

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )

COURT OF COMMON PLEAS

Mountain View Pointe Owners Association, )  
Inc., Jane P. Hale, L. Shepard Hamrick, Jr., )  
Martha Hamrick, Matthew Williams, Sue )  
Williams, Barry Noffze, Ruth Noffze, )  
Michael Dorsey, Monica Dorsey, Jack )  
James Dorsey, Jr. and Lucinda Dorsey, as )  
Co-Trustees of the Dorsey Joint Revocable )  
Trust, Kai Evensen, Lynn Elliot Amos, as )  
Trustee of the Lynn Elliot Amos Qualified )  
Personal Residence Trust, Lynn Keith )  
Amos, as Trustee of the Lynn Keith Amos )  
Qualified Personal Residence Trust, )  
Charlene Finucan, John Prescott, Jr., )  
Elizabeth Prescott, Steven Trojan, Dottie )  
Trojan, Leonard J. Stoecklein, Patricia )  
Stoecklein, Dale Hill, Rebecca Hill, Larry )  
Kuykendall, as Trustee of the Larry )  
Kuykendall Revocable Trust, Larry )  
Kuykendall, as Trustee of the Elke )  
Kuykendall Revocable Trust, Thomas )  
McCaw, Roberta McCaw, Robert )  
Albergotti, Elaine Albergotti, Frank )  
Patterson, Frances Patterson, Brian A. Fox, )  
And Jennifer Fox, )

Plaintiffs, )

vs. )

Rodney Halsell, Barbara Halsell, Graham )  
R. Piper, Christine A. Piper, Michael )  
Newton, Angela Newton, Gary Hutchinson, )  
Daniel Horner, Lonnie Harper, Elianor )  
Harper, Christopher Tam, Amie Kerley, )  
Karan Sandhu, and Gloria Sandhu. )

Defendants. )

**RECEIVED**

JUN 07 2023

SC Court of Appeals

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

Case #2021CP3700093

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER**

This is an action by the Mountain View Pointe Owner's Association and certain owners of lots in the Mountain View Pointe Subdivision based on an Amended Complaint filed on February 18, 2021 (collectively, the Plaintiffs). The Amended Complaint named as Defendants Rodney Halsell, Barbara Halsell, Graham R. Piper, and Christine A. Piper, against whom specific relief was sought, as well as several owners of lots in the Mountain View Pointe Subdivision who chose not to be named as parties plaintiff (the "Other Owners"). The Amended Complaint stated six causes of action. At the beginning of the trial, the Court granted an unopposed motion to dismiss the Second, Fourth and Fifth causes of Action. The remaining counts sought (i) a Declaratory Judgment declaring the rights of the parties with respect to certain easements over two parcels that abut the main entrance road into the subdivision on both sides of Mountain View Pointe Drive, and (ii) actual and punitive damages based on Halsells' trespass and/or gross negligence in constructing a driveway from Mountain View Pointe Drive across the Plaintiffs' Landscape Easement. The Other Owners were named so that the outcome of this case would be effective as against all Lot Owners.

With respect to the remaining causes of action, Defendants collectively, in their responsive pleadings and other filings, raised various counter-claims and defenses, including failure to state facts sufficient to constitute a cause of action, lack of standing to bring certain claims, absence of a judicial controversy, that the easements were never granted and could not have been granted due to the doctrine of merger, abandonment of the easements by the Plaintiffs, as well as estoppel and waiver. They also claimed that as abutting property owners, they had an absolute right to a driveway across the easements because they bordered a publicly maintained roadway (Mountain

View Pointe Drive) that was depicted on the plat referenced in their respective deeds. Defendants further asserted the defenses of estoppel, waiver, statute of limitations, and laches and, of course, denied that the Halsells cutting of a driveway across the easements constituted an unreasonable interference with the easements granted to the Plaintiffs.

At the beginning of the trial, the Court granted an unopposed motion to add Halsells' claim for easement by necessity.

Defendants Piper, who are lot owners within the subdivision and members of the POA, also filed a counter claim seeking a Declaration that the assessment of the owners of lots in the Subdivision for the costs of litigation was *ultra vires*.

On October 26-27, 2022, the Court conducted a bench trial in which it received testimony from eight witnesses and admitted a total of 67 Exhibits. The Judge, accompanied by all counsel, also made a site visit to the Subdivision and Parcels A and B. At the conclusion of the evidentiary phase, the Court granted the parties 30 days to prepare and submit post-trial briefs and responses to the post-trial brief(s) of the other parties.

Having thoroughly considered all the evidence, the parties' written submissions, and relevant authority, the Court now issues its Findings of Fact and Conclusions of Law.

## I. FINDINGS OF FACT

1. On November 12, 2002, Crescent Communities S.C., LLC ("Crescent" or "Declarant"), as Declarant, recorded a Declaration (herein so called) of Covenants, Conditions and Restrictions for Mountain View Pointe ("MVP") ("the Subdivision"). *See Cover Page of Joint Ex. 1A*, which is a copy of the Declaration. The Declaration had been executed with the formalities of a deed.

2. The Subdivision is a high-end residential community of 29 single-family homesites as depicted on a plat (the "MVP Plat") referenced in, and recorded on the same date as, the Declaration. *See* Joint Ex. 2, which is a copy of the MVP Plat.

3. The Plaintiffs in this case are the Owners (herein so called) of homesites ("Lots") in the Subdivision who elected to be Plaintiffs in this case, and the Mountain View Pointe Owners Association, Inc., ("the POA"), a South Carolina mutual benefit corporation that was incorporated in September 2002. Joint Ex. 1A.

4. The Defendants in this case are the Halsells, the Pipers and the Other Owners of lots in the subdivision who did not elect to be Plaintiffs in the matter.<sup>1</sup>

5. The entrance to the Subdivision is at the intersection of Doug Hollow Road, a state road, and Mountainview Pointe Drive ("MVP Drive"), which was built by Crescent for the Subdivision. Joint Ex. B. Subsequently, Crescent deeded the fifty-foot (50') right-of-way for MVP Drive to Oconee County, South Carolina, for maintenance and inclusion in the county road system. *See* Joint Ex. 8, which is a copy of the deed of right-of-way.

6. The MVP Plat depicts two parcels (one on each side of MVP Drive) that abut both Doug Hollow Road and MVP Drive and are designated as property of Crescent. Joint Ex. 2. The two parcels subsequently came to be known as Parcel A, a 4.7 acre parcel on the west side of MVP Drive that is currently owned by the Halsells, and Parcel B, a 17.03 acre parcel on the east side of MVP Drive that is currently owned by the Pipers. The MVP Plat also depicts a transmission tower easement on Parcel B in favor of Duke Energy. Joint Ex.7. All of Parcel A is in the Control Free

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<sup>1</sup> For economy of words, unless the reference is to all Defendants, references herein to "the Defendants" shall mean Rodney Halsell, Barbara Halsell, Graham R. Piper and Christine A. Piper.

Zoning District but a portion of Parcel A also is in the Lake Overlay District. Plaintiffs' Ex. 3, pg.

1. All of Parcel B is in both the Control Free Zoning District and in the Lake Overlay District.

7. Parcels in the Control Free District can be used for residential, commercial or industrial uses, subject only to set back requirements and a maximum height of sixty-five feet (65'). Oconee County, S.C., Rev. Ordinances, Ch. 38, art. X, §38-10.2 [Control free district (CFD)].

8. The portions of property in the Lake Overlay District used for residential purposes also are subject to lake buffer requirements for waterfront properties, a maximum density of two residences per acre and restrictions on the alteration of grade elevations. *Id. at* §38-11.1(4)(a)(i)(1) and (2)[Lake overlay district].

9. Property in the Lake Overlay District also may be used for commercial or industrial purposes, subject to a Special Exception Hearing by the Board of Zoning Appeals, which is instructed to use the standards in Appendix A to the regulation as a guide in considering such proposals. *Id. at* §11.1-(4)(a)(i)(4). The strict application of any such standard may be waived for good cause shown. *Id.*

10. The Declaration organizing and establishing the Mountain View Pointe Subdivision, and the Covenants and Restrictions placed thereon, are sufficiently clear and are not ambiguous and constitute an unconditional deed of two non-exclusive perpetual easements (the "Easements") from Crescent to the POA for the purpose of landscaping and maintaining the Entrance Monument area and an abutting twenty-five-foot wide (25') Landscape Easement Area on each side of Mountain View Pointe Drive extending from Doug Hollow Road, as state maintained roadway to the subdivision.

11. Section 7.9 of the Declaration describes the Easements, in part, by reference to the MVP Plat.

Declarant hereby grants, establishes, creates and reserves for the benefit of the Declarant and the [POA], and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the entryway and erecting and maintaining the Entrance Monument for the Subdivision [shown] *sic* as 'Entrance Monument Easement' on the [MVP Plat]. Declarant or the [POA] shall have the right to enter, landscape and maintain the Entrance Monument as an entryway to the Subdivision.

Declarant further hereby grants, establishes, creates and reserves for the benefit of Declarant or the [POA] and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the property adjacent to the main entry road for the Subdivision [shown] *sic* as 'Landscaping Easement' on the [MVP Plat]. Joint Ex. 1A, art. VII, §7.9 pgs. 24-25.

12. The MVP Plat depicts a "Sign Easement" and a "Landscape Easement" that collectively run the entire length of Parcels A and B where they abut MVP Drive (Joint Ex. 2) and clearly refer to the Entrance Monument easement area and the Landscape Easement Area, respectively.

13. The Landscape Easement Area is expressly designated as part of the Common Areas of the Subdivision. *Id.*, art.1, §1.12. Therefore, they are Property under Section 1.36 of the Declaration. Section 3.2 of the Declaration provides that Each Owner shall have the "non-exclusive easement and right to enjoy" the Common Areas. Joint Ex. 1A, art I, §3.2, pg.7.

14. The POA installed sod and sprinklers in the unpaved portion of the right-of-way and, for more than 19 years, has paid for the maintenance thereof.

15. Although the POA has chosen to leave most of the Landscape Easement Area in its natural wooded state, it has not abandoned the easements as claimed by the Defendants.

16. In 2013, Crescent sold Parcels A and B to the Pipers, subject to, among other things, “easements, covenants, restrictions and conditions of record” and “zoning, subdivision, land use and other laws, regulations or ordinances applicable to the Property.” Joint Ex. 6. The recorded plat describes Parcels A and B referenced in the deed depicts the Easements exactly as they are shown on the MVP Plat. Joint Ex. 7.

17. In early September 2020, Mr. Piper told the POA Board (the “Board”) that he had an offer to purchase Parcel A for \$200,000.00. Plaintiffs’ Ex. 5, and that the offeror wanted to construct a driveway across the Landscape Easement Area to access a residential garage for his car collection. Plaintiffs’ Ex. 3.

18. A few days later, the Defendants met with the Board to explain the proposal, after which Mr. Piper e-mailed the Board and the Halsells a handout he had prepared, outlining the proposal and the potential benefits to the POA and Owners of accepting the proposal. Plaintiffs’ Ex. 3.

19. In order to convince the Board that they were authorized to grant Halsells’ request, the proposal cites Section 6.1 of the POA’s By-laws, which, in relevant part, authorizes the POA to grant “all necessary easements and rights-of-way upon, over, under and across the Common Areas when it deems such action to be necessary and appropriate. . . .” Joint Ex. 1B, art. 6, §6.1.

20. Two days after the meeting, Mr. Piper sent a letter to Adam Chapman, the Planning Director of Oconee County, seeking support for Halsells’ proposed driveway off MVP Drive. The letter said, in part,

[w]hile a driveway from Doug Hollow Road to the proposed building is possible, such a driveway will require significantly more removal of trees,

more earthwork, and result in more hardscape. . . . The Pipers and Halsells believe that a driveway from Doug Hollow Rd. detracts from the wooded nature of the property today. . . . The Halsells as buyers, are looking for some assurance that a driveway on Mountain View Pointe Drive will be allowed by Oconee County or knowing that they must enter the property from Doug Hollow Rd., they will account for the extended length driveway in their offer. Plaintiffs Ex. 7.

21. Following the meeting, the Board polled the Owners, a super majority of which opposed the driveway across the Landscape Easement Area.

22. Accordingly, a representative of the Board notified the Defendants that the Board had determined that granting Halsells' request for a driveway would not be in the best interest of the homeowners and therefore, their request was denied.

23. On October 26, 2020, Plaintiffs' attorney, sent letters to the Defendants explaining the POA's position that a waiver of property owners' rights under the Landscape Easement would require consent of 100% of the Owners. Plaintiffs' Ex. 4 and Halsells' Ex. 11A.

24. In late November 2020, the Halsells delivered a letter to each Owner. In part, the letter stated that if the Owners did not agree to Halsells' proposal, then due to the topography of the property, Halsells "would be forced" to construct an 802' driveway running right behind "the nice neighborhood monument sign" and would require them to cut down three times more trees than under their proposal. Plaintiffs' Ex. 2.

25. On December 4, 2020, Halsells purchased Parcel A from the Pipers for the reduced price of \$150,000.00. See Plaintiffs' Exs. 5, 6, 8, and 9.

26. At trial, the Defendants gave conflicting testimony as to the reason for the \$50,000.00 price reduction from the original offer. The Court finds that the price reduction was due to the prospect of Halsells having to access their property from Doug Hollow Road, as that is

consistent with Mr. Piper's written correspondence to Mr. Chapman (Plaintiffs Ex.7), as well as Halsells subsequent application for and receipt of an encroachment permit from the SC Department of Highways and Public Transportation for a driveway off Doug Hollow Road. Plaintiffs' Ex. 10 (Application) and Plaintiffs' Ex. 11 (Permit).

27. The conveyance from Pipers to Halsells is subject to "those easements and/or rights-of-way as may appear on the premises and/or of record" Joint Ex.9. The deed also is necessarily subject to "zoning, subdivision, land use and other laws, regulations or ordinances applicable to the Property, since that was an exception to Crescents' deed to the Pipers."

28. The previously recorded Plat of Parcel A referenced in the Halsells' deed depicts the Easements exactly as they are shown on the MVP Plat. Joint Ex. 11.

29. In a January 12, 2021, letter, Halsells' counsel advised Plaintiff's counsel that the Halsells believed they had a right to install a driveway over the Landscape Easement Area, had acquired an encroachment permit and expected to start work soon. Joint Ex. 11B.

30. On or about January 22, 2021, Halsells began clearing an 80' by 25' swath of trees from the Landscape Easement Area, removed turf, curbing and guttering from the public road-right-of-way, graded and entirely cleared the area needed for his driveway and demolished a section of the irrigation system running along the roadway as well as the berm in the Landscape Easement Area and roadbed. They then constructed a gravel driveway, ostensibly for the purpose of facilitating the construction of their building. In so doing, the Halsells impermissibly and unilaterally reduced the area of the landscape easement clearly defined in terms of location, length, and width and thereby completely deprived the POA of their easement rights in and to the area

whereupon they placed their driveway. The Court finds that these actions impermissibly and unreasonably interfered with Plaintiffs' full use and enjoyment of the Landscape Easement.

31. Halsells then proceeded with the construction of a large metal building on the steepest part of their property and as far from Doug Hollow Road, and as close to Mountain View Pointe Drive, as possible. Plaintiffs' Ex. 2.

32. In July 2022, Halsells widened the cleared areas in the Landscape Easement Area and roadbed and poured concrete curbing along their driveway and in August 2022, with the trial just a little more than two months away, paved and landscaped the driveway at a cost in excess of \$43,000. These actions further impermissibly and unreasonably deprived the Plaintiffs of the full use and enjoyment of the Landscape Easement.

33. It is clear that the Halsells proceeded with the purchase of Parcel A and, with Graham Piper's willful promotion, proceeded with the construction of the driveway with full knowledge that consent had not been received to breach the Landscape Easement and with willful disregard of the rights of the Plaintiffs.

34. Section 6.1 (j) and (m) of the POA Bylaws, respectively, empowers the Board to retain the services of legal firms to enforce the provisions of the Declaration. Joint Ex. 1B., art. 6, §6.1 (j) and (m), pg.7. One of the specific purposes of the enforcement powers granted to the POA in the Declaration is "to ensure, for the benefit of each Owner, the specific rights, privileges and easements in the Common Areas. . . ." Joint Ex. 1A, pg. 1. The Court finds and concludes that initiating the suit and pursuing the request for a declaratory judgment and other claims are within the POA's authority.

35. The Court finds that the Amended Complaint sets forth facts sufficient to state a claim for the relief sought therein.

36. By way of a Counterclaim, Pipers asserted that the POA's levy of a Special Assessment to fund this litigation is *ultra vires* and unfairly requires the Pipers to fund litigation against themselves. The Court finds that the Special Assessment was authorized under Section 5.5 of the Declaration.

37. The Court finds that a Special Assessment levied pursuant to Section 5.5 is applicable to all Owners. The fact that Pipers wear two hats in this litigation does not relieve them of their obligation to pay their share of any Special Assessments.

38. Mr. Halsell testified at trial that he would not agree to refrain from constructing any other driveways off MVP Drive because there were three undeveloped acres on Parcel A, thus clearly supporting the need for a Declaratory Judgment in favor of the Plaintiffs that driveways may not be constructed over the Landscape Easement without the express consent of the Owners.

39. Mr. Piper has been a strong advocate of the Halsells' position throughout this process and, in the context of defending the suit, Pipers denied that the Easements even exist.

40. The Court finds that the quality or esthetics of the buildings and other structures erected by Halsells on their property, or that might be erected in the future on Parcels A and B, is not relevant to the issue of whether such constructions unduly and/or unreasonably interfere with the use and enjoyment of the Landscape Easement by the POA as well as all Owners of Lots in the Subdivision.

41. Crescent's intent as expressed in the Declaration cannot be plainer or more obvious than when it is expressly stated in "Statement of Purpose" on page one of the instrument that

Crescent “desires to ensure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances and enhance the value of all properties within the Development.” Joint Ex.1, pgl.

42. Most all of the covenants, conditions and restrictions in the Declaration are in support of the stated purpose. Parcels A and B are not subject to most of those provisions.

43. Extrinsic evidence is not required to conclude that Crescent, as the developer of the Subdivision and owner of Parcels A and B, was in the business of developing and marketing high end lake front, lake view and lake access Lots and was aware that Parcels A and B were un-zoned and subject to relatively few other restrictions.

44. Clearly, Crescent’s intent was to provide for the ability to screen activity and future construction on Parcels A and B as viewed from Mountain View Pointe Drive so as to enhance the appeal and value of the subdivision, to provide the owners of lots within the subdivision such control so as to prevent future impairment thereof and to prevent nuisances, which would effectively negate curb cuts and driveways from Mountain View Pointe Drive to Parcels A and B.

45. The Court finds that the designation of the Easements in the Declaration as “non-exclusive” does not render the Declaration ambiguous or otherwise alter the clear and obvious intent of the instrument.

46. Parcels A and B are large and, being un-zoned and subject to minimal restrictions, there is potential for multiple non-conforming buildings with disparate uses on both parcels, as well as multiple driveways and owners.

47. Piper has created a narrow, unpaved path of sorts through the Landscape Easement Area to provide tractor access from MVP Drive to the pole barn-type structure covered in plastic

tarps on Parcel B where he stores his tractor. From the site visit, it did not appear that in so doing, Piper had altered the Landscape Easement Area. However, there is nothing to prevent the POA from planting trees or shrubbery in that location, which may effectively prevent the Pipers from utilizing that path in the future.

48. The Court finds that while it may cost more for the Halsells to construct a driveway off Doug Hollow Road, they could have done so. Indeed, they sought and obtained a permit to do so. As to the extra cost, the negotiated discount from the offer price was intended to mitigate the extra expense, which is due, in large part, to where they put their building. There was conflicting testimony as to whether the topography of Parcel A left Halsells no choice but to build their building where they did and whether a driveway off of Doug Hollow Road was unreasonable. The Court concludes that Halsells failed to prove necessity by a preponderance of the evidence.

49. The fact that there are transmission towers on Parcel B was known to Pipers when they bought the property and Pipers presented no evidence that a driveway could not be constructed under the power lines. The Court concludes that Halsells failed to prove necessity by a preponderance of the evidence.

50. None of the Defendants presented any evidence that a necessity existed at the time of the severance of Parcels A and B from the property in the Subdivision. MVP Drive was built by Crescent for the Subdivision and was cut off a hillside on the eastern border of Halsells' property. *See Halsells Ex. 14*. There is no evidence that MVP Drive was ever used to access Parcels A or B, or that Parcels A and B were ever accessed other than from Doug Hollow Road.

51. The Court concludes that Halsells and Pipers failed to carry their burden of proof that they are entitled to easements by necessity.

52. The Court finds that Defendants did not present any credible evidence or legal argument in support of their claims related to the statute of limitations, estoppel, waiver, and laches and therefore have failed to meet their burden with respect to their several asserted defenses.

53. The Plaintiffs have carried their burden of proof as to the existence and purpose of the Landscape Easement and that the Halsells have violated the Landscape Easement to the detriment of the Plaintiffs.

54. The POA and each individual Plaintiff has standing in this case and the actions of the POA office in bringing this action and assessing all Owners for the costs of the litigation is not an *ultra vires* act.

55. The facts are with the Plaintiffs and against the Defendants.

56. The “Other Owner” Defendants failed to appear or answer and are in default. Therefore, the Findings and Judgment in this case are also fully applicable to them.

57. Any Finding of Fact more properly considered a Conclusion of Law shall be deemed to be restated in the Conclusions and incorporated by reference therein.

## II. CONCLUSIONS OF LAW

### A. JURISDICTION, STANDING AND ADEQUACY OF PLEADINGS

1. Jurisdiction of this matter is conveyed via the South Carolina Declaratory Judgment Act, which provides in relevant part that “[c]ourts of record may declare rights, status and other legal relations whether further relief is or could be claimed. S.C. Code Ann. § 15-53-20 (2012). “Any person interested under a deed, will, written contract or other writings constituting a contract . . . may have determined any question of construction or validity arising under the instrument . . . [or] contract and obtain a declaration of rights, status or other legal relations thereunder.” S.C.

Code Ann. § 15-53-30 (2012). “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration. . . .” S.C. Code Ann. § 15-53-80 (2012).

2. This dispute falls squarely within the parameters of the Act. Moreover, all parties who have an interest that would be affected by a declaratory judgment have been made parties to the suit, including Halsells, Pipers and the Owners (some of whom elected to be Defendants and some of whom elected to be Plaintiffs). As members of the POA, the Owners clearly had an interest that would be affected by a declaratory judgment in this action.

3. Therefore, the Court finds Pipers’ challenge to the Plaintiffs’ standing to be without merit, as the POA was required to make all of the Owners a party to the action.

4. With respect to justiciable controversy, the South Carolina Supreme Court has clarified that, “Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for invocation of declaratory judgment action. *Power v. McNair*, 255 S.C. 150, 153-154, 177 S.E.2d 551 (Sup. Ct. 1970). The respective counsels’ letters placed in evidence in this case, the parties’ pleadings and other filings, as well as the Pipers’ advocacy on behalf of the Halsells and expressed intent with respect to future driveways, establish that there is a justiciable controversy as to both the Halsells and the Pipers.

#### **B. VALIDITY AND EXISTENCE OF THE EASEMENTS**

5. Pipers rely on *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (Sup. Ct. 2009) for their argument that no easement exists. In *Windham*, the seller of property under an installment contract reserved an easement for himself for the benefit of another tract of land he owned, but retained title to

the servient estate until all installment payments were made. The Court held that because, at the time of the purported grant of the easement, the seller owned both the dominant and servient estates, an easement “could not have been created.” *Id.* The holding was based on the doctrine of merger of title. *Id.* Simply put, an easement is the right to use the land of another, so the seller under the installment contract could not reserve an easement to himself, because it would not be an easement for the use of another’s land, but for the use of his own land. *See Haselden v. Schein*, 167 S.C. 534, 539, 166 S.E. 634, 635 (Sup. Ct. 1932). However, *Windham* is inapposite because here, the grant was not from Crescent to itself. Rather, the grant was from Crescent to the POA, a legally separate, non-profit mutual benefit corporation. Therefore, the Court finds and concludes that there was no merger of title, the Easements do exist and are enforceable by the POA.

6. Pipers also claimed that the Easements had been abandoned. In determining whether an easement has been abandoned, the intention of the owner to abandon is the primary inquiry. *Carolina Land Company, Inc. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (Sup. Ct. 1975). “The mere non-use of an easement for a period of however long does not amount to an abandonment, but there must be other action by the dominant estate owner that manifests either a present intent to relinquish the easement or purpose inconsistent [with the Landscape Easement’s] further existence.” *Id.* Thus, the fact that the POA has chosen to leave much of the Landscape Area in its natural wooded state is not evidence of abandonment. There is no evidence of the POA’s present intent to relinquish the Landscape Easement or of a purpose inconsistent with the Landscape Easement’s further existence. Thus, the Court finds and concludes that the Landscape Easement has not been abandoned.

### C. CONSTRUCTION OF THE EASEMENTS

7. Under South Carolina law, easements are to be construed in accordance with the rules applied to deeds and other written instruments. *Binkley v. Rabon Creek Watershed Conservation Dist. Of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001).

8. Restrictions on the use of property must be strictly construed, with doubts resolved in favor of the free use of the property, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenant. *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (Sup. Ct. 1998).

9. The language in a deed is ambiguous if it is reasonably susceptible to more than one interpretation. *Snow v. Smith*, 416 S.C. 72, 85, 784 S.E.2d 242, 248. The ambiguity, however, must be interpreted in light of good faith, reasonableness and what was necessarily the intent of the parties to the original agreement. *Proctor v. Steedley*, 398 S.C.561 575, 730 S.E.2d 357, 365 (Ct. App.2012).

10. In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole, and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed. *Snow v. Smith*, 416 S.C. 72, 89, 784 S.E.2d 242, 251 (Ct. App. 2016).

11. “An easement is a right which one person has to use the property of another for a specific purpose and gives no title to the land on which the servitude is imposed. *Snow*, 416 S.C. at 85, 784 S.E.2d at 249. Although the rights of the easement owner are paramount to those of the landowner as to the easement, the easement owner’s rights are not absolute but are limited, so both

the owners of the easement and the servient tenement may have reasonable enjoyment. The owner of an easement has all rights incident or necessary to its proper use and enjoyment. *Id.*

12. In this case, the width, length and location of the Easements are clear and unambiguous and there is nothing in the Declaration that restricts the Plaintiffs' use to only a portion of the Easement areas. Therefore, under the rule of strict construction, the Court must construe the easements to allow the Plaintiffs to use the entirety of the Easement areas for the intended use. See *Xanadu Horizontal Property Regime v Ocean Walk Horizontal Property Regime*, 306 S.C 170, 410 S.E.2d at 580 (Ct.App. 1991).

13. The servient estate owner and anyone claiming through them may use the Easement areas only in ways that do not interfere with Plaintiffs' full use and enjoyment of the Easements.

14. As discussed in the Findings of Fact, the Court found that Crescent's intent in granting the Landscape Easement was to allow the POA to beautify the entrance road into the Subdivision and, if necessary, screen future development activity on Parcels A and B from view and protect the Subdivision from increased noise, odors and other nuisances that might be attendant to such development.

15. The Court found no evidence that Crescent intended to allow the Defendants or future owners of Parcels A and B (or anyone claiming through them) to install driveways or other permanent structures in the Landscape Easement Area, or to restrict the POA and Owners from using any part of the Landscape Easement Area for the purpose for which it was intended or in a manner that interferes with the POA's or Owners' full use and enjoyment of the Landscape Easement Area.

16. The Court finds and concludes that the construction of a driveway or other permanent structure in the Landscape Easement Area is impermissible because it would totally preclude the Plaintiffs' from using portions of the Easement Areas obstructed by the driveway or other permanent structure for the intended use and therefore unreasonably interferes with the use and enjoyment of the Landscape Easement.

17. The Merriam-Webster Dictionary defines landscaping as "to modify or ornament (a natural landscape) by altering the plant cover". Another edition of the same dictionary defines it as "to modify (a natural landscape) by grading, clearing or decorative planting." The Court finds that Crescent did not intend that Defendants could modify the natural landscape of the easement area in ways that interfere with the use and purpose of the easement. The Court also finds that Crescent intended that, to ensure the cohesiveness and attractiveness of the Landscape Easement Area as a whole, the management and control of all vegetation, landscaping, and grading in the Easement areas would be vested in the POA.

18. The Court specifically finds that the designation of the Easements in the Declaration as "non-exclusive" does not render the Declaration ambiguous or otherwise alter the clear and obvious intent of the instrument. The term "non-exclusive" is well used and understood in the context of easement law.

19. Generally, easements are either "exclusive" or "non-exclusive." An "exclusive easement" means that only the original grantee may use the property for the purpose for which the easement is granted, to the exclusion of all others. Under a "non-exclusive easement" the servient estate owner can grant other parties additional easements for the same purpose on or over the same property. Most often, that term is used in the context of easements for ingress and egress, where

multiple parties may need to cross the same easement to reach other properties nearby. *See, e.g., Xanadu Horizontal Property Regime v Ocean Walk Horizontal Property Regime*, 306 S.C 170, 410 S.E.2d at 580 (Ct.App. 1991). There is no evidence here that any party other than the POA has been granted a Landscape Easement.

20. Also, in the case of a non-exclusive easement, the servient estate owner retains ownership of the fee, and may use the property for any purpose that does not interfere with the easement owner's use and enjoyment of the easement. *Snow*, 416 S.C. at 86, 784 S.E.2d at 249.

21. Although it would have been possible for Crescent to have granted an easement that was outside of the paradigm described above, there is no evidence in the deed that it intended to do so.

22. In no event may a subsequent grantee or the servient estate owner use the easement in a way that interferes with the original grantee's use or enjoyment of the easement. Thus, in *Xanadu Horizontal Property Regime v Ocean Walk Horizontal Property Regime*, 306 S.C 170, 410 S.E.2d at 580 (Ct.App. 1991), Xanadu was granted a non-exclusive easement for ingress and egress. The court determined that neither the subsequent grantee nor the servient estate owner could use the easement area in violation of the original grantee's easement. *See also Howorka v. Harbor Island Owners Assoc.*, 292 S.C. 381, 356, S.E.2d 433, 436 (Ct.App. 1987), ("The grantor of an easement retains dominion and use of the servient estate only to the extent his actions do not interfere with the grantee's reasonable enjoyment of the easement. Thus, any easement subsequently granted is subordinate, and the subsequent grantee acquires only the right to use the servient land in a manner consistent with the terms of the prior easement.").

**D. DEFENDANTS' CLAIMS OF ENTITLEMENT TO DRIVEWAY ACCESS**

23. The issue in this case is not whether abutting owners generally have a right of access over any public street adjacent to their property, but rather, whether the Defendants have a right to construct one or more driveways in the Easement areas which would unreasonably interfere with the full use and enjoyment of the Easements. As previously noted, the Court finds and concludes that they do not.

**E. DEFENDANTS' CLAIMS OF EASEMENT BY NECESSITY**

24. The elements of a claim for easement by necessity are (1) unity of title, (2) severance of title, and (3) necessity. *Paine Gayle Props., LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528, 540 (Ct. App. 2012)]. “The necessity required for easement by necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible. The necessity element of easement by necessity must exist at the time of the severance and the person claiming a right to an easement by necessity must not create the necessity when it would not otherwise exist. This is so because it is the severance that creates the necessity for an easement and, thus, allows the law to impute to a landowner a right to cross an adjacent parcel.” *Id.*(internal citations omitted).

25. The Court finds that the unity and severance criteria are met. However, as noted in the Findings of Fact, neither the Halsells nor the Pipers presented any evidence that a necessity existed at the time of the severance or that Parcels A and/or B were ever accessed other than from Doug Hollow Road. Moreover, neither the Halsells nor the Pipers have proved current necessity by a preponderance of the evidence.

**F. HALSELLS' VIOLATION OF PLAINTIFFS' RIGHTS IN THE EASEMENTS**

26. It is unfortunate that Halsells elected to proceed as they did. The old saying sometimes relied upon is that it is better to seek forgiveness than ask permission. In this case Halsells, with the assistance of Pipers, did seek permission from the POA, but it was denied. Halsells then elected to take their chances of asking for forgiveness after the fact, which was also denied as evidenced by the current litigation. It is clear that Halsells and Pipers both were well aware of the Landscape Easement and that placing a paved driveway over it would require permission. Halsells successfully negotiated a \$50,000 price reduction from Piper based on the knowledge that, very likely, Halsells ultimately would be forced to access their property via Doug Hollow Road. Halsells further prepared for that possibility by procuring the necessary permit from SCDOT to do so. Certainly, access via Doug Hollow Road will be more costly and perhaps not as convenient to Halsells, but that does not allow them to ignore the Landscape Easement as they have done.

27. Based on the facts of this case as earlier articulated, the Court concludes that the Halsells have willfully and unreasonably interfered with Plaintiffs' use and enjoyment of the Landscape Easement and have trespassed on Plaintiffs' easements (rights).

28. Defendants argue that, under South Carolina law, "[a] trespass is limited to interference with one's right to the exclusive peaceable possession of his property," citing *Ravan v. Greenville County*, 315 S.C. 447, 463, 434 S.E. 2d 296, 306 (SC App 1969), and that Plaintiffs are not entitled to possession of the Easement areas.

29. Plaintiffs contend that South Carolina clearly recognizes a cause of action for trespass in instances where the owner of a servient estate intentionally destroys an easement without the consent of the easement holder. *Ralph v. McLaughlin*, 428 S.C. 320, 350, 834 S.E.2d 213, 229 (Ct. App. 2019); *rev'd* on other grounds, *Ralph v. McLaughlin*, 432 S.C. 640, 856 S.E.2d 154 (Sup. Ct. 2021). Moreover, the *Ravan* case cited by Defendants also noted that a nuisance is "anything which works hurt, inconvenience, or damages; anything which essentially interferes with the enjoyment of life or property." However, the interference or inconvenience must be unreasonable to be actionable. *Ravan*, 315 S.C. at 350, 434 S.E.2 at 213 (citations omitted).

30. Based on the Court's finding that Halsells' actions unreasonably interfered with the Plaintiffs' use and enjoyment of the Landscape Easement, such actions clearly constituted a nuisance, which has the same consequences as a trespass. Halsells are liable for the restoration of the premises destroyed by their actions and for all damages Plaintiffs have incurred as a result of Halsells' unlawful conduct.

#### **G. PIPERS' PATH THROUGH THE EASEMENT AREA**

31. As stated previously, the Court concludes that, currently, Piper's tractor path, used only for access to his makeshift tractor storage hut, does not interfere with Plaintiffs' use and enjoyment of the easement. Of course, there is nothing to prevent the POA from planting trees or shrubbery in that location at a future point, which may make the path inaccessible to the Pipers.

#### **H. PIPERS' COUNTER CLAIMS**

32. The Pipers' counterclaim against the POA is without merit. Pipers wear two hats, one as Lot Owners and members of the POA and one as the owners of Parcel B. As noted in the Findings of Fact, the actions of the POA in taking the steps to finance this litigation were

appropriate and within its authority. Probably such was incumbent upon them under the circumstances. The Special Assessment was valid as against the Pipers.

### III. JUDGMENT AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law:

1. The Court hereby declares the Easements to be existing, valid and enforceable against the Defendants.

2. Further, the Court hereby declares that the placement of a driveway or other permanent structure in the Landscape Easement Area unreasonably prohibits the POA from using the portion of the easement area obstructed thereby for the purpose for which it was granted and is a violation of the POA's rights in the Landscape Easement.

3. Further the Court hereby declares that any alteration of the natural landscape in the Landscape Easement Area that disrupts the natural screen provided thereby (including, without limitation, removal of or damage to vegetation and any grading in the Landscape Easement Area), without the express, written consent of the POA, unreasonably interferes with the POA's use of the Landscape Easement for the purpose for which it was granted and is a violation of the POA's rights therein.

4. Further the Court hereby declares that the Easements vest in the POA sole management and control of beautification, vegetation, landscaping, soil disturbance and grading in the Landscape Easement Area which is necessary in order to insure the full use and enjoyment of the Landscape Easement and any interference with the same by the servient estate owners or anyone claiming through them is a violation of the POA's rights in the Easements.

5. The Defendants and parties claiming through them are not entitled to an easement by necessity for purposes of accessing Parcels A and B.

6. The actions of the POA Board in levying Special Assessments for the purpose of funding this litigation is duly authorized in the Declaration and the Special Assessment already levied is effective as to the Pipers and all the Lot Owners.

7. The Halsells removal of all vegetation in a portion of the Landscape Easement Area of approximately 80' by 25', destruction of the berm and regrading of such portion of the Landscape Easement Area, removal of all vegetation from and regrading a portion of the unpaved roadbed, making a curb cut in MVP Drive, and installation of a driveway in those areas unreasonably interfered with the Plaintiffs' rights in the Landscape Easement and constituted a trespass and/or a nuisance.

8. It is Ordered that the Halsells shall restore all areas disturbed in connection with the construction of their driveway or related thereto, up to the westernmost border of the Landscape Easement Area, to the condition existing prior to their disturbance. Such restoration shall include, without limitation, removal of all concrete and other existing structures, and restoring the contour of the land and replacement of the trees removed with plants approved by the POA to provide screening comparable to those destroyed. The Halsells shall, within forty-five (45) days of this Order, submit to the POA a written proposal as to by whom, and within what time frame, and precisely how they propose to comply with this Order for the restoration of the Landscape Easement Area. The proposal shall also disclose the price quoted for the required work and landscaping materials. The POA shall within ten (10) days thereafter respond to the Halsells in writing either that they agree with the proposal or propose changes thereto. If the POA and the

Halsells have not reached an agreement within twenty (20) days thereafter, they shall so notify this Court. Upon receipt of such notice this Court shall schedule a hearing to resolve the matter and/or order such money damages against the Halsells as will allow the POA to undertake such restoration itself. Similarly, if they do reach an agreement, they shall provide such agreement to this Court by notice from parties' counsel and that agreement shall then be embodied in a Supplemental Order and Judgment. The parties will proceed with diligence to complete all required demolition and restoration.

9. This Court retains jurisdiction of this case pending the parties' compliance with the immediately preceding paragraph and with any further Order, should agreement be reached by the parties or further dispute arise as to the adequacy of the actual performance under any such agreement or Order.

**IT IS SO ORDERED!**

March \_\_\_\_\_, 2023

\_\_\_\_\_  
Steven C. Kirven, Master-In-Equity,  
10<sup>th</sup> Judicial Circuit



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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Larry C. Brandt, P.A. P.O. Box 738 3691 Blue Ridge Blvd. Walhalla, SC 29691

William C. Hood 505 N. McDuffie Street Anderson, SC 29621

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Virginia Hall Campbell

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[Empty lines for additional information]



Oconee Common Pleas

**Case Caption:** Mountain View Pointe Owners Association Inc , plaintiff, et al VS  
Rodney Halsell , defendant, et al  
**Case Number:** 2021CP3700093  
**Type:** Master/Order/Form 4

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081