

Original
Complaint Filed
by OPPOA
March 03, 2022

STATE OF NORTH CAROLINA

PENDER County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: Olde Point Property Owners Association, Inc.
Address: c/o Bradley A. Cox, 3907-100 Wrightsville Avenue
City, State, Zip: Wilmington, NC 28403

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s): Harbour Village Yacht Club, Inc.

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: Harbour Village Yacht Club, c/o Commodore Gregory Leighton, 705 N. Green Tee Rd., Hampstead, NC 28443

Name And Address Of Defendant 2: Harbour Village Yacht Club, c/o Commodore Gregory Leighton, P.O. Box 786, Hampstead, NC 28443



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Bradley A. Cox, HODGES COXE & POTTER, LLP, 3907-100 Wrightsville Avenue, Wilmington, NC 28403

Date Issued: 3-3-22 Time: 11:19 AM
Signature: Sandra J. James
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time: AM PM
Signature:
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA

File No. 22 CV 5 174

PENDER County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: Olde Point Property Owners Association, Inc.
Address: c/o Bradley A. Coxe, 3907-100 Wrightsville Avenue
City, State, Zip: Wilmington, NC 28403

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s): Harbour Village Yacht Club, Inc.

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: Harbour Village Yacht Club, c/o Commodore Gregory Leighton, 14889 US HWY 17, Hampstead, NC 28443

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea Inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Bradley A. Coxe, HODGES COXE & POTTER, LLP, 3907-100 Wrightsville Avenue, Wilmington, NC 28403

Date Issued: 3-3-22 Time: 11:19 AM
Signature: Sandra J. James
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time: AM PM
Signature:
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i>	<input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i>	<input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA
COUNTY OF PENDER.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: CVS

OLDE POINT PROPERTY OWNER'S
ASSOCIATION, INC.
Plaintiff,

2022 APR 3 A.M. 19

PENDER COUNTY

vs.

89

COMPLAINT

HARBOUR VILLAGE YACHT CLUB INC.
Defendant

Now Comes the Plaintiff, Olde Point Property Owner's Association, by and through counsel, claiming against Defendant Harbour Village Yacht Club Inc. as follows:

1. Plaintiff Olde Point Property Owner's Association is a corporation organized under Chapter 55A of the North Carolina General Statutes with its principal and registered office in Pender County, North Carolina.
2. Plaintiff is a property owners association formed for the purpose of the common interest of the property owners to preserve, protect, promote and enhance the quiet and peaceful enjoyment of property ownership and the financial, physical, an aesthetic well-being of the planned community known as "Olde Point Development, Phase I and Phase II" as identified in the Amended Declaration of Restrictive Covenants, Book 4700, Page 1, Pender County Registry. (Exhibit 1-2020 Declarations).
3. Pursuant to N.C. Gen. Stat. § 47F-3-102(4), Plaintiff has the authority to "institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community."
4. All property owners in Olde Point Development have or will have suffer harm and be directly affected by actions as set forth in the claims of relief below, including but not limited to William Keith, Section 5, Phase I, Olde Point Development.

A TRUE COPY
CLERK OF SUPERIOR COURT
PENDER COUNTY
BY *Sandra J. Jones*
DEPUTY CLERK SUPERIOR COURT

5. Defendant is a corporation organized under Chapter 55A of the North Carolina General Statutes with its principal and registered office in Pender County, North Carolina.
6. Defendant is the owner of Lot 1 Rev., Section I, Olde Point Development, Phase I, having acquired said Lot 1 by way of deed recorded in Book 1516, Page 114, Pender County Registry. (Exhibit 2-HVYC deed).
7. Defendant is the owner of the tract in Olde Point Development shown as "Parking Lot" as shown on Map Book 22, Page 47, Pender County Registry and acquired by way of deed recorded in Book 1516, Page 114, Pender County Registry. (Exhibit 2-HVYC Deed).
8. Defendant operates, manages, and maintains a private boating and social club including a clubhouse, recreation area, docks, and boat launch ramp, on Lot 1 Rev. and parking lot on the "Parking Lot" tract.

First Claim for Relief

Interference with Property Right

9. The allegations set forth hereinabove are incorporated by reference as if fully set forth herein.
10. The "Parking Lot" tract was conveyed to Defendant from the Hanley Corporation on September 23, 1999 subject to the following restriction of use: "The above tract is restricted for use only as a Parking Lot for the benefit of Olde Point Development, Inc., its successors and assigns, Olde Point Associates Limited Partnership, its successors and assigns, and Olde Point Property owners, which restriction shall run with land by whomsoever owned." (Exhibit 2-HVYC Deed).
11. Lot 1 Rev was conveyed to Defendant from the Hanley Corporation on September 23, 1999 subject to the following restrictions of use: "The above described Lot 1, Rev., is conveyed subject to a perpetual easement hereby reserved in favor of Olde Point lot owners, and a perpetual and alienable easement hereby reserved in favor of Olde Point Development, Inc. its successors and assigns, and Olde Point Associates Limited

partnership, its successors and assigns to use said Lot as a boat landing and recreation area." (Exhibit 2-HVYC Deed).

12. At the time of conveyance of the property, Olde Point property owner rights and easement, the boat landing and recreation area included:
 - a. A boat ramp to the Intracoastal Waterway sufficient to load and unload a boat from a trailer towed by a motor vehicle
 - b. Driveways
 - c. A pier, ramp and floating dock extending out into the Intracoastal Waterway
 - d. Water access to spray off boats and trailers.
 - e. Beach
 - f. Pathway
 - g. Trees
 - h. Picnic Tables
 - i. Horseshoe Pit
13. Defendant has constructed a gate, allowing them to control and restrict access to the boat landing and portion of the recreation area.
14. Defendant has enacted and published restrictions and requirements for Olde Point property owners that are unreasonable, inconsistent with the deeded easements and property rights, and contrary to North Carolina law. (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members; Exhibit 4-Registration Process for 2022 for Olde Point Residents).
15. On January 27, 2022, Plaintiff requested that Defendant remove the overly restrictive rules and regulations for the use of the property and easement and provide evidence that maintenance costs for the easement were properly calculated. (Exhibit 5-William Keith 1/27/2022 email).
16. On February 4, 2022, Plaintiff followed up with Defendant on the issues raised in the January 27, 2022 email. (Exhibit 6-William Keith 2/4/2022 email).

17. On February 8, 2022, Defendant refused to change any of the Rules and Regulations for Non-Members. (Exhibit 7-Gregory P. Leighton email).
18. Defendant has interfered with the property and easement rights of William Keith and all the Olde Point property owners in the following respects:
 - a. Restricting "use of the boat ramp and parking lot for qualified non-members of Harbour Village Yacht Club who own a boat." (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - b. Requiring Olde Point property owners to "apply for access to the HVYC boat ramp and parking lot." (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - c. Requiring Olde Point property owners to "provide proof of ownership and insurance of the boat(s), trailer(s), and tow vehicle(s)" (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - d. Limiting use to "access to the ramp area and parking lot for launching and retrieving registered boats." (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - e. Towing of any unregistered vehicle. (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - f. Limiting parking to "registered vehicles." (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - g. Prohibiting "[f]ishing, crabbing, swimming and sunbathing...from...the bulkhead." (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - h. Prohibiting "commercial use of the boat ramp or docks." (Exhibit 3-Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
 - i. Prohibiting "EXCESSIVE powering on to [boat owner's] trailer" with a warning that "Failure to abide may result in permanent revocation of ramp privileges."

(Exhibit 3–Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).

- j. Requiring an indemnity agreement for the use of the easement. (Exhibit 3–Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
- k. Asserting that the Defendant has the “right to deny the use of boat ramp and parking lot to any person and any time.” (Exhibit 3–Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
- l. Asserting that the Defendant is “final authority on the interpretation of the policy on non-member use of the boat ramp and parking lot.” (Exhibit 3–Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
- m. Asserting that the Defendant “reserves the right to deny the privilege of continued use of the boat ramp and parking lot to anyone who does not comply with all of the...Rules and Regulations.” (Exhibit 3–Harbour Village Yacht Club, Inc. Rules and Regulations for Non-Members).
- n. Restricting the “ramp and parking lot...for the use of...Olde Point ramp users utilizing the ramp for boat launching.” (Exhibit 4–Registration Process for 2022 for Olde Point Residents).
- o. Restricting the use to property owners and prohibiting guests of Olde Point property owners to use the boat landing area. “Do not allow others outside of your personal residence to use your key fob. Letting others use your fob can cause deactivation and loss of use of the Boat Ramp.” (Exhibit 4–Registration Process for 2022 for Olde Point Residents).
- p. Restricting the use of property owners while renting out their property. “Renters of property in Olde Point can receive a boat ramp key fob if the owner of the Olde Point property agrees to relinquish their key fob during the rental period.” (Exhibit 4–Registration Process for 2022 for Olde Point Residents).

- q. Requiring fees and possible late fees per tow vehicle/boat/trailer before allowing Olde Point property owners access and use of their easement and property rights. (Exhibit 4-Registration Process for 2022 for Olde Point Residents).
 - r. Requiring fees and possible late fees per tow vehicle/boat/trailer, rather than the pro rata share of all Olde Point property owners as holders of the dominant estate of the easements of the reasonable, general maintenance costs of the boat landing, recreation area, and parking lot.
 - s. Other impermissible restrictions to Olde Point property owners use of the boat landing, recreation area, and parking lot that will be shown through discovery and trial.
19. As a proximate result of Defendant's interference with easement and property rights, William Keith and all Olde Point property owners have been injured or damaged and are entitled to permanent injunctive relief.

Second Claim for Relief

Violation of Restrictive Covenants

20. The allegations set forth hereinabove are incorporated by reference as if fully set forth herein.
21. Defendant took ownership of Lot 1 Rev and the Parking Lot tract pursuant to all restrictions of record. (Exhibit 2-HVYC deed).
22. All lots and tracts in Olde Point Development, including Lot 1 Rev and the Parking Lot tract are subject to the Declaration of Restrictive Covenants, originally effective on March 12, 1975, recorded in Book 481, Page 14, Pender County Registry and currently as amended at Book 4700, Page 1, Pender County Registry. (Exhibit 1-2020 Declarations).
23. All lots and tracts in Olde Point Development are limited to "residential purposes exclusively." (Exhibit 1-2020 Declarations, Sec. 6(a)).
24. An exception to the residential purposes restrictive covenant was provided for in the 1975 Declaration of Restrictive Covenants which provided "(c) The Developer further expressly

reserves to itself, its successors and assigns, the right to construct, lease, operate and manage any club, marina, or other like facility with associated amenities, upon any of the property not designated as a residential lot for the mutual enjoyment of the owners and to establish reasonable fees, rules and regulations for the use thereof." (Exhibit 8-1975 Declarations).

25. The club exception continued unchanged in the 1989 Amended Declaration of Restrictive Covenants. (Exhibit 9-1989 Declarations).
26. The 1989 Amended Declaration of Restrictive Covenants included Plaintiff in the definition of "Developer" in the event there was no specified Owner or Developer or successor or assign. (Exhibit 9-1989 Declarations).
27. Olde Point Development, Inc. was succeeded by Olde Point Associates Limited Partnership as Developer.
28. Olde Point Associates Limited Partnership sold their last remaining property in Olde Point Development and ceased to be the Developer or Owner in 2009.
29. The 2020 Amended Declaration of Restrictive Covenants amended the club exception removing language providing the Developer the power to assign and reserving that to the Plaintiff. (Exhibit 1-2020 Declarations).
30. Defendant was never provided an valid assignment from Olde Point Development, Inc., or Olde Point Associates Limited Partnership, Hanley Corporation, Olde Point Property Owner's Association, or any other entity who was or purported to be an Owner, Developer, or their successor, to operate and manage a yacht club pursuant to the Declarations.
31. In the alternative, any valid assignment of the rights to operate and manage a yacht club was revoked by the dissolution of the assignor or the removal of any such rights from the assignor in the Declarations.
32. In the alternative, Plaintiff as the only entity with the current authority under the Declarations to operate and manage a yacht club or assign those rights, revokes any prior

assignment provided to Defendant to operate and manage a yacht club within the Olde Point Development.

33. Plaintiff asserts a claim for declaratory judgment pursuant to N.C. GEN. STAT. § 1-253 and 1-254 and Rule 57 of the North Carolina Rules of Civil Procedure through which Plaintiff seeks to have the court declare and enter a judgment that Defendant has no valid current assignment or authority to use Lot 1 Rev or the Parking Lot tract to manage and operate a yacht club or to otherwise act contrary to the Amended Declaration of Restrictive Covenants.
34. A genuine controversy exists between the Plaintiff and Defendant regarding the authority of the Defendant to manage and operate a yacht club within Olde Point Development.
35. Plaintiff is entitled to a declaratory judgment, pursuant to the provisions of N.C. GEN. STAT. § 1-253 *et. seq.*, that Defendant does not have the authority to manage and operate a yacht club within Olde Point Development; and that the Plaintiff is currently the only entity that has the authority to operate and manage a yacht club within Olde Point Development or provide an assignment to another party to operate and manage a yacht club within Olde Point Development; and that Defendant cease and desist from operating and managing a yacht club within Olde Point Development.

Third Claim for Relief

Preliminary and Permanent Injunctive Relief

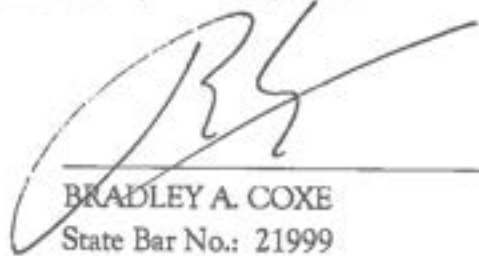
36. The allegations set forth hereinabove are incorporated by reference as if fully set forth herein.
37. Pursuant to the provisions of N.C. GEN. STAT. § 1-485 and Rule 65 of the North Carolina Rules of Civil Procedure, Plaintiff is entitled to preliminary and permanent injunctive relief prohibiting Defendant from interfering with the easement and property rights of the Olde Point property owners as shown in Plaintiff's First Claim for Relief.
38. Plaintiff is likely to succeed on the merits of the claims presented herein.

39. Olde Point property owners are in danger of suffering irreparable harm if relief is not granted as Olde Point property owners are prevented from exercising and enjoying their easement and property rights and no future use or monetary remedy will repair the period of lost use.
40. The conduct of Defendant as alleged herein provides grounds for the issuance of permanent and preliminary injunctive relief.

Wherefore, the Plaintiff prays unto the court as follows:

1. That Plaintiff have and recover against the Defendant a preliminary and permanent injunction against restrictions and limitations on the easement and property rights of Olde Point property owners to use and enjoy the boat landing area, recreation area, and parking lot beyond those contained in the deed recorded in Book 1516, Page 114, Pender County Registry.
2. That the Olde Point property owners are only responsible for their pro rata share of the reasonable, general maintenance of their easement and property rights in the boat landing area, recreation area, and parking lot.
3. For a judgment declaring that Defendant does not have authority to operate a yacht club within Olde Point Development.
4. For a judgment declaring that Plaintiff does have the authority to operate a yacht club within Olde Point Development and has the authority to assign those rights.
5. For the costs of this action to be taxed against Defendant, including Plaintiff's reasonable attorney's fees pursuant to the Amended Declaration of Restrictive Covenants and North Carolina law including N.C. GEN. STAT. § 47F-3-120.

This the 2nd day of March, 2022



BRADLEY A. COXE

State Bar No.: 21999

3907-100 Wrightsville Ave

Wilmington, N.C. 28403

Telephone: (910) 772-1678

Email: bcoxe@hcpplaw.com