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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County

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

Appellate Case No. 2022-000301

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.

APPELLANTS' FINAL BRIEF

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I.

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II.

Could the Master change the Gill-Millers' property rights established by the 1973 Master Deed without the Gill-Millers' consent, when they, and all the unit co-owners, accepted and ratified those rights upon their purchase of their Regime estates in real property subject to the provisions of the 1973 Master Deed?

STATEMENT OF THE CASE

Respondent, Todd E. Taylor ("Taylor"), filed his Complaint on July 31, 2020. (Complaint, ROA 25). 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 (the "Gill-Millers"), filed their Amended Answer and Third-Party Complaint on December 3, 2021, joining Respondent, South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII (the "Regime"). (Gill-Millers Amended Answer and Third-Party Complaint, ROA 32). The Regime filed its Answer to the Gill-Millers' Third-Party Complaint on March 5, 2021. (Regime Answer to Gill-Millers' Third Party Complaint, ROA 41).

On August 25, 2021, the Regime filed a Petition for Relief under S.C. Code Ann. § 33-31-160(c), to which the Gill-Millers filed a Response on November 11, 2021. (Petition for Relief, and Gill-Millers' Response, ROA, respectively, 45 and 91).

On October 6, 2021, with the consent of all parties, and under Rule 53(b), SCRCP, the case was referred in part to the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County.[1] (Order of Reference, ROA 1).

A hearing on the Regime's Petition for Relief was held on November 22, 2021, and on February 3, 2022, the Master entered the appealed-from Order, which granted the Regime's Petition for Relief. (Order Granting the Regime's Petition for Relief, ROA 4).

On February 11, 2022, the Gill-Millers filed a motion under Rule 59(e), SCRCP, to alter or amend the Master's Order granting the Regime's Petition for Relief, which the Master denied

[1] The consent order of reference refers the Petition for Relief and "all summary judgment motions filed by the parties including those relating to legal claims," and "all equitable claims alleged, and equitable remedies sought by all parties..." to the Beaufort County Master-in-Equity. (Consent Order of Reference, ROA 1).

on March 10, 2022. (Gill-Millers' Rule 59(e) Motion and Master's Order denying the Gill-Millers' Rule 59(e) Motion, ROA, respectively, 121 and 23).

The Gill-Millers timely filed their Notice of Appeal on March 15, 2022. (Notice of Appeal, ROA 353).

STATEMENT OF FACTS

The Regime was established under South Carolina's Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10, *et seq.,* (the "HPA"), by the Master Deed of Sea Pines Plantation Company dated October 17, 1973, recorded in the then Beaufort County RMC on November 2, 1973, in book 215, page 1092 (1973 Master Deed, ROA 467).[2]

The Regime consists of three buildings, with two individual units in each building. Two units have three bedrooms, and four units have two bedrooms. The 1973 Master Deed defines the general common area elements as all the Regime property except the interiors of the individual units and the limited common area elements. The limited common area elements are defined as the rear and front yards, service and like areas, and structures immediately adjacent to the individual units and the limited common area elements' use is restricted to the owners of the individual units adjacent to the particular limited common area element. (1973 Master Deed, ROA 467).

Under HPA § 27-31-60(a), the 1973 Master Deed sets the value of the Regime property as a whole at $458,000.00 and assigns values of $73,000.00 to the four, two-bedroom units and $83,000.00 to the two, three-bedroom units. Based on the ratio of the values assigned the individual units to the assigned value of the Regime property as a whole, per HPA § 27-31-60(a),

[2] The 1973 Master Deed was amended on August 20, 1984, with the consent of all the Regime unit co-owners, this amendment being recorded on September 7, 1984, at deed book 402, page 1779. This amendment does not affect the issues raised in this appeal.

the 1973 Master Deed sets the proportionate share of the unit owners' interest in the general and limited common area elements and their proportionate representation for voting in the Regime's Council of Co-Owners at 15.939% for the two-bedroom unit owners and 18.122% for the three-bedroom unit owners. (1973 Master Deed, ROA 467).

The Gill-Millers own Unit 1595. Taylor owns Unit 1596. The owners of the remaining Units, 1591, 1592, 1593, and 1594, are not parties to this lawsuit. (Order Granting Regime's Petition for Relief, ROA 4).

Over many years, the owners of Units 1591, 1594, and the Gill-Millers, expanded their units into the limited common elements associated with their respective units. Over the years, the unit owners discussed the possible need to amend the 1973 Master Deed to adjust the maintenance expenses attributable to the expanded units. No unanimous agreement on an amendment, as required by the 1973 Master Deed, has been reached regarding any such amendment. (Order Granting Regime's Petition for Relief, ROA 4).

On March 1, 2018, as provided by HPA § 27-31-90, the Regime was incorporated under South Carolina's Nonprofit Corporation Act of 1994, S.C. Code Ann. § 33-31-101, *et seq.* (the "NCA"), as a nonprofit corporation.

After the issues were joined in this lawsuit, the Regime filed its Petition for Relief asking that the Master, under NCA § 33-31-160, order the Regime hold a special meeting to approve an amendment to the 1973 Master Deed. The Regime also requested the Master alter the unanimous voting requirements of the 1973 Master Deed and the HPA so the affirmative vote of a simple majority of the co-owners, based on the voting percentages established by the 1973 Master Deed, was all that was necessary to approve the proposed amendment. (Regime Petition for Relief, ROA 45).

The Master granted the Regime's requested relief. (Order Granting Regime Relief, ROA 4). The Master's order, to which this appeal was taken, directed the Regime hold a special meeting, ordered that based on the voting percentages of the 1973 Master Deed, any amendment of the Master Deed proposed at the required special meeting would win approval by a simple majority of the votes cast by the co-owners, and directed that any Master Deed amendment so approved "shall ... constitute a valid and lawful amendment...." as directed by subsequent order. (*Id.,* ROA 15).

On March 17, 2022, the Regime held the ordered special meeting. At that meeting, an Amendment to the 1973 Master Deed proposed by Taylor received 52.183% of the participating co-owners' votes.[3] (2022 Amendments to 1973 Master Deed, Exhibit "C" to the Regime's Motion for Entry of Order Declaring Master Deed Amendment Valid and Lawful, ROA 347).

On March 31, 2022, the Regime moved the Master for a ruling "ordering the [majority only approved 2022 Amendments to the 1973 Master Deed] to constitute a valid and lawful amendment to the [1973] Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements...." and directing that the majority approved 2022 Amendments to the 1973 Master Deed "be filed in the public records of Beaufort County." (Regime Motion for Entry of Order Declaring Master Deed Amendment Valid and Lawful, March 31, 2022 Motion, and Exhibit "C" to Regime March 31, 2022 Motion, ROA 272 and 347).

The majority approved 2022 Amendments to the 1973 Master Deed seek to amend numerous provisions of the 1973 Master Deed, including the property description and the square

[3] At the March 17, 2022 "Special Meeting" ordered by the Master, Units 1593, 1594 and 1596 voted in favor of the proposed amendments to the 1973 Master Deed, the Gill-Millers (Unit 1595) voted against the proposed amendments, and Units 1591 and 1592 were absent and did not vote. *See* Regime's March 31, 2022, Motion for Entry of Order Declaring Master Deed Amendment Valid and Lawful, ROA 272.

footage of the individual units and the common area elements. Most significantly, the majority approved 2022 Amendments to the 1973 Master Deed assign different common and limited common area ownership percentages to the 6 individual units. The 2022 Amendments to the 1973 Master Deed do so by calculating the ratio of the square footage of the individual units on a September 17, 2019, revised As-Built survey of the Regime property, to the total square footage of the individual units, and applying that percentage to the 1973 Master Deed established value of the Regime property. The results change the values assigned to all six individual units from 1973 Master Deed's two values, one for the two-bedroom units, the other for the three-bedroom units, to different values for each individual unit, and establishes different ownership and voting percentages for each unit based on the square-footage formula adopted by the Master Deed amendments. This creates one "super unit" having a proportionate common and limited common area element and voting share of 22.801%, a "junior unit" having a proportionate common and limited common area element and voting share of 13.549%, with the remaining units' proportionate common and limited common area element and voting shares falling between these two extremes, none of the units having the same proportionate common and limited element or voting share, including two of the two-bedroom units that have not been expanded. (*Id.*).

STANDARD OF REVIEW

The *de novo* standard of review applies to appeals involving questions of law. *Ziegler v. Dorchester County,* 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019).

ARGUMENT

I. The Master could not alter the unanimity requirement of HPA § 27-31-60(a) regarding changes in the Regime unit owners' ownership percentages in the Regime common and limited common area elements because this section of the HPA could not be overridden by NCA § 33-31-160(c).

A. The Horizontal Property Regime Act.

Under the HPA, by recording a master deed, a South Carolina real property owner may declare their property subject to a horizontal property regime. HPA § 27-31-30.

The creation of a South Carolina horizontal property regime can be accomplished only "through compliance with the [HPA]." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 360 - 61, 628 S.E. 2d 902, 912 (Ct. App. 2006).

The interest of the unit owners within an established horizontal property regime is an "estate[] in real property...," Black's Law Dictionary at 267 (5th Ed.1979), consisting of the exclusive ownership of their individual unit, plus "the common right to share, with the other co-owners...," in the common area elements of the horizontal property regime. HPA § 27-31-60(a).

Under HPA §27-31-40, once established as a horizontal property regime, South Carolina condominiums "may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causes ... and the individual titles and interest shall be recordable."

HPA § 27-31-60(a), controls the establishment of the individual unit owners' interests in the horizontal property regime common area elements, providing that the unit owner's percentage of common area interest:

> ... shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole. The percentage [of common area element interest] *shall be expressed at the time the horizontal property regime is*

constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the property.

Emphasis added.

Under this HPA section, the 1973 Master Deed set the value of the Regime property as a whole at $458,000.00 and assigned values of $73,000.00 to the four two-bedroom units and $83,000.00 to the two three-bedroom units. Based on the ratio of the assigned value of the Regime property as a whole to the value of the individual units, the 1973 Master Deed set the proportionate share of the unit owners' interest in the general and limited common area elements and their proportionate representation for voting in the Regime's co-owners council at 15.939% for the two-bedroom unit owners and 18.122% for the three-bedroom unit owners. (1973 Master Deed, ROA 467).

In addition to providing for the establishment of the unit owners' ownership rights in the horizontal property regime property, the HPA provides for the administration of horizontal property regimes. HPA §§ 27-31-150 and 160 require horizontal property regimes be "governed by bylaws" recorded on the public land records of the county in which the property is located and provide minimal requirements for the contents of such bylaws. Most significantly for this appeal, HPA § 27-31-90, permits horizontal property regimes, for the purposes of "administering" their counsels of condominium co-owners, to incorporate under South Carolina law. This the Regime did in 2018, as a nonprofit corporation under the NCA. (Master's Order granting Regime's Petition for Relief, ROA 4).

B. The Nonprofit Corporation Act of 1994.

NCA § 33-31-302(18) provides that "[u]nless its articles of incorporation provide otherwise, every corporation ... has the same powers as an individual ... to do all things necessary or convenient, *not inconsistent with law*, to further the activities and affairs of the corporation." Emphasis added.

NCA § 33-31-301(b) says:

> A corporation engaging in an activity that is subject to regulation under another statute of this State may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. *The corporation is subject to all limitations of the other statute.*

Emphasis added.

NCA § 33-31-160(a) says:

> If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, ... the court of common pleas for the county in which the principal office designated on the last filed notice of change of principal office, articles, or application for authority to transact business is located, ... may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authored, in such a manner as the court finds fair and equitable under the circumstances.

Upon such a finding, NCA § 33-31-160(c) says:

> The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the *articles, bylaws, or this chapter.*

Emphasis added.

Under NCA § 33-31-160(a) and (c), overriding and preempting HPA § 27-31-60(a), the Master ordered a bare majority of the Regime's co-owners' votes could amend any part of the 1973 Master Deed, including its provisions regarding the percentage of ownership of the common

and limited common area elements of the Regime and change the formula by which those new percentages are calculated.

This was error.

C. The pertinent sections of the HPA and NCA can be harmonized giving effect to their plain language and requiring the reversal of the Master's Order.

When there is a conflict between statutes, "[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible ...." *Hodges v. Rainey,* 341 S.C. 79, 91, 533 S.E.2d 583, 584 (2000). The principal goal of statutory construction is to determine the intent of the legislature. *State v. Squires*, 311 S.C. 11, 14, 426 S.E.2d 738, 739 (1992). "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (citing *TNS Mills, Inc. v. South Carolina Dept. of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). "A statute should not be construed by concentrating on an isolated phrase." *Id.* (citing *Laurens County School Districts 55 and 56 v. Cox*, 308 S.C. 171, 417 S.E.2d 560 (1992).

The Gill-Millers respectfully submit there is no conflict between the pertinent HPA and NCA sections and, as applied to the facts of this case, these two statutes can be read in harmony, giving the effect to each intended by the legislature.

The Regime is subject to the HPA – it would not exist but for its provisions. "The creation of a horizontal property regime is accomplished through compliance with the..." HPA. *Queen's Grant II Horizontal Prop. Regime,* at 361, 628 S.E. 2d 912. The Regime is bound by "all [HPA] limitations," including HPA § 27-31-60(a)'s formula for calculating the property interests of the unit owners in the common and limited common area elements of the Regime, the permanent

nature of those interests, and the requirement that these interests cannot be altered or amended without the consent of all the individual unit owners.

The HPA also provides generally for the administration of horizontal property regimes. Pertinent here, HPA § 27-31-90 allows horizontal property regime owners to incorporate "for the purpose of the *administration* of the property constituted into a horizontal property regime." Emphasis added.

NCA § 33-31-302(18) provides a nonprofit corporation, such as the Regime, the powers of a natural person to do everything "necessary or convenient" to further the interest of the Regime, but under the general limitation that such actions must not be "inconsistent with law..." NCA § 33-31-301(b) subjects nonprofit corporations to other, specific limitations require by other statutes.

NCA § 33-31-160(c), upon which the Master based his order, says that after making the findings required by NCA § 33-31-160(a), a court may alter "... the percentage of votes needed for approval, that would otherwise be imposed by the *articles, bylaws or this chapter*." Emphasis added.

Reading these sections together and in harmony, the HPA provides the statutory framework and formula for establishing, by master deed, the property interests of individual unit owners in the common and limited common area regime elements. The HPA also provides for the administration of horizontal property regimes and allows horizontal property regime unit co-owners to organize as corporations, including under the NCA, as nonprofit corporations. The NCA provides for the administration of nonprofit corporations generally and allows court intervention into the affairs of a nonprofit corporation upon a court's finding, under NCA § 33-31-160(a), that "it is impractical or impossible for [the] corporation to call or conduct a meeting of its members...." Having made this finding a court may "order that such a meeting be called or that a

written ballot or other form of obtaining the vote of members, in such a manner as the court finds fair and equitable under the circumstances." Under NCA § 33-31-160(c), court intervention can include dispensing with any "requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to … the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or this chapter."

The NCA § 33-31-160(c) vote alteration intervention power is, however, not unlimited.

First, this power is limited by the language of this section itself, which confines the vote alteration intervention power to the "percentage of votes needed for approval of the articles, bylaws or…" the NCA. The 1973 Master Deed is not an article nor a bylaw. It is a deed which, under the HPA, establishes the individual unit owners' property interests in the Regime. Accordingly, NCA § 33-31-160(c), does not allow the Master to direct that changes in the 1973 Master Deed can be adopted by a bare majority co-owner vote and without the consent of the Gill-Millers, especially changes in the 1973 Master Deed concerning the property rights of the Gill-Millers.

Further, a nonprofit corporations' powers are limited generally to the powers of a natural person which are not inconsistent with law and specifically limited by other statutes under which the nonprofit corporation operates. The Regime is subject to the HPA and specifically to HPA § 27-31-60(a), which provides the formula for calculating the interests of the horizontal property regime co-owners in the common and limited common element areas and says that these percentages shall be of a "permanent character" and that they cannot be altered without the unanimous consent of all the individual unit owners.

The Master may have had the power under the NCA to order the Regime hold a properly noticed special meeting of the unit owners, direct a vote at the special meeting on any proposed amendments to the 1973 Master Deed, and direct other matters about the conduct of the special

meeting, i.e., concerning the "administration" of the Regime.[4] The Master had no power to direct, without their consent, a change in the property interests of the Gill-Millers in the Regime common and limited common areas and the formula by which those interests were calculated.

The majority favored 2022 Amendments to the 1973 Master Deed, while touching on the "administration" of the Regime, do far more than that. Those amendments seek to change the method by which the co-owners' common and limited common area interests in the Regime are calculated, and change those interests without the Gill-Millers consent, all in violation of the HPA and the 1973 Master Deed.

Taylor may argue, as he did at the March 4, 2022, hearing on the Gill-Millers' Motion to Alter or Amend, that NCA § 33-31-160(d) supports the Master's order ignoring the unanimity requirement of HPA § 27-31-60(a). (Trans. of March 4, 2022, hearing, p. 25, l. 9 – p. 26, l. 13, ROA 463 - 464). This NCA section says that a court may "also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets [of the nonprofit corporation]." However, neither NCA § 33-31-160(c) or (d) can trump HPA § 27-31-60(a), because the NCA specifically provides that they cannot do so.

Ignoring the unanimity requirement of the HPA, the Master's order purported to allow the Regime's common and limited common area ownership percentages, and the formula for computing those percentages, to be changed without the Gill-Millers' consent.

Harmonizing the NCA and the HPA as each applies to the facts of this case, the Master was without authority to direct the adoption of amendments to the 1973 Master Deed effecting the

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[4] The Gill-Millers did not object to the Regime's Petition for Relief to the extent it asked the Master that he order, upon proper notice, a special meeting to be held for the purpose of considering proposed 1973 Master Deed amendments, directing any such amendments be voted on at the special meeting, and that all unit owners be required to attend the special meeting, either in person or remotely. The Gill-Millers' Response to the Regime's Petition for Relief, ROA 91.

ownership interest of the Gill-Millers in the common and limited common area elements of the Regime without their consent. The 2022 Amendments to the 1973 Master Deed passed under the Master's order, at least to the extent they purport to change the ownership interests of the individual unit owners, in particular the Gill-Millers, in the Regime common and limited common areas are void and the Master's Order must be reversed.

D. To the extent there is any conflict between the pertinent sections of the HPA and NCA, the HPA must control.

The Gill-Millers respectfully submit the pertinent portions of the HPA and NCA can be harmonized so as to give effect to each as they bear on the issues in this case.

To the extent the Court perceives there to be a conflict, the sections of the HPA and NCA can, nevertheless, be harmonized.

> It must be presumed that the legislature intended to achieve a consistent body of law. In accord with this principle, subsequent legislation is not presumed to effectuate a repeal of existing law in the absence of expressed intent. Repeal by implication is not favored and can be found only where no reasonable construction can be given to two statutes, other than that they are in irreconcilable conflict with each other.
>
> *Busby v. State Farm Mut. Auto. Ins. Co.,* 280 S.C. 330, 334, 312 S.E. 2d 716, 718 (Ct. App. 1984) (Citations omitted).

Here, the competing sections are HPA § 27-31-60(a) and NCA § 33-31-160(c); the former requiring the agreement of all the unit co-owners to alter their percentage interests in the Regime's common and limited common area elements, and the later seeming to allow, upon certain findings, a court to alter that unanimity requirement.

The HPA was enacted in 1962, the NCA in 1994. Under the "last legislative expression" rule, where conflicting provisions exist, the last in point of time or order of arrangement should prevail. *Eagle Container Co., LLC v. County of Newberry,* 379 S.C. 564, 572, 666 S.E. 2d 893, 896 (2008), quoting *Feldman v. S.C. Tax Commission,* 203 S.C.

49, 54, 26 S.E. 2d 22, 24 (1943). However, "the last legislative expression rule is purely an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted." *Id.* at 54, 26 S.E. 2d at 24.

Interpreting NCA § 33-31-160(c) to preempt the unanimity requirement of HPA § 27-31-60(a), is unnecessary to harmonize these statutes. The HPA does two things. First, it establishes the necessary statutory mechanism for creating a horizontal property regime, including the formula for calculating the property interests of the regime owners in the common and limited common area regime elements and providing these property interests are to be of a permanent nature alterable only upon the unanimous consent of the regime co-owners. Second, it provides for the *administration* of the horizontal property regime including allowing regimes to organize under the NCA. The NCA provides that corporations organized under its auspices have the powers of individuals to act consistent with the law generally, and subject specifically to the limitations under which a nonprofit corporation may operate. Under NCA § 33-31-160(c), a court may intervene in the administration of a nonprofit by altering the voting requirements of a nonprofit's articles and bylaws. However, because the NCA provides generally that nonprofit corporations can only act "in accordance with the law" and specifically in accordance with the limitations placed upon it by other statutes, NCA § 33-31-160(c), should not be interpreted to allow the alteration of the substantive property interests provided by the HPA of the unit co-owners in the common and limited common area elements of the horizontal property regime. To do so violates the rule of construction requiring courts to "harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a

result that is plainly absurd." *Hodges v. Rainey,* 341 S.C. 79, 91, 533 S.E.2d 578, 581 (2000). To interpret NCA § 33-31-160(c) to allow an alteration in substantive property rights without the consent of the property owner him or herself, is an absurd result and is unnecessary given the plain language of these two statutes.

The Master's order in this respect must be reversed.

II. The Master could not change the Gill-Millers' property rights established by the 1973 Master Deed without the Gill-Millers' consent, because they, and all the unit co-owners accepted and ratified those rights when they purchased their Regime estates in real property subject to the provisions of the 1973 Master Deed.

The HPA establishes the statutory basis for the creation of a horizontal property regime. The horizontal property regime master deed, under HPA § 27-31-100, is the instrument which actually creates a horizontal property regime, in this instance, the 1973 Master Deed.

While all provisions of the 1973 Master Deed are important, for purposes of this argument, the crucial sections of the 1973 Master Deed are the Eleventh, Fourteenth and Sixteenth Paragraphs, which provide:

> ELEVENTH: That the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all the co-owners express in amendment to this deed duly recorded.
>
> FOURTEENTH: That the dedication of the [Regime] Property to the Horizontal Property Regime herein shall not be revoked, or the Property herein removed from the Horizontal Property Regime, or any of the provisions herein amended unless all the co-owners and the mortgagees of all the mortgages covering the Dwelling Units unanimously agree to such revocation or amendment, or removal of the Property from the Horizontal Property Regime by duly recorded instrument.
>
> SIXTEENTH: That all present and future co-owners, tenants, future tenants, or any other person that might use the facilities of the Property in any manner, are subject to the provisions of this Deed, and that the mere acquisition or rental of any of the Dwelling Units shall signify that the provisions of this Deed are accepted and ratified.

The Regime was established under the HPA upon the original property owner's signature

on the 1973 Master Deed and its recordation in the public land records of Beaufort County. Upon their purchase of Unit 1595 in 1992, the Gill-Millers acquired ownership of their individual unit, and the property right to share in the common area elements of the Regime in accordance with the percentage provided under the HPA by the 1973 Master Deed. Upon their purchase of Unit 1595, the Gill-Millers' also accepted and ratified all provisions of the 1973 Master Deed, as did all the past and present individual unit owners, including Taylor.

The Master did not have the authority under the HPA, the NCA and the 1973 Master Deed to alter the unanimity required to change the common and limited common area element ownership percentages established in the 1973 Master Deed.

Nor did the Master have the power, without the consent of the Gill-Millers, to excise from the 1973 Master Deed the requirement that any amendment thereto can be accomplished only by the unanimous agreement of all the Regime co-owners.

"The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent reasonableness, or other parties' failure to guard their rights carefully." *Ellis v. Taylor,* 316 S.C. 245, 248, 449 S.E. 2d 387, 488 (1994). "The terms of the Master Deed were expressly incorporated into each unit owner's purchase contract. By signing the purchase contract at closing, each homeowner was charged with having read the Master Deed's contents." *Gates at Williams-Brice Condo Ass'n v. DDC Constr. Inc.,* 418 S.C. 282, 297, 792 S.E.2d 240, 248 (Ct. App. 2016).

The 1973 Master Deed provides that the "mere acquisition" of an individual unit signifies the acceptance and ratification of the 1973 Master Deed by the individual unit grantee. The Master, under the NCA § 33-31-301(b), did not have the power to alter the contractually agreed upon unanimity required under the 1973 Master Deed to allow amendments to that deed without the

consent of the Gill-Millers. The result of the Master's overreach is an alteration of the Gill-Millers' property rights in the Regime common and limited common area elements without their consent.

CONCLUSION

Under the HPA, the 1973 Master Deed established the Regime and, under the HPA § 27-31-60(a), applying the statutorily defined formula, set forth the individual unit owners' percentage of ownership of the Regime's common and limited common area elements. The HPA provides these ownership percentages cannot be changed without the Gill-Millers' consent and the 1973 Master Deed provides that neither the ownership percentages, nor any other of its provisions, can be amended without the consent of all the individual unit owners.

The HPA allows for administration purposes, horizontal property regimes established under its auspices to incorporate, which the Regime did under the NCA. The NCA provides that any nonprofit corporation formed under the NCA has the powers of a natural person to act, as long as the act or acts is in accordance with the law, and all nonprofit corporations remain subject to the limitations of any other statute governing their existence or operation. Accordingly, regardless of its incorporation under the NCA, the Regime remains subject to the HPA, in particular, HPA § 27-31-60(b). While NCA 33-31-160(c), provides in certain circumstances a court may alter the voting requirements for "approval, that would otherwise be imposed by the...." NCA or a nonprofit corporate's articles or bylaws, the Master, under this provision of the NCA, had no power to alter the unanimity required under the HPA to change the Gill-Millers' ownership interests in the Regime's common and limited common area elements. The 1973 Master's Deed is not a Regime corporate article or bylaw. It is a deed establishing the property rights of the Gill-Millers and the other Regime co-owners in the common and limited common areas of the Regime. While the Master under the NCA may have been able to alter the voting requirements to amend a Regime

article of incorporation or bylaw, the Master had no power, under the HPA or NCA, to affect the property rights of the Gill-Millers established under the 1973 Master Deed without their consent.

Finally, upon acquisition of their respective interests in the Regime, all the individual Regime unit owners agreed to and ratified the 1973 Master Deed, including the paragraph requiring unanimous agreement to amend the 1973 Master Deed. The Master had no power to excise this requirement from the 1973 Master Deed without the Gill-Millers' consent.

The Master's Order must be reversed, and the case remanded to the circuit court.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I HEREBY certify that this Final Brief complies with Rule 211(b), SCACR.

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