

THE STATE OF SOUTH CAROLINA  
In The SC Court of Appeals

**RECEIVED**

**Apr 07 2021**

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Case No. 2020-CP-10-00209  
Appellate Case No. 2019-001030

Eugene J. Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11, 1997; 1776, LLC; Beach Fenwick, LLC; The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC; John Doe and Mary Roe,

..... Respondents,

v.

Maybank 2754, LLC, .....Appellant.

**INITIAL BRIEF OF RESPONDENT PENNY CREEK  
ASSOCIATES, LLC**

/s THOMAS B. PRITCHARD  
Thomas B. Pritchard (SC Bar 65006)  
PARKER NELSON & ASSOCIATES  
211 King Street, Suite 107  
Charleston, SC 29401  
(843) 727-2500  
tpritchard@pnlaw.net

*Attorneys for Penny Creek  
Associates, LLC*

April 7, 2021

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF ISSUES ON APPEAL ..... 1

STATEMENT OF THE CASE .....2

STATEMENT OF FACTS .....3

ARGUMENT .....4

I. Appellant’s challenge to the Circuit Court’s subject matter jurisdiction fails..4

II. The Circuit Court correctly held that the alleged easement did not survive the foreclosure.....4

III. The Appellant’s argument that it should have been allowed to amend its complaint.....4

CONCLUSION.....5

**TABLE OF AUTHORITIES**

**Rules**

Rule 208(b)(6), SCACR.....2, 3, 4

### STATEMENT OF ISSUES ON APPEAL

1. Did the trial court have jurisdiction over Respondents' motions for summary judgment where the motions were not a matter affected by Appellant's appeal regarding the mode of trial, and where Appellant did not preserve, affirmatively waived, and is estopped from making its jurisdictional argument?
2. Did the trial court properly grant Respondents' motions for summary judgment where it is undisputed that the first-in-time mortgage on the property was never subordinated to Appellant's alleged unrecorded easement and where Appellant's alleged easement was extinguished by a foreclosure of the mortgage?
3. Did the trial court abuse its discretion in denying Appellant's motion to amend its complaint where the proposed amendments were futile in view of the legal grounds for granting summary judgment?

**STATEMENT OF THE CASE**

Pursuant to Rule 208(b)(6), SCACR Respondent Penny Creek adopts in full the Statement of the Case as set forth by co-Respondent Zurlo Entities.

**STATEMENT OF FACTS**

Pursuant to Rule 208(b)(6), SCACR Respondent Penny Creek adopts in full the Statement of the Case as set forth by co-Respondent Zurlo Entities.

## ARGUMENT

**I. Appellant's challenge to the Circuit Court's subject matter jurisdiction fails.**

Pursuant to Rule 208(b)(6), SCACR Respondent Penny Creek adopts the Arguments presented by its co-Respondents, Zurlo Entities, 1776, LLC, Beach Entities and SWA pertaining to the Appellant's appeal that the Trial Court lacked subject matter jurisdiction when it decided Respondents' motions at issue herein.

**II. The Circuit Court correctly held that the alleged easement did not survive the foreclosure.**

Pursuant to Rule 208(b)(6), SCACR Respondent Penny Creek adopts the Argument presented by its co-Respondents Zurlo Entities, 1776, LLC, Beach Entities and SWA pertaining to Appellant's appeal that the Circuit Court erred in granting summary judgment on Respondents' motions because the alleged easement did not survive Wells Fargo's foreclosure on the property and no conspiracy exists which deprived Appellant of alleged easement.

**III. Circuit Court's decision to reject Appellant's request to amend its complaint should be affirmed.**

Pursuant to Rule 208(b)(6), SCACR Respondent Penny Creek adopts the arguments presented by its co-Respondents Zurlo Entities, 1776, LLC, Beach Entities and SWA pertaining to Appellant's appeal that the Circuit Court committed error in not allowing Appellant to amend its Complaint.

**CONCLUSION**

For the foregoing reasons, this Respondent respectfully requests that this Court affirm the Orders of the trial court.

Respectfully submitted,

/s Thomas B. Pritchard  
Thomas B. Pritchard (SC Bar 65006)  
PARKER NELSON & ASSOCIATES  
211 King Street, Suite 107  
Charleston, SC 29401  
(843) 727-2500  
[tpritchard@pnlaw.net](mailto:tpritchard@pnlaw.net)

*Attorneys for Respondent Penny Creek  
Associates, LLC*

April 7, 2021

**RECEIVED**

**Apr 07 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Case No. 2020-CP-10-00209  
Appellate Case No. 2019-001030

Eugene J. Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11, 1997; 1776, LLC; Beach Fenwick, LLC; The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC; John Doe and Mary Roe,

..... Respondents,

v.

Maybank 2754, LLC, .....Appellant.

**PROOF OF SERVICE**

I hereby certify that on this date I have served **INITIAL BRIEF OF RESPONDENT PENNY CREEK ASSOCIATES** on Appellant and other parties to their respective e-mail addressed, pursuant to the Order of Supreme Court Appellate Case No. 2020-000447(g)(3).

Jason Tarokh, Esq.  
[jason@tarokhlaw.com](mailto:jason@tarokhlaw.com)

Scarlet B. Moore, Esq.  
[Scarlet28@msn.com](mailto:Scarlet28@msn.com)

J. Rutledge Young, Jr., Esq.  
[jry@duffyandyoung.com](mailto:jry@duffyandyoung.com)

Patrick C. Wooten, Esq.  
[pwooten@duffyandyoung.com](mailto:pwooten@duffyandyoung.com)

Cheryl D. Shoun, Esq.  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

Jordan N. Teich, Esq  
[jteich@cskl.law](mailto:jteich@cskl.law)

Alexandra Harrington Austin, Esq.  
[aaustin@nexsenpruet.com](mailto:aaustin@nexsenpruet.com)

Jason S. Smith, Esq.  
[js@hellmanyates.com](mailto:js@hellmanyates.com)

John Patrick Turner Norris, Esq.  
[pnorris@cskl.law](mailto:pnorris@cskl.law)

Brian A. Hellman, Esq.  
[bh@hellmanyates.com](mailto:bh@hellmanyates.com)

Kent Taylor Stair, Esq.  
[kstair@cskl.law](mailto:kstair@cskl.law)

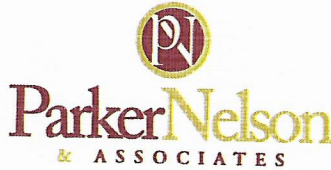
/s THOMAS B. PRITCHARD  
Thomas B. Pritchard (SC Bar 65006)  
PARKER NELSON & ASSOCIATES  
211 King Street, Suite 107  
Charleston, SC 29401  
(843) 727-2500  
tpritchard@pnalaw.net

*Attorneys for Penny Creek  
Associates, LLC*

April 7, 2021

Theodore Parker III  
tparker@pnalaw.net  
*Admitted in Nevada & South Carolina*

Todd N. Nelson  
1965-2002



Thomas B. Pritchard, Esquire  
**Certified Circuit Court Mediator**  
[tpritchard@pnalaw.net](mailto:tpritchard@pnalaw.net)

April 7, 2021

**RECEIVED**  
**Apr 07 2021**  
**SC Court of Appeals**

**VIA E-MAIL**

Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Re: Maybank 2754, LLC v. Eugen J. Zurillo, et al.  
C/A No.: 2020-CP-10-00209  
Appellate Case No.: 2020-001030

Dear Ms. Kitchings:

Pursuant to the Supreme Court Appellate Case No.: 2020-000447©(6), attached please find for filing Respondent Penny Creek Associates, LLC's Initial Brief and Proof of Service as to same.

Please do not hesitate to contact me, should you have any questions or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read 'T. Pritchard', is written over a light blue horizontal line.

Thomas B. Pritchard

TBP

Enclosures

cc: All Counsel of Record (via e-mail only w/ enclosures)

Jacqueline Dixon Phillips  
jdixon@pnalaw.net  
*Admitted in South Carolina*

Stephanie A. Garabedian  
sgarabedian@pnalaw.net  
*Admitted in Nevada & Washington*

Yadira Rios Gibson  
Of Counsel  
yrios@pnalaw.net  
*Admitted in Nevada, California & Illinois*

Shana D. Weir  
sweir@pnalaw.net  
*Admitted in Nevada*

Carlton D. Bowers  
cbowers@pnalaw.net  
*Admitted in South Carolina*

Thomas B. Pritchard  
tpritchard@pnalaw.net  
*Admitted in South Carolina*

Casey D. Gish  
Of Counsel  
cgish@pnalaw.net  
*Admitted in Nevada & California*

Jay T. Hopkins  
jhopkins@pnalaw.net  
*Admitted in Nevada*

LAS VEGAS, NV

P: 702.868.8000 | F: 702.868.8001  
2460 Professional Court, Suite 200 | Las Vegas, Nevada 89128

CHARLESTON, SC

P: 843.727.2500 | F: 843.727.2599  
211 King Street, Suite 107 | Charleston, SC 29401