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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Master in Equity

Marvin H. Dukes, III, Master in Equity  
Case No.: 2020-CP-07-01547

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Appellate Case No. 2022-000301

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Todd E. Taylor,.....Respondent,

v.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller.....Appellants,

v.

South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII,  
.....Respondent.

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**MOTION TO DISMISS APPEAL**

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COMES NOW Respondent South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII (hereinafter "Respondent Regime" or "Regime"), by and through undersigned counsel, pursuant to Rule 201, Rule 240 and Rule 222, SCACR, and moves this Court for an order dismissing the Appeal filed by Appellants Amar and Kennie Gill Living Trust Dated March 15, 2019, Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust dated March 15, 2019, Kenneth V. L. Miller, and Anna M. Miller (hereinafter "Appellants") as it is procedurally improper and does not seek review of appealable rulings.

## BACKGROUND AND STATEMENT OF RELEVANT FACTS

This appeal concerns property within the South Beach Village Lagoon Villas II Horizontal Property Regime LVII, located in Beaufort County, South Carolina. Appellants have filed a Notice of Appeal of two (2) Orders entered by the Honorable Marvin H. Dukes, Master in Equity for Beaufort County: (1) Order Granting Respondent Regime's Petition for Relief Pursuant to S.C. Code § 33-31-160 dated February 3, 2022 (hereinafter "2-3-22 Order"), attached hereto as **Exhibit A**; and (2) Order Denying Appellants' Rule 59(E) Motion to Reconsider and Alter or Amend dated March 10, 2022 (hereinafter "3-10-22 Order"), attached hereto as **Exhibit B**.

The Regime property includes a total of six (6) individual dwelling units. [Exhibit A at P. 2]. Respondent Todd E. Taylor, Plaintiff below (hereinafter "Respondent Taylor"), is the owner of residential real property in the Regime located at 226 Sea Pines Drive, Apt. 1596, Hilton Head Island, South Carolina. [Exhibit A at P. 2]. Appellants, Defendants below, are the owners of residential real property in the Regime which adjoins Respondent Taylor's property, located at 226 Sea Pines Drive, Apt. 1595, Hilton Head Island, South Carolina. [Exhibit A at P. 2]. Following the renovation and expansion of three (3) of the six (6) dwelling units into the common elements of the Regime, all co-owners of the Regime agree that the Master Deed identifying, describing and governing the Regime requires an amendment in order to lawfully and properly describe the property and rights of the co-owners. [Exhibit A at P. 3;7]. Since at least 2018, the Regime attempted to pursue an Amendment to the Master Deed with the required approval of 100% of the co-owners. [Exhibit A at P. 4]. However, the Regime was unable to reach a solution to which all co-owners agreed. [Exhibit A at P. 4;7].

On July 31, 2020, after the failed attempts to reach consensus on an amendment to the Master Deed, Respondent Taylor filed the instant lawsuit against Appellants, asserting, *inter alia*,

that Appellants illegally expanded Unit 1595 into the Common Area of the Regime, and the encroaching structure must be removed. [Exhibit A at P. 5]. On December 3, 2020, Appellants filed an Amended Answer and Third Party Complaint against the Respondent Regime, seeking, *inter alia*, a Declaratory Judgment that the Regime approved Appellants' addition, and that a valid and enforceable encroachment agreement exists between Appellants and the Regime. [Exhibit A at P. 5]. On August 26, 2021, the Respondent Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160 (hereinafter "Petition"), seeking an Order from the court requiring, *inter alia*, the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting. A true and correct copy of the Petition is attached hereto as **Exhibit C**.

On February 3, 2022, the lower court entered the 2-3-22 Order granting the Regime's Petition. Pursuant to the 2-3-22 Order, the lower court found that "the intervention of the Court is warranted to order a special meeting of the Regime members for the purpose of voting on an amendment to the Master Deed" and "that it is necessary and appropriate to modify the voting requirement for the passage of an amendment to the Master Deed." [Exhibit A at P. 7]. The 2-3-22 Order directed the Regime to hold a Special Meeting within 45 days of the Court's Order for the purpose of voting on a proposed amendment to the Master Deed, subject to a number of procedural requirements, and instructions for the submission of proposed amendments and the manner in which to conduct a vote upon the same. [Exhibit A at P. 7-12]. The 2-3-22 Order provided for a structure in which both Respondent Taylor and Appellants could submit proposed Master Deed amendments for the consideration and vote of the co-owners. [Exhibit A at P. 9].

Most pertinently for purposes of this motion, the 2-3-22 Order provided that at the contemplated Special Meeting, "if a proposed amendment to the Master Deed receives a **majority**

**vote, the Court shall order the amendment to constitute a valid and lawful amendment by subsequent order.”** [Exhibit A at P. 8]. The Order further provides:

Should a majority of co-owners approve an amendment to the Master Deed at the Special Meeting, the Court shall issue a subsequent Order, ordering the Amendment to constitute a valid and lawful amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements, and the Court will order the same to be filed in the public records of Beaufort County.

[Exhibit A at P. 12].

On March 10, 2022, the lower court denied Appellants’ Rule 59(E) Motion to Reconsider and Alter or Amend. The first party claims asserted by Respondent Taylor against Appellants have not been adjudicated; Appellants have a pending Motion for Summary Judgment seeking judgment as a matter of law on those claims. The Declaratory Judgment action asserted by Appellants against Respondent Regime has likewise not been adjudicated. On March 15, 2022, Appellants filed the instant appeal of the 2-3-22 Order and the 3-10-22 Order (hereinafter sometimes collectively the “Appealed Orders”).<sup>1</sup> Respondent Regime files this Motion to Dismiss Appellants’ Appeal because the appealed Orders are not immediately appealable rulings.

#### **MEMORANDUM AND CITATION OF AUTHORITIES**

Rule 201, SCACR provides “[a]ppel may be taken, as provided by law, from any final judgment, appealable order or decision.” “The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [S.C. Code Ann. § 14–3–330]....An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 587–88, 671 S.E.2d 98, 100 (Ct. App. 2008) (internal citations and quotations omitted). “Absent some

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<sup>1</sup> On March 17, 2022, the Regime held the Special Meeting as ordered pursuant to the 2-3-22 Order. The proposed amendment submitted by Respondent Taylor passed by a greater than majority vote.

specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within S.C. Code Ann. § 14–3–330.” *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006). The Supreme Court has further noted that, absent a specialized statute, the appellate courts are “not permitted to hear a case on appeal not comporting with the requirements of [S.C. Code Ann. § 14–3–330].” *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 379 (Ct. App. 2002). “The provisions of section 14–3–330... have been narrowly construed.” *State v. Wilson*, 387 S.C. 597, 601, 693 S.E.2d 923, 925 (2010).

S.C. Code Ann. § 14–3–330 provides for the following categories of immediately appealable orders:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

The Appealed Orders do not fall into any of these categories. The Appealed Orders do not “involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken.” *See Edwards*, 369 S.C. 91, 94.

S.C. Code Ann. § 14-3-330(1) is inapplicable to the Appealed Orders. “To involve the merits, the order must **finally determine** some substantial matter forming the whole or part of some cause of action or defense....*Peterkin v. Brigman*, 319 S.C. 367, 368-69, 461 S.E.2d 809, 809-10 (1995) (quoting *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)) (emphasis added). “If a judgment leaves some further act to be done by the court before the rights of the parties are determined, the judgment is not final....If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.” *S.C. Dep’t of Transp. v. Faulkenberry*, 337 S.C. 140, 146-47, 522 S.E.2d 822, 825 (Ct. App. 1999) (citations and quotations omitted). Simply put, the 2-3-22 Order did not “finally determine” any matters where the lower court directed the Regime to hold a special meeting, at which multiple proposed amendments to the Regime’s Master Deed, including that submitted by Appellants, could be proposed, and **if** a proposed amendment were to receive a majority vote, the court contemplated it would enter a subsequent order declaring the amendment to be lawful and valid. [Exhibit A]. The 3-10-22 Order merely confirmed the ruling set out in the 2-3-22 Order. At the time Appellants filed their Notice of Appeal, there were multiple conditions which would have to occur before the lower court would entertain a subsequent order declaring any passed amendment to be valid and lawful. [*Id.*]. Thus, the Appealed Orders do not fall within Section (1) of the appealability statute.

Under S.C. Code Ann. § 14-3-330(2), pretermitted whether the Appealed Orders affected a “substantial right”<sup>2</sup> of Appellants, none of the criteria listed in subsections (a)-(c) are met. As

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<sup>2</sup>In *Mid-State Distributors*, Chief Justice Toal defined “an order affecting a substantial right” and states, “(t)his is when such an order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.” 310 S.C. 330, 336, footnote 4; *see also Edwards*, 369 S.C. 91, 94. Thus whether an order affects a “substantial right” appears to be based on the same criteria stated in the remainder of S.C. Code Ann. § 14-3-330(2). For the same reasons those

above regarding S.C. Code Ann. § 14-3-330(1), the Appealed Orders do not make any rulings which could possibly be characterized as determinative of the action or as striking out any pleadings where the 2-3-22 Order by its terms contemplates multiple future events and conditions necessary to occur before the lower court would entertain a subsequent order declaring any passed amendment to be valid and lawful. Furthermore, the Appealed Orders do not prevent a judgment from which an appeal may later be taken. *See Edwards*, 369 S.C. 91, 91 (“Under 14-3-330, however, an order must affect a substantial right **and** prevent a judgment from which an appeal may later be taken in order to be immediately appealed.”) (emphasis in original); *see also Tatnall*, 350 S.C. 135, 137–39 (“Pursuant to section 14–3–330(2), this Court may not review an order that does not prevent a judgment from being rendered in the action, and from which the appellant can seek review in any appeal from the final judgment.”) (internal citations and quotations omitted). Thus, the Appealed Orders do not fall within Section (2) of the appealability statute. Moreover, Sections (3) and (4) of the Statute are inapplicable on their face.

The Appealed Orders are intermediary orders which on their face and by their terms contemplate multiple future contingencies and a future ruling before even the matters addressed in the Appealed Orders would or could take effect. These are precisely the type of Orders this Court routinely declines, and should decline, to review. The Appealed Orders are interlocutory orders which do not satisfy any of the criteria set forth in S.C. Code Ann. § 14–3–330, and are therefore not appealable.

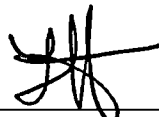
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criteria are not present with respect to the Appealed Orders as set forth above, the Appealed Orders do not affect a substantial right of Appellants.

**CONCLUSION**

Based upon the foregoing, Respondent Regime respectfully requests an Order of this Honorable Court dismissing Appellants' appeal in its entirety. Respondent Regime further respectfully requests that costs and fees be taxed against Appellants to the fullest extent permitted under Rule 222, SCACR.

This 31st day of March, 2022.



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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM BEAUFORT COUNTY  
Master in Equity

Marvin H. Dukes, III, Master in Equity  
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v.

South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII,  
.....Respondent.

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**PROOF OF SERVICE**

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I certify that I have served **Regime Respondent's Motion to Dismiss Appeal**, upon the parties below by depositing a copy of it in the United States Mail, postage prepaid and/or via electronic mail, on March 31, 2022, addressed as follows:

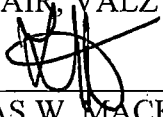
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*Counsel for Appellants*

This 31<sup>st</sup> day of March, 2022.

COPELAND, STAIR, VALZ & LOVELL, LLP

By: \_\_\_\_\_

  
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State Bar No.: 76332

LACEY L. HOUGHTON

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March 31, 2022

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**VIA EMAIL AND REGULAR MAIL**


Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
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[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Re: Todd E. Taylor v. Amar and Kennie Gill Living Trust Dated March 15, 2019, et al;  
Appellate Court Case No.: 2020-CP-07-01547  
Beaufort County Case No.: 2020-CP-07-01547  
CSVL File No.: 4692-61574

Dear Ms. Kitchings:

Enclosed please find Respondent South Beach Village Lagoon Villas, II; Horizontal Property Regime LVII's *Motion to Dismiss Appeal* in this case, together with Exhibits A-C and related *Proof of Service*. The \$50.00 filing fee is also enclosed. By copy of this letter, the enclosed Motion and Exhibits have been served on all counsel of record in this case *via electronic mail*. If anything further is required from Respondent at this time, please advise.

Sincerely,



DOUGLAS W. MACKELCAN  
LACEY L. HOUGHTON

LLH:tjr

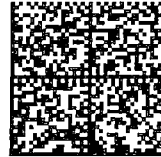
Enclosures

cc: via email only: Edward M. Kubec, Esq.; Magalie A. Creech, Esq.  
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