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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

Appellate Case No.: 2024-000027
Civil Action No.: 2022-CP-40-06509

The Lofts at Printers Square Condominium Association, Inc.,..........................Respondent,

v.

M Gourmet Group, LLC,...Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the Circuit Court err in granting judgment on the pleadings as to the validity and enforceability of the Master Deed, First Amendment to the Master Deed, and the Rules and Regulations?

II. Did the Circuit Court err in granting summary judgment as to the validity and enforceability of the Regime Documents?

STATEMENT OF THE CASE

This arises from a dispute between a property owner and a property owners association at a four-story building located at 530 Lady Street in Columbia, South Carolina, over the validity and enforceability of documents relating to the governance of the horizontal property regime.

On June 7, 2011, The Lofts at Printers Square, LLC ("Declarant") filed the Master Deed and Declaration of Covenants, Conditions, Restrictions, Easements, Charges, and Liens for the Lofts at Printers Square Horizontal Property Regime ("Master Deed"). (R. pp. 23-109.) The Master Deed created thirteen units—two commercial suites on the first floor, and eleven residential units on the top three floors. (R. pp. 30-32.) Filed with the Master Deed were seven exhibits, including the Bylaws and Articles of Incorporation for The Lofts at Printers Square Condominium Association, Inc. ("the Association") and the percentage interests assigned to the two Commercial Suites and the eleven Residential Units. (R. pp. 69-86; R. p. 87.) The Master Deed also imposed certain restrictions on the use and purpose of the Commercial Suites. (R. pp. 23-24; R. p. 30; R. pp. 43-53; R. pp. 55-58; R. pp. 63-64.)

In late July of 2011, the Declarant sold all eleven of the residential units, as demonstrated by deeds filed at the Richland County Register of Deeds Office.[1]

The new owners took title to those units under the existing, original Master Deed, including the provisions relating to parking spaces.

On April 6, 2012, the Declarant closed the sale of Commercial Suite A and Commercial Suite B to M Gourmet Group, LLC ("M Gourmet" or "Appellant") and filed a First Amendment to the Master Deed. (R. pp. 110-112; R. pp. 113-120.) The Deed to M Gourmet included the following:

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[1] See Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding."); Masters v. Rodgers Dev. Grp., 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984) (holding appellate court may take judicial notice of indisputable matters). See also Deed from Declarant conveying Unit 201 filed July 25, 2011 in the Richland County Register of Deeds Office at Book 1696, Page 1709; Deed from Declarant conveying Unit 202 filed July 25, 2011 in the Richland County Register of Deeds Office at Book 1696, Page 1725; Deed from Declarant conveying Unit 203 filed July 28, 2011 in the Richland County Register of Deeds Office at Book 1697, Page 1040; Deed from Declarant conveying Unit 204 filed July 25, 2011 in the Richland County Register of Deeds Office at Book 1696, Page 2178; Deed from Declarant conveying Unit 301 filed July 29, 2011 in the Richland County Register of Deeds Office at Book 1697, Page 2465; Deed from Declarant conveying Unit 302 filed July 27, 2011 in the Richland County Register of Deeds Office at Book 1697, Page 699; Deed from Declarant conveying Unit 303 filed July 29, 2011 in the Richland County Register of Deeds Office at Book 1697, Page 2462; Deed from Declarant conveying Unit 304 filed July 27, 2011 in the Richland County Register of Deeds Office at Book 1697, Page 553; Deed from Declarant conveying Unit 401 filed July 29, 2011 in the Richland County Register of Deeds Office at Book 1697, Page 3129; Deed from Declarant conveying Unit 402 filed July 28, 2011 in the Richland County Register of Deeds Office at Book 1697, Page 1020; and Deed from Declarant conveying Unit 403 filed July 25, 2011 in the Richland County Register of Deeds Office at Book 1696, Page 2422.

THE GRANTEE, BY THE ACCEPTANCE OF THIS INDENTURE DEED, ACKNOWLEDGES THAT THIS CONVEYANCE IS SUBJECT TO THE PROVISIONS OF THE AFORESAID MASTER DEED AND BY-LAWS OF THE LOFTS AT PRINTERS SQUARE HORIZONTAL PROPERTY REGIME DESCRIBED ABOVE, INCLUDING THE PROVISIONS OF ALL EXHIBITS. THE GRANTEE ACKNOWLEDGES AND AGREES THAT THIS DEED, THE MASTER DEED AND BY-LAWS OF THE LOFTS AT PRINTERS SQUARE HORIZONTAL PROPERTY REGIME AND EXHIBITS, CONTAIN ALL OF THE REPRESENTATIONS AND INDUCEMENTS CONCERNING THE PURCHASE BY GRANTEE OF THE DWELLING DESCRIBED ABOVE.

GRANTEE ACCEPTS THE UNIT "AS-IS WHERE-IS" AND SELLER DISCLAIMS ALL WARRANTIES AND MAKES NO WARRANTIES EXPRESSED OR IMPLIED OTHER THAN THE EXPRESS WARRANTY OF TITLE CONTAINED HEREIN.

M Gourmet Group, LLC

By:

Its: Manager

(R. p. 111.)

On May 19, 2016, the Association held a formal meeting at which a quorum was present. Pursuant to the Master Deed and Bylaws, the Association, by an affirmative vote of those owners holding a majority of the voting interests in the Association, approved a Second Amendment to the Master Deed ("Second Amendment"). (R. p. 129; R. pp. 134-138.) The Second Amendment was properly executed and included a certification with acknowledgements evidencing that it was properly adopted. (R. pp. 129-138.) It was filed July 27, 2016, in the Richland County Register of Deeds Office. (R. p. 129.)

Following the adoption and filing of the Second Amendment, M Gourmet argued the Second Amendment reduced parking spaces for the Commercial Suites in violation of the First Amendment and disputed whether the amendment was enforceable. (R. p. 21; R. p. 154.)

On December 29, 2021, the Association adopted Rules and Regulations and a Rules Enforcement and Fine Policy. (R. pp. 142-146; R. pp. 147-151.) Those documents were recorded January 5, 2022, in the Richland County Register of Deeds Office. M Gourmet also disputed

whether the Rules and Regulations applied to it. (R. p. 21 "Defendant disputes the violations and has contended the Master Deed, amendments to it, the Bylaws, and the Rules and Regulations are invalid and/or unenforceable."; R. p. 154 (admitting same).)

On December 13, 2022, after making no progress in its dispute with M Gourmet, the Association commenced this action upon a single cause of action for a declaratory judgment. (R. pp. 18-22.) In its complaint, the Association did not seek enforcement by way of an injunction or money judgment; it sought only "an order declaring the Master Deed, Amendments to it, Bylaws, and Rules and Regulations are valid and enforceable." (R. p. 22.) True and accurate copies of the regime documents were filed as exhibits to the complaint and incorporated into it. (R. pp. 19-21 (alleging true and accurate copies of the Master Deed, Deed to M Gourmet, First Amendment, Second Amendment, and Rules and Regulations were attached exhibits to the complaint); R. pp 152-154 (admitting same); R. p. 217 (admitting authenticity of the exhibits to the complaint); R. p. 209 (same).)

On February 16, 2023, M Gourmet filed and served its answer to the complaint and responses to the Association's first set of requests for admission. (R. pp. 152-155; R. pp. 217-220.)

On March 13, 2023, the Association moved for judgment on the pleadings or, in the alternative, for summary judgment based upon the admissions in M Gourmet's responsive pleading and its admissions. (R. pp. 213-220.) Four days later, M Gourmet's attorney sought, and was granted, relief as counsel of record. (R. pp. 15-16.)

On August 16, 2023, the court served notice of a hearing to take place on September 7, 2023, on the Association's motion for judgment on the pleadings or, in the alternative, for summary judgment. (R. p. 229.)

On August 18, 2023, M Gourmet, through its new attorney, moved for leave to amend its answer and its responses to the Association's Rule 36 Requests for Admissions. (R. pp. 181-196.)

On September 7, 2023, the hearing on the Association's motion proceeded as noticed via Webex before The Honorable J. Cordell Maddox. (R. pp. 156-169.) Judge Maddox did not hear, nor was he ever asked to decide, M Gourmet's motion for leave to amend. Id. Following the hearing, Judge Maddox took the matter under advisement. On October 24, 2023, Judge Maddox notified the parties he intended to grant the Association's motion and requested a proposed order. (R. pp. 227-228.)

On November 7, 2023, counsel for the Association submitted the proposed order to Judge Maddox after circulating it to M Gourmet's then-counsel. (R. pp. 225-227.) Because M Gourmet's counsel had not had an opportunity to review the proposed order, Judge Maddox allowed additional time for M Gourmet's counsel to review the proposed order. (R. pp. 224-226.) After receiving comments from M Gourmet's counsel on the proposed order and having further discussion, the Association's counsel revised the order and re-submitted it on November 19, 2023, for the Court's review. (R. pp 221-222; R. pp. 223-224.)

On December 5, 2023, Judge Maddox entered his final order. (R. pp. 3-11.) Following entry of that order, M Gourmet filed no Rule 59, SCRCP, motion. Instead, it elected to change attorneys yet again and proceed with this appeal. (R. pp. 1-2; R. pp. 170-171.)

STANDARD OF REVIEW

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRCP. See also Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009) ("A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in

plaintiff's favor."); and Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(c), SCRCP.

Under Rule 56, SRCP, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Med. Univ. of S.C. v. Arnaud, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). "[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." Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023).

Whether reviewing a grant of summary judgment or a judgment on the pleadings, appellate courts review questions of law *de novo* applying the same standard as the trial court. Ziegler v. Dorchester Cnty., 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019); see also Ballard v. Admiral Ins. Co., 442 S.C. 22, 33–34, 897 S.E.2d 183, 188–89 (Ct. App. 2023), reh'g denied (Feb. 21, 2024).

ARGUMENT

I. Appellant Failed to Preserve the Issues for Appellate Review.

Neither of the issues MGM presents on appeal is preserved for review because the Appellant failed to raise them to the circuit court.

To successfully preserve an issue for appellate review, the issue must be: "(1) raised and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity." Rummage v. BGF Indus., 434 S.C. 441, 455–56, 865 S.E.2d 380, 388 (Ct. App. 2021), reh'g denied (Sept. 22, 2021), reh'g denied (Dec. 2, 2021), cert. granted (Sept. 7, 2022), cert. dismissed as improvidently granted, 440 S.C. 307, 891 S.E.2d 374 (2023) (quoting S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007)) (quoting Jean Hoefer Toal, et al., Appellate Practice in South Carolina 57 (2d ed. 2002)).

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quoting Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." Herron, 395 S.C. at 465, 719 S.E.2d at 642 (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)).

"A bedrock part of error preservation is that an issue must have been ruled upon in the trial court in order for it to be preserved for appellate review." Gleaton v. Orangeburg Cnty., 440 S.C. 350, 359, 891 S.E.2d 390, 395 (Ct. App. 2023) (citing Wilke, supra). "Without a ruling, there is nothing for [the appellate court] to review." Id. "The issue must be sufficiently clear to bring into

focus the precise nature of the alleged error so that it can be reasonably understood by the judge." Malloy v. Thompson, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) (citing Wilke, supra). "It is 'axiomatic that an issue cannot be raised for the first time on appeal.'" Herron, 395 S.C. at 465, 719 S.E.2d at 642 (quoting Wilke, 330 S.C. at 76, 497 S.E.2d at 733). "Imposing such a requirement on the appellant 'is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" Herron, 395 S.C. at 465, 719 S.E.2d at 642 (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)). "The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." I'On,, 338 S.C. at 422, 526 S.E.2d at 724.

In I'On, the Supreme Court of South Carolina explained,

> An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. E.g., Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991) (same); Sumter Building & Loan Ass'n v. Winn, 45 S.C. 381, 23 S.E. 29 (1895) (same).
>
> If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. E.g., Pelican Bldg. Centers of Horry–Georgetown, Inc. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993); Hoffman v. Powell, 298 S.C. 338, 380 S.E.2d 821 (1989); see also Rules 52(b) and 59(e), SCRCP.

I'On, 338 S.C. at 421–22, 526 S.E.2d at 724–25.

In this appeal, M Gourmet presents two issues:

> (1) Did the circuit court err by granting Respondent's motion for judgment on the pleadings based upon Appellant's Answer despite Appellant's meritorious motion for leave to amend its answer?
>
> (2) Did the circuit court err by granting Respondent's motion for judgment on the pleadings based upon Appellant's responses to requests for admission despite Appellant's meritorious motion for leave to amend those responses?

(App.'s Br. at 1). However, M Gourmet never presented the arguments they make as to either of those issues to the trial court.

In its return filed in opposition to the Association's motion, M Gourmet presented three arguments: (i) that judgment on the pleadings should be denied under the original pleadings; (ii) that judgment on the pleadings should be denied based on the amended answer and amended answers to requests for admission; and (iii) that judgment on the pleadings should be denied because both the plaintiff and defendant are seeking declaratory relief and it will be decided by the court after hearing all the evidence and an adequate time to complete discovery. (R. pp. 176-179.)

At the hearing, M Gourmet argued judgment on the pleadings was improper based on the original pleadings, based on the Association having breached the Master Deed, based on the Rules and Regulations "being enforced inconsistently, wrongfully, and unfairly," and because M Gourmet expected if judgment on the pleadings was denied its motion for leave to amend would be granted. (R. p. 166, lines 8-14 "Although it was filed recently, it was sent to Mr. Bruner at the end of April, shortly after we were retained, and the motion to amend isn't for hearing today, but if Your Honor denies the motion for judgment on the pleadings, we would expect that that motion would be heard in relatively short order, and we'd like to think it would be granted.")

Significantly, however, at no time did M Gourmet object to the hearing moving forward or request a continuance due to its pending motion for leave to amend. Although it had the opportunity to file a Rule 59(e) motion, M Gourmet never did. Now, M Gourmet offers a series of new arguments for the first time on appeal, including that the trial court erred by not even considering its motion for leave to amend. (App.'s Br. at 13 "The circuit court did not consider Appellant's motion to amend in its decision to grant Respondent's motion for judgment on the pleading...the order falls short of *actually* denying Appellant's motion to amend."; see also "[S]ince the circuit court ultimately granted Respondent's motion for judgment on the pleadings without first considering Respondent's motion to amend, the circuit court undoubtedly failed to exercise its discretion.") Stated otherwise, M Gourmet appears to rest its entire appeal on Judge Maddox not granting a motion for leave to amend which M Gourmet never asked him to decide.

Specifically, in its brief M Gourmet argues, inter alia:

(i) "[t]he circuit court did not consider Appellant's motion to amend," (App.'s Br. at 13); "[t]he circuit court failed to consider Appellant's motion to amend," (App.'s Br. at 19);

(ii) "the circuit court undoubtedly failed to exercise its discretion," (App.'s Br. at 13);

(iii) "the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it, but the circuit court failed to do so in its order," (App.'s Br. at 13);

(iv) "[t]he assertions in the order that 'the pleadings raise no dispute regarding the validity and enforceability of the Master Deed, First Amendment and Rules and Regulations[,]' . . . and that 'MGM [sic] admits in its initial answer . . . that the Second Amendment is enforceable[,]'...are erroneous." (App.'s Br. at 14);

(v) "the circuit court made several inaccurate factual determinations that unsurprisingly supported its decision to grant Respondent's motion for judgment on the pleadings," (App.'s Br. at 15);

(vi) "[t]he circuit court's assertion that 'the Second Amendment did not remove or take away any spaces' is erroneous," (App.'s Br. at 15);

(vii) "[t]he circuit court granted Respondent's motion (and thus, by default, denied Appellant's motion to amend) based on its perception of the merits of the amended claims, not under the criteria for amendment the court was required to consider under Rule 15(a)," (App.'s Br. at 16);

(viii) the trial court's finding that granting the motion for leave to amend would be futile "is based on a misstatement of certain facts," (App.'s Br. at 16);

(ix) "[t]he circuit court's assertion that 'clearly the Master Deed allows for amendments without MGM's [sic] consent' is simply inaccurate," (App.'s Br. at 18);

(x) "[s]imply put, this is not the rare case where it would be appropriate for the circuit court to deny a motion to amend," (App.'s Br. at 18);

(xi) "[t]he circuit court's failure to consider the Rule 36(b) factors when presented with Appellant's motion to amend is an abuse of discretion," (App.'s Br. at 19); and

(xii) both prongs of the Rule 36(b) analysis regarding the court's discretion to allow amendments to Rule 36 admissions weigh in favor of M Gourmet. (App.'s Br. at 19-20.)

The Appellant presented none of these arguments to Judge Maddox. It never argued the merits of its motion for leave to amend, never requested a continuance to allow its motion for leave to amend to be heard and decided, and never even asked Judge Maddox for a ruling on its motion despite ample opportunity to do so before, during, and after the hearing. M Gourmet also had the opportunity after it received Judge Maddox's order to raise all of these issues and alleged errors in a Rule 59 motion to "first try to convince the lower court it has ruled wrongly." I'On, supra, at 421, 526 S.E.2d at 724. See also Gibbons v. Aerotek, Inc., 441 S.C. 180, 185, 893 S.E.2d 326, 329 (Ct. App. 2023) ("A Rule 59(e) motion would have given Aerotek the opportunity to argue the errors it believed the trial court committed in denying its motion for attorneys' fees and allowed the trial court to reconsider the *sua sponte* ground and its ruling. However, in the absence of this

motion, such an opportunity was lost. After the trial court issued its order, Aerotek was required to file a Rule 59(e) motion addressing the trial court's finding that Aerotek did not properly authenticate the Employment Agreement."). However, M Gourmet did not file a Rule 59 motion. Instead, it chose to fire yet another attorney and proceed with this appeal. As a result of its actions, M Gourmet never afforded Judge Maddox "a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Herron, 395 S.C. at 465, 719 S.E.2d at 642. Rather than provide Judge Maddox that opportunity, M Gourmet simply held the ace card up its sleeve and proceeded with this appeal in hope that this Court would treat Judge Maddox's order as one denying a motion for leave to amend (despite M Gourmet never asking Judge Maddox to decide that motion). See I'On, supra at 422, 526 S.E.2d at 724. Or perhaps M Gourmet was too busy firing its second attorney and seeking out new representation to timely file the Rule 59 motion. Either way, M Gourmet failed to preserve the issues it presents on appeal. That failure is fatal to its appeal.

II. The Trial Court Properly Granted Judgment on the Pleadings as to the Master Deed, the First Amendment to the Master Deed, and the Rules and Regulations.

M Gourmet argues generally that the trial court erred in granting judgment on the pleadings without deciding M Gourmet's motion for leave to amend its original answer and its responses to the Association's Rule 36 requests for admissions. In addition to the arguments above that note M Gourmet's own failure to raise those issues to the trial court, the Association would show the argument overlooks the absence of any legitimate dispute as to the validity and enforceability of the Master Deed, First Amendment to the Master Deed, and Rules and Regulations.

"A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor." Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009). Here, there was no dispute about the validity and enforceability of the Master Deed, First Amendment, and Rules and Regulations. Not only do M Gourmet's answer and Rule 36 responses—as well as the proposed amendments it sought to file—demonstrate that truth, M Gourmet admits as much in its brief:

> While the proposed amendments to the Answer and responses and requests for admissions do admit the *validity* and *enforceability* of the *Master Deed* and *First Amendment* because those were entered as part of the contract of sale and formed the basis of the parties' bargain...Appellant denies the validity and enforceability of the Second Amendment to the Master Deed and admits only that the Commercial units are subject to the Rules and Regulations *provided* they are: (1) lawfully promogulated and lawfully, fairly and equitably enforced and (2) that they do not unreasonably restrict the use of the Commercial Units.

(App.'s Br. at 16-17 (emphasis in original).) Therefore, M Gourmet does not dispute the validity or enforceability of the Master Deed or First Amendment, and it admits it is subject to the Rules and Regulations. In light of these concessions, the Association would be entitled to the declaratory relief it sought as a matter of law notwithstanding the amendments. The qualified concession as to the Rules and Regulations—that they must be lawfully promogulated and lawfully, fairly and

equitably enforced and that they do not unreasonably restrict the use of the Commercial Suites—is of no moment here because this is not an enforcement action. McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("whatever doesn't make any difference, doesn't matter."). The sole relief sought in this action is to establish, contrary to M Gourmet's contention, that the regime documents are valid and enforceable. In light of the lack of any dispute over the validity and enforceability of the Master Deed, the First Amendment to the Master Deed, and the Rules and Regulations, Judge Maddox properly granted the Association the declaratory relief it sought as to those documents. The order should be affirmed.

III. The Trial Court Properly Granted Summary Judgment as to the Validity and Enforceability of the Regime Documents.

In addition to granting judgment on the pleadings, Judge Maddox also granted summary judgment as to the Association's request for a declaratory judgment that all the regime documents, including the Second Amendment, are valid and enforceable.

In his Order, Judge Maddox held in pertinent part,

> Finally, [M Gourmet] has raised no allegation or dispute that the Association failed to follow the protocols outlined in the Master Deed when it gave notice of and voted on the Second Amendment. Even considering [M Gourmet] changing attorneys, it has had ample time to conduct discovery and provide some evidence to avoid summary judgment, yet [M Gourmet] has failed to point to any genuine issue of material fact regarding the adoption and validity of the Second Amendment. See, e.g., Rule 56(c), SCRCP, and Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463–64, 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.") (internal citation and quotation omitted). **After considering the pleadings, exhibits incorporated into the pleadings, the admissions on record, and even the proposed admissions, I find no genuine dispute of fact that the regime documents, including the Second Amendment, are valid and enforceable. The Association is entitled to summary judgment, as requested in its original motion.** See Rule 12(c), SCRCP ("If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."), and Rule 56(c), SCRCP.

(R. pp. 7-8 (emphasis added).) The Court's ruling was based not only upon the allegations in the complaint, M Gourmet's answer, and M Gourmet's proposed amended answer but also on the substance of the one hundred twenty-one pages of regime documents that were included as exhibits to the complaint and contained acknowledgements. See Rule 902, SCRE. M Gourmet had months to conduct depositions or even submit an affidavit to refute the authenticity of the documents, to refute the statements on the face of the documents that they were properly adopted and enacted pursuant to the terms of the Master Deed, or to otherwise create a genuine issue of fact about the validity of the regime documents. See Rule 56(c), SCRCP; Kitchen Planners, 440 S.C. at 463, 892 S.E.2d at 301 ("[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."); Regions Bank, 354 S.C. at 660, 582 S.E.2d at 438 ("Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial."). Applying Rule 56(c) and the law governing on summary judgment, Judge Maddox found, based on his rulings, that the Association had carried its burden of proving the regime documents valid and enforceable, and he further held M Gourmet had not carried its burden of coming "forward with specific facts showing there is a genuine issue for trial." "Despite having ample time to conduct discovery, M Gourmet has pointed to no evidence from which a fact-finder could reasonably find a triable issue exists as to the enforceability of the regime documents." (R. p. 9.)

It is significant that Judge Maddox granted summary judgment as to the validity and enforceability of *all* the regime documents, including the Second Amendment. (R. p. 8.) M Gourmet presents no argument challenging the trial court's grant of summary judgment under Rule

56(c), SCRCP. Therefore, that ruling is the law of the case, and Judge Maddox's order should be affirmed on that basis alone. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case.") (quoting Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), abrogated on other grounds by Repko v. County of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018))); Shirley's Iron Works, 403 S.C. 560, 573, 743 S.E.2d 778, 785 ("An unappealed ruling is the law of the case and requires affirmance."); Gibbons, 441 S.C. at 186, 893 S.E.2d at 329–30 ("Because we hold the trial court's finding regarding the authentication issue is the law of the case, it is, therefore, a ground supporting the denial of Aerotek's motion for attorneys' fees and costs. Accordingly, pursuant to the two-issue rule, we affirm and do not address issue one.") (citing Jones v. Lott, and Atl. Coast Builders & Contractors).

This court should affirm Judge Maddox's decision granting summary judgment.

IV. Other Grounds to Affirm Appearing in the Record.

In addition to the grounds discussed above, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR.

M Gourmet argues the trial court's order should be reversed to enable her to challenge and assert counterclaims regarding the Association's adoption of the Second Amendment. (R. p. 165, line 24 to R. p. 166, line 2 "So, in 2016, the association amended the master deed with the second amendment, which took away nine of the 11 spaces that were given in the first amendment. So that's the genesis of this dispute.") During the hearing, the Association argued any such claims lapsed long ago because M Gourmet failed to bring them within three years of the filing of the

Second Amendment placing M Gourmet on notice of the amendment. (R. p. 162, line 17 to R. p. 163, line 1.) See also S.C. Code Ann. § 15-4-510 ("The periods for the commencement of actions other than for the recovery of real property shall be as prescribed in the following sections."), and S.C. Code Ann. § 15-3-530 ("Within three years...(1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520[.]"); Poly-Med, Inc. v. Novus Sci. Pte. Ltd., 437 S.C. 343, 350, 878 S.E.2d 896, 900 (2022) ("[E]mbedded in South Carolina's approach to the statute of limitations is a discovery rule. The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist.") (internal quotation omitted).

The statute of limitations barring M Gourmet's challenge to the Second Amendment constitutes other grounds appearing in the record upon which this Court may affirm the trial court's order under Rule 220(c), SCACR. The Respondent also raised additional grounds in its motion that support the trial court's order. (R. pp. 213-220.)

V. Appellant's Arguments Under Rules 15 and 36, SCRCP.

Appellant's brief is dedicated largely to arguments that the trial court should have granted it leave to amend its answer under Rule 15, SCRCP, and should have granted it leave to amend its Rule 36 responses under Rule 36(b), SCRCP. While the Association contends none of those arguments is properly preserved for review, it takes this opportunity to respond to them.

M Gourmet argues Judge Maddox should have granted its motion for leave to amend its answer under Rule 15, SCRCP, because the Association failed to show any prejudice, because the trial court made inaccurate factual determinations, and because allowing the amendment would not have been futile. (App.'s Br. at 13 "if the circuit court did consider the motion to amend, the circuit court erred in refusing to allow Appellant to amend its answer and responses to requests for admission for several reasons."); see also (App.'s Br. at 13-18.) In addition, M Gourmet argues

the Judge Maddox should have allowed the amended Rule 36 responses under Rule 36(b), SCRCP and Com. Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc., 347 S.C. 545, 554, 556 S.E.2d 718, 723 (Ct. App. 2001). Those arguments notwithstanding, M Gourmet has failed to explain how, even with those amendments there, any dispute exists about the validity or enforceability of the Master Deed, First Amendment, or Rules and Regulations. See Rule 12(c), SCRCP. Similarly, while M Gourmet offers argument now about the Second Amendment, it failed to point the trial court to any evidence or inference therefrom creating a genuine dispute as to the validity or enforceability of the Second Amendment. See Rule 56(c), SCRCP. Thus, had M Gourmet asked the trial court to decide the motion, and had the trial court allowed the amendment, the trial court's rulings would still be proper. Furthermore, and contrary to the Appellant's argument, the trial court's order did consider and note the prejudice that would result from allowing the amendments, as well as the futility in allowing them given M Gourmet's inability to identify any evidence creating a genuine dispute of fact. (R. pp. 8-10.) Notably, with regard to prejudice the Appellant argues, "In its motion for judgment on the pleadings, Respondent does not allege that there are any evidentiary challenges, e.g. the unavailability of key witnesses, because of the sudden need to obtain evidence with respect to the questions previously answered by the admissions." (App.'s Br. at 20.) That is correct. Because M Gourmet filed its motion for leave to amend on August 18, 2024, five months after the Association filed its motion and M Gourmet's first attorney moved to be relieved as counsel. The Association's motion could not possibly contain the allegations M Gourmet contends it should have because M Gourmet did raise the issue of amendment until after it was served with the Association's motion.

For these reasons, the trial court committed no reversible error in granting the Association's motion. Unlike a motion for judgment on the pleadings and motion for summary judgment, the

denial of a motion for leave to amend is reviewed on an abuse of discretion standard, as the Appellant notes in its brief. (App.'s Br. at 9-11.)

CONCLUSION

For the reasons set forth above, as well as any others that appear in the record, Judge Maddox properly granted judgment on the pleadings and summary judgment, and this Court should affirm his order.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

Appellate Case No.: 2024-000027
Civil Action No.: 2022-CP-40-06509

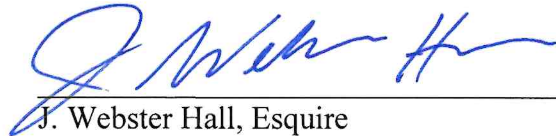
The Lofts at Printers Square Condominium Association, Inc.,..........................Respondent,

v.

M Gourmet Group, LLC,..Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Initial Brief of Respondent The Lofts at Printers Square Condominium Association, Inc., complies with Rule 208, SCACR.



J. Webster Hall, Esquire

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THE STATE OF SOUTH CAROLINA
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J. Cordell Maddox, Jr., Circuit Court Judge

Appellant Case No.: 2024-000027
Civil Action No.: 2022-CP-40-06509

The Lofts at Printers Square,
Condominium Association, Inc. .... Respondent,

v.

M Gourmet Group, LLC, ... Appellant.

PROOF OF SERVICE

I, Bridget Steele, employee of Bruner, Powell, Wall & Mullins, LLC, certify that I have served a copy of the *Respondent's Final Brief* on M Gourmet Group, LLC by electronic mail only, on September 17, 2024, upon the following parties:

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September 17, 2024

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Re: ***The Lofts at Printers Square Condominium Association, Inc. v. M Gourmet Group, LLC***
Appellate Case No.: 2024-000027
BPWM File No.: 11-2529.103

Dear Ms. Kitchings:

Enclosed herewith please find Respondent's Final Brief in the above referenced matter.

Sincerely,

J. Webster Hall

JWH/gh
Encl.

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