THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Case No. 2022-CP-40-1147

James A. Leonard, III; Sheryl A. Leonard; Merrie P. Grant; G. Duncan Grant, and Pamela K. Smith,

Appellants,

v.

WildeWood Sections I-IV Homeowners Association, Inc.,

Respondent.

INITIAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

Table of Contents....................ii

Table of Authorities....................iii

Statement of Issues on Appeal....................1

Statement of the Case....................2

Standard of Review....................4

Facts....................5

Argument I....................14

Argument II....................15

Argument III....................19

Conclusion....................22

TABLE OF AUTHORITIES

Cases

Anderson v. Purvis, 211 S.C. 255, 44 S.E.2d 611 (1947)...12

Brown v. Wingard, 285 S.C. 478, 330 S.E.2d 301 (1985)...17

Carolina All. for Fair Employment v. S. Carolina Department of Labor, Licensing, & Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999)...4

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005)..........14

CoastalStates Bank v. Hanover Homes of S.C., LLC, 408 S.C. 510, 759 S.E.2d 152 (Ct. App. 2014)...15

Cook v. Cooper, 59 S.C. 560, 38 S.E. 218 (1901)...14

Dixon v. Dixon, 362 S.C. 388, 608 S.E.2d 849 (2005)...12

Estes v. Roper Temp. Servs., Inc., 304 S.C. 120, 403 S.E.2d 157 (Ct. App. 1991)...................4

Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991)...12

Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 459 S.E.2d 844 (1995)......................17

Heritage Fed. Sav. & Loan Association v. Eagle Lake & Golf Condo., 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995)...12

Lyons v. Fidelity National Title Insurance Company, 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015)...13

Mathis v. S.C. State Highway Department, 260 S.C. 344, 195 S.E.2d 713 (1973)....................18

McAlhany v. Carter, 415 S.C. 54, 781 S.E.2d 105 (Ct. App. 2015)...4

Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000)................4

Murphy v. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (Ct. App. 2009)...4

Parr v. Parr, 268 S.C. 58, 231 S.E.2d 695 (1977)...12

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002)....................19

Power v. McNair, 255 S.C. 150, 177 S.E.2d 551 (1970)...17

Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006)....................15

Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 494 S.E.2d 465 (Ct. App. 1997)....................12

South Carolina Department of Social Services v. Winyah Nursing Homes, Inc., 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984)....................14

Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 593 S.E.2d 462 (2004)....................18, 19

Thomerson v. DeVito, 430 S.C. 246, 844 S.E.2d 378 (2020)....................12

Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992)....................19

Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996)....................14

Waller v. Waller, 220 S.C. 212, 66 S.E.2d 876 (1951)....................18

Williams Furniture Corp. v. Southern Coatings & Chemical Co., 216 S.C. 1, 56 S.E.2d 576 (1949)....................17

Statutes

S.C. Code Ann. § 15-3-520(b)....................13

S.C. Code Ann. § 15-53-20....................17

S.C. Code Ann. § 15-53-30....................17

S.C. Code Ann. § 15-53-130....................17

S.C. Code Ann. § 19-1-160....................14

Rules

Rule 56, South Carolina Rules of Civil Procedure....................4

Rule 57, South Carolina Rules of Civil Procedure....................17

Other Authorities

68 Am. Jur. 2d *Seals* § 6 (2014)....................13

Sealed Instrument, BLACK'S LAW DICTIONARY (9th ed. 2010)..13

1 WILLISTON ON CONTRACTS § 2:4 (2007)..13

STATEMENT OF ISSUES ON APPEAL

I. Did the lower court err in ruling that a three-year statute of limitations applied to this declaratory judgment action which sounds in equity?

II. If this declaratory judgment action were an action at law, did the lower court err in ruling that the three-year statute of limitations applied rather than the twenty-year statute of limitation applicable to sealed instruments?

III. Did the lower court erred in ruling that the question of whether Respondent had the authority to place a lien on a homeowner's property as a method to collect unpaid assessments for a pool and social membership was moot?

STATEMENT OF THE CASE

This matter came before the Richland County Court of Common Pleas by way of a complaint filed by James A. Leonard, III; Sheryl A. Leonard; Merrie P. Grant; G. Duncan Grant, and Pamela K. Smith ("Appellants") on March 4, 2022. [Complaint]. In their complaint Appellants sought declaratory relief from the court on issues concerning the validity of an assignment between various homeowners' associations, whether certain restrictive covenants were valid and enforceable, whether the actions taken by Respondent in 2018 to require homeowners to pay an assessment for a pool and social membership were valid, and whether Respondent had the authority to file a lien against homeowners to attempt to collect unpaid assessments for a pool and social membership. [Complaint, ¶ 27]. Respondent timely answered. [Answer].

Thereafter, on November 10, 2023, Respondent filed a motion for summary judgment, requesting that the complaint be dismissed in its entirety because it was time barred. [Respondents Motion for Summary Judgment]. In addition, on April 18, 2024, Respondent filed with the court the affidavit of Gail Bragg, Respondent's president, with several attached exhibits. [Affidavit of Gail Bragg]. A hearing on the motion was held before the Honorable Joseph M. Strickland on April 18, 2024, at the Richland County Courthouse. Appellants were not present but were represented at the hearing by Spencer A. Syrett, Esquire. Respondent, likewise, was not present, but it was represented at the hearing by Richard H. Willis, Esquire, and John G. Tamasitis, Esquire. The lower court received argument of counsel and reviewed documents provided by counsel, but no exhibits were formally entered into evidence. [Tr. p. 2]. Subsequently, by order dated November 1, 2024, the lower court issued an order granting Respondent summary judgment. [Order]. The parties received written notice of entry of the order on November 1, 2024.

On December 2, 2024, Appellants served notice of appeal on Respondent. By letter dated December 2, 2024, Appellants filed their notice of appeal with this Court and the Richland County Clerk of Court. Appellants requested and this Court issued orders extending the time for Appellants to file their initial brief and designation of matter to be included in the record on appeal on December 27, 2024, and January 31, 2025. Appellants' initial brief follows.

STANDARD OF REVIEW

An appellate court reviews a grant of summary judgment applying the same well-established standard as the trial court pursuant to Rule 56, SCRCP. *See McAlhany v. Carter,* 415 S.C. 54, 62, 781 S.E.2d 105, 110 (Ct. App. 2015). Summary judgment should only be granted when it is clear there is no dispute concerning either the facts or the inference to be drawn from those facts. *Id.* "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Moriarty v. Garden Sanctuary Church of God,* 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000). In evaluating a motion for summary judgment, an appellate court is required "to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom." *Estes v. Roper Temp. Servs., Inc.*, 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). Summary judgment is a "drastic remedy" that should be "cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Murphy v. Tyndall,* 384 S.C. 50, 54,681 S.E.2d 28, 30 (Ct. App. 2009) (quoting *Carolina All. for Fair Employment v. S. Carolina Department of Labor, Licensing, & Regulation*, 337 S.C. 476,485, 523 S.E.2d 795, 799 (Ct. App. 1999).

<u>FACTS</u>

Appellants brought this declaratory judgment action requesting the lower court determine (1) whether certain purported assignments of restrictive covenants to Respondent were valid; (2) whether Respondent's purported amendment of those restrictive covenants was valid; (3) whether the actions taken by Respondent to require homeowners in the WildeWood subdivision to pay a new assessment for a pool and social membership were valid; and (4) whether Respondent has the authority to place liens against homeowners' properties as part of a collection effort to recover unpaid assessments for the pool and social membership. [Complaint, ¶ 27].

The restrictive covenants involved in this matter originate in individual deeds in the chain of title of the Appellants. [Tr. p. 21, l. 17 - p. 22, l. 6]. Rather than create a set of restrictive covenants and make them applicable to the entirety of the development prior to partitioning the lots of the development, the various corporate entities developing WildeWood chose to, instead, include variations of similar restrictive covenants in the individual deeds for each property as the parcels were subdivided from the larger development and initially sold for home construction. [*Id.*]. The deeds conveying title to Appellants Merrie P. Grant, G. Duncan Grant, and Pamela K. Smith do not contain the restrictive covenants, and one must look to deeds in their prior chain of title to locate those which are purportedly applicable to their properties. [Respondent's Motion for Summary Judgment, Exhibits B, C and D; Deeds in Grants' and Smith's Prior Chain of Title]. The deed conveying title to Appellants James Leonard and Sheryl Leonard does contain restrictive covenants applicable to their parcel. [Complaint, ¶¶ 2-7 and attachment to Complaint; Respondent's Motion for Summary Judgment, Exhibit A].

Appellants James and Sheryl Leonard live at 131 Running Fox Road (TMS # 22810-01-12). The restrictive covenants in their chain of title first appear in a 1985 deed from WildeWood

III Associates to The Manning Company, Inc. [Complaint, Attachment]. Thereafter, they appear in the deed from The Manning Company, Inc. to the Leonards. [Complaint, ¶¶ 2-7, attachment to Complaint; Respondent's Motion for Summary Judgment, Exhibit A]. Thirty numbered restrictions appear in both deeds. Number 20 in each reads as follows:

> It is understood that the above restrictions shall be appurtenant to and run with the land, and in the event of the violation of any of the said restrictions, Grantor shall have the right to abatement and the right to enforce compliance by injunction or any other appropriate remedy without liability for damages. The restrictions, however, shall be construed to be for the benefit of the Grantor alone, who reserves the right to alter, amend, or release the same at will.

[*Id.*]. There is no reference to the existence or creation of a homeowner's association in either of the deeds. [*Id.*].

Although it is difficult to ascertain, given the age and quality of the existing copies, whether the deed from WildeWood III Association to The Manning Company, Inc. has a seal affixed to it, the testimonium clause contains the phrase "Witness its hand and seal..." [*Id.*]. The witnesses' signatures are preceded by "SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF." [*Id.*]. The signature of WildeWood III Association's general partner is followed by "(SEAL)," and the attestation clause contains language indicating the witness saw the general partner sign, seal and deliver the deed. [*Id.*].

The testimonium clause of the deed from The Manning Company to the Leonards also contains the phrase "Witness its hand and seal..." [Respondent's Motion for Summary Judgment, Exhibit A]. The witnesses' signatures are preceded by the words "Signed, Sealed and Delivered in the presence of." [*Id.*]. The signature of The Manning Company's president is followed by the word "(SEAL)," and the attestation clause contains language indicating the witness saw the president sign, seal and deliver the deed. [Id.].

Appellants Merrie Grant and Duncan Grant live at 55 Running Fox Road (TMS # 22805-02-02). [Complaint, ¶¶ 8]. The restrictive covenants in their chain of title appear only in a 1976 deed from Wildewood Associates I to Donald Richardson. [Complaint, Attachment; Respondent's Motion for Summary Judgment, Exhibits B & C; Deeds in Grants' Prior Chain of Title]. Unlike the Leonard deeds, this deed contains only twenty-one numbered restrictions. [Complaint, Attachment]. However, similar to the Leonard deeds, the restriction numbered 20 reads:

> It is understood that the above restrictions shall be appurtenant to and run with the land, and in the event of the violation of any of the said restrictions, Grantor shall have the right to abatement and the right to enforce compliance by injunction or any other appropriate remedy without liability for damages. The restrictions, however, shall be construed to be for the benefit of the Grantor alone, who reserves the right to alter, amend, or release the same at will.

[*Id.*]. There is no reference to the existence or creation of a homeowner's association in this deed. [*Id.*]. No other deeds in the Grant's chain of title up through and including their purchase of the property in 1994 contain any other restrictions or references to the existence or creation or a homeowner's association. [Complaint, Attachment; Respondent's Motion for Summary Judgment, Exhibits B & C; Deeds in Grants' Prior Chain of Title].

As with the older deeds in the Leonards' chain of title, given the age and quality of the existing copies of the deed from WildeWood I Association to Donald Richardson it is difficult to ascertain whether it has a seal affixed to it. However, the testimonium clause contains the phrase "IN WITNESS WHEREOF, WildeWood I Associates has caused these presents to be executed in its name by C. Heath Manning, General Partner, and his seal to be hereto affixed..." The signature block for the grantor contains the word "(SEAL)" immediately following the words "WildeWood I Association." Finally, the attestation clause indicates that the witness "saw the within-named

WildeWood I Associates, by C. Heath Manning, General Partner, sign the within Deed and seal said Deed...."

Appellant Pamela Smith lives at 120 Wood Duck Road (TMS # 22809-03-22). [Complaint, ¶ 13]. The first and only deed in Ms. Smith's chain of title which enumerates restrictions is one from 1974 from Heathcote Corporation and City Investment Corporation to Joy Williamson. [Complaint, Attachment; Respondent's Motion for Summary Judgment, Exhibits D through F; Deeds in Smith's Prior Chain of Title]. Unlike the pertinent deeds of the other Appellants, this deed only enumerates seventeen (17) restrictions. [Complaint, Attachment]. Restriction number 17 reads:

> It is understood that the above restrictions shall be appurtenant to and run with the land, and in the event of the violation of any of the said restrictions, Grantor shall have the right to abatement and the right to enforce compliance by injunction or any other appropriate remedy without liability for damages. The restrictions, however, shall be construed to be for the benefit of the Grantor alone, who reserves the right to alter, amend, or release the same at will.

[*Id.*]. There is no reference to the existence or creation of a homeowner's association in this deed. [*Id.*].

Again, given the age and quality of the existing copies of the deed from Heathcote Corporation and City Investment Corporation to Joy Williamson it is difficult to ascertain whether it has a seal affixed to it. However, the testimonium clause contains the following:

> IN WITNESS WHEREOF, Heathcote Corporation has caused these presents to be executed in its name by C. Heath Manning, its President, and City Investment Corporation has caused these presents to be executed in its name by Darnell W. Boyd, its President, and their respective corporate seals to be hereto affixed....

[*Id.*]. The signature block for Heathcote Corporation has "(SEAL)" immediately following the words "Heathcote Corporation," and the signature block for City Investment Corporation likewise has "(SEAL)" immediately following the words "City Investment Corporation." [*Id.*]. The

attestation clause contains language indicating the witness saw both signatories "sign the within Deed...seal said Deed, and, as their act and deed, deliver the same...." [*Id.*].

On or about January 19, 1998, the entities WildeWood I Associates, WildeWood II Associates, WildeWood III Associates and WildeWood IV Associates executed a document captioned "Assignment of Covenants, Conditions and Restrictions Affecting Lots in Sections I, II, III and IV of the WildeWood Subdivision" ("Assignment"). [Complaint, Attachment]. According to the Assignment those entities were developers or owners of property in the WildeWood subdivision, not homeowners' associations. [*Id.*]. Curiously, although the Assignment includes a recital indicating that the deed restrictions contained provisions providing for the establishment of homeowners' associations for the enforcement and management of the restrictions themselves, none of the deeds in this matter contain such language. [*Id.*]. Nevertheless, in the Assignment the Assignors for undisclosed consideration consent to the formation of Respondent and assign all rights they have in the "covenants, conditions, restriction and easements [previously] imposed on the real property known as Sections I, II, III and IV of the WildeWood Subdivision...," except the right to be paid for sewer tap fees and annual charges for sewer services. [*Id.*]. There is no similar assignment from Heathcote Corporation or City Investment Corporation to Respondent.

Directly above the signature blocks for the Assignors and witnesses the Assignment contains the words, "WITNESS, Our hands and seals effective on this date as above noted," and "Signed, sealed and delivered in the presence of." [*Id.*]. The word "(SEAL)" appears next to the signature of the general partner of each of the Assignors, and the Probate/Attestation includes language indicating the witness, "saw the within named Assignors, sign, seal and as the act and deed of the partnership, deliver the within Assignment...." [*Id.*].

On or about February 23, 1998, Respondent, citing the aforementioned Assignment as authority, issued a document captioned "Declaration of Covenants, Conditions and Restrictions WildeWood Subdivision Sections I, II, III and IV" ("Declaration"), in which it expressed its desire to amend and restate all covenants, conditions, restrictions and easements previously imposed on the lots in WildeWood Sections I through IV. [Complaint, ¶ 21;]. Unlike the Appellants' deeds the Declaration contains thirty-six restrictions, and for the first time one which requires all property owners to be members of Respondent. [Declaration, pp. 2-9].

Directly above the signature blocks for Respondent and witnesses the Declaration contains the words, "IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the first day above written," and "Signed, sealed and delivered in the presence of." [Declaration, p. 10]. The word "(SEAL)" appears next to the signature of Respondent's then-president and secretary, and the probate/attestation includes language indicating the witness, "saw the within named Association, by its duly authorized officers, sign, seal and as the act and deed of the Association, deliver the within [Declaration]…." [*Id.*].

In 2018 The Members Club at Wood Creek and WildeWood, LLC, which owned and operated both the Wood Creek and WildeWood golf courses and related amenities in and around the WildeWood neighborhood, went out of business. [Answer, ¶ 22; Respondent's Motion for Summary Judgment, p. 4]. First Citizens Bank foreclosed on the properties and offered them for sale to the highest bidder. [*Id.*]. A group of WildeWood residents ("Investor Group") approached the several WildeWood homeowners' associations, including Respondent, with a proposal to raise sufficient annual capital to support the operation and maintenance of the foreclosed properties should the Investor Group be successful in purchasing the properties from the bank. [*Id.*].

The Investor Group's proposal included the Investor Group purchasing the foreclosed property and operating it as a new private club, with an agreement, to be memorialized in a deed restriction, to only operate the property as a private club and not sell or develop it for a minimum of 25 years. [*Id.*]. Additionally, Respondent's members would receive limited rights to use some of the new club's amenities. [*Id.*]. In exchange for the new club's deed restriction, Respondent agreed to charge a new, additional $40 per month assessment, the pool and social membership, to each of its members, which would then be directly paid to the new club. [*Id.*].

On November 27, 2018, Respondent placed a proposed resolution before its members requesting they vote on whether they would authorize Respondent to charge a mandatory $480 per year assessment to all members for a special membership in the new club to be known as a "Pool and Social Membership." [Tr. p. 8, l. 5 - p. 9, l. 13; Affidavit of Gail Bragg, Exhibit 5, p. 2, fifth recital]. The resolution itself indicated that its effectiveness was contingent upon the Investor Group purchasing the old club property. [Affidavit of Gail Bragg, Exhibit 5]. In pertinent part the resolution reads, "expressly conditioned on the golf course and related property being purchased by the Investor Group. If this transaction does not take place, the Assessment increase will be considered withdrawn." [*Id.*].

The Investor Group purchased the golf course and related property in September 2019. [Tr., p. 37, ll. 14-22]. Respondent did not begin billing for the pool and social membership until October 2019. [*Id.*]. Respondent filed a lien against Appellants James and Sheryl Leonard's property on March 4, 2022, seeking to collect unpaid assessments for the pool and social membership. [Complaint, ¶ 25 and Attachment; Answer, ¶ 25; Tr., p. 12, ll. 12-16]. Respondent filed a Release of Notice of Delinquent Assessment Lien on May 22, 2024, which was recorded

with the Richland County Register of Deeds in Book 2925 at page 1202. [Order Granting Defendant's Motion for Summary Judgement, p. 10].

A chronological list of the deeds in the Appellants' respective chains of title follows.

<u>James A. Leonard, III and Sheryl A. Leonard</u>

1. Deed from WildeWood III Associates to The Manning Company, Inc.
   Dated: December 31, 1984
   Filed: January 7, 1985
   Book/Page: 724/716

2. Deed from The Manning Company, Inc. to James A. Leonard, III and Sheryl A. Leonard
   Dated: August 27, 1985
   Filed: August 27, 1985
   Book/Page: 755/961

<u>Merrie P. Grant and G. Duncan Grant</u>

1. Deed from Wildewood Associates I to Donald V. Richardson
   Dated: October 14, 1976
   Filed: December 30, 1974
   Book/Page: 408/703

2. Deed from Donald V. Richardson to John G. Morrison and Barbara L. Morrison
   Dated: May 14, 1979
   Filed: May 17, 1979
   Book/Page: 501/629

3. Deed from John G. Morrison and Barbara L. Morrison to Richard D. Swartout and Carolyn J. Swartout
   Dated: April 2, 1984
   Filed: April 3, 1984
   Book/Page: 688/827

4. Deed from Richard D. Swartout and Carolyn J. Swartout to Merrie P. Grant
   Dated: July 28, 1984
   Filed: July 29, 1994
   Book/Page: 1211/196

5. Deed from Merrie P. Grant to Merrie P. Grant and G. Duncan Grant
   Dated: May 24, 2013
   Filed: May 31, 2013
   Book/Page: 1865/1473

Pamela K. Smith

1. Deed from Heathcote Corporation and City Investment Corporation to Joy C. Williamson
Dated: December 19, 1974
Filed: December 24, 1974
Book/Page: 336/362

2. Deed from Joy C. Williamson to Western Enterprises of Asheville
Dated: April 29, 1980
Filed: May 15, 1980
Book/Page: 540/112

3. Deed from Western Enterprises of Asheville to Herbert and Claire Meltzer
Dated: January 9, 1981
Filed: January 13, 1981
Book/Page: 564/171

4. Deed from Herbert and Claire Meltzer to Timothy McConnell
Dated: April 20, 1982
Filed: May 6, 1982
Book/Page: 608/769

5. Master Deed from Timothy McConnell to LaSalle National Bank
Dated: August 3, 2000
Filed: August 9, 2000
Book/Page: 433/1017

6. Deed from LaSalle National Bank to Pamela K. Smith
Dated: November ___, 2001
Filed: December 17, 2001
Book/Page: 603/1874

7. Deed of ½ interest from Pamela K. Smith to Douglas McFadden
Dated: November 21, 2003
Filed: December 1, 2003
Book/Page: 880/1677

8. Deed of ½ interest from Douglas McFadden to Pamela K. Smith
Dated: October 2, 2012
Filed: August 22, 2013
Book/Page: 1889/1269

ARGUMENT I

I. The lower court erred in ruling that a statute of limitations applied to this declaratory judgment action which sounds in equity.

Actions for declaratory judgment are neither legal nor equitable; instead, the nature of the action depends on the underlying issues. *Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime*, 329 S.C. 206, 209, 494 S.E.2d 465, 467 (Ct. App. 1997); *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991). Appellants primary purpose in bringing this action was to challenge the validity of Respondent's authority to enact the pool and social club assessment voted on in November 2018. As part and parcel of that challenge Appellants asked the lower court to determine the validity of (1) the Assignment, (2) the Declaration, (3) the 2018 pool and social club assessment, and (4) Respondent's power to lien properties to collect unpaid assessments for the pool and social club. Since the alleged genesis of Respondent's authority for these actions are the restrictions contained in the Appellants' deeds or prior deeds in their respective chains of title, for the lower court to make these determinations, it would necessitate the lower court interpreting those deeds.

The interpretation of a deed is an equitable matter. *Heritage Fed. Sav. & Loan Association v. Eagle Lake & Golf Condo.*, 318 S.C. 535, 539, 458 S.E.2d 561, 564 (Ct. App. 1995). In *Thomerson v. DeVito*, 430 S.C. 246, 251, 844 S.E.2d 378, 381 (2020), the supreme court, citing *Anderson v. Purvis*, 211 S.C. 255, 44 S.E.2d 611 (1947), noted, "[t]his Court has held that the statute of limitations does not apply to actions in equity." *See also Dixon v. Dixon,* 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005); *Parr v. Parr,* 268 S.C. 58, 67, 231 S.E.2d 695, 699 (1977). Therefore, reliance upon the statute of limitations by the lower court to dismiss this action was improper.

ARGUMENT II

II. Even were this declaratory judgment action an action at law it was error for the lower court to rule that the three-year statute of limitations applied rather than the twenty-year statute of limitation applicable to sealed instruments.

South Carolina Code Ann. § 15-3-520(b) provides for a twenty-year statute of limitations for an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only. In *Lyons v. Fidelity National Title Insurance Company*, 415 S.C. 115, 125-26, 781 S.E.2d 126, 131-32 (Ct. App. 2015), this court explained:

> A sealed instrument is defined as "an instrument to which the bound party has affixed a personal seal, [usually] recognized as providing indisputable evidence of the validity of the underlying obligations." *Sealed Instrument*, BLACK'S LAW DICTIONARY (9th ed. 2010). A seal is defined as "an impression or sign that has legal consequences when applied to an instrument." *Id.*; see also 68 Am. Jur. 2d *Seals* § 6 (2014) ("Devices or impressions held to be seals include . . . a printed impression of a seal."). The prevailing view is that "the seal may consist of any substance affixed to the document or the use of an impression such as that customarily used by notaries and corporations, or the use of any other mark, work, symbol, scrawl, or sign intended to operate as a seal." 1 WILLISTON ON CONTRACTS § 2:4 (2007).

In this matter, Appellants requested the lower court determine whether the deed restrictions, Assignment and Declaration provide Respondent with the authority to enact the pool and social membership assessment and, if so, whether Respondent properly exercised its authority in enacting the pool and social membership resolution and applying it to them. Respondent claims its authority to enact the assessment flows from the 1998 Assignment and Declaration, which both, in turn, obtain their authority from the restrictions found in Appellants James and Sheryl Leonard's deed and in the deeds in the prior chain of title of Appellants Merrie Grant, Duncan Grant and Pamela Smith. As discussed above, given the state of the copies of these documents there is no clear indication any have an actual seal affixed to them.

Nevertheless, the lack of an affixed seal is not dispositive of the issue of whether these documents constitute sealed instruments. For, if there are other indicia that the parties intended to create a sealed instrument, the twenty-year statute would still be applicable. "Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto." S.C. Code Ann. § 19-1-160. *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 172, 609 S.E.2d 548, 550 (Ct. App. 2005).

In *Cook v. Cooper*, 59 S.C. 560, 38 S.E. 218 (1901), our supreme court, relying on the predecessor to S.C. Code Ann. § 19-1-160, found that, although the deed in question lacked a seal on its face, the parties intended to create a sealed instrument because (1) it contained an attestation clause; (2) it contained the word "seal" adjacent to the grantor's signature; and (3) the deed concluded with "Signed, Sealed and Delivered in the [presence] of [names of witnesses]." *Id.* In *South Carolina Department of Social Services v. Winyah Nursing Homes, Inc.*, this court concluded that although the contract at issue did not include a seal, the language of the contract manifested the parties' intent to create a sealed instrument. 282 S.C. 556, 561, 320 S.E.2d 464, 467 (Ct. App. 1984). In *Winyah* the attestation clauses stated that "the parties hereto have set their hands and seals," and the notation "L.S." followed the signatures of the parties to the contract. *Id.* Likewise, in *Treadaway v. Smith*, this court found the parties to a separation agreement intended to create a sealed instrument. 325 S.C. 367, 378, 479 S.E.2d 849, 855 (Ct. App. 1996), *abrogated by Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005). There, the parties' agreement stated, "IN WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals in quadruplicate as of the day and year first above written" and

"SIGNED SEALED AND DELIVERED IN THE PRESENCE OF [signatures of parties and witnesses]." *Id.* This court concluded that the plaintiff's action, which sought to enforce a provision of the agreement in which the defendant agreed to pay the children's college expenses, was governed by the twenty-year statute of limitations. *Id.*

As discussed above, the deeds in the Appellants' respective chains of title upon which the Assignment and Declaration claim to derive their authority and the Assignment and Declaration themselves all contain the same or similar indicia that the parties intended to create sealed instruments, and some arguably contain more than those in *Cook*, *Winyah* and *Treadaway*. Thus, Appellants contend that were this action an action at law, it too would be governed by the twenty-year statute of limitations.

If an action at law, Appellants challenge to the resolution authorizing collection of dues for the pool and social membership is essentially an allegation that Respondent has breached the covenants it claims are authorized by the deeds, Assignment and Declaration. Appellants position is the breach did not occur, and was, thus, not actionable until the resolution became effective, which, by its own terms, did not occur until the Investment Group purchased the golf club in September 2019. Since the complaint was filed on March 4, 2022, it would be well within the twenty-year statute of limitations. Even were the statute of limitations triggered by the November 27, 2018, vote, the complaint would still be timely. *See 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) (restrictive covenants contractual in nature and may give rise to actions for breach of contract); *CoastalStates Bank v. Hanover Homes of S.C., LLC,* 408 S.C. 510, 517, 759 S.E.2d 152, 156 (Ct. App. 2014) (statute of limitations begins to run when a cause of action reasonably ought to have been discovered).

Appellants also challenged Respondent's authority to file liens against homeowner properties to collect past due assessments for the pool and social membership. [Complaint, ¶ 27]. Respondent filed a lien against Appellants James and Sheryl Leonard's property for the purpose of collecting past due assessments for the pool and social membership dues on February 8, 2021.. [Complaint, Attachments]. This action was filed on March 4, 2022, well within either a three year or twenty-year statute of limitation as to that issue, and Respondent conceded as much at the summary judgment motion hearing. [Tr., p. 12, ll. 12-21]. Thus, were this matter considered an action at law, it was error for the lower court to grant summary judgment, for there is at the very least a genuine issue of material fact as to the application and expiration of the statute of limitations on Appellants' claims.

ARGUMENT III

III. The lower court erred in ruling that the question of whether Respondent had the authority to place a lien on a homeowner's property as a method to collect unpaid assessments for a pool and social membership was moot.

S.C. Code Ann. § 15-53-20 identifies the purpose of the Uniform Declaratory Judgments Act and provides that courts "shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Graham*, 319 S.C. at 71, 459 S.E.2d at 845 (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)). "A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party." *Graham,* at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)). This requirement is satisfied by "any person interested under a deed . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a ... contract or franchise may have determined any question of construction or validity arising under the instrument, ... contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30; see also Rule 57, SCRCP.

The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships. *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949)); S.C. Code Ann. § 15-53-130. It is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy.

Waller v. Waller, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951). The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004).

In this matter, Appellants have challenged "Whether the [Respondent] has the power to file a lien against a homeowner for an unpaid assessment for a 'Pool and Social Membership." [Complaint, ¶ 27]. What Appellants have not done is challenge whether Respondent could file a lien against Appellants James A. Leonard, III and Sheryl A. Leonard. Appellants challenge is not a challenge to Respondent's authority to file a lien against *a singular property*. Rather, Appellants seek a declaratory judgment whether Respondent has the power or authority under the deeds, Assignment and Declaration to file a lien against *any property* as a method to collect unpaid assessments for the pool and social membership.

A case becomes moot when judgment, if rendered, will have no practical legal effect upon an existing controversy. This is true when some event occurs making it impossible for a reviewing court to grant effectual relief. *Mathis v. S.C. State Highway Department*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Although when Appellants filed this action there was an existing lien filed against the Leonards' property, Respondent's release of the lien subsequent to the hearing on its motion for summary judgment did not moot the underlying issue for which Appellants sought declaratory relief.

The essence of Appellant declaratory judgment action was one to settle the legal rights of the parties vis-a-vis the deeds, Assignment and Declaration. Whether an active lien existed did not change the nature of the action. The threat of liens being filed against Appellants' properties or any other homeowner's property remains, as evidenced by Respondent's admission, through counsel, that it will continue to file liens on properties, which indicates it continues to believe it

has the authority to do so. [Tr., p. 20, ll. 8-15]. The underlying issue for which Appellants have sought declaratory relief -- whether Respondent has that authority under the relevant documents remains unresolved. Thus, answering that question would have a practical legal effect on the parties. Respondent's release of the lien on the Leonards' property did not make it impossible for the lower court to do so. cf. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004) (justiciable controversy found to exist when developer sought to enjoin city from enforcing ordinance prohibiting extension of sewer system against it prior to formally requesting extension); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 455, 415 S.E.2d 801, 805 (1992) (finding a justiciable controversy in a pre-election review of a voter-initiated ordinance); *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 888-89 (Ct. App. 2002) (dispute involving homeowners' challenge to amendments of their subdivision's restrictive covenants a justiciable controversy). Thus, taking the facts in the light most favorable to Appellants, the lower court erred in determining the question was moot.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the trial court and remand this matter for further proceedings.

Respectfully submitted,

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Attorney for Appellants

March 5, 2025.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Case No. 2022-CP-40-1147

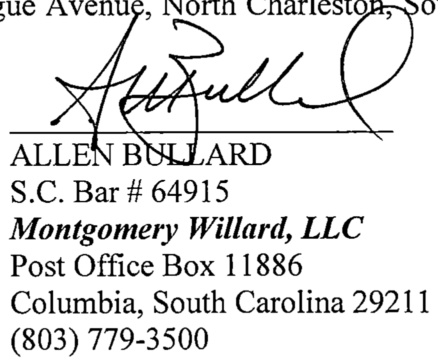
James A. Leonard, III, Sheryl A. Leonard, Merrie P. Grant, G. Duncan Grant, and Pamela K. Smith,..Appellants,

v.

WildeWood Sections I-IV Homeowners Association, Inc.,..................................Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellants and Appellants' Designation of Matter to be Included in the Record on Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on March 5, 2025, addressed to its attorneys of record, Richard H. Willis and John G. Tamasitis, 1230 Main Street, Suite 330, Columbia, South Carolina 29201 and Sean A. O'Connor, 3300 West Montague Avenue, North Charleston, South Carolina 29418.



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March 5, 2025

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: James A. Leonard, III, Sheryl A. Leonard, Merrie P. Grant, G. Duncan Grant, and Pamela K. Smith v. WildeWood Sections I-IV Homeowners Association, Inc.
Appellate Case No.: 2024-002070

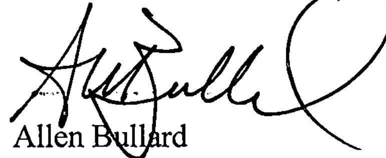
Dear Mrs. Kitchings:

Enclosed for filing is the initial brief of appellants, appellants' designation of the matter to be included in the record on appeal along with a proof of service on Respondent.

Please feel free to contact me if you have any questions or concerns regarding the foregoing.

Sincerely,

MONTGOMERY WILLARD, LLC



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enclosures
cc: Richard H. Willis, Esquire
Sean A. O'Connor, Esquire
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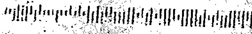
Andrew Syrett, Esquire



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