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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

Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-0075

Appellate Case No. 2022-000545

MAC Coastal Properties, Inc., ... Appellant-Respondent,

v.

Shoestring Retreat, LLC, ... Respondent-Appellant.

RESPONDENT-APPELLANT'S PETITION FOR REHEARING

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INTRODUCTION

Respondent-Appellant Shoestring Retreat, LLC ("Shoestring"), pursuant to Rule 221, SCACR, respectfully petitions the Court for Rehearing of Respondent-Appellant's appeal in this matter. Pursuant to Rule 221(a), Respondent-Appellant petitions the Court to reconsider its decisions that a common scheme of development exists with reciprocal negative easements enforceable by MAC Coastal Properties, Inc., Appellant-Respondent ("MAC Coastal"); that Shoestring had notice that the deed restrictions could possibly be enforceable by MAC Coastal; and that Shoestring's property is subject to the "Sand Dunes Restriction."

BACKGROUND

The background of this case is set forth in detail in Respondent-Appellant's briefs filed in this appeal.

ARGUMENT

Rehearing is appropriate when the Court has overlooked or misapprehended [the appellant's] argument," *Kennedy v. S.C. Ret. Sys*., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001), or when a "material fact or principle of law has been either overlooked or disregarded." *State v. Haygood*, 413 S.C. 239, 240, 776 S.E.2d 262, 263 (2015); *see Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). Here, the Court should grant rehearing on several points.

1. The Court should grant rehearing and reverse its decision that Shoestring had notice that MAC Coastal could enforce the deed restrictions.

This appeal involves relatively enigmatic and technical conveyances and deed restrictions which span more than 70 years. Within the myriad of documents, the language in the deeds consistently provides that the benefit and enforcement of the restrictions is reserved solely to the Boyle Trustees. The Trust Deed provides that the Boyle Trust terminates upon the sale of all of

the land, but no later than 21 years after its execution, which means the Boyle Trust terminated by its own terms no later than December 3, 1973.

Any reasonable purchaser of land conducting due diligence on this property would find this language in the deeds. In spite of this, the Court concluded that enforcement of the restrictions is not reserved solely to the Trustees and a common scheme of development was created with negative reciprocal easements, which Shoestring had notice of and chose to disregard. This conclusion has the effect of: (i) creating an implication of knowledge of and/or admission by Shoestring as to the enforceability of the restrictions at issue by MAC Coastal, (ii) raising a suspicion as to Shoestring's intentions with regard to the restrictions, and (iii) creating an unfair prejudice as to Shoestring's position and arguments regarding the development of the property. In short, the Court's findings imply Shoestring somehow knew or believed that the deed restrictions were enforceable by anyone other than the Boyle Trustees, and disregarded that fact. The evidence in the record shows Shoestring had no reason to suspect that anyone other than the Boyle Trustees would have the right to enforce the restrictions. The implication that Shoestring knew or believed anything to the contrary is unsupported by the record.

In its Opinion, this Court found:

> After taking possession of the property, Shoestring had the property surveyed. The first surveyor prepared a survey that identified the Dunes Restricted Area. Shoestring believed that the prohibition on building in the Dunes Restricted Area was unenforceable and sought to have the surveyor remove the notation from the survey. When the surveyor refused, Shoestring sought the services of a second surveyor. The second survey did not include the Dunes Restricted Area. Shoestring used that survey as part of its building permit application. On its building permit application to Georgetown County, Shoestring indicated that there were no restrictions on any portion of its property.

Opinion at 4. This Court also held:

> Not only do we find this language is further evidence of a common plan for development, but the record makes clear that Shoestring had actual knowledge of this restriction and elected to disregard it.

Opinion at 11. The evidence in the record, however, demonstrates that Shoestring did not disregard the restrictions, but rather acted at all times upon the advice of multiple expert real estate attorneys who advised that the restrictions were unenforceable under South Carolina law; acted only after Mr. and Mrs. McManus met with the North Litchfield Homeowners Association to determine whether the restrictions are enforceable and were advised by the HOA that it had no enforcement authority for this particular property (R. 240-241); and acted only after informing Georgetown County officials of the existence of the restrictions who advised Shoestring to indicate on the County applications that there are no restrictions which would prohibit Shoestring's intended use. R. 246, 290. Because the evidence in the record *expressly* indicates that no one other than the Trustees can enforce the deed restrictions, and there is no evidence in the record, direct or circumstantial, that anyone else has the right of enforcement, equity demands that the Court reverse its decision that Shoestring had notice that MAC Coastal possessed such rights.

Prior to Shoestring's purchase of the property at issue, the McManuses owned a home at 1 Parker Drive in North Litchfield and became interested in the subject property (R. 239, ll. 13-24). In February, 2019, Mrs. McManus signed a purchase agreement with the owners of the property, Mr. and Mrs. Haun (R. 521). The McManuses immediately began conducting due diligence for the purchase of the property (R. 244, ll. 17-22). In an abundance of caution of whether and how to proceed with a possible subdivision of the property by Mrs. Haun prior to the sale, Mr. and Mrs. McManus sought the counsel of Dan Stacey, a reputable real estate attorney and an expert in North

Litchfield property.[1] Early in their investigation and with the help of Mr. Stacy, they discovered the existence of the deed restrictions, the 1952 plat of Retreat Beach and the sand dunes restriction (R. 246) and sought additional advice from two in-house attorneys for Shoestring regarding those (R. 255-256), with a specific interest in possibly subdividing the property (R. 240). Mr. Stacy advised Mr. and Mrs. McManus that no one, including MAC Coastal, had any enforcement rights of any of the restrictive covenant including the sand dunes restrictions (R. 270).

In February, 2019, Mr. and Mrs. McManus commissioned Greggory Cunningham of Parker Land Surveying to prepare a plat of the subject property, a draft of which was done on February 26, 2019. The plat showed the existence of a 60' Sand Dune Restricted Area on a portion of the property (R. 120). Mr. and Mrs. McManus sought further advice from another real estate attorney, Mary Shahid (R. 253), an expert in coastal matters who served as Chief Counsel of the Coastal Permitting Office (which includes OCRM) for approximately ten years, and obtained an opinion letter from her advising that the restrictions were not enforceable (R. 242, 255-256). Throughout the course of their due diligence, the McManuses and their attorneys found no less than four previously recorded plats (R. 585, 618, 663 and 666), including those prepared by Samuel Harper, the "godfather" of surveys of North Litchfield who had conducted original property surveys there since the 1940's (R. 128), all of which omitted a sand dunes restricted area (R. 127-132). Based upon the foregoing due diligence and advice from four attorneys, the McManuses requested that Greggory Cunningham remove the reference to the 60' Sand Dune Restricted Area from the plat he had prepared (R. 126, 246). Mr. Cunningham declined to do so, and the

[1] Mr. Stacy served as special referee involving real estate in North Litchfield (R. 268), who held that, as to the right of reverter in the indenture deeds, it "died with the trustees" (R. 605).

McManuses therefore engaged another surveyor to prepare a plat without a sand dune restricted area, which was completed on June 6, 2019 (R. 246, 290).

To further ensure compliance with all legal requirements (R. 242), Mr. McManus informed Mr. Boyd Johnson and Judy Blankenship, the Georgetown County officials charged with approval of subdivision plat applications, of Ms. Shahid's opinion letter and asked, in light of the McManus' expert legal opinions that the restrictions are unenforceable, whether or not they should check the box "yes" or "no" on the subdivision application (R. 243). Mr. Johnson and Ms. Blankenship directed the McManuses that, if they believe that there are no restrictions of record that are enforceable, they should check the box "no" (R. 242-243).

In holding that Shoestring is charged with notice of the deed restrictions, the Court compares the present appeal to the case of *McDonald v. Welborn,* 220 S.C. 10, 66 S.E.2d 327 (1951). However, *McDonald* is a highly distinguishable case, and it also does not reach the issue of notice of enforceability. In *McDonald*, the restrictions of record were explicitly "for the benefit of all future owners of lots in the subdivision," *id.* at 13, 66 S.E.2d at 328. Therefore, the defendant in *McDonald* had notice, not only of the existence of the restrictions of record, but also that they were enforceable by any other lot owner. In this case, the restrictions explicitly reserve the benefit and enforceability solely to the Trustees, and do not put grantees on notice that they are enforceable by anyone else.

2. The Court should grant rehearing and reverse its decision on common scheme of development and reciprocal negative easements because this finding overlooks the preponderance of the evidence and applies the wrong legal standard.

The Court found that a common scheme of development was created such that MAC Coastal can enforce the deed restrictions because: "[t]he character of the restrictions, the recording of the plat map before the Boyle Trust ever conveyed any property, and the fact that development

in Retreat Beach has not materially deviated from the restrictions is strong evidence of a common plan for development." Op. at 7, "[t]he subject matter of these covenants ***strongly suggests*** a purpose benefitting all property owners in Retreat Beach," *id.*, "the deed language and surrounding circumstances show the grantors' plain intention to create a common scheme of development," Op. at 8, and "the deeds speak of benefitting the grantor – the Boyle Trust – but we find that the nature of the covenants, and the circumstances surrounding the imposition of the restrictions, ***strongly suggests an intention*** to benefit the entire neighborhood." Op. at 9. [Emphasis added]. The evidence in the record does not support these conclusions. The Trustees' intentions are stated expressly and unambiguously in the deeds in the record:

> IT IS UNDERSTOOD AND AGREED that these covenants, conditions and restrictions are made ***solely for the benefit of the grantors***, who may release or modify same in writing at any time and, in the event of violation of any of said covenants, conditions, or restrictions by grantee, her heirs or assigns, ***the grantors shall have the right of abatement and the right to enforce compliance*** by injunction or any other appropriate legal or equitable action.

[Emphasis added] (R. 296, 299, 334, 341, 345, 349, 365, 373, 385, 391, 394, 397, 400, 403, 406, 409, 412, 421, 431, 535). In the subsequent releases, modifications and waivers, all of which were approved and signed solely by the Trustees, the Trustees referenced and reiterated the Trust was the sole beneficiary and possessed the sole right to release and modify the restrictions (R. 607, 613, 646). This Court cites *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 463, 839 S.E.2d 879, 881 (2020) for the proposition that "[w]hen the [deed] is ambiguous the court may take into consideration the circumstances surrounding its execution in determining the intent." Op. at 13. In the present appeal, there is no ambiguity in the deeds, and no reason to look to the circumstances surrounding its execution. This language is plain and shows absolutely no intent to impart the benefit of, or enforcement authority to, anyone other than the Trustees.

Even when considering the "subject matter" of the restrictions and "surrounding circumstances," the Court's findings ignore the uncontradicted testimony of Thomas B. Boyle, a trustee of the Boyle Trust, who specifically testified that the purpose of the restrictions was to reserve the benefit solely to the Trust and to reserve the enforcement thereof solely to the Trustees:

> Q. … Now, it provides – and let me read to you. I know it's awful. But after restriction No. 10 it is provided, "It is understood and agreed that these covenants, conditions and restrictions are made solely for the benefit of the grantors" – **that's the Trust?**
>
> A. **Yes**.
>
> Q. -- "who may release or modify same in writing at any time and, in the event of violation of any of said covenants, conditions and restrictions, their heirs or assigns have the right of abatement and the right to enforce compliance by injunction or other appropriate legal or equitable action." **Was that right reserved solely to the Trustees?**
>
> A. **Yes**.
>
> Q. All right, sir.
>
> A. **That's the purpose of it**.

(R. 676, ll. 8-25) (emphasis added). In the face of this testimony, there is no need to look to the "surrounding circumstances" to ascertain the Trustees' intent – Thomas B. Boyle explained their intent. Plainly, the Trustees intended themselves, ***and no one else***, to be the sole enforcers of the restrictions. There is simply no evidence suggesting that negative reciprocal easements arose by an express or implied intent.

Kathryn Wallace Salley, MAC Coastal's and Shoestring's predecessor in title, also considered the Trustees to be the sole enforcers. In reference to the July 7, 1978 *Modification of Covenants, Conditions and Restrictions,* allowing her to reconfigure the lots as shown on the plat of the same date, she testified:

> Q. All right. So if you want to change [the lot lines] you think you have to get permission of whoever has the right to enforce restrictive covenants?
>
> A. Well, it so happens it was the Boyle Trust.
>
> Q. That was Mr. Hinds' opinion at that time, but–

A. Well, I mean, that's the only way we got them changed.

Q. Did you go to the, for example, Litchfield Beach Company or the North Litchfield Beach Company and ask their permission?

A. **No. We were told that we had to have the Boyles permission.**

Q. **Okay. But you didn't seek the permission of anybody else?**

A. **No.**

[Emphasis added] (R. 677-678). There is no evidence in the record that any property owner in Retreat Beach believed that anyone other than the Trustees had the right to enforce the restrictions, and there is no evidence that any other property owner has ever tried to enforce the restrictions.

Additionally, the Court concludes that the surrounding circumstances and the subject matter of the restrictions "strongly suggests a purpose of benefitting all property owners in Retreat beach," but **a strong suggestion is not the legal standard by which to evaluate intent**, as established by applicable precedent.

To be enforceable, a "restriction on the use of the property must be created in express terms ***or by plain and unmistakable implication***, and all such restrictions are to be strictly construed, ***with all doubts resolved in favor of the free use of property***." *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 392, 680 S.E.2d 289, 291 (S.C. 2009) (emphasis added)(citing *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (S.C. 2006)). "The court is **without authority to consider parties' secret intentions**…" *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). Therefore, "***words cannot be read into a deed to impart an intent unexpressed when the deed was recorded***." *Edgewater on Broad Creek Owners Ass'n, Inc. v. Ephesian Ventures, LLC*, 430 S.C. 400, 409, 845 S.E.2d 211, 216 (Ct. App. 2020)(emphasis added)(quoting Pee Dee Stores, 831 S.C. at 241, 672 S.E.2d at 802). "The court may not limit a restriction in a deed, ***nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties***

would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." *Cmty. Servs. Assocs., Inc. v. Wall*, 421 S.C. 575, 583, 808 S.E.2d 831, 835 (Ct. App. 2017)(emphasis added)(quoting *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998)).

A reasonable and prudent purchaser of property in North Litchfield, including Shoestring, would not expect, rely upon, or have notice that the deed restrictions would be enforceable by anyone other than the Boyle Trustees. Even MAC Coastal did not believe it had the right to enforce the restrictions at issue as made obvious by its recording of an *Assignment of Right of Abatement and Right to Enforce Compliance with Restrictions* dated September 1, 2020, and an *Assignment of Right to Enforce Compliance with Restrictions* dated September 25, 2020, ***eight months after filing its action for an injunction***, in an apparent attempt to give MAC Coastal the standing it would have needed to enforce the restrictions in its already-pending lawsuit. (R. 562, 571, Pl.'s Tr. Exs. 25-26) As MAC Coastal itself argued and as held by the Circuit Court, "South Carolina courts have long protected the expectation rights of residential purchasers. Therefore, the focus should be on the equitable rights and remedies of the purchasers..." (R. 11). Shoestring's reasonable expectation of equitable rights, based on its thorough and extensive due diligence, is that the restrictions are enforceable only by the Boyle Trustees. Shoestring developed the property in good faith and with complete transparency based on these well-founded expectations.

This Court held that the present appeal is analogous to *Pitts* because the Boyle deed restrictions are not extensively varied and are "undeviating" on "subdivision, setbacks and the number of homes" which "strongly tends to fix the character and use central to Retreat Beach," they "directly address[] the aesthetic and cosmetic integrity of the development," and "the plan was nearly-perfectly adhered to for over fifty years." Op. at 7. This holding, however, neglects

that, in all of the indenture deeds, which the evidence shows are extensively varied, the benefit and enforceability are reserved solely to the Trustees, and any attempt to draw similarities among the Boyle deed restrictions and conclude that a common scheme of development was created contradicts the unambiguous language reserving the benefit and enforceability of the deed restrictions solely to the Trustees.

This Court's reliance on *Pitts* also overlooks and disregards evidence that *Pitts* is distinguishable from the present appeal. In *Pitts*, the Court found that forty-four (44) out of fifty-two (52) deeds contain the exact same restrictions and there were only three (3) "negligible" violations thereof. In the present appeal, the variation in the Boyle deed restrictions, including the sand dunes restriction, is very extensive. The Boyle Trustees did not use a uniform conveyance document and instead used at least four different deed forms with differing deed restrictions, some with four, seven, nine, or thirteen restrictions, and others with no restrictions. (R. 267, ll. 7-13; R. 160, ll. 6-12; Pl.'s Tr. Exs. 4, 5, 13, 14; Def.'s Tr. Ex. 34)

If these widely disparate deed restrictions are loosely categorized as a "plan," it was one which was not "nearly perfectly adhered to for over fifty years." There were many deviations, including by waivers, releases and modifications of the restrictions ***only from*** the Boyle Trustees ***before and even after the Trust had expired***, and not from anyone else. The Trustees consistently granted waivers and releases of restrictions, including the sand dunes restriction, to build in the sand dunes area, and allowed subdivisions including those relating to the Shoestring Property and MAC Coastal Property. (R. 607, 613, 618, 641, 646, 652, 654 (Def. Tr. Exs. 2, 3, 5, 14, 15, 16 and 17)). There was no enforcement of deed restrictions and sand dunes agreement by anyone for 67 years. (R. 277, ll. 7-25). There were repeated subdivisions of MAC Coastal's property. (R. 314, 329, 607, 613 (Pl. Tr. Ex. 9, 13, Def. Tr. Ex. 2, 3)). The Trustees' restriction against construction

in the sand dunes area was not absolute, as the restriction does not appear in any of the deeds conveyed to the beneficiaries of the Boyle Trust, even for properties adjacent to the sand dunes area. (R. 329, 658, 670 (Pl. Tr. Ex. 13, Def. Tr. Ex. 19, 34)). Other lot owners in the vicinity obtained waivers to build in the sand dunes area. (R. 641, 646 (Def. Tr. Exs. 14, 15)) The Kate Wallace deeds clearly allow construction in the sand dunes area with the Trustees' written permission. (R. 295 (Pl. Tr. Ex. 4)). Many of the deeds contain a similar clause that allows construction in the sand dunes area with the permission of the Trustees, which was granted on many occasions. (R. 337, 345, 356, 359, 373, 385, 391, 394, 406, and 421 and (Def. Tr. Exs. 2-3, 14-17)). And, many owners have subdivided restricted properties and built unchallenged in the sand dunes area. (R. 272-277). There is no evidence in the record that anyone except for the Boyle Trustees exercised enforcement authority of the restrictions, and all the evidence shows that each and every exercise of authority in the form of waivers, releases and modifications of the restrictions were performed solely by the Boyle Trustees.

This Court additionally held that "neither the plan, nor the enforcement rights discussed later in this opinion, evaporated when the Boyle Trust expired..." In this respect, the Court disregards and nullifies the Boyle Trustees' rights, express intent, and legal force of the restrictions they imposed for the benefit of the Trust. In no uncertain language, the Trust expired, at the latest, "upon the twenty-first anniversary of the execution hereof." (R. 291). The Trustees knew this because they signed it (R. 292) and knew exactly the effect of the indenture deed restrictions that they imposed (R. 676). The Court's characterization of the enforcement rights as not "evaporating" undermines the Boyle Trustee's express intent and rights to develop the property as they saw fit on behalf of, and in accordance with, the Trust – that enforcement of the restrictions would, in fact, sunset upon the Trust's expiration. Conspicuously, nowhere in the record do the Trustees

include language or imply that any party other than the Trustees would have enforcement rights, including before or after the expiration of the Trust, or after the death of the Trustees.

In this appeal, the Court has surmised that the Boyle Trustees must have intended to create a common scheme of development with negative reciprocal easements merely because they recorded a plat titled "Retreat Beach" and restricted the development of the properties to single-family dwellings. This static portrayal of the property was recorded in accordance with the terms of the Boyle Trust – wherein the Trustees were authorized "[t]o manage said property; cause surveys and/or plats-to be made thereof; to cause said property to be subdivided into lots and blocks...", and which "shall cease and terminate upon the twenty-first anniversary of the execution hereof," no later than December 3, 1973, R. 292 – has little relationship to how the property was actually developed as shown on many subsequent plats of modifications, waivers and releases. *See* R. 580, 581, 582, 584, 585, 662, 663, 664, 665, 666, 667, 668, and 669. In the face of the deed language reserving the benefit and enforceability of the restrictions solely to the Trustees and testimony of Thomas B. Boyle, this Court's conclusion extends enforcement of the restrictions "by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." *Cmty. Servs. Assocs., Inc. v. Wall,* 421 S.C. at 583, 808 S.E.2d at 835.

3. The Court should grant rehearing and reverse its distinguishing of *Heffner v. Litchfield Golf Co.*, 258 S.C. 447, 189 S.E.2d 3 (1972)

In its analysis of the *Heffner* decision, this Court draws more parallels to the present appeal than distinctions. The Court's analysis relies on the fact that the respondent in *Heffner*, Litchfield, "st[ood] simultaneously" as the original grantor and the successor grantee of the property in question, that "the duality in party was material because that deed allowed parties to the original

conveyance to change or modify the deeds restrictions at any time," and that "because the restrictions specified they were for the mutual benefit of the parties to the deed and could be freely modified by them, neighboring property owners did not have standing to defeat the written instrument's expressed intention." Op. at 13. Rather than serving to distinguish *Heffner*, however, this Court shows how the Boyle Trustees stood in essentially the same position as Litchfield – they could unilaterally change or modify the deed restrictions at any time, and the restrictions specified they were solely for their benefit. In addition to these near-identical circumstances, this Court recognized that, in *Heffner*, Litchfield's reservation of the benefit of the restriction was the operative fact that "directly precludes an implication that the grantor intended to create restrictions for the benefit of all purchasers in the subdivision." *Id.*, 258 S.C. at 451, 189 S.E.2d at 5.

The *Heffner* Court stated simply why the appellant had no standing: "[b]ecause of the express limitation contained in the above quoted provision of the indenture ['that these covenants, conditions and restrictions are made solely for the benefit of the Grantor and Grantee herein']" *Id.* at 450, 189 S.E.2d at 5 (emphasis added). In addition to finding that the grantor did not "manifest[] [an] intention to subject the parcels conveyed to common restrictions for the benefit of all grantees," *id*. at 451, 189 S.E.2d at 5, the *Heffner* Court found that Litchfield had the **sole right** to modify the restriction. This is directly analogous to the present appeal. In our case, the Boyle Trustees reserved the benefit of the restrictions solely to themselves, who have the sole right to release, modify and enforce the same. The Boyle indenture deeds did not require an agreement with anyone to modify the restrictions, and these circumstances were equivalent in *Heffner* – Litchfield did not need an agreement with any other party to modify the restrictions. And, in any event, whether the grantor could modify the restriction on its own or by agreement with a grantee, nowhere in the *Heffner* decision does the Court reason that the creation of a common scheme of

development *depends on* the grantor's right to modify the restriction, only that the restriction "does not bar the intended use of the premises" as the result of such right of modification. *Id*. at 450, 189 S.E.2d at 5. Under *Heffner*, it is the reservation of the benefit of the restriction, not whether or how such restriction may be modified, that defeats a finding of a common scheme of development.

In the present appeal, the Court's finding that: "[t]he crux of this case is whether Shoestring's proposed development is consistent with the character of the neighborhood, making this case directly distinguishable from *Heffner*," Opinion at 10, is simply not supported by the evidence in the record or by *Heffner*. In *Heffner*, the appellant wanted to prevent Litchfield from expanding the club's tennis court area onto residential lots, and the Court held that Litchfield's proposed use "is consistent with the combined recreational and residential character of the development." *Id*. at 452, 189 S.E.2d at 5. In the present appeal, Shoestring intended to build a single-family residence in a neighborhood of single-family residences, as supported by the testimony of Wayne Rogers, Shoestring's architect who has designed approximately thirty (30) "very similar" beachfront homes in the area, including at least four specifically in North Litchfield, R. pp. 261-264, and which is otherwise consistent with the use and character of many other properties in North Litchfield.

As outlined above, all of the evidence in the record, including the language in the Boyle deeds – which is nearly identical to the language in the *Heffner* deeds – as well as the testimony of Thomas B. Boyle, expressly provides and states that the Boyle Trustees intended the benefit, as well as the right to modify, release, waive and enforce the restrictions, all be reserved exclusively to the Trustees. As such, "[b]y near unanimous authority, no enforceable general scheme of development is inferable in the face of a provision of this tenor." *Id.* at 451, 189 S.E.2d at 5.

CONCLUSION

As an action in equity, there is no evidence in the record to support the conclusion that Shoestring had notice that the indenture deed restrictions, including the sand dunes restriction, could possibly be enforced by MAC Coastal. In all of its due diligence regarding the property, Shoestring relied on the language of the deeds, the expert advice of South Carolina real estate attorneys, the North Litchfield community, its architects, surveyors, and Georgetown County officials, and acted accordingly. At no time did it disregard the restrictions of record, and no reasonable purchaser of the Shoestring property would have any reason to be on notice that the restrictions of record could be enforced by MAC Coastal. Shoestring respectfully asks the Court to grant rehearing and reverse its decision that a common scheme of development was created with reciprocal negative easements that are enforceable by MAC Coastal, that Shoestring had notice that the deed restrictions could be enforceable by MAC Coastal, and that Shoestring's property is subject to the "Sand Dunes Restriction."

Respectfully Submitted,

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