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**May 16 2022**

**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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**REPLY TO APPELLANTS' RETURN TO RESPONDENT'S  
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 respectfully submits this Reply to 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's (hereinafter "Appellants") Return to Respondent Regime's Motion to Dismiss Appellants' Appeal.

## INTRODUCTION

As fully set forth in the Regime’s Motion to Dismiss Appellants’ Appeal, 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”); and (2) Order Denying Appellants’ Rule 59(E) Motion to Reconsider and Alter or Amend dated March 10, 2022 (hereinafter “3-10-22 Order” and collectively the “Appealed Orders”). While Appellants’ Response to the Regime’s Motion sets out Appellants’ position as to why the lower court erred in the Appealed Orders, the Appellants have not articulated a valid statutory basis for the Appeal under S.C. Code Ann. § 14-3-330. As South Carolina Appellate courts have explained that this statutory basis is a jurisdictional requirement, this Appeal must be dismissed. *See Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 379 (Ct. App. 2002) (discussing subject matter jurisdiction and stating 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].”). The Appealed Orders are precisely the type of unappealable intermediary orders this Court routinely declines to review.

## MEMORANDUM AND CITATION OF AUTHORITIES

Specifically, Appellants argue the 2-3-22 Order is immediately appealable under S.C. Code Ann. § 14-3-330(2)(a) because it is an “order affecting a substantial right made in an action when such order (1) in effect determines the action or discontinues the action.” [App. Resp. Mot. Dismiss at P. 6]. The full text of S.C. Code Ann. § 14-3-330(2)(a) provides appeal may be taken from “[a]n 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.” Appellants cannot meet the requirements of § 14-3-330(2)(a) to demonstrate appealability.

**1. The Appealed Orders Do Not Affect a Substantial Right of Appellants.**

First, the Appealed Orders do not affect a “substantial right” of the Appellants as that phrase is used in § 14-3-330(2). Appellants contend the Appealed Orders affect certain substantive property, statutory, and contractual rights. These arguments are immaterial as the case law of this Court and the South Carolina Supreme Court define an order affecting a “substantial right” in this context as “when such an order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780, footnote 4 (1993). *See also Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) (“Orders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.”); *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) (providing the same definition). Thus determining whether an order affects a “substantial right” is based on the same criteria stated in the remainder of S.C. Code Ann. § 14-3-330(2). Appellants asserts Section(2)(a) governs the immediate appealability of the Appealed Orders. Therefore, Respondent addresses the reasons why the Appealed Order do not meet the criteria of Section 2(a) below.

**2. The Appealed Orders Do Not Determine the Action and Prevent a Judgement From Which an Appeal Might Be Taken or Discontinue the Action, Pursuant to the Criteria Set Forth in S.C. Code Ann. § 14-3-330(2)(a).**

Appellants argue the instant appeal is proper under § 14-3-330(2)(a) which provides for appeal where an order “in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” As set forth in Respondent Regime’s Motion, the 2-3-22 Order does not finally determine or discontinue anything, where on its face it

contemplated multiple future events, the occurrences and outcomes of which were unknown, before the Court would entertain a subsequent order declaring and effectuating an amendment to the Regime's Master Deed, if all procedural requirements were met and an amendment was approved by a majority of the Regime ownership. [See Exhibit A to Resp. Mot. Dismiss Appeal]. 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, instructions for providing non-party owners with notice and opportunity to object to the procedures stated in the Order, 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].<sup>1</sup> Based on the status of events and the matters ordered pursuant to the 2-3-22 Order, at the time of entry of the Appealed Orders and at the time Appellants filed their Notice of Appeal on March 15, 2017, Appellants cannot argue the Appealed Orders "in effect determin[e] the action."

Appellants note that since they filed their Notice of Appeal, the Regime held the Special Meeting as directed by the Court, and a proposed amendment to the Regime's Master Deed received a majority vote<sup>2</sup>. Appellants argue their appeal is therefore proper because "for all practical purposes...the 1973 Master Deed has been amended...under the February 3, 2022 Order." However, Appellants acknowledge the Regime has filed a Motion in the lower court

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<sup>1</sup> On March 7, 2022, Appellants submitted a proposed amendment for consideration by the Regime membership at the Special Meeting which was noticed to occur on March 17, 2022. [See App. Resp. Mot. Dismiss Appeal at Exhibit I at P. 3]. Appellants later withdrew their proposed amendment from consideration at the Special Meeting on March 17, 2022 before a vote could be held regarding the same. [*Id.* at P. 4].

<sup>2</sup> Although not pertinent to the legal inquiry before the Court regarding the jurisdictional basis for this Appeal, Appellants state that the proposed amendment to the Master Deed received 52.183% of the "participating co-owners' votes" at the Special Meeting. To clarify, the proposed amendment received 52.183% of the votes of the entire ownership as defined in the Master Deed and as required pursuant to the Court's 2-3-22 Order.

seeking an Order declaring that amendment to be valid and lawful, and permission to file the amendment in the public records of Beaufort County, which is expressly required and contemplated under the 2-3-22 Order. [*Compare* App. Resp. Mot. Dismiss at Exhibit I *with* Resp. Mot. Dismiss at Exhibit A “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.”]. Under the 2-3-22 Order, the amendment is not effective until the lower court enters a subsequent order as contemplated, if the lower court finds entry of such an order to be appropriate based on satisfaction of the many procedural requirements of the Court’s 2-3-22 Order. The 2-3-22 Order, on its face and by its terms did not “determine” or “discontinue” this action or any part thereof.

Additionally, the second requirement § 14–3–330(2)(a) is unquestionably not met because the 2-3-22 Order does not prevent a judgment from which an appeal might be taken. As the Supreme Court has stated “[u]nder 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.” *Edwards*, 369 S.C. at 91 (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.”).

It is clear that the instant appeal does not satisfy the criteria for an immediately appealable ruling under S.C. Code § 14–3–330 generally, or specifically § 14–3–330(2)(a) as argued by Appellants. Appellants have filed a premature appeal and it must be dismissed.

**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 16<sup>th</sup> day of May, 2022.



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**PROOF OF SERVICE**

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I certify that I have served **Respondent Regime’s Reply to Appellants’ Response to 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 May 16, 2022, addressed as follows:

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This 16<sup>th</sup> day of May, 2022.

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