

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Case No. 2020-CP-10-04185
Court of Appeals Case No. 2021-001014

Bonnie Wall, individually and derivatiely,
and Walter B. Wall, Jr., Appellants,

v.

Jonathan Dye, Shaun Dye, Shellmore Homeowners’
Association, Inc., and John H. Chakides, Jr., individually and
in his capacity as Director of Shellmore Homeowners’
Association, Inc., Respondents.

RETURN TO PETITION FOR REHEARING

The Court of Appeals correctly decided the issues before it and should deny Appellants’
petition for rehearing for the reasons which follow.

**I. The Court of Appeals correctly ruled that the ARC was properly designated
with authority to approve the Dyes’ dock.**

Appellants argue that the ARC was without authority to approve the Dyes’ dock because
the articles of incorporation do not designate the ARC as a committee of the board. The Appellants’
argument ignores that homeowner’s associations—unlike other nonprofit corporations—derive
their authority not simply from the articles of incorporation but also from restrictive covenants
recorded against the land being governed. Well-established, black-letter law recognizes this
reality. *Seabrook Island Prop. Owners Ass'n v. Marshland Tr., Inc.*, 358 S.C. 655, 663, 596 S.E.2d
380, 384 (Ct. App. 2004) (recognizing architectural review board’s authority granted by restrictive

covenants); 17 S.C. Jur. Covenants § 88 (“Restrictive covenants often authorize the creation of a homeowners' association, usually in the form of a not-for-profit corporation, and grant it authority to manage common areas, make regulations, levy assessments, and other similar privileges.”).

Here, as covered exhaustively in prior briefing, the restrictive covenants give the Board explicit authority to designate an ARC—composed of non-Board members—to exercise authority to approve or disapprove of external structures within Shellmore as allowed by S.C. Code § 33-31-801(c). Moreover, the Board explicitly considered the ARC’s decision on the Dyes’ covered dock and allowed the decision to stand—essentially ratifying the ARC decision as the position of the Board. R. 256. This fact renders Appellants’ argument inconsequential. In addition, following Appellants’ argument to its logical conclusion would result in invalidating innumerable ARC decisions in other subdivisions where the ARC’s authority has not also been made explicit in the corporate articles. Ironically, Appellant’s argument on this point also undermines its argument that prior ARC denials of covered docks establishes a common scheme of development prohibiting docks. If the ARC lacked authority to approve the Dyes’ dock, as Appellants’ urge, the prior iterations of the ARC would also have lacked authority to reject prior covered dock applications. Appellants’ inconsistent and illogical argument should be soundly rejected here.

II. The Court of Appeals correctly ruled that the Board and ARC had authority to approve the Dyes’ dock.

Appellants argue the Court ignored statutory fiduciary duties in rendering its decision. But, Appellants misconstrue the decision. This Court correctly decided that the covenants unambiguously granted the Board and the ARC authority to approve the Dyes’ covered dock—authority which was properly exercised here. This decision renders any analysis of a fiduciary duty irrelevant. If the Board and ARC acted within their corporate authority there can be no breach of

a fiduciary duty—whether the source of that duty is statutory or otherwise. Appellants’ petition should be denied.

III. This Court correctly affirmed summary judgment prior discovery because Appellants failed to demonstrate the need for further discovery.

The questions which this Court (and the lower court) were called upon to answer were all legal questions based on the undisputed record evidence presented. Those questions involved the interpretation of the restrictive covenants and the application of the covenants to facts which were undisputed. Although the Appellants attempted to create a dispute of fact by filing numerous affidavits, the affidavits consisted of mostly inadmissible or incompetent testimony. The Appellants failed to articulate what factual evidence discovery might have uncovered which would have affected any determination of a legal question by either this Court or the lower court. As a result, Appellants’ petition should be denied.

IV. This Court correctly held that the covenants do not prohibit covered docks.

Appellants argue for this Court to find a common scheme of development prohibiting docks which simply does not exist. No such scheme is found anywhere in the governing documents of the HOA or in the record before this Court.

In arguing for their position, Appellants resort to misrepresenting the record by saying there is doubt that the Dyes’ actually submitted any plans at all. Appellants ignore competent testimony found in the HOA’s affidavit and Mr. Dye’s affidavit which clearly indicate the Dyes’ submitted the required plans. R. 218-219, 299. None of the affiant testimony submitted by Appellants on this issue contained any foundational testimony indicating the affiants had personal knowledge regarding whether or not such plans were submitted. This speculation was correctly disregarded by this Court and the lower court.

There simply is no enforceable prohibition on covered docks in Shellmore. The Appellants' petition should be denied.

In conclusion, the Court of Appeals correctly decided the issues before it and should deny Appellants' petition for rehearing for the reasons set out above and in Respondents' briefing previously submitted to this Court.

Respectfully submitted,

By: /s/ Andrew M. Connor _____

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October 28, 2024

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SC Court of Appeals

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PROOF OF SERVICE

I certify that on October 28, 2024, I served Respondents' Return to Motion to Petition for Rehearing on Petitioners by sending the same to their attorneys of record, Ainsley F. Tillman and Ian S. Ford, at their email addresses of record with the AIS.

By: /s/ Andrew M. Connor _____
Andrew M. Connor