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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2024-000794

Kenneth S. Hoffman, Linda J. Hoffman.
Harold W. Walters, Terrence Whitlock, and
Barrie Whitlock, ...Appellants,

v.

Saad Holdings, LLC, and Carl L. Jones, as Personal
Representative of the Estate of Anne E. Jones, deceased,.................................Respondents.

BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in failing to hold that the restrictive covenants in this matter restricting use of any lot in the subdivision to "residential purposes" are clear and unambiguous?

II. Whether the trial court erred in failing to determine and to declare what constitutes "residential purposes" for use of property in the subdivision as set forth in the restrictive covenants?

III. Whether the trial court erred in determining that Respondents' use of their property "to walk across his lot to access his boat docks" is a use of the lot for other than residential purposes in violation of the restrictive covenants?

IV. Whether the trial court erred in holding that interpreting the restrictive covenants in the manner sought by the Plaintiffs (i.e., according to their plain meaning - that lots are to be used for residential purposes only) that make certain uses of the property impermissible [not "impossible" as the trial court concludes] violates public policy and would unreasonably interfere with free use of property?

Statement of the Case

This action arises out of a dispute between the parties regarding certain lots in Providence Point subdivision located in Anderson County, South Carolina, all of such lots being subject to residential restrictive covenants, and whether the uses being made by the Respondents of their lots are in violation of the restrictive covenants.

Appellants filed suit against the Respondents on September 29, 2022. (Summons and Complaint, R. p. 59). Appellants sought a declaratory judgment as to the rights of the parties pursuant to certain residential restrictive covenants, sought a declaration that the Respondents' use of their property to a) obtain boat dock permits from the US Army Corps of Engineers, b) to provide utility service to the docks, and c) to use the property for parking vehicles and to access the boat docks violates the restrictive covenants that restrict use of property in the subdivision to "residential purposes," and sought an injunction prohibiting Respondents from using their property other than for residential purposes.

On November 2, 2022, Respondents filed their Answer and Counterclaim (Answer and Counterclaim, R. p. 82). Respondents sought a declaratory judgment that their use(s) of the property are not in violation of the restrictive covenants, or that compliance with the restrictive covenants has been waived. The Appellants filed their Reply to the Counterclaim on November 7, 2022 (Reply to Counterclaim, R. p. 87) denying Respondents' assertions and reiterating the allegations of their Complaint.

On January 22, 2024, Appellants filed their Motion for Summary Judgment asserting that there were no questions of material fact regarding Respondents' uses of their property being in violation of the restrictive covenants and that Appellants were entitled to judgment as a matter of law. (Plaintiffs' Motion for Summary Judgment with exhibits, R. p. 91) On January 23, 2024,

Respondents filed their cross-Motion for Summary Judgment, likewise asserting that there were no questions of material fact regarding Respondents' uses of their property and that Respondents were entitled to judgment as a matter of law (Defendants' Motion for Summary Judgment, R. p. 164). Respondents filed their Memorandum of Law with exhibits on March 29, 2024. (Defendants' Memorandum of Law with exhibits, R. p. 165)

This matter was tried by non-jury bench trial on April 9, 2024, in Oconee, South Carolina. The case originated in Anderson, SC and the parties agreed, due to scheduling reasons, to have the case heard in Oconee County. The parties' motions for Summary Judgment were dispensed with and incorporated by reference during oral arguments at the trial, and all exhibits were admitted into evidence without objection. In addition, the depositions of party witnesses were submitted and admitted into evidence. The parties each were given an opportunity to state their respective positions and the applicable law, after which the trial court took the matter under advisement before issuing its ruling.

On April 26, 2024, the Honorable R. Scott Sprouse issued an Order holding, among other things, that Respondent's boat docks are not violations of the Providence Point subdivision restrictive covenants as they are attached to the shoreline which is owned by the U.S. Army Corps of Engineers; that Respondents' walking across their lots to access these boat docks is not a violation of the restrictive covenants; that interpreting the restrictive covenants in the manner sought by the Appellants would lead to an absurd result that violates public policy in that it would unreasonably interfere with the free use of property; that there is no evidence that Respondents' current use of their lots would constitute a nuisance or other violation of the Providence Point subdivision restrictive covenants; and denying Appellants' request for an injunction and Respondents' counterclaims for attorney fees and costs. (Order, April 26, 2024, R. p. 1)

Appellants filed a Motion to Reconsider, Alter, or Amend Judgment on May 1, 2024, pursuant to Rules 59 and 60, SCRCP. (Motion to Reconsider, R. p. 195). The grounds for the motion were, *inter alia*, the same issues raised herein on appeal. The trial court denied Appellants' Motion to Reconsider without a hearing and issued a Form 4CE Order on May 2, 2024. (Order Denying Plaintiff's Motion to Reconsider. R. p. 12) This appeal followed.

STATEMENT OF THE FACTS

On August 23, 2021, by deed from Carl L. Jones, recorded on September 1, 2021, in Book 15569 at Page 106 in the Register of Deeds office for Anderson County, South Carolina, the Defendant, SAAD Holdings, LLC, acquired ownership of and title to the property identified as:

> **All those certain pieces, parcels, or lots of land situate, lying, and being in the State of South Carolina, County of Anderson, being shown and designated as Lot Number One (1), containing 5,598 square feet, Lot Number Two (2), containing 2,595 square feet, and Lot Number Three (3), containing 4,173 square feet, as shown on a plat prepared by Nu-South Surveying, Inc., Earl B. O'Brien, RLS No. 10755, dated July 9, 2014, revised June 23, 2021, and recorded in the Office of the Register of Deeds for Anderson County, South Carolina, in Plat Slide S2830 at Page 6, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.**
>
> **This being the same property conveyed unto Carl L. Jones and Anne E. Jones by deed of James W. Reed dated April 26, 1991, recorded May 1, 1991, in the Office of the Register of Deeds for Anderson County, South Carolina, in Book 1167 at Page 186. Anne E. Jones died testate on June 19, 2008, devising her interest in said property unto her husband, Carl L. Jones. See Probate Judgment Roll Number 2021ES04______ in the Office of the Probate Court for Anderson County, South Carolina.**

(R. p. 203)

The Title to Real Estate from Jones to SAAD expressly states:

> **This conveyance is specifically made subject to those certain Restrictions of record in the Office of the Register of Deeds for Anderson County, South Carolina, in Deed Book 15-Q at Page 468, and amended in Book 3847 at Page 285, and is further subject to any and all recorded rights-of-way, easements, conditions, restrictions, and zoning ordinances pertaining to said premises, and is subject to any of the foregoing which may appear from an inspection of the premises.**

On or about September 1, 2021, Defendant SAAD Holdings, LLC recorded a new Plat (referenced in the aforementioned Deed) prepared by Nu-South Surveying, Inc., Earl B. O'Brien, RLS# 10755, dated July 9, 2014, approved by Development Standards on July 28, 2021, and

recoded on September 1, 2021, in the Office of the Register of Deeds for Anderson County, South Carolina, in Plat Slide 2830 at Page 6, that subdivides the originally designated Lot 21, Providence Point, into Lot 1, Lot 2, and Lot 3. (R. p. 206)

The Covenants (of Providence Point subdivision) referenced in the Title to Real Estate provide, in pertinent part, the following:

> LAND USE AND BUILDING TYPE:
>
> No lot shall be used for other than residential purposes. No residential building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height and a private garage for not more than two cars.

(R. p. 209)

The Amendment to the Covenants (adopted in August 2000, **twenty-one (21) years before SAAD acquired its Lots**), while they amend or alter other provisions of the Covenants, do not change the provisions as set forth above in the original Restrictive Covenants related to residential use of the property; however, the following is added:

> **(i) No residence shall be constructed closer than twenty (20) feet to the front lot line, front lot line being defined as that line bordering public street, nor nearer than ten (10) feet to any side lot line.**

(R. p. 213)

Greg Saad of SAAD Holdings, LLC made application for and on January 1, 2022, received Permit# 13328 for a 26' by 24' dock with a 4' by 60' gangwalk and on August 1, 2022 received Permit# 13390 for a 26' by 24' dock with a 4' by 60' gangwalk from the US Army Corps of Engineers for boat docks to be used in conjunction with the renumbered lots, Lot 1, Lot 2, and Lot 3. (R. p. 216)

In addition, SAAD Holdings, LLC has run power and other utilities to one or more of the renumbered Lots 1, 2, and 3. (R. p. 223)

The renumbered lots, Lot 1, Lot 2, and Lot 3, *each* are not large enough for the owners to construct a single-family residence upon that would meet the minimum square footage and setback requirements of the Restrictive Covenants, as amended.

In their Complaint, Plaintiffs assert that the Defendants' intention is to make use of Lot 1, Lot 2, and Lot 3 for primarily or solely ***recreational*** purposes and not for residential purposes as required by the Restrictive Covenants. In fact, Defendants admit that their intended use of the Lots is to gain access to the boat docks.

In response to Request for Admissions, numbers 11 - 20, the Defendants admit that they are not using their property in Providence Point subdivision for any residential purposes as follows:

> 11. Since receipt of the written notice from the Plaintiffs, the Defendants have continued to develop and to make improvements to their Lots.
>
> **Answer: Denied. Defendants have never built any structures on the Lots in question.**
>
> 12. Defendants do use and intend to use Lot 1, Lot 2, and Lot 3 as a means of access to boat docks that have been permitted adjacent to each lot.
>
> **Answer: Admit**
>
> 13. Defendants, when using Lot 1, Lot 2, or Lot 3 to access boat docks adjacent to each Lot, drive to the Lot(s), park a vehicle or vehicles on the Lots while at the property.
>
> **Answer: Admit**
>
> 14. Defendants are using Lot 1, Lot 2, and Lot 3, to provide utilities and/or other services to each Lot.
>
> **Answer: This request requires clarification in order to be admitted or denied. Defendants do not understand the question.**

15. Defendants do not use Lot 1, Lot 2, or Lot 3 for any residential purposes.

Answer: Defendants admit that there is no residence or any other structure located on the Lots.

16. Defendants do not receive mail at Lot 1, Lot 2, or Lot 3.

Answer: Admit

17. Defendants do not list Lot 1, Lot 2, or Lot 3 as their residential address on their driver's licenses.

Answer: Admit

18. Defendants have not registered to vote as residents of Lot 1, Lot 2, or Lot 3.

Answer: Admit

19. Defendants have not enrolled any children in school on the basis of residing on Lot 1, Lot 2, or Lot 3.

Answer: Admit

20. Defendants have not relocated their household furniture and furnishings to Lot 1, Lot 2, or Lot 3.

Answer: Admit

(R. p. 236)

In his deposition, Gregory Saad admits that his intended use of the property is not for residential purposes, but is "to enjoy the lake" as follows:

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18 Q. Okay. All right. Okay.

19 I think you answered this in the very

20 long answer that you gave me, so I don't want to

21 try to rehash this, but I want to make sure I

22 understood it. So I'm going to ask you a real

23 simple question.

24 **What's your intended use of the**

25 **property, as we sit here today? What are you**

48

1 **intending to use the property for?**

2 **A. To enjoy the lake.**

3 **Q. And so what is it you intend to do with**

4 **the property itself?**

5 **A. Walk across it to get to the dock.**

6 **Q. Okay.**

7 **So you have no intentions of building**

8 **on it?**

9 **A. Can't.**

10 **Q. Okay.**

11 **No intentions of --**

12 **A. Well, I shouldn't say can't. I don't**

13 **know how legal that is. Okay. But probably too**

14 **long now and all the legal stuff with all that.**

15 **Okay.**

16 **Q. Well, I'm just asking you what your**

17 **intentions are.**

18 **A. My intentions are to continue to use**

19 **the property, to have a place for our boat and our**

20 dock and our kids and we can go out there and enjoy

21 the water, and that's it.

(R. pp. 242, line 18 to 243, line 21)

STANDARD OF REVIEW

Declaratory judgment actions are neither legal nor equitable. Wiedemann v. Town of Hilton Head Island, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct. App. 2001). The character of an action as legal or equitable depends on the relief sought. Cedar Cove Homeowners Ass'n v. DiPietro, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct. App. 2006). An action to enforce restrictive covenants by injunction is an equitable action. South Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). In an action in equity, the appellate court may find facts in accordance with its own view of the evidence. *Id.*

Restrictive covenants are contractual in nature and rules of contract interpretation apply. Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006)." Interpreting restrictive covenants is an action at law. Barnacle Broad., Inc. v. Baker Broad., Inc., 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000) (holding that interpretation of a contract is an action at law). In an action at law tried without a jury, the appellate court standard of review extends only to the correction of errors of law. Townes Assocs. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976). Thus, the trial court's factual findings regarding interpretation of the contract will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the court's findings. Barnacle Broad., Inc., 343 S.C. at 146, 538 S.E.2d at 675.

ARGUMENT

I. The trial court erred in failing to find that the restrictive covenants in this matter restricting use of any lot in the subdivision to "residential purposes" are clear and unambiguous.

The trial court, in its Order, makes no finding as to whether the restrictive covenants at issue in this matter are vague or ambiguous. Appellants assert that the provision of the restrictive covenants at issue in this matter are, in fact, clear and unambiguous. The provision states as follows:

> **LAND USE AND BUILDING TYPE:**
>
> **No lot shall be used for other than residential purposes. No residential building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height and a private garage for not more than two cars.**

The covenants expressly state that "No lot shall be used for other than residential purposes." (Restrictive Covenants, R. p. 209) Appellants argue that this provision of the restrictions is not capable of more than one meaning or interpretation, and that it is clear in its intent and purpose. The developer of Providence Point, a residential neighborhood at its inception, intended the lots in the neighborhood to be limited to use for residential purposes only.

The S.C. Court of Appeals in Kinard v. Richardson, held as follows:

"Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." [754 S.E.2d 894] Id. at 4, 498 S.E.2d at 863–64 (quotation marks omitted). When "the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning." Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct.App.1992). "A restriction on the use of 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." Taylor, 332 S.C. at 5, 498 S.E.2d at 864 (citation and quotation marks omitted). However, this rule of strict construction " **'should not be applied so as to defeat the plain and obvious purpose of the instrument.'** " McClellanville, 345 S.C. 617, 550 S.E.2d at 302 (quoting Taylor, 332 S.C. at 4–5, 498 S.E.2d at 863–64).

[In Kinard] Paragraph five of the Restrictive Covenants prohibits any use other than single–family residential use. **"Single-family residential use" involves the act of residing in a single-family dwelling.** See Easterly, 256 S.C. at 342–44, 182 S.E.2d at 674 (interpreting a restriction providing that no structure "shall be erected upon any of [the] residential lots other than one single family private dwelling house" and stating, "No apartment house or duplex of any type shall be erected or maintained on any of the lots" **and holding that the general plan of the residential neighborhood had been maintained since its inception because only single family dwellings had been erected on the lots (emphases added))**; Maxwell v. Smith, 228 S.C. 182, 193–94, 89 S.E.2d 280, 285 (1955) (interpreting a covenant restricting use of lots to "residential purposes" and stating that a lake stocked with minnows and pools holding minnows for ultimate sale in a nearby city were elements of a commercial installation in violation of the covenant); id. at 194–95, 89 S.E.2d at 286 (**holding that even if the commercial use stopped, the lake and pools were on vacant lots and, therefore, must be viewed as "not incident to residential use"**). Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014).

Accordingly, the trial court should have first determined whether the covenants at issue are vague or ambiguous, analyzed what the plain and obvious purpose of the instrument was (i.e., to restrict lot use to residential purposes only), and then made a determination as to whether Respondents' use of their property comports with these restrictions. Appellants assert that the

restrictive covenants at issue in this matter are not vague or ambiguous, that they are not capable of more than one meaning, that the covenants clearly restrict the use of any lot to residential purposes only, and that the trial court erred in not holding as such.

II. The trial court erred in failing to determine and to declare what constitutes "residential purposes" for use of property as set forth in the restrictive covenants.

Appellants assert that the trial court erred in not determining and declaring what "residential purposes" means in the context of the restrictive covenants at issue in this matter. That is, the trial court did not expressly find what use for "residential purposes" is as required by the covenants.

Restrictive covenants are contractual in nature. Hoffman v. Cohen, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution. Taylor v. Lindsey, 332 S.C. at 4, 498 S.E.2d at 864. Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants. Taylor at S.C. 1, 4, S.E.2d 862, 863 (1998).

Appellants assert that "recreational" and "residential" are separate and distinct terms with independent meanings, and that recreational use and residential use are not the same. Residential is an adjective relating to the noun "residence."

Giving "residence" it's plain, ordinary meaning it is defined as the act or fact of dwelling in a place for some time, or the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn. Miriam-Webster Dictionary. ***"Recreational" on the other hand, is an adjective relating to noun "recreation," which, given its plain and ordinary meaning, is defined as refreshment of strength and spirits after work or a means of refreshment or diversion such as a hobby.*** Miriam-Webster Dictionary.

In accordance with the plain meaning of the restrictive covenants, the use of any lot in Providence Point subdivision that is not in conjunction with a residential purpose is a violation of the covenants. Using the lots to obtain boat dock permits, to put boat docks on adjacent Corps property, and to utilize the lots to access the boat docks is not in any sense of the term a residential purpose, nor is that use being made in conjunction with any residential purpose. The use by the Respondents of their lots is for purely recreational purposes. Appellants assert that the trial court erred in failing to determining what uses constitute "residential purposes" in relation to the covenants at issue in this matter, and that in order to reach a conclusion in this case the trial court needed to distinguish use for residential purposes from use for other purposes such as recreation.

III. The trial court erred in characterizing Respondents' use of their property "to walk across his lot to access his boat docks" as the manner in which Respondents are using their property, and that such use is not in violation of the restrictive covenants.

Appellants assert that it is undisputed in this matter that Respondents are making three (3) distinct uses of their property. 1) Respondents used their property, which is adjacent to Lake Hartwell Corps of Engineers Property, to obtain boat dock permits from the US Army Corps of Engineers, 2) Respondents are using their property to run utilities across the property to the boat docks, and 3) Respondents are using their property to park vehicles and to walk across their lots to access their boat docks.

(R. pp. 242, line 18 to 243, line 21)

While there were arguments advanced by the Respondents about whether things such as bird watching or picnicking on the property would also be prohibited by the restrictive covenants, those activities are anecdotal, were not asserted to be occurring on the property, and ***are not the offensive uses at issue in this matter***. The issue in the instant case is whether Respondents can use their lots

solely for recreational purposes such as for the purpose of gaining access to boat docks on Lake Hartwell when there are not any residential purposes of the use (R. pp. 31-33, pp. 46-48).

Appellants assert that owning the lot and making no use of the property (i.e., holding property for investment purposes) is not a "use" of the property at all, as it is not being utilized for residential or non-residential purposes. This would not be a violation of the covenants. Nor would performing maintenance on a lot to prevent it from becoming a nuisance be a violation as that too is not making a "use" of the property. However, when use is made of any lot in Providence Point, the use made must be for residential purposes in conformity with the express, clear, and unambiguous provisions of the restrictive covenants.

Appellants contend that Respondents' admitted uses of their lots are *not for any residential purposes.* (R. pp. 242, line 18 to 243, line 21) The trial court held that "interpreting the restrictive covenants in the manner sought by the Plaintiffs would lead to an absurd result that violates public policy in that it would unreasonably interfere with free use of property." Appellants asked the trial court to interpret the restrictive covenants according to their clear, plain, and ordinary meaning, to declare that only residential use of the lots is permitted, and to determine that Respondents' use of the lots is not for any residential purposes and is in violation of the restrictive covenants. Appellants did not seek, nor did they ask the trial court to interpret the covenants in any manner that would be absurd or that would otherwise violate public policy. The within action did not seek a declaration as to whether bird watching or picnicking, or other potential "hypothetical" uses of the property, would violate the restrictive covenants, but rather only a ruling on whether the uses of the lots actually being made by the Respondents are in violation of the restrictive covenants.

It is extremely common in South Carolina that residential restrictive covenants expressly limit or restrict the use of property in a residential subdivision to residential use and/or to residential

purposes only. That is, the covenants restrict use of the property for a residence or for purposes incidental to living and/or residing on the property.

As such, Appellants assert that the trial court erred in holding that "interpreting the restrictive covenants in the manner sought by the Plaintiffs would lead to an absurd result that violates public policy in that it would unreasonably interfere with free use of property." To hold as the trial court suggests would, in essence, render meaningless all existing residential restrictive covenants that expressly intend to limit property to residential use in the State of South Carolina.

IV. The trial court erred in holding that interpreting the restrictive covenants in the manner sought by the Appellants that make certain uses of the property "impossible" violates public policy and would unreasonably interfere with free use of property.

Appellants assert that restrictive covenants by their very nature interfere with the free use of property. ***That is their precise purpose.*** Restrictive covenants are contractual in nature. Hoffman v. Cohen, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). As such, a person buying property bound by restrictions goes into the transaction ***knowing that certain uses of the property are prohibited***, and he/she agrees to be contractually bound not to make unpermitted uses of the property. This is exactly the scenario in the instant case. Respondents knew that the lots in Providence Point were restricted to residential purposes only, yet they purchased the lots with the intention of using them to create essentially a private boat marina. There is no question in this matter that the Respondents do not reside on the lots, that they does not intend to reside on the lots, and that the only uses they intend to make of the lots are 1) to use the property, which is adjacent to Lake Hartwell Corps of Engineers Property, to obtain boat dock permits from the US Army Corps of Engineers, 2) to use the property to run utilities across the property to the boat docks, and 3) to use the property to park vehicles and to walk across his lots to access their boat docks. (R. pp. 242, line 18 to 243, line 21) All of these activities are for recreational purposes only.

Here, the restrictive covenants do not make these acts impossible, rather they make them *impermissible.* The trial court incorrectly holds that that if the restrictive covenants are interpreted in the manner sought by the Plaintiffs (i.e., according to their plain meaning, and that that lots are to be used for residential purposes only) making certain uses of the property "impossible", they violate public policy and would unreasonably interfere with free use of property. However, by their very nature restrictive covenants (sometimes referred to as reciprocal negative easements) prohibit both the servient estate and the dominant estate owner from doing something on their respective properties.

In Reyner v. Stephens, 347 S.E.2d 878, 289 S.C. 575 (S.C. 1986), the South Carolina Supreme Court held: Restrictions on the use of land may be created by express terms or by implication. Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906 (1956). Where they arise by implication and subdivided land is involved, restrictions are termed reciprocal negative easements. Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978); 20 Am.Jur.2d Covenants, Conditions and Restrictions, § 173 (1965). Reciprocal negative easements are enforceable by any grantee against any other grantee "where the owner of a tract of land subdivides it and sells the distinct parcels thereto to separate grantees, imposing restrictions on its use pursuant to a general plan of development or improvement ..." [Emphasis supplied]. McDonald v. Welborn, 220 S.C. 10, 18, 66 S.E.2d 327, 331 (1951).

Each of the uses being made by Respondents are clearly not for residential purposes, are a violation of the plain meaning of the restrictive covenants, and respectfully, the trial court's conclusion in its Order eviscerates the purpose of the covenants and is applied by the trial court so as to **"defeat the plain and obvious purpose of the instrument"**, which was held improper by the South Carolina Supreme Court in McClellanville, 345 S.C. 617, 550 S.E.2d at 302 (quoting Taylor, 332 S.C. at 4–5, 498 S.E.2d at 863–64).

CONCLUSION

For the reasons set forth herein above, Appellants assert that the trial court erred in failing to determine that the restrictive covenants at issue in this matter are clear and unambiguous, that the trial court erred in failing to determine and to declare what constitutes "residential purposes" in accordance with the restrictive covenants, that the trial court erred in holding that "interpreting the restrictive covenants in the manner sought by the Plaintiffs would lead to an absurd result that violates public policy in that it would unreasonably interfere with free use of property", and that the trial court erred in holding that Respondents' uses of their property (those actually being made) are not in violation of the restrictive covenants and are permissible uses of the property. Accordingly, this Court should, respectfully, reverse the trial court's Order, correct the errors of law, and remand the matter for further proceedings consistent with this Court's findings.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

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October 28, 2024
Anderson, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2024-000794

Kenneth S. Hoffman, Linda J. Hoffman.
Harold W. Walters, Terrence Whitlock, and
Barrie Whitlock, ...Appellants,

v.

Saad Holdings, LLC, and Carl L. Jones, as Personal
Representative of the Estate of Anne E. Jones, deceased,.....................................Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Brief of Appellants complies with Rule 211(b), SCACR. The undersigned also certifies that this Appellants' Brief complies with the South Carolina Supreme Court's April 16, 2014 Order re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.

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PROOF OF SERVICE

I certify that I served copies of the **Brief of Appellants and Certificate of Counsel** by e-mail and by United States Mail, postage paid, addressed to:

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Hon. Jenny Abbott Kitchings
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Post Office Box 11629
Columbia, South Carolina 29211

RE: Kenneth S. Hoffman, et al. vs. Saad Holdings, LLC, et al.
Appellate Case No. 2024-000794

Dear Mrs. Kitchings:

Enclosed please find for filing the Brief of Appellants, Certificate of Counsel, along with the original Proof of Service.

Please let me know if you need anything else.

With kind regards,

THE INJURY LAW FIRM, P.C.

Daniel L. Draisen

DLD
Enclosures
cc: Joshaua B. Raffini, Esq.

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