

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Honorable Kristi F. Curtis  
Circuit Court Judge

Civil Action No. 2023-CP-22-00210

Appellate Case No. 2023-001776

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Kendrick A. Bryant and Keisha Bryant Sherman on behalf of the heirs of Ernest Bryant; Benjamin Dennison and Willie Dereef, Jr. on behalf of the heirs of Limerick Dennison; Lucille Grate; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlets, Inc.,.....Appellants,

v.

Georgetown County and Covington Homes, LLC  
.....Respondents.

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**COVINGTON HOMES, LLC'S MOTION TO DISMISS**

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Pursuant to Rule 240 of the South Carolina Appellate Rules and Rule 21 of the South Carolina Rules of Civil Procedure, Respondent Covington Homes, LLC (“Covington Homes”), with the consent of Respondent Georgetown County, moves the Court of Appeals for an Order dismissing it from this appeal. The Appellants did not consent to the dismissal of Covington Homes from this appeal and because of the Appellants’ refusal to consent, Covington Homes had no choice but to file this instant motion, asking the Court of Appeals to dismiss it from this case.

The only reason Covington Homes was named as a party in this case is because of its ownership of real property in Pawleys Island. Covington Homes submitted a subdivision application to Georgetown County to construct six new duplexes on its property in Pawleys Island. Georgetown County Council approved Covington Homes' application, and after County Council approved Covington Homes' application, Appellants commenced this lawsuit. Covington Homes and Georgetown County moved to dismiss the Complaint filed by Appellants. The Honorable Kristi F. Curtis granted Covington Homes and Georgetown County's Motion to Dismiss the Complaint. Then, this appeal followed.

During the pendency of this appeal, Covington Homes sold its property to CAB Investments, LLC as reflected on the deed attached as **Exhibit A**. Because Covington Homes no longer has an interest in the property that is the subject of this appeal, Covington Homes no longer has any stake in the outcome of this appeal or the declaratory relief sought by the Appellants. Because it no longer has any stake in this litigation, Covington Homes respectfully requests that it be dismissed from this appeal.

### **STATEMENT OF FACTS**

This is an appeal from the trial court's order dismissing the Appellants' declaratory judgment action. (**R. 3-19**). The Appellants originally commenced this action in the Georgetown County Court of Common Pleas on March 10, 2023. (**R. 24-57**). At the time, Covington Homes owned a parcel of land in Pawley's Island, South

Carolina (“the property”) and sought approval from Georgetown County to construct a subdivision on same. **(R. 28-29)**.

Covington Homes submitted an application to the Georgetown County Planning Commission (“Planning Commission”) for review on December 20, 2022. **(R. 82-87)**. A public hearing was held on January 19, 2023, at which time the Planning Commission voted to recommend denial of the application. **(R. 80-81, 92)**. The recommendation and application were then submitted to the Georgetown County Council (“County Council”) for consideration, and it voted to approve the application on February 14, 2023. **(R. 81)**.

The Appellants then filed this lawsuit against Georgetown County and Covington Homes seeking the following declarations pursuant to the South Carolina Declaratory Judgment Act: (1) the Georgetown County Ordinances requiring a site plan review by the County Council are void and unenforceable; (2) the County Council had no authority to render its decision approving the application; (3) the Planning Commission’s decision to deny the application was final, valid, and binding; (4) the Georgetown County Zoning Ordinances allowing high density on land parcels designated by the Comprehensive Plan as medium density are void and unenforceable; (5) the approval of the application was a violation of State and County law; (6) Georgetown County has a statutory mandate to bring its Zoning Ordinances and Land Use Regulations into Compliance with the Comprehensive Plan; and (7) Georgetown County has a statutory mandate to consider compliance with the Comprehensive Plan in its decision making processes. **(R. 24-57)**. In response,

Georgetown County and Covington Homes filed Motions to Dismiss. (**R. 110-113**). The trial court granted the Motions to Dismiss by Order dated September 19, 2023. (**R. 3-17**). This appeal followed and, in the meantime, Covington Homes sold the property. (*See Property Deed, Exhibit A*).

### **ARGUMENT**

The Appellants challenge the validity of Georgetown County’s ordinances. The Appellants do not contend that Covington Homes failed to follow the application process or violated the Georgetown County ordinances. Covington Homes is a party to this action solely so it will be bound if the Court determines its development application is void. However, Covington Homes no longer owns the property for which it submitted the application and, as such, it no longer has an interest in the development application or this appeal and should be dismissed.

**I. Covington Homes should be dismissed from this appeal because it does not have an interest in the declaratory relief sought by the Appellants.**

Covington Homes’ interest in the relief sought by the Appellants under the South Carolina Uniform Declaratory Judgment Act (“the Act”) terminated when it sold the property. (*See Property Deed, Exhibit A*). The Act requires that all parties to a declaratory judgment action have an interest in the declaratory relief sought. S.C. Code Ann. § 15-53-80. Interpreting the Act, South Carolina courts require not only an interest, but a substantial, direct, and legally protected interest in the relief sought. *Carolina Alliance for Fair Empl. v. South Carolina Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 487, 523 S.E.2d 795, 801 (Ct. App. 1999).

Covington Homes is a party to this declaratory judgment action because it had an interest in the outcome of its development application. That is no longer the case. Covington Homes' interest in the relief sought terminated when it sold the property—it no longer has any interest in the outcome of the development application or the Appellants' challenge to the validity of Georgetown County's ordinances, much less a substantial, direct or legally protected interest. Thus, Covington Homes is not a proper party to this action under S.C. Code Ann. § 15-53-80 and should be dismissed.

**II. The Court of Appeals has authority to dismiss Covington Homes from this appeal.**

As mentioned, Covington Homes should be dismissed from this appeal because it no longer has an interest in the declaratory relief sought. While unique at this stage in litigation, it is necessary and appropriate for the Court of Appeals to dismiss Covington Homes from this appeal to avoid the unjustness of Covington Homes defending an action in which it has no claims or interest.

The Supreme Court and Court of Appeals have recognized broad authority under Rule 21 of the South Carolina Rules of Civil Procedure to drop or realign a party “at any stage of the action and on such terms as are just.” Rule 21, SCRPC (emphasis added); see *Branham v. Ford Motor Co.*, 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010); *Bauknight v. Buchanan*, 2020 S.C. App. Unpub. LEXIS 252, \*5, 2020 WL 3989494 (2020); *Jones v. Rogers Townsend & Thomas, P.C.*, 2022 S.C. App. Unpub. LEXIS 391, \*7, 2022 WL 2966387 (Ct. App. 2022). In *Jones v. Rogers Townsend & Thomas*, the Court of Appeals affirmed the circuit court's decision to dismiss the trustee parties from the action because the plaintiff sought a declaratory

judgment regarding the validity of an easement in which the trustee parties no longer claimed any interest. *Jones*, 2022 S.C. App. Unpub. LEXIS 391 at \*9. This case is no different.

The Court should exercise its broad authority under Rule 21 to dismiss Covington Homes from this action. Covington Homes' interest in this litigation ceased when it sold the property. Covington Homes has no claims or interest in this litigation and the outcome of this appeal will have no binding or practical effect on it or the other parties to this action. The only real impact will be Covington Homes needlessly incurring attorney's fees and costs defending this action. Therefore, the Court should exercise its authority and dismiss Covington Homes from this appeal.

### **CONCLUSION**

For the foregoing reasons, Covington Homes moves the Court of Appeals for an Order dismissing it from this appeal and granting such other and further relief as this Court deems just and necessary under the circumstances.

**BURR & FORMAN, LLP**

/s/ James K. Gilliam

James K. Gilliam

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Post Office Box 447

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(864) 271-4940

***Attorney for Respondent Covington  
Homes, LLC***

Greenville, South Carolina

September 3, 2024

**Exhibit A**  
*(The Property Deed)*



**THIS CONVEYANCE IS MADE SUBJECT TO** easements and restrictions of record and otherwise affecting the property.

**TOGETHER** with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

**TO HAVE AND TO HOLD** all and singular the premises before mentioned unto the said **CAB Investments, LLC, a South Carolina Limited Liability Company**, its successors and assigns, forever, in fee simple.

**AND** Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said **CAB Investments, LLC, a South Carolina Limited Liability Company**, its successors and assigns, forever, in fee simple, against itself and its successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

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STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS  
COUNTY OF GEORGETOWN )

PERSONALLY appeared before me the undersigned, who being duly sworn, depose and state:

1. We have read the information on the back of this affidavit and we understand such information.
  2. The property being transferred is located at **Waverly Road, Lot 3, Pawleys Island, SC 29585**, bearing Georgetown County Tax Map Number PIN# **04-0204-025-03-00**, and was transferred by **Covington Homes LLC, a South Carolina Limited Liability Company** to **CAB Investments, LLC** on **July 11, 2024**.
  3. Check one of the following: The deed is
    - (a)  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
    - (b)  subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
    - (c)  exempt from the deed recording fee because (See Information section of affidavit): \_\_\_\_\_  
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
- If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Yes \_\_\_\_\_ or No \_\_\_\_\_
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
    - (a)  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 275,000.00
    - (b)  The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_.
    - (c)  The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ \_\_\_\_\_.
  5. Check Yes \_\_\_\_\_ or No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
  6. The deed recording fee is computed as follows:
 

(a) <input type="checkbox"/> Place the amount listed in item 4 above here:	<u>\$275,000.00</u>
(b) <input type="checkbox"/> Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	<u>0</u>
(c) <input type="checkbox"/> Subtract Line 6(b) from Line 6(a) and place result here:	<u>\$275,000.00</u>
  7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$1,017.50.
  8. As required by Code § 12-24-70, we state that we are responsible persons who were connected with the transaction as: Seller.
  9. We understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than one year, or both.

Covington Homes LLC, a South Carolina Limited Liability Company

By: Kevin R. Mills  
Kevin R. Mills, Authorized Signatory

SUBSCRIBED and sworn to before me this 15 day of July, 2024.

Debbie Rose (SEAL)  
Debbie Rose, Notary Public for SC  
My Commission Expires: 8/2/28

**DEBBIE ROSE**  
Notary Public, State of South Carolina  
My Commission Expires 8/2/2028

(SEAL or STAMP)

RECEIVED

Sep 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Honorable Kristi F. Curtis  
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Benjamin Dennison and Willie Dereef, Jr. on behalf of the heirs of Limerick Dennison;  
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**PROOF OF SERVICE**

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I, the undersigned legal practice assistant of the law offices of Burr & Forman, LLP, do hereby certify that on September 3, 2024, I have served all counsel in this action with a copy of the motion described herein below by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2023-001776).

**Documents Served:** (1) Motion to Dismiss

**Counsel Served:**

Via E-Mail Only  
Cynthia Ranck Person, Esq.  
Keep It Green Advocacy, Inc.  
[kig.advocacy@gmail.com](mailto:kig.advocacy@gmail.com)  
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**Attorneys for Respondent Georgetown County**

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\_\_\_\_\_  
Kailyn Beasley

Greenville, South Carolina

September 3, 2024

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**RECEIVED**

**Sep 03 2024**

**SC Court of Appeals**

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September 3, 2024

**VIA FEDEX**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Kendrick A. Bryant, et al. v. Georgetown County and Covington Homes, LLC  
Appellate Case No. 2023-001776

Dear Ms. Kitchings:

Please find enclosed a check representing the filing fee for Respondent Covington Homes' Motion to Dismiss, which was electronically filed in the above referenced appeal on September 3, 2024.

Please let me know if anything further is needed.

Sincerely,



James K. Gilliam  
Partner

JKG/kb  
Enclosure