ma'am.

1 Q Okay. And isn't it a fact each of those structures
2 referenced in Plaintiff's Exhibit Nine are sitting on the
3 parking lot on the property owned by the Lawhons, Mark Lawhon?

4 A No, ma'am.

5 Q What is not?

6 A Some of them, they were under the parking lot, like the
7 grease trap.

8 Q Okay.

9 A And all of them have been there for as long as I can
10 remember, if not the 30 years of the building's existence.

11 Q Okay. So there are some -- like the grease trap under
12 the parking lot?

13 A Yes, ma'am.

14 Q Okay. But that's -- that property where that grease
15 trap's in that's owned by Palmetto Industrial a company owed
16 by Mr. Lawhon; is that right?

17 A Up until this lawsuit I didn't -- I -- that was new
18 knowledge to me.

19 Q Okay. So up unto this lawsuit you did not know that
20 these structures that are mentioned in Plaintiff's Exhibit
21 Nine were on the parking lot or on the property owned by
22 Palmetto Industrial?

23 A That's correct. My only knowledge was we had the parking
24 lot at night.

25 Q Okay. Plaintiff's Exhibit Number 20, that's already into

1 evidence, and let's go to the photograph, the second and third
2 photograph, the second photograph first. We'll need to show
3 the vehicle. Do you see that, Mr. Kirk?

4 A Yes, ma'am.

5 Q Okay. You testified on direct examination that Mr.
6 Lawhon's vehicle blocked a truck; is that correct?

7 A Yes, ma'am. From making his delivery.

8 Q Okay. Now, Mr. -- this photograph that's in front of you
9 in Exhibit Number 20, Mr. Lawhon's car is sitting in a parking
10 place; is it not?

11 A It looks like it's sitting in two parking places.

12 Q Well, then go look at the next picture. The vehicle is
13 sitting in a parking lot; is it not, Mr. Lawhon's vehicle?

14 A It's sitting in a parking lot, yes.

15 Q Yes. In a parking space in a parking lot?

16 A In two spaces, yes, ma'am.

17 Q Okay. So he's the owner of the property. Are you
18 telling this jury he doesn't have a right to park his car in
19 parking spaces on his property?

20 A No. What I'm saying is there was a fence on the other
21 side of Dr. Lawhon's truck to where the truck couldn't turn
22 around or the truck would generally come forward, make a K
23 turn, back up to the gate, that that's damaged area on the
24 building. He would make a K turn, back up, do his delivery or
25 even to turn around he had no space to turn around and Dr.

1 Lawhon was out there when the truck driver pulled up and
2 that's how the conversation started.

3 Q Well, you weren't out there with the truck driver; were
4 you --

5 A No, ma'am.

6 Q -- when he pulled up?

7 A I came, I came down afterwards.

8 Q Okay. The truck driver came into the parking lot; right?

9 A Yes, ma'am.

10 Q And he left out of the parking lot; did he not?

11 A Yes, ma'am.

12 Q Okay. And you're trying to telling this jury that Mr.
13 Lawhon parking in parking spaces he can't do that?

14 A What I was telling the jury is 15 minutes after he got
15 excited with me on the phone that he came down to the
16 restaurant and had a confrontation with one of my delivery
17 delivers. That's what I was telling the jury.

18 Q You weren't there; were you?

19 A No. But I had a written statement from the driver.

20 Q And there's nothing in that written statement there was a
21 confrontation; is there?

22 A He said, "If you have a problem go talk to Jef."

23 Q That's not a confrontation. Is that what you're telling?
24 That's a conversation when he says go talk to Jef?

25 A I --

1 Q Is that what you consider to be a confrontation?

2 A I would consider that confrontation, yes, ma'am.

3 Q Okay. But, all right, Mr. Lawhon can park in the parking
4 spaces on the parking lot; can he not?

5 A Yes. But he's occupying two spaces that would -- there
6 was other places to park. I believe he was just being
7 difficult.

8 Q Okay. This is November the 11th; is that right?

9 A Yes, ma'am.

10 Q And are you telling the jury then there are other places
11 to park?

12 A Other than that specific place right in front of the
13 gate, yes, ma'am.

14 Q Okay. Good. How tall are you?

15 A I'm six foot, four.

16 Q Six foot, four. You're just a little taller than Chris
17 Lawhon who's six, three; is that right?

18 A I've never measured him.

19 Q Chris Lawhon?

20 A I've never measured him.

21 Q Oh, but you're just a hair taller than Chris Lawhon; is
22 that right?

23 A If you say so, yes.

24 Q Well --

25 A And if he's six, three, then yes, I'm an inch taller than

- 1 him. I, I guess so, yeah. I meant --
- 2 Q Okay. Okay. Now, let's go to -- I think you -- you --
- 3 you told the jury about this hammer throwing that occurred.
- 4 You said it was on the 18th, on a Friday; is that right?
- 5 A Yes, ma'am.
- 6 Q Okay. And but the Lawhons were taking down the fence on
- 7 the 17th; is that right?
- 8 A Thought it was the 18th.
- 9 Q Okay. But it could have been the 17th; could it not?
- 10 A No, ma'am. I'm pretty sure it was the 18th.
- 11 Q Okay. And you didn't do an email about this hammer
- 12 throwing event; did you?
- 13 A Linda Barnaba was standing next to me.
- 14 Q My question was did you do an email about the hammer
- 15 throwing event?
- 16 A No. Because my supervisor was standing next to me.
- 17 Q Well, when you sent the email on November, on November
- 18 the 10th Linda Barnaba was there when the fence went up; did
- 19 you not -- was she not?
- 20 A She was there after the fact. Yes.
- 21 Q Okay. But and you did send her an email then and saw --
- 22 even though she saw the fence; right?
- 23 A Yes, ma'am.
- 24 Q Okay. And you didn't send any text about this hammer
- 25 throwing event; did you?

1 A No. She was standing next to me.

2 Q Okay. And you didn't call the police about this hammer
3 throwing event; did you?

4 A No. We were trying to deescalate the situation.

5 Q Okay. And I think you told the jury that there were two
6 hammers that landed at your feet?

7 A In front of us, yes, ma'am.

8 Q In front of you, and you and Linda Barnaba were standing
9 by the Gulfstream looking north; is that right?

10 A Yes, ma'am.

11 Q Okay. You were standing by the garbage dumpsters looking
12 north.

13 A In that area. Yes, ma'am.

14 Q Okay. You were -- if I remember what you said to the
15 jury one time you said you were walking when the hammers were
16 thrown and the second time you said you were standing. So
17 tell the jury, were you walking or were you standing when the
18 hammers were thrown in front of your feet?

19 A We were walking and then we stopped walking.

20 Q Okay.

21 A And then the hammers landed in front of us.

22 Q Okay. So you stopped walking. So you were standing
23 still when the hammers were thrown?

24 A Yes, ma'am.

25 Q Okay. Now, did the hammers go over your head?

1 A As -- that's what I remember. I just remember looking
2 down and bam, there's hammers in front of us.

3 Q Okay. So then the hammers were thrown over your head?

4 A In that direction, yes, ma'am.

5 Q Okay. That has to be a pretty big throw to get, to get
6 those hammers over your head; doesn't it?

7 A Chris Lawhon's a pretty big guy.

8 Q Not as big as you are.

9 A He's -- I mean, he's a lot younger than I am.

10 Q Uh-huh. So the -- now, both -- did both of the hammers
11 go over your head?

12 A I recall the hammers hitting the ground. I wasn't
13 watching the hammers fly through the air. I, I saw them hit
14 the ground in front of us.

15 Q My question was did both the hammers go over your head?

16 A I saw the hammers land in front of us.

17 MR. NUGENT: Objection. Asked and answered, Your Honor.

18 THE COURT: I believe he's responded to your question,
19 ma'am.

20 MS. GOLDING: Thank you, Your Honor.

21 BY MS. GOLDING:

22 Q Now, you also told this jury about police being called in
23 May and June?

24 A Yes, ma'am.

25 Q Okay. Now, at that time there had been a fishing

1 tournament in May; is that correct, in May 2017?

2 MR. NUGENT: Objection, Your Honor. Can we have a
3 sidebar?

4 (Whereupon, a bench conference is held in the presence,
5 but out of the hearing of the jury.)

6 Q Mr. Lawhon, in November -- excuse me. In the calendar
7 year 2015 there were two fishing tournaments held by the
8 Marlin Quay Store and Restaurant; is that correct?

9 A I believe so, yes.

10 Q Okay. And in the calendar year 2016 there were two
11 fishing tournaments held by the Marlin Quay Store and
12 Restaurant; is that correct?

13 A Yes.

14 Q Okay. And the fishing tournaments, there's a spring one
15 in May and then there's a fall one each year; is that right?

16 A Yes. It's in October.

17 Q Okay. And those four fishing tournaments you
18 communicated with the Lawhons; is that correct?

19 A Yes.

20 Q Okay. And you were the one that permitted the tents on
21 the parking lot for those four fishing tournaments?

22 A No, ma'am. I was told that they were going to go -- I
23 was told that they were going to be there.

24 Q Okay. You took no action to say remove them, can't be
25 there, anything like that; did you?

1 A I contacted Linda Barnaba and let her know what was going
2 on and we didn't see a problem with it at the time.

3 Q So my question was, did you take any action to tell them
4 to remove the tents from the parking lot?

5 A No, ma'am.

6 Q Okay. In fact, Gulfstream Café through you provided
7 chafing --

8 MR. NUGENT: Objection, Your Honor.

9 THE COURT: Sustained.

10 MS. GOLDING: Okay. May I sidebar?

11 THE COURT: Ma'am, we had a discussion about this.

12 MS. GOLDING: Okay. This would be another -- I'll think
13 -- thank you, Your Honor.

14 BY MS. GOLDING:

15 Q Now, with respect to the police being called, there were
16 no written tickets given by the deputy sheriff, Mr. Weaver;
17 were there?

18 A No. He took down our information --

19 Q Okay.

20 A -- and told us -- told, told me I'd be on the no trespass
21 list.

22 Q And with respect to Mr. Weaver, all Deputy Weaver and
23 Chris Lawhon, all the conversations were cordial and
24 professional; is that correct?

25 A Yes, ma'am.

1 Q Okay. And Chris Lawhon told Deputy Weaver that there
2 were individuals in the back of the building --

3 MR. NUGENT: Objection, hearsay.

4 Q -- on the bulkhead --

5 THE COURT: Establish whether or not he was present and
6 heard the conversation.

7 MS. GOLDING: Okay.

8 BY MS. GOLDING:

9 Q You were present when Deputy Weaver was there having
10 communications with the individuals, your vendors?

11 A With the vendors, yes, ma'am.

12 Q Okay. And during that conversation you heard Chris
13 Lawhon speak to deputy; is that correct?

14 A Not that I recall. They, they had a previous
15 conversation over by the marina, Mark Lawhon and Chris Lawhon
16 did, and then they walked over together with the deputy --

17 Q Okay.

18 A -- as I was standing with the window washers.

19 Q Okay. And then you came down and you spoke to the
20 deputy; is that correct?

21 A I was in the parking lot waiting with the window washers
22 as he was speaking with Mr., Mr. Lawhon and Chris Lawhon.

23 Q Then -- did you then speak to Deputy Chuck Weaver?

24 A Yes.

25 Q Okay. And did not Deputy Chuck Weaver tell you that it

1 was a legitimate concern of safety as to where these
2 individuals were and falling in oyster beds?

3 A No, ma'am.

4 Q Now, you also tell this jury there were some cones put on
5 the parking lot.

6 A Yes, ma'am.

7 Q And these cones -- those were the safety cones, the
8 orange cones; is that correct?

9 A Yeah, orange utility cones.

10 Q Okay. Okay. And one cone or several cones were
11 surrounding the top of a fuel area; is that correct?

12 A There's one cone on top of a fuel.

13 Q Okay. And did you go there and see that broken top for
14 that fuel?

15 A Sure. Those, those weren't -- that wasn't the cone that
16 was the concern.

17 Q But you didn't identify to the jury what concerns.

18 A There was multiple cones and there was cones taking up
19 parking spots.

20 Q Okay. And you don't think cones when there's an unsafe
21 condition should be put on the parking lot to alert people?

22 A When the cones are by the Gulfstream side right by the
23 dumpsters I don't see why there was a reason to alert when
24 there's never been a reason for them to be alerted for the
25 last -- since 2011 I've never seen those parking lots

1 obstructed with cones, no, ma'am.

2 Q There hasn't been any repair on the parking lot for a
3 while; has there?

4 A No, ma'am.

5 Q Okay. And that's because of the seawall construction and
6 other anticipated construction; isn't that correct?

7 A I'm not sure what the reason is, ma'am.

8 Q Well, I thought you testified on direct that there was
9 discussion you had with Mark Lawhon about repaving it --

10 A About --

11 Q -- but Mr. Lawhon said wait.

12 A That's correct. Yeah.

13 Q Okay.

14 A It's, it's due to --

15 Q And he said --

16 A Go ahead. I'm sorry. It --

17 Q I'm sorry. And he said wait because we got construction
18 coming.

19 A Yes, ma'am.

20 Q Okay. So you're not -- Gulfstream doesn't own the
21 parking lot; does it?

22 A No, ma'am.

23 Q Okay. And if the owner of the parking lot believes
24 there's an unsafe condition shouldn't it be the responsibility
25 of the owner of that parking lot to alert the people using the

1 parking lot?

2 A I, I was never alerted. I just witnessed cones being
3 there.

4 Q Okay.

5 A And it's my understanding we have a right to that parking
6 lot at night. So when there's cones blocking spaces or any
7 other obstruction at night it's, it's a concern.

8 Q Now, let's -- this -- you say something happened this
9 past Friday, the glass bucket?

10 A Yes, ma'am.

11 Q And Mr. Lawhon went to the Gulfstream and spoke to a
12 manager?

13 A That's before I got there, I guess.

14 Q Okay.

15 A I'm not sure what happened.

16 Q Okay. Well, you told this jury that Mr. Lawhon said,
17 "Get in there and get it out."

18 A Yes, ma'am.

19 Q Okay. You didn't hear that; did you?

20 A I have statements from two of my employees.

21 Q You didn't hear that; did you?

22 A No, ma'am.

23 Q Okay.

24 A And there was also six of them there talking to my
25 employees, one employee, six guys.

1 Q And in fact, isn't it a fact that Mr. Lawhon just pointed
2 it out that they used the wrong dumpster, and he said, "Don't
3 worry about it now. Just don't let it happen again?"

4 A After the conversation we had in -- while we had a
5 Georgetown Sheriff's, Sheriff's Deputy standing there, yes.

6 Q Okay. And he also said that to the individual he first
7 talked to.

8 A That what?

9 Q You weren't there; were you?

10 A No. That's not in his report.

11 Q Whose report?

12 A The individual that he talked to.

13 Q Who? You've got a written report?

14 A Yes, ma'am.

15 Q Okay. And who's the individual he talked to?

16 A His name's Cole Lynch.

17 Q What's the name?

18 A David Cole Lynch.

19 Q Okay. I think it was Defendant's Number 59. Do you see
20 Exhibit 59 in front of you?

21 A Yes, ma'am.

22 Q Defendant's Exhibit 59? I'll represent to you this is a
23 drawing made by Linda Barnaba this past Saturday, and it's a
24 drawing relating to the hammer throwing incident. With
25 respect to -- do you see the line where she says hammer lands

1 in a line to a little blue --

2 A Yes.

3 Q Okay. Do you see the dotted line that's to be the fence?

4 A Yes, ma'am.

5 Q Do you see the X mark? It's got dark and then an X?

6 A Yes.

7 Q Is it accurate that you were standing where this X mark
8 is, you and Linda?

9 A In that area, yes.

10 Q Okay. Is it accurate to where the, the hammers landed?

11 A In, in that area, yes.

12 Q Okay.

13 MS. GOLDING: Nothing further, Your Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. NUGENT:

17 Q Mr. Kirk, you testified about an incident this past
18 Friday night at the Gulfstream. Do you remember that issue,
19 that testimony?

20 A Yes.

21 Q And --

22 MS. GOLDING: Your Honor, I'm going to object. This is
23 not new, new matter that needs to be only brought up in reply.

24 THE COURT: I appreciate it. It was a subject for cross
25 examination. I'm going to allow him to explore. If you have

1 further objections I'll hear it. Go ahead.

2 MR. NUGENT: Thank you, Your Honor.

3 BY MR. NUGENT:

4 Q Do you recall testifying that you saw six men approaching
5 the dumpster by the Gulfstream Café?

6 A Yeah. There was six in total, Mark Lawhon, then Chris
7 Lawhon, then four other individuals. I saw it on the
8 surveillance camera.

9 Q Okay. Could you explain what you saw on the surveillance
10 camera?

11 A I saw one of my employees down there. Moments later I
12 saw Mark Lawhon walk over with a flashlight, open the dumpster
13 up, look inside the dumpster with the flashlight. Then he
14 waved over a group of gentlemen that were sitting over by the
15 trailer. They, they walked over and they were all gathered
16 around the trashcan.

17 MS. GOLDING: Your Honor, I -- I'm going to object
18 because I think the video from the surveillance camera would
19 be the best evidence, Your Honor.

20 THE COURT: I am going to allow him to testify as to what
21 he saw, and I'm -- you may continue, sir.

22 A So at, at that point there was a bunch of men gathered
23 around the dumpster. My employees and the hourly kitchen
24 manager was down there addressing the situation. One of my
25 staff members called me. I was at home. I had just left and

1 alerted me of, of the situation. I told everybody just to --
2 we're not -- don't go in the dumpster, just go back inside the
3 building and I'll be right there. So I left my home and came
4 up there. I called Linda Barnaba. I informed her what was
5 going on, and she agreed to meet me down there as well.

6 Q And Mr. Kirk, you testified that you obtained written
7 statements from some of the employees regarding the event; is
8 that right?

9 A That's correct.

10 Q And was this -- were these written statements obtained in
11 accordance with company policy?

12 A Yes. Any time there's an incident we get written
13 statements from our employees or vendors or guests.

14 Q And did you obtain these written statements immediately
15 after this incident occurred?

16 A That evening, yes.

17 Q And did you obtain a statement from a Tim Frank?

18 A Yes.

19 Q And who is Tim Frank?

20 A Tim Frank is the server. He was down there and he also
21 witnessed Dr. Lawhon telling Cole to retreat. He said, "We
22 have to figure out a way to get this out of the dumpster, you
23 know, you need to go in there and get it out."

24 MR. NUGENT: Your Honor, I'd like to approach the witness
25 and identify what we will mark as Plaintiff's Exhibit 50.

1 THE COURT: All right, sir.

2 MS. GOLDING: Your Honor, may I, may I -- I'd like --

3 THE COURT: Yeah. In just a second. Let him mark it and
4 identify it first.

5 MS. GOLDING: Thank you. Thank you.

6 MR. NUGENT: We currently have a digital copy of it but
7 can provide a paper copy in short order, like to hand it to
8 the witness and allow him to identify it.

9 THE COURT: All right. Well, but we'll need a paper
10 copy.

11 MR. NUGENT: Yes, Your Honor.

12 BY MR. NUGENT:

13 Q Mr. Kirk, if you'll look on this iPad. Is that the
14 statement that you obtained from Tim Frank? You can scroll
15 down to confirm if you need to.

16 A Yes. It is.

17 Q Could you read that statement for the jury, please?

18 MS. GOLDING: Your Honor, I'm going to make an objection.
19 It's not into evidence.

20 THE COURT: You cannot -- you're just asking him to read
21 it to himself, not out loud; correct?

22 Q Read it to yourself, yeah, sure.

23 THE COURT: All right. Very good.

24 MS. GOLDING: Your Honor, also, I do not have -- have not
25 been provided any of this, Your Honor.

1 THE COURT: All right. Thank you, ma'am.

2 MS. GOLDING: Yes, sir.

3 Q Mr. Kirk, is that a true and accurate copy of the
4 statement you obtained from Tim Frank?

5 A Yes. It is.

6 MR. NUGENT: Tender Plaintiff's Exhibit 50, Your Honor.

7 THE COURT: All right. Mr. Foreman, ladies and
8 gentlemen, go to your jury room, please.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Ms. Golding, your objection,
12 please, ma'am?

13 MS. GOLDING: I, I have not seen those statements at all.

14 THE COURT: All right.

15 MR. NUGENT: I'm happy to provide her.

16 THE COURT: Can you show -- can you show Ms. Golding --

17 MR. NUGENT: Absolutely.

18 THE COURT: -- what the witness has looked at, please?

19 MS. GOLDING: Your Honor, I just -- I have read -- I have
20 read these on this iPad. This is -- these are statements that
21 were signed June 1. This -- these are shown to me after cross
22 examination even though they've had this after June 1. I
23 still don't have a piece of paper. I think it's highly
24 prejudicial and unfair. They had an obligation if they were
25 going to utilize these to have provided to me immediately.

1 THE COURT: All right. Counsel, did you after their
2 production or after they came into existence did you provide a
3 copy of those in accordance with the discovery rules to
4 opposing counsel?

5 MR. NUGENT: Your Honor, a copy was not provided, and
6 frankly, was not necessary until Mr. Kirk was impeached on
7 cross examination about the circumstances of the event. As
8 such, these statements are appropriate to credibility.

9 THE COURT: Well, that might be a reason that the Court
10 might allow you to call the individuals involved as witnesses,
11 though not named before, but not the introduction of the
12 document at this time. All right. Not going to allow the
13 document. Thank you.

14 You have further direct -- I'm sorry -- further redirect
15 questions for this witness?

16 MR. NUGENT: Your Honor, I have another potential exhibit
17 that we probably should deal with first and --

18 THE COURT: Okay.

19 MR. NUGENT: -- that's a picture of the scene of what
20 occurred this past Friday night, and I'm happy to share it
21 with Ms. Golding.

22 THE COURT: Well, how about -- well, okay, let's, let's
23 get it identified by the witness first.

24 MS. GOLDING: I did not hear what he said he had, Your
25 Honor. I'm sorry.

1 THE COURT: A picture.

2 MR. NUGENT: A picture.

3 THE COURT: A picture. So get it identified by the
4 witness first and then, then show it to Ms. Golding, okay?

5 BY MR. NUGENT:

6 Q Mr. Kirk, could you review this photograph and identify
7 it for me?

8 A Yes. That's a photograph of the surveillance video of
9 the men standing around the dumpster.

10 Q And did you review that surveillance video?

11 A Yes. I did.

12 Q Does it truly and accurately depict what you saw?

13 A Yes. It does.

14 MR. NUGENT: I would tender this exhibit, which I believe
15 would be Plaintiff's 51 into evidence.

16 THE COURT: All right. Can you show it to Ms. Golding
17 first? It's not the video itself.

18 MR. NUGENT: No. It's a still --

19 THE COURT: It's a, a screenshot of the video; is that
20 right?

21 MR. NUGENT: -- a still shot, yes, Your Honor.

22 THE COURT: Okay.

23 MS. GOLDING: I can't even identify the people. It's
24 three people. I, I have no idea.

25 THE COURT: All right. I, I appreciate that. All right.

1 All right. So your objection, Ms. Golding?

2 MS. GOLDING: Obviously, they had this as June 1. It was
3 taken off a surveillance. They never offered the whole, whole
4 surveillance. It's just one -- apparently one picture.
5 Again, I have -- they introduced it in direct examination.
6 This witness was asked about it on direct examination, and if
7 I have to -- it is totally improper that they set this up and
8 did not provide the information and now have jeopardized the
9 cross examination. I, I just think it's, you know, as Mr.
10 Bloom just told Mr. Adams [sic], "Try it anyhow, get it in
11 anyhow."

12 THE COURT: All right.

13 MS. GOLDING: I think that's just not the way we conduct
14 discovery.

15 THE COURT: I appreciate that. All right. It was in
16 existence prior to the start of the trial. It's potential
17 evidence. You're under the discovery rules. It should have
18 been provided to opposing counsel, and the picture from the
19 surveillance video I do not find, secondly, to be the best
20 evidence, but main violation is it's evidence, thought it came
21 into existence late in the case, it did come into existence
22 prior to the start of the trial. The parties are under an
23 obligation to give that information to the opposing counsel as
24 soon as it is developed. Failure to do so, I'm not going to
25 allow you to use it. Thank you.

1 MR. BLOOM: Your Honor, may we perfect the record with a
2 continuance of a proffer while we've got the jury out?

3 THE COURT: Sure.

4 PROFFER

5 BY MR. NUGENT:

6 Q Mr. Kirk, I'm handing you what has been identified as
7 Plaintiff's Exhibit 51. Could you review that for me?

8 THE COURT: The problem is now for appellate purposes you
9 don't have an exhibit. You're going to have to come up with a
10 paper exhibit --

11 MR. NUGENT: Yes, Your Honor.

12 THE COURT: -- that is Exhibit 51.

13 MR. NUGENT: Yes, Your Honor, and we absolutely will do
14 that.

15 THE COURT: All right. Go ahead.

16 BY MR. NUGENT:

17 Q Mr. Kirk, do you recognize the image depicted in Exhibit
18 51?

19 A Yes. I do.

20 Q And where did you take the picture that is Exhibit 51?

21 A Myself or Linda Barnaba did off the surveillance camera
22 in the office at Gulfstream.

23 Q Could you explain what is depicted in Exhibit 51?

24 A There's Mark Lawhon standing there and there's two other
25 individuals in this picture.

1 Q And can you describe Mark Lawhon in that image?

2 A He's wearing a white shirt and it looks like gray shorts.

3 Q Okay. And do you know the identity of the two other
4 individuals?

5 A I, I do not.

6 Q And are those the individuals who walked over to the
7 trash dumpster from the trailers by the former snack bar?

8 A Yes.

9 MR. NUGENT: Thank you, Your Honor.

10 THE COURT: All right. Let's cover this now before it
11 potentially comes up in cross examination. If you potentially
12 intend to use it in cross examination you must produce the
13 surveillance video in its entirety to opposing counsel, and I
14 want that done by tomorrow morning 9:00 a.m.

15 MR. NUGENT: Yes, Your Honor.

16 THE COURT: All right. I, I'm not saying that you can
17 use it. I'm not ruling on any objections. I'm just saying if
18 you don't do that you have no chance of using it on cross
19 examination. Okay?

20 MR. NUGENT: Absolutely, Your Honor.

21 THE COURT: So you've got to produce the whole thing,
22 deliver it to them by 9 a.m., and then we'll deal with any
23 objections thereafter, but it's got to get delivered first.
24 Okay?

25 MR. BLOOM: Your Honor --

1 THE COURT: Yes, sir.

2 MR. BLOOM: -- along those, along those same lines, let,
3 let the record also reflect that, that we intend to call the,
4 the authors of the statements that Your Honor just excluded in
5 Exhibit 50.

6 THE COURT: Well, and --

7 MR. BLOOM: I'm hereby putting them on notice that we're
8 going to call Tim Frank and the other authors of the
9 statements.

10 THE COURT: All right. So Tim Frank and who is the other
11 individual?

12 MR. BLOOM: What's that name, the one on the bottom,
13 Jef?

14 A It's David Cole Lynch, Cole Lynch.

15 MR. NUGENT: David Cole Lynch.

16 THE COURT: Okay. And could you have the, the witness
17 identify who these individuals are and what position they
18 might have at the restaurant?

19 MR. NUGENT: Absolutely, Your Honor.

20 BY MR. NUGENT:

21 Q Mr. Kirk, I'm going to ask you about the individuals from
22 whom you obtained statements regarding the incident this past
23 Friday night at the Gulfstream. Who is Daniel Watts?

24 A Daniel Watts is a kitchen employee. He's a line cook.

25 Q And was Mr. Watts present on this past Friday night?

1 A I believe he was standing on the back dock. Yes.

2 Q And did you obtain a statement from Mr. Watts regarding
3 the incident by the trash dumpster?

4 A Yes.

5 Q Mr. Kirk, could you explain who is Tim Frank?

6 A Tim Frank is a server at the Gulfstream Café.

7 Q Was Mr. Kirk [sic] present at Gulfstream on Friday night?

8 A Mr. Frank, yes.

9 Q Mr. Frank. Excuse me. And did you obtain a statement
10 from Mr. Frank regarding the incident in the parking lot?

11 A Yes.

12 Q And the third statement is from Jef Kirk, that's you;
13 correct?

14 A Yes.

15 Q The final statement is from a Mr. David Cole Lynch. Who
16 is David Cole Lynch?

17 A He's an assistant kitchen manager.

18 Q And was Mr. Cole Lynch present at the Gulfstream Friday
19 night?

20 A Yes. He was.

21 Q And did you obtain a statement from Mr. Cole Lynch?

22 A Yes. I did.

23 THE COURT: And just for my information, is it Frank or
24 Franks?

25 A Frank, F-R-A-N-K.

1 THE COURT: And David Cole Lynch. How do you spell his
2 last name?

3 A L-Y-N-C-H.

4 THE COURT: All right, sir. All right. Ms. Golding,
5 prior --

6 MR. NUGENT: Your Honor, can I ask one more question of
7 Mr. Kirk --

8 THE COURT: Sure.

9 MR. NUGENT: -- just to clear up the record?

10 MS. GOLDING: Could I --

11 THE COURT: Just hold on a second.

12 MS. GOLDING: Thank you.

13 THE COURT: I -- go, go ahead. I'm going to allow the
14 question and then I'll speak to you all.

15 MS. GOLDING: Thank you.

16 BY MR. NUGENT:

17 Q Were there any other individuals who provided statements
18 last Friday night?

19 A No.

20 THE COURT: All right. Thank you. All right. Prior to
21 their use as witnesses, you identified Tim Frank and David
22 Cole Lynch. Do you intend to call the, the other individual
23 also or just Tim Frank and David Cole Lynch?

24 MR. BLOOM: Jef -- go ahead.

25 MR. NUGENT: There's, there's three individuals, Your

1 Honor.

2 THE COURT: Okay.

3 MR. NUGENT: And I'm trying to recall --

4 THE COURT: All right. And I'm sorry, who's the third
5 one then?

6 MR. NUGENT: Jef, Jef.

7 THE COURT: But, but there was some other person that's
8 --

9 MR. NUGENT: Daniel Watts, Daniel Watts.

10 THE COURT: Daniel Watts. Okay. All right. Prior to
11 their use as a potential witness in this matter you will make
12 them available to Ms. Golding. Ms. Golding, you can either
13 have the choice of speaking with them or deposing them, but
14 you all listening to me?

15 MR. BLOOM: Yes, sir.

16 THE COURT: Okay. Ms. Golding, you were speaking. I'm
17 not sure you were listening to me.

18 MS. GOLDING: I apologize, Your Honor.

19 THE COURT: I'm giving you an opportunity prior to Mr.
20 Frank, Mr. Lynch, and Mr. Watts being called as potential
21 witnesses, you have the ability to either, your choice, speak
22 to them and ask them questions or depose them in a regular
23 deposition manner. Okay. Obviously, that's going to have to
24 be done, counsel, outside of the timeframes of this trial, but
25 so it'll be the obligation of the Plaintiff to make the

1 individuals available. You'll need to tell them, Ms. Golding,
2 your choice.

3 MS. GOLDING: Yes, sir.

4 THE COURT: Okay. You just want to speak to them and
5 ask them questions, that's fine, or you want to do it in a
6 deposition fashion, your choice, okay, but you've got to tell
7 them ahead of time, and if it's going to be deposition then
8 you're going to need to make the arrangements to have that
9 take place, and the Plaintiffs -- Plaintiff will cooperate in
10 making these individuals available understanding you're going
11 to have to do it outside of regular court hours. All right?

12 MR. BLOOM: Yes, sir.

13 THE COURT: Okay. All right. So while the jury's out,
14 Ms. Golding, you said you wanted to proffer some cross-
15 examination questions. Why don't you go ahead and do that now
16 since we've got the jury out.

17 MS. GOLDING: Your Honor, I, I apologize. I was speaking
18 to my client. I -- we -- Mr. Lawhon had the conversation
19 recorded and we're going to have that -- I'm going to direct
20 Mr. Connell to go and, and get that from the cell phone and
21 provide that to Plaintiff's counsel, Your Honor.

22 THE COURT: All right. So if there's any potential use
23 of it, just like --

24 MS. GOLDING: Correct.

25 THE COURT: -- I informed Plaintiff's counsel, if there's

1 anything out there as a result of this incident, whatever it
2 is, if you intend to make further use of it, you've got to
3 first give a copy to opposing counsel so that they have the
4 opportunity to review it. That's the first step. If you
5 don't do that, neither one of you will have a chance to use
6 that particular item. Okay?

7 MR. BLOOM: Yes, sir.

8 THE COURT: And then, obviously, when you attempt to use
9 it we'll address the objections that may or may not exist at
10 that time, and I'll have the opportunity, obviously, at that
11 point in time to look at it and see what it is that we're
12 actually talking about. Okay? All right. So, Ms. Golding,
13 you wanted to proffer some cross-examination questions to the
14 witness.

15 MS. GOLDING: Yes, sir, I would like to, please.

16 THE COURT: Go ahead and do that.

17 MS. GOLDING: Thank you, Your Honor.

18 PROFFER

19 BY MS. GOLDING:

20 Q Mr. Kirk, with respect to the fishing tournaments in 2015
21 and 2016, I'm going to ask you to look at the exhibits which
22 are Plaintiff's photos 28, 29, 30. Let me give you photos,
23 Exhibit 28, 29 and 30, and are these not photos of the fishing
24 tournaments or at least one of the fishing tournaments that
25 occurred at the Marlin Quay?

1 A Yes, ma'am.

2 Q Okay. And do you recall what year the fishing tournament
3 is with respect to each photograph?

4 A This would -- they -- I believe they'd all be 2015
5 because we were celebrating our 30th year anniversary.

6 Q Okay. And so Gulfstream Café had a banner that they put
7 up on the Marlin Quay Store and Restaurant?

8 A I gave the banner to Dave Christian and where he put it
9 was up to him, right.

10 Q Okay. But you gave a banner of the Gulfstream to be used
11 during the fishing tournament; is that correct?

12 A Yes, ma'am.

13 Q Okay. And with respect to those fishing tournaments, you
14 worked together with the Lawhons as to having the fishing
15 tournaments on the parking lot, the activities that went on;
16 is that correct?

17 A I tried to help them out where, where we could.

18 Q Okay. And there was cooperation; is that correct?

19 A Yes, ma'am.

20 Q And those fishing tournaments used what, 15 parking
21 spaces?

22 A Yes, ma'am.

23 Q Okay. And in those photographs it shows activities in
24 the evening with the 15 parking spaces; is that correct?

25 A Yeah. I believe they have a captains' call about 6:00

1 o'clock.

2 Q Okay. And the activities continue into the evening with
3 respect to the fishing tournament and the parking lot; is that
4 correct?

5 A Yes, ma'am.

6 Q Okay. Now, the fishing tournaments that were at the,
7 that were at the parking lot there have been fishing
8 tournaments for -- that use the parking lot for over 25, 30
9 years; have there not?

10 A There hasn't been till the Lawhons took over, not that
11 I'm aware. I've seen pictures of some back in the 80s and
12 early 90s, but I haven't seen any since recently, right.

13 Q Okay. So you have seen photographs of fishing
14 tournaments held on the parking -- in which tents were held on
15 the parking lot before 2015?

16 A No, ma'am.

17 Q Okay. Oh, I thought you just said you've seen
18 photographs?

19 A I saw one photograph that had like one single tent like
20 is depicted here in the parking lot, but I --

21 Q And with respect to the May 2016 -- excuse me, not May
22 2016, May 2017 fishing tournament, Gulfstream Café did not
23 agree to, to the Lawhons or Palmetto Industrial having a
24 fishing tournament in May of 2017; did it?

25 A I don't think so, ma'am.

1 Q Okay. And that's true for October 2017, Gulfstream Café
2 objected to the fishing tournament in October 2017; is that
3 correct?

4 A Yes, ma'am.

5 Q Okay. And there was a May 2018 fishing tournament this
6 year; is that correct?

7 A Yes, ma'am.

8 Q And Gulfstream Café has objected to the May 2018 fishing
9 tournament?

10 A Yes, ma'am.

11 Q Okay. And there's going to be a fishing tournament in
12 October of 2018 and Gulfstream Café has objected to that?

13 A I'm unaware of that situation.

14 Q Okay. Are you aware that, that Mr. Lawhon has requested
15 that the October 2018 fishing tournament being held September
16 7 and 8, 2018?

17 A No, ma'am.

18 Q Okay. Now, going to the May 2017 fishing tournament, it
19 was after that tournament that Mr. Lawhon's letter to you
20 dated June 1, 2017, which I think is Plaintiff's Exhibit Nine,
21 you received that; is that correct?

22 A Correct. It was in June.

23 Q Okay. And it would be fair to state that Gulfstream's
24 objection to the May 2017 fishing tournament was the first
25 time that Gulfstream objected to a fishing tournament; to your

1 knowledge?

2 A To, to my knowledge.

3 Q Okay.

4 MS. GOLDING: One, one moment, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. GOLDING: Nothing further with respect to the fishing
7 tournaments --

8 THE COURT: All right.

9 MS. GOLDING: -- Your Honor.

10 THE COURT: Do you wish to ask questions regarding those
11 cross-examination questions? Any redirect about that?

12 MR. NUGENT: No, Your Honor.

13 THE COURT: All right. Now, as far as the matters that I
14 did not exclude, did you have further redirect questions of
15 this witness that you wanted to ask in front of the jury?

16 MR. NUGENT: No, Your Honor.

17 THE COURT: All right. So we're basically done with this
18 witness?

19 MR. NUGENT: That is correct.

20 THE COURT: All right, sir, so you can step down. The --
21 those photographs that you had him look at, did you want to
22 mark those for identification for the record?

23 MS. GOLDING: Yes, Your Honor. Yes, Your Honor.

24 THE COURT: Okay. So just make sure those are marked by
25 the court reporter for identification for the record.

1 (Court and reporter confer.)

2 THE COURT: You can step down, sir.

3 A Thank you, Your Honor.

4 THE COURT: All right. Is it, is it -- since this came
5 up with the, with the last witness, any anticipation that you
6 might call Mr. Kirk back in reply?

7 MR. NUGENT: That is a possibility, Your Honor.

8 THE COURT: All right. So with that then, Mr. Kirk, I'm
9 not going to release you from the sequestration order then
10 because you potentially could be called back. If a witness,
11 once they testify and they're done, then, you know, obviously,
12 they can participate, but apparently you might have to come
13 back. So you'll have to still obey that sequestration order.
14 Okay. All right. All right. So where we are, who's the,
15 who's the next witness for the Plaintiff?

16 MR. BLOOM: Mike Stone.

17 THE COURT: All right. Very good. All right. All
18 right. Very good. All right. So ask the -- do you all want
19 a very short break since I've given the jury a short one?

20 MS. GOLDING: Please.

21 THE COURT: All right. Give you a short break, five
22 minutes, and then we'll come back in and commence with Mr.
23 Stone.

24 MS. GOLDING: Thank you, Your Honor.

25 THE COURT: Okay. Thank you very much.

1 where the water is is 28 feet wide, and by towards the
2 Waccamaw Drive, the other side, it's 15 feet wide. It's a
3 unique design. It's a special design.

4 Now, going back to this verdict form, I took a long time
5 to talk about this first thing. Number one, "We, the jury, by
6 unanimous decision, find for the Plaintiff or we, the jury, by
7 unanimous decision find for the Defendants." I ask you to
8 find for the Defendants because the preponderance of the
9 evidence is clear that Mr. Lawhon and his company have not
10 interfered, and also, your decision is extremely serious
11 because there's a lot more. If you find that there was any
12 interference, the judge can rule that there'll never be a
13 building. That's the consequences. Greg Greenbaum will be
14 ecstatic. He will have his wish, no building, and then at
15 some point in time since there'll be no building there'll be
16 no Marina. So I ask you to find on each one of those three
17 points for the Defendants. Thank you.

18 THE COURT: Final argument.

19 MR. BLOOM: All right. Ladies and gentlemen, this is the
20 final word. I'm sure you're, you're happy to be at the end of
21 this journey that we've taken together. We do agree on one
22 thing, and that is that the verdict form is what guides you
23 in, in your answering and how to resolve the case. We
24 absolutely agree on that, but what we don't agree, obviously,
25 is how, how you should fill it out, and I'll go through that

1 with you in just one second, but you heard testimony, once
2 again, from Ms. Golding about this concept or this fear of
3 competition that they continue to harp on, that, that
4 Greenbaums worried about competition, Greenbaums worried about
5 competition. Did you hear any evidence of that during five
6 days of testimony that they're worried about having another
7 restaurant competing for customers? No. You've got a hundred
8 years of restaurant experience sitting over there, and on the
9 other side you've got a guy who watches Bar Rescue as his
10 experience to running a \$4 million restaurant. Do you think
11 they're really worried about competition? No. What they're
12 worried about is losing parking spaces. That's what they're
13 worried about. Even if just the employees of this building
14 parked in that lot there'd be 20 fewer spots, just the
15 employees. If they never sold a single fish taco in this
16 building they'd still have 10, 15, 20 employees. Not worried
17 about competition. You know how often restaurants come in and
18 go out in this town and in every other town around the
19 Southeast? It's the hardest business to run. These guys have
20 been doing it for decades. They've had 10 restaurants in
21 South Carolina for decades. You decide whether you think
22 they're really worried about competition.

23 And I thought about objecting when she was going on about
24 this, but I didn't. Did you hear any evidence from any
25 witness that Greenbaum gave some order to do everything you

1 can to get in the way of the Lawhons? Please, look at, look
2 at the evidence. Look back in your memories. Talk about it
3 back there. Did anyone say those words that Greenbaum said,
4 "You need to go get after the Lawhons. You need to interfere
5 with the Lawhons. You need to wreck the Lawhons"? Did anyone
6 say that other than this lawyer that just stood up here and
7 made it up from whole cloth? Nobody said it because it wasn't
8 ever said. Greenbaum's got 20 other restaurants or 19 other
9 restaurants to run and worry about. Do you think he's got
10 some vendetta against the Lawhons? Was there any evidence of
11 that, anything that they got out of him when he was on cross?
12 Deposed him for eight hours, his deposition, eight-hour long
13 or seven-hour deposition. Is there any evidence that
14 Greenbaum gave this kill order? It's a joke because it never
15 happened and you never heard anybody say it happened except
16 for the lawyer that was standing here, and you remember what
17 he said about what lawyers say at this table? It's not
18 evidence. It's sad really.

19 Who were their witnesses? I don't -- I can't tell you.
20 I don't remember them. Kinard, what did he talk about, the
21 financial statements. Allison, who sold the property to
22 Lawhon, what did he have to say? Everhart, I said, "Mr." -- I
23 do remember Mr. Everhart because he did a lot of talking and
24 there was things going on. I said, "Mr. Everhart, did you
25 hear a word that came out of Jef Kirk's mouth?" What was his

1 answer? "No. I didn't hear what he said." "Thank you," and
2 I sat down. Do you remember that?

3 Who else were their witnesses? Dan Stacy who was up
4 there telling you how a bill becomes law in the zoning world,
5 and Pat Henry, who, who's up there, the older guy that was
6 talking about the history of the marina and how wonderful the
7 marina is. Yeah. The marina is great. Nobody wants the
8 marina to go anywhere. All those witnesses that kept us here
9 for five days had to say absolutely nothing. They said
10 nothing that will help you make this decision. It comes back
11 to what I said in the beginning.

12 Oh, yeah, where was the county councilman, Mr. Goggans?
13 He's got his 120 grand. He's got the county, approved
14 everything for them, and he -- he's nowhere to be seen. He
15 gone. I don't blame him, but it makes you kind of wonder, the
16 architect of this whole project, made 120 grand off of getting
17 this thing designed and getting it through the county process,
18 he's nowhere to be found. He never took that seat.

19 Well, let's go to the verdict form. Would you mind --
20 can you pull it up, Adam? The first item's, obviously,
21 interference with an easement. This is our claim that they
22 interfered with the parking agreement. We ask you, obviously,
23 to check the first box that you find unanimously for the
24 Plaintiff on its claim of interference with its easement.
25 Now, you can do that by finding any of the following things,

1 hammer throw, called the sheriff, fence in the parking lot,
2 containers and construction stuff in the parking lot, dumpster
3 intimidation, the building's too big for the old footprint,
4 the building's going to take up parking that they didn't used
5 to take up, any of those things, not all of them, but any of
6 them you get to check yes or you get to check next to the word
7 we. You don't have to find all of them. Maybe you're not
8 real sure about what happened at the dumpster. Maybe you're
9 not real sure about what happened with the delivery truck. I
10 forgot the delivery truck, but pull up the fence, go to the
11 pictures. The pictures show you what happened. She wants to
12 make a big deal about whether it was 90 percent or 50 percent.
13 Look at the picture. You can see that the entire parking lot,
14 everything to the left of the fence is blocked. So you don't
15 have to believe anybody about that. Just look at the picture.
16 Look at the picture of the -- of Lawhon's truck blocking the
17 delivery truck, read the statement of the delivery driver,
18 find any of those things. Pull up the demo plan, please.
19 Find any of those things, just one, and you can check the box
20 next to, "We, the jury, by unanimous decision, find for the
21 Plaintiff." Now, if there's any question, maybe you don't
22 believe any of it, but look at their own -- this is their plan
23 that's on the screen. This is Lawhon's own plan, and the
24 yellow, look at it with your own eyes back there if you want,
25 but the yellow highlights the old building, the footprint of

1 the old building, and the pink highlights the footprint of the
2 new building. Does that not look to you like they're building
3 a building with a bigger footprint than was there before?

4 Common sense. You have that document just to remind you.

5 It's in Exhibit 12. It's part of the plans. You find that,
6 you get to check the box for the Plaintiff.

7 Remember the testimony when I asked Dr. Lawhon about the
8 parking lot blocking the delivery truck? I said, "You're not
9 confrontational; are you?" "No." "I'm not confrontational."
10 I said, "You could have parked anywhere else in that parking
11 lot. It was the middle of the day, and there was a fence up,
12 your fence. You could have parked anywhere you wanted, but
13 you decided to park in the one place that was going to block
14 the delivery truck of Mr. Felder." Yeah. He had a right to
15 park wherever he wanted, but he didn't park just anywhere. He
16 parked in the one place to interfere with our delivery.

17 That's what a bully does. So how then do you answer these
18 questions when you get to, hopefully, the bottom of that page?
19 If you found for the Plaintiff set forth the amount of
20 damages, if any. Well, you heard Mr. Greenbaum talk about
21 \$60,000 of lost sales and you heard Dr. Lawhon talk about this
22 -- the richest parking spaces in the Southeast, \$260 a day,
23 \$260 a day to rent a parking space in that parking lot. I'm
24 in the wrong business. I need to get into the Georgetown
25 County parking lot business if you can get \$260, but if you,

1 if you like that number, think about the 55 parking spaces
2 that were in the parking lot that were blocked by the fence,
3 just add 55 times the \$260 times 12 months and however many
4 years and that's another method to get to, to get to these
5 damages, and then it's a little harder to come up with damages
6 for some of this other stuff like the hammer throw, calling
7 the sheriff, the dumpster confrontation, the delivery truck.
8 There's no easy number for that. That's going to be what's
9 called in your conscience, the conscience, the enlightened
10 conscience of the jury, and finally, remember one other thing
11 with respect to damages, remember what the marina paid for the
12 months that it blocked the parking. It had to pay like
13 \$167,000 when it blocked parking. So these are some tools
14 that you can use to come up with the money damages answer if
15 you find for the Plaintiff on page one.

16 Now, the rest of the, the verdict form deals with these
17 remaining weak, weak counterclaims. There's a dumpster sitting
18 in the parking lot. Can you pull it up, please, Adam? Do you
19 know the dumpster is sitting in the parking lot? It's not on
20 a parking space. Look at it yourself, and the dumpster that's
21 right next to our dumpster is their dumpster. We're here for
22 six days to talk about dumpsters? You know that's a weak,
23 weak claim, and yes, the Judge kicked out all of their other
24 counterclaims, dismissed them all. This is the only thing
25 that's left, the dumpster and this maintenance obligation. So

1 you can very easily find in the answer to question number two
2 the second answer, "We, the jury, find for the Plaintiff,"
3 check that box. Question number three, the breach of the
4 easement, that deals with sharing costs for the, for the
5 parking lot.

6 Now, let's go to the easement language again, and Ms.
7 Golding is very, very prescient because she's right, I'm going
8 to challenge you to find anywhere in that language that talks
9 about an obligation for us to pay taxes, their taxes. The word
10 taxes shows up nowhere in that agreement period. We did not
11 agree in 1986 to pay half of their taxes. We did not agree in
12 1996 or in 2016 or in 2018 to pay half of their taxes, and the
13 only evidence that you heard was Dr. Lawhon saying, "Well, I
14 think the tax bill is about \$11,000." You never saw the bill.
15 We don't know the bill. He didn't know if he split the bill
16 right. He wasn't sure about the bill, but it doesn't matter
17 because there's nothing in that document that says,
18 "Gulfstream, you got to pay half the taxes." There's nothing
19 in that document. I challenge you, please, look, that says,
20 "You got to pay half of our insurance for the parking lot."
21 It just doesn't say anything about it. The only thing it says
22 is the notion of maintenance and upkeep, but you didn't hear
23 any evidence of what that costs. So this \$30,000 number
24 doesn't get past go. They don't collect a dime. It's dead on
25 arrival, but that's the best they've got. Everything else has

1 been dismissed. This Judge dismissed the rest of those
2 counterclaims. The other judge found that they were in
3 interference with our easement, Judge Culbertson. You've got
4 two judges that are telling you exactly what they think about
5 this case at least in terms of the counterclaims and the other
6 judge with the interference claim. No Councilman Goggans.

7 So in the end, we ask you to find for the Plaintiff for
8 interference. We ask you to find for the Plaintiff on the two
9 counterclaims, questions two and question three, and send --
10 and, and answer the question once and for all for Dr. Lawhon.
11 He doesn't like to hear no. He didn't like it when the judge
12 told him, Judge Culbertson told him no. He didn't like it
13 when Judge John told him no. He ain't going to like it if you
14 tell him no, but just like the one year old that drops the
15 meatballs for the dogs to eat and you tell her no, it's time
16 at some point for her to appreciate and for him to appreciate
17 that there is cause and effect and that there are
18 repercussions for your actions, and I think the only one whose
19 voice they'll listen to, he'll listen to is yours when you
20 find for the Plaintiff, and it's going to take probably more
21 than a slap of the hand. Thank you.

22 THE COURT: All right. Mr. Foreman, ladies and gentlemen
23 of the jury, go to your jury room for about five minutes and
24 we'll come back and I'll charge you the law. Thank you very
25 much.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. We'll be at ease for about five
4 minutes.

5 MS. GOLDING: Your Honor, may I?

6 THE COURT: Yes, ma'am.

7 MS. GOLDING: I had one matter, Your Honor, on -- when
8 Mr. Bloom started his closing his -- he said that the -- Judge
9 Culbertson found that Mr. Lawhon violated -- interfered with
10 the easement. He then again said that on his reply. That's
11 not accurate, Your Honor. Judge Culbertson did not find there
12 was a violation of easement, and therefore, I request there be
13 a curative instruction to the jury.

14 THE COURT: Mr. Bloom.

15 MR. BLOOM: Judge, it says exactly that, a willful
16 violation of the prior court order by interfering with the
17 Plaintiff's easement. That's on the screen for Your Honor to
18 refer to.

19 THE COURT: I, I, I appreciate that, but prior court
20 rulings were matters that were addressed by the Court based
21 upon the situation at hand. It's for this jury to decide
22 based upon the verdict form what their decision will be. I
23 will tell the jury, and I'll emphasize to them, that I have
24 made no comments on the facts, no rulings on the facts. I've
25 only ruled on what they are to look at. My decisions, any

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2016-CP-22-00961

THE GULFSTREAM CAFE,)

Plaintiff,)

vs.)

J. MARK LAWHON,)

INDIVIDUALLY, AND)

PALMETTO INDUSTRIAL)

DEVELOPMENT LLC,)

Defendants.)

Transcript of Record

(Motion Hearing)

November 14, 2018

B E F O R E:

Honorable Steven H. John
Georgetown County Courthouse
Georgetown, South Carolina

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

George W. Redmond, III, Esquire
Simon H. Bloom, Esquire
Adam D. Nugent, Esquire
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Henrietta U. Golding, Esquire
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Kay H. Richardson
Circuit Court Reporter

I N D E X

NOVEMBER 14, 2018

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No.

ID

EV

D1 Thumb Drive		48

1 NOVEMBER 14, 2018 - 9:35 A.M.

2 BY THE COURT:

3 THE COURT: All right. This is 2016-CP-22-961, the
4 Gulfstream Café, Inc., Plaintiff versus J. Mark Lawhon,
5 Individually, and Palmetto Industrial Development, LLC. There
6 are two matters before the Court this morning. There is the
7 motion for contempt of court filed by the plaintiff in this
8 matter and the defendant's motion to alter or amend the
9 Court's order previously issued and amended in this matter.

10 How I intend to proceed, I'm going to hear from the
11 defendant on their motion to alter or amend the Court's order.
12 I will then hear from the plaintiff as to their response to
13 that, as well as their motion to hold the defendant in
14 contempt of court, and then I'll hear a reply from the
15 defendant.

16 Proceed.

17 MOTION TO AMEND:

18 MS. GOLDING: Thank you, Your Honor. Good morning, Your
19 Honor.

20 Your Honor, the defendant's motion to amend or alter
21 seeks, it's based on four distinctive grounds, Your Honor.
22 The removal -- the removal of the plat from the order that is
23 referenced in your July 27 formal order is the first basis.
24 If Your Honor will recall, in June -- on June the 4th, you
25 issued an oral order. And at that time, in your oral order,

1 you made no reference whatsoever to the plat. And in fact, in
2 that oral order, and I believe -- I believe it might be June
3 the 12th, I'm sorry, Your Honor. But in that oral order, you
4 specifically stated that the defendants are enjoined from
5 preventing the plaintiff from enjoying the right, et cetera,
6 and defendants are restrained and may not expand the outside
7 boundaries of any new building. We believed at that time,
8 when I heard, and when you put that in the formal order, the
9 outside boundaries, that specifically entails, Your Honor, the
10 sidewalks. It specifically entailed the cement pad and behind
11 and the container. The plaintiff sought to change that and
12 made a motion to amend or alter to change that language from
13 the outside boundaries. And the reason being, Your Honor, is
14 because the outside boundaries included the sidewalk, included
15 the cement pad, and at least one container. The evidence was
16 very clear at trial that the outside boundaries, the sidewalk,
17 the cement pad, and the container had been there for at least
18 30 years, Your Honor. We had witnesses testify. Mr. Henry,
19 Mike Wooten, and even the plaintiff's witnesses testified that
20 they had knowledge of those structures on the property as
21 being part of the building as they drove in and out. They all
22 testified there was -- that these existed and had existed. I
23 find it somewhat ironic that Plaintiff, in its reply brief to
24 the motion, referenced a portion of Mark Lawhon's testimony
25 about two weeks, relating to the two-week period that he moved

1 the containers on the -- right after the demolition. The
2 plaintiff is misleading the Court. Mark Lawhon clearly
3 testified on his testimony that from the building to the road
4 is where we had our containers and freezers. Now, prior to
5 November 1, 2016, did Gulfstream at any time ever object to
6 the containers and the walk-in freezer being beside and
7 adjacent to the building? Never. That is exactly his
8 testimony. And as I stated, also the testimony of Mr. Henry
9 and Mr. Wooten. If the Court will recall Mr. Henry had been
10 there many, many years, and Mr. Henry testified clearly that
11 the sidewalk, the cement pad, and the building -- the freezer,
12 were there.

13 Well, what's the significance of that? The significance
14 of that is that you have shrunk the size of the building that
15 was there in existence for over 30 years. And in spite of the
16 fact that even on the plat, there was no sign. This Court
17 ruled that the sign can stay there because it had been there
18 30 years but yet, at the same time, took the position that the
19 sidewalk, and the container, and the cement pad were not part
20 of the building even though all the testimony was to the
21 contrary. And that's what happened in your amended order,
22 Your Honor.

23 So, what has happened by you changing your order and the
24 amended form order to what is now the order of the Court, in
25 which you state that it has to be within the footprint, you

1 also added it does not include cement pads, dumpsters, or
2 other fixtures outside the building, which were not in your
3 previous order, Your Honor, and then you added the plat. Now,
4 this language, the plat, wasn't even in your direction, Your
5 Honor, to the plaintiff's counsel. They took it upon
6 themselves to add that. That was not -- you did not address
7 it in court, you did not put it in your formal order. It was
8 only in the order that Mr. Adams -- Adam Nugent, excuse me,
9 presented to the Court without any direction from Your Honor.

10 Now, what is the significance of that, Your Honor? The
11 significance is simply at trial both plaintiff's expert and
12 defendant's expert testified there were no dimensions
13 whatsoever to the drawing of the plat, supposedly being the
14 building, no dimensions. And the significant part is that
15 having no dimensions, that causes confusion, and the
16 confusion, Your Honor, is it's gonna happen with this
17 plaintiff. It's happening already with this plaintiff. And
18 the Court, I believe, needs to revise the order to remove any
19 reference to the plat and restore the order, the position of
20 the order that the building can consist of the sidewalk, the
21 cement pad, and the container area.

22 Your Honor, then the second ground is a permanent
23 injunction should not have been granted. As the Court knows,
24 a permanent injunction is a drastic remedy. A permanent
25 injunction can only be granted if there is no remedy, no

1 remedy. In this case, clearly, Plaintiff has a remedy. They
2 brought an action, they sought damages, they've received
3 damages. There was a \$1,000 damage.

4 And with respect to the permanent injunction, Your Honor,
5 what is -- what has happened now is that this motion for
6 contempt for the defendant parking in the lawful parking
7 places, they have taken your order and placed meanings to it
8 which do not exist. And why, because the permanent injunction
9 is there and they think that they can use that as a sledge
10 hammer, Your Honor, and that is not proper. When we hear
11 about the testimony of -- excuse me -- when we hear about the
12 parking, their motion for contempt, Your Honor, is addressed
13 to parking, parking in lawful parking spaces, parking in
14 spaces that are not designated for anyone. And why did they
15 make that motion? Because there is permanent injunction.
16 That is -- that shows you how they are misusing and abusing
17 this Court's order.

18 The plaintiff also says, well, we didn't object to the
19 permanent injunction when you first issued your order on June
20 12th. Your Order, on June 12, was rescinded and revised.
21 There is now a July, I think it was July 27 or June 27th
22 order. Is that July 27? Yeah. It's a July order, Your
23 Honor. That is the order from which we are seeking relief
24 from because of how the plaintiff has abused this Court's
25 order. And also, Your Honor, there is no law in South

1 Carolina that you can only appeal part of an order; that
2 doesn't exist.

3 So, at this time, Your Honor, the permanent injunction,
4 we request that it be removed because there is definite --
5 there is an adequate remedy of law. They can seek damages.

6 And then the final grounds, Your Honor, is that the
7 permanent injunction appears to enlarge the plaintiff's
8 easement. Your Honor knows that the law of South Carolina is
9 that restrictions to property are -- are construed very, very,
10 narrowly, these restrictions on property that is the easement.
11 The permanent injunction, as shown by the way the plaintiffs
12 have tried to use it, has enlarged their rights. What
13 Plaintiffs have now done is put a sign up on one parking space
14 and said, don't park here, enlarging their rights.

15 Look at the plat, Your Honor. The plat has nothing in
16 there about anything about use of the parking spaces, other
17 than joint not exclusive, no restrictions to any. But here,
18 the plaintiff, through its contempt motion, it has enlarged
19 this Court's temporary -- excuse me, Your Honor -- permanent
20 restraining order.

21 So, the bottom line is, Your Honor, Plaintiffs have an
22 adequate remedy of law. The injunction should not have been
23 issued and nothing is more of a prime example than the abuse
24 of the plaintiff in filing the motion for contempt. Clearly,
25 the plaintiffs went beyond what this Court instructed, when

1 they added words, which were not in existence in the Court's
2 order, when they added the plat, and clearly the testimony at
3 trial. And there is no dispute, Your Honor, the testimony at
4 trial is that the sidewalks, the cement pad, and at least one
5 container were part of the building. This Court permitted the
6 sign, the grease trap, to be on the parking lot, for the very
7 reason they'd been there for over 30 years. The evidence is
8 clear that the grease trap -- excuse me -- the evidence is
9 clear that the sidewalk, cement pad, and at least one
10 container were there many, many, years, over 30 years. No
11 dispute even though, erroneously, the plaintiff tries to
12 establish a dispute.

13 The bottom line is that Your Honor needs to revise your
14 Order, remove the permanent injunction and permit the
15 construction of a building that incorporated the sidewalks,
16 the cement pad, and one container.

17 Thank you, Your Honor.

18 THE COURT: All right.

19 MR. BLOOM: Would you mind turning the screen around,
20 please.

21 Your Honor, may I move the podium?

22 THE COURT: You sure you can't use your desk?

23 MR. BLOOM: No, I'll be happy to use my desk.

24 THE COURT: Great.

25 MR. BLOOM: I just can't see all that well. No problem.

1 THE COURT: That's all right.

2 MR. BLOOM: There's a -- Your Honor, an original June
3 order with an injunction as part of it. Your Honor, then
4 revised the order in July to revise and alter the injunction
5 as a result of our motion.

6 The first argument that the injunction is inappropriate
7 because there's an adequate remedy at law simply is a failing
8 argument. Number one, it's an untimely argument. Rule 59(e)
9 gives the moving party 10 days from the date of the order to
10 seek to move to alter, amend, or modify an order. This
11 element of the order, i.e. there be a permanent injunction
12 enjoining interference was in place on June 12th. The
13 defendants failed within 10 days to move to alter or amend
14 that aspect of the order. They now try to resuscitate that
15 request here and this is because Your Honor entered a new
16 order. When does the finality that Rule 59 contemplates take
17 effect? If Your Honor changes one paragraph -- I should say
18 one comma of the July 27th order, does that start a new 10-day
19 clock? It's obvious that they missed the boat in attacking
20 Your Honor's order from June 12th order and now try to
21 bootstrap their way using Rule 59 as it was clearly not
22 contemplated to be used.

23 Second, it simply disingenuous to argue that the jury
24 adequately found damages in an adequate remedy of law when we
25 all recall the jury came back originally with zero damages.

1 Your Honor had to charge the jury to go back to either find
2 ether no interference or find interference and assign some
3 dollar value. This proves the essence of what injunctive
4 relief and equitable relief is all about. It is when it is so
5 difficult to ascertain a monetary figure and arrive at actual
6 monetary damages that you have to have equitable relief in the
7 form of an injunction. This is the classic law school case of
8 a finder of fact that had a difficult if not impossible time
9 of identifying actual damages. We know they found liability
10 because Your Honor charged them with determining whether there
11 was interference. They found liability, and the remedy was so
12 difficult for them to assign a dollar figure to they came back
13 with zero. That is black letter law in equitable remedies
14 that, if it is so difficult to ascertain or arrive at or
15 calculate monetary damages, then that is the time when there
16 is no adequate remedy of law and equitable relief is
17 appropriate. This is that classic case. There couldn't be a
18 better case, in fact. The jury told you, we find liability,
19 we don't find any damages, and you correctly told them you
20 can't do both for a monetary damages claim. You have to
21 either find no interference, no liability, or if you find
22 liability you have to say what number damages arise. So, of
23 course, the argument that this was an improper injunction
24 because of inadequate remedy at law also fails because
25 Defendants apparently overlook the very clear distinction --

1 they overlook the very clear distinction that we made through
2 a year of litigation between the difference of injury for past
3 violations of the easement and injunctive relief to prevent
4 future violations of the easement. That distinction was made
5 clear throughout the trial. Your Honor appreciated the
6 distinction because even after the jury found -- the trier of
7 fact found that there was liability, found that there was
8 interference, assigned a nominal dollar figure to it, Your
9 Honor then entered an injunction. So, of course, there was a
10 distinction throughout the case between past interference
11 violations liability and damages and prohibiting future
12 violations, liability, and potential future damages. So, it's
13 simply argu -- this argument about the inadequate remedy at
14 law falls on its face.

15 Secondly, they argue that the injunction enlarges our
16 easement rights. They seem to misunderstand the difference
17 between enlarging easement rights and preventing interference.
18 The easement is no broader or deeper or larger than it was
19 before Your Honor's two orders. The easement says what it
20 says. There -- we get to park primarily at night during
21 evening business time hours, they get to park primarily during
22 the daytime. That language hasn't changed. It's not
23 exclusive; that language hasn't changed. There is no
24 question, Judge, that by you simply saying, hey, don't
25 interfere with the easement rights, that you haven't done

1 anything to enlarge the easement rights. The easement area is
2 the same, the confines are the same, the parameters are the
3 same, the capacity language is the same. What you're telling
4 the defendants that they simply don't seem to get the message
5 is that they cannot do anything to obstruct or undermine or
6 hinder our ability to use the parking lot. That message must
7 not be clear in your order because they continue to do so even
8 days after Your Honor's order was entered. Mr. Nugent will
9 handle the motion for contempt.

10 It was the history, the retrospective view of instance
11 after instance, and I won't go back into all of them, of
12 interference with the easement rights that necessitated both
13 the final liability by the jury and necessitated for Your
14 Honor the entry of injunction. That was the whole point. You
15 look at the past to predict what events you don't want to
16 happen in the future. That was the history of events that
17 required the injunction being entered.

18 Your Honor, the third point, the third point is
19 laughable, that Your Honor's reference to the 1985 plat
20 creates more confusion. We spent months and then eight or
21 nine days in this room litigating about this plat. We
22 litigated about this plat for hours and hours and hours. Your
23 Honor probably knows it by heart but I wanted Mr. Redman to
24 grab it and he did so in record time just so that we are clear
25 about what we're talking about. This plat, to contend that

1 the inclusion of it in your July order creates more confusion
2 is simply unfathomable. To contend that this plat lacks
3 reference to boundaries, lack dimensions, and lacks
4 identification of the property at issue, the easement area, is
5 simply false. It's belied by the black and white. This plat
6 contains measurements. This plat contains reference to
7 monuments. This plat does everything that the Court, the
8 Supreme Court in 1992 in the *Gentry v. Locke* [sic] case says a
9 legal description or reference to property must contain
10 natural boundaries, check, there's the water; artificial
11 monuments, check, there are pins in the ground, there are
12 caps, too, if you'll recall for the gas tanks; adjacent
13 boundaries, check, it ends where new property begins; and
14 courses and distances, also check, it references -- it
15 references places in the world with minutes and seconds.
16 Sorry, it's *Garrett v. Locke*. That's what *Garrett v. Locke*
17 says you're supposed to have. So, how could Your Honor be any
18 more precise to eliminate confusion about what the easement
19 area is than to refer to the 1985 plat? They don't like the
20 1985 plat because it determines definitively what their
21 footprint is. This is it. This is their footprint. This is
22 where they can build. There's no confusion about that, Judge.
23 They know that's the footprint because in the last month or so
24 they have developed, yes, 3.0, the newest set of plans to
25 build the Marlin Quay Marina project and, lo and behold, they

1 use the footprint that Your Honor entered in your July order
2 as the footprint for the new building. So, to say with a
3 straight face that inclusion of the '85 plat creates confusion
4 is absurd.

5 Finally, it is obvious and it should be obvious to anyone
6 that has been involved with this case and anyone that reads
7 Your Honor's order that the footprint that Your Honor meant --
8 and I don't pretend to argue what Your Honor had in your mind,
9 all I can do is look at what Your Honor signed. But, it's
10 pretty logical and not a huge inferential jump to think that
11 since we argued for all those months and all those days of
12 trial about this 1985 plat and about that very footprint that,
13 when Your Honor said that the outside boundaries of the
14 building, you meant the footprint that is set forth in the
15 1985 plat. It could mean nothing else. But, let's just take
16 one second to refute the nonsense. And it's typical broad-
17 brush painting. All the witnesses said it was 30 years when
18 it came to the freezer and the sidewalk and the one container,
19 and all the witnesses argued or contended without dispute that
20 this stuff had been here forever. That's the kind of
21 generalized platitudes that you hear from lawyers when they
22 don't have actual record cites. Point us to one record cite
23 where one witness in all of that testimony said that these
24 containers existed on their spots for 30 years. It doesn't
25 exist. And Your Honor knows that if it did, learned counsel

1 across the aisle would've put in their response brief or their
2 motion and included it today at hearing. Instead, they argue
3 all the witnesses said in undisputed way that these containers
4 had been there for 30 years. That's simply a joke, because
5 it's not even close to being true, and Your Honor knows that
6 because you sat through the trial and you took copious notes.
7 And if Your Honor had notes that reflected that, I am
8 confident that Your Honor would point that out. The fact of
9 the matter is the only witness who had personal knowledge of
10 what was there for 30 years was Mr. Mike Stone. And he
11 testified definitively, and it's cited in our papers,
12 definitively that those containers, the storage containers
13 adjacent to the ship store were not there when they owned the
14 ship store and the Marlin Quay Marina.

15 You can look at and it's so easy, it's like the whole
16 thing with the ellipsis the way the defendants argue, between
17 the lines, if you read what they say, there's no definitive
18 evidence that any single witness said those containers were
19 there before 2016 when we bought the project. There is no
20 testimony -- and I urge, implore, encourage defendants to show
21 those cites for the Court in their reply to this argument
22 because we know it doesn't exist. Page, chapter, verse,
23 please show us where it said as opposed to just saying all the
24 witnesses said 30 years.

25 Their final argument is that the July injunction -- the

1 footprint, to the 1985 footprint is an error because I guess
2 there's some argument -- I guess there's some argument they're
3 making that they acquired adverse possession through use of
4 more than the footprint for 30 years. I guess that's where
5 they're going. But, of course, they never pled that. Of
6 course, no finding of adverse possession has ever been made.
7 Of course, the easement and Georgia -- and South Carolina law,
8 black letter required that in order to amend or modify the
9 confines or parameters of a real estate document, it must be
10 done in writing. There's no, of course, dispute that that
11 never happened. And, there's never been an adjudication by
12 this Court or any other that because for two years they had a
13 storage container outside of their building that that somehow
14 encroached into the easement area, increased their footprint,
15 and reduced the easement area. But, I think that's their
16 argument, as best I can infer. And that's simply false right
17 on its face. The footprint is what is has been since 1985,
18 1984. It has always been the footprint. The addition of a
19 freezer or the addition of a container in 2016 to move and
20 store stuff for the store does not change the footprint, and
21 it does not change the easement area. And therefore, our
22 easement rights have been ordered to be maintained after
23 respect that their property, for purposes of the easement and
24 at the 1985 confines of the boundary of the footprint.

25 The motion to alter or amend should be denied for all of

1 those reasons. It's untimely. There's no merit to the
2 inadequate remedy at law argument. There's no merit to adding
3 confusion from the July 27 inclusion of the plat. And,
4 there's absolutely no increase or expansion of our easement
5 rights as a result of the clarification. It is the
6 clarification that we requested, Your Honor, from this Court
7 to avoid confusion, to avoid additional litigation, and to
8 avoid going further and further down the road guessing what
9 the Court means by the outside boundaries of the old building.
10 It's clear as day on the 1995 plat.

11 I'd like to then turn the floor over, with Your Honor's
12 permission, to Mr. Nugent to address the motion for contempt.

13 THE COURT: All right.

14 Proceed, sir.

15 THE COURT: All right. You may proceed, sir.

16 MOTION FOR CONTEMPT:

17 MR. NUGENT: Thank you, Your Honor. Thank you for
18 hearing us today on this motion for contempt. The reason
19 we're here on this motion is because the defendant simply
20 refused to follow the Court's Orders. And I want to back up
21 for a minute and remind the Court of the history of this case.

22 Almost exactly two years ago, Judge Culbertson entered a
23 temporary injunction in this case, and in that injunction,
24 Judge Culbertson order the defendants not to interfere with
25 Gulfstream's easement. Well, the defendants failed to abide

1 by that injunction and we came back approximately a year ago
2 on a motion for contempt because the defendants had interfered
3 with the easement by a number of instances, including Your
4 Honor may recall this from trial, calling the sheriff when
5 Gulfstream's window washers and painters came to do work on
6 the Gulfstream building. Judge Culbertson heard that motion
7 for contempt last year, and he in fact found the defendants to
8 be in criminal contempt of the temporary injunction. He
9 sanctioned them to 30 days in jail or a fine and it was
10 decided, this in fact came in during the trial, it was ruled
11 that they had contemptuously violated the temporary
12 injunction. Keep that in the back of your mind as we talk
13 through the conduct that's at issue in the present motion.

14 What kind of person, having already been sanctioned for
15 contempt, already sat through a trial, found liable by a jury,
16 already hit with a permanent injunction, goes back out and
17 ignores, intentionally, the plain language of that injunction.
18 The permanent injunction the Court entered in this case was
19 entered on June 12, and it very clearly barred the defendants
20 from interfering with Gulfstream's easement. The specific
21 language was the defendants were enjoined from denying
22 Gulfstream the enjoyment of the rights granted to Gulfstream
23 in the easement and those rights, I'm sure Your Honor recalls,
24 include the full and free right of access, ingress and egress,
25 the right to traverse the easement for parking, the right to

1 use the easement for maintenance of its building, et cetera.
2 Very clear that the defendants were barred by this Court from
3 interfering with those easement rights. Almost immediately,
4 the defendants began embarking on a pattern of conduct that
5 represents intentional efforts to interfere and we filed a
6 motion on July the 20th. And in that motion, we referenced
7 several instances of the defendants contemptuously violating
8 the permanent injunction. Since then, there have been
9 additional instances and those are referenced in the reply
10 brief we filed.

11 MS. GOLDING: Your Honor?

12 THE COURT: Yes, ma'am?

13 MS. GOLDING: I'd like to object. Their motion for
14 contempt is based on parking. They have not sought to amend
15 their motion for anything else. And they're referring, I
16 assume, to lighting and the trailer. I'm not so sure, but I
17 want to, just for the record, place that it's improper for
18 them to try to present more matters that were not set forth in
19 their contempt motion.

20 THE COURT: All right. Thank you, ma'am.

21 You may continue, sir.

22 MR. NUGENT: Thank you. As I mentioned, our motion was
23 initially filed July 20th. It addressed the contemptuous
24 actions to date, but there are additional behavior that are
25 referenced in our reply brief. They actually were referenced

1 in Defendant's opposition to our motion and the affidavits of
2 Mr. Kirk, which spelled this all out very, very, clearly.

3 I'm going to walk through three different categories of
4 contempt here and the first one relates to blocking the
5 Gulfstream delivery gate. And I'll take the Court back to
6 trial, and the Court may recall that there was a lot testimony
7 about an incident in November of 2016. Mark Lawhon and Jef
8 Kirk spoke on the phone and the conversation ended with Mark
9 Lawhon stating that it's going to get ugly, and sure enough 45
10 minutes after that phone call Mr. Kirk walks out and finds
11 Mark Lawhon's vehicle parked in a place that blocks the
12 Gulfstream delivery gate so that Gulfstream's food delivery
13 from U.S. Foods, the big semi-trailer, and it comes regularly,
14 because this is a restaurant, that trailer, that tractor-
15 trailer was blocked from accessing the delivery gate. And up
16 on the screen, this was Exhibit 20 in the trial. These were
17 the photographs that were taken from that November 2016
18 incident. And in addition to the photograph, there was also a
19 statement from the delivery truck driver about how he tried to
20 get Mark Lawhon to move his car and Dr. Lawhon refused and
21 Your Honor may recall, this was just somebody trying to do his
22 job. This man was just trying to deliver the food so he could
23 go on about his day and he was impeded from doing that by Mark
24 Lawhon parking his car near the delivery gate to block access
25 to that gate.

1 No question, following the trial and that testimony, that
2 that specific type of conduct interferes with Gulfstream's
3 easement rights. No question, none of the people who sat here
4 in this trial could possibly be uncertain about whether it is
5 inappropriate for the defendants to block access to the
6 delivery gate. Nevertheless, the defendants, following entry
7 of the permanent injunction, repeatedly and intentionally
8 blocked the delivery gate. The first time it happened was
9 July 11th. Chris Lawhon blocked the delivery gate with his
10 golf cart and he left the golf cart there for two consecutive,
11 days and we've got a photograph of that -- of it being blocked
12 and if you see that up on the screen, you can see the golf
13 cart in the background. It is literally blocked as close to
14 the delivery gate as humanly possible, so that there is no way
15 to access that gate. It was parked there on July 11th, sat
16 there for two days. This wasn't an isolated incident, a
17 mistake, it got parked there and then something happened; it
18 was parked there on July 11. It came back July 13th. And on
19 July 13th, Jef Kirk sent a text message to Chris Lawhon. He
20 had texted with Mr. Lawhon before. He asked him, can you
21 please move your cart? He needs to get into the delivery gate
22 so he can take deliveries of food so he can manage the
23 restaurant, that's Mr. Kirk's job. No response, of course.
24 And even on the 13th, the U.S. Foods driver, a different
25 driver this time, tried to get access to the gate. And this

1 individual, I can't quite red his name, I think the first name
2 may be Alan or Alex, but his statement, as he went over to the
3 Marlin Quay Marina Store and asked if they would move the
4 cart. They said they didn't have the key. He then called
5 Chris Lawhon to ask him and couldn't get a response. That's
6 the second time that Chris Lawhon blocks it -- blocks the
7 delivery gate with his golf cart. This happened over and over
8 and over. On July 15, on the 17th, on the 18th, on the 19th,
9 six different times, Chris Lawhon parked his golf cart in
10 front of the delivery gate to block access so Gulfstream
11 couldn't take deliveries from its U.S. Foods semi-truck that
12 delivers the food, it's 100 plus packages, a lot of boxes.
13 This is a restaurant after all.

14 And even later, July 27th, Mark Lawhon parked his SUV,
15 same location. Jef Kirk again asked Chris Lawhon, texted him,
16 please have your dad move his car so he can access the
17 delivery gate. The only way that Gulfstream was able to deal
18 with this situation is Jef Kirk had to either park his own car
19 in front of the delivery gate or have an employee of the
20 restaurant park their car in front of the delivery gate so
21 that they could move it when the truck came. Because
22 otherwise, if they left that spot open, Chris Lawhon or Mark
23 Lawhon was going to get in there, block it, and just keep them
24 from being able to run their restaurant. Think about how
25 ridiculous it is, you're tasked with running a restaurant,

1 you've got a million things on your plate and now you have to
2 worry about not being able to get food deliveries because your
3 neighbor is gonna take that spot and block you and not respond
4 to your calls and your texts. It's ridiculous.

5 These instances with the golf cart, seven different times
6 there are repeated interferences with the easement and there
7 are repeated violations of the Court's order. There is
8 nothing accidental, there's nothing intentional -- and really
9 the kicker to all this is Jef Kirk looked at the surveillance
10 video and he saw Chris Lawhon drive up in the golf cart, get
11 out of the cart, and instead of walking over to the Marlin
12 Quay Marina Store, where he works, he walked the other
13 direction. He walked off south down Waccamaw Drive back to
14 his house. That man got up early in the morning and
15 intentionally drove the golf cart from his house, he's still
16 just in his pajamas, essentially, parked it there to interfere
17 with Gulfstream and walked away; not to go to work, not to
18 make room for his customers, but just to hurt Gulfstream and
19 make it harder for them to run their business.

20 This pattern of conduct, with respect to the golf cart,
21 clear instances of contemptuous behavior, clearly intentional,
22 nothing accidental, and just designed to make life harder for
23 Gulfstream and for the people who work there. That's the
24 first category of contemptuous behavior.

25 Move on to the second category. This interestingly

1 started right after the injunction was entered. The
2 injunction, of course, was entered on June 12th, that was a
3 Tuesday. And then the first Friday and Saturday after it was
4 entered, lo and behold, the lights in the parking lot are off.
5 And Your Honor I'm sure remembers, the Gulfstream is a
6 dinnertime restaurant and it's required, if you're going to
7 operate a dinnertime restaurant, to have a parking lot that is
8 illuminated, that's safe for patrons to cross. The
9 defendants, they control whether the lights work on the
10 parking lot. And I suspect Your Honor is familiar with the
11 Garden City area but, at night, it gets very dark down there.
12 There's water on both sides, there's not a lot of ambient
13 light. It's essential that there be sufficient light in that
14 parking lot to allow people to access the restaurant. Think
15 about a couple coming out for an anniversary dinner, dressed
16 nicely, maybe the woman is in high heels. They show up to the
17 Gulfstream for an 8 o'clock reservation and it's pitch black
18 in that parking lot. They've got to cross the parking lot
19 with no light. It's a hazard. It's a hazard to Gulfstream's
20 guests. It's also a hazard to the employees. If a server has
21 a great night, gets a bunch of money, has a bunch of cash in
22 his rear pocket and then has to go across the parking lot in
23 the dark at 10:00 P.M. because the defendants want illuminate
24 it.

25 The first incident with the lights, this was June 15, 16

1 timeframe, right after the injunction was entered. Just kind
2 of a little dig at Gulfstream because they were mad, the
3 defendants were mad about the permanent injunction. And then
4 starting in July, there were more instances with the lights
5 being out. Six or eight instances, almost all in a row, of
6 the parking lot not being illuminated at night. And less
7 there be any doubt about whether this was an accidental issue
8 or some sort of malfunction, on three different occasions, the
9 area next to the Marlin Quay Marina Store was lit up, while
10 the area by Gulfstream was in the dark. And on one occasion,
11 the parking lot lights were out, Jef Kirk and Linda Barnaba
12 walk out into the parking lot, they see Chris Lawhon, Chris
13 Lawhon sees them, next thing you know, the lights are turned
14 on. No doubt that these lights were being manipulated by the
15 defendants to interfere with Gulfstream's ability to run its
16 business. Again, eight different instances of this happening,
17 absolutely intentional, absolutely violates the Court's
18 permanent injunction, clearly contemptuous conduct.

19 Now, I get to the final instance of contempt, and this is
20 part of broader pattern here obviously, but in -- you'll
21 recall that there was testimony about the defendants blocking
22 portions of the parking lot using containers in the 2016
23 timeframe. There were several containers on the lot for
24 several weeks and even once the temporary injunction was
25 entered, the fence that had been put up was taken down and the

1 container stayed there for several more weeks and there was
2 testimony about how those containers being there represented
3 interference with the parking lot, interference with
4 Gulfstream's easement. Well, the defendants found a new way
5 to do that, and that's through long-term storage of trailers
6 and trucks in the parking lot. Starting in July, late July,
7 two boat trailers were put in the parking lot, oversize
8 trailers can't fit in a parking space. They initially are
9 blocking the sidewalk. They get moved because that's a hazard,
10 pedestrians can't walk safely down the road. They get moved
11 off the sidewalk and now they're blocking circulation in the
12 parking lot, making it harder for vehicles to access and
13 circulate through the lot. At the same time -- and those
14 trailers, they're not just there for a night or two, they're
15 there, I know the picture up here on the screen, you can see a
16 picture of those two trailers to the right-hand side. They're
17 there for approximately two weeks and three weeks
18 respectively, those two trailers are sitting there; not for a
19 night, not just a weekend sort of thing, they're sitting there
20 in a long-term storage kind of situation. And then, August
21 1st, the defendants add a large box truck, an oversized box
22 truck that is parked right next to the trailers and that box
23 truck parks there August 1st, does not move for 35 days.
24 August 1st to September 5th, that box truck sits there without
25 moving.

1 You can see the box truck. It's in the bottom right-hand
2 corner of this photograph. This was actually taken in
3 September. So, I mentioned the box truck showed up August
4 1st, stayed there for 35 days without moving and then it came
5 back. It left for a few -- a couple of weeks and it came back
6 September 21st. It was the picture just up there, September
7 21st, the box truck coming back. It's still there. November
8 14th, we're sitting here, the box truck is still sitting in
9 the parking lot; it hasn't moved, it hasn't run, it could be
10 disabled for all we know. It's not being parked there; it's
11 being stored there. And this may seem like a minor issue but
12 the reality is the defendants have other places they could put
13 these things. They've got other property where they can
14 locate the trailers and box truck. It's just an effort to
15 reduce the available parking. They know the parking lot gets
16 full. They know Gulfstream needs the spaces and any space
17 they can take away, just makes it that much harder for
18 Gulfstream to run its restaurant.

19 And so, that's the issues with the truck and the trailer
20 are that third category of contempt, part of the bigger
21 pattern. Part of these defendants just completely thumbing
22 their nose at the Court's authority, at the obligation they
23 have to not interfere with Gulfstream's easement. And I'll
24 remind the Court of the law here. This is a contempt motion
25 and this is, we believe, a classic example of criminal.

1 contempt. There is an intentional violation, repeated
2 intentional violation, of the Court's order. And this was in
3 the *Miller v. Miller* case. It's in our pleadings, it spells
4 out when criminal contempt occurs, and it also makes clear
5 that criminal contempt exists when there's a willful
6 disobedience. And the purpose of issuing a citation, a
7 sanction in criminal contempt, is to punish the party that's
8 engaged in the contemptuous behavior. That punishment is
9 designed to vindicate the authority of the Court, and this
10 Court has ample authority to sanction the repeated intentional
11 violations by the defendants and issue fines and imprison them
12 and award attorneys' fees.

13 And when coming to the remedy, I want to remind the
14 Court, this is not their first violation. They've been held
15 in contempt before. They've been sanctioned for criminal
16 contempt before. They sat through a trial and they watched
17 the testimony and they got an adverse verdict from the jury,
18 they got a permanent injunction entered against them, and they
19 still went out and did the exact same conduct that led to the
20 interference claims that they lost on at trial. They know
21 what they're doing. They're repeat offenders. They are going
22 to do whatever they want to do until this Court makes it clear
23 that they must obey. The remedy needs to be sufficiently
24 severe to tell the defendants, to send them a message that
25 they are not to disobey this Court's order, they are not to

1 interfere with the Gulfstream easement.

2 And just recall, when fashioning that remedy, the
3 defendants here, they have means. There was testimony during
4 the trial about purchases of several hundred thousand dollar
5 pieces of property throughout this area, several different
6 businesses that were operating. They're in the process of
7 designing and building a multi-million dollar building down in
8 the Marlin Quay area. The notion of them having to stroke a
9 check for 5 or \$10,000; they're not even gonna care. That's
10 not gonna send a message to them about their obligation to
11 comply with this Court's order. We request a more severe
12 sanction than that. We believe they need a sanction that
13 sends a message, that tells them you are not to disobey. And
14 in this case, we believe a sanction of \$100,000, six months in
15 jail, that's the kind of thing that gets their attention. And
16 put on top of that attorneys' fees. Gulfstream spent in
17 excess of \$10,000 dealing with litigation over these repeated
18 violations, writing attorney letters, motions practice,
19 hearing preparation, all completely unnecessary. We ask the
20 Court hold these defendants in contempt and put in place a
21 sanction that sends a message to them so we can stop the
22 madness of them ignoring the Court's order and we can --
23 Gulfstream can move on with its business and the Court can
24 move on with its business.

25 Thank you.

1 THE COURT: All right.

2 All right. Ms. Golding?

3 MS. GOLDING: There's only one thing I agree with what
4 Mr. Nugent said. All is unnecessary what the plaintiff has
5 done with this motion. This motion is totally unnecessary.
6 It should never have been brought because the defendants are
7 using their rights under the joint and non-exclusive easement.
8 They have a right to park. The motion for contempt clearly
9 establishes that the parking is not a right of the defendants.
10 There is nothing in the plat other than there are 70-plus
11 parking spaces. Nothing -- no parking space, Your Honor, is
12 designated for the plaintiff. No parking spaces are
13 designated or dedicated to the defendants. They're
14 complaining about parking, Your Honor, but, Your Honor, did
15 you hear one word that they did not get a delivery? No. Did
16 you hear one word that they lost a customer? No. Because
17 none of that happened because we used our parking spaces only
18 and we have a right to use our parking spaces. When the first
19 affidavit was filed by Jef Kirk with the motion for contempt,
20 Your Honor, that affidavit stated that we don't want
21 deliveries in our front door. Then, he filed an affidavit
22 last week, when we brought up the photographs, numerous
23 photographs of deliveries being made through the front door
24 without any parking spaces being used by the defendants. Then
25 he changed his affidavit and said, well, now, we do have

1 deliveries of wine and beverages.

2 They also failed to mention that they had deliveries
3 underneath the building. Your Honor, in addition to the
4 photographs that we have set forth in our memorandum, and
5 these photographs in our memorandum clearly showed that the
6 plaintiff put a do not -- please do not block delivery date
7 10:00 A.M. to 4:00 P.M. That was done after this Court
8 issued the injunctive relief.

9 After that, Mr. Lawhon, Chris Lawhon, parked a golf cart.
10 He was using the golf cart because his truck was in the shop.
11 It stayed there one night because it rained. As he stated in
12 his affidavit, he got a ride home.

13 The only reason there is a photograph showing that he
14 went one way -- number one, is because he didn't -- he had
15 dropped something and went to pick it up. And, Mr. Nugent
16 here said he had his pajamas on, which is ridiculous. He was
17 coming to work that morning as he always has done, between
18 5:30 and 6:00, because the charter -- the people on the
19 charter boats came to work, excuse me, came that early in the
20 morning and parked, and he was not parking near the marina
21 store simply because they parked near the marina store, Your
22 Honor. It was actually nothing to do with interfering with
23 any type of deliveries as stated in Mr. Kirk's affidavit.

24 Well, after they put up this sign -- and there's this one
25 parking space, Your Honor, right by the building where the

1 plaintiff put up the sign basically, do not park. After they
2 put up they sign, Your Honor, they had on July the 22nd, we
3 have a photograph, a Mustang was parked in that space where,
4 at some point, Mr. Lawhon's golf cart was parked. It came in
5 at 8:46 A.M. and it left at 3:55 P.M. This photograph is on
6 Page 4 in the affidavit of Chris Lawhon. It is in Paragraph
7 6. And in fact, this photograph shows that that red Mustang
8 parked in that one place that the plaintiffs are complaining
9 about we shouldn't park because we're blocking. Even though
10 there's no designation that this parking lot is used for
11 anything other than parking.

12 In Mr. Jef Kirk's affidavit, which the second one which
13 he did after we showed all these photographs, he said that he
14 was trying to get employees to park in that place to prevent
15 us from parking in that place, which of course is
16 disingenuous, Your Honor. It is -- the red Mustang, in our
17 memorandum, the photograph is on Page 4, that is a photograph
18 of an employee of Gulfstream, who parked from 8:46 A.M. to
19 3:55 P.M., all day long.

20 Your Honor, I'd like to hand up to the Court, I just
21 asked Mr. Connell here, just to do an outline of, of entries,
22 Your Honor.

23 THE COURT: Do you have a copy for opposing counsel?

24 MS. GOLDING: Yes, sir.

25 Of the surveillance videos that we handed to the Court

1 and the thumb drive. These are the surveillance videos, Your
2 Honor. Whereas, we have photographs attached to the
3 memorandum. The surveillance videos starting on July 19, 2018
4 at 9:54 A.M. show that a vendor is not using the Gulfstream
5 delivery gate even though the parking spaces are empty. The
6 vendor is using the front entrance.

7 July 22, 2018, an employee parks in the space that it
8 says, do not use between 10:00 A.M. and 4:00 P.M. And this
9 July 22, we have a photograph of that red Mustang arriving at
10 8:34.

11 July 23, another employee parked in the space right below
12 the do not park sign. They came there at 3:28 P.M. and left
13 and stayed there through the evening. Also shown on July
14 23rd, another vendor using Gulfstream's delivery gate, even
15 though parking spaces are, excuse me, not using the delivery
16 gate even though parking spaces are empty.

17 July 24, Gulfstream employee parking where Mark Lawhon
18 parks his SUV. Your Honor, this parking place where Mr.
19 Lawhon one day parked his SUV, is across from the restaurant
20 two places or one place from the sign. This is also a parking
21 space; obviously, there's no designation. The photographs in
22 our memorandum on Page 11, there's a photograph of Mr. Lawhon
23 one day parking in that area, and that was on July 20, 2018.
24 And then on August 1, 2018, it's a photograph of Jef Kirk
25 parking in that same parking space. And there are numerous

1 photographs in the surveillance video that showed Jef Kirk
2 parking in the same parking space that Mr. Lawhon supposedly
3 cannot park in.

4 On Page 12 of our memorandum, we have again, Jef Kirk
5 parking, and I think this is August 1. He parks at 10 o'clock
6 -- and this photograph is -- is -- Mr. Kirk is parking on
7 August 1 at 10 o'clock in the parking space that Mark Lawhon
8 parked in on July the 20th and this photograph shows a
9 delivery truck making a delivery at the same time Jef Kirk's
10 car is parked there.

11 So, the plaintiffs are saying that Mr. Lawhon is
12 interfering with our easement because he's parking, but Jef
13 Kirk is not interfering with the easement, even though he's
14 parking and deliveries are being made in the same area.

15 Then, you then go to the additional photographs in our
16 memorandum, on Page 13 in July -- on July 25th, July the 31st,
17 additional employees parked where Mr. Lawhon parked July 20th.
18 They're also parking in that area, that space right below the
19 do not disturb.

20 What is interesting to note, Your Honor, in the list that
21 I've provided just to the Court, is that there are at least 10
22 or 20 times that vendors never used the gate that they had.
23 And I understand Mark, excuse me, Gulfstream had this delivery
24 gate built a number of years ago, maybe five to 10 years ago,
25 but there are a number of times where the vendors never use it

1 and there is no one parked in that space under the sign do not
2 use between 10:00 A.M. and 4:00 P.M. And that happened on
3 July 26. There were two vendors that day that never used it
4 and there was nothing.

5 Then on August 11, 2018, there was a blue bus that was
6 parked -- I guess a tour bus -- that Chris Lawhon had parked
7 his truck just for 40 minutes to change some oil at 11:00 A.M.

8 This list can go on and on. Just -- August 17, Jef Kirk
9 parks where Mark Lawhon on July parked his car.

10 October 1, Gulfstream employees, that same red Mustang,
11 parks there again.

12 October 2, Gulfstream employee parks where Mr. Lawhon
13 parked.

14 October -- through October, vendors do not use this
15 delivery gate even though there is no parking.

16 Then he talks about this white truck. This white truck
17 delivers ice, Your Honor. The ice for the Marina Store. The
18 white truck is part of the Marina Store and restaurant. It
19 has ice for the boats. That's what it's used for. It parks
20 in the parking lot. Did Mr. Nugent say that they lost
21 customers? No. There was no damage, because why? Because
22 this truck is parked where it's supposed to be parked. It's
23 using the parking lot in a proper manner.

24 You know, Mr. Nugent said that Jef Kirk tried to text
25 Chris Lawhon. Well, Your Honor, after the trial, Mr. Lawhon

1 -- Chris Lawhon is no longer accepting any texts from Mr. Kirk
2 because of the falsehoods he told at this trial. But nothing
3 stopped Mr. Kirk from going over there and delivering a little
4 letter or saying anything. Jef Lawhon -- excuse me -- Chris
5 Lawhon did not receive the text messages but he could have --
6 Mr. Kirk could've walked over there and stated, wait a minute,
7 you know, this is blocking, and he didn't walk over there
8 because nothing was being blocked. Nothing was being
9 interfered with.

10 In a second category, is that the plaintiff raises is the
11 lights. Mr. Lawhon, in his affidavit -- Mark Lawhon, in his
12 affidavit, clearly set forth that there was a problem with the
13 lights. They called the repairman. I think he went there two
14 different times. They had to call the property manager with
15 the homeowner's association for Marlin Quay and then they had
16 to call that same property manager for the Marina Association.
17 What happened was that there was a sprinkler system,
18 unbeknownst to the Lawhons, that had been installed by the
19 Marina Association and, when it was on, it was putting out the
20 lights. It was affecting the lights negatively. I don't know
21 particulars, but we have an electrician's bill that was
22 introduced with, with the affidavit of Chris Lawhon, and the
23 bill was for \$1400. I sent this bill to Mr. Nugent and he
24 sent a letter back and said, we'll pay the 700. I think I
25 sent that in the latter part of July. We did get a check, but

1 then something happened with the check and we've asked for
2 another check and Mr. Nugent's staff has said they'll issue
3 another check. But that was a factor that was due to sources
4 and forces outside of the control of the Lawhons.

5 Mr. Kirk and Ms. Barnaba supposedly were there one day
6 and Mr. Lawhon, Chris Lawhon says, I drove up, I was at home,
7 saw that there was a light problem, I drove to the Marina
8 Store to check on it. When I drove in, I saw Linda Barnaba
9 leaving. He went and checked on the lights and, somehow, the
10 lights had been switched off and he put them back on.
11 Clearly, there is no evidence of any kind that there was any
12 deliberate or even any kind of interference whatsoever with
13 the lights. And I say that, Your Honor, because -- because
14 there's nothing. Mr. Nugent comes up here and talks about a
15 woman in high heels or talks about a server walking away with
16 loads of money he made, nothing of that is in the evidence and
17 why, because nothing like that ever happened. The plaintiff
18 is overblowing something completely for the sake of enlarging
19 and increasing their easement rights only.

20 The third item, he was talking about the trailers. Well,
21 the trailers were their weekly rentals, Your Honor. As Chris
22 Lawhon stated in his deposition, that is a part of renting a
23 space for a boat. That has been done years and years and
24 years and never has that been a complaint.

25 Mr. Nugent stood before this Court and said it impeded

1 the traffic. Well, look at the plaintiffs own photographs.
2 The traffic lanes were not blocked at all. They had nothing
3 to show. The photographs are clear that these trailers are
4 parking in a parking space. The parking easement doesn't
5 restrict that a car only can be parked in a parking space.
6 These trailers were there for a week each because that was a
7 weekly rental.

8 As I said at the very beginning of this, Your Honor,
9 plaintiffs are using this Court to increase and enlarge their
10 easement rights and denying and inhibiting the easement rights
11 of the defendants. They have -- the Defendant Palmetto has a
12 joint right to use the easement. The plaintiff's easement is
13 non-exclusive. Parking is permitted, there's no restriction
14 on parking. Nothing has been done by the defendants to in any
15 way interfere with the easement rights of the plaintiff.

16 Now, with respect to the plaintiff's response to the
17 motion to amend and alter, Your Honor, one thing that struck
18 me that was stated by plaintiff's counsel, he said, this is a
19 joke. Those were his exact words; he said, this is a joke.
20 This is not a joke. Palmetto is the owner of this property.
21 Plaintiff's counsel said, what are you talking about, they
22 didn't assert any claim for adverse possession. You don't
23 assert a claim for adverse possession against your own land.
24 Plaintiff started this lawsuit and never once sought to remove
25 the sidewalk, to remove the concrete pad, to remove the

1 container. In their complaint, they had an itemized list of
2 what they said was on the parking lot. They sought an
3 injunction from the Court, and they received an injunction.
4 But the sidewalk, the concrete pad, and the one container were
5 not part of their request for injunctive relief, Your Honor.
6 Therefore, we should not be penalized for having used portions
7 of this parking lot for 30 some years. Plaintiff never
8 complaining about it and only now saying that we must -- that
9 that's not part.

10 As I stated in my motion to amend and alter, Your Honor,
11 there is clear testimony from Pat Henry, Mike Wooten. No, I
12 don't have their cites to the testimony, I sought the
13 testimony from the court reporter back in, I think it was
14 early July or middle of July, I ordered it and simply it has
15 taken time. But Your Honor will remember Mr. Henry and Mr.
16 Wooten's testimony. The sidewalks, the concrete pad and at
17 least one container have been there for 30 years.

18 I think it's ironic that the plaintiffs, as they've done
19 time and time again, attempt to introduce things that are not
20 before this Court. But since the plaintiff stated that the
21 Defendant Palmetto has submitted plans for another building in
22 the footprint, yes, they have. But with those plans, Your
23 Honor, we hope to have the sidewalks and the area of the
24 concrete pad and one container as part of the building as it
25 had been for over 30 years.

1 Thank you, Your Honor.

2 THE COURT: All right. Thank you.

3 MR. NUGENT: Very briefly, Your Honor?

4 THE COURT: Very briefly.

5 MR. NUGENT: Your Honor, Ms. Golding states that this
6 motion for contempt is all about parking and that's frankly
7 not true. None of the actions that the defendants have
8 engaged in are parking. They're intentional obstruction.
9 Using the golf cart to block delivery gate, long-term storage
10 of vehicles, turning out the lights to make it harder for
11 patrons to access the Gulfstream Restaurant, none of that is
12 parking, none of that is contemplated by the easement. In
13 fact, it's all contrary to Gulfstream's rights in the easement
14 to use the parking lot. It's reducing Gulfstream's rights and
15 it violates the terms of the easement and the terms of this
16 Court's order.

17 Ms. Golding mentioned a few things about deliveries
18 coming into the front of the building and the presence of a
19 sign. I'll just address very briefly some of those items.
20 Mr. Kirk's affidavit submitted last week, makes clear that
21 some vendors deliver products through the front door of
22 Gulfstream; primarily, items for the bar, liquor and wine.
23 But it's the U.S. Foods truck that comes in through the
24 delivery gate, big semi-trailer, hundred plus boxes of food,
25 and there shouldn't be any question about that because we've

1 got photographs from the trial of the U.S. Foods truck trying
2 to use the delivery gate, and we've got photographs from this
3 motion, Mr. Kirk's affidavit, same exact issue. The delivery
4 gate is essential for taking delivery of food. They can put
5 however many photographs they want in the record of things
6 other than food deliveries but it does not change the fact
7 that, when they block that gate, they make it harder for
8 Gulfstream to receive food, which is essential at a
9 restaurant.

10 There was a brief reference by Ms. Golding to the sign
11 that was put up by Gulfstream, asking for people not to park
12 in front of the delivery gate. That sign was put there in
13 response to Chris Lawhon repeatedly blocking the delivery
14 gate, when the texts and the phone call and the food truck
15 driver going over to Marlin Quay to ask him to move, when none
16 of that made any difference, he put up a sign. And guess
17 what? Chris Lawhon kept parking there anyway. He didn't care
18 that, you know, there was a sign there and that Jef was
19 asking, Mr. Kirk, Gulfstream was asking very nicely just to
20 keep the delivery gate open. He didn't care. He went up
21 there and he parked in front of it. In fact, the photograph
22 in Mr. Kirk's affidavit shows Chris Lawhon's golf cart parked
23 in front of the delivery gate and you can see the sign. No
24 question that that was -- that was put there as a result, as a
25 reaction to these interferences but it didn't stop it, because

1 nothing will stop Chris Lawhon or Mark Lawhon from
2 interfering. In fact, the only thing that stopped it on the
3 delivery date was Gulfstream's own employees and Mr. Kirk.
4 And Ms. Golding went through this long history of various
5 photographs of people, a red Mustang, or a different kind of
6 car, that's the point here. That's what Gulfstream has had to
7 do because these defendants will not leave them alone, won't
8 leave the delivery gate alone.

9 Briefly, on the golf cart, Ms. Golding tried to give an
10 explanation that Chris Lawhon parked his golf cart and then he
11 had to walk in the other direction because he dropped
12 something. That video has been submitted to the Court and I'm
13 happy to show it now but, frankly, it speaks for itself. It
14 shows him parking his golf cart and walking down the street,
15 down the sidewalk, back to his house, south of Waccamaw Drive.
16 No indication he is doing anything to service people at the
17 Marlin Quay Marina Store. And let's be real, this is a golf
18 cart he had. It takes up not even a full parking space, but
19 he found a way to put it in just the one half of a parking
20 spot where it could most adversely affect Gulfstream.

21 There was argument from Ms. Golding that, and this is the
22 first time I've ever heard this, that Chris Lawhon blocked Jef
23 Kirk's number and couldn't receive text messages. The first
24 I've ever heard that but, remember, there is evidence in the
25 record, a statement from the food truck driver that he called

1 Chris Lawhon and went over to Marlin Quay, the exact thing
2 that Ms. Golding said, Jef Kirk should've done. Well, the
3 food truck driver did it; it didn't make a difference. It's
4 not -- it doesn't matter what explanation, what excuse they
5 give, they were not interested in moving the golf cart because
6 it was doing exactly what they wanted to do.

7 And I want to just briefly address the issue with the
8 lights. Ms. Golding argued that there was a glitch in the
9 lights, they called a repair person, submitted an invoice to
10 counsel, and that it was -- counsel agreed to pay. I want to
11 set the record straight. When a \$700 invoice was sent to my
12 client, rather than fight over a \$700 invoice, we opted to pay
13 it and made very clear to Ms. Golding that we do not agree
14 with her characterization of what happened, that it does not
15 match the history of the problems with the lights, it doesn't
16 explain why the lights were out on a Friday and Saturday
17 immediately after the injunction was entered. It doesn't
18 explain why the lights were on on one part of the parking lot
19 and not on the other. But in the interest of diffusing one
20 small aspect of this giant litigation, we agreed to pay that
21 \$700. It does not change the fact that the lights were
22 intentionally manipulated by the defendants in order to
23 interfere with Gulfstream's operations.

24 And at the end of the day, Ms. Golding said, there's no
25 evidence of harm, there's no evidence of Gulfstream being

1 injured. The reality is, there are most certainly examples of
2 Gulfstream being injured, but that's not what criminal
3 contempt is about. Criminal contempt is about holding the
4 defendants to account for violating a court order, punishing
5 them for those violations and vindicating the Court's
6 authority. The Gulfstream is not part of criminal contempt
7 and while there certainly were people -- I am certain there
8 were people who were deterred from coming to Gulfstream
9 because of the dark parking lot and certainly they would've
10 turned around when the parking lot was too full, because it
11 was extra filled with boat trailers and the box truck and the
12 things that are stored in the parking lot. .

13 At the end of the day, what the Court has in front of it,
14 is an affront to its authority and an opportunity to send a
15 message to the defendants they must comply with this Court's
16 order and as a result, we respectfully ask, that the Court
17 grant the motion for contempt and issue a citation of contempt
18 against the defendants. Thank you.

19 BY THE COURT:

20 THE COURT: All right. Thank y'all. I'm going to take a
21 recess and review the arguments that have been made this
22 morning in conjunction with what I've already done regarding
23 all of the matters filed that both parties have filed with the
24 Court previously and I appreciate y'all doing that. That has
25 enabled me to go through all of those materials submitted by

1 both parties well in advance of the hearing today, and I
2 appreciate you doing that and not going forward and going page
3 by page on all those. I will assure you I have read every
4 single line of everything that has been filed in this matter.
5 I've looked at it all.

6 So, with that, we'll take a recess and consider your
7 arguments and I will come back and render my decision. All
8 right?

9 Thank you very much.

10 **RECESS - 10:51 A.M.**

11 *******OFF THE RECORD*******

12 **(On the Record - 11:47 A.M.)**

13 **RULING OF THE COURT:**

14 THE COURT: All right. In this matter of 2016-CP-22-961,
15 the Gulfstream Café, Inc., Plaintiff, versus J. Mark Lawhon,
16 individually, and Palmetto Industrial Development, LLC. The
17 Court has received from the parties all of their previous
18 filings in this matter regarding the two motions, the
19 affidavits, the attachments, the photographs, and documents.
20 I have reviewed that. I've gone back and reviewed the Court's
21 prior orders in this matter and heard arguments of counsel
22 this morning.

23 As to the defendants' motion to alter or amend the
24 Court's formal order dated July 27, 2018, the Court's ruling
25 is as follows: The Court hereby denies the motion to alter or

1 amend as filed by the defendants and reaffirms the July 27,
2 2018 order in its entirety without amendment or alteration.

3 As to the plaintiffs' motion for contempt of court, the
4 Court's ruling is as follows. The Court finds that the
5 defendants have engaged in criminal contempt of court by the
6 deliberate and intentional acts by the placement of a golf
7 cart, which interfered with the proper use of the non-
8 exclusive easement in this matter and was in direct violation
9 of the Court's previous order. The Court does not find any
10 other contemptuous behavior in this matter.

11 Therefore, the Court hereby imposes a fine in the sum of
12 \$5,000 to be paid by November 21, 2018 by 5:00 P.M. to the
13 Georgetown County Clerk of Court's Office.

14 Now, I'm gonna speak to the plaintiffs and the defendant
15 in this matter. My issuance of the contempt order was based
16 upon the matters presented in this matter. I did not hear the
17 prior contempt proceeding. It was handled by Judge Culbertson
18 and I took that as what he did. I take very seriously the
19 violation of the Court's orders. I considered this to be the
20 first presentation of a violation of the Court's order in this
21 matter. I want both parties to understand the full contempt
22 powers of this Court are available to me should you come back
23 before me on a contempt of court matter. You are professional
24 businessmen; act like it. You are joined at the hip by
25 recorded documents in this county. Repeatedly coming to this

1 Court will not solve your problems. Cooperation and
2 acknowledgement that you are in business in this county is
3 something both parties, both of you, need to realize.
4 Repeatedly coming to court, will not solve your issues.

5 Thank you very much.

6 This proceeding is at an end.

7 MS. GOLDING: Your Honor, Your Honor?

8 THE COURT: Yes.

9 MS. GOLDING: We have the thumb drive that was delivered
10 to your office; the Clerk's Office couldn't take it. They
11 recommended that we submit it to the Clerk of Court and the
12 Clerk just asked that we submit it in your presence, Your
13 Honor.

14 THE COURT: All right. Is there any problem with that,
15 gentlemen?

16 MR. BLOOM: No.

17 MS. GOLDING: They received it as well.

18 THE COURT: Let's do so then.

19 COURT REPORTER: Mark it as an exhibit, so it will be ---

20 THE COURT: As their exhibit, yes, ma'am, it's going to
21 be a part of the record.

22 MS. GOLDING: Thank you, Your Honor.

23 DEFENDANT'S EXHIBIT NUMBER 1

24 ADMITTED INTO EVIDENCE

25 THE COURT: Thank you very much.

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ADJOURNED - 11:53 A.M.

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 hearing held in the case of The Gulfstream Café, Inc. v. J. Mark Lawhon, et al., held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on November 14, 2018.

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

Kay H. Richardson
Official Court Reporter

October 28, 2019.

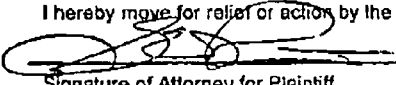
STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
The Gulfstream Café, Inc.,)
☒ Plaintiff)
v.)
J. Mark Lawhon, Individually, and)
Palmetto Industrial Development, LLC)

☐ Defendant)

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT
CASE NO. 2018-CP-22-02961

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

Name, SC Bar No. & Address of Plaintiff's attorney		Name, SC Bar No. & Address of Defendant's attorney	
George W. Redman, III SC Bar #72365		SC Bar #	
Bellamy Law Firm PO Box 357, MB, SC 29578 Telephone: 893.448.2400 Fax: 843.448.3022		Telephone: Fax:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Plaintiff's Motion for Temporary Restraining Order</u>			
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.  November <u>16</u> , 2018 Signature of Attorney for Plaintiff Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: <u>\$25.00</u>			
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse of Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION		JUDGE	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: er:		CODE: Date:	
CLERK'S VERIFICATION			
Collected by: <u>Linda S. Sane</u> (print name)		DATE FILED <u>11-16-18</u>	
☐ MOTION FEE COLLECTED: <u>\$25</u>			
☐ CONTESTED - AMOUNT DUE:			

FILED
GEORGETOWN COURT
2018 NOV 16 PM 4:32
ALPHEA R. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-22- 60961

The Gulfstream Café, Inc.,

Plaintiff,

v.

J. Mark Lawhon, Individually, and
Palmetto Industrial Development LLC,

Defendants.

EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER

CLERK OF COURT
MAY Y. WHITE

2016 NOV 16 PM 4:32

FILED
JUN 16 2016
JUN 16 2016

TO: THE ABOVE-NAMED DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through its undersigned attorneys, moves this Honorable Court, pursuant to Rule 65(b) of the *South Carolina Rules of Civil Procedure*, under emergency circumstances for an Order granting immediate relief enjoining and prohibiting, Defendants, and any and all individuals, entities, contractors or others acting in concert with Defendants, from, *inter alia*, taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use their Parking Lot, as set forth in that certain Easement, dated December 9, 1985, titled Agreement of Easement and Consent to and Joinder of Mortgagee to Granting of Easement, recorded in Deed Book 382 at Page 217 among the land records of Georgetown County (hereinafter "Easement").

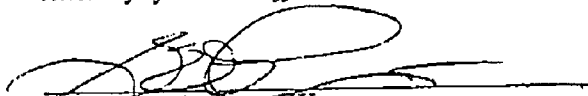
Plaintiff will show and allege unto this Honorable Court, by and through the facts set forth in its Verified Complaint, as same is Personally Verified by an Authorized Agent of Plaintiff, Linda Barnaba, and as may be allowed during a hearing on this

Motion, along with further affidavits and memoranda as may be appropriate, that Plaintiff will succeed in the merits in this Action, that Plaintiff has no adequate remedy at law, and that Plaintiff has and will continue to suffer immediate and irreparable injury, including the complete loss of its entire business operations, unless and until this Court grants Plaintiff the immediate relief as requested herein.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enjoin Defendants, and any and all individuals, entities, contractors or others acting in concert with Defendants, from taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use their Parking Lot, including but not limited to, immediately stopping and enjoining Defendants from obstructing, the Parking Lot via fencing, signage, or placing any materials whatsoever on any portion of the Parking Lot, or in any other way whatsoever obstructing the Parking Lot in any way.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
Post Office Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
Attorneys for Plaintiff



George W. Redman, III

Myrtle Beach, South Carolina

November 16, 2016.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-22-00961

The Gulfstream Café, Inc.,

Plaintiff,

v.

J. Mark Lawhon, Individually, and
Palmetto Industrial Development LLC,

Defendants.

AFFIDAVIT OF JEF KIRK

ALPHA WHITE
CLERK OF COURT

2016 DEC 13 PM 3:33

FILED
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
GEORGETOWN, SOUTH CAROLINA

Personally appeared before me, Jef Kirk, who, upon being duly sworn, deposes and states as follows:

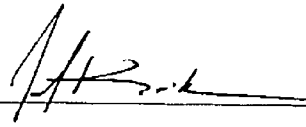
1. My name is Jef Kirk. I have been the Operating Partner and general manager for The Gulfstream Café, Inc., (hereafter "Gulfstream" or "Gulfstream Café"), for over 3 years, and as such I have personal knowledge of all matters set forth herein this Affidavit.
2. The Gulfstream Café is well-known, marsh-front, fine-dining restaurant located adjacent to the Marlin Quay Marina, and has been open daily from 4 PM to 10 PM since 1986. In 2010, we added a Sunday brunch which starts at 10 AM.
3. Gulfstream Café has used the parking lot ("Parking Lot") adjacent to the Gulfstream building since it opened pursuant to a publicly recorded easement. There is very little available parking in the immediate area, and due to the popularity of the Gulfstream Café, access to and the use of the entire Parking Lot during normal business hours is more critical than ever.

4. In early November, I was surprised to find the Parking Lot roped off with yellow caution tape by construction workers. The Defendant, J. Mark Lawhon ("Mr. Lawhon") confirmed that he was responsible for temporarily blocking the Parking Lot, however, he also indicated that the Parking Lot would continue to be available for the Gulfstream Café, including a bus of customers we were expecting.
5. Over the past two years, I had come to learn Mr. Lawhon apparently bought property within the Marlin Quay Marina, including the Marina Club and Snack Bar ("Snack Bar") located adjacent to the other end of the parking lot.
6. At no time did Mr. Lawhon inform me that he intended for Gulfstream's Parking Lot to be completely blocked off from use. A few days later, however, a more permanent wire fence had been constructed to block access to the Parking Lot.
7. Immediately thereafter, I called to request a telephone conference with Mr. Lawhon and Gulfstream's corporate management concerning the Parking Lot. He returned my call 2 days later, only to dispute our right to use the Parking Lot at all.
8. I informed Mr. Lawhon that during a past construction project that blocked the Parking Lot in 2007, alternative measures were taken to assist the Gulfstream Café, including payment for alternative parking, a valet service, as well as informative signage.
9. Mr. Lawhon affirmed that the Parking Lot would be blocked, that he would not pay for any parking alternatives for Gulfstream Café, and he pointedly emphasized his wealth and his connections.

10. Mr. Lawhon became agitated and aggressive. He then informed me that: (1) all of the available parking belongs to him, (2) that Gulfstream Café's underground grease trap would need to be moved, and (3) that the owners of the slips with their vehicles and golf carts could fill the lot, which would make the Parking Lot unavailable to Gulfstream Café.
11. While the parking lot was blocked, on November 11, 2016, Gulfstream Café's U.S. Food delivery truck driver, Adrian Felder, came to my office and informed me that there was a white sport utility vehicle ("SUV") parked in an area blocking Gulfstream Café's delivery gate.
12. I learned that the owner of the SUV, which is a GMC Yukon, S.C. license plate no. U19492, is Mr. Lawhon.
13. Mr. Lawhon refused to move his vehicle, and Mr. Felder was then forced to deliver The Gulfstream Café's order through the dining room entrance of the restaurant, causing heavy wear on our hardwood flooring.
14. Mr. Felder's signed statement and contemporaneous photographs regarding this incident are attached hereto as "EXHIBIT A" and "EXHIBIT B."
15. As a result of the Parking Lot being completely blocked, Gulfstream's other delivery truck drivers have had to park on Waccamaw Drive, which substantially blocks street traffic.
16. As a result of the Parking Lot being completely blocked since November 4, 2016, Gulfstream Café staff members and some customers have been forced to park on and walk along Waccamaw Drive. There is no sidewalk on portions of Waccamaw Drive, it is very dark at night, and there are posted "No Parking" signs. This is a dangerous situation.

17. A significant amount of Gulfstream's business from repeat customers occurs during the off-season months because both tourists and locals expect that the parking will be more readily available in the off-season months than in the more crowded, summer months.
18. I have had multiple annual customers drive by and write me emails to tell me that they were not going to stop and eat at Gulfstream this year because of the parking situation.
19. There is no question Gulfstream has lost business because of Mr. Lawhon's actions.
20. I have received several complaints and have watched as Gulfstream has lost business from a number of its elderly customers because they could not walk longer distances for parking.
21. Defendants' actions in completely blocking Gulfstream's Parking lot are depriving Gulfstream Café of its easement rights to the Parking Lot, preventing staff, delivery trucks, and customers from having the ability to park at the restaurant, have created dangerous conditions for Gulfstream's customers to get to and from the restaurant, and have damaged Gulfstream's good will and business reputation.
22. After the Court issued the TRO requiring Defendants to stop interfering with our access to the Parking Lot, I witnessed the Defendants using a tractor to tear up the northern asphalt of the Parking Lot until an older gentleman approached them. Thereafter they stopped tearing up the Parking Lot and began moving equipment and supplies off of portions of the Lot.

23. I walked down to the Parking Lot as they were removing the wire fencing with our Director of Operations, Linda Barnaba, at which time we were both aggressively confronted by Mr. Lawhon and his son. Mr. Lawhon's son looked directly at me, pointed, and screamed: "Don't you fucking look at me." Although we did not respond and walked away two (2) times, each time Mr. Lawhon's son threw his hammer immediately in front of us and thereafter came to retrieve it while glaring at me.
24. Later that night, Mr. Lawhon came to eat dinner at the restaurant with his wife and son. They walked the entire restaurant, asked questions of the staff, and took pictures both inside and outside of the restaurant.
25. The Defendants continue to block ½ of the Parking Lot with their construction materials, and as a result, there is simply not enough parking
26. During Thanksgiving the Gulfstream Café was very busy, as expected. After we used the entire usable portion of the Parking Lot, we were forced to use parking on the street. Staff had to park in the driveways of some local residents who went out of town.
27. Further, the Affiant saith not.


Jef Kirk
Operating Partner, The Gulfstream Café

SWORN TO before me
this 30~~th~~ day of NOV 2016.


Notary Public for the State of South Carolina
My Commission Expires: K. FELKEL
Notary Public, State of South Carolina
My Commission Expires 12/31/2023

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-22-00961

The Gulfstream Café, Inc.,

Plaintiff,

v.

J. Mark Lawhon, Individually, and
Palmetto Industrial Development LLC,

Defendants.

**MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION
FOR TEMPORARY INJUNCTION**

ALMA Y. WHITE
CLERK OF COURT

2016 DEC 16 PM 2:32

FILED
GEORGETOWN COUNTY, SC

I. INTRODUCTION

Plaintiff, The Gulfstream Café, Inc., by and through its undersigned attorneys, has moved pursuant to Rule 65 of the *South Carolina Rules of Civil Procedure*, for an Order granting injunctive relief enjoining and prohibiting Defendants, J. Mark Lawhon, Individually, Palmetto Industrial Development, LLC, and any and all individuals, entities, contractors or others acting in concert with Defendants, from, *inter alia*, taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use its Parking Lot, as set forth in that certain Easement, dated June 4, 1990, titled Agreement of Easement and Consent to and Joinder of Mortgagee to Granting of Easement, recorded in Deed Book 382 at Page 217 among the land records of Georgetown County (hereinafter, "Easement"),¹ or in the alternative, to pay a fair market value of rent in accordance with South Carolina law for their continued misuse, interference, and obstructions of Plaintiff's rights during the pendency of the above-captioned lawsuit. Plaintiff now submits this Memorandum in support of its Motion.

¹ A true and accurate copy of Plaintiff's Easement is attached hereto as "Exhibit A." A true and accurate copy of the recorded plat referenced and incorporated by Plaintiff's Easement is attached as "Exhibit B."

II. BRIEF FACTUAL & PROCEDURAL HISTORY

A. Facts Known to Plaintiff As of the Filing of the Complaint and Motion for T.R.O.

To avoid redundancy, Plaintiff largely refers the Court to Plaintiff's Verified Complaint, except as follows. Plaintiff has owned and operated a restaurant known as The Gulfstream Café ("Gulfstream Café"), located in Murrells Inlet, South Carolina since 1986. The real property adjoining Gulfstream Café is part of a development referred to as the Marlin Quay Marina. Through a series of conveyances, detailed in Plaintiff's Verified Complaint, Plaintiff was expressly granted an easement for the use of the Parking Lot adjoining Plaintiff's restaurant, which expressly states:

[A] non-exclusive perpetual easement appurtenant to the premises of the Grantee hereinafter described for the full and free right of ingress and egress on, over and across the following described property of the Grantor, together with the rights of vehicular parking on and vehicular and pedestrian access to, all in accordance with all governmental rules, regulations, ordinances or laws, the premises of the Grantor hereinafter described, and also for the purpose of maintenance, repair, alteration and/or improvements to the [Gulfstream Café's] hereinafter described property. It is anticipated by the parties that while they will each have joint and non-exclusive use **at all times** of the area covered by this easement that the Grantor will utilize the premises primarily during the daytime regular business hours of Grantor and the [Gulfstream Café] will utilize the premises primarily in the evening regular business hours of [the Gulfstream Café].

A non-exclusive right of ingress, egress and vehicular parking over, across ... Lots 3, 4, and 5 of Tract 3 on that certain Plat entitled Survey of Marlin Quay Marina Horizontal Property Regime, Garden City Point, prepared by Surtech, Inc. dated May 21, 1985, revised November 27, 1985, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, **said plat being expressly incorporated herein by reference.** (*emphasis added*).

The Gulfstream Café had a long history of cooperation with the prior owners of the Parking Lot. In August 2014, however, Defendants purchased portions of the Marlin Quay Marina including the Parking Lot, subject to Plaintiff's Easement rights of record. In November of 2016, Defendants initiated a construction project demolishing their existing building (hereinafter, the "Marlin Quay Store"), and installing tall fences and barricades to block Plaintiff's access to the Parking Lot. (See Exhibit C – Parking Lot Obstructions). Defendant placed large construction containers directly upon the Parking Lot, several of which still remain on the Parking Lot as of the date of this Memorandum. *Id.* At that time Defendant J. Mark Lawhon parked his vehicle so as to obstruct a vendor of the Gulfstream Café from accessing the restaurant delivery entrance. *Id.* At no time prior to the initiation of the construction activities was anyone from The Gulfstream Café, Inc. notified that constructions activities would block access to the Parking Lot.

B. Procedural History

As a result of the Defendants' actions, The Gulfstream Café, Inc. filed this Action on November 16, 2016 alleging asserting causes of action against Defendants for: (1) Intentional Interference with Easement Rights, (2) Trespass and Nuisance, and (3) Forcible Entry and Detainer. Plaintiff also sought immediate injunctive relief. On November 17, 2016, this Honorable Court entered its Order granting Plaintiff's Motion for T.R.O., providing:

Defendants...and any and all individuals, entities, contractors or others acting in concert with Defendants, are hereby enjoined and prohibited from, *inter alia*, taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use their Parking Lot, including but not limited to, immediately stopping and enjoining Defendants from obstructing the Parking Lot via fencing, signage, or **placing any materials whatsoever on any portion of the Parking Lot**, or in any other way whatsoever obstructing the Parking Lot in any way.

On November 23, 2016, the Court entered an Order extending the T.R.O. until the hearing on Plaintiff's Motion for Temporary Injunction.

C. Events Subsequent to the Issuance of the T.R.O.

After the T.R.O. was served upon Defendants on November 18, 2016, the Operating Partner and general manager for Gulfstream Café, Mr. Jef Kirk, witnessed Defendants using a tractor to tear up the northern asphalt of the Parking Lot until approached by Mr. Pat Henry. *See* (Aff. of Jef Kirk, p. 4, para. 22) and (Aff. of Linda Barnaba, p. 5-6, para. 24). Thereafter, Defendants stopped tearing up the Parking Lot and began moving some equipment and supplies off of portions of the Lot. (Aff. of Jef Kirk, p. 4, para. 22). However, when Mr. Kirk and Linda Barnaba, the Director of Operations for Gulfstream Café, walked down to the Parking Lot, they were aggressively confronted by Defendant Lawhon and his son. (Aff. of Jef Kirk, p. 5, para 23), (Aff. of Linda Barnaba, p. 5-6, para. 24). Defendant Lawhon's son confronted Mr. Kirk and screamed, "Don't you [expletive] look at me." *Id.* When Mr. Kirk and Ms. Barnaba twice turned to walk away, Defendant Lawhon's son threw his hammer towards them and glared at them. *Id.*

During the evening of the same day, November 18, 2016, Defendant Lawhon brought his wife and son to eat dinner at Gulfstream Café. (Aff. of Jef Kirk, p. 5, para. 24). Defendant, his wife, and his son walked throughout the entire restaurant, asking questions of the staff and taking pictures both inside and outside of the restaurant. *Id.*

Since the T.R.O. was issued by the Court and through the Thanksgiving holiday to the date of this memorandum, Defendants have continued to block thirteen (13) spaces adjacent to the roadway in the Parking Lot with large construction containers, which harms the Gulfstream Café in several aspects. *Id.* at p. 5, paras. 25-26. Not only does this impermissibly block the parking lot, it is also unsightly and creates confusion as to whether Plaintiff is open or is under construction. *Id.* To-date, Defendants continue to block these portions of the Parking Lot, despite the express language in the T.R.O.²

² *See* (Exhibit C – Parking Lot Obstruction) demonstrating the continued presence of Defendants' construction materials.

D. Additional Relevant Facts

Upon learning, in early November 2016, that Defendants have plans to construct a new building on or adjacent to the Parking Lot, Plaintiff has attempted to ascertain the details of those plans. To that end, Plaintiff has been informed by Georgetown County that, to-date, Defendants only have a permit to: (1) demolish their the Marlin Quay Store building, which has already occurred, and (2) to install pylons into the Parking Lot that would potentially be used to support a new building. Defendants did not inform Georgetown County of Plaintiff's recorded Easement.

On Wednesday, November 23, 2016, well after the filing of this lawsuit, Defendants submitted plans for new construction on the Parking Lot. Upon information and belief, the proposed construction seeks to relocate a new and vastly larger building directly upon the Parking Lot.³ They also indicate that Defendants seek to impermissibly reconfigure the Parking Lot in such a way as to interfere with and overburden Plaintiff's Easement rights.

Defendants have initiated a construction project directly upon Plaintiff's Easement without Plaintiff's consent, without informing Georgetown County of Plaintiff's Easement, even though they do not have a permit to construct any portion of the proposed building. The proposed plans would permanently interfere with Plaintiff's Easement rights, and would therefore cause permanent and irreparable damage as a threat to the very existence of The Gulfstream Café, Inc.

LEGAL STANDARD

"A plaintiff's entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably

³ When Plaintiff requested a set of the proposed plans from Georgetown County, pursuant to the Freedom of Information Act, the County denied Plaintiff's request. Therefore, Plaintiff is unable to confirm any details of Defendants' plans.

necessary to protect the legal rights of the plaintiff during the litigation.” *FOC Lawshe v. International Paper*, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002). A Plaintiff seeking a temporary injunction generally must demonstrate that it meets each of the three following criteria: (i) that absent the restraint, the Plaintiff may possibly suffer irreparable harm; (ii) that the Plaintiff is likely to succeed on the merits of the action; and (iii) that the Plaintiff has an inadequate remedy at law. *Id.*

The court must review each of these factors, and balance them against the interests of the party being restrained. *LeFurgy v. Long Cove Club Owners Assn., Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994). Courts are not supposed to consider the merits of the case, “except in so far as they may enable the court to determine whether a prima facie showing has been made” and when such showing has been made, “a temporary injunction [should] be granted without regard to the ultimate termination of the case on the merits.” *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969). Thus, “[t]he sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.” *County Council of Charleston v. Felkel*, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964). This is especially true in the case of property rights. *See Id.* (determining that a temporary injunction in a case concerning the sale of real property was appropriate because if defendants were permitted to continue selling lots while litigation was pending, it was conceivable that irreparable damage might result, whereas to maintain the status quo could result in damages to no one).

ARGUMENT

A temporary restraining order should be granted in this matter because: (1) Plaintiff will suffer irreparable harm should Defendants be permitted to interfere with Plaintiff's Easement rights during the pendency of this case and administrative proceedings before Georgetown County, (2) the facts set forth in Plaintiff's Verified Complaint clearly demonstrate Plaintiff's likelihood to succeed on the merits of this case, and (3) there is no adequate legal remedy to prevent the immediate and irreparable harm Plaintiff will suffer should Defendants be permitted to interfere with Plaintiff's Easement rights during the pendency of this case and administrative proceedings with Georgetown County.

A. Irreparable Harm

The South Carolina Supreme Court has held that temporary injunctions are proper when protecting rights acquired under an easement. *Transcontinental*, 252 S.C. at 481; *See also D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904) (holding that where a plaintiff had an established right of way to real property, a temporary injunction which prohibited the defendant from constructing a railroad line over such property, during the pendency of litigation, was proper to preserve the plaintiff's rights).

South Carolina courts have also held shutting down an individual's business would constitute an irreparable harm. *Peek v. Spartanburg Regional Healthcare System*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). In *Peek*, the Plaintiff was an anesthesiologist who had been practicing with Defendant hospital as a staff member for nearly fourteen years when the hospital contracted with an outside anesthesiologist company to provide the hospital exclusively with its own anesthesiologists. *Id.* Defendant hospital terminated Plaintiff when she failed to become employed by the outside anesthesiologist company. *Id.* Thereafter, Plaintiff filed a breach of contract action against the hospital and a motion for a restraining order prohibiting Defendant from

preventing her from continuing to practice at the hospital during the pendency of her case. *Id.* The trial court granted a temporary injunction, which the hospital appealed. *Id.* On appeal, the Court of Appeals upheld the temporary injunction, holding, in pertinent part:

Peek has lived and practiced anesthesiology...for fourteen years. During this time Peek built a patient referral base, which fueled her professional practice. The loss of privileges at the Hospital would lead to the loss of her patient referral base, which would, in turn, lead to the loss of her professional practice. **The complete loss of a professional practice can be an irreparable harm.**

Id. at 455, 37 (emphasis added).

Comparable to both the *Transcontinental* and *Peek* cases, Plaintiff in this matter will be irreparably harmed if a temporary injunction is not granted which prohibits Defendants from blocking Plaintiff's access to its Parking Lot (i.e. its Easement rights). Plaintiff has built a successful fine-dining restaurant that has operated in the Murrells Inlet area for over thirty (30) years. Plaintiff's business is highly dependent its ability to provide convenient and safe access and parking. Defendants' interference with Plaintiff's use of its Parking Lot and Easement rights would be detrimental to Plaintiff's business operations, and an injunction is proper to prevent irreparable harm to Plaintiff's Easement rights.

Further, to-date, Defendants only have a permit to demolish their prior building and to construct pylons in the Parking Lot. The act of constructing the pylons will interfere with Plaintiff's Easement rights both during the construction process and after, as it will result in the elimination of parking spaces and require reconfiguration of the Parking Lot. Upon information and belief, not only will further construction activities interfere with Plaintiff's rights to use its Easement --- completion of Defendants' proposed, yet unpermitted project, will significantly interfere with Plaintiff's Easement rights following the completion of construction.

In regards to Defendants' future construction plans, an entire administrative procedure is required before Defendants' plans can be approved. Defendants submitted their construction plans

to Georgetown County on November 23, 2016, *after* this action was filed and *after* the Court's issuance of T.R.O. Therefore, to-date, no plans for the new building have been approved, and Defendants have no right to construct a new building, as the administrative review process is in its early stages.

While the permitting procedures are not an issue for the Court at this time, it is imperative that Georgetown County's administrative procedures be completed prior to this Court even considering construction activities within Plaintiff's Easement. If a temporary injunction is not granted, Defendants could resume their installation of pylons in the Parking Lot, interfering with Plaintiff's Easement rights, only to be denied a permit to begin construction of the new building. Even should the construction of the new building be approved at some point in the future, all such construction activities by Defendants will result in irreparable harm to Plaintiff during the pendency of this case, and such actions threaten the very existence of The Gulfstream Café.

B. Likelihood of Success

In order to satisfy the Court's requirement that the Plaintiff demonstrate a likelihood of success on the merits of its claim, Plaintiff only needs to make a prima facie showing of entitlement to relief based upon the allegations set forth in its Verified Complaint. *Compton v. South Carolina Dept. of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). The Verified Complaint alleges, and attaches photographic evidence depicting, that Defendants' fence completely blocked access to the Parking Lot. Plaintiff has clearly demonstrated prima facie causes of action for intentional interference by Defendants with Plaintiff's Easement rights, trespass and nuisance by Defendants upon Plaintiff's Easement, and violation of South Carolina Code 15-67-410, *et. seq.*

The facts in this matter are straightforward. Plaintiff has an Easement for the real property which Defendants have been occupying without Plaintiff's permission and over Plaintiff's express objection. In *Faulkenberry v. Norfolk Southern Ry. Co.*, 349 S.C. 318, 325, 563 S.E.2d 644, 648

(2002), the South Carolina Supreme Court held that where a defendant railroad company had an easement, and the plaintiff was entitled to some use of that easement, the plaintiff could cross over the easement but could *"not do anything which would unreasonably interfere with [the railroad's] use of its easement."* (emphasis added). Similarly, the South Carolina Supreme Court has also held a defendant, by its grant of an easement to a plaintiff, "must be held during the continuance of the easement to have abandoned every use of the land except such as might be made consistent with the reasonable enjoyment of the easement granted." *Id.* (citing *Marion County Lumber Co. v. Tilghman Lumber Co.*, 75 S.C. 220, 55 S.E. 337 (1906) (holding that an owner of a dominant estate cannot materially interfere with the use and enjoyment of a servient estate's easement)).

Plaintiff's Easement expressly states that the depiction and configuration of the Parking Lot is set forth and shown on the plat publicly recorded with Georgetown County records in "Plat Book 6 at Page 214, **said plat being expressly incorporated herein by reference.** (emphasis added). Defendants cannot constrain or narrow the boundaries of Plaintiff's easement. *See Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991) (holding that where an easement is specific as to its width, length, and location, the easement cannot be constricted to any degree).

Further, Defendants occupation of Plaintiff's Easement is actively preventing both Plaintiff and Plaintiff's customers from access to Plaintiff's business. South Carolina Code Annotated Section 15-67-410 expressly provides that if any person be put out or disseized of their real property, the aggrieved party shall have an action against such a disseizor. In addition to protecting lands held in fee, the statute protects a party's easement rights. *Vance v. Ferguson*, 101 S.C. 125, 85 S.E. 241 (1915). **Under this statutory scheme, the Court may put the Plaintiff back in possession of the Easement.** *See* S.C. Code Ann. § 15-67-460 (emphasis added).

Therefore, pursuant to the facts in this matter, Plaintiff has set forth prima facie causes of action for relief against Defendants and has a high likelihood of success on its causes of action.

C. No Adequate Remedy At Law

Finally, there is no adequate remedy at law for Plaintiff in this matter. An adequate remedy at law is one which "is certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity." *Nutt Corp. v. Howell Road, LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011). Here, there is no legal remedy to completely and sufficiently protect Plaintiff against the harm that will result if Defendants are permitted to continue and/or resume blocking all access to parking at Plaintiff's business, pursuant to Plaintiff's Easement rights.

The South Carolina Supreme Court has held that temporary injunctions are proper when protecting rights acquired under an easement. *Transcontinental*, 252 S.C. at 481; *See also D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904) (holding that where a plaintiff had an established right of way to real property, a temporary injunction, during the pendency of litigation, was proper to preserve the plaintiff's rights).

In *Peek*, the South Carolina Court of Appeals held that if the Plaintiff lost her practice privileges at the hospital, her professional practice, and by extension, **her career would be lost long before her claims against the hospital were adjudicated.** *Peek*, 367 S.C. 450, 457, 626 S.E.2d 34, 38 (emphasis added). Similarly, if Defendants are permitted to resume and/or continue blocking off Plaintiff's parking, Plaintiff's legal status becomes questionable, and Plaintiff faces the risks of the loss of their entire business during the pendency of this action. Here, as was the case in *Peek*, injunctive relief is a better remedy than monetary damages because it allows Plaintiff to retain its customer base during the pendency of this Action. *See id.*

D. Payment of Rent

Should the Court deny Plaintiff's Motion for Temporary Injunction, Plaintiff seeks an alternative remedy, the payment of rent by Defendants to Plaintiff for the use of Plaintiff's Easement (in the event that Defendants obtain a valid final building permit for the entire project).

Plaintiff's Third Cause of Action against Defendants is based upon South Carolina's Forcible Entry and Detainer statute, as codified in S.C. Code § 15-67-410 *et seq.*, which expressly provides that Plaintiff may bring an action against Defendants for immediate possession of the Parking Lot which is the subject of this Action.

Pursuant to South Carolina statutory law, "proceedings in cases of forcible entry and detainer shall be such as are prescribed by law in cases when tenants hold over after the expiration of their leases." S.C. Code Ann. § 15-67-470. When a tenant holds over, a landlord has the right to bring an action for possession of the property. See S.C. Code § 27-40-770 (stating, "If the tenant remains in possession without the landlord's consent ... the landlord may bring an action for possession."). South Carolina Code Annotated Section 27-40-790, entitled "Payment of rent into court" provides, in pertinent part:

In any action where the landlord sues for possession ...

The tenant is required to pay the landlord all rent which becomes due [and] ... the rent to be paid must be the fair-market rental value of the premises at the time of the hearing.

Assuming alternative parking could be located within a reasonable vicinity, Plaintiff has determined that the total fair market value of the Parking Lot is as follows:

November (Use, Valet, Signage):	\$22,700.00
December (Use, Valet):	\$21,200.00
January (Use, Valet):	\$25,700.00
February (Use, Valet):	\$21,200.00
March (Use, Valet):	\$21,200.00
April (Use, Valet):	\$43,200.00
May (Use, Valet):	\$58,200.00
June & After (Use, Valet):	\$103,200.00

See (Aff. of Linda Barnaba, p. 5, para. 21). If alternative parking cannot be located, fair market value of the Property would be equal to the appraised value of the Gulfstream Café, Inc., as the loss of an ongoing concern.

Plaintiff has sued Defendants for the return of possession of the Parking Lot which is the subject of this Action. Therefore, should this Court decide Defendants shall remain in possession of the Parking Lot, this Court may properly Order Defendants to deposit the fair-market rental value of the premises in advance on a monthly basis, as set forth above, with the Clerk of Court to be placed into an interest bearing account, or some other neutral account, for the pendency of this Action.

CONCLUSION

In sum, Plaintiff will suffer irreparable harm should Defendants be allowed to interfere with Plaintiff's Easement rights during the pendency of this action to prevent further and significant harm as a result of Defendants' yet to be fully permitted construction activities.

For the foregoing reasons, Plaintiff first seeks an Order of this Court finding that Defendants have not complied with the Order of this Court. Plaintiff further respectfully requests an Order of this Honorable Court for a Temporary Injunction during the pendency of this case and the pendency of administrative procedures before Georgetown County, enjoining Defendants, and any and all individuals, entities, contractors or others acting in concert with Defendants, from

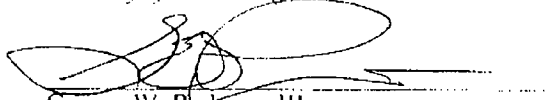
taking any actions whatsoever which would in any way interfere with Plaintiff's perpetual easement rights to use their Parking Lot, including but not limited to, immediately stopping and enjoining Defendants from obstructing the Parking Lot via fencing, signage, or placing any materials whatsoever on any portion of the Parking Lot, or in any other way whatsoever obstructing the Parking Lot in any way. In the alternative, Plaintiff respectfully requests that the Court Order Defendants to pay rent for their use of Plaintiff's Easement.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

Post Office Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400

Attorneys for Plaintiff



George W. Redman, III

Myrtle Beach, South Carolina

December 2, 2016.

216-CP-22-00961

EXHIBIT A

04347

BOOK 382 PAGE 217

FILED
BETTY L. WILLIAMS
Clerk of Court
90 JUN - 1 12:00 PM
BOOK 382 PAGE 217

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

AGREEMENT OF EASEMENT AND
CONSENT TO AND JOINDER OF MORTGAGEES
TO GRANTING OF EASEMENT

WHEREAS, Marlin Quay Marina Corporation did on the 12th day of December, 1985, execute and deliver a Note in the amount of Six Hundred Thousand and no/100 (\$600,000.00) Dollars to First Union National Bank and secured the same by Mortgage and Security Agreement, said Mortgage being recorded in the Office of the Clerk of Court for Georgetown County in Real Estate Mortgage Book 225 at Page 209; and

WHEREAS, Marlin Quay Marina Corporation granted three (3) easements to The Gulfstream Cafe, Inc. which easements were recorded in the office of the Clerk of Court for Georgetown County in Deed Book 234 at Pages 790, 797 and 803; and

WHEREAS, the parties acknowledge that there may be discrepancies in the rights granted to The Gulfstream Cafe, Inc., and Marlin Quay Marina Corporation and The Gulfstream Cafe, Inc. therefore desire that Marlin Quay Marina Corporation grant a non-exclusive perpetual easement from Marlin Quay Marina Corporation to The Gulfstream Cafe, Inc. for the purposes of ingress and egress and vehicular parking on, over and across that certain real property of Marlin Quay Marina Corporation, which is more fully described herein below, by owners, agents, employees, servants, visitors, guests and invitees of The Gulfstream Cafe, Inc., and Marlin Quay Marina Corporation and The Gulfstream Cafe, Inc. further desire to clarify the intent of the parties in the granting of all of the easements described above, and First Union

National Bank desires to consent to and join in the granting of said easement hereinafter described:

NOW THEREFORE, for and in consideration of the sum of One and No/100 (\$1.00) Dollar and the covenants and conditions expressed herein, the receipt and sufficiency of which is hereby acknowledged, Marlin Quay Marina Corporation, a corporation duly organized pursuant to the laws of the State of South Carolina (the "Grantor"), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto The Gulfstream Cafe, Inc., its successors and assigns (the "Grantee") a non-exclusive perpetual easement appurtenant to the premises of the Grantee hereinafter described for the full and free right of ingress and egress on, over and across the following described property of the Grantor, together with the rights of vehicular parking on and vehicular and pedestrian access to, all in accordance with all governmental rules, regulations, ordinances or laws, the premises of the Grantor hereinafter described, and also for the purpose of maintenance, repair, alteration and/or improvements to the Grantee's hereinafter described property. It is anticipated by the parties that while they will each have joint and non-exclusive use at all times of the area covered by this easement that the Grantor will utilize the premises primarily during the daytime regular business hours of Grantor and the Grantee will utilize the premises primarily in the evening regular business hours of Grantee. The property of the

Grantor subject to this non-exclusive perpetual easement is more fully described as follows:

A non-exclusive right of ingress, egress and vehicular parking over, across and on all those certain pieces, parcels or tracts of land situate, lying and being in the Garden City area of the County of Georgetown, State aforesaid, and being more particularly shown as Lots 3, 4, and 5 of Tract 3 on that certain Plat entitled Survey of Marlin Quay Marina Horizontal Property Regime, Garden City Point, prepared by Surtech, Inc. dated May 21, 1985, revised November 27, 1985, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 214, said plat being expressly incorporated herein by reference.

The Grantor acquired the aforescribed property by virtue of that certain Deed from Marlin Quay Company, a South Carolina General Partnership, dated July 1, 1983 and recorded on September 1, 1983 in the office of the Clerk of Court for Georgetown County in Deed Book 211 at Page 1141.

The property of the Grantee to which this easement is appurtenant is more fully described as follows:

All those certain pieces, parcels, areas or tracts of land identified as Marsh Area, Tract A and Tract B on that certain survey for Marlin Quay Company, Garden City Point dated August 27, 1985, revised January 24, 1986, surveyed and mapped by Surtech, Incorporated and recorded in the office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 438.

It is expressly understood and agreed by Marlin Quay Marina Corporation and the Gulfstream Cafe that as part of the consideration for this conveyance, both parties shall be equally responsible for the maintenance and upkeep of the aforementioned easement area and shall equally share the costs associated with its proper maintenance and upkeep to insure that it is satisfactory for the uses and purposed intended herein.

It is further understood and acknowledged by the parties hereto that the Grantor herein gave a Mortgage in favor of First Union National Bank, said Mortgage having been recorded in the Office of the Clerk of Court for Georgetown County in Mortgage Book 225 at Page 209, and covering certain real property of the Grantor herein, a portion of which real property is covered by the grant of the easement herein (the "Mortgage"). First Union National Bank consents to and joins in the aforesaid grant of easement from Marlin Quay Marina Corporation to The Gulfstream Cafe, Inc. upon and pertaining to that portion of the property covered by the aforescribed Mortgage lien of First Union National Bank, and First Union National Bank specifically and expressly subordinates its aforesaid Mortgage lien to the easement granted herein; provided, however, that First Union National Bank makes no representations or warranties as to the validity of the documents creating the easement; and provided, further, that said Mortgage in all respects shall remain in full force and effect and be unaffected hereby except as set forth hereinabove;

Together with all and singular the rights, members, hereditaments and appurtenances to the above-described easement belonging, or in anywise incident or appertaining;

To have and to hold, all and singular, the above-described easement and to the said The Gulfstream Cafe, Inc., its successors and assigns forever;

And the said Marlin Quay Marina Corporation does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, the said easement unto the said Gulfstream Cafe, its successors and assigns, against itself and its successors and assigns and all others whomever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 12th day of April, in the year of our Lord One Thousand Nine Hundred and Eighty Five and in the Two Hundred and Thirteenth Year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

[Signature]

Nancy L. Rowe
(as to Marlin Quay
Marina Corporation)

MARLIN QUAY MARINA CORPORATION
a South Carolina Corporation
(Corporate Seal)

By: *[Signature]*
Its: *[Signature]*

Attest: *[Signature]*
Its: *[Signature]*

WITNESSES:

Annette Jordan

Amelia A. Britton
(as to The Gulfstream Cafe,
Inc.)

The Gulfstream Cafe, Inc.
a South Carolina Corporation
(Corporate Seal)

By: *[Signature]*
Edward G. Criss, Jr.
President

Attest: *[Signature]*
Its: *[Signature]*

BOOK 382 PAGE 222

WITNESSES:

Marcia Conner
Angela Sue Huskey
(as to First Union
National Bank)

FIRST UNION NATIONAL BANK

By: Deborah M. Miller
Its: Vice President

Attest: J. L. Meade
Its: Assistant Secretary



BOOK 382 PAGE 223

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) PROBATE

PERSONALLY appeared before me the undersigned witness
and made oath that (s)he saw the within named First Union National
Bank , by and through its duly authorized officers, sign,
seal and as its act and deed, deliver the within written
Agreement of Easement and Consent To and Joinder of Mortgage to
Granting of Easement; and that deponent with the other witnesses
whose name is subscribed above witnessed the execution thereof.

Maica Corra

SWORN TO before me this
12th day of April, 1990.

Adrian H. Alexander (L.S.)
Notary Public for South Carolina
North
My Commission Expires: 10-9-1990



STATE OF SOUTH CAROLINA)
Horry) PROBATE
COUNTY OF GEORGETOWN)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named The Gulfstream Cafe, Inc., by and through its duly authorized officers, sign, seal and as its act and deed, deliver the within written Agreement of Easement and Consent To and Joinder of Mortgagee to Granting of Easement; and that deponent with the other witnesses whose name is subscribed above witnessed the execution thereof.

Annella A. Britton

SWORN TO before me this
14th day of May, 1990
day of May 1990.
Charles L. Jordan (L.S.)
Notary Public for South Carolina
My Commission Expires: 4-25-96

BOOK 382 PAGE 225

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Marlin Quay Marina Corporation, by and through its duly authorized officers, sign, seal and as its act and deed, deliver the within written Agreement of Easement and Consent To and Joinder of Mortgagee to Granting of Easement; and that deponent with the other witnesses whose name is subscribed above witnessed the execution thereof.

[Signature]

SWORN TO before me this
11th day of June, 1998.
[Signature]
Notary Public for South Carolina (L.S.)
My Commission Expires: 6-9-98

BOOK 382, PAGE 226

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FILED
BETTY L. WILLIAMS
CCCP & GS

90 JUN -4 PM 12:00

RECORDED
BOOK 382 PAGE 217
Charles J. Brantley
Deputy clerk

41-129-5-3
Martin Quay Marina Corp

to

Gulfstream Cape Inc

Recorded this 6th day of

June A.D. 1980

In Book Page

Charles J. Brantley
Auditor, Georgetown Co., S. C.

COUNTY PARCEL # 41-129-5.3

MSD

Deputy Secy



FILED
DETTY L. WILLIAMS
C.C.F. & G.S.

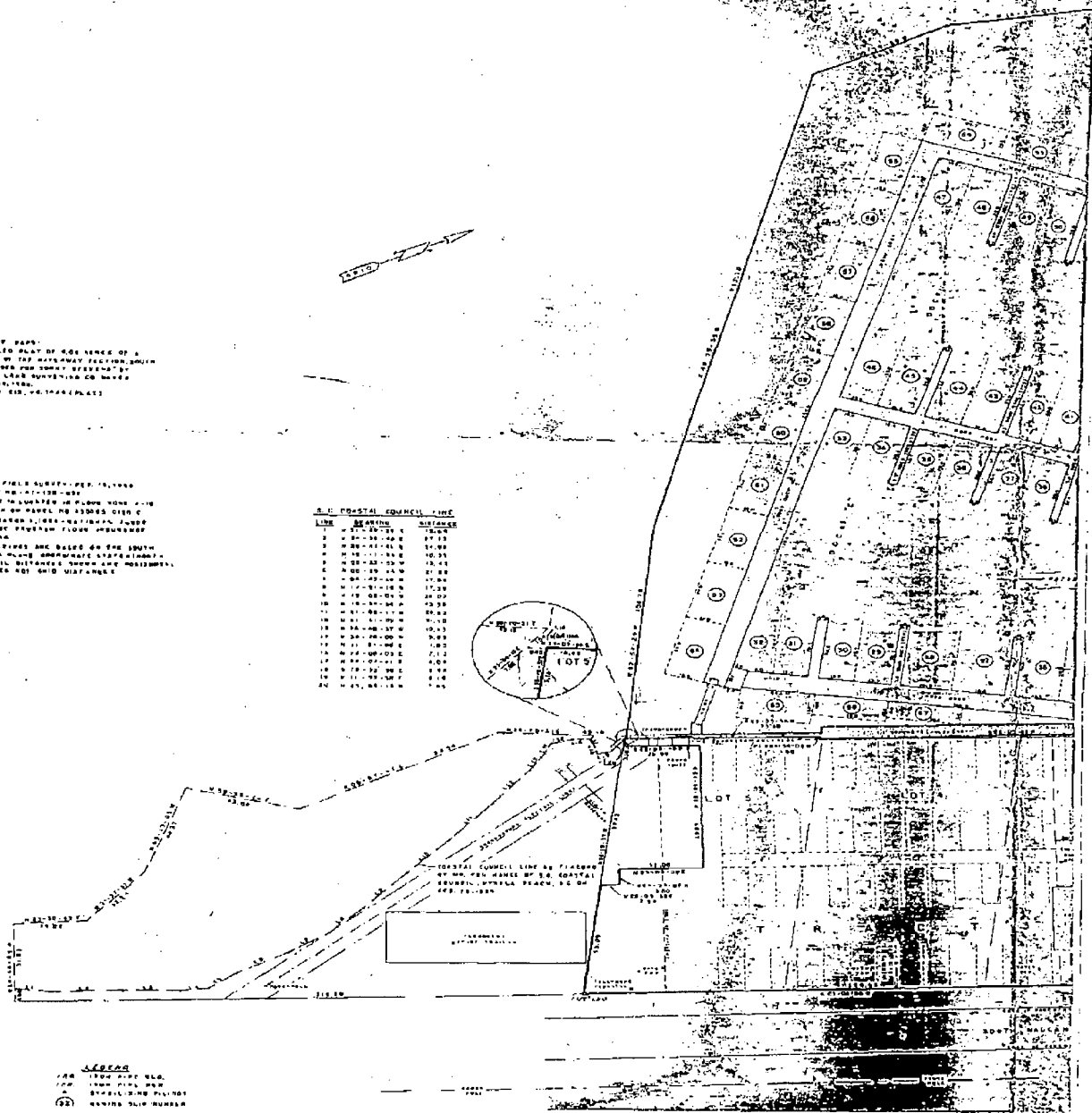
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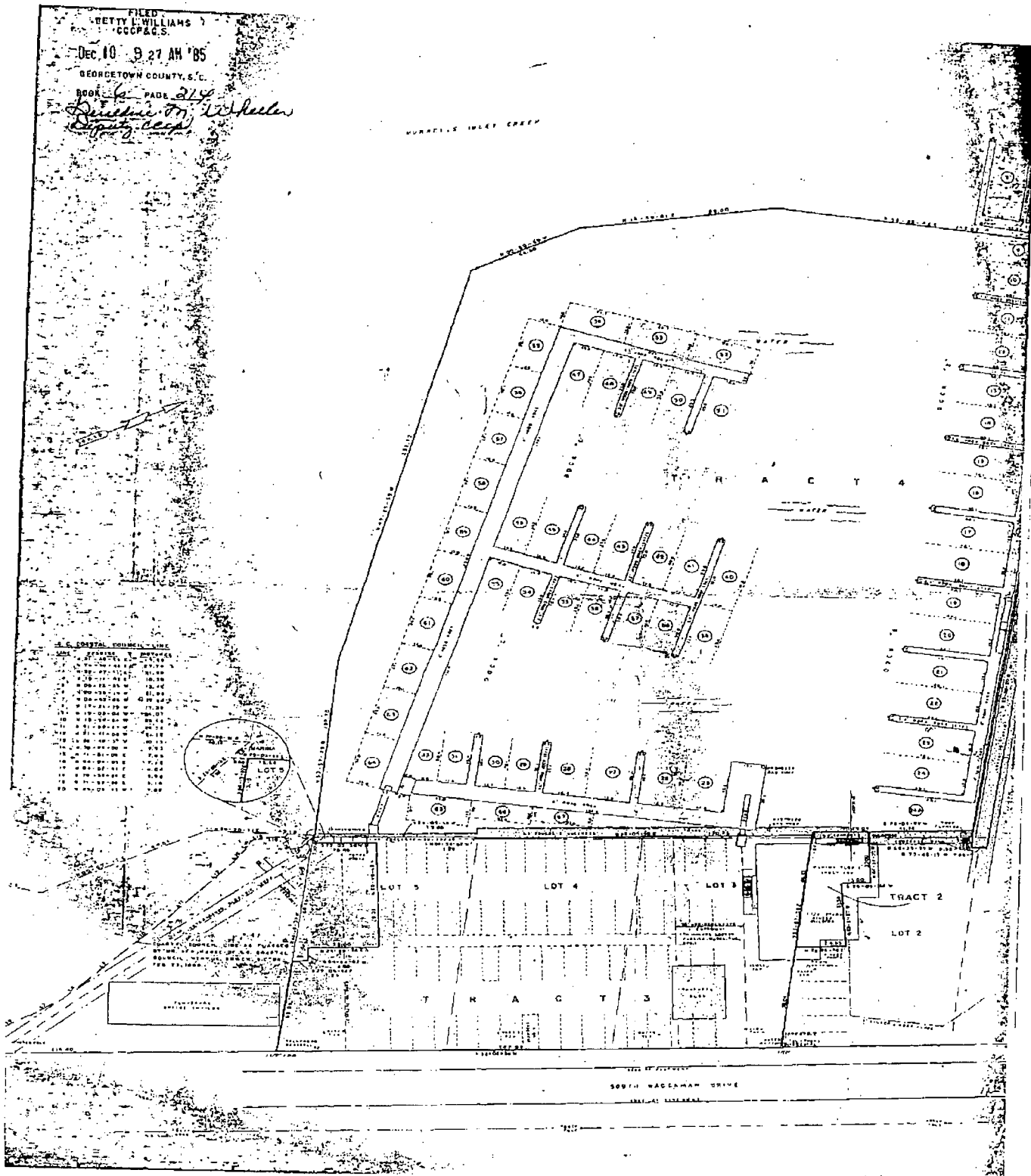
Book 6 Page 214
Deputy Secy

RECORDED MAPS:
1. COMPILED MAP OF THE LINES OF A
SECTION IN THE WATKINS FRACTION, SOUTH
POINT, AREA FOR TOWN OF GEORGETOWN BY
CULLUM LANE SURVEYING CO. DATED
MARCH 24, 1900.
INDEXED BY 212, 26, 174, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

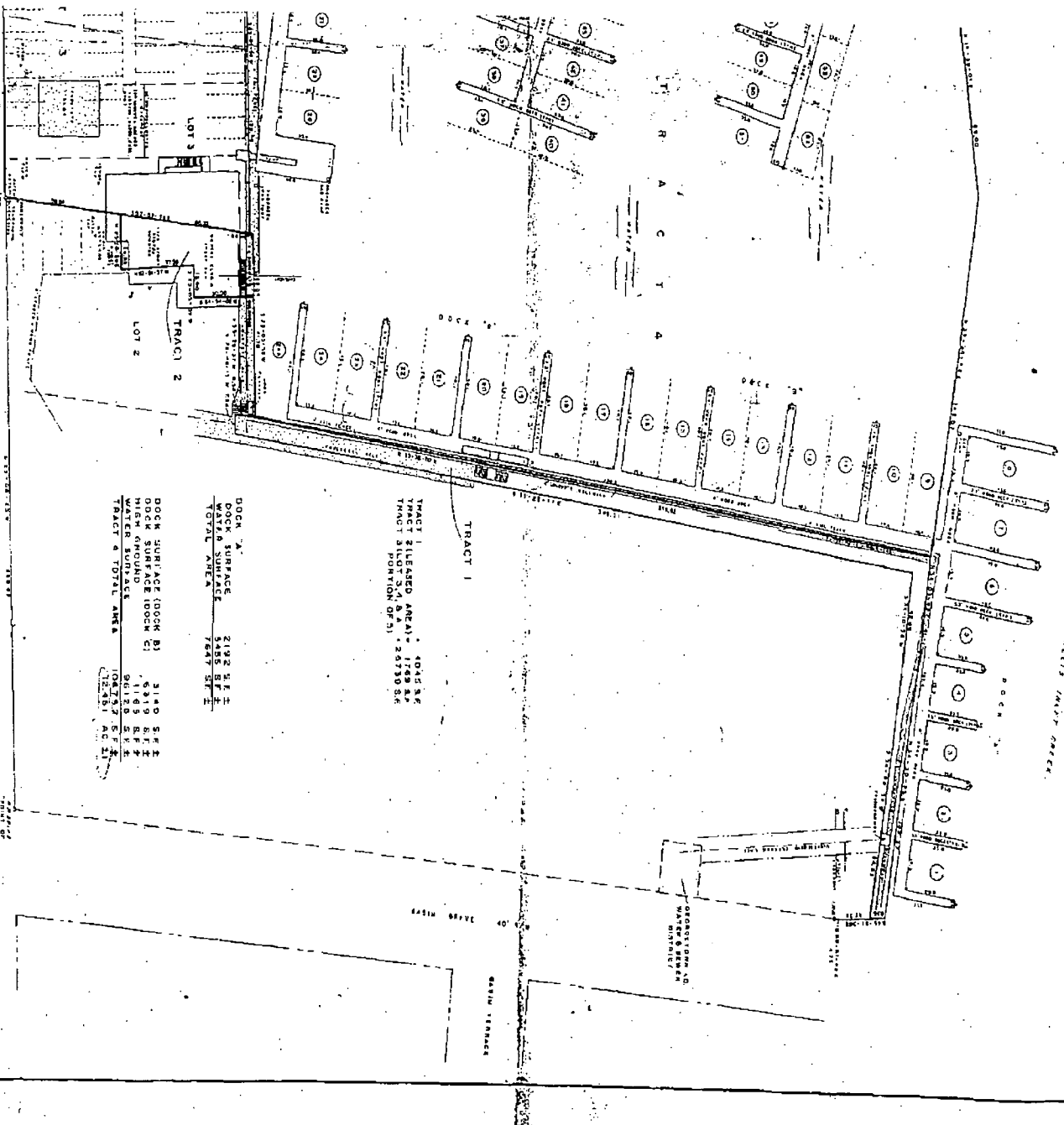
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1. DIST. OF FIELD SURVEY, PER 10, 1900.
2. DIST. MAP NO. 17-130-000.
3. DIST. LOT 10, LOTS 11-13, 14-16, 17-19, 20-22, 23-25, 26-28, 29-31, 32-34, 35-37, 38-40, 41-43, 44-46, 47-49, 50-52, 53-55, 56-58, 59-61, 62-64, 65-67, 68-70, 71-73, 74-76, 77-79, 80-82, 83-85, 86-88, 89-91, 92-94, 95-97, 98-100.
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LINE	BEARING	DISTANCE
1	N 17° 20' 30" E	15.00
2	N 87° 30' 00" E	17.15
3	N 80° 21' 30" E	17.00
4	N 10° 11' 30" E	10.35
5	N 80° 23' 30" W	13.15
6	N 80° 20' 00" W	17.00
7	N 17° 21' 30" E	17.30
8	N 10° 08' 00" W	10.35
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10	N 10° 08' 00" W	10.35
11	N 10° 08' 00" W	10.35
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99	N 10° 08' 00" W	10.35
100	N 10° 08' 00" W	10.35



$$6 \overline{) 214}$$


6/214



DOCK X
DOCK SURFACE 3192 S.F.
WATER SURFACE 5985 S.F.
TOTAL AREA 9177 S.F.

DOCK SURFACE (DOCK B)
DOCK SURFACE (DOCK C)
WATER SURFACE
TRACT 2 TOTAL AREA
DOCK SURFACE (DOCK B) 3140 S.F.
DOCK SURFACE (DOCK C) 1143 S.F.
WATER SURFACE 9012 S.F.
TRACT 2 TOTAL AREA 13495 S.F.

TRACT 1
TRACT 1 (CLEARED AREA) 4015 S.F.
TRACT 1 (DOCK A, B, C) 1759 S.F.
TRACT 1 (DOCK D, E, F) 2070 S.F.

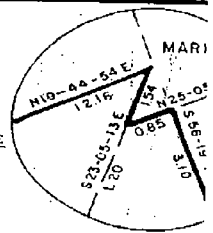
SCALE: 1" = 100'

SURVEY OF
MARLIN QUAY MARINA
HORIZONTAL PROPERTY REGIME

PREPARED FOR THE CITY OF LOS ANGELES
BY THE CITY ENGINEER
SUN-TECH INCORPORATED
1000 WEST 10TH STREET
LOS ANGELES, CALIF. 90057

I HEREBY CERTIFY THAT THE MEASUREMENTS
AS SHOWN HEREON ARE CORRECT AND THERE
ARE NO VISIBLE ENCROACHMENTS OR
PROJECTIONS OTHER THAN SHOWN.

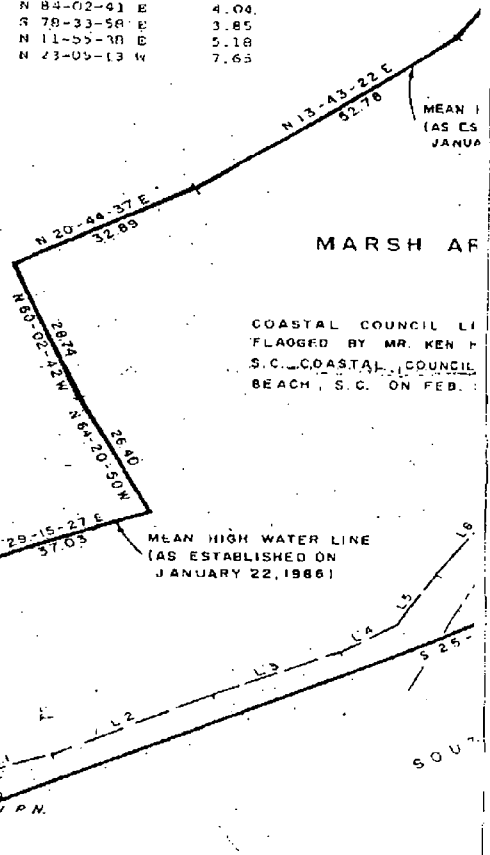
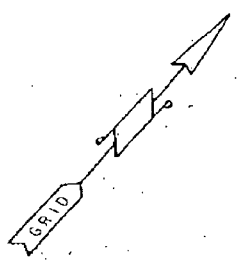
Stephen R. Wolfe
STEPHEN R. WOLFE R.L.S. NO. 9065



INSET "A"
NOT TO SCALE

LINE	BEARING	DISTANCE
1	N 31-46-25 E	13.60
2	N 24-32-41 E	27.75
3	N 26-47-41 E	21.99
4	N 19-11-53 E	10.39
5	N 08-21-55 W	13.42
6	N 00-39-14 W	21.89
7	N 04-42 48 W	17.64
8	N 17-21-19 W	17.39
9	N 19-03-04 W	24.07
10	N 19-34-54 W	21.58
11	N 21-06-17 W	24.52
12	N 21-41-07 W	21.10
13	N 28-40-37 W	10.13
14	N 36-28-00 W	5.53
15	N 11-01-06 E	7.65
16	N 24-08-03 E	7.13
17	N 84-02-41 E	4.00
18	S 78-33-58 E	3.85
19	N 11-55-30 E	5.18
20	N 23-05-13 W	7.65

FILED
BETTY L. WILLIAMS
COP. P.C.S.
APR 2 2 58 PM '86
GEORGETOWN COUNTY, S.C.
BOOK 6 PAGE 438
Stephen R. Wolfe
Deputy Reg.



LEGEND

I.P.O. IRON PIPE OLD
I.P.N. IRON PIPE NEW
S.F. SQUARE FEET

- NOTES:
- 1) PARENT TAX MAP NO. 41-128-032
 - 2) THIS LOT IS LOCATED IN FLOOD ZONE A-16 AS SHOWN ON PANEL NO. 450085 0120 C DATED MARCH 1, 1984 - NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP.
 - 3) ALL BEARINGS ARE BASED ON THE SOUTH CAROLINA PLANE COORDINATE SYSTEM (NORTH ZONE). ALL DISTANCES SHOWN ARE HORIZONTAL DISTANCES NOT GRID DISTANCES.

REFERENCE MAPS ENTITLED:

- 1) "SURVEY OF MARLIN QUAY MARINA HORIZONTAL PROPERTY REGIME" BY THIS OFFICE DATED MAY 21, 1985.
- 2) "COMPILED MAP OF 6.06 ACRES OF WATERWAY SECTION SOUTH POINT LOTS FOR SONNY STEVENS" BY CULLER LAND SURVEYING CO. DATED MAR. 29, 1982.

NOTE: THE ME
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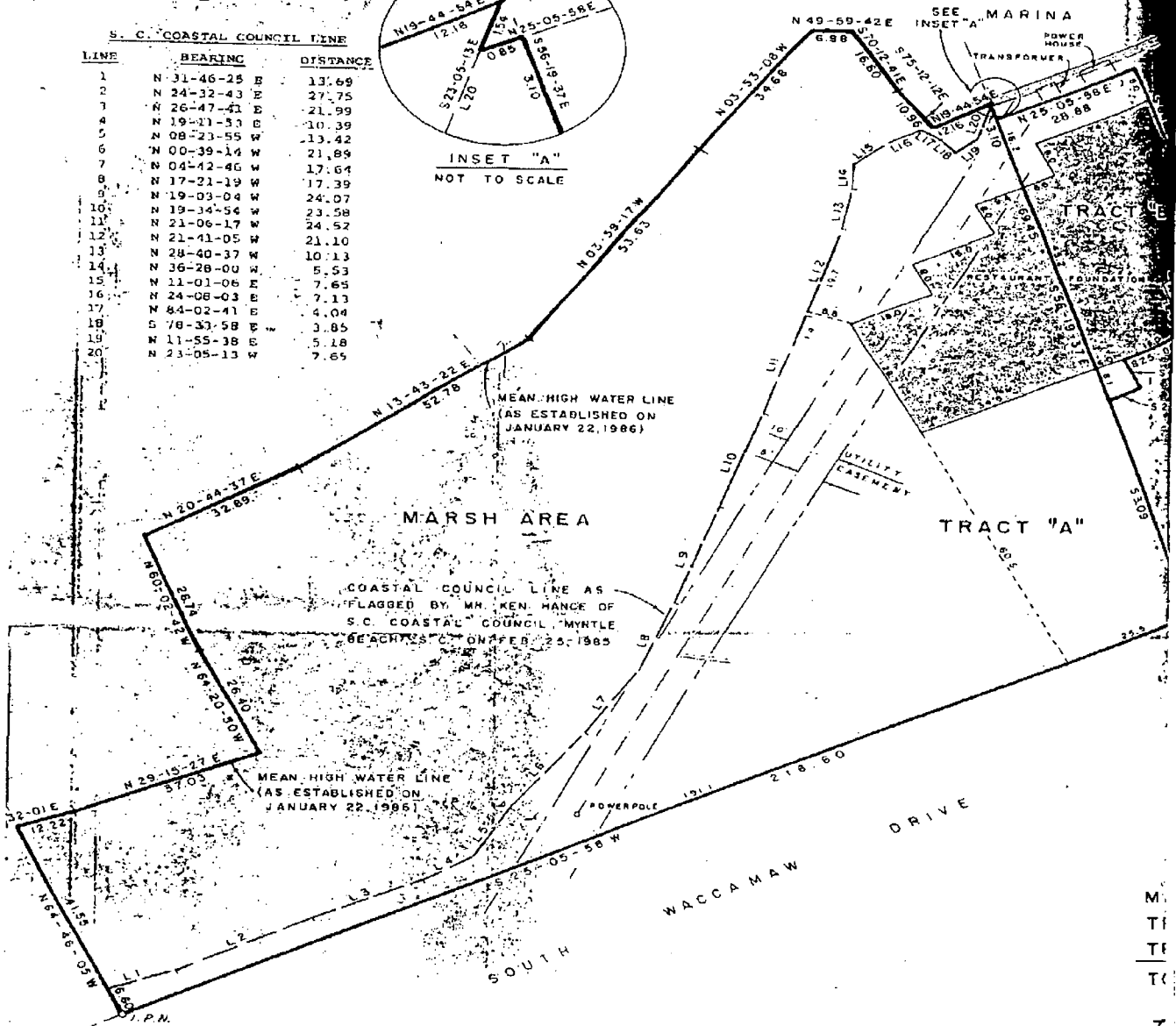
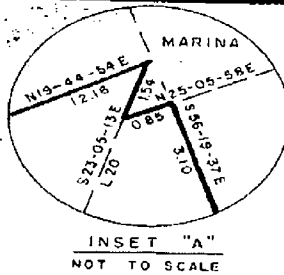
1/24/86	ADDED MEAN HIGH WATER LINE
1/13/86	ADDED FOUNDATION OF RESTAURANT
	BUILDING
DATE	REVISION

DRAWN BY DANNY LONG

6/438

438

S. C. COASTAL COUNCIL LINE		
LINE	BEARING	DISTANCE
1	N 31-46-25 E	13.69
2	N 24-32-43 E	27.75
3	N 26-47-41 E	21.99
4	N 19-21-53 E	10.39
5	N 08-23-55 W	13.42
6	N 00-39-14 W	21.89
7	N 04-42-46 W	17.64
8	N 17-21-19 W	17.39
9	N 19-03-04 W	24.07
10	N 19-14-54 W	23.58
11	N 21-06-17 W	24.52
12	N 21-41-05 W	21.10
13	N 28-40-37 W	10.13
14	N 36-28-00 W	5.53
15	N 11-01-06 E	7.65
16	N 24-08-03 E	7.13
17	N 84-02-41 E	4.04
18	S 78-33-58 E	3.85
19	N 11-55-38 E	5.18
20	N 23-05-13 W	7.65

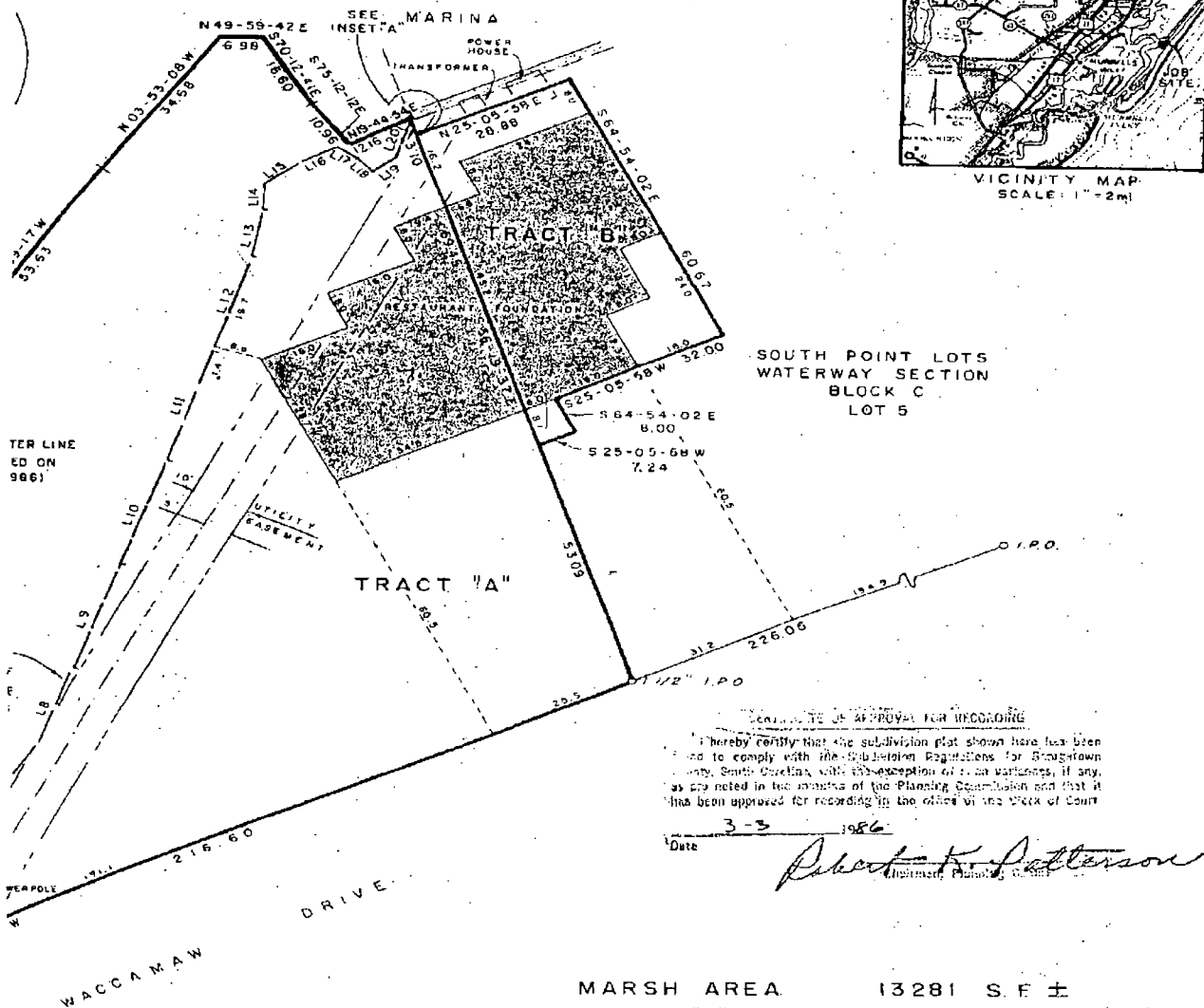


NOTE: THE MEAN HIGH WATER (M.H.W.) LINE WAS ESTABLISHED FROM N.O.S TIDAL BENCH MARK STAMPED "CA NO.3 1975". THE M.H.W. LINE WAS LOCATED VERTICALLY AND HORIZONTALLY ON THE GROUND AT THE 2.56' M.S.L. ELEVATION. MON ELEVATION: 6.89' ABOVE MEAN HIGH WATER (M.H.W.) 9.45' ABOVE MEAN SEA LEVEL (M.S.L.)

86	ADDED MEAN HIGH WATER LINE
86	ADDED FOUNDATION OF RESTAURANT BUILDING
	REVISION

6/438

438



CONSENT TO APPROVAL FOR RECORDING
I hereby certify that the subdivision plat shown here has been
found to comply with the Subdivision Regulations for Georgetown
County, South Carolina, with the exception of such as variances, if any,
as are noted in the minutes of the Planning Commission and that it
has been approved for recording in the office of the Clerk of Court.

Date 3-3-1986

Robert K. Patterson
Notary Public, Georgetown, S.C.

MARSH AREA	13281	S. F. ±
TRACT "A"	10002	S. F. ±
TRACT "B"	2083	S. F. ±
TOTAL AREA	25366	S. F. ±

TRACT "A" AND TRACT "B" WILL BE
COMBINED INTO ONE LOT

H WATER (M.H.W.) LINE WAS ESTABLISHED
AL BENCH MARK STAMPED "DA NO. 3 1975"
E WAS LOCATED VERTICALLY AND HORIZONTALLY
D AT THE 2.56' M.S.L. ELEVATION.
V 6.89' ABOVE MEAN HIGH WATER (M.H.W.)
9.45' ABOVE MEAN SEA LEVEL (M.S.L.)

SURVEY FOR
MARLIN QUAY COMPANY
GARDEN CITY POINT
GEORGETOWN CO. SOUTH CAROLINA
SCALE 1" = 20 FEET AUG. 27, 1985

20 10 0 20 40
SURVEYED AND MAPPED BY
SUR-TECH, INCORPORATED
MURRELLS INLET, GEORGETOWN COUNTY
SOUTH CAROLINA 29576
803-651-8656

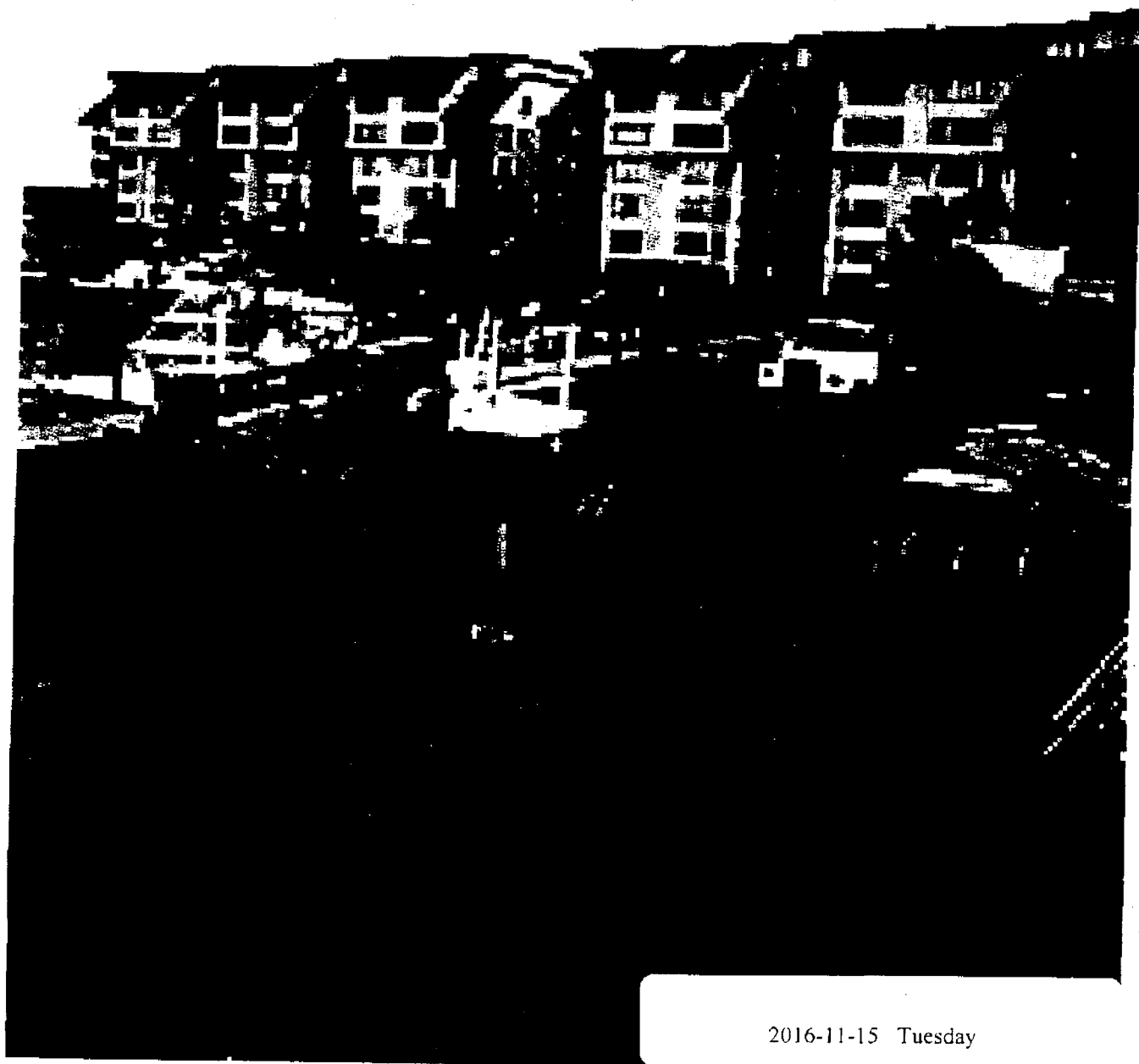
ST-150 MAP NO. 01-2-133

2016-CP-22-00961

EXHIBIT B

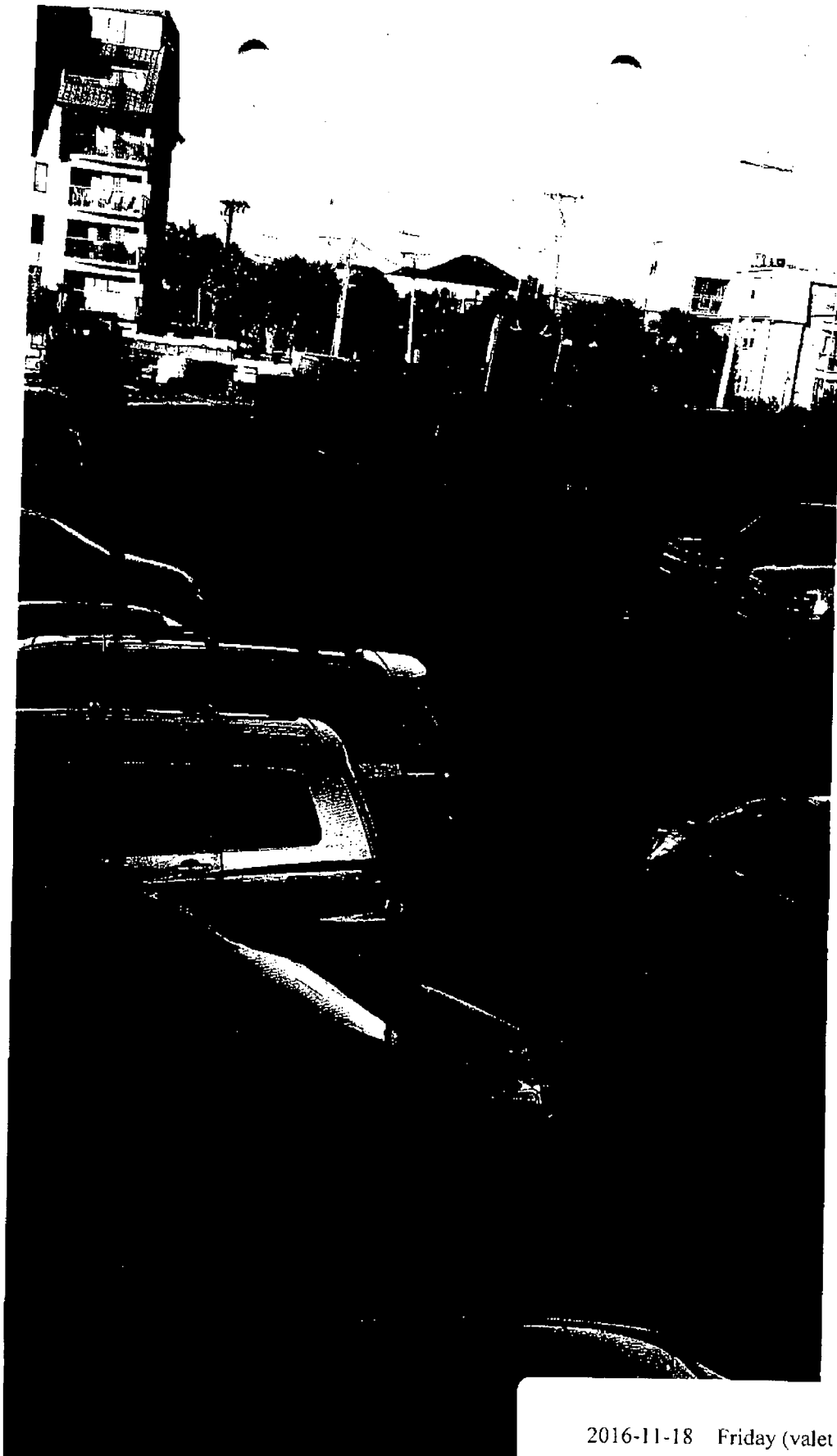
2016-CP-22-00961

EXHIBIT C

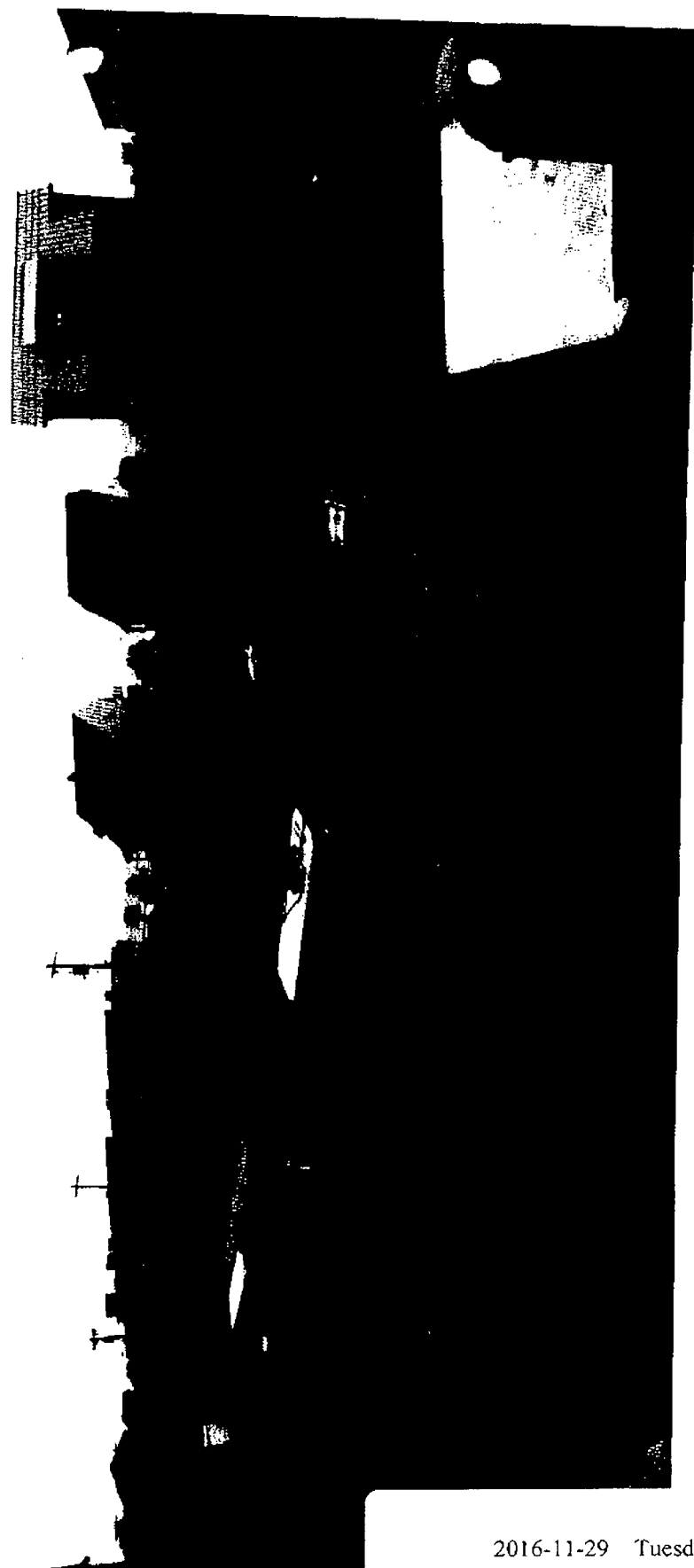


DANGER
DO NOT ENTER
AUTHORIZED
PERSONNEL ONLY

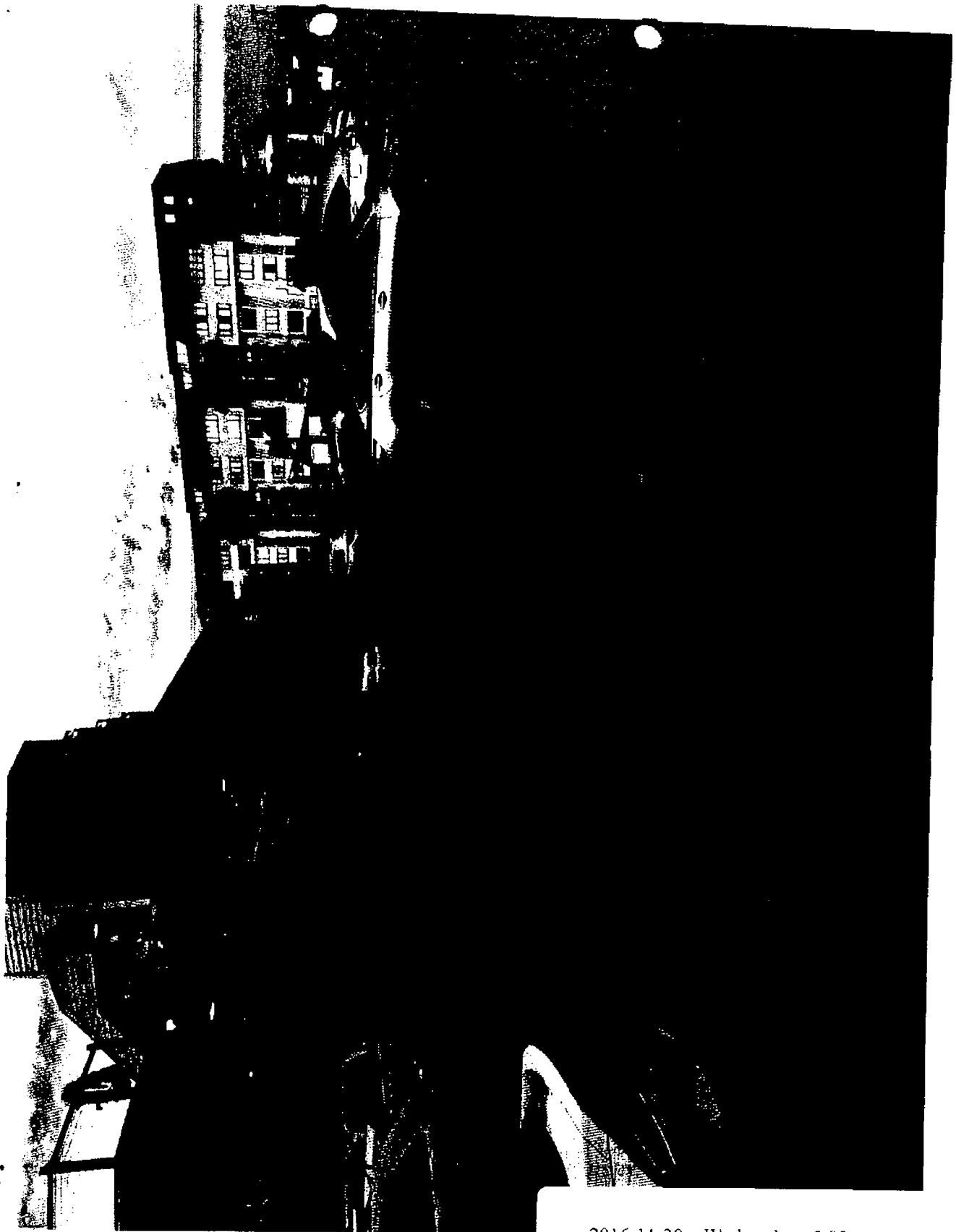
2016-11-16 Wednesday



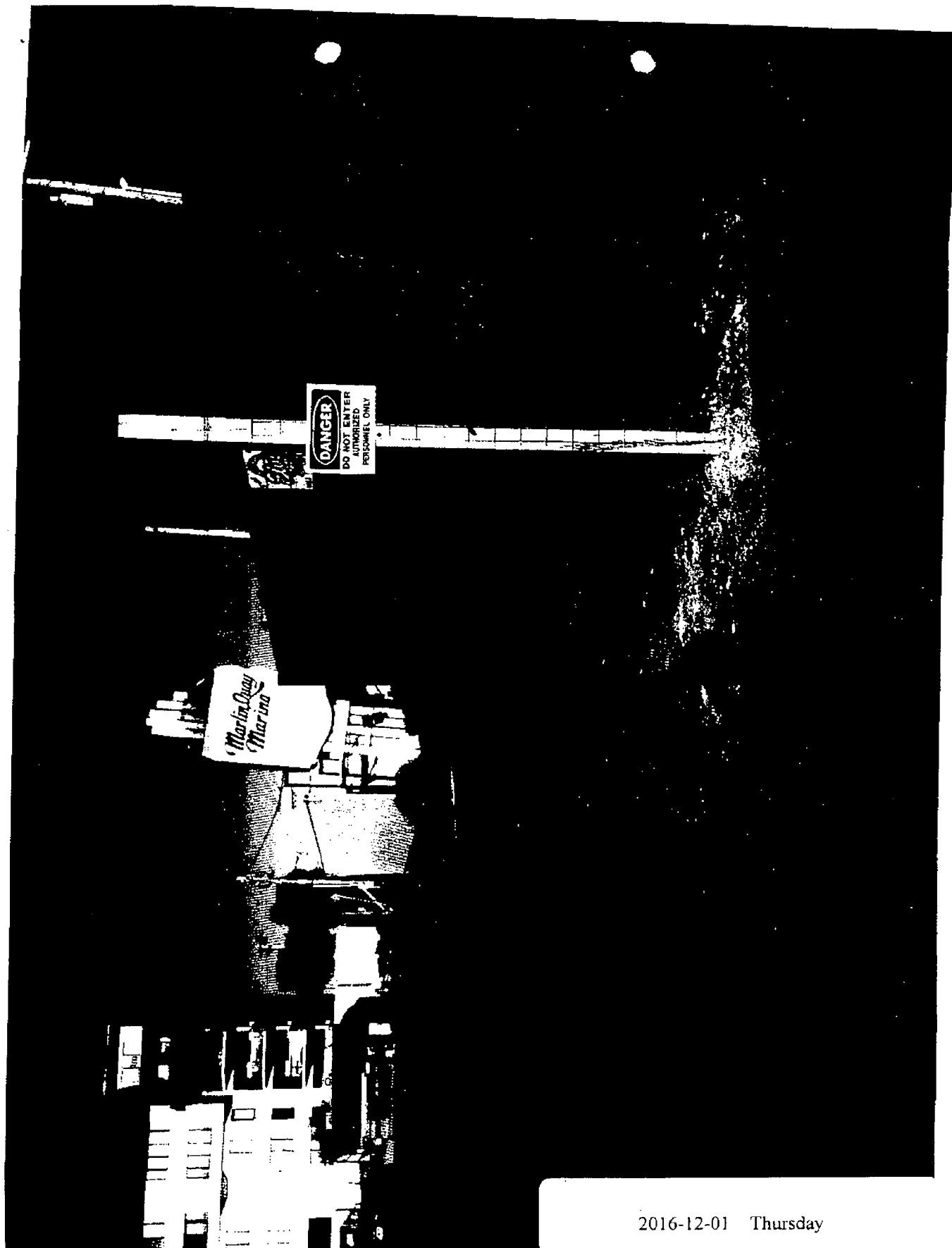
2016-11-18 Friday (valet cones)



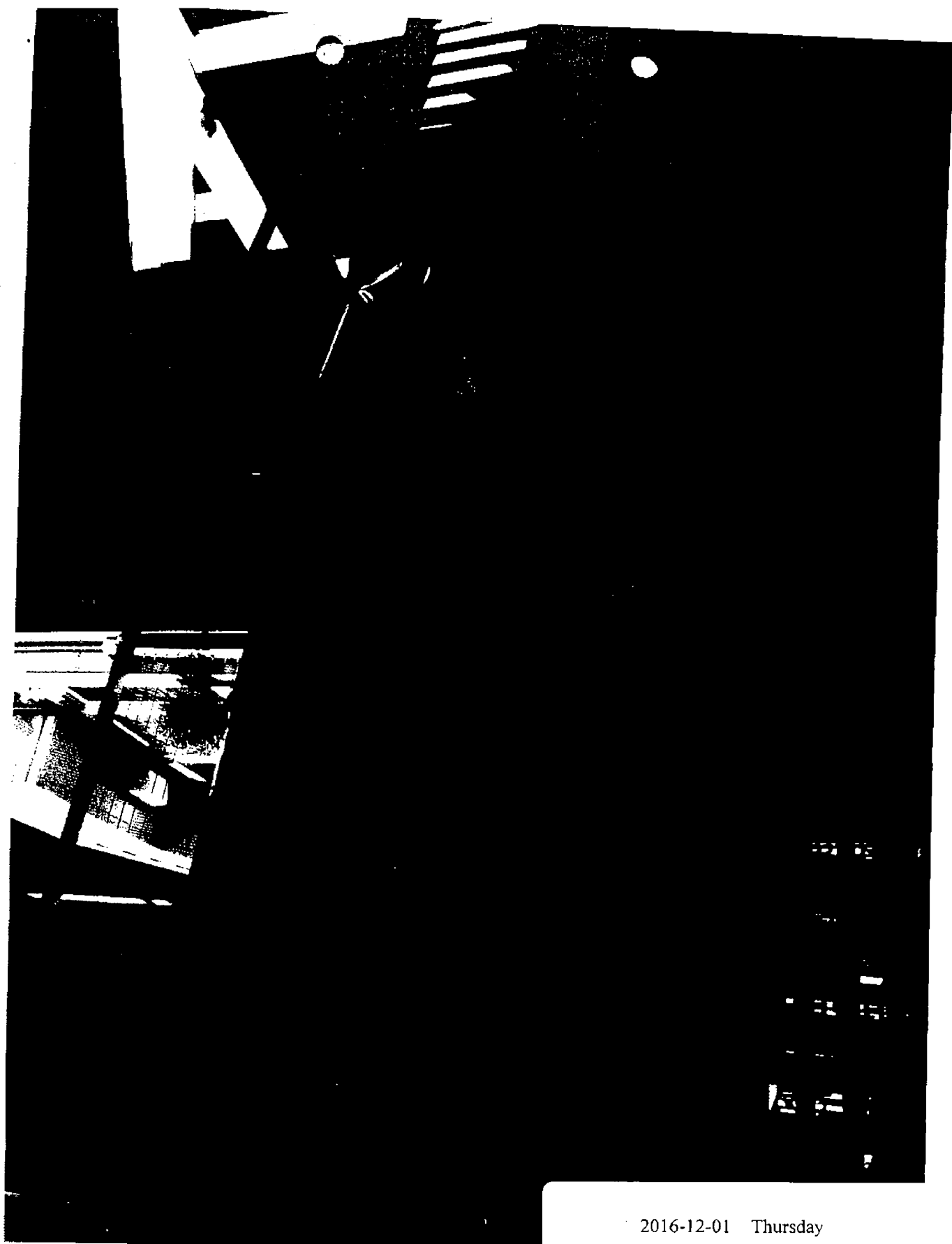
2016-11-29 Tuesday



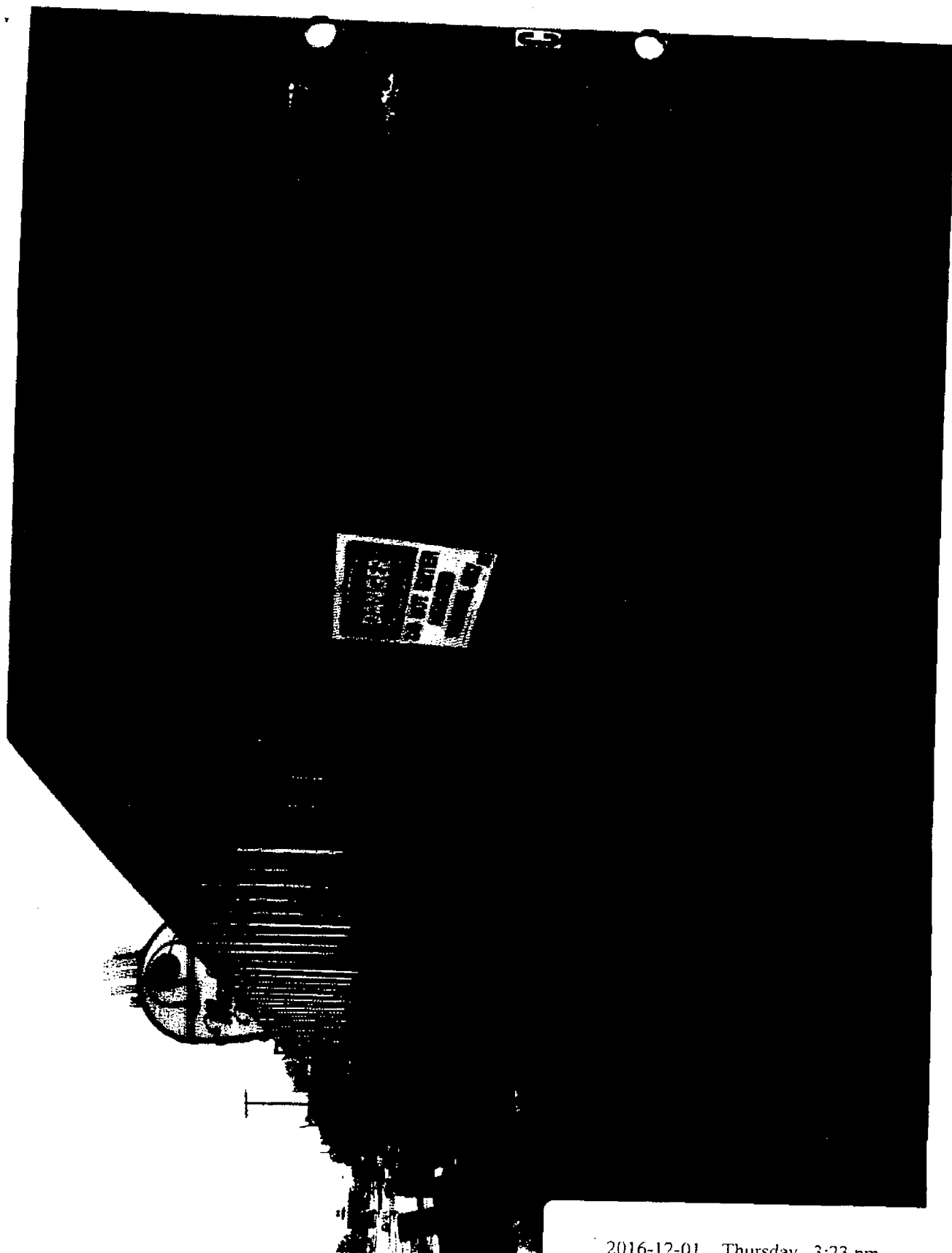
2016-11-30 Wednesday 5:00 pm



2016-12-01 Thursday



2016-12-01 Thursday



2016-12-01 Thursday 3:23 pm

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

The Gulf Stream Café, Inc.,

Plaintiff,

vs.

J. Mark Lawhon, Individually, and Palmetto
Industrial Development, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2016-CP-26-00961
) 23

MEMORANDUM IN OPPOSITION
TO MOTION FOR
TEMPORARY INJUNCTION

FILED
2016 DEC 12 AM 8:40
ALMA Y. WHITE
CLERK OF COURT

This dispute is not about a parking lot. Instead, it is about Gulfstream Café's attempt to use this Court to put the Marlin Quay Marina Restaurant out of business.

Gulfstream Café knew for over a year that the Marina Restaurant – Gulfstream's only neighboring restaurant – planned to replace its decrepit old building with a new one. For over a year, Gulfstream did not object. Likewise, beginning on November 1, 2016, Gulfstream Café sat by and watched for over two weeks as the Marina Restaurant posted a demolition permit, placed shipping containers in the parking lot outside the restaurant, moved equipment, furniture, and supplies out of the restaurant building and into the containers, erected a safety fence around the building, brought in heavy equipment, and tore the building down.

Equipment and supplies for the demolition of Marina Restaurant filled most of the parking lot for two weeks in early November, yet Gulfstream did not complain about any lack of parking . . . until demolition was complete.

Only when demolition was complete did Gulfstream raise the parking issue and file this lawsuit seeking to enjoin Marina Restaurant from performing any further work – that is, seeking to maintain Gulfstream’s new-found monopoly by preventing its now-buildingless sole competitor from rebuilding. Defendants respectfully request that this Court not assist the Gulfstream Café in its attempt to establish a perpetual restaurant monopoly at Marlin Quay.

BACKGROUND

Some history puts this dispute in perspective. For over thirty years, The Gulfstream Café, Inc. (“Gulfstream”) has operated a restaurant at the south end of the Marlin Quay Marina parking lot. Also for the past thirty years, there has been another restaurant at the north end of the parking lot, about two hundred feet away. The restaurant at the north end has changed names and owners over the years, and it is currently owned and operated by Marlin Quay Marina Restaurant & Bar, LLC (“Marina Restaurant”). During the past thirty years, customers of both restaurants have parked in the parking lot between the two restaurants.

Palmetto Industrial Development, LLC (“Palmetto”) owns the parking lot. Mark Lawhon owns Palmetto. Mark Lawhon also owns the LLC that operates the Marina Restaurant, and his son, Chris Lawhon, manages this restaurant. When Mark Lawhon stands in the parking lot outside his restaurant, he is standing on his own land. Not so for the owners of Gulfstream.

Gulfstream does not own the parking lot. Instead, Gulfstream has an easement to use the parking lot for ingress, egress, and parking. Gulfstream’s easement is

non-exclusive, as Plaintiff Gulfstream concedes (Plaintiffs' Memorandum p. 2). This means that Gulfstream shares the parking lot with others including Defendant Marina Restaurant. No particular parking spaces are designated for Gulfstream's use, nor is Gulfstream entitled to any specific number of parking spaces.

However, now that Marina Restaurant's building has been demolished, and Gulfstream has begun to enjoy its monopoly, Gulfstream has taken the position that (a) its non-exclusive easement gives it a superior right to use the parking lot than that enjoyed by the parking lot's owner, (b) any change to Marina Restaurant's floorplan or business model from that which existed when the easement was granted over thirty years ago creates unreasonable interference with Gulfstream's non-exclusive easement, and (c) the parking lot cannot be reconfigured even if doing so creates *more* parking.

Gulfstream's position is not supported by equity, law, or logic. As described in detail below, this Court should dismiss Gulfstream's motion, and award damages to Marina Restaurant for Gulfstream's improper delay of construction.

LEGAL ANALYSIS

This Court should deny Plaintiff's motion for two reasons. First, Plaintiff will not suffer irreparable harm because Defendants' construction activities do not unreasonably interfere with Plaintiff's claimed easement. Second, the equities balance in favor of Defendants.

However, if this Court does enjoin Defendants, then Plaintiff must post bond in the amount of at least \$2,000,000.00 to protect Defendants in the event the injunction is ultimately deemed improper.

I. Plaintiff will not suffer irreparable harm because Defendants' construction activities do not unreasonably interfere with Plaintiff's easement.

Plaintiff seeks a Temporary Injunction. The purpose of an injunction is to preserve the status quo. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 50-51, 674 S.E.2d 505, 508-09 (Ct. App. 2009). Its purpose is not to right past wrongs. See Winget v. Winn-Dixie Stores, Inc., 242 S.C. 152, 162-63, 130 S.E.2d 363, 368-69 (1963) (refusal to issue injunction proper where the acts complained of "have been discontinued and their repetition appeared unlikely."). Therefore, the threshold question before the Court is narrow: Is Defendants' future construction activity likely to unreasonably interfere with Gulfstream's enjoyment of its easement?

For ease of analysis, the question can be divided into two questions: First, will the *final product* of construction unreasonably interfere with the easement? Second, will the *process* of construction unreasonably interfere with the easement? The answer to both questions is "No."

A. The final product of construction will not unreasonably interfere with the easement.

There will be at least as many parking spaces after construction is complete as there were before construction began. Immediately prior to construction there were at most 61 parking spaces in the parking lot.¹ (Exhibit A). Construction plans² show that the completed parking lot will contain 67 parking spaces. (Exhibit B). As a result, Plaintiffs'

¹ Three of the 61 spaces were marked "Marina Parking Only" and were never used by Gulfstream, leaving only 58 spaces to which Gulfstream's easement may have applied.

² Contrary to Plaintiff's allegation "Plaintiff is unable to confirm any details of Defendants' plans" because Plaintiff has not been provided with the plans (Plaintiff's Memorandum FN. 3), complete plans were provided to Plaintiff's counsel via email on Tuesday, November 22, 2016 at 3:08 p.m. (Exhibit C) – over a week before Plaintiff served its memo claiming not to have seen the plans.

unfounded allegation that construction will “result in the elimination of parking spaces” (Plaintiffs’ Memorandum p. 8) is false.³

Plaintiff has not offered any authority for the proposition that increasing the number of parking spaces from 61 to 67 unreasonably interferes with its parking easement. Instead, Plaintiff appears to argue that the new building will be “vastly larger” than the demolished building, and as a result will “overburden Plaintiff’s easement rights.” (Plaintiff’s Memorandum, p. 5). However, the building plans and permits provided to Plaintiff’s counsel on November 21 and 22, 2016 show that the new building is no larger than the size of the demolished building. (Exhibit D). Moreover, Plaintiff has not cited any authority for the proposition that Marina Restaurant’s business must remaining identical to the business that existed on the site when the easement was granted in 1986. Nor would Plaintiff, as the Gulfstream has increased its own business over the years – including by adding a deck, adding Sunday hours (Affidavit of Jef Kirk ¶ 2), and hosting weddings. Because the final product of construction does not unreasonably interfere with Plaintiff’s easement, Plaintiff’s Motion should be denied.

B. The process of construction will not unreasonably interfere with the easement.

Plaintiff’s easement is non-exclusive. That is, Plaintiff shares the parking lot with others, including Marina Restaurant. Marina Restaurant – having been demolished – is not open for business. As a result, no parking spaces are occupied by Marina Restaurant’s customers. Instead, the only parking spaces that Marina Restaurant used or may use until it reopens are those spaces that are needed for construction activities. In addition,

³ Tellingly, nowhere in Plaintiff’s pleadings does Plaintiff actually count the parking spaces to support its argument that spaces will be lost.

construction occurs primarily during the day on weekdays, and Gulfstream does not open until 4:00 p.m. on weekdays, so there is very little overlap.

Of the 61 spaces in the lot, Plaintiff Gulfstream alleges that Marina Restaurant used 13 to store construction material. (Plaintiff's Memorandum p. 4). Put another way, over 75% of the shared parking lot was available to Gulfstream. Right now, there are no construction containers in the parking lot. Neither is there a construction fence in the parking lot, as revealed by the attached photos taken yesterday. (Exhibit H). As a result, 100% of the parking lot is currently available to Plaintiff Gulfstream. Nonetheless, Plaintiff takes the curious position – while itself using 75% to 100% of the parking lot – that Marina Restaurant is not sharing because Marina Restaurant is using 0% to 25%.

In conversations between counsel, Plaintiff took the position that it would be fine for Marina Restaurant to use 13 spaces or even half the lot or more for vehicular parking, but that use of even a single space for anything other than vehicular parking constitutes unreasonable interference with the easement that might put Plaintiff Gulfstream out of business. Plaintiff's argument is flawed in at least two ways.

First, unlike Plaintiff – which claims an easement for ingress, egress, and parking – Defendants *own* the parking lot. Accordingly, Defendants use of the lot is not restricted to parking only. Instead, Defendants may use the lot for any purpose that does not unreasonably interfere with the easement. Consider the analogous example of a farmer who licenses non-exclusive quail-hunting rights on his land. While the licensee hunter is restricted to only hunting quail on the land, the farmer is free to hunt quail, or hunt other game, or to plant crops, or not plant crops, etc. – whatever the farmer likes, as long as he does not unreasonably interfere with the hunter's easement.

Second, consistent with Defendants' rights to use the lot for multiple purposes as described above, the lot has historically been used for purposes other than parking without any objection from Gulfstream. Among other things, semiannual fishing tournaments have been at the marina for over two decades. Attached are photos of tournaments in 2016 and 2015 (Exhibit E). The photos show approximately half of the lot roped off, and a large tent erected. Unlike the current construction – which is occurring during Gulfstream's slow season (Transcript pp. 15-16) – the fishing tournaments occurred during peak season (Transcript p. 15-16) (Gulfstream states “. . . the middle of the summer [is] our peak season.”).

Plaintiff Gulfstream has not offered any record of Gulfstream ever objecting to Defendants' use of the half the parking lot for fishing tournaments during peak season, and there is no public record of Gulfstream ever seeking to enjoin such use. Gulfstream's acquiescence to the fishing tournaments year after year belies its argument that use of a mere 13 parking spaces during the dead of winter will irreparably harm its business.

II. Plaintiff's motion must be denied because the equities balance in favor of Defendants.

It is axiomatic that the Court should not take action that makes matters worse. See Burch v. Burch, 395 S.C. 318, 331, 717 S.E.2d 757, 764 (2011) (“Courts have the inherent power to do all things reasonably necessary to insure that *just results* are reached to the fullest extent possible [and equally] instructive is the equitable maxim that one who seeks equity must do equity.”) (emphasis added) (Internal citations and quotations omitted); see also Colegrove v. Green, 328 U.S. 549, 566, 66 S. Ct. 1198, 1209 (1946) (declining to exercise discretionary jurisdiction where “the cure sought may be worse than the disease.”)

Whether “a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.” Levine v. Spartanburg Reg'l Servs. Dist., Inc., 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). Accordingly, within the Court’s analysis of whether Plaintiff has shown irreparable harm and an inadequate remedy at law, is a balancing of the equities. Poynter Invs. v. Century Builders of Piedmont, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010) (holding that balancing the equities is not a separate fourth element required to obtain an injunction, but rather “is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test.”); see also First Union Nat’l Bank v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998) (“The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. The decision to grant equitable relief is in the discretion of the trial judge.”).

Here, the equities balance in favor of Defendants for two reasons. First, the harm which is certain to befall Defendants if an injunction is issued is far greater than the speculative harm which may or may not befall Plaintiff if an injunction is not issued. Second, Plaintiff’s inequitable conduct in this matter precludes Plaintiff receiving equitable relief.

A. Defendant will be harmed more by the issuance of an injunction than the Plaintiff will be if an injunction is not issued.

Plaintiff alleges that its restaurant business will be irreparably harmed if no injunction is issued and Defendants use thirteen parking spaces for construction activities.

However, Plaintiff does not allege that Defendants will interfere with Plaintiff's use of its kitchen, dish room, dining room, or bar absent an injunction.

On the other hand, if this Court enjoins Defendants, not only will Defendants restaurant business not use any parking spaces, neither will it be able to use its kitchen, dish room, dining room, or bar *because its building has been torn down*. Plaintiff argues that complete loss of a business constitutes irreparable harm. (Plaintiff's Memorandum pp. 7-9). Defendants agree. However, it is Defendants' business that is in danger of being completely lost, not Plaintiff's.

Plaintiff's business has survived semiannual occupation of the parking lot for peak-season fishing tournaments year after year, thus calling into serious question the allegation that its business will be destroyed by off-season use of a few parking spaces during construction. In contrast, Marina Restaurant's business cannot operate at all without a building. If this Court issues an injunction preventing construction of the new building, then it is beyond any reasonable doubt that Defendants will lose their entire business.

Plaintiff cites Cty. Council of Charleston v. Felkel ("Felkel") in support of enjoining Defendants. (Plaintiff's Memorandum p. 6 citing Cty. Council of Charleston v. Felkel, 244 S.C. 480, 483, 137 S.E.2d 577, 578 (1964)). However, Felkel is clearly distinguishable. As Plaintiff states in its memorandum, the injunction in Felkel was appropriate because there "it was conceivable that irreparable damage might result, *whereas to maintain the status quo could result in damages to no one.*" (Plaintiff's Memorandum p. 6) (emphasis added). Here, unlike in Felkel, maintaining the current status quo is certain to result in substantial damage to Defendants because Defendants have no building in which to run their restaurant.

In addition, Felkel predates Rule 65 by two decades. Whether or not the standard for injunctive relief in 1964 was that damages be “conceivable,” that is not the standard now. Instead, “[t]o obtain a preliminary injunction, a party *must demonstrate* irreparable harm.” Atwood Agency v. Black, 374 S.C. 68, 75 n.3, 646 S.E.2d 882, 885 (2007) (emphasis added). To “demonstrate” irreparable harm means “to establish that it would suffer irreparable harm . . .” Rawlinson Rd. Homeowners Ass'n v. Jackson, 395 S.C. 25, 36, 716 S.E.2d 337, 343 (Ct. App. 2011) (“A party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. . . [Therefore, to] succeed in its motion, the Association had to establish that it *would suffer* irreparable harm without an injunction, lacked an adequate remedy at law, and would likely succeed on the merits.”) (emphasis added). Accordingly, whether or not speculative harm was sufficient to support an injunction in 1964, it is not sufficient now.

Because any harm to Plaintiff if no injunction is issued would be minor and speculative, whereas the harm to Defendants if they are enjoined is major and certain, equity requires that Plaintiff’s Motion be denied.

B. Plaintiff’s inequitable conduct precludes its receiving equitable relief.

Plaintiff’s inequitable conduct is manifold. First, Plaintiff improperly obtained both an *ex parte* Temporary Restraining Order (“TRO”) as well as an *ex parte* Order extending the effect of the TRO for an additional eight days. Under Rule 65, to obtain an *ex parte* TRO, a party must represent to the Court that “damage will result to the applicant before

notice can be served and a hearing had thereon.” Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 120 (2001) (quoting Rule 65, SCRCP).

Plaintiff communicated with this Court *ex parte* even though it knew that Defendants were represented by counsel and available for a hearing. When Plaintiff filed its Emergency Motion for Temporary Restraining Order on November 16, 2016, Plaintiff knew that Defendants were represented by attorney Dan Stacy because Defendant told Plaintiff just the day before that “Dan Stacy is my attorney.” (Transcript p. 3). Nonetheless, Plaintiff left the “Defendant’s Attorney” section of the Civil Motion Cover Sheet blank, and did not Plaintiff serve Dan Stacy. (Exhibit F).

Plaintiff also knew when it filed its Emergency Motion on November 16, that Defendants were available for a hearing on the matter two days later, on November 18. Plaintiff knew that Defendants were available because just the day before Plaintiff and Defendants had scheduled a meeting for November 18 (Transcript pp. 10-11, 24). Based in part on the above misrepresentations, Plaintiff obtained an *ex parte* TRO.

Plaintiff’s counsel met with Dan Stacy on November 21, 2016 to discuss this matter. Nonetheless, on November 22, 2016, Plaintiff filed another *ex parte* motion, this one entitled “Motion for Extension of Temporary Restraining Order Temporary Injunction, Payment of Rent.” As before, Plaintiff did not disclose to the Court that it knew that Defendants were represented by counsel, despite having met with Dan Stacy just the day before. As before, Plaintiff left the “Defendant’s Attorney” section of the Civil Motion Cover Sheet blank. (Exhibit G). And as before, Plaintiff did not serve Dan Stacy. Based in part these misrepresentations, Plaintiff obtained another *ex parte* Order. Moreover, the

hearing on Plaintiff's Motion was set for December 5, 2016 – two weeks later than it could have been had Plaintiff been candid with this Court.

As a result of its misrepresentations, Plaintiff obtained and maintained a TRO for 18 days to which it was not entitled, and would not have obtained had it disclosed to this Court, as required, that it knew that Dan Stacy was Defendants' attorney, and that Defendants were immediately available for a hearing on the matter. This inequitable conduct alone is sufficient to support denial of Plaintiff's Motion for Temporary Injunction.

Second, Plaintiff intentionally mislead Defendants that Plaintiff approved of Defendants construction plans until Defendant had demolished its building. Only when Defendants' building was gone – and thus Plaintiff Gulfstream's only neighboring competitor out of business – did Plaintiff come forward with its objection and this lawsuit.

Defendants advised Plaintiff of Defendants' plans over a year and half ago in May 2015. (Affidavit of M. Lawhon ¶ 6). Plaintiff and Defendants met and communicated regularly and with increasing frequency as the beginning of demolition and construction approached. (Affidavit of M. Lawhon ¶¶ 6-14). Plaintiff provided input, and Defendants incorporated this input into their plans. *Id.* At no time before demolition was complete did Plaintiff voice any objection to Defendants. (Affidavit of M. Lawhon ¶ 22).

The day before Plaintiff filed this lawsuit, Linda Barnaba, Director of Operations for Plaintiff The Gulfstream Café, Inc., told Defendants the following:

1. "you're making a lot of improvements, you know, to the marina which, you know, we are super-excited about." (Transcript p. 3).
2. "I'm so glad that you called, Mr. Lawhon, because we, you know, the timing is not bad for us. You know, the last time I guess it was Mr. Stone, they did

the dredging. It was unfortunate for us. It was just bad timing because it was the middle of the summer which was during our peak season. So right now it's not, you know, it's not the worst time in the world for us." (Transcript pp. 15-16).

3. "It's just the two holidays that, you know, that we're concerned about. And that's really we're looking at about like a three-week period of time. So I mean if -- you picked a good time, you know, to do this, and I'm sure that you were really considerate, you know, making that decision." (Transcript p. 16).

4. "I'm the best neighbor in the world." (Transcript p. 3).

5. "there's really enough pie to go around, absolutely enough, you know." (Transcript p. 23).

6. "... it sounds to me like, you know, it's going to be a great partnership. I mean it's -- I really appreciate you calling me back, and I appreciate the fact that we're willing to sit down and, you know, take a look at this. And I'm super-excited." (Transcript p. 23).

7. "I look forward to seeing you, then, on Friday." (Transcript p. 24).

Defendants demolished their own building as a result of Plaintiff's false representations between May 2015 and October 2016 that it supported the demolition and reconstruction. By seeking now to prevent construction of the very project which Plaintiff told Defendants was "an improvement . . . to the marina which, you know, we are super-excited about," Plaintiff reveals its actions for what they are -- a cynical ploy to use the power of this Court to eliminate Plaintiff's only local competition.

III. If the Court holds that an injunction is proper, then Plaintiff should be required to post bond in the amount of not less than \$2,000,000.00.

A nominal bond of \$250 does not satisfy Rule 65(c). Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007). Instead, bond must be for “an amount sufficient to protect [Defendants] in the event the injunction is ultimately deemed improper.” Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007). For example, to support an injunction preventing payment of a \$100,000.00 note, the Court in Martin v. Paradise Cove Marina, Inc. required movants “to provide an injunction bond of \$ 126,250 for the payment of costs and damages suffered by any party found to have been wrongfully enjoined.” Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 382, 559 S.E.2d 348, 350 (Ct. App. 2001). Likewise, to enjoin a defendant from cutting timber on land it possessed, a bond of \$5,000 in 1911 dollars was required. Atl. Coast Lumber Corp. v. E. P. Burton Lumber Co., 89 S.C. 143, 145, 71 S.E. 820, 820 (1911). \$5,000 in 1911 is worth over \$115,000 today. See <http://www.saving.org/inflation/inflation.php?amount=5,000>.

Here, as set forth in the attached affidavits, Defendants will suffer damages of at least \$2,000,000.00 if they are enjoined from rebuilding the building. (Affidavit of M. Lawhon, ¶ 44); (Affidavit of C. Lawhon ¶ 30). As a result, Plaintiff must post an injunction bond of at least \$2,000,000.00, as this is the least amount sufficient to protect Defendants in the event the injunction is ultimately deemed improper. Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007).

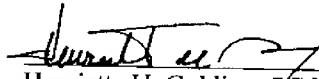
CONCLUSION

Because Defendants’ construction activities do not unreasonably interfere with Plaintiff’s claimed easement and because the equities balance in favor of Defendants,

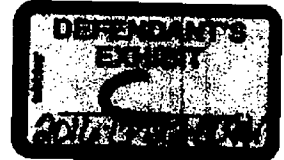
Defendants respectfully request that this Court deny Plaintiff's Motion for Temporary Restraining Order.

Alternatively, if this Court grants Plaintiff's Motion, either in whole or in part, then Defendants respectfully request that this Court order Plaintiffs to post cash bond within ten days of entry of the order, in an amount not less than \$2,000,000.00 to protect Defendants in the event the injunction is ultimately deemed improper.

McNAIR LAW FIRM, P.A.


Henrietta U. Golding, SC Bar #2173
Lane D. Jefferies, SC Bar #101764
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: (843) 444-1107
Fax: (843) 444-3964
Email: hgolding@mcnair.net
ljefferies@mcnair.net
Attorneys for Defendants

Myrtle Beach, South Carolina
December 5, 2016



From: Dan Stacy
Sent: Tuesday, November 22, 2016 3:08 PM
To: 'Redman, George W' <GRedman@bellamylaw.com>
Subject: FW: Site Plan

Bldg. permit to follow.

From: Heather Kakert [<mailto:Heather@SGAarchitecture.com>]
Sent: Tuesday, November 22, 2016 2:25 PM
To: Dan Stacy <DStacy@OxnerandStacy.com>; Mark Lawhon <marklawhon@gmail.com>
Cc: Steve Goggans <Steve@SGAarchitecture.com>
Subject: RE: Site Plan

Dan,
Please find the proposed site plan, building plans, and elevations for Marlin Quay.

Let me know if you need them in individual files.

Thank you,
Heather

From: Dan Stacy [<mailto:DStacy@OxnerandStacy.com>]
Sent: Tuesday, November 22, 2016 1:51 PM
To: Mark Lawhon; Heather Kakert
Subject: RE: Site Plan

Heather, I need the bldg. plans, elevation drawing, and the plan you sent to Mark yesterday in one email if that is possible. Thank you.

From: Mark Lawhon [<mailto:marklawhon@gmail.com>]
Sent: Monday, November 21, 2016 3:50 PM
To: Dan Stacy <DStacy@OxnerandStacy.com>; Heather Kakert <Heather@sgaarchitecture.com>
Subject: RE: Site Plan

You can get all you need from Heather. Heather give Dan whatever he needs

On Nov 21, 2016 3:37 PM, "Dan Stacy" <DStacy@oxnerandstacy.com> wrote:

What about the building plans, elevations etc.? Also, he sent that subpoena last week and "forgot" to mention it today. I need the summons and complaint you were served with as well so I can get that to Henrietta

From: Mark Lawhon [mailto:marklawhon@gmail.com]
Sent: Monday, November 21, 2016 12:31 PM
To: Dan Stacy <DStacy@OxnerandStacy.com>
Subject: Fwd: Site Plan

Dan here is the drawing you requested you have my pennits for the demolition and foundation. Let me know if you need something else.

Thanks again

Mark

----- Forwarded message -----
From: "Laura Helminski" <Laurah@sgaarchitecture.com>
Date: Nov 21, 2016 12:24 PM
Subject: Site Plan
To: "Mark Lawhon" <marklawhon@gmail.com>
Cc: "Heather Kakert" <Heather@sgaarchitecture.com>

Mark,

Per our conversation, please find the site plan attached that includes the building outline.

Please let me know if you need anything more.

Laura

Laura Helminski, AIA, NCARB

Architect

SGA Architecture

Architecture | Interior Design | Landscape Architecture | Land Planning

245 Business Center Lane

Suite 4B

Pawleys Island, SC 29585

843.979.5450 - Direct

843.979.5458 - Fax

laurah@sgaarchitecture.com

www.sgaarchitecture.com

From: Dan Stacy
Sent: Monday, November 21, 2016 4:52 PM
To: 'Redman, George W' <GRedman@bellamylaw.com>; 'Pat Henry' <PHenry@thompsonlaw.com>
Subject: FW: Marlin Quay

From: Holly Richardson (<mailto:hrichardson@gtcounty.org>)
Sent: Monday, November 21, 2016 4:52 PM
To: Dan Stacy <DStacy@OxnerandStacy.com>
Subject: Marlin Quay

The Zoning Department signed off on the foundation plans for the Marlin Quay development. The building permit cannot be issued without a zoning sign off. Joanne reviewed parking, etc. at that time. Keep in mind that this project is about maintaining the existing parking area since the construction of the marina/restaurant is a replacement of the use that was there previously.

Let me know if you need further info.

Holly Richardson, AICP
Chief Planner
Georgetown County Planning and Code Enforcement
129 Screven Street
Georgetown, SC 29440
843-545-3254 (W)
843-545-3299 (F)
hrichardson@gtcounty.org

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Laura

Laura Helminski, AIA, NCARB

Architect

SGA Architecture

Architecture | Interior Design | Landscape Architecture | Land Planning

245 Business Center Lane

Suite 4B

Pawleys Island, SC 29585

843.979.5450 - Direct

843.979.5458 - Fax

laurah@sgaarchitecture.com

www.sgaarchitecture.com

From: Dan Stacy
Sent: Tuesday, November 22, 2016 3:13 PM
To: 'Redman, George W' <GRedman@bellamylaw.com>
Subject: FW: Message from "RNP0026737C6066"

-----Original Message-----

From: copier@loslaw.net [mailto:copier@loslaw.net]
Sent: Tuesday, November 22, 2016 3:16 PM
To: Dan Stacy <DStacy@OxnerandStacy.com>
Subject: Message from "RNP0026737C6066"

This E-mail was sent from "RNP0026737C6066" (MP C5503).

Scan Date: 11.22.2016 15:16:24 {-0500}
Queries to: copier@loslaw.net



Georgetown County
DEPARTMENT OF BUILDING INSPECTION

CERTIFICATE OF TEMPORARY POWER

Permit Number: COMM-10-16-22020

Date: November 07, 2016

Owner's Name: PALMETTO INDUSTRIAL DEVELOPMENT

Lot #

Owner's Address: 1508 S WACCAMAW Drive
GARDEN CITY, SC 29576

Tax Map # 41-0129-002-00-00

Location Address: 1508 SOUTH WACCAMAW Drive
Garden City, SC 29576

Zoning District: PD

Health Department No:

Type of Structure: New Construction

Contractor: CENTRAL CONSTRUCTION CO., LLC

THIS STRUCTURE DESCRIBED ABOVE MAY BE USED FOR A PERIOD OF Completion WITH THE
FOLLOWING CONDITION:

A GROUND-FAULT-CIRCUIT-INTERRUPTER IS REQUIRED FOR ALL RECEPTACLE OUTLETS TO BE USED BY
CONSTRUCTION PERSONNEL.

Date Expires: COMPLETION OF CONSTRUCTION

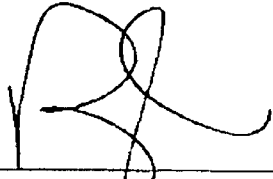
APPROVED BY: _____

Palmetto_00020

AFFIDAVIT

I, (Contractor or Owner) license # , do attest and affirm that any subcontracted work over the sum of \$200.00 (two hundred dollars) shall be by a licensed or registered contractor by the State Homebuilders Commission as a contractor or specialty contractor. (This applies only to sub-contractors required to be licensed by the State). This will be for all work covered by Building Permit # .

OWNER / BUILDERS PLEASE NOTE: SC State Law prohibits the offering of the structure for sale or rent for a period of two years from the issuance of a Certificate of Occupancy; violators of this are subject to penalties as provided by law.



Witnessed by



Contractor or Owner's Signature

Palmetto_00021



GEORGETOWN COUNTY DATE: 11/07/2016
SOUTH CAROLINA

BUILDING PERMIT CARD

Inspection Request Line: (843) 545-3261

ISSUED TO: PALMETTO INDUSTRIAL

JOB ADDRESS: 1508 SOUTH WACCAMAW

PERMIT #: COMM-10-16-22020

Garden City, SC 29576

FLOOD ZONE: VE EL 16'

ZONING DISTRICT: PD

FRONT SETBACK:

SIDE SETBACK:

REAR SETBACK:

NATURE OF WORK: FOUNDATION & PIERS ONLY FOR NEW MARLIN QUAY RESTAURANT & STORE

CONTRACTOR: CENTRAL CONSTRUCTION CO., LLC

TAX MAP #: 41-0129-002-00-00

WILL THE CONTRACTOR PLACE A CONSTRUCTION SIGN ON THE JOB SITE? No

TYPE OF INSPECTIONS

	PASS	FAIL		PASS	FAIL
FOOTING/SETBACKS			ROUGH TOTAL		
FLOOR FRAMING			SHEATHING		
SLAB-PLUMBING			ELECTRICAL COMPLIANCE		
SLAB/POLY WIRE			SWIMMING POOL		
FRAMING-ROUGH			MISCELLANEOUS		
ROUGH MECHANICAL			FINAL		
ROUGH PLUMBING					
ROUGH ELECTRICAL					
BOND BEAM					

ISSUED BY: 

THIS PERMIT MUST BE DISPLAYED AT THE ADDRESS SHOWN ABOVE AND A SET OF PLANS KEPT ON SITE DURING THE ENTIRE PERIOD OF CONSTRUCTION.

Palmetto_00022



GEORGETOWN COUNTY
SOUTH CAROLINA
COMMERCIAL ROSTER CARD
Inspection Request Line: (843) 545-3261

DATE: 11/07/2016

ISSUED TO: PALMETTO INDUSTRIAL L... JOB ADDRESS: 1508 SOUTH WACCAMAW Drive
PERMIT #: COMM-10-16-22020 Garden City, SC 29576

TRADE	CONTRACTOR	GEORGETOWN CO. REG #	PHONE NUMBER
GENERAL CONTRACTOR			
ELECTRICIAN			
PLUMBER			
HEATING & AIR			
GLASS & GLAZING			
*CONCRETE			
MARINE			
*MASONRY			
*PRE-ENGINEERED METAL BUILDING			
*INTERIOR RENOVATION			
SPECIALTY ROOFING			
*GENERAL ROOFING			
*STRUCTURAL FRAMING			
SWIMMING POOLS			
FIRE SPRINKLER			
STRUCTURAL SHAPE			
*GRADING			
ASPHALT PAVING			
*WOOD FRAME STRUCTURE			
BOILER			
BRIDGES			
PRESSURE & PROCESS PIPING			

ALL CLASSIFICATIONS MARKED WITH AN ASTRISK (*) MAY BE PERFORMED BY THE GENERAL CONTRACTOR WITH A BUILDING (BD) LICENSE CLASSIFICATION. PROVIDE THE GENERAL CONTRACTOR'S GEORGETOWN COUNTY REGISTRATION # FOR THESE TRADES UNLESS THE WORK IS BEING PERFORMED BY A LICENSED ENTITY. ALL OTHER SUBCLASSIFICATIONS MUST BE STATE LICENSED BY THE S.C. CONTRACTORS LICENSING BOARD AND HAVE A GEORGETOWN COUNTY REGISTRATION NUMBER. NO RESIDENTIAL SPECIALTY REGISTRATION NUMBERS WILL BE ACCEPTED FOR COMMERCIAL CONSTRUCTION.

Palmetto_00023

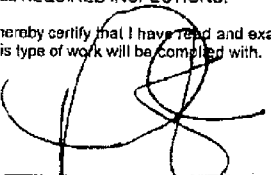


Building Permit	Permit No. 00019
	Issued Date: 11/7/2016
Expiration Date: 05/06/2017	

Project Address 1508 SOUTH WACCAMAW Drive Garden City, SC 29678		Project Name MARLIN QUAY MARINA		Applicant PALMETTO INDUSTRIAL DEVEL		
Tax Map # 41-0129-002-00-00	District Garden City	Lot / Block 0 / 0	Zoning PD			
Sewer	Water	Type of Const	Type of Heat	Setback - Front	Setback - Side	Setback - Rear
Exterior	Fireplaces	Type of Fuel	Rooms	Bedrooms	Bathrooms	Stories
Proposed Use MARLIN QUAY RESTAURANT & STORE (FOUNDATION & PIERS ONLY)			Describe Work FOUNDATION & PIERS ONLY FOR NEW MARLIN QUAY RESTAURANT & STORE			
Owner Information PALMETTO INDUSTRIAL DEVELOPMENT		Address 1508 S WACCAMAW Drive GARDEN CITY, SC 29576	Phone	Cell	Fax	
Contractor(s) CENTRAL CONSTRUCTION CO., LLC		Address 3534 TURBEVILLE Highway LAKE CITY SC 29560	Phone (843)687-8470	Cell		
Contact Type Architect	Name STEVE GOGGANS	Company SGA ARCHITECTURE	Address 245 Business Center Lane Pawleys Island, SC 29585	Phone (843)237-3421		
Engineer	Saul Martinez	Martinez & Associates, Structural Engineers, PA	807 Main Street Myrtle Beach, SC 29577-3871	(843)839-1620		
Flood Zone VE EL 16'	Fire Zone Murrells Inlet-Garden City Fir	Valuation: \$ 150,000.00	Fee Total \$ 2,799.75	Amt Paid \$ 2,799.75	Amt Due \$ 0.00	
Occupancy Type	Total Sq Feet: 5181					
Comments:						

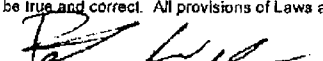
**** NOTICE ****
This application shall become the BUILDING PERMIT when approved by the Building Official or Development Coordinator. The permit issued shall be construed to be a license to proceed with the work and shall not be construed as authority to violate, alter or set aside any of the provisions of any ordinances, code, regulation, law or standard. Georgetown County reserves the right to enforce any violation of any code, regulation or law existing as of the date of these presents or created subsequently that applies to the work whether known or unknown to Georgetown County Building and Zoning Department. This permit shall become invalid unless the work authorized is commenced within six (6) months. IT IS THE RESPONSIBILITY OF THE APPLICANT TO SCHEDULE ALL REQUIRED INSPECTIONS.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of Laws and Ordinances governing this type of work will be complied with.



Approved
11/7/2016

Date



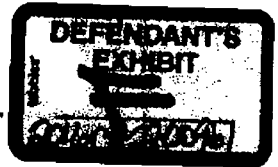
Signature of Contractor
11/7/16

Date

Signature of Owner

Date

Palmetto_00019



STATE OF SOUTH CAROLINA

COUNTY OF Georgetown

The Gulfstream Café, Inc.,

☒ Plaintiff

v.

J. Mark Lawhon, Individually, and
Palmetto Industrial Development, LLC

☐ Defendant

IN THE 1 1 COURT OF COMMON PLEAS

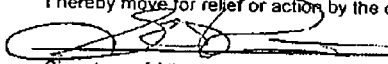
☐ FAMILY COURT

CASE NO. 2016-CP-22-00961

MOTION INFORMATION FORM
AND COVER SHEET

COPY

check box above indicating submitting party

Name, SC Bar No. & Address of Plaintiff's attorney		Name, SC Bar No. & Address of Defendant's attorney	
George W. Redman, III SC Bar #72365 Bellamy Law Firm PO Box 357, MB, SC 29578 Telephone: 893.448.2400 Fax: 843.448.3022		SC Bar:# Telephone: Fax:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)			
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Plaintiff's Motion for Temporary Restraining Order</u>			
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion Type			
☒ Written motion attached			
☐ Form Motion --			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
		November <u>16</u> , 2016	
Signature of Attorney for Plaintiff		Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: <u>\$25.00</u>			
☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse of Abuse and Neglect			
☐ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☐ Other: _____			
JUDGE'S SECTION		JUDGE	
☐ Motion Fee to be paid upon filing of the attached order.		CODE: _____	
☐ Other: _____		Date: _____	
CLERK'S VERIFICATION			
Collected by <u>Linda L. Lane</u> (print name)		DATE FILED <u>11-16-16</u>	
☒ MOTION FEE COLLECTED: <u>\$25</u>			
☐ CONTESTED - AMOUNT DUE: _____			

2016 NOV 16 PM 4:32
ALMA WHITE
CLERK OF COURT
FILED
GEORGETOWN COUNTY, S.C.