

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Oct 21 2020

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Case No. 2017-CP-26-00424
Appellate Case No. 2020-000528

Vista Del Mar Condominium Association; Dennis M. Merritt,
Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins;
and Eleanor N. Hawkins,Plaintiffs,

v.

Vista Del Mar Condominiums, LLC; Atlantic Development
Company, LLC; Atlantic Coast Funding, LLC; John Doe, a
nominal Defendant representing all persons or entities unknown
who may claim an interest in the property that is the subject of
this action, Defendants,

And

Atlantic Development Company, LLC and Atlantic Coast
Funding, LLC, Third-Party Plaintiffs,

v.

Barbara P. Swartz; Nancy S. Case; Winston Salem Daly
Development, LLC; Charles F. Webber; Mark L Skowron,
as Trustee of Mark L. Skowron Revocable Trust dated April 24,
2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron
Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee
of the Norman W. Taylor Revocable Living Trust dated April 28,
2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori
Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W.
Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC;
Beth G. Bauknight; Roderick D. Sanders (or his successor), as Trustee of
the Amended and Restated Revocable Declaration of Trust of Anne
Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon
Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M.

Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; p Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203 LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas McKiernan and Anne McKiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A. dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa t. Edwards; Michael J. Wilk,Third-Party Defendants,

Of which

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins; Barbara P. Swartz; Nancy S. Case; Winston Salem Daly Development, LLC; Charles F. Webber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G. Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; David N.

Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203 LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas McKiernan and Anne McKiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A. dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa t. Edwards; Michael J. Wilk, are the Appellants,

And

Of which Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; and John Doe, a nominal Defendant Representing all persons or entities unknown who may claim an interest In the property that is the subject of this action, are the Respondents.

**RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondents hereby designate the following matter to be included in the Record on Appeal:

Pleadings, Memoranda, etc.

1. Notice of Appeal filed March 20, 2020;
2. Memorandum in Opposition to Respondents Atlantic Development Company, LLC and Atlantic Coast Funding, LLC's ("ADC" and "ACF," respectively) Motion to Reconsider, filed January 25, 2020;

3. ADC and ACF's Notice of Motion and Motion to Reconsider filed November 18, 2019;
4. October 24, 2019 email from Jim Koutrakos to Judge Hyman and counsel including the attachment;
5. September 9, 2019 email from Judge Hyman to counsel;
6. ADC and ACF's proposed order granting partial summary judgment submitted on September 3, 2019;
7. Plaintiffs/Third-Party Defendants/Appellants' proposed order denying summary judgment submitted on September 3, 2019;
8. Notice of Filing filed on September 4, 2019 by ADC and ACF of the Timeline of Undisputed Facts and Plat Book 243 at Page 275, which documents were provided to The Honorable Larry B. Hyman, Jr., during the motion hearing on August 13, 2019;
9. ADC and ACF's Memorandum in Support its Motion for Partial Summary Judgment with Exhibits A to C on the easement filed on August 13, 2019;
10. Memorandum in Opposition to ADC and ACF's Motion for Summary Judgment, together with Exhibits A through E, filed August 9, 2019;
11. ADC and ACF's Notice of and Motion for Partial Summary Judgment on the easement filed on July 15, 2019;
12. ADC and ACF's Notice of and Motion for Partial Summary Judgment with Exhibits A to K on the 2.58 Acre Parcel filed on May 31, 2019;
13. Reply by ADC to the Third-Party Defendants/Appellants' counterclaims filed on July 27, 2018;
14. Reply by ACF to the Third-Party Defendants/Appellants' counterclaims filed on July 27, 2018;
15. Plaintiffs/Third-Party Defendants/Appellants' Answer to ADC's First Amended Answer to Amended Complaint, Counterclaims, and Cross-Claim and ADC and ACF's Third Party Complaint; Third-Party Defendants/Appellants' Cross Claims against Vista Del Mar Condominiums, LLC and John Doe; and Third-Party Defendants/Appellants' Counterclaims against ADC and ACF filed on June 7, 2018;
16. Lis Pendens filed by ADC on April 30, 2018;
17. Summons to Third-Party Complaint; ADC's First Amended Answer to Amended Complaint, Counterclaims, and Cross-Claim; and Third-Party Complaint filed on April 16, 2018;

18. Plaintiffs'/Appellants' Reply to Counterclaims asserted by ADC filed on September 25, 2017;

19. Plaintiffs'/Appellants' Amended Complaint filed April 5, 2017;

20. Plaintiffs'/Appellants' Lis Pendens filed January 25, 2017;

Orders

21. Order Granting ADC and ACF's Motion to Reconsider, Vacating this Court's Prior Order Denying Summary Judgment, and Granting Summary Judgment entered on February 20, 2020;

22. Order Denying ADC and ACF's Motion for Summary Judgment entered on November 8, 2019;

23. Form 4 Order taking ADC and ACF's motion for summary judgment under advisement and retaining jurisdiction entered on August 13, 2019;

Hearing Transcripts

24. Transcript of Record dated August 13, 2019, pages 1–43;

25. Transcript of Record dated January 27, 2020, pages 1–27; and

26. Transcript of Record dated February 18, 2020, pages 1–27.

Rule 209 (c), SCACR Certification

I certify the foregoing Designation of Matter to be Included in the Record on Appeal contains no matter which is irrelevant to this appeal.

RECEIVED
Oct 21 2020
SC Court of Appeals

s/ Demetri K. Koutrakos
Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com
Email: harrydixon@callisontighe.com

**ATTORNEYS FOR RESPONDENTS
ATLANTIC DEVELOPMENT
COMPANY, LLC AND ATLANTIC
COAST FUNDING, LLC**

October 21, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Oct 21 2020

APPEAL FROM HORRY COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Case No. 2017-CP-26-00424
Appellate Case No. 2020-000528

Vista Del Mar Condominium Association; Dennis M. Merritt,
Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins;
and Eleanor N. Hawkins,Plaintiffs,

v.

Vista Del Mar Condominiums, LLC; Atlantic Development
Company, LLC; Atlantic Coast Funding, LLC; John Doe, a
nominal Defendant representing all persons or entities unknown
who may claim an interest in the property that is the subject of
this action, Defendants,

And

Atlantic Development Company, LLC and Atlantic Coast
Funding, LLC, Third-Party Plaintiffs,

v.

Barbara P. Swartz; Nancy S. Case; Winston Salem Daly
Development, LLC; Charles F. Webber; Mark L Skowron,
as Trustee of Mark L. Skowron Revocable Trust dated April 24,
2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron
Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee
of the Norman W. Taylor Revocable Living Trust dated April 28,
2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori
Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W.
Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC;
Beth G. Bauknight; Roderick D. Sanders (or his successor), as Trustee of
the Amended and Restated Revocable Declaration of Trust of Anne
Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon
Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M.

Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; p Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203 LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas McKiernan and Anne McKiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A. dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa t. Edwards; Michael J. Wilk,Third-Party Defendants,

Of which

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins; Barbara P. Swartz; Nancy S. Case; Winston Salem Daly Development, LLC; Charles F. Webber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G. Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; David N.

Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino;p Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203 LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas McKiernan and Anne McKiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A. dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa t. Edwards; Michael J. Wilk, are the Appellants,

And

Of which Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; and John Doe, a nominal Defendant Representing all persons or entities unknown who may claim an interest In the property that is the subject of this action, are the Respondents.

PROOF OF SERVICE

I hereby certify that, on this date, the **Initial Brief of Respondents Atlantic Development Company, LLC and Atlantic Coast Funding, LLC and Respondents' Designation of Matter to be Included in the Record on Appeal** were served on Appellants' counsel via AIS email, pursuant to Supreme Court Order dated March 20, 2020, as amended on May 29, 2020, as follows:

Kenneth R. Moss, Esquire
Wright, Worley, Pope, Ekster & Moss, PLLC
628-A Sea Mountain Highway
North Myrtle Beach, SC 29582
Email: Kennethmoss@wwpemlaw.com

Robert E. Lee, Esquire
P. O. Box 1096
Marion, SC 29571
Email: rel@rellawfirm.com
(Attorneys for Appellants)

A copy of the service email is attached hereto, as required.

I further certify that all parties required by Rule to be served have been served.

s/ Demetri K. Koutrakos

Demetri K. Koutrakos

October 21, 2020
Columbia, South Carolina

Kathy Romero

From: Kathy Romero
Sent: Wednesday, October 21, 2020 1:52 PM
To: Kenneth Moss; Robert E. Lee
Cc: Jim Koutrakos; Harry Dixon
Subject: RE: Vista Del Mar Condominium Association, et al. vs. Atlantic Development Company, LLC, et al. / Appellate Case No. 2020-000528
Attachments: Initial Brief of Respondents.pdf; Respondents' Designation of Matter.pdf; Proof of Service - Initial Brief & DOM.pdf; Clerk.003.pdf

Dear Mr. Moss and Mr. Lee,

Attached please find the Initial Brief of Respondents Atlantic Development Company, LLC and Atlantic Coast Funding, LLC; Respondents' Designation of Matter to be Included in the Record on Appeal; Proof of Service; and letter to the appellate clerk regarding the above-referenced matter. The attached documents are being submitted today to the Court of Appeals for filing. Thank you.

With kind regards,

Kathy Romero
Legal Assistant to Demetri "Jim" K. Koutrakos, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: kathyromero@callisontighe.com

RECEIVED
Oct 21 2020
SC Court of Appeals

The information contained in this electronic message contains privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient of this e-mail, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. If you received this e-mail in error, please immediately notify us by telephone and permanently delete the e-mail and destroy any printed copies immediately. Thank you.

Demetri "Jim" K. Koutrakos
803-404-6900
JimKoutrakos@callisontighe.com

October 21, 2020

RECEIVED
Oct 21 2020
SC Court of Appeals

VIA EMAIL: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RE: Vista Del Mar Condominium Association, *et al.* vs. Atlantic
Development Company, LLC, *et al.*
Appellate Case No. 2020-000528

Dear Ms. Kitchings:

Enclosed herewith please find the Initial Brief of Respondents Atlantic Development Company, LLC and Atlantic Coast Funding, LLC and Respondents' Designation of Matter to be Included in the Record on Appeal, together with the Proof of Service, in the above-referenced matter. Kindly file the same and return a clocked-in copy of each to the undersigned via return email.

The enclosed documents have been served upon Appellants' counsel today via email as indicated in the Proof of Service.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri "Jim" K. Koutrakos

Demetri "Jim" K. Koutrakos

DKK:ksr
Enclosures
cc (via email): Kenneth R. Moss, Esquire
Robert E. Lee, Esquire
Harry A. Dixon, Esquire
1448.217\Appeal\Clerk.003