

RECEIVED
Jun 10 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Robert E. Hood., Circuit Court Judge
Case No. 2018-CP-26-06033

Appellate Case No. 2022-000031

Royal Garden Resort Regime Homeowners Association, Inc. Respondent

vs.

Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson;
and Phoenix of the Strand, Inc. Appellants

RESPONDENT'S BRIEF IN OPPOSITION TO APPELLANTS' MOTION TO STRIKE

The Appellants have moved the Court pursuant to Rule 240, SCACR for an Order striking Respondent's "Statement of Facts" which in fact is not in Respondent's Initial Brief. Respondent's Brief is in compliance with Rule 208(2), SCACR in that Respondent has followed the standard format as required by the rules and has addressed the statement of issues, statement of the case, and standard of review since Respondent disagrees with Appellants on these matters. Further, Respondent has cited the record over twenty-seven times and Respondent has meticulously identified in its Brief all documents (by name and date) it relies on to sustain the trial court's ruling.

Respondent has the right to set forth its own statement of issues on appeal, statement of case and standard of review if it does not agree with those set out by Appellants in their brief. Rule 208(2), SCACR clearly allows such and states as follows:

(2) Brief of Respondent. The brief of respondent shall conform to the requirements of Rule 208(b)(1)(A)-(F), except that a statement of the issues, of the case, or of the standard of review need not be made unless the respondent is dissatisfied with the statement of the issues, of the case, or of the standard of review by appellant. If a respondent does not include his own statement of the case, he shall be bound by the matters stated or alleged in appellant's statement of the case. If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case. Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c).

STANDARD OF REVIEW

It is well settled that there are two methods employed by Respondent in its brief to answer Appellants' allegations in its brief. The first method is to cite to the record on appeal. The second method is to argue additional sustaining grounds. Respondent has done both in its Initial Respondent's Brief which is clearly allowed under South Carolina law.

ARGUMENT

I. RESPONDENT CITES TO THE RECORD IN ARGUING SALIENT FACTS.

Appellants claim that Respondent has not identified the documents in the record which support its factual position. In fact, Respondent has on pages 6-15 of its brief specifically identified factual matters and evidence presented to the circuit judge. Those documents are as follows:

- The Master Deed
- Supplemental Affidavit of Daniel W. Stacy dated July 30, 2021.
- Affidavit of Stephen Hunt, Sr. dated August 2, 2021
- Affidavit of Stephen Hunt, Sr. dated September 28, 2021
- Affidavit of Harold Outz
- Cable Communications Easement

Each of the above documents was identified at the hearing and cited to in the record and supports the facts alleged by Respondent. Rule 208(b)(4), SCACR governs initial briefs and provides as follows:

The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal.

Here, Respondent has carefully cited each of the above-referenced pieces of evidence including exhibits which are in the record and were properly cited and thus Respondent has complied with SCAR 208(b)(4).

II. APPELLANTS ONLY CITE ONE EXAMPLE WHICH THEY CLAIM MUST BE STRICKEN FROM THE RECORD.

Appellants in their motion argue that the citation to the Prior Cable Communications Easement is inappropriate and was never presented to the lower court. In fact, in the Supplemental Affidavit of Daniel W. Stacy, Jr. filed July 30, 2021, he stated:

I am also aware from a review of the title records for Royal Garden Resort Regime Homeowners Association that a Cable Communications Easement had been obtained from the Royal Garden Resort Regime Homeowners Association on November 18, 2005, and such was filed in the Horry County records on February 7, 2006. This Cable Communications Easement was signed by the Property Manager. (Supplemental Affidavit of Daniel W. Stacy, Jr. filed 7/30/21).

Further, in the August 4, 2021 Transcript of Record, Respondent's counsel stated:

And if Your Honor looks at our submissions, I think it's number seven. If you look at our submission number seven, you'll see quite interestingly that Mr. Donaldson on behalf of the board signed an easement to Spectrum or Time Warner back in 2005 authorizing them to put cable anywhere throughout the building. (Tr. p. 14, line 25; p. 15, lines 1-5).

Thus, contrary to Appellants' argument in their motion, the trial court was presented with the prior Cable Communications Easement as a argument to permit entry by Respondents. This is an additional sustaining ground which is allowed pursuant to South Carolina law. The Supreme Court in *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) is directly on point in

regard to Respondent's argument. In that case, a developer did not ask the circuit court judge to rule on any other grounds believing it could raise those matters on appeal as additional sustaining grounds under the authority of SCACR Rule 220. The Supreme Court in deciding *I'On* found that the developer as the prevailing party could raise additional issues and arguments that were not ruled upon by the circuit court.

In *I'On*, the Court clarified the law regarding additional sustaining grounds. In *I'On*, the Court held:

Consequently, it is not always necessary for Respondent -- as the winning party in the lower court -- to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review. This approach is in keeping with the view, as expressed in Rule 220(c), SCACR, that an appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal. An affirmance promotes judicial economy in finality in private and public affairs which are important public policies.

... Stated another way, the Respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.

In contrast, different preservation rules apply to an appellant -- the losing party in the lower court. An appellate court may not, of course, reverse for any reason appearing in the record. The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. (526 S.E.2d at 718).

In this case, Appellant Donaldson had previously granted, with permission of the HOA, a Time Warner Cable Communications Easement for the same area he now refuses to allow cable boxes to be replaced. This Cable Communications Easement was of record in the Horry County Register of Deeds Office and the Court could take judicial notice of that fact. While Respondent did not specifically receive a ruling in regard to the prior Cable Communications Easement, it was in the record and thus is an independent and additional sustaining ground for affirming the trial court. It shows that the matter of which the Appellants now complain, i.e., the placing of cable boxes in storage units, was long ago waived by Donaldson when he signed a blanket Cable Communications

Easement. Further, the prior Cable Communications Easement signed by Donaldson is in complete conformity with Article IX Section 2 of the Royal Garden Resort Regime HOA Master Deed which granted an express easement to the HOA to repair, replace and maintain a master television antenna service.

CONCLUSION

In summary, Respondent has complied with South Carolina Appellate Court Rule 208(b)(1)(A-F) as to content, Rule 208(b)(2) as to Brief of Respondent, and Rule 208(b)(4) in that Respondent's brief has cited the references in the record, including the master deed, affidavits, the prior Cable Communications Easement and other portions of the transcript as required. All of these documents were before the trial court and are in Appellants' possession. Further, each of these documents is listed in Respondent's Designation of Matter to be Included in the Record on Appeal. Finally, Appellants' motion to strike is based on a generalized complaint of failure to designate matters in the brief which must be denied since all factual issues in Respondent's brief are supported by documents and the trial transcript. It is for this reason that Appellants' motion should be denied.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.A.



Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Respondents

June 10, 2022
Surfside Beach, South Carolina

RECEIVED

Jun 10 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Robert E. Hood., Circuit Court Judge
Case No. 2018-CP-26-06033

Appellate Case No. 2022-000031

Royal Garden Resort Regime Homeowners Association, Inc. Respondent

vs.

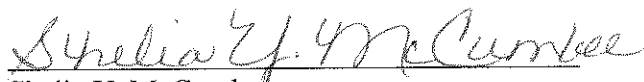
Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson;
and Phoenix of the Strand, Inc..... Appellants

PROOF OF SERVICE

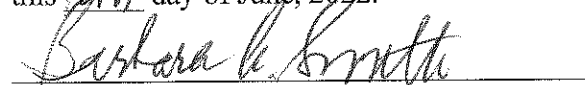
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of **Respondent's Brief in Opposition to Appellants' Motion to Strike** on the 10th day of June, 2022 by depositing a copy of same in the United States Mail, postage prepaid, to:

Douglas M. Zayicek, Esquire
Holly M. Lusk, Esquire
Bellamy, Rutenberg, Copeland, Epps,
Gravelly & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578

Kirby D. Shealy III, Esquire
Luke M. Allen, Esquire
Adams and Reese LLP
PO Box 2285
Columbia, SC 29202


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 10th day of June, 2022.


Notary Public for South Carolina
My Commission Expires: 3/22/24

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

RECEIVED

Jun 10 2022

SC Court of Appeals

AREA CODE 843

238-5648

FAX: 238-5050

EDWARD T. KELAHER*

GENE M. CONNELL, JR.

L. SIDNEY CONNOR, IV

LISA POE DAVIS

*OF COUNSEL

June 10, 2022

ctappfilings@sccourts.org

Jenny Abbott Kitchings

Clerk, South Carolina Court of Appeals

Post Office Box 11629

Columbia, South Carolina 29211

Re: Appellate Case No. 2022-000031

Royal Garden Resort Regime Homeowners Association, Inc. v. Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc.

C/A No. 2018-CP-26-06033

Our File No. 2018-0334C

Dear Ms. Kitchings:

Enclosed please find Respondent's Brief in Opposition to Appellants' Motion to Strike and Proof of Service in the above-captioned matter.

By copy of this letter, we hereby serve Respondent's Brief in Opposition to Appellants' Motion to Strike on counsel of record.

Should you have any question or need anything further at this time, please do not hesitate to contact me.

Sincerely yours,



Gene M. Connell, Jr.

GMCJr:sm

Enclosures

cc w/enc:

Douglas M. Zayicek, Esquire

Holly M. Lusk, Esquire

Kirby D. Shealy III, Esquire

Luke M. Allen, Esquire