

STATE OF SOUTH CAROLINA )  
 :  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
C.A. NO.: 2020-CP-18-1856

Joseph R. Davis and Jennifer Davis, )  
individually and as representative of all )  
those similarly situated, )

**ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT**

Plaintiffs, )

v. )

River Oaks Homeowners Association, Inc., )  
Halcyon Real Estate Services, LLC, and )  
Dorchester Real Estate Services, Inc., )

**RECEIVED**

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Defendants. )

**SC Court of Appeals**

This matter is before the Court on cross-motions for summary judgment by the Plaintiffs and Defendant River Oaks Homeowners Association, Inc. ("River Oaks"). As is outlined further below, these Parties ask this Court to interpret the governing documents of River Oaks and the Woodington I and Woodington II neighborhoods. The Plaintiffs ask the Court to find that they do not authorize River Oaks to act as the homeowners association for the Woodington I and Woodington II neighborhoods. River Oaks asks the Court for the opposite finding. Oral arguments were conducted at the Dorchester County Courthouse on June 12, 2024, with Ford H. Thrift appearing on behalf of River Oaks and D. Conor Keys appearing on behalf of the Plaintiffs. The Parties incorporated their motions and exhibits to the motions as part of the record and agreed that the material facts are not in dispute. For the reasons set forth below this Court GRANTS the Defendants' motion and DENIES the Plaintiffs' motion.

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**Background**

This lawsuit calls into question the validity of the River Oaks Homeowners Association and its authority to act as the homeowners association for the neighborhoods of Woodington I and

Woodington II.<sup>1</sup> In the late 1990s, homeowners from these neighborhoods and seven others joined together to form a homeowners association for their community. (See Mot. for Summ. J., filed June 11, 2024, (“River Oaks’ Motion”) at Exhibit A.) The neighborhoods are all contiguously located in Dorchester County on the Ashley River side of Dorchester Road in the vicinity of its intersection with Ashley Phosphate Road. Each neighborhood is subject to an individual set of covenants and restrictions but none of these sets of restrictions created a homeowners association for their respective neighborhoods. The covenants for both Woodington I and Woodington II contain a provision allowing for their terms to be changed, in whole or in part, by a recorded instrument signed by a majority of the then-owners. (River Oaks’ Motion at Exhibits I-J.) There is no provision in either set of covenants prohibiting the existence, or creation, of a homeowners association. (Id.)

To further the interests of River Oaks, the interested homeowners retained an attorney to advise them on the proper way to establish a homeowners association. (See River Oaks’ Motion at Exhibit O.) With the assistance of their attorney, River Oaks filed its articles of incorporation as a nonprofit organization in 1996 and subsequently drafted a document titled the “River Oaks Declaration” which publicly stated the purpose of the organization. On May 26, 2000, River Oaks’ attorney filed the River Oaks Declaration with the Office of the Dorchester County Register of Deeds. (Id.; See also River Oaks’ Motion at Exhibit A.) The River Oaks Declaration identified its members as “those persons owning real property in the residential subdivisions which are served by the association.” (See River Oaks’ Motion at Exhibit A.) The residential subdivisions are likewise identified by name and geographical location. (Id.) The River Oaks Declaration further states that the purpose of River Oaks was to preserve and enhance the property values of

<sup>1</sup> This lawsuit originally concerned additional neighborhoods within River Oaks. By Order entered August 16, 2022, the Hon. Diane Goodstein limited the scope of the Plaintiffs’ class to only these two neighborhoods.

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its member neighborhoods, enhance and maintain community entryways and roadsides, improve street lighting, assist with the enforcement of covenants, and establish a funding mechanism for its operations. (Id.) The River Oaks Declaration states that it:

affects the lots which compromise these subdivisions, and the terms and provisions of this Declaration apply to all such lots, running with the title to them and binding their present owners and all subsequent owners without regard to whether this Declaration is referred to in any deeds or other instruments of conveyance.

(Id.) Additionally, the River Oaks Declaration contained signature pages from homeowners stating their intention to impress the River Oaks Declaration upon their property. Each signature page states:

The undersigned . . . in order to establish a funding mechanism for the Association's operation, hereby impress the attached Declaration upon our property, to run with the land, and agree for ourselves and our successors and assigns to be bound by this Declaration.

(Id.) River Oaks filed additional signatures in supplemental filings on September 25, 2001, and April 24, 2002. River Oaks held itself out as a mandatorily binding organization beginning in 2002 and has operated with unpaid volunteers as a non-profit organization from that date to the present.

Specific to the neighborhoods at issue in this case, River Oaks obtained the signatures of at least 27 homeowners from the 52 lots within Woodington I and 42 homeowners from the 79 lots within Woodington II. (See gen. River Oaks' Motion at Exhibits A-C.) From Woodington I, River Oaks filed the signatures of two lot owners alongside the River Oaks Declaration and 25 signatures in the first supplemental filing on September 25, 2001.<sup>2</sup> (Id.) From Woodington II, River Oaks

<sup>2</sup> Additional signatures beyond these 27 were included with the River Oaks Declaration and its supplements, and the Plaintiffs have challenged the validity of these signatures based upon a lack of ownership either at the time of signing the River Oaks Declaration or at the time when River Oaks filed the signature pages. Nonetheless, River Oaks established by public record that 27 signatories owned their homes at both the time when they signed the River Oaks Declaration and at the time when their signature was filed in the Office of the Register of Deeds with Supplement #1.

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filed the signatures of three lot owners alongside the River Oaks, 37 signatures alongside the first supplemental filing, and one additional signature alongside the second supplemental filing.<sup>3</sup> (Id.)

In 2005, Plaintiff Joseph Davis purchased a home located at 3213 Wynnefield Drive in North Charleston (the "Property").<sup>4</sup> (See River Oaks' Motion at Exhibit D.) The Property is located in the Woodington I neighborhood. Plaintiff Joe Davis resided there with his wife, Plaintiff Jennifer Davis, from 2005 until 2013. (Id. at Exhibit E, 11:14-24; Exhibit F, 12-5:11.) The Plaintiffs knew of River Oaks' existence at the time when they purchased the Property and that River Oaks acted as the homeowners association for Woodington I. (Id. at Exhibit E, 30:3 – 31:11, 34:17-21; Exhibit F, 50:6-17, 64:5-13.) Shortly after purchasing the Property, the Plaintiffs attended an annual meeting for River Oaks and also received a newsletter from River Oaks on a regular basis. (Id. at Exhibit E, 43:22 – 47:16; Exhibit F, 55:16 – 57:24.) The newsletter announced that River Oaks had mandatory fees. (Id. at Exhibit E, 45:22-15; Exhibit F, 56:13-18.) The Plaintiffs concede that they were also aware of the River Oaks Bylaws. (E.g., River Oaks' Motion, Ex. F, 52:6-10.) The Plaintiffs also acknowledge that these documents were available to them during their time as residents of Woodington I. (Id., at 57:5-10.) Plaintiff Joe Davis performed a complimentary financial audit for the River Oaks Board in 2012 and Plaintiff Jennifer Davis served as a member of the River Oaks Board of Directors from 2012 to 2014. (Id. at Exhibit E, 66:24 – 67:9, 115:3-16; Exhibit F, 67:14-22.) During her time on the Board of Directors, Plaintiff Jennifer Davis participated in votes to place liens on homes for nonpayment of dues. (Id. at Exhibit E, 76:3-19.)

<sup>3</sup> Like the signatures from Woodington I, the Plaintiffs addressed at length the validity of other signatures that River Oaks does not include in its motion. River Oaks has established by public record that the 42 signatories it has submitted owned their homes at the time of signing and at the time of filing. Of these, River Oaks reached a majority when Supplement #1 was filed with the Office of the Register of Deed.

<sup>4</sup> Plaintiff Jennifer Davis was never an owner of record of the Property. Plaintiffs concede that she cannot serve as a class representative and asserts only individual claims in this action. See Order on Class Certification, entered August 16, 2022.

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In 2013, the Plaintiffs moved to Walterboro and sold the Property under an installment sale contract. The terms of the contract required the purchaser to pay the mortgage payment, property taxes, insurance, utilities, and the annual HOA dues; however, the purchaser failed to pay association dues to River Oaks in 2014, 2015, and 2016. (Id. at Exhibit E, 39:10-25, 58:4-23; Exhibit F 47:9-17.) This nonpayment resulted in the filing of two (2) separate liens against the Property for unpaid dues. By 2016, the balance of the Plaintiffs' account totaled approximately \$484. In April of 2016, a law firm<sup>5</sup> contacted the Plaintiffs seeking to collect on a debt of \$1,035.28. The law firm indicated that it would foreclose on the property if the debt was not satisfied. The Plaintiffs paid the debt in response.

In 2017, the Plaintiffs filed this action against River Oaks alleging, *inter alia*, that River Oaks and its agents do not have authority to enforce the covenants of Woodington I and II nor do they have the authority to charge annual dues or levy fines/fees for violating the Woodington I and II covenants. The Plaintiffs allege ten total causes of action - nine causes of action alleged on behalf of their class and one individual cause of action for violation of the South Carolina Unfair Trade Practices Act. While each cause of action is distinct from one another, each claim centers upon the Plaintiffs' allegation that River Oaks lacks the authority to act as a homeowners association for Woodington I and Woodington II.

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In the current motions, the Parties ask this Court to interpret the governing documents of River Oaks and the Woodington I and Woodington II neighborhoods. The Plaintiffs seek an order declaring that (1) the River Oaks Declaration is not a restrictive covenant and not binding upon the lots located within Woodington I and II; (2) the River Oaks Declaration is not an amendment

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<sup>5</sup> The law firm claimed to represent River Oaks, but River Oaks contends that its property manager hired the law firm without River Oaks' permission. As there are no motions before the Court concerning claims between River Oaks and its property manager, this disputed fact does not impact the instant motion or the Court's ruling.

to the Woodington I and Woodington II covenants; (3) the River Oaks Declaration does not authorize River Oaks to levy fines or fees; the Woodington I and Woodington II covenants do not authorize anyone to levy assessments, fines, or fees; and (4) the Woodington I and Woodington II covenants do not authorize anyone to record liens against property. Conversely, River Oaks seeks an order finding that (1) its members properly imposed the River Oaks Declaration upon the Woodington I and Woodington II neighborhoods by following the mechanisms for change found within the respective neighborhood covenants; and (2) the governing documents authorize River Oaks to levy dues, fines, and fees and also to file liens for non-payment. River Oaks also seeks an order finding that it cannot be held liable for unfair trade practices because it is not a business and that equity prohibits a ruling in favor of the Plaintiffs.

#### STANDARD OF REVIEW

“Rule 56 provides that the defendant may seek summary judgment at any time.” McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994) “Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 311, 534 S.E.2d 275, 277 (2000). “The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Richardson v. State-Rec. Co., 330 S.C. 562, 566, 499 S.E.2d 822, 824-25 (Ct. App. 1998). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility “may be discharged by ‘showing’ – that is, pointing out to the [trial] court – that there is an absence of evidence to support the nonmoving party’s case.” Id. (emphasis in original). “Once [the] moving party carries its initial burden, [the] opposing party must, under [Rule 56], do more than simply show that there is some metaphysical doubt as to the material facts

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but must come forward with specific facts showing that there is a genuine issue for trial.” Id. (emphasis in original). The proper standard of review is the “genuine issue of material fact” standard. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). “[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” Id. (quoting Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). “Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

### LAW AND ANALYSIS


#### **I. River Oaks is not a business and cannot be held liable for Unfair Trade Practices.**

The Plaintiffs’ sole individual claim is a cause of action for a violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”). River Oaks asks this Court to grant summary judgment as to this cause of action because it is a homeowners association that does not participate in “trade” or “commerce.” The Plaintiffs argue that River Oaks collects debts from its members and is, therefore, subject to the provisions of the SCUTPA. The SCUTPA outlaws “unfair or deceptive acts or practices in the conduct of any *trade or commerce*.” S.C. Code Ann. § 39-5-20 (emphasis added). The act defines “trade” and “commerce” as “the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” S.C. Code Ann. § 39-5-10. “The words “trade” and “commerce,” as used in the UTPA, are synonymous.” Baker v. Chavis, 306 S.C. 203, 209, 410 S.E.2d 600, 603–04 (Ct. App. 1991). Therefore, if River Oaks engages in either trade or commerce then it may be liable under the statute.



Broadly defined, the word “trade” includes the business of buying as well as the business of selling.” Id. A homeowners association does not conduct trade or commerce merely by enforcing covenants and restrictions of a neighborhood because these actions are not trade or commerce. See, e.g., Brown v. Spring Valley Homeowners Ass'n, 2014 WL 12781045 (S.C.Com.Pl. Apr. 03, 2014) (Griffith, J.); see also Jefferies v. Phillips, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) (conduct which only affects the parties to the transaction provides no basis for a UTPA claim). River Oaks is a nonprofit corporation that manages and enforces the covenants of its member neighborhoods. The levying of association dues is mere regulation of an association’s membership and not an act of trade or commerce. See, e.g., Foggie v. CSX Transportation, Inc., 313 S.C. 98, 104, 431 S.E.2d 587, 591 (1993) (decision not to reinstall railroad crossing was not “in the conduct of trade or commerce”). Plaintiffs argue that River Oaks is subject to the SCUPTA because it collects annual dues and imposes additional fines on members for nonpayment. River Oaks, however, is a non-profit corporation with a board of directors comprised of volunteers. Non-profit corporations may impose dues and assessments upon its members. S.C. Code Ann. 33-31-302 (15). The Court is not persuaded that the alleged actions of River Oaks constitute “trade” or “commerce” and grants summary judgment in favor of the Defendants as to this cause of action.

**II. The homeowners of Woodington I and Woodington II properly adopted the River Oaks Homeowners Association by obtaining majority approval and recording their signatures in the public record.**

 The Court finds as a matter of law that the Woodington I & II neighborhoods are part of River Oaks because their homeowners properly bound their homes to the River Oaks Declaration by a majority of the then-homeowners in accordance with the applicable covenants and restrictions. At their heart, restrictive covenants are contracts. Queen's Grant II Horizontal Prop.

Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). Like any other contract, the terms and scope of restrictive covenants may be changed. Id., at 362, 628 S.E.2d at 913-914 (recognizing developer's right to amend covenants); Arnoti v. Lukie, 350 S.C. 177, 564 S.E.2d 691 (Ct. App. 2002) (recognizing that restrictive covenants may authorize owners to change restrictive covenants in whole or in part). Years before the Plaintiffs moved to the River Oaks Community, the homeowners in the Woodington I & II neighborhoods adopted River Oaks as its homeowners association and impressed the River Oaks Declaration upon its members and future owners.

**a. Both the Woodington I and Woodington II covenants allow for a change by a simple majority of the homeowners.**

The prerequisite inquiry is whether the Woodington I and Woodington II homeowners are authorized and empowered to effect any change to their own covenants. River Oaks relies upon the language of Woodington I and Woodington II Covenants, which both contain a provision allowing for change when "an instrument, signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part." The Plaintiffs argue that only the original developers of these neighborhoods, or their successors, may change the covenants or impose additional restrictions on the lots. The Plaintiffs argue that neither River Oaks nor the individual homeowners are a successor to the original developers. The Plaintiffs also argue that the imposition of a homeowners association requires unanimous consent of the homeowners.

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"Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution. The paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." Kinard v. Richardson, 407 S.C. 247, 257, 754 S.E.2d 888, 894 (Ct. App. 2014) (internal citation and formatting omitted). The Court notes that the covenants specifically contemplate a change by the lot owners and not

solely the original declarant. (River Oaks' Motion at Exhibit I, § R; Exhibit J, § R.) In Arnoti, the South Carolina Court of Appeals noted that a similar provision requiring "an instrument signed by the then owners of three-fourths (¾) of the lots . . . agreeing to change said covenants and restrictions in whole or in part" authorized homeowners to change their restrictive covenants. 350 S.C. at 178, 564 S.E.2d at 692; see also Queen's Grant II, 368 S.C. at 368-69; 628 S.E.2d at 917 (favorably citing North Carolina case law in which restrictions in an amendment to a condominium declaration may bind even unit owners who bought their units before the amendment was adopted). Further, there is nothing before this Court indicating that the developers of these neighborhoods retain ownership of any lots within the neighborhoods and the change must necessarily come from the homeowners themselves. The Court finds that the covenants of Woodington I and Woodington II authorize the homeowners of these neighborhoods to change the terms of the covenants.

Additionally, nothing within the covenants contemplates a requirement of unanimity or a supermajority vote for special circumstances. See Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 216, 352 S.E.2d 714, 716 (Ct. App.), aff'd, 294 S.C. 86, 362 S.E.2d 874 (1987) (interpreting covenants requiring 51% vote for emergency expenditures and 60% for special assessments). The plain wording of the Woodington I and Woodington II Covenants authorizes a simple majority of the homeowners to change their covenants by signing and recording an instrument documenting their change. Additionally, when restrictive covenants may be amended by a majority vote, such a vote is binding on all homeowners. See Cummings v. Noon & Hammett, LLC, 2016 WL 7635815 at \*3 (Dec. 8, 2016) (Couch, J.). An "amendment" is a change made by addition, deletion, or correction. Black's Law Dictionary, 98 (10th ed. 2014). There can be no doubt as to the language of the applicable covenants, which provides only for approval by a majority and does not

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require 100% of the homeowners as asserted by Plaintiffs. This Court, therefore, finds that the Woodington I & II homeowners may change their covenants by a majority of the then-owners.

**b. The Woodington I homeowners properly obtained approval by a simple majority.**

Examining each neighborhood in turn, the Court is satisfied that the homeowners of Woodington I and II obtained the necessary majority vote to impress the River Oaks Declaration upon their neighborhoods. Woodington I is comprised of 52 single-family residential lots. (See River Oaks' Motion at Exhibit K.) A majority vote of the Woodington I homeowners would therefore require 27 votes in favor of any change, not 52 as asserted by Plaintiff. The River Oaks Declaration and its supplements contain the signatures of at least 27 Woodington I owners stating their intentions to impress the Declaration upon their property.<sup>6</sup> (See River Oaks' Motion at Exhibits A to C.) While the parties dispute the timing and legal implications of lot ownership and signing of the River Oaks Declaration, the parties all agree that these are matters of publicly filed documents for the Court to interpret. Documents on file with the Dorchester County Register of Deeds are records of which the Court may take judicial notice.<sup>7</sup>

The River Oaks Declaration states it affects the Woodington I neighborhood and that its terms and provisions shall apply to all lots within Woodington I, running with title to them, and shall be binding upon present and subsequent owners. Each page of signatures states the following at the top of the page:

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<sup>6</sup> The Court is particularly aware that one of these signatories is the prior owner of the Plaintiffs' Property and their signature individually bound the Property and the Plaintiffs to the River Oaks Declaration. As successor purchasers of the Property, the Plaintiffs cannot avoid the benefits and burdens imposed by the River Oaks Declaration. See Harbison Cmty. Ass'n, Inc. v. Mueller, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995) ("A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant.")

<sup>7</sup> See Rule 201(b), SCRCE (a judicially noticed fact must be capable of accurate and ready determination by sources whose accuracy cannot be questioned); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.")

The undersigned record owners of the lots within the \_\_\_\_\_ subdivision, which is within the River Oaks Homeowners Association service area, in consideration of other homeowners doing the same in order to establish a funding mechanism for the Association's operation, hereby impress the attached Declaration upon our property, to run with the land, and agree for ourselves and our successors and assigns to be bound by this Declaration.

(See River Oaks' Motion at Exhibit A, pp 4-9). For each page, the homeowners filled in the name of their respective subdivisions and indicated their names, address, and lot number. Id. River Oaks has presented this Court with the names of 27 signatories who executed the River Oaks Declaration as lot owners within Woodington I. (See River Oaks' Motion at Exhibit A-C.) Each of these signatories identified their respective lots by address and lot number. River Oaks has also submitted their respective deeds of conveyance as exhibits for this Court's review. (See River Oaks' Motion at Exhibit L.) Although the Plaintiffs have identified other signatories who did not own their lots either at the time of signing or filing, which River Oaks has conceded, the only objections as to the ownership of these 27 signatures concern the ownership of just two.

The Court is informed that two of the 27 signatories took legal title to their lots at some point after the River Oaks Declaration was filed. (River Oaks' Motion, p. 11 n. 4.) At all relevant times, however, these signatories had equitable ownership of their lots by nature of installment sales contracts. Under these contracts, "the vendor retains legal title to the property until all of the purchase price has been paid [but] the purchaser is entitled to immediate possession . . ." Lewis v. Premium Inv. Corp., 351 S.C. 167, 170-71, 568 S.E.2d 361, 363 (2002). The vendee in possession of the land is considered the owner of an equitable interest in the property. S. Pole Bldgs., Inc. v. Williams, 289 S.C. 521, 523, 347 S.E.2d 121, 122 (Ct. App. 1986). "The law is well settled that one who buys land, pays a part of the purchase price, and takes possession under his contract of purchase, is the owner of the land in equity. He may mortgage it, convey it to another, or devise it, and, if he dies intestate, it descends to his heirs. Ridgeway v. Broadway, 91 S.C. 544, 75 S.E.

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132, 133 (1912). Equitable owners may encumber land which they have an interest in. See S. Pole Bldgs., Inc., supra.

The Plaintiffs further argue that the timing of the signatures renders them invalid. The Plaintiffs argue that the signatories cannot be considered the “then owners” because they were not all obtained simultaneously. The Plaintiffs argue that the first signatory signed the River Oaks Declaration in 1999 while the last signatory signed in 2001. While it is true that River Oaks did not obtain these signatures at once, it is also true that the first signatory still retained their ownership interest when the last signatory provided their signature and, therefore, remained a “then owner.” There is no evidence before the Court that any of the owners withdrew their signatures or approval of River Oaks during this time either. Based on the information provided as exhibits and available in the public record, the Court is satisfied that the 27 signatories named above had an ownership interest in their respective lots both when they signed the River Oaks Declaration and when River Oaks filed recorded their signatures. The Court, therefore, finds as a matter of law that the homeowners of Woodington I adequately obtained approval of the River Oaks Declaration by a majority of the then-owners in compliance with the Woodington I covenants.

**c. The Woodington II homeowners properly obtained approval by a simple majority.**

Woodington II is comprised of 79 single-family residential lots. (See River Oaks’ Motion at Exhibit M.) A majority vote of the Woodington II homeowners would therefore require 40 votes in favor of the River Oaks Declaration. The River Oaks Declaration and its supplements contain the signatures of 42 Woodington II owners stating their intentions to impress the Declaration upon their property. (See River Oaks’ Motion at Exhibit A-C.) Like the Woodington I signatories, each signature page for Woodington II contains an affirmative statement of intent to bind the River Oaks Declaration to the signatories’ lots. River Oaks has presented this Court with

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the names of 42 signatories who executed the River Oaks Declaration as lot owners within Woodington II. Id. Each of these signatories identified their respective lots by neighborhood, address, and lot number. River Oaks has also submitted their respective deeds of conveyance as exhibits for this Court's review. (See River Oaks' Motion at Exhibit A-C.) Like Woodington I, the Plaintiffs have argued against the timeliness of these signatures based upon the fact that certain signatories did not purchase their lots until after other signatures had been provided. The Court is satisfied, however, that each of the signatories that River Oaks identified had an ownership interest in their respective lots both when they signed the River Oaks Declaration and when River Oaks filed recorded their signature. Although River Oaks submitted evidence of 42 signatures in total, only 41 were filed with the River Oaks Declaration and its first supplement, which is when River Oaks determined itself to have obtained the necessary signatures. The final signature was provided the following year. Nonetheless, the 41 signatures recorded by September 25, 2001, constitute a majority of the then owners of the 79 lots within Woodington II. The Court, therefore, finds as a matter of law that the homeowners of Woodington II adequately obtained approval of the River Oaks Declaration by a majority of the then-owners in compliance with the Woodington II covenants.

**III. The Covenants of Woodington I and Woodington II specifically contemplate the future creation of a homeowners association.**

Next, the Court considers whether the addition of a homeowners association is permitted by the Woodington I and II Covenants. River Oaks argues that nothing prohibits such an addition while the Plaintiffs argue that the covenants do not contemplate such an addition and only existing terms of the covenants may be changed. South Carolina law strictly construes restrictive covenants but the Court must nonetheless enforce them unless they are indefinite or contravene public policy. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). Moreover,

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while doubts must be construed in favor of the free use of property, the rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. Kinard v. Richardson, 407 S.C. 247, 258, 754 S.E.2d 888, 894 (Ct. App. 2014) (citation omitted). In this case, it is undisputed that the Woodington I and II covenants are valid and binding. The Court notes that the Covenants expressly contemplate the later creation of a homeowners association in their original terms. In “Section O. Subdivision Entrances,” the covenants create an easement for construction and maintenance of the neighborhood entryways and state that “Declarant shall have the right to assign this easement to a neighborhood homeowners association or garden club.” (See River Oaks’ Motion at Exhibit I and J.) The mere fact that the developer did not ultimately establish a homeowners association cannot be construed as promoted by Plaintiffs to prohibit an association. Therefore, the Court finds that the homeowners of Woodington I and II may alter their covenants to create or add a homeowners association so long as such a change is otherwise made in accordance with the terms of the covenants.

**IV. The River Oaks Declaration sufficiently identifies the land it encumbers and runs with the land as a restrictive covenant.**

In opposition of River Oaks motion and in support of its own motion, the Plaintiffs argue that the River Oaks Declaration does not “touch and concern the land” nor does it adequately identify the property it impacts. The Court is not persuaded by these arguments. “Covenants requiring property owners to pay fees for improvements, maintenance or other services to a homeowners association run with the land.” Harbison Cmty. Ass'n, Inc. v. Mueller, 319 S.C. 99, 102, 459 S.E.2d 860, 862 (Ct. App. 1995). The evidence offered to the Court is that the annual dues for River Oaks serve, at least in part, for the improvement and maintenance of the community entryway and greenways. (See River Oaks’ Motion at Exhibit A.) Further, the plain language of the River Oaks Declaration is clear that signatories thereto intended for the Declaration to run with

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the land and be binding upon successors and assigns. *Id.* “For a covenant to run with the land, there must also be an indication that the parties intended for the covenant to run with the land.” *Harbison Cmty. Ass'n, Inc. v. Mueller*, 319 S.C. 99, 102, 459 S.E.2d 860, 862 (Ct. App. 1995). As for the property described in the River Oaks Declaration, the Plaintiffs argue that the lack of reference to a plat renders the Declaration ineffective. “While a property description need not be perfect, it must allow one examining it to identify the property conveyed; otherwise, the conveyance is void.” *Hoyler v. State*, 428 S.C. 279, 295, 833 S.E.2d 845, 853 (Ct. App. 2019). The Court notes that the River Oaks Declaration provides the name of the property owner, the property address, the neighborhood in which the property is located, the county in which the property is located, and a geographic location of its location within the county. (See River Oaks’ Motion at Exhibit A.) This is more than sufficient for a person to conduct a title examination of the property affected by the River Oaks Declaration. The Court, therefore, finds as a matter of law that the River Oaks Declaration touches and concerns the land it impacts.

**V. The Woodington I Covenants, the Woodington II Covenants, the River Oaks Declaration, and the River Oaks Bylaws authorize River Oaks to enforce the Woodington I and II Covenants and charge annual dues, assessments, and fees.**

River Oaks’ authority to act with respect to the Woodington I neighborhood is derived from three (3) things: the Woodington I Covenants, the River Oaks Declaration, and River Oaks’ Bylaws. Similarly, River Oaks’ authority to act with respect to the Woodington II neighborhood is derived from three (3) things: the Woodington II Covenants, the River Oaks Declaration, and River Oaks’ Bylaws. The binding nature of the Woodington I and II Covenants is undisputed, and actions taken in accordance with those Covenants are binding upon their respective neighborhood. As described above, the adoption of the River Oaks Declaration was proper and binding upon Woodington I and II. In turn, the River Oaks Declaration states that River Oaks is governed by

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Bylaws. Together, these documents allow River Oaks to enforce the Woodington I and II Covenants; charge annual association dues, fines, or fees; and place liens upon properties in the neighborhood. The Court further notes that the South Carolina Nonprofit Corporation Act grants nonprofit corporations the ability to impose dues and assessments upon its members. S.C. Code Ann. § 33-31-302 (15).

The Woodington I and II covenants allow for “[e]nforcement . . . by proceedings at law or in equity . . . to either restrain violation [of the covenants] or to recover damages.” (River Oaks’ Motion, at Ex. I, § P; Ex. J, § P.) An action to enforce a restrictive covenant is an action in equity. Anderson v. Buonforte, 365 S.C. 482, 488, 617 S.E.2d 750, 753 (Ct. App. 2005). Similarly, an action to foreclose a lien for unpaid homeowners’ association assessments is an action in equity. Wachesaw Plantation E. Cmty. Servs. Ass’n, Inc. v. Alexander, 420 S.C. 251, 256 n. 1, 802 S.E.2d 635, 638 n. 1 (Ct. App. 2017). The River Oaks Declaration states that its purpose, in part, is to establish a funding mechanism for River Oaks. (See River Oaks’ Motion at Exhibit A.) The Declaration further provides for River Oaks to levy dues and assessments in order to fund its operations. (Id.) In addition, the Declaration makes reference to the Bylaws which outline the financial administration of River Oaks. (Id.) Article VII, Section 2 of the Bylaws states that the Board of Directors “shall establish regular dues . . .” and that “any member [that] has failed to pay dues . . . is no longer in good standing . . .” (See Mot. for Summ. J., filed May 21, 2021, at Exhibit B.)<sup>8</sup> As amended, the Bylaws authorize the Board to enforce collection of these dues by imposing financial penalties. (Id.) The financial penalties include late fees and collection costs. (Id.) Additionally, the Bylaws authorize the Board to impose assessments for violations of restrictive covenants. (Id.) The Court finds that the language of these documents is clear and unambiguous.

<sup>8</sup> River Oaks filed a copy of the Bylaws as an exhibit to an earlier motion for summary judgment on May 21, 2021, and the parties read the relevant provisions of the Bylaws into the record at the hearing on the instant motion.

Plaintiffs argue that (1) the express terms, “dues and assessments” in the Declaration do not mean dues and assessments, that (2) express reference within the Woodington I and Woodington II covenants allowing for the enforcement of the covenants and to recover damages should be ignored, and that (3) the Declarations reference and inclusion of the Bylaws and the Bylaws method of collection and to enforce collection of dues, financial penalties, late fees and collection costs are not applicable or enforceable. These words contested by the Plaintiffs have clear meaning and the Court cannot ignore the plain language of the documents before it. First Fed. Sav. & Loan Ass'n of Charleston v. Bailey, 316 S.C. 350, 354, 450 S.E.2d 77, 79 (Ct. App. 1994). Having found that River Oaks properly complied with the terms of the covenants for Woodington I and Woodington II, this Court will not redefine the language of the governing documents to match the Plaintiffs’ desires. The Court finds, as a matter of law, that the governing documents of River Oaks, namely its Declaration and Bylaws, and the covenants of Woodington I and II authorize River Oaks to enforce the Woodington I and II Covenants; charge annual association dues, fines, or fees; and place and foreclose upon liens on properties in the Woodington I and Woodington II neighborhoods.


**VI. It would be inequitable for this Court to declare River Oaks invalid after more than twenty years of operations.**

As an alternative basis for granting River Oaks’ motion and denying the Plaintiffs’, equity does not permit a ruling that would alter the landscape of Woodington I and Woodington II. In the view of this Court, even if River Oaks failed to properly form, it would be inequitable to now hold that River Oaks cannot serve as the homeowners association for Woodington I and II because it has done so for more than twenty-two years. See, e.g., Jarmuth v. Intern. Club Homeowners Ass’n, Inc., 2012 WL 10096357, at \*7 (Sep. 10, 2012) (“To declare, at this late stage, that these Bylaws are invalid or ineffective when they have been relied upon by all of the homeowners within

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the Community would be inequitable.”) A declaratory judgment action is neither legal nor equitable in nature, but it takes on the tenor of the underlying action. Seabrook Island Prop. Owners Ass'n v. Marshland Tr., Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 382–83 (Ct. App. 2004) (citation omitted). The determination of the scope of restrictive covenants is an action in equity. Id. “[E]quity exists to correct mistakes and prevent windfalls.” Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 427, 746 S.E.2d 35, 39 (2013) (Pleicones, J., dissenting). Further, no rule prohibits the Court from applying equitable principles at the summary judgment stage. See Chalet Susse Int'l, Inc. v. Mobil Oil Corp., 597 A.2d 1350, 1352 (Me. 1991) see also Rule 56(a), SCRPC (permitting summary judgment in declaratory judgment actions).

As to the original creation of River Oaks, it is clear that River Oaks obtained consent from a majority of the homeowners within Woodington I and II. As noted above, these homeowners signed the River Oaks Declaration, which states their intent to bind their lots to the River Oaks Declaration and to run with the land. While the Plaintiffs argue that the timing, format, and filing of these signatures within the River Oaks Declaration was ineffective, equity looks to substance rather than form. Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011). The Plaintiffs essentially argue that River Oaks should have obtained and filed each signature simultaneously. Instead, River Oaks retained the services of an attorney who advised them on formation and filed the River Oaks Declaration on River Oaks’ behalf. Together, they obtained signatures from a majority of the Woodington homeowners, which is all that the applicable covenants require. If River Oaks did not properly establish itself, it was not for lack of trying.

 As for today, the Woodington I and II neighborhoods are centrally located at the heart of the River Oaks community. For twenty-two years now, these neighborhoods have known River

Oaks to be their homeowners association and during this time River Oaks has enabled the improvement of entry ways, greenways, and the community overall. The Court notes that both a church and local elementary school have been named for River Oaks since its creation and are testaments to the growth of River Oaks in the years since its establishment. While many of the original signatories continue to reside in the Woodington I and II neighborhoods, the majority of the current homeowners have never known their neighborhoods without a homeowners association. See Buffington v. T.O.E. Enterprises, 383 S.C. 388, 393, 680 S.E.2d 289, 291 (2009) (a homeowners' justified reliance on a restrictive covenant weighs in favor of its enforcement). To determine now, after all these years, that River Oaks was void *ab initio* would undo the obvious progress of the community and run contrary to the interests of its current inhabitants.

Specific to the Plaintiffs themselves, the Court is not persuaded that their alleged losses, if any, outweigh the interests of preserving the homeowners association. The Plaintiffs do not live in Woodington I and have not lived there for many years. If the Court were to issue an order removing or limiting River Oaks, the prospective impact of that ruling would not affect the Plaintiffs in the same way that it would necessarily affect the 131 current homeowners of Woodington I and II. Further, when the Plaintiffs lived in Woodington I, they were well aware of River Oaks' existence and participated in its operations – most clearly demonstrated by Plaintiff Jennifer Davis' service on the River Oaks Board of Directors. See supra, p. 4.<sup>9</sup> Their claims today are based upon documents to which they had equal access in 2005 and every year thereafter. It is clear to this Court that River Oaks was a benefit to the Plaintiffs when they resided in the



<sup>9</sup> The Court also notes that the debt that provided the original impetus for this lawsuit and others was a debt for unpaid association dues. (See River Oaks' Motion, Ex. F, 13:6 – 16:9.) These are dues which the Plaintiffs had previously paid for several years and for which they had contractually obligated others to pay during the life of their installment sales contract to sell the Property. (Id. at Exhibit E, 39:10-25, 58:4-23; Exhibit F 47:9-17.)

Woodington I neighborhood. To remove that benefit to current Woodington I and Woodington II residents now – at the request of nonresidents – would not serve the interests of justice or equity.

**Conclusion**

The material facts relied upon by the Plaintiffs and River Oaks are undisputed. For the reasons set forth above, the Court GRANTS Defendant River Oaks Homeowners Association, Inc.'s motion for summary judgment and DENIES the Plaintiffs' motion for summary judgment.

AND IT IS SO ORDERED!

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Dated this <sup>21<sup>st</sup></sup> day of July 2024  
St. George, South Carolina

*Thomas L. Hughston, Jr.*  
~~\_\_\_\_~~ Thomas L. Hughston, Jr.  
First Judicial Circuit, *Presiding*  
Judge  
*Retired But Active*



Dorchester Common Pleas

**Case Caption:** Joseph R Davis , plaintiff, et al VS River Oaks Homeowners Association Inc , defendant, et al

**Case Number:** 2020CP1801856

**Type:** Order/Summary Judgment

So Ordered

s/T.L.HUGHSTON, JR. 2008