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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Appellate Case No. 2023-001776
Circuit Court Case No. 2023-CP-22-00210

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 Inlet, Inc.

Appellants,

v.

Georgetown County and Covington Homes, LLC

Respondents.

APPELLANTS' RETURN IN OPPOSITION TO THE MOTION TO DISMISS
OF RESPONDENT COVINGTON HOMES, LLC, AND
APPELLANTS' MOTION TO JOIN TRANSFEREE AS AN ADDITIONAL PARTY

/s/ F. Patrick Hubbard
F. Patrick Hubbard (SC Bar #12614)
1525 Senate Street
Room 312
Columbia, SC 29208
(803) 422-6762
phubbard@law.sc.edu
ATTORNEY FOR APPELLANTS

/s/ Cynthia Ranck Person
Cynthia Ranck Person (SC Bar #105126)
Keep It Green Advocacy
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
kig.advocacy@gmail.com
ATTORNEY FOR APPELLANTS

September 10, 2024

BACKGROUND

On September 3, 2024, Respondent Covington Homes, LLC, filed a Motion to Dismiss requesting to be dismissed as a party on the basis that on July 15, 2024, Covington Homes transferred its ownership interest in land that is part of the subject matter of this Declaratory Judgment action to an entity known as CAB Investments, LLC.

Appellants oppose the dismissal of Covington Homes and request the court to join the transferee, CAB Investments, LLC, as a additional party to this action.

APPLICABLE RULES AND PROCEDURE

The rule applicable to this situation is SCRCP, Rule 25(c) and (e) which governs transfers of interest. SCRCP, Rule 25(c), provides that "[i]n case of any transfer of interest, *the action may be continued by or against the original party*, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action *or joined with the original party*." (emphasis added). Rule 25(e) provides that "[s]ubstitution of parties under the provision of this rule may be made by the trial court either before or after judgment, *or pending appeal, by the appellate court*."

According to Rule 25(c) the options in this case are as follows: (1) the case continues against the original party, Covington Homes, LLC; or (2) the transferee, CAB Investments, LLC, is joined as a party along with the original party, Covington Homes, LLC; or (3) the transferee, CAB Investments, LLC is substituted for the original party, Covington Homes, LLC. There is no provision in the rules for dismissal of the original party due to a transfer of interest *without* a concurrent addition or substitution of the transferee as a party. Thus, Appellants oppose the Motion to Dismiss of Covington Homes, LLC.

Appellants submit that for the reasons set forth hereinafter, the appropriate course of action in this case is for the original party, Covington Homes, LLC, to remain as a party and for CAB Investments, LLC, be joined as an additional party.

COVINGTON HOMES REMAINS AN INTERESTED PARTY

Appellants filed this action against Respondents Covington Homes, LLC, ("Developer") and Georgetown County under the Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-10, *et seq.*, (hereinafter "Declaratory Judgments Act"), arising out of the improper approval of a land development application submitted to the County by Covington Homes. The allegations involve both improprieties in the application approval process as well as substantive issues regarding the parameters of the land parcel itself. (Complaint, ROA 23-109).

Section 15-53-80 of the Declaratory Judgments Act requires that "all persons shall be made parties who have or claim *any* interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." (emphasis added). When the Complaint was filed, Covington Homes was an interested party under the Declaratory Judgments Act on two bases: (1) it was the *applicant* named on the land development application at issue; and (2) it was the owner of the underlying land. (Complaint pars. 24-28, 47, 50, 69, 122, 124, 128; ROA 28, 29, 33, 34, 39, 52, 54).

"Applicant" and "landowner" are not synonymous terms in the context of land development applications. An applicant can be, and often is, a party other than the landowner. In this case they happened to be the same entity. However, the fact that Covington Homes transferred the land to CAB Investments, LLC, after litigation had commenced and while an appeal was pending, does not change the fact that Covington Homes remains an interested party as the *applicant* in the underlying action, as well as the entity that owned the land at the time of

the events in the underlying action. These two roles are independent of and in addition to the current ownership of the land. Covington Homes cannot avoid its interest in the litigation by voluntarily transferring ownership of the land after the fact.

Furthermore, over and above Covington Homes' status as the applicant and former owner, there are not sufficient facts of record to establish whether Covington Homes continues to have an interest related to its ownership of the land at the time of the events that are the subject of this litigation. Apart from the recorded Deed attached as an Exhibit to Covington Homes' Motion to Dismiss, there are no facts of record about the following matters that remain unknown: (1) the relationship between the transferor, Covington Homes, LLC, and transferee, CAB Investments, LLC, and whether there are common members or financial or other interests between these two entities; and (2) inasmuch as this transfer took place while litigation was pending, the nature and details of any agreements between the transferor, Covington Homes, LLC, and transferee, CAB Investments, LLC, relative to the outcome of the litigation.

Appellants submit that Covington Homes, LLC, remains an interested party in this matter regardless of the transfer of interest, and the appropriate course of action under Rule 25(c) is for Covington Homes, LLC, to remain as the original party, and for CAB Investments, LLC, to be joined as an additional party.

COVINGTON HOMES' MOTION FAILS TO CITE APPLICABLE RULES

Covington Homes cites SCRCF, Rule 21 (misjoinder and nonjoinder of parties), and SCACR, Rule 240 (general motions) in support of its motion. These rules do not specifically address transfers of interest applicable to the present case.

Covington cites four cases in its motion, none of which is relevant to the issue before the court. Two of the cases, *Carolina Alliance for Fair Employment v. South Carolina Dept.*, 337

S.C. 476, 523 S.E.2d 795 (Ct. App. 1999), and *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010) have to do with the requirements for standing of a Plaintiff in a Declaratory Judgment action. Standing is not the issue in the present situation. The other two cases, *Bauknight v. Pope*, 2020 WL 3989494, and *Jones v. Rogers Townsend & Thomas*, 2022 WL 2966387, are unpublished *per curiam* opinions which have no precedential value and are improperly cited. Regardless of that, the facts of these two cases are relevant only to the general authority of the trial court to "re-align" or dismiss parties when necessary under circumstances that are not relevant to the facts in this case or to Covington Homes' Motion to Dismiss.

APPELLANTS' MOTION TO JOIN CAB INVESTMENTS, LLC,
AS AN ADDITIONAL PARTY

Based on the foregoing and pursuant to SCRPC, Rule 25(c) and (e), Appellants submit that CAB Investments, LLC, has become an interested party in this Declaratory Judgments action by virtue of this transfer of interest in the real estate.

WHEREFORE, Appellants respectfully request this Honorable Court to:

1. Deny the Motion to Dismiss of Covington Homes, LLC; and
2. Direct that CAB Investments, LLC, be joined in this action as an additional party along with Covington Homes, LLC, and Georgetown County.

Respectfully submitted,

/s/ F. Patrick Hubbard
F. Patrick Hubbard (SC Bar #12614)
1525 Senate Street, Room 312
Columbia, SC 29208
(803) 422-6762
phubbard@law.sc.edu
ATTORNEY FOR APPELLANTS

/s/ Cynthia Ranck Person
Cynthia Ranck Person (SC Bar #105126)
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
kig.advocacy@gmail.com
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Appellants,

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Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that the APPELLANTS' RETURN IN OPPOSITION TO THE MOTION TO DISMISS OF RESPONDENT COVINGTON HOMES, LLC, AND APPELLANTS' MOTION TO JOIN TRANSFEREE AS AN ADDITIONAL PARTY was served this 10th day of September, 2024, upon Respondents by emailing a copy of same to the primary email address of counsel of record listed in the AIS system as set forth below. Copies of said emails are attached hereto in accordance with SC Appellate Court Rules and related orders.

H. Thomas Morgan, Jr. (SC Bar #73585)
Sydney Douglas (SC Bar #105744)
Shanon Peake (SC Bar #102723)
tommy@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com
shanon.peake@smithrobinsonlaw.com
ATTORNEYS FOR RESPONDENT GEORGETOWN COUNTY

James K. Gilliam (SC Bar #76695)
jgilliam@burr.com
ATTORNEY FOR RESPONDENT COVINGTON HOMES, LLC

/s/ F. Patrick Hubbard
F. Patrick Hubbard (SC Bar #12614)
1525 Senate Street
Room 312
Columbia, SC 29208
(803) 422-6762
phubbard@law.sc.edu
ATTORNEY FOR APPELLANTS

/s/ Cynthia Ranck Person
Cynthia Ranck Person (SC Bar #105126)
KEEP IT GREEN ADVOCACY, INC.
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
kig.advocacy@gmail.com
ATTORNEY FOR APPELLANTS

September 10, 2024



KIG Advocacy <kig.advocacy@gmail.com>

Bryant v. Georgetown County, Appellate Case No. 2023-001776

1 message

KIG Advocacy <kig.advocacy@gmail.com>

Tue, Sep 10, 2024 at 2:54 PM

To: Tommy Morgan <tommy@smithrobinsonlaw.com>, "Gilliam, James" <jgilliam@burr.com>, Sydney Douglas <Sydney.Douglas@smithrobinsonlaw.com>, Shanon Peake <shanon.peake@smithrobinsonlaw.com>

Cc: "Hubbard, Patrick" <phubbard@law.sc.edu>

Dear Counsel:

Attached please find the following which is hereby served upon you and will be filed with the Court of Appeals this afternoon:

Appellants' Return in Opposition to the Motion to Dismiss of Respondent Covington Homes, LLC, and Appellants' Motion to Join Transferee as an Additional Party

Thank you for your kind attention.

Very truly yours,
Cindy Person
F. Patrick Hubbard
ATTORNEYS FOR APPELLANTS

Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director

KEEP IT GREEN ADVOCACY, INC.

P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
KIG.Advocacy@gmail.com

www.KeepItGreenInSC.com/kiga

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 **Bryant Return in Opposition to MTD 09.10.2024 f.pdf**
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