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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-001282

Case No. 17-ALJ-07-0085-CC

Richard J. Hook and Phillip Patterson.....Respondents,

vs.

South Carolina Department of Health and Environmental Control.....Appellant.

RECORD ON APPEAL

VOLUME 3 OF 3 (SUPPLEMENT)

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to impair such title as the Grantor received, and the Grantor does bind itself and its successors and assigns to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's successors and assigns against all persons whomsoever lawfully claiming or to claim the same or any part thereof by, under or through the Grantor, but not otherwise.

WITNESS the Grantor's hand and seal this 21st day of July, 2010.

SIGNED, sealed and delivered in the presence of:

^{as of}
BRANCH BANKING AND TRUST COMPANY,
a North Carolina banking corporation (SEAL)

By: [Signature]
Otis B. Northington, Senior Vice President

[Signature]
Witness #1
Regina M. Lucas
Witness #2 / Notary

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG) PROBATE

Personally appeared before me the undersigned witness and made oath that he/she saw Otis B. Northington, as Senior Vice President of **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation, sign, seal and as the act and deed of the company deliver the within written Title to Real Estate, and that he/she, with the other witness named above, witnessed the execution thereof.

[Signature]
Witness #1

Sworn to before me this 6th
day of July, 2010.
Regina M. Lucas
Notary Public for North Carolina
My commission expires: 8-21-2012



EXHIBIT A

All that certain piece, parcel and tract of land, together with any improvements located thereon, situate, lying and being in the City and County of Charleston, State of South Carolina, and shown as "LOT 9" on a plat by Richard A. Aldridge, S.C.P.L.S. 20854 of Trico Engineering Consultants, Inc. entitled, "FINAL PLAT SHOWING LOTS 7 THRU 28 BELLE TERRE SUBDIVISION FORMERLY KNOWN AS PARROT POINT SUBDIVISION OWNED BY PARROT POINT, LLC. LOCATED ON JAMES ISLAND IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", which said plat is dated November 9, 2004, last revised January 18 2005, and recorded in Plat Book EH at pages 688 through 692, inclusive, in the RMC Office for Charleston County, South Carolina.

Said tract of land having such size, shape, dimensions, buttings and boundings, more or less, as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Branch Banking and Trust Company, a North Carolina banking corporation, by deed of Courtney Lane, LLC dated September 2, 2009, and recorded October 15, 2009, in Book 86 at Page 852, in the Charleston County RMC Office.

Being all of TMS Number: 452-06-00-136.

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
 COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is Lot 9, Belle Terre, 627 Parrot Point Drive, Charleston, Charleston County, South Carolina bearing Charleston County Tax Map Number 452-06-00-136 and is being transferred by Branch Banking and Trust Company, a North Carolina banking corporation, to Wesley Jay Patterson on July 12, 2010.
3. Check one of the following. The deed is:
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because: _____
 (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked:
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$269,500.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$269,500.00
- (b) Place the amount listed in item 5 above here: \$ 0.00
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a)
and place result here: \$269,500.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$997.15.

8. As required by Code Section 12-24-70, I state that I am the responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

**BRANCH BANKING AND TRUST COMPANY, a
North Carolina banking corporation (SEAL)**

By: *Otis B. Northington*
Otis B. Northington, Senior Vice President

SWORN to before me this 6th
day of July, 2010.

Regina M. Weal
Notary Public for North Carolina
My Commission Expires: 8-21-2012

(SEAL)



\\11845388.3

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RICHARD J. HOOK,

Petitioner,

vs.

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL AND PHILLIP PATTERSON,

Respondent.

Docket No.: 17-ALJ-07-0085-CC

**PETITIONER'S ANSWERS TO
DEPARTMENT'S FIRST
INTERROGATORIES**

IN RE:

FORD DEVELOPMENT CORP. V. SCDHEC
DOCKET NO. 05-ALJ-07-0031-CC

**TO: BRADLEY D. CHURDAR, ESQUIRE ATTORNEY FOR SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Richard J. Hook
176 Sharon Church Road
Lexington, SC 29072
No statements have been taken.

Phillip Patterson (a/k/a Brent Patterson)
627 Parrot Point Drive
Charleston, SC 29412
No statements have been taken.

Curtis M. Joyner
SCDHEC
No statements have been taken.

Blair Williams
SCDHEC

No statements have been taken.

Any witness identified by any other party to this litigation.

Petitioner reserves the right to supplement this answer after additional discovery is obtained, including review of the Department's files, which has been requested.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the defense in the case.

ANSWER:

Aerial photographs of the property

Photographs of the dock

Plat of subdivision

Consent order dated January 25, 2005 and exhibits

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: Unknown at this time.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

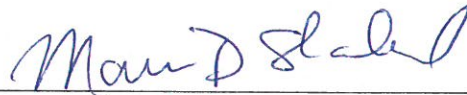
ANSWER:

Brent Patterson is the owner of Lot 9, Parrot Point Drive, a/k/a 627 Parrot Point Drive and has knowledge regarding the permit amendment issued in 2014 and construction of the dock on Lot 9.

Richard J. Hook is the owner of Lot 10, Parrot Point Drive and has knowledge regarding circumstances surrounding the purchase of Lot 10 and discovery of the dock constructed on Lot 9.

Curtis M. Joyner issued the permit authorizing construction of the docks on Parrot Point Drive and in the Parrot Point community.

Blair Williams has knowledge regarding the Consent Order pertaining to Lot 9 and Lot 10, Parrot Point Drive and the permits issued authorizing construction of the docks in the Parrot Point Community.



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Attorneys for Petitioner, Richard J. Hook

September 7, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RICHARD J. HOOK,

Petitioner,

vs.

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL AND PHILLIP PATTERSON,

Respondent.

Docket No.: 17-ALJ-07-0085-CC

CERTIFICATE OF SERVICE

IN RE:
FORD DEVELOPMENT CORP. V. SCDHEC
DOCKET NO. 05-ALJ-07-0031-CC

The undersigned hereby certifies that she has this day served copies of Petitioner's
Answers to Department's First Interrogatories via U.S. Mail, postage pre-paid this 7th day of
September, 2017, on the following parties of record listed below:

Bradley D. Churdar, Esquire
South Carolina Department of Health and
Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Phillip Patterson
627 Parrot Point Drive
Charleston, SC 29412



NEXSEN PRUET, LLC

Charleston, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Richard J. Hook,)	Docket No.17-ALJ-07-0085-CC
)	
Petitioner,)	
)	
vs.)	
)	
South Carolina Department of Health and Environmental Control and Phillip Patterson,)	RESPONDENT PATTERSON'S SUPPLEMENTAL ARGUMENTS IN OPPOSITION TO PETITIONER'S MOTION TO ENFORCE CONSENT ORDER
)	
In Re: Ford Development Corp. v. SCDHEC, Docket No. 05-ALJ-07-0031-CC)	
)	
Respondents.)	
)	

Following oral arguments on Petitioner’s Motion to Enforce Consent Order before the Honorable S. Phillip Lenski, Administrative Law Judge, on Wednesday, December 6, 2017, the Court offered counsel for all parties until Monday, December 18, to submit any further written arguments in support of their respective positions. On behalf of Respondent Patterson the following additional arguments are submitted:

Petitioner Hook contends he is entitled to seek enforcement of a consent order that resulted from a contested case action to which Hook was never a party, Ford Development Corp. v. SCDHEC, Docket No. 05-ALJ-0031-CC. (Exhibit B to Motion to Enforce). However, that contention needs to be put in context to the overall picture of the Belle Terre Dock Master Plan (DMP) approval process and resulting twenty-seven (27) dock permits. As pointed out in respondent Patterson’s Return to Motion to Enforce, there is a back history to the proceeding which led to that Consent Order and which casts doubts on its enforceability.

The Consent Order Hook seeks to enforce was a result of an application to change the alignment of the dock walkway on Lot 9, now owned by Patterson. However, the alignment of the Lot 9 dock sought to be changed resulted from an earlier contested case brought by the James Island Public Service District (JIPSD) and eleven named individuals. James Island Public Service District, et al. v. SCDHEC and Ford Development, Docket No. 03-ALJ-07-0105-CC. The petitioners in that earlier case (particularly the named individuals who resided on Parrot Creek but not within Belle Terre) objected to the DMP and the docks approved by it due to, *inter alia*, negative impacts on navigation, the adjacent tidelands, and their use and enjoyment of the public trust lands.

The case between petitioner JIPSD and respondents DHEC and Ford Development was settled on September 23, 2003, by a Stipulation of Dismissal With Prejudice (Exhibit B to Respondent's Return). This Stipulation contains the statement "The terms and conditions of this settlement are fully set forth in a separate Settlement Agreement and Partial Release." However, despite requests by Patterson to DHEC, the Clerk of the Administrative Law Court, JIPSD, and counsel for Ford and JIPSD at the time of that dismissal, no one has been able to locate or produce a copy of that agreement. As will be seen by the argument set forth below, the terms of that agreement could have significant repercussions depending on this Court's resolution of Hook's motion.

Notwithstanding the absence of a written copy of the Settlement Agreement and Partial Release, the Stipulation itself references the permits authorized by the DMP by number, including P/N #2002-1E-322-P, the permit for Lot 9. That reference, of necessity, includes the special conditions which, in the part pertinent to this proceeding, provides: "Lot 9 dock will angle to Parrot Creek rather than extend straight from upland property thereby reducing the walkway length from

595' to 200'." (Exhibit A to Respondent's Return, p. 2 of 15.)

Following JIPSD's withdrawal from the case, the named individuals proceeded to a contested case hearing before Judge Anderson which resulted in a Final Order and Decision filed November 13, 2003. (Exhibit C to Respondent's Return). On page 6 of this Final Order and Decision Judge Anderson finds:

Moreover, though the approved DMP for Lots 1-5 and 7 sanctioned the permitting of six individual walkways for each lot, **Ford agreed to the construction of and OCRM approved** joint-use docks on those lots. Those docks consist of shared walkways between Lots 1-2, 3-4, and 5-7. However, the docks depart from the typical joint use design in that at the terminus of the shared walkway each lot owner has access to their own pierhead and float. As a result, the docks permitted for Lots 1-5 and 7 consist of three walkways, six individual pierheads and six individual floats. The combined walkways at these locations reduce the scenic and environmental impacts of these docks.

Additionally, during the permitting process, **OCRM modified the approved corridor for Lot 9**. The dock corridor identified in the approved DMP indicates a dock length of 595 feet. In deviating from the approved corridor, the permit extended the dock between the property lines but reduced the length of the walkway. The dock permitted on Lot 9 now extends at an angle within the view corridor for Lot 10, but the walkway for this dock has been reduced from 595' to 200' thereby warranting the crossing of the extended property lines. (emphasis added)

Those findings are important because following the contested case hearing the individually named petitioners continued their appeal (under the then-existing procedures) to the Coastal Zone Management Appellate Panel (CZMAP). (Exhibit D to Respondent's Return). However, based on the concessions made by Ford and DHEC, these petitioners abandoned their challenges to the docks on Lots 1-5, 7-11, and 24-28. *id.* p.2. The clear inference from that relinquishment of their appellate rights is that the resolution of the location, size and/or realignment of those docks removed their objections.

In this action Hook is seeking to enforce a Consent Order filed February 9, 2005 in a

“contested case” which had been requested on January 5, 2005 and to which Hook was not a party. The “case” had not even been docketed and assigned to a Judge by the Court, which means there had never been a public notice that an appeal had been filed. ALC Rule 12. The Consent Order changed the alignment of the walkway and dock for Lot 9 which had been previously settled by a Final Order and Decision filed on November 13, 2003 as well as being a subject of an earlier Stipulation of Dismissal With Prejudice. The alleged underpinning allowing this re-writing of the DMP permits by a Consent Order, was the “unfortunate” failure of the Stipulation of Dismissal and the Final Order and Decision to contain any mention of “OCRM’s intent to limit amendments to the General Permit.” (Consent Order, p. 2.) In fact however, there was no need to contain any such language in those documents because the agency’s regulation already covered amendments to DMPs. As referenced in the letter denying the amendment request, Regulation 30-12(3)(b) provided that “amendments to the general permit must be in keeping with the spirit of the original dock master plan to the maximum extent feasible.” (Exhibit F to Respondent’s Return). OCRM went on to explain, “It is staff opinion that maintaining the ‘spirit’ or ‘intent’ of the dock master plan and general permit is to retain the original alignment.” *id.* Thus the basis underlying the Consent Order should be viewed as invalid and the Order itself unenforceable by anyone.¹

Hook contends that, notwithstanding the fact that he was never a party to the proceeding that resulted in the Consent Order, he has standing and is entitled to bring this motion more than two years after Patterson’s dock was built because he did not become aware of the dock’s alignment until

¹This regulation was amended on June 24, 2005, and now reads “Major modifications of individual structures that would require a new public notice will not be permitted; however, those modifications that are minor in nature will be considered as long as the request is in keeping with the spirit of the DMP.” S. C. Ann. Regs 30-12(3) (c). This language is entirely in keeping and consistent with staff’s interpretation of the regulation in 2004.

“earlier this year” (Hook Amended Pre-Hearing Statement) despite having received written notice in 2014 that Patterson had requested an amendment to the permit - presumably indicating that construction of a dock was imminent - and being directed as to how to request or review “plans depicting the proposed work.” (Exhibit H, DHEC Return to Motion.)

Assuming this Court agrees that Hook is entitled to relief under those facts, what is the Court going to do when JIPSD, or Mr. and Mrs. Douglas Patterson, or Mr. and Mrs. Charles Christen, Jr., or Mr. and Mrs. Douglas Springer, or Mr. and Mrs. Glenn Young, or Mr. and Mrs. David Francer, or Mr. Alan Tannenbaum notices the existing dock on Lot 9 is being ripped out and a new dock 566' long being constructed straight out across Parrot Creek towards their property? What is the Court going to do when they bring an action demanding enforcement of the November 13, 2003 Final Order and Decision? What is the Court going to do if the “Settlement Agreement and Partial Release” referenced in the Stipulation of Dismissal (with prejudice) between JIPSD and Ford and DHEC is discovered and contains provisions prohibiting any realignment of docks different than those “Ford agreed to ... and OCRM approved” in 2003? If Hook has standing to enforce a Consent Order issued a dozen years ago in a proceeding to which he was never a party based on information he allegedly only discovered in March 2017 indicating that the terms of that Consent Order had not been adhered to in 2014, how could this Court deny standing to JIPSD or the named individual petitioners to enforce a Final Order and Decision to which they most definitely had been parties and which had specifically addressed and resolved concerns they had raised and litigated to a conclusion prior to the 2005 Consent Order or deny them the requested relief? Merely posing the questions demonstrates the can of worms that would be opened by acceding to Hook’s demand.

Further, there is no demonstration by Hook that he is entitled to relief even if the Consent

Order was valid and had been breached by DHEC. Hook has produced no evidence that he has suffered any injury by any alleged failure of DHEC. Counsel for Hook agreed at Wednesday's hearing that Hook was asserting no right to an unobstructed view of Parrot Creek and adjacent tidelands and acknowledged that no such right exists under South Carolina jurisprudence. Instead she couched his position as trying to "protect his investment" in Lot 10. However, in the next breath she asserted that the value of the investment was determined by Hook on the basis of an unobstructed view. That would appear to be a distinction without a difference. At any rate, as noted, Hook has produced no evidence other than his own opinion that his property has been depreciated by the existence of the Patterson dock. The fact is, as admitted by Hook, he purchased his lot "at the peak of the real estate market in Charleston." (Petitioner's Reply, p. 10.) There is no demonstration that Lot 10 would be valued at one million dollars in today's market regardless of the existence of his neighbor's dock, or that whatever its present value, that value is diminished by the presence of the Lot 9 dock.

As to that latter point, counsel for Hook advances a unique standard for balancing the equities between Hook and Patterson. She postulates that since Hook purchased "at the peak of the real estate market" while Patterson acquired his lot "at the bottom of the real estate market," "equity weighs in favor of Petitioner over Respondent." *id.* p. 13. Counsel for Patterson has scoured the legal reporters in a fruitless effort to find any support for such a proposition. There is no contention that Patterson had knowledge of the Consent Order or otherwise did anything improper in this matter. As between Hook and Patterson, the equities clearly fall in Patterson's favor. Hook's dispute is with DHEC, not Patterson, yet Patterson is made to suffer for DHEC's mistake and Hook's lack of attention to his investment.

Despite the efforts of counsel for Hook to characterize this as a motion to enforce a prior order of the Court, the facts allege a tort committed by the State through failure to perform an administrative duty, or performing that duty in a negligent manner, resulting in financial damages to Hook. His exclusive remedy would appear to lie in an action pursuant to the South Carolina Tort Claims Act, S. C. Code Section 15-78-10, et seq. The problem he runs into there, in addition to the statute of limitation issue, is that the act specifically exempts the State from liability “for a loss resulting from:... licensing powers or functions including, but not limited to, **the issuance**, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke **any permit**, license, certificate, approval, registration, order, or similar authority **except when the power or function is exercised in a grossly negligent manner.**” §15-78-60 (12). (emphasis added). The entire basis of his complaint is the allegation that an agency employee mistakenly issued a permit pursuant to a DMP that had purportedly been amended by a Consent Order, a copy of which was not placed in the DMP file. It is doubtful that these errors and omissions reach the level of “gross negligence.” In the absence of such proof, the State has preserved its immunity from any claim by Hook to expend State funds in removing and replacing an existing walkway and dock.

CONCLUSION

Hook lacks standing to seek enforcement of an Order issued in a proceeding in which he was not a party.

Hook’s action is time-barred in that he had actual and constructive notice in September of 2014 that Patterson intended to build a dock on Lot 9, and Hook was explicitly provided the means and opportunity to ascertain the alignment and dimensions of that dock.

Hook has offered no evidence beyond his own opinion that the presence of the Patterson dock

has in any way devalued his property or has resulted in any cognizable damages to him.

Hook seeks enforcement of a right that does not exist under South Carolina law; i.e., a prescriptive right to an unobstructed view over adjoining property.

Hook, as a privy to Ford Development, is barred by the doctrine of *res judicata* which prevents a litigant from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. Since the location, alignment and length of the Lot 9 dock was specifically raised and adjudicated in James Island Public Service District, et al. v. SCDHEC and Ford Development, Docket No. 03-ALJ-07-0105-CC, it was not a proper subject to be argued in Ford Development Corp. v. SCDHEC, Docket No. 05-ALJ-0031-CC.

Hook, as a privy to Ford Development, is barred by the doctrine of collateral estoppel, because once a final judgment on the merits has been reached in a prior claim (i.e.; James Island Public Service District, et al. v. SCDHEC and Ford Development, Docket No. 03-ALJ-07-0105-CC)), the re-litigation of those issues actually and necessarily litigated and determined in the first suit (i.e.; the location, alignment and length of the Lot 9 dock) are precluded as to the parties and their privies in any subsequent action based upon a different claim (i.e.; this case).

Granting Hook the relief he seeks would violate the terms and conditions of previous administrative orders and settlements and open the floodgates to suits by parties actually participating in and protected by those previous orders and settlements.

Granting Hook the relief he seeks would amount to causing economic waste with no corresponding return of value.

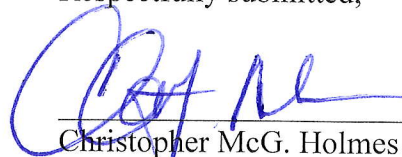
The balancing of equities between Hook and Patterson falls in favor of Patterson so that Hook should be denied the relief he seeks.

There is no proof that the issuance of the Patterson dock permit by an employee of DHEC was done in a manner that would constitute gross negligence; therefore the State has not waived its immunity from an action seeking the relief Hook requests.

Respondent adopts and incorporates by reference the arguments advanced by Respondent DHEC in its opposition to the Motion.

For any and all of the foregoing reasons the Motion to Compel should be denied and this matter dismissed.

Respectfully submitted,



Christopher McG. Holmes
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 388-2966

Attorney for Respondent Phillip Patterson

December 18, 2017
Mt. Pleasant, S.C.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Richard J. Hook,

Petitioner,

v.

The South Carolina Department of Health and
Environmental Control and Phillip Patterson,

Respondents.

In Re:

Ford Development Corp. v. SCDHEC

Docket No. 05-ALJ-07-0031-CC.

Docket No. 74-ALJ-07-0085-CC

**AMENDED PETITIONER'S RETURN
TO RESPONDENT PATTERSON'S
MOTION TO ALTER OR AMEND
JUDGMENT**

Petitioner Richard J. Hook, through his undersigned counsel, hereby submits this Return to Respondent Phillip Patterson's Motion to Alter or Amend Judgment, in which Respondent Patterson requests Reconsideration of the Order issued by this Court on or about May 3, 2019, wherein the Court granted Petitioner's Motion to Enforce the Consent Order and denied the Motion for Relief Under Rule 60(b)(5) filed by Respondent South Carolina Department of Health and Environmental Control ("Department" or "DHEC"). Respondent Patterson argues the following in support of his motion:

1) That the defenses of *res judicata* and collateral estoppel have merit and that the Petitioners in the 2003 contested case ("the 2003 Petitioners") were excluded from any chance to plead the defenses in the 2005 case because they did not receive any notice of the case. Respondent Patterson argues that the Respondents should have been allowed to plead these defenses in this case;

2) That the Special Conditions included in the original Dock Master Plan ("DMP") constitute a binding agreement or contract entered into and between Ford Development

Corporation and DHEC and the 2003 Petitioners that is enforceable and should have been enforced by this Court;

3) That revision of Respondent Patterson's dock to conform to the Consent Order will cause an environmental impact that this Court failed to consider in issuing the subject Order; and

4) That the motion for relief from the Consent Order filed by the Department should have been equally applicable to him and that he is entitled to relief under Rule 60(b), due to mistake, inadvertence or excusable neglect.

PETITIONER'S RESPONSE

I. Petitioner's response to Respondent's arguments re: *res judicata* and collateral estoppel.

Respondent's argument reflects misunderstanding of the application of *res judicata* and collateral estoppel. Petitioner agrees that to any extent that Lot 9's dock alignment was actually litigated in the 2003 contested case, *res judicata* and collateral estoppel could have been pled in the subsequent action in 2005. The Department participated in the 2003 case and the 2005 case and did not raise these defenses.

Respondent Patterson cites no legal authority to support his positions that the 2003 Petitioners should have received specific notice of the 2005 case or that failure to provide notice constitutes a "miscarriage of justice." According to Rule 11 of the Rules of Procedure for the Administrative Law Court, service of copies of requests for contested case filings are required to be made only upon parties and on the affected agency. The rule requires no other notice.

II. Petitioner's response to Respondent's arguments that the Special Conditions of the DMP constitute a binding agreement that should have been enforced by this Court.

Respondent Patterson misunderstands and mischaracterizes the nature of the 2003 Permit. First, the Stipulation of Dismissal of JIPSD does not directly refer to the 2003 Permit or the Special

Conditions contained therein. Rather, the Stipulation provides “[t]he terms and conditions of this settlement are fully set forth in a separate Settlement Agreement and Release.” That sentence refers only to the Settlement Agreement and Release reached between JIPSD, Ford Development Corporation and DHEC-OCRM. Second, the 2003 Permit was issued only to Ford Development Corporation. The terms of the Permit created obligations only on the part of Ford. Moreover, General Condition # 12 provides “[t]hat the authorization for activities or structures herein constitutes a revocable license.” As such, the 2003 Permit constituted a license issued to Ford only.

III. Petitioner’s response to Respondent’s argument that this Court failed to consider potential environmental impact.

As set forth in this Court’s Order, this issue was raised before the Court but the Department failed to submit any evidence in support of the alleged “substantial negative impact” to the environment. Respondent Patterson has not demonstrated any evidence of substantial negative impact. In the absence of such evidence there is nothing for the Court to consider. Moreover the Court may presume, based on the Department’s participation in the 2005 Consent Order, that the alignment of the dock as agreed upon in the 2005 Consent Order is presumptively consistent with the Rules and Regulations governing dock construction.

IV. Petitioner’s response to Respondent’s argument that he is entitled to relief under Rule 60(b), due to mistake, inadvertence or excusable neglect.

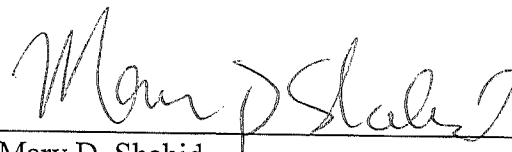
The Court determined that the Department failed to demonstrate that it is entitled to relief from the Consent Order under Rule 60(b)(5). Respondent Patterson did not move for relief under Rule 60(b)(5) or join in the Department’s motion when made. Respondent Patterson cites no legal authority and provides no argument or any justification for his position that Rule 60(b) should provide him relief when he failed to request such relief. Moreover, Respondent Patterson has

provided no response that contests the Court's conclusions in footnote 10 that Patterson has an adequate remedy under the South Carolina Tort Claims Act.

CONCLUSION

Respondent Patterson's Motion concludes with an argument that appeal of the 2003 Order was "the proper avenue of relief" to re-align the dock on Lot 9. This argument ignores that the Department's regulations allow modifications of structures authorized by the DMP that are minor in nature and are in keeping with the spirit of the DMP. R. 30-12(A)(3).

For all the foregoing reasons, Petitioner Hook requests that Respondent Patterson's Motion to Alter or Amend Judgement be denied.



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Attorneys for Petitioner
Richard J. Hook

June 3, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Richard J. Hook,

Petitioner,

v.

The South Carolina Department of Health and
Environmental Control and Phillip Patterson,

Respondents,

In Re:

Ford Development Corp. v. SCDHEC

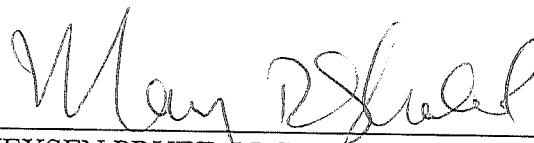
Docket No. 05-ALJ-07-0031-CC.

Docket No. 74-ALJ-07-0085-CC

This is to certify that a copy of Petitioner's Amended Return to Respondent Patterson Motion to Alter or Amend Judgment has been served upon the following counsel of record by mail, addressed to the following as shown below this 3rd day of June, 2019.

Bradley D. Churdar, Esquire
SC Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405

Phillip Brent Patterson
627 Parrot Point Drive
Charleston, SC 29412



NEXSEN PRUET, LLC
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STATE OF SOUTH CAROLINA
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Richard J. Hook,

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v.

The South Carolina Department of Health and
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Respondents.

In Re:

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Docket No. 05-ALJ-07-0031-CC.

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**PETITIONER'S RETURN TO
RESPONDENT PATTERSON'S
MOTION TO ALTER OR AMEND
JUDGMENT**

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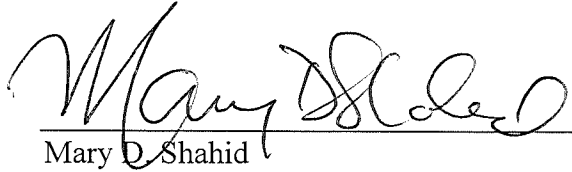
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Attorneys for Petitioner
Richard J. Hook

June 3, 2019
Charleston, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Richard J. Hook,

Petitioner,

v.

The South Carolina Department of Health and
Environmental Control and Phillip Patterson,

Respondents,

In Re:

Ford Development Corp. v. SCDHEC
Docket No. 05-ALJ-07-0031-CC.

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RECEIVED

Sep 10 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-001282

Case No. 17-ALJ-07-0085-CC

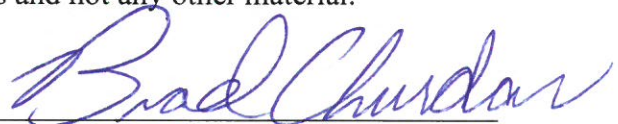
Richard J. Hook and Phillip Patterson.....Respondents,

vs.

South Carolina Department of Health and Environmental Control.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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September 10, 2020
Charleston, South Carolina