

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

J & W CORPORATION OF
GREENWOOD,

Plaintiff,

vs.

BROAD CREEK MARINA OF
HILTON HEAD, LLC; BROAD CREEK
MARINA OPERATIONS, LLC; BROAD
CREEK MARINA PROPERTIES, LLC; and
BROAD CREEK MARINA
DEVELOPMENT, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-07-1622

**INTERIM ORDER RELATING TO
RELOCATION OF PLAINTIFF'S
OFFICE SPACE**

RECEIVED
JUN 04 2020
SC Court of Appeals

This case came before the undersigned for a trial on the merits beginning May 15, 2019, and concluding May 16, 2019. All parties appeared and were represented by counsel. The case involves claims and counterclaims regarding multiple issues, which issues generally stem from a 99-year Lease Agreement ("Lease") executed on September 23, 1993, between Plaintiff J & W Corporation of Greenwood ("J & W"), as the Tenant, and Hilton Head Island Marina, L.P., a predecessor-in-interest to Broad Creek Marina Properties, LLC ("BCMP"), as the Landlord.

The Lease relates to certain portions of Broad Creek Marina located on Hilton Head Island, South Carolina.¹ Eleven years after the initial Lease was executed, in connection with a prior landlord/tenant dispute involving the Lease, the parties entered into a Release and Confidential Settlement Agreement dated December 13, 2004.

¹ A copy of the Lease was entered into evidence as Defendants' Exhibit 1. The testimony at trial indicates that Landlord owns the property and is assisted in the administration of the Lease by an affiliated entity, Broad Creek Marina Operations, LLC ("BCMO"), which operates the Broad Creek Marina.

The claims and counterclaims in the current dispute arise from both the Lease and the Release and Settlement Agreement.² At the conclusion of the trial, the matter was taken under advisement by the Court and will be resolved in the near future by the Court in one or more orders. However, the Court recognizes that one issue — the future location of J & W's commercial office space — needs immediate resolution. The urgency has arisen in part based on a notice issued by the Town of Hilton Head ("Town") to BCMP/BCMO indicating that a commercial office use of the structure where J & W's office is currently located has not been previously authorized or permitted by the Town. The Town's notice was dated May 3, 2019, and states that the commercial office use of the structure must be discontinued within sixty (60) days of the notice, or by July 3, 2019. Although representatives of the Town testified that the deadline could be extended if sufficient, good faith progress toward relocating J&W's office is being made, the Court believes, and the parties agree, that the issue is appropriate for expedited resolution.

The parties disagree, however, as to the respective rights, responsibilities, liabilities, and damages relating to the issue of the office. The Court will make a final resolution of all of these issues in a final order, but issues this Interim Order to provide the parties with immediate guidance for the resolution of the issue as to where the future location of J & W's office space will be on a going forward basis. The Court's decision on this issue was assisted substantially by the fact that the testimony of both sides confirms a willingness for the office to be placed in the location that the Court is establishing within this Interim Order.

Therefore, based on the exhibits and testimony in the record, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants BCMP and BCMO shall immediately at their

² A copy of the Release and Settlement Agreement was entered into evidence as Defendants' Exhibit 2. The signatories to the Release and Settlement Agreement were J & W and Defendant Broad Creek Marina of Hilton Head, LLC, which is also a predecessor-in-interest to BCMP under the Lease.

sole expense, take all reasonable and necessary steps to permit and obtain a temporary portable rental office (as described in testimony by Mr. Freedman and Mr. Jones at trial), which shall be placed in a location mutually agreeable to the parties but in such a place as to not require any additional site work (foundation, etc.). BCMP/BCMO shall pay the expenses necessary to make utilities (specifically electricity, phone and internet) available in the temporary space. J & W shall post any account deposits and pay directly for all monthly utility charges and trash pickup charges for the temporary office.

Further, immediately upon the permitting and availability of the temporary office, J & W shall, at its expense, vacate the current structure and move to the temporary office provided, where J & W shall operate until BCMP and BCMO provide the new floating office location that is set forth below. Once J & W has vacated the current structure and is operating in the temporary office, Defendants may demolish or reutilize the current structure as they see fit.

With regard to the permanent relocation of J&W's office for the unexpired portion of the Lease, it is further ordered that as soon as reasonably possible, BCMP/BCMO shall at their sole expense, take all reasonable steps to permit and acquire a new floating office with at least 300 square feet of commercially useable space and at least a 20-year anticipated service life. The floating office will remain the legal property of BCMP as an improvement to the real property, but shall be a portion of the "Leased Property" for all purposes under the Lease and the Release and Settlement Agreement, as applicable.

Once the new floating office has been properly permitted, installed, and a Certificate of Occupancy issued, J & W shall at its expense, vacate the temporary office and move to the new floating office. Immediately upon the issuance of a Certificate of Occupancy, all future costs and expenses of maintenance, repair, upkeep, environmental and regulatory compliance, sanitation,

utilities, trash service, taxes, insurance and future replacement of the floating office, shall be the sole responsibility of J & W. Additionally, Tenant, at Tenant's expense, will cause the floating office to be separately metered for applicable utilities within 30 (thirty) days of taking occupancy of the floating office. The various provisions of the Lease and the Release and Confidential Settlement Agreement shall be applicable to the floating office and the other "Leased Property," as defined in the Lease and as redefined in the Release and Confidential Settlement Agreement.

The location of the new floating office shall be the area marked on the diagram attached as Exhibit A, so as to be adjacent to J & W's leasehold dockage, and as close to shore as possible, but not using any of J & W's leasehold dock footage. If an amendment to the existing floating office permit to allow for the location indicated on Exhibit A is not approved by OCRM, either party can petition the Court upon an expedited basis under Rule 60, SCRCF, or otherwise, for an expedited ruling on an alternate location in the event that the parties cannot agree to an alternate location for the new floating office that OCRM does approve.

In the event that the parties cannot agree as to other issues relating to aspects/specifications of the temporary office or aspects/specifications of the floating office, or other matters, the Court is prepared to assist them. The Court shall also fully resolve all claims, counterclaims and remaining issues through a final order or orders to be issued upon further review and consideration of the record.

IT IS SO ORDERED.

The Honorable Marvin H. Dukes, III
Master-in-Equity and Special Circuit Judge for
Beaufort County

May ____, 2019

Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-1622

J & W Corporation of Greenwood, Inc.

Broad Creek Marina of Hilton Head,
LLC; Broad Creek Marina Operations,
LLC; Broad Creek Marina Properties,
LLC; and Broad Creek Development,
LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Ellis R. Lesemann

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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
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For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

 CLERK OF COURT



Beaufort Common Pleas

Case Caption: J W Corporation Of Greenwood , plaintiff, et al VS Broad Creek
Marina Of Hilton Head Llc , defendant, et al
Case Number: 2018CP0701622
Type: Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069