EXHIBIT B

FINAL TRIAL ORDER, April 28, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Civil Action No.: 2019-CP-10-00039
	)	
	)	
DOLPHIN POINT OWNERS' ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**FINAL ORDER**
	)	
SEABROOK ISLAND PROPERTY OWNERS' ASSOCIATION,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court for trial on February 15 and February 16, 2023. In this action, Plaintiff, Dolphin Point Owners' Association, Inc., ("Dolphin Point"), seeks to recover the cost of repairing an area of its property along the oceanfront on Seabrook Island from Defendant, Seabrook Island Property Owners' Association ("SIPOA"). The repairs included rebuilding a rip rap revetment that supported the upland and restoring the upland. Dolphin Point premises its claims on an easement it granted SIPOA in early 2005. SIPOA denies that the easement was effective and denies any liability for the cost of the project.

Having fully considered the pleadings, the testimony and exhibits admitted at trial, and the applicable law, the Court makes the following findings of fact and conclusions of law. The headings below are general in nature and not conclusive as to whether a determination of the Court is a finding of fact or conclusion of law. The findings may contain conclusions of law and the conclusions of law may contain findings of fact.

FINDINGS OF FACT

Dolphin Point is a small property owners' association comprised of the owners of four units in two buildings on the southwestern end of Seabrook Island near the confluence of the North Edisto River and the Atlantic Ocean. Dolphin Point is on a portion of property previously known as the Deveaux Site. The Deveaux Site was divided into two lots, Lots A and B. The Dolphin Point units were constructed on Lot B in 2006. Lot A that adjoins Lot B on its eastern boundary is owned by SIPOA.

Prior to the construction of Dolphin Point, Lot B was encumbered by a 20-foot-wide "Access Easement" along the interior of the property line in favor of SIPOA. This easement was to provide SIPOA access to the rip rap revetment and the beach. Dolphin Point at Seabrook, LLC, then the owner and future developer of Lot B, approached SIPOA about exchanging the 20 foot easement for a new easement, 30 feet in width, across the entire property line of Lot B, next to the revetment and ocean. At its meeting on December 13, 2004, the working board of SIPOA discussed the proposal and unanimously approved it. The minutes of the meeting reflect the action of the working board as follows:

> Mr. Coy Foster, at Mr. Sbihli's request, was invited to the meeting to discuss the Ed Williams [on behalf of Dolphin Point at Seabrook, LLC] proposal made at the November working Board meeting. This proposal involved the POA relinquishing its 20 ft. easement on the southern side (property line shared with the Beach Club Villas) of the site and absorbing 35 ft. of the 50 ft. Town Buffer requirement on the northern side in return for a new 30 ft. easement on the front (ocean) side of the property for the assumed purpose of constructing a boardwalk for all Property Owners use. Additionally, Mr. Williams would pay for any portion of the boardwalk crossing his property, as well as any necessary legal documents. Mrs. Zahrn made a motion to release the existing POA 20 ft. easement and to absorb 35 Ft of the buffer zone on the Deveaux site in return for a 30 ft, easement along the beach side of the property and to require the developer to pay for the construction of the portion of the boardwalk across his property as well as any required legal expenses. Discussion followed. The motion was passed by unanimous vote.
>
> (Pl. Ex. 1).

The action of the board was embodied in a letter dated December 14, 2004. (Pl. Ex. 1). The copy of the letter admitted at trial did not contain a signature. However, SIPOA acknowledged that it was a business record of SIPOA. Additionally, other SIPOA records from later dates refer to its letter agreement with Dolphin Point at Seabrook, LLC. The Court finds that this letter (hereinafter the "Letter Agreement") embodied an agreement between Dolphin Point at Seabrook, LLC and SIPOA. The letter from SIPOA to Mr. Williams specified the following:

> This letter is to advise you that the SIPOA Board of Directors at its December 13, 2004 working board meeting made the following decision with respect to the Deveaux site, lots A and B:
> 1. The SIPOA will give up its 20 foot wide easement on the north and west side of lot B in exchange for a 30 foot easement on the water/south side of lot B.
> 2. The SIPOA will absorb 35 feet of the 50 foot dissimilar property buffer on lot A of the DeVeaux site with lot B's share of the buffer being 15 feet.
> 3. You, as the owner of lot B, will pay for all portions of any boardwalk that crosses lot B with the understanding that such boardwalk, aesthetics permitting, will be as close to the water side as feasible.
> 4. You will prepare and pay for any and all legal documents necessary to execute this agreement.
> Please sign, date and return the attached copy of this letter to confirm your acceptance of provisions herein.
>
> (Pl. Ex. 1).

The SIPOA records do not include a signed, returned copy of this letter. Regardless, the parties proceeded with the performance of their respective obligations under the Letter Agreement. On February 7, 2005, SIPOA executed an abandonment of the 20 foot easement along the side property line that was recorded in the Register of Deeds for Charleston County at Book G528, Page 640, on March 8. 2005. (Pl. Ex. 2). On February 21, 2005, Dolphin Point at Seabrook, LLC, as Grantor, signed a grant of the 30-foot wide easement across the southern boundary of Lot B in favor of SIPOA. This grant of easement was notarized but did not contain the witness signatures

necessary for recording. The copy introduced at trial was obtained from the records of SIPOA. The easement specified, in pertinent part, as follows:

> An easement for ingress, egress and related purposes for the benefit of the Grantee, its members and those utilizing the easement with its permission, which easement is 30 feet in width and extending across time entire southern boundary of the Grantor's property as shown upon the Plat of Lewis S. Seabrook dated _____ which Plat is attached hereto and incorporated herein by reference (see Exhibit A). Subject to the following special terms and conditions:
> a. Grantee shall construct and maintain a boardwalk, with no other structures such as benches, platforms, roofs or other viewing areas upon said easement for the entire length of the easement, which shall be constructed as near as legally permissible to water, and
> b. Grantor and its successors may connect boardwalks from its buildings to boardwalk to be built by Grantee. The connecting boardwalks and extensions to beach to be constructed by Grantor shall remain the private property of Grantor, its successors and assigns.
> e. In relation to the Grantor's construction of two buildings upon Lot B, Grantee will absorb 35 feet of the 50 dissimilar property buffer requirement upon Lot A, with Lot B's share of said buffer being 15 feet.
>
> (Pl. Ex. 3).

The grant of easement did not include a signature line for SIPOA, just as SIPOA's abandonment of easement did not require the signature of Dolphin Point at Seabrook, LLC. The minutes of SIPOA board and committee meeting as well as other correspondence related to the 30-foot easement introduced at trial did not include any references to SIPOA contesting or objecting to the terms of the 30-foot easement granted by Dolphin Point at Seabrook, LLC. Three plats of Lewis S. Seabrook were recorded that show the "30' Access Easement" across the southern boundary of Lot B, Dolphin Point, just landward of the top of the rip rap revetment. (Def. Ex. 21, 22, and 23).

Based on the testimony and exhibits introduced into evidence, the Court finds that there was an easement in favor of SIPOA across the 30 feet next to the southern boundary line of Lot B, as set forth in the Grant of Easement signed and notarized on February 21, 2005, and as shown in the recorded plats just mentioned (hereinafter the "SIPOA Easement").

As referenced in the Letter Agreement and SIPOA Easement, SIPOA intended at that time to construct a boardwalk on the highland behind the rip rap revetment that would extend across Lots A and B (i.e., Dolphin Point) to Beach Club Villas, the property adjacent to the northwest boundary of Dolphin Point. The minutes of the SIPOA board and committees introduced into evidence show that SIPOA pursued the boardwalk as part of a project sometimes described as the "Deveaux Ocean Site Pavilion and Viewing Area."

At its meeting on March 21, 2005, the Board moved the handling of the project to the General Operating and Maintenance Committee ("GOMC") under Jim Tilson with assistance from The Long Range Planning Committee. (Pl. Ex. 5). The records of the GOMC from March 24, 2005, include an outline of the steps for designing, permitting, and seeking bids for the construction of the "Deveaux Boardwalk." (Pl. Ex. 5). These GOMC records also break down the project into four segments for the boardwalk: Area I - SIPOA property from The Club to Dolphin Point; Area IA - Dolphin Point; Area II - SIPOA property from Dolphin Point to Pelican Watch; Area III - The Club Property. (Pl. Ex. 5). SIPOA obtained pricing for the construction of aspects of the project from Dock and Marine. (Pl. Ex. 5).

At the SIPOA Board meeting on May 16, 2005, Mr. Tilson reported at length on the project. He relayed that the estimated cost was higher than expected and that the design was being changed to reduce the size and strengthen the structure. The GOMC believed the reduced project could be brought back into budget. He told the Board that "[w]hen completed, our Seabrook ocean front boardwalk, running parallel to the beach, will be the only one of its kind in South Carolina." (Pl. Ex. 6).

Mr. Tilson updated the SIPOA Board again at its meeting on June 20, 2005, that the project was "being downsized and limited." The Board unanimously approved Mr. Tilson's motion to

approve the final design and requests for construction proposals for the boardwalk and viewing platform for "only those phases of construction known as No. I and IA [Dolphin Point] although approval request phases of No.2 and 3 will remain active with the OCRM." (Pl. Ex. 7, p. 000097).

At the SIPOA Working Board Meeting on July 18, 2005, Mr. Tilson informed the Board that the Town of Seabrook Island indicated that its zoning requirements may not permit the construction of a large deck. For this reason, he informed the Working Board that SIPOA's submission for permitting purposes will consist of the boardwalk itself, with an addendum request for a small viewing area. He told them that if the viewing area is denied, then boardwalk construction could commence while an appeal is made to add a viewing platform. (Pl. Ex. 7, p. 000100).

Mr. Tilson next reported to the board on the Deveaux Boardwalk Project at the Special Board Meeting on July 25, 2005. The SIPOA board approved a motion to accept the proposal of Dock and Marine, Inc. to construct a "Boardwalk and Viewing Platform on property owned by the Seabrook Island Property Owners Association at the beach front area known as the DeVeaux Site, the work to be limited to Phase I and the Viewing Platform for a total not to exceed $190,587." (Pl. Ex. 7, p. 000102). At the SIPOA Board of Directors meeting on September 19, 2005, the Board approved the funding for the construction of Phase I. (Pl. Ex. 7, p. 000105).

At the meeting of the SIPOA Working Board of Directors on October 10, 2005, Mr. Tilson reported that Charleston County reviewed the plans and was requiring that "ADA handrails and pickets at 4 in. intervals be incorporated into the design" and that the GOMC "will need to review these requirements and the resulting change in appearance of the boardwalk." (Pl. Ex. 7, p. 000106). The minutes from this meeting show that Mr. Tilson's report was followed by the following comment and decision: "Mr Genovese noted that The Club is considering potentially

major changes in the area of the Ocean Club and that it may be prudent to delay boardwalk construction until these changes are known. The Board agreed to delay this project until these issues are resolved." (Pl. Ex. 7, p. 000106). The minutes from the meeting of the SIPOA Board on November 21, 2005, note again that "the Board feels that the DeVeaux Site boardwalk should be put on hold at this time." (Pl. Ex. 7, p. 000108). According to Heather Paton, the executive director of SIPOA who testified at trial, the Deveaux Boardwalk Project was indefinitely postponed because of the Horizon Project, which was another capital improvement project of SIPOA that took priority.

The minutes of later board meetings as well as correspondence within the business records of SIPOA show the delay prompted discussions between SIPOA and Mr. Williams who was by then completing the construction of the four dwellings in the two buildings at Dolphin Point. At the meeting on March 13, 2006, Mr. Ahearn reported to the SIPOA Working Board that "the SIPOA and the developer have an agreement for the developer to pay for the portion of this boardwalk across this property" and that since "the SIPOA is not currently building this boardwalk, the developer does not want to allow for an indefinite time period to complete construction." The minutes then state the following: "The Board reviewed the original agreement, and determined that there is no set time frame for the boardwalk agreement. A letter detailing the SIPOA's position will be sent to the developer by April 1, 2006." (Pl. Ex. 8, p. 000116).

The minutes of the meeting of the SIPOA Working Board on November 13, 2006, again refer to the *agreement* with the developer: "Mr. Tilson discussed an agreement made with the builder of the DeVeaux site that allowed for changes in SIPOA setback requirements in exchange for easement modifications and a promise to pay for a portion of a proposed new boardwalk. The SIPOA has not yet built this boardwalk due to implementing the Horizon Plan. The original

agreement was made with the development company, which may be dissolved when the last Villa unit is sold. Mr. Thompson will research this issue and report at a future Board meeting." (Pl. Ex. 8, p. 000117 (emphasis added)).

The SIPOA records include an unsigned letter dated November 14, 2006, marked "DRAFT #2" from Mr. Thompson as executive vice-president of SIPOA to Mr. Williams that congratulates him "on the near completion of your Dolphin Point project" and goes on to discuss the boardwalk project:

> With regard to the boardwalk, which is the subject of *our agreement* dated December 14, 2004, the SIPOA will construct the Boardwalk at some time in the future; as you are aware, the delay in construction is due to the Horizon Plan potentially changing the design details of what had been originally planned.
>
> As a means for you to avoid being affected by escalation of construction costs, while meeting your obligations to the SIPOA, the Board suggests you place funds in escrow in the near future to cover an agreed upon cost of construction.
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> (Pl. Ex. 9 (emphasis added)).

The next communication about the project in the SIPOA records is a letter dated November 21, 2006, from Mr. Williams to Mr. Spihli, as Chairman Long Range Planning SIPOA. In it he discusses his understanding of the agreement with SIPOA at the time the easement was negotiated. He said he agreed to construct the portion of the boardwalk over the SIPOA Easement and even to use more expensive materials as requested by SIPOA. Despite the several changes to the project since then, he states that "if the POA decides to build the boardwalk now, I will build the portion that crosses our property." Mr. Williams also commented about the last plan of the boardwalk across Dolphin Point. He wrote that he found its location was too close to the buildings; he also objected to the viewing platform shown on those plans. He further expressed his understanding that SIPOA's boardwalk project was to coincide with his construction of the Dolphin Point buildings. He said that he expected to complete the construction of Dolphin Point in the late spring

of 2006[1] and if SIPOA did not proceed with the boardwalk project before then, he would not participate. (Pl. Ex. 10).

On January 12, 2007, John Wells, SIPOA's director of operations and maintenance at that time, wrote an email to Messrs. Genovese and Thompson. (Pl. Ex. 11). In the email he recommended that the "SIPOA take the following position with respect to the 30 foot easement in front of the [Dolphin Point] property in order to maintain the easement rights":

> 1. Installation of and maintenance of a walkway between the SIPOA over walk on lot A to the Beach Trust area in front of the Beach Walk Villas
> 2. Installation of and maintenance of a vehicle passage (truck/4wheel vehicle) without interference between the SIPOA over walk on Lot A to the Beach Trust area for maintenance work in the Beach Trust area and access to the beach on the Edisto River. (NOTE: This is the only easement that the SIPOA has on the Edisto River side of Seabrook Island for access. The entrance by Pelican Watch Villas is not an easement and is granted only by the Pelican Watch Villa Association.)
> 3. Provisions of and maintenance of a heavy equipment access during emergency conditions to allow access to the Beach Trust area and the Edisto River beach area. I recommend a minimum distance of 15 feet clearance due to the limited turning ability of the equipment and to allow sufficient clearance of structures. Vegetation may be removed if necessary and replaced by the regime.
>
> (Pl. Ex. 11).

In a letter dated February 2, 2007, to Terry Ahearn of SIPOA, Mr. Williams communicated his view that Dolphin Point at Seabrook, LLC had lived up to the terms of the Letter Agreement:

> I met with John Wells and John Genovese on January 31 to discuss the beach access required by the POA at Dolphin Point. The solution they proposed to remove a portion of our existing boardwalks is not necessary and does not comply with our original agreement.
>
> At the time we negotiated the exchange of easements on our property, there were two necessary requirements for the POA:
> 1. Provide pedestrian access across the site
> 2. Provide access for heavy equipment across the site

[1] Mr. Williams' reference to completion of the construction of Dolphin Point in the late spring of 2006 raises a question as to the accuracy of the date on the letter in the SIPOA records and implies it was written before that time. Regardless of the actual date of the letter, the contents confirm an agreement is in place and Mr. Williams' understanding of that agreement.

> We found out after our boardwalks were constructed, that the POA had a third requirement for trucks and motorized carts to have access. We have made a provision to allow for that at our expense. This access (sand ramps) was discussed with John Wells and Bill Eiser (OCRM).
>
> John Wells asked for a thirty (30) foot easement instead of a twenty (20) foot easement to allow room for the POA boardwalk (which was to be constructed at the same time we were building Dolphin Point) and the heavy equipment access. As discussed with John Wells, we agreed to provide removable sections in Dolphin Point's boardwalks to allow access for heavy equipment. The removable sections are installed and can be made wider if necessary. The approved plan calls for Dolphin Point's boardwalks to tie into the POA's boardwalk. The elevations met that requirement and were no higher than necessary to clear the rocks and access the beach.
>
> When the POA boardwalk was shelved, I spoke to Bill Eiser. He suggested a walkover at the end of each boardwalk as being the simplest and least obtrusive way to access the beach.
>
> I feel very strongly that we have fulfilled our agreement with the POA.
>
> (Pl. Ex. 12).

The next SIPOA internal discussion about the Letter Agreement and SIPOA Easement in the minutes transpired at the Working Board Meeting on March 19, 2007:

> Mr. Williams and Mr. Wells were invited in to the meeting to discuss *the Dolphin Point easement and access arrangement with the SIPOA*. Mr. Genovese distributed a handout containing a drawing illustrating *the original exchange of easements between Dolphin Point, LLC and the SIPOA*. A raised boardwalk has been constructed from each of the two villas to the beach. Each boardwalk contains a 10-ft. removable section to allow SIPOA vehicles access through this section of the beach. *Mr. Wells stated that problems exist with this design, as the raised boardwalk prohibits routine access by small vehicles such as pickup trucks and other maintenance vehicles*. Mr. Wells recommended that the boardwalk be lowered to ground level *so that small maintenance vehicles can easily drive over without damaging the boardwal*k. Mr. Williams then reviewed the original discussion relating to trading easements with the SIPOA, and explained the reasons for constructing the two boardwalks to their current height of up to 24 in. above ground level. In addition, he stated that the original agreement was supposed to allow for emergency access and not for unrestricted routine access. Mr. Williams summarized the three issues involved in this dispute:
>
> 1. Is the 10-ft. removable section large enough to allow large construction vehicles (primarily for rip-rap repair) through?

> 2. Can the current boardwalk provide for routine access by pickup trucks and other small maintenance vehicles?
> 3. Who is responsible for removing and re-installing the 10-ft. removable boardwalk sections?
>
> Each Board member will visit the area in question, and the Board will make their decision at a future meeting.

(Pl. Ex. 8, p. 000119 (emphasis added)).

The last reference to the SIPOA Easement is in the minutes of the Working Board Meeting on April 16, 2007: "The Board discussed the boardwalk behind the Dolphin Point Villas. Mr. Mordhorst expressed concern about Emergency Vehicle access to this area of the beach. The Environmental Committee will review this area to determine any access issues by the STPOA Maintenance Department arid emergency vehicles." (Pl. Ex. 8, p. 000120).

As these last several excerpts from the SIPOA minutes, Mr. Thompson's letter, and Mr. Wells's email demonstrate, SIPOA clearly understood and took the position that there was both a prior agreement and an easement in its favor. SIPOA also believed the SIPOA Easement included its use by SIPOA for small vehicles to cross in front of the Dolphin Point buildings and for emergency vehicular access to the beach as well as to repair rip rap. Additionally, Mr. Williams constructed the separate boardwalks from his two buildings to the beach to accommodate a tie in with SIPOA's Deveaux Boardwalk Project if and when the project proceeded and included removable spans of those boardwalks to allow access to the beach by construction vehicles and equipment. To the extent there was any issue over access by SIPOA's larger construction vehicles or the length of the removable sections or anything else, these items did not involve the existence and validity of the Letter Agreement nor the SIPOA Easement that were never questioned by either side. The issues that may have been left hanging were not addressed in terms of either. Because there were no further references in the minutes or correspondence to these specific items, it is unknown whether they were ultimately worked out or not.

What is clear is that SIPOA's and Mr. Williams' differing views of topics not addressed in Letter Agreement and SIPOA Easement turned out to be an academic question. SIPOA did not to proceed with the Deveaux Boardwalk Project across Dolphin Point although the minutes of the SIPOA Board indicate it might do so sometime in the future. The minutes introduced at the trial did not include any later SIPOA Board minutes where it formally killed the Deveaux Boardwalk Project or took action to abandon the SIPOA Easement before this suit was filed. As Mr. Wells noted in his email of January 13, 2007, this 30' easement was "only easement that the SIPOA has on the Edisto River side of Seabrook Island for access." (Pl. Ex. 11).

SIPOA disputes that SIPOA ever used the SIPOA Easement. Based on the testimony of Mr. Bradwell, the Court finds that SIPOA did use SIPOA Easement for some indeterminate time soon after Dolphin Point was constructed for "gators" to pick up trash. These small vehicles used sand ramps to cross over the two boardwalks to the beach from the Dolphin Point buildings. These sand ramps are mentioned in Mr. Williams's letter of February 2, 2007 (Pl. Ex. 12), and they are visible in the photographs of these boardwalks after Hurricane Matthew in 2016 (Pl. Ex. 18, pictures 1 and 4). The Court finds that SIPOA, as an organization, did in fact use the SIPOA Easement in this manner for some period of time.

There was also extensive proof of the use of the SIPOA Easement by pedestrian beachgoers. SIPOA constructed and maintained a beach access staircase over the rip rap revetment known as SIPOA Boardwalk #8. It was located on Lot A immediately adjacent to the eastern boundary of Dolphin Point. The testimony was that the bottom of the stairs ended in a scour that was often under water at high tide and that the stairs were difficult to navigate. The testimony and picture exhibits showed that many persons on a daily basis crossed from the top SIPOA Boardwalk #8 over the SIPOA Easement to the Dolphin Point beach staircases and used them and the reverse

– that beachgoers would use the Dolphin Point beach staircases to leave the beach and use the SIPOA Easement to walk over to the adjoining SIPOA property on Lot A.

Seabrook Island is a gated community. The Court finds that it is more probable than not these persons were SIPOA members or guests of SIPOA members. One of the primary purposes of the SIPOA Easement was to accommodate pedestrian access by its members, albeit over what was then believed to be the Deveaux Boardwalk that was never constructed. The SIPOA Easement however did not limit its use to members using the proposed boardwalk. The grant of easement was general in nature: "An easement for ingress, egress and related purposes for the benefit of the Grantee, its members, and those utilizing the easement with its permission,…" (Pl. Ex. 3).

SIPOA argues that the use of these persons cannot be considered since there is no proof they knew about the SIPOA Easement. What is important is the use, not the user's knowledge of the easement or whether knowledge of the easement caused the use. The proof was undisputed that SIPOA did nothing to discourage its members and guests from using the SIPOA Easement to access the Dolphin Point boardwalk staircases until after suit was filed.

The proof further established that the Dolphin Point owners and their rental guests did not use the SIPOA Easement to access the beach. Instead, they used the individual boardwalks of the two buildings that provided a direct route to the beach crossing over the SIPOA Easement area.

In October 2016 Hurricane Matthew damaged the SIPOA Easement area and the rip rap revetment immediately seaward of it. Numerous pictures admitted in evidence show the extent of the damage that also included the destruction of the stairs of the Dolphin Point boardwalks over the revetment. (Pl. Ex. 18 and Ex. 20, pp. 5-8, 13-20). The waves from the hurricane overwashed the top of the damaged revetment and removed grass and topsoil from the SIPOA Easement area. This overwash area behind the displaced rip rap damaged in the hurricane was not inundated with

the daily tidal cycle of the waves and did not become part of the beach. These portions of the SIPOA Easement manifested damage from an isolated storm event rather than a broad expansion of the beach on a daily basis.

The owners of the four Dolphin Point units were concerned about the damage to the SIPOA Easement area that is plainly evident from the photographs. They were concerned about potential liability to Seabrook Island beachgoers who tried to use the SIPOA Easement area. They were also concerned about protecting the Dolphin Point buildings.

SIPOA put in evidence an email from one of the owners, Linda Demler, date November 15, 2016, to the other owners discussing a conversation she had with Tim Cana, a coastal scientist, who did a presentation at a community center. (Def. Ex. 29). Demler described a portion of her conversation with him in this email as follows:

> … In discussing the aftermath of the hurricane. Tim said that he was very concerned about the erosion of sand and formation of a depression in front of "Deveaux Villas" meaning Dolphin Point Town homes. He said that they are very hopeful that this is not indicative of an underlying sub-structural issue below the sand bed because if so, the Deveaux Villas will be sliding in the ocean without intervention. He put that disastrous scenario at low probability but within possibility…
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> (Def. Ex. 29, p. 3).

SIPOA contends that the Dolphin Point owners wanted to repair the SIPOA Easement area solely to protect their houses from "sliding in the ocean." Bradwell and Demler testified that they did not consider this happening to be a realistic possibility. Further, there was no proof that there was in fact "an underlying sub-structural issue below the sand bed" that was the predicate to Cana's comment. The Court finds that even if the desire to protect their property was one of the reasons for Dolphin Point's repairing the SIPOA Easement area, that has no bearing on whether Dolphin Point is entitled to reimbursement for the cost of the repair. The fact remains that, regardless of

the specific reasons for proceeding, Dolphin Point restored the SIPOA Easement area and paid the entire cost for that work.

In her emails from November 2016 Demler also communicated to the other owners on November 21, 2016, that John Wells believed that the town of Seabrook Island held an easement along the oceanfront of the Dolphin Point property that would make the town responsible for the repairs. (Def. Ex. 29). Demler and Bradwell testified that this was the first time that they remembered becoming aware of the easement that was held by SIPOA, not the town. According to this email, Wells agreed with Cana that the Dolphin Point should use an experienced marine contractor to shore up the rip rap and backfill the upland area behind it that had been removed in the storm surge.

Bradwell approached SIPOA about payment of the repair of the Dolphin Point Easement area, meeting with SIPOA representatives at their office on January 6, 2017. Bradwell followed up that meeting with an email on February 7, 2017, to Ms. Paton, in which he reiterated Dolphin Point's request:

> …We, at Dolphin Point, are anxious to have the lost land mass and revetment wall restored as our homes are now more vulnerable to storm flooding. As stated in the meeting, it is our position that SIPOA should meet the responsibility to restore the revetment wall and easement land mass loss as they must be rebuilt together as a system…
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> (Pl. Ex. 29).

On February 24, 2017, Paton sent Bradwell an email that attached a package of documents related to Dolphin Point and the SIPOA Easement that were part of SIPOA's records including the Letter Agreement, the Dolphin Point Easement, and the recorded plat showing the 30' easement along the oceanfront of the Dolphin Point property. (Pl. Ex. 30). SIPOA ultimately took the position it had no responsibility for the repair and would not pay for it.

Dolphin Point obtained the final permit for the repair from OCRM on December 12, 2017. (Pl. Ex. 24). The permit described the "Authorized Work" as follows: "To make repairs to a section of an oceanfront rip-rap revetment. Specifically, to add rip-rap to the revetment to bring it back to the surveyed height at stations 14-16 as shown on the 'Summary Report Seawall Inspection-2007.'" (Pl. Ex. 24).

The Court finds, as Mr. Bradwell testified, that the revetment and upland behind it work as a system. Each provides structural stability to the other. The revetment provides support to the upland, and the upland behind it to the revetment. The SIPOA Easement Area could not be maintained and restored unless the revetment were rebuilt. Dolphin Point did both.

Dolphin Point paid BluTide Marine Construction $92,668 to reconstruct the revetment and to backfill the SIPOA Easement Area behind the rebuilt revetment. (Pl. Ex. 22). Dolphin Point paid $945.89 to Brownswood Nursery for junipers and planting materials to replace the ones that had been destroyed. (Pl. Ex. 23). It also paid $270 for labor to install those junipers, and another $140 to install new irrigation for them. (Pl. Ex. 23). The total sum expended was $94,023.89.

After Dolphin Point filed this action against SIPOA in January 2019 seeking reimbursement for the cost of these repairs, SIPOA executed a Declaration of Easement Abandonment of the SIPOA Easement on June 17, 2019, and recorded it in the Register of Deeds for Charleston County. (Pl. Ex. 13). Additionally, at some unidentified time after this suit was filed, SIPOA placed a sign next to Boardwalk No. 8 "Private Property – No Beach Access" to inform SIPOA residents and their guests of the status of the Dolphin Point property. (Pl. Ex. 21). SIPOA also removed the stairs to the beach at Boardwalk No. 8 and created a lookout platform above the revetment in its place. In the fall of 2022 SIPOA constructed a boardwalk from the street to lookout that turns east at the lookout towards the Beach Club. (Pl. Ex. 21). The new boardwalk

includes railings that have the secondary effect of deterring persons from turning left and crossing over to Dolphin Point to use either of their stairways to gain access to the beach.

CONCLUSIONS OF LAW

This matter was referred to this Court for final disposition by Consent Order of Reference filed on January 13, 2021, to "exercise all the power set forth in Rule 53(c), SCRCP, including, but not limited to, directing entry of final judgment in this action."

Dolphin Point asserts three causes of action seeking reimbursement from SIPOA in its complaint: the first cause of action is for breach of contract under the SIPOA Covenants, the second cause of action is for breach of the common law duty to repair and maintain, and the third cause of action is for quantum meruit. In its answer and counterclaim, SIPOA asserts several defenses. The primary defenses SIPOA argued at trial were its contentions that: there was no valid easement; that if there were an easement, SIPOA abandoned it before the repairs were made; that it has no responsibility for the repair of the revetment and SIPOA Easement area under the SIPOA Covenants and rules propounded by the SIPOA Board, that the private property owner has responsibility for any repair of the revetment in front of its property, and that Dolphin Point's claims are barred by the statute of limitations. SIPOA counterclaimed for its attorneys' fees and costs under Section 35 of the SIPOA Covenants that provides SIPOA can recover these in a proceeding against a person who violates the SIPOA Covenants. (Pl. Ex, 14, Section 35).

I. CAUSES OF ACTION AT LAW AND IN EQUITY

"[T]he determination of the existence of an easement is a question of fact in a law action." Jowers v. Hornsby, 292 S.C. 549, 551, 357 S.E.2d 710, 711 (S.C. 1987). Our Supreme Court has stated the test for determining whether a complaint is at law or in equity as follows:

> Characterization of an 'action as equitable or legal depends on the appellant's 'main purpose' in bringing the action.' 'The main purpose of the action should generally

> be ascertained from the body of the complaint.' 'However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action.' The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable.

Verenes v. Alvanos, 387 S.C. 11. 16, 690 S.E.2d 771, 773 (S.C. 2010) (internal citations omitted).

Under this test Dolphin Point's first cause of action for breach of the SIPOA Covenants is an action at law. The next two causes of action are ones based in equity that seek damages rather than equitable relief. Since the main purpose of the action is to recover damages, the Court concludes this is a legal action rather than an equitable action. Even so, "[T]he determination of the extent of a grant of an easement is an action in equity." Smith v. Commissioners of Pub. Works of City of Charleston, 312 S.C. 460, 465, 441 S.E.2d 331, 334 (Ct. App. 1994).

As previously stated, the Court finds and concludes that the SIPOA Easement was a valid easement. The preponderance of the evidence established that SIPOA considered that it had the benefit of this easement and used the easement for purposes of its planning the Deveaux Boardwalk Project and for the collection of refuse over some period of time. There is plenty of contemporaneous documentation from SIPOA and Williams affirming the existence of the easement. The evidence also showed the construction of the earthen ramps and the Dolphin Point boardwalks to accommodate SIPOA's vehicular use of the SIPOA Easement area. Further, there was abundant proof of the pedestrian use of the SIPOA Easement area by its members and guests up through SIPOA's official abandonment of the easement in June 2019.

SIPOA argues that there was no meeting of the minds as on every term of the SIPOA Easement. These principles governing formation of contracts do not apply to easements. The elements necessary to prove a contract and those to prove an easement are different. The contract in this case was the Letter Agreement. The SIPOA Easement was granted in performance of one

of the terms of that contract. The SIPOA Easement satisfies the requirements for an easement, described by our Court of Appeals as follows:

> An easement is a right given to a person to use the land of another for a specific purpose. An easement may arise in three ways: (1) by grant; (2) from necessity; and (3) by prescription.

Ward v. Evans, 387 S.C. 401, 409, 693 S.E.2d 7, 11 (Ct. App. 2010).

The SIPOA Easement meets this test. It was a right given by grant by the then-owner of the Dolphin Point property to SIPOA and its members to use the SIPOA Easement area "for ingress, egress and related purposes." (Pl. Ex. 3).

"An easement by grant is not required to be recorded to be valid. Although notice is assumed when a document conveying an interest in real property is recorded, recording is not necessary if the buyer has actual notice." Frierson v. Watson 371 S.C. 60 at 67, 636 S.E.2d 872, 875 (Ct. App. 2006). SIPOA's argument that the failure to record the easement is somehow fatal to its existence is particularly unavailing here. SIPOA kept a copy of the grant of easement in its records, had actual knowledge of the SIPOA Easement, and treated it as effective until formally abandoning it in June 2019. Additionally, the easement was shown on plats that were in fact recorded. Pl. Ex. 4; Def. Exs. 21, 22, and 23. Even in the absence of an express grant of easement, a property owner may create an easement by recording a plat showing the easement if the intent was to create an easement. Murrells Inlet Corp. v. Ward, 378 S.C. 225, 232-3, 662 S.E.2d 452, 455 (Ct. App. 2008). In this case, Dolphin Point at Seabrook, LLC clearly intend to convey an easement since it made an express grant that was confirmed in recorded plats.

SIPOA makes a separate argument that the SIPOA Easement did not constitute an easement appurtenant but was instead an easement in gross. An appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially

necessary to the enjoyment thereof. Tupper v. Dorchester Cty., 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). Here the SIPOA Easement had its terminus on SIPOA property (Lot A) and traversed the oceanfront of Lot B to provide access not only to the Beach Club Villas to the west of Lot B but also to SIPOA's Beach Trust property. Under Section 31 of the SIPOA Covenants, SIPOA holds "in trust all lands, if any, located between the front Property lines of any oceanfront Lot and the high water mark of the Atlantic Ocean and the North Edisto River: directly in front of each such Lot, for the use and benefit of the residents of the SID [Seabrook Island Development]." Pl. Ex. 14. SIPOA asserts the easement was not necessary. The email of John Wells of January 13, 2007, however, attests to the necessity of the SIPOA Easement to SIPOA for gaining access to its Beach Trust property since SIPOA held no other easements on that end of the island. (Pl. Ex. 11).

For these reasons the Court finds and concludes the SIPOA Easement is an appurtenant easement, but the distinction makes no difference in this case. What most distinguishes an easement appurtenant from one in gross is that an easement appurtenant runs with the land to the benefit of the grantee of the dominant estate. Williams v. Tamsberg, 425 S.C. 249, 264 821 S.E.2d 494, 502 (Ct. App. 2018) ("[A]n appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance.") But, here SIPOA never attempted to convey the SIPOA Easement before it executed and recorded the Declaration of Abandonment in June 2019.

SIPOA argues that even if there were an easement, SIPOA abandoned the easement before recording the Declaration of Abandonment in June 2019. Abandonment "may be inferred from the acts and conduct of the owner and the nature and situation of the property, where there appears some clear and unmistakable affirmative act or series of acts clearly indicating, either a present

intent to relinquish the easement, or purpose inconsistent with its further existence." Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975). The burden of proof is on the party claiming abandonment to prove the "abandonment by clear and unequivocable evidence." Id. In Carolina Land Co., Inc. the state Supreme Court referred to its decision in Witt v. Poole, 182 S.C. 110, 188 S.E. 496 (1936), where "we held that the mere nonuse of an easement created by deed for a period however long will not amount to an abandonment, but there must be other acts by the owner of the dominant estate conclusively manifesting either the present intention to relinquish the easement or purpose inconsistent with its further existence." 217 S.E.2d 21. Here, SIPOA did not establish anything more than its nonuse of the SIPOA Easement for many years, even though its members and their guests continued to use the SIPOA Easement. The Court finds and concludes that SIPOA did not prove it abandoned the SIPOA Easement by clear and unequivocal evidence before June 2019. But, instead and significantly, the Court finds and concludes that the Declaration of Easement Abandonment, filed on June 17, 2019, does constitute clear and unequivocal proof of the abandonment of the SIPOA Easement and was effective upon that date. (Pl. Ex. 13).

II. BREACH OF CONTRACT

Dolphin Point alleges that SIPOA breached an obligation under the SIPOA Covenants to repair and maintain its Easements. SIPOA asserts that the SIPOA Covenants relieve it of any obligation to prevent or correct the effect of erosion on the beach and that the individual owners have responsibility to repair the revetment along their oceanfront properties.

Our Supreme Court regards restrictive covenants to be contractual in nature. S.C. Dept. of Nat. Resources v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). Restrictive covenants are construed like contracts and may give rise to actions for breach of contract. Kinard v. Richardson, 407 S.C. 247,754 S.E.2d 888, 893 (Ct. App. 2014). "Words of a

restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998).

The SIPOA Covenants that were in effect at the time of the repair of the SIPOA Easement area were the Restatement and Ninth Modification of Protective Covenants for Seabrook Island Development Charleston County, South Carolina (Adopted February 18, 2017). Pl. Ex. 14. Earlier versions of these restrictive covenants were put into evidence, but none showed that the provisions pertinent to this dispute changed in any material respect since the granting of the SIPOA Easement.

Section 2 (b) of the SIPOA Covenants provides in pertinent part as follows:

> The purpose and business of SIPOA is to preserve the Property values and the quality of life in the SID [Seabrook Island Development] through: … (b) Protection, operation, maintenance and improvement of such roads, bridges, parks, playgrounds, *beaches,* open spaces, rights-of-way, *easements* and other SIPOA properties, as are deeded, leased or otherwise conveyed to or held in trust for the benefit of SIPOA or Property Owners; provided, however, *while the provision in this section for the maintenance of beaches* shall not be construed as imposing an obligation on SIPOA or its agents to restore, replenish, protect or take any preventive or remedial action against beach or marsh changes occurring as a result of forces of nature, projects of this nature may be undertaken as authorized in the Bylaws; …

Pl. Ex. 14, Section 2 (b) (emphasis added).

Dolphin Point argues that this section imposes the obligation on SIPOA to protect, maintain and improve its easements "as are deeded, leased or otherwise conveyed to or held in trust for the benefit of SIPOA or Property Owners." The Court finds and concludes that the SIPOA Easement was deeded to SIPOA for the benefit of it and its property owners.

SIPOA argues that the second part of the excerpted section exonerates it from responsibility for the Dolphin Point's repair: "provided, however, while the provision in this section for *the maintenance of beaches* shall not be construed as imposing an obligation on SIPOA or its agents to restore, replenish, protect or take any preventive or remedial action against beach or marsh

changes occurring as a result of forces of nature, projects of this nature may be undertaken as authorized in the Bylaws." Pl. Ex. 14, Section 2 (b). Dolphin Point asserts that this clause directly refers to SIPOA's specific obligation to maintain the beaches that was stated in the preceding sentence. Dolphin Point is not suing SIPOA for breaching its contractual duty to maintain the beaches but instead for breach of its contractual duty to maintain its easements.

Applying the rules of construction to Section 2(b), the Court finds and concludes that this exemption from responsibility involves SIPOA's obligation to maintain the beaches. This provision distinguishes between SIPOA's obligation to maintain beaches and its obligation to maintain easements. The exonerating wording SIPOA references in the second part of Section 2(b) refers only to its obligation to maintain *the beaches*. SIPOA's interpretation is that the exculpatory wording relates to all of its maintenance obligations in the preceding sentence. If that were the case, then there would have been no need to have the limiting wording "of beaches" and would have instead stated, "this section for the maintenance ~~of beaches~~ of any of the above shall not be construed as imposing an obligation on SIPOA … to restore…."

"[A]n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." Stevens Aviation, Inc. v. DynCorp Int'l LLC, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014). SIPOA's interpretation of Section 2(b) would render the words "of beaches" meaningless or superfluous. The Court finds and concludes that the cardinal rules of contract construction support Dolphin Point's interpretation of Section 2(b) and that the exclusion of liability in the last part of the section does not apply here. Because it does not apply since we are dealing with the SIPOA's duty to maintain easements, the Court does not need to determine whether Dolphin Point's restoration of the rip rap revetment was "to

restore, replenish, protect or take any preventive or remedial action against beach or marsh changes occurring as a result of forces of nature."

SIPOA separately argues that the SIPOA Covenants place the responsibility to repair the rip rap revetment on the owner of the adjoining property. However, there is no provision in the SIPOA Covenants that imposes this responsibility.

Section 23 of SIPOA Covenants referenced by the letter of September 4, 2017 (Def. Ex. 1), does not state that beachfront owners are responsible for the cost of repair of the revetment seaward of their properties. Instead, it similarly limits the owner's obligation to repair to the portion of the structure on the owner's property: "In the event of a partial loss or damage and destruction resulting in less than total destruction of structures *located on Property subject to these Protective Covenants other than property owned by SIPOA*, the Property Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner determined by the ARC to be consistent with the original construction or in such other manner as may be approved pursuant to Section 19 of these Protective Covenants." Pl. Ex. 14, Section 23 (emphasis added). No portion of the revetment was on the property of Dolphin Point. It was on the property of SIPOA.

Without a specific provision in the SIPOA Covenants to this effect, SIPOA falls back on the policies or rules adopted by its Board. Def. Ex. 13. The South Carolina Homeowners Association Act (the "Act"), S.C. Code §§ 27-30-100 et seq. requires that homeowners' associations must record their rules and regulations with the Register of Deeds for them to be effective and enforceable, including those that were in place before the effective date of the Act, May 17, 2018. S.C. Code Ann. § 27-30-130. SIPOA did not put into evidence any proof that the rules and policies that impose this financial responsibility to repair the revetment were ever recorded. The copies introduced into evidence do not bear any recording information. Def. Ex. 13.

The Court further notes its reservations about the application of such a policy in this case where SIPOA acknowledges that the revetment is entirely on its Beach Trust property, not the property of Dolphin Point, just as shown by the surveys.

In arguing its defense of statute of limitations, SIPOA asserts that it gave notice of this unrecorded policy directly to the Dolphin Point owners in a September 2007 in a letter to them and other owners of beachfront property along the revetment on the North Edisto end of the island. Def. Ex. 1. The letter notified the owners that SIPOA was seeking a permit to conduct comprehensive repairs to the revetment and informed the owners that they could agree to let SIPOA conduct the repair next to their properties and pay their share or separately contract for the repairs provided they were pursuant to the permit SIPOA was seeking. Def. Ex. 1. The letter enclosed a thumb drive with the Seawall Inspection Report - 2007 of Coastal Science and Engineering and a similar report from the previous year that had been communicated to these owners. Def. Exs. 1, 8, and 9. The SIPOA letter included the statement that "SIPOA's rules and regulations specify that property owners are responsible for and must maintain the portion of seawall located on their property in good condition at all times (reference paragraph 23. of the SIPOA Covenants and By-Laws, and specifically, paragraph 12.i. of the SIPOA Rules)." Def. Ex. 1, p. 1. In other places in the letter SIPOA again stated this responsibility of the property owner was for the *portion of seawall located on their property* and went so far as to say "[c]harges, to individual property owners will be exactly what it cost to perform the work *on their lot*." Def. Ex. 1, p. 2 (emphasis added). Linda Demler signed and returned the enclosed form agreeing "in principal to participate in the proposed SIPOA-managed project to repair the seawall revetment *located on my property* on Seabrook Island at Dolphin Point…" Def. Ex. 7 (emphasis added).

The Court has found and SIPOA acknowledges that no portion of the wall was on the Dolphin Point property, which meant that she would not have paid anything if the project had proceeded. Ultimately the project did not proceed because OCRM determined that the repair of the revetment would require the permittee "to excavate dune vegetation that has recently become established immediately seaward of the revetment in many areas" including the area in front of Dolphin Point. Pl. Ex. 28. OCRM allowed the permit for only the portion of the revetment without the dune vegetation.

The Court finds and concludes that the letters of September 4, 2017, do not support SIPOA's defense of statute of limitations as argued by it. None of the Dolphin Point owners sustained any financial loss since the project never proceeded and none were charged. It is the "settled law of South Carolina" that the statute of limitations "begins to run from the time of the first injury or damage." Webb v. Greenwood County, 229 S.C. 267, 279, 92 S.E.2d 688, 693 (1956). That injury or damage did not occur until Dolphin Point incurred the full cost of repairing the SIPOA Easement area in 2018. Additionally, the letter of September 4, 2017, asserted the Dolphin Point owners were responsible for that portion of the revetment on the Dolphin Point property; no portion of the revetment was on its property. As Mr. Bradwell testified and the OCRM letter of decision confirmed, the beach in front of Dolphin Point was in good shape at that time regardless of the condition of the revetment. Further, the claim in this case involves an area that is subject to an easement of SIPOA. Under the SIPOA Covenants SIPOA has responsibility for maintaining its easements rather than the property owner whose property is burdened by the easement.

The Court finds and concludes that Dolphin Point proved by the preponderance of the evidence that SIPOA breached the obligation imposed in Section 2(b) to maintain *easements* for

the benefit of SIPOA and its members and that such breach caused Dolphin Point to incur damages in the amount of $94,023.89, the cost of repairing the SIPOA Easement area.

III. COMMON LAW DUTY TO REPAIR EASEMENT

Dolphin Point's second cause of action is an alternative claim based on the common law responsibility to repair and maintain an easement where it is silent as to the obligation, as held by our Court of Appeals in Hayes v. Tompkins, 287 S.C. 289, 337 S.E.2d 888 (Ct. App. 1985):

> In the absence of an agreement, the Tompkinses, as owners of the servient tenement, are under no duty to maintain and repair the easement represented by the gravel road for the benefit of the dominant tenement owned by Hayes. Ordinarily the owner of an easement has the duty to keep it in repair…here, however, Hayes and the Tompkinses use the gravel road to gain access to their respective properties. Although the Tompkinses appear to use the gravel road more than Hayes, the apportionment by the trial judge of the burden of maintenance and repair is equitable, especially when consideration is given to the burden the easement of right-of-way places upon the Tompkinses' property, Hayes' duty to keep the right-of-way in repair, and the benefit Hayes derives from its use.

337 S.E.2d 891 (internal citations omitted).

As earlier held, the SIPOA Covenants constitute an agreement outside the Grant of Easement that imposed on SIPOA the obligation to maintain the SIPOA Easement area. If it were determined that the SIPOA Covenants do not impose this obligation, then the operative instrument would be the Grant of Easement that does not address the obligation to maintain and repair the SIPOA Easement area. In that circumstance the decision in Hayes v. Tompkins controls. Ordinarily the owner of the servient estate has no obligation to maintain and repair; the obligation is shouldered entirely by the owner of the dominant estate, here SIPOA. However, if both use the easement area, then the court is charged in equity to apportion the responsibility based on the parties' respective use. Here the proof established that Dolphin Point maintained the plantings in the SIPOA Easement area but did not use it to gain access to and from the beach. The pedestrians

who frequently used the SIPOA Easement were members of SIPOA or their guests. Additionally, SIPOA used the SIPOA Easement area in the years immediately after the Grant of Easement for small vehicles that engaged in trash pickup along the beach.

Based on the preponderance of evidence at trial, the Court finds and concludes that an equitable apportionment of the cost of repair of the SIPOA Easement area would be to attribute 50% to SIPOA and 50% to Dolphin Point. As previous stated, this apportionment would only come into play if Section 2(b) of the Covenants were to be determined not to govern.

IV. QUANTUM MERUIT

Dolphin Point's final cause of action is to recover damages under the doctrine of unjust enrichment, also known as quantum meruit. "The elements of a quantum meruit claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." Stevens and Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 583, 762 S.E.2d 696, 704 (2014). A "breach of contract claim and quantum meruit claim are alternative rather than inconsistent remedies." Franke Associates by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 464–5 (Ct. App. 1988) (internal citations omitted). However, if this Court were to find for Dolphin Point for both breach of contract and quantum meruit, Dolphin Point cannot obtain a double recovery. Id. Accord, Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177, 182 (S.C. App. 2012) ("Case law bars recovering under both theories.")

The Court finds and concludes that Dolphin Point proved by the preponderance of the evidence that it conferred a benefit upon SIPOA by repairing the revetment on its property and the upland that was within the SIPOA Easement area, that SIPOA realized that benefit and that

retention by the SIPOA of the benefit under conditions that make it unjust for SIPOA to retain that benefit without paying its value. Therefore, Dolphin Point is entitled to recover $94,023.89 against SIPOA on its claim for quantum meruit.

The Court has considered all the arguments and defenses advanced by SIPOA.[2] The Court finds and concludes that SIPOA did not prove by the preponderance of the evidence the additional defenses raised in its answer, specifically to include abandonment of the easement from alleged non-use, and both the timely defenses of statute of limitations and laches.

The Court further finds and concludes that SIPOA is not entitled to recover its attorneys' fees on its counterclaim under Section 35 of the SIPOA Covenants. SIPOA did not initiate this action for an alleged violation of the SIPOA Covenants by Dolphin Point, much less prove that Dolphin Point violated the SIPOA Covenants. Section 35 is simply not applicable.

IT IS, THEREFORE, ORDERED that Plaintiff, Dolphin Point, is entitled to recover against Defendant, SIPOA:

1) $94,023.89 on its first cause of action for breach of contract;
2) 50% of $94,023.89 ($47,011.95) on its second cause of action under the common law duty of the owner of the dominant estate to repair and maintain the easement on the servient estate; and,
3) $94,023.89 on its third cause of action for quantum meruit/unjust enrichment.

IT IS FURTHER ORDERED that Plaintiff, Dolphin Point, may only have one recovery and must choose among the three recoveries awarded.

IT IS SO ORDERED! **SIGNATURE PAGE TO FOLLOW**

[2] This Court is well aware that this case presents a single-instance event due to SIPOA's clear abandonment of the easement across the Dolphin Point property on June 17, 2019.

Charleston Common Pleas

Case Caption: Dolphin Point Owners Association Inc VS Seabrook Island Property Owners Association Inc

Case Number: 2019CP1000039

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062