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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable David P. Caraker, Jr., Circuit Court Judge

Appellate Case No. 2025-000066

Emmanuel Stikas, Trustee of the Stikas Revocable Living Trust, dated February 1, 2023, d/b/a The Village Shops; Donald W. Reid and Katheryn W. Reid, husband and wife; Elizabeth Gattshall Hawkins Martin; and Tall House Farm, L.P.,.....Appellants,

v.

Georgetown County; David E. Tanner; RCB Land Holdings, LLC; and Magic Oaks, LLC,Respondents,

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

**RESPONDENTS RCB LAND HOLDINGS, LLC AND MAGIC OAKS, LLC'S REPLY
TO APPELLANTS' RETURN**

BELLAMY, RUTENBERG, COPELAND,
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s/ Zachary J. Crowl

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Myrtle Beach, South Carolina
March 18, 2025

ARGUMENT

All arguments raised by Respondents in the Motion to Dismiss are reiterated and incorporated herein by reference. The following is intended to briefly clarify a few specific points in response to Appellants' Return in Opposition.

I. None of Appellants' Causes of Action Have Been Dismissed. Appellants' Amended Complaint Alleges the Same Causes of Action as the Original Complaint.

The Circuit Court's Order struck allegations of Appellants' Complaint regarding a kayak launch that is no longer part of the development plan. Efforts to frame the Circuit Court's Order as dismissing Appellants' causes of action are simply not true. Appellants' Original Complaint included allegations regarding a public kayak launch as if it already existed. It did not. The development plan included a contingent kayak launch dependent upon access. If the contingency failed, the development plan would revert to the initial plan recommended by Planning Commission. County Council voted upon and approved this plan. When the contingency failed, the development plan reverted back to the initial plan. The Circuit Court's Order removed reference to the contingent kayak launch that is not and will not be part of the property.

It is unclear from Appellants' Return which cause of action Appellants claim has been dismissed. This is rendered even more difficult to decipher by the fact that all of Appellants' causes of action remain in their Amended Complaint. Not one cause of action has been dismissed. Appellants are still pursuing the same causes of action under the same allegations.

Paragraphs 73 – 83 of Appellants' Original Complaint set forth five causes of action: I. Declaratory Judgment: Pre-existing Zoning was Void as Ultra Vires; II. Declaratory Judgment: Violations of the South Carolina Enabling Act; III. Declaratory Judgment: Violations of Georgetown County Ordinances and Procedure; IV. Declaratory Judgment: Adjoining Landowners; and V. Attorneys Fees from Georgetown County. Paragraphs 73 – 83 of Appellants'

Amended Complaint, filed after the Order to Strike, set forth the exact same causes of action. Contrary to Appellants' assertions, the public kayak launch does not form the basis of any of their causes of action. If so, Appellants surely would not have included the exact same causes of action.

II. Appellants' Amended Complaint Sets Forth the Same Allegations Without Reference to the Kayak Launch.

Appellants cite several paragraphs of their Original Complaint they deem critical to a cause of action they incorrectly claim was dismissed. These include Paragraphs 2, 7(c), 52-55, 59, and 75-76. The Court's Order struck allegations related to the public kayak launch in only two of those paragraphs: 7(c) and 52. The remainder of these allegations were left untouched. In Paragraphs 7(c) and 52 of the Amended Complaint, Appellants still set forth allegations regarding the South Carolina Enabling Act and a development plan they incorrectly assert was improperly submitted to County Council for approval. The only difference in these paragraphs from the Original Complaint to the Amended Complaint is that reference to the non-existent public kayak launch no longer appears. The arguments Appellants claim are critical to their causes of action are still included in the Amended Complaint even after the Circuit Court's Order. Based on Appellants' Amended Complaint, reference to the public kayak launch is immaterial to these allegations.

III. The Order Does Not Involve the Merits or Affect a Substantial Right.

Appellants claim the Circuit Court's Order involves the merits and affects a substantial right. It does not. As detailed in Respondents' Motion to Dismiss, the Order Granting the Motion to Strike does not fall into any of the categories of immediate appealability listed in S.C. Code Ann. § 14-3-330.

The Circuit Court's Order does not involve the merits because it did not finally determine a substantial matter forming Appellants' causes of action. See Brown v. Cnty. of Berkeley, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) ("To involve the merits of a case, the order must finally

determine some substantial matter forming the whole or a part of some cause of action or defense.”). If it had, Appellants would not have set forth the exact same causes of action in their Amended Complaint.

The Order does not affect a substantial right because it did not determine the action, prevent a judgment, or discontinue the action. See Id. (“To affect a substantial right, the order must determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.”). The Circuit Court’s Order simply removed reference to an immaterial matter that does not require litigation as it cannot and will not exist. The Circuit Court’s Order is interlocutory and not immediately appealable.

CONCLUSION

For the foregoing reasons and the reasons set forth in Respondents’ Motion, Respondents respectfully request that this Honorable Court grant the relief requested in Respondents’ Motion to Dismiss Appellants’ Appeal.

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Magic Oaks, LLC, Third Party Plaintiff,

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PROOF OF SERVICE

I certify that I have served Respondents Magic Oaks, LLC and RCB Land Holdings, LLC's Reply to Appellants' Return upon the parties below by emailing a copy of the document to the email addresses associated with the Attorney Information System on March 18, 2025, and identified below. Consistent with Rule 262(c)(3), SCACR and section (d)(1) of the Supreme Court of South Carolina's April 24, 2024 Amended Order, a copy of the email serving the document is enclosed.

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Myrtle Beach, South Carolina
March 18, 2025

Crowl, Zachary J.

From: Crowl, Zachary J.
Sent: Tuesday, March 18, 2025 11:06 AM
To: 'KIG Advocacy'; 'Hubbard, Patrick'; 'Tommy Morgan'; 'Sydney Douglas'; 'Dan Stacy'
Cc: Miller, David Brunson; Carrigg, Vickie
Subject: Emanuel Stikas, et al. v. Georgetown County, et al., Appellate Case No. 2025-000066
Attachments: Reply to Appellants' Return 3-18-25.pdf

Good morning everyone,

Please see the attached Reply to Appellants' Return which will be filed with the Court of Appeals today.

Thank you,
Zach



Zachary James Crowl

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