RECEIVED
May 15 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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 REPLY BRIEF OF APPELLANTS

ALLEN BULLARD
Montgomery Willard, LLC
Post Office Box 11886
Columbia, South Carolina 29211
(803) 779-3500

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

ARGUMENT I

I. Appellants' issues are preserved for appeal.

Appellants' first and third issues were preserved for appeal. In construing a complaint or responsive pleading, the court must review the entire pleading. See *Doe ex rel. Legal Guardian v. Barnwell School Dist. 45*, 369 S.C. 659, 663, 633 S.E.2d 518, 520 (Ct. App. 2006). "To ensure substantial justice to the parties, the pleadings must be liberally construed." *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000), aff'd as modified on other grounds, 354 S.C. 416, 581 S.E.2d 169 (2003); see Rule 8(f), SCRCP (providing that all pleadings must be construed to do substantial justice to all parties). *Parrish v. Allison*, 376 S.C. 308, 327, 656 S.E.2d 382, 392 (Ct. App. 2007).

In their complaint, Appellants' requested the lower court determine, among other things, whether it was proper for Respondent to compel homeowners to pay an assessment for a pool and social membership and whether Respondent had the authority to lien a homeowner's property to enforce payment of that assessment. [Complaint, ¶ 27]. Further, Appellants complaint requested the lower court determine those issues and contained a prayer for general relief -- "for such other and further relief as may be just and proper." [Complaint, p. 5]. Our supreme court has held that where "the facts alleged are broad enough to warrant relief, it matters not how narrow the specific prayer may be if the bill contains a prayer for general relief." *McMaster v. Strickland*, 322 S.C. 451, 454, 472 S.E.2d 623, 625 (1996) (citing *Mortgage Loan Co. v. Townsend*, 156 S.C. 203, 152 S.E. 878 (1930)).

"A prayer for general relief is as broad as the equitable powers of the Court. Under i[t] the Court will shape its decree according to the equities of the case, and broadly speaking will grant any relief warranted by the allegations of the bill, whether it is the only prayer in the bill or whether

there is a special prayer for particular and different relief; and defects in the special prayer. If the facts alleged are broad enough to warrant relief, it matters not how narrow the specific prayer may be if the bill contains a prayer for general relief. The prayer for general relief serves to aid and supplement the special prayer by expanding the special relief sought, so as to authorize further relief of the same nature. It may also serve as a substitute for the prayer for special relief and authorize relief of a different nature when that specially prayed is denied even to the extent of substituting a money decree in lieu of the relief specifically prayed." *Mortgage Loan Co. v. Townsend*, 156 S.C. 203, 225, 152 S.E. 878, 886 (1930).

As to Appellants' first issue, Appellants submit that when taken as a whole, their complaint *asked the lower court to interpret Appellants' deeds and other recorded instruments*, many of which are in Appellants' respective chains of title, and ultimately determine that according to their terms the assessment for the pool and social membership and the filing of a lien to enforce the assessments were not proper. If the lower court had reached such a conclusion upon examination of the merits of the case, issuing an injunction prohibiting Respondent from making the assessments and filing liens to enforce the assessments would be the logical form of relief warranted under the facts and their general prayer. Since an injunction is an equitable remedy, equity was pled in this action. *See Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (the power of a court to grant an injunction is in equity).

As to Appellants' third issue, paragraphs 27(c) and 27(d) of their complaint request the lower court determine "[w]hether the actions taken by the Wildewood Sections I-IV Homeowners Association, Inc. in 2018 to attempt to require homeowners to pay an assessment for a 'Pool and Social Membership' [was proper] and "[w]hether the Wildewood Sections I-IV Homeowners Association, Inc. has the power to file a lien against a homeowner for an unpaid assessment for a

'Pool and Social Membership.'" Neither of those requests is specifically limited to a challenge to Respondent's actions directed solely at the Leonards. Since a justiciable controversy remains even after Respondent released the lien against the Leonards' property, each Appellant has standing to challenge Respondent's authority to make the assessment and to file a lien to enforce the assessment against their own properties and Respondent's admission that it intends to continue liening properties to enforce the pool and social membership assessment, this issue is, likewise, preserved. [Initial Brief of Appellant's, Argument III; Initial Reply Brief of Appellants, Argument III; Motion for Summary Judgment Hearing Transcript, p. 4, ll. 15-21; p. 12, l. 12 - p. 13, l. 1; p. 17, ll. 8-11; p. 20, ll. 8-15].

ARGUMENT II

II. Respondent's Fourth Argument is not Preserved for Appellate Review.

In its fourth argument, Respondent argues Appellants failed to submit an affidavit to oppose the affidavit of Gail Bragg which it filed in support of its motion on April 18, 2024, the day of the hearing on its motion. [Affidavit of Gail Bragg]. Although Respondent did advance this argument before the lower court on its hearing on its motion for summary judgment, the lower court's order, which Respondent's counsel authored [IBOR, pp. 20-21], did not rule on this ground and Respondent failed to file a motion for reconsideration asking that the order its counsel authored be revised. Therefore, the issue is not preserved for appeal. *Elam v. S.C. DOT*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (A party must file a Rule 59(e) motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review).

Even were the issue preserved for appellate review, it would still fail. Respondent's argument is premised on the fact that since it filed an affidavit in support of its motion for summary judgment, Appellants were compelled to do the same. Respondent's argument turns the burden of proof on its head. The grant of summary judgment is appropriate only if it is perfectly clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that the movant is entitled to judgment as a matter of law. *Crescent Company of Spartanburg, Inc. v. Insurance Company of North America*, 266 S.C. 598, 225 S.E.2d 656 (1976); *Davis v. Piedmont Engineers, Architects and Planners, P.A.*, 284 S.C. 20, 324 S.E.2d 325 (Ct. App. 1984). A party seeking summary judgment has the burden of clearly establishing by the record properly before the court the absence of a triable issue of fact. *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990); *Tom Jenkins Realty, Inc. v. Hilton*, 278 S.C. 624, 300 S.E.2d 594 (1983). A party who fails to show the

absence of a genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials. *Standard Fire*, 301 S.C. at 422; *Title Insurance Co. of Minnesota v. Christian*, 267 S.C. 71, 226 S.E.2d 240 (1976).

Furthermore, Respondent's affidavit was not timely filed such that the provisions of Rule 56(e), SCRCP, which it invokes become relevant. As mentioned above, Respondent filed an affidavit from Gail Bragg on the day of the hearing on its motion for summary judgment, giving Appellants no time to fairly review or prepare any counter affidavits. The Rules of Civil Procedure provide "*when a motion is to be supported by affidavit, the affidavit shall be served with the motion*; and except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time. Rule 6(d), SCRCP; *Dedes v. Strickland*, 307 S.C. 152, 154, 414 S.E.2d 132, 133-34 (1992). Here, Respondent did not file its supporting affidavit with its motion. Rather, it was filed nearly six months after its motion was filed. Thus, the affidavit was not filed within the time prescribed by the rules, rendering that portion of Rule 56 on which Respondent relies inapplicable.

ARGUMENT III

III. Appellants Have Standing to Challenge Respondent's Lien Authority.

S.C. Code Ann. § 15-53-30 provides as follows:

> Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

The purpose of the Declaratory Judgments Act "is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. S.C. Code Ann. § 15-53-130; see also *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) ("The basic purpose of the [Declaratory Judgments] Act is to provide for declaratory judgments without awaiting a breach of existing rights."). Further, "[t]he Declaratory Judgments Act 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." *Sunset Cay, LLC*, 357 S.C. at 423, 593 S.E.2d at 466. Moreover, the Act "is to be liberally construed and administered." S.C. Code Ann. § 15-53-130.

Respondent has already placed a lien on the Leonards' property. Although it was later removed, arguably in an effort to moot the one issue it conceded during argument was not subject to dismissal on statute of limitations grounds, it has not only indicated a clear position that it has a continuing right to lien properties to enforce the pool and social membership assessment, those owned by each of the Appellants included, but also that it intends to continue to do so. [Motion for Summary Judgment Hearing Transcript, p. 4, ll. 15-21; p. 12, l. 12 - p. 13, l. 1; p. 17, ll. 8-11; p. 20, ll. 8-15]. Since Respondent has liened the Leonards' property and indicates it believes it has the authority to continue placing liens on properties of those homeowners who do not pay the

pool and social membership assessments, Appellants are all interested parties with regard to Respondent's authority to place liens against properties to collect the assessment for the pool and social membership.

CONCLUSION

For the foregoing reasons, Appellants submit that (1) its issues are properly preserved for appellate review; (2) Respondent's fourth argument is not preserved for appellate review; and, (3) they have standing to challenge Respondent's lien authority.

Respectfully submitted,

s/ Allen Bullard
ALLEN BULLARD
Montgomery Willard, LLC
Post Office Box 11886
Columbia, South Carolina 29211
(803) 779-3500
(803) 799-2755 (fax)
abullard@montgomerywillard.com

Attorneys for Appellants

May 15, 2025.