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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

The Honorable William H. Seals, Jr.
Circuit Court Judge

Appellate Case No. 2023-001306
Circuit Court Case No. 2023-CP-22-00007

Elizabeth M. Powers and Edward A. Powers; Martha C. Green; Steven E. Basso;
James R. Sherman; Alexander V. Picard and Jessica L. Picard; Parkersville Planning
& Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.

Appellants,

v.

Georgetown County; and Alliance for Economic Development for
Georgetown County

Respondents.

**APPELLANTS' RETURN IN OPPOSITION TO THE MOTION TO DISMISS
OF RESPONDENT ALLIANCE FOR ECONOMIC DEVELOPMENT
FOR GEORGETOWN COUNTY**

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June 9, 2025

BACKGROUND

Shortly after 5 pm on Friday, June 6, 2025, Respondent Alliance for Economic Development for Georgetown County, (hereinafter "Alliance"), served a Motion to Dismiss requesting to be dismissed as a party in this case on the basis that four days before, on June 2, 2025, the Alliance transferred its ownership interest in land that is part of the subject matter of this Declaratory Judgment action to an entity known as One Georgetown Realty, LLC. Earlier in the day on June 6, 2025, counsel for the Alliance had emailed Appellants' counsel to inquire whether Appellants would consent to dismissal. Before Appellants' counsel had an opportunity to review and respond to the email inquiry, the Alliance filed this Motion to Dismiss.

Appellants oppose the Alliance's eleventh-hour Motion to Dismiss on both procedural and substantive grounds and request that it be denied for the reasons set forth hereinafter. Final briefing at the Court of Appeals was closed in August of 2024. Oral argument was originally scheduled for April 15, 2025, and due to an emergency, was rescheduled for Wednesday, June 11, 2025, two days from today.

APPLICABLE RULES AND PROCEDURE

The rule applicable to this situation is SCRCP, Rule 25(c) and (e) which governs transfers of interest. SCRCP, Rule 25(c), provides that "[i]n case of any transfer of interest, *the action may be continued by or against the original party*, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action *or joined with the original party*." (emphasis added). Rule 25(e) provides that "[s]ubstitution of parties under the provision of this rule may be made by the trial court either before or after judgment, *or pending appeal, by the appellate court*."

According to Rule 25(c) the options in this case are as follows: (1) the case continues against the original party, the Alliance; or (2) the transferee is joined as a party *along with* the Alliance; or (3) the transferee is substituted for the original party, the Alliance. There is no provision in the rules for dismissal of the original party due to a transfer of interest *without* a concurrent addition or substitution of the transferee as a party. Thus, Appellants oppose the Alliance's Motion to Dismiss which does not involve a request for addition or substitution of the transferee. For the reasons set forth herein as well as the last-minute nature of the transfer and motion, the appropriate course of action is for the Alliance to remain as a party.

ALLIANCE REMAINS AN INTERESTED PARTY

Appellants filed this action against Respondent Alliance, ("Owner and Applicant") and Georgetown County under the Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-10, *et seq.*, (hereinafter "Declaratory Judgments Act"), arising out of the improper approval of a zoning change application submitted to the County by the Alliance. The allegations involve both improprieties in the application approval process as well as substantive issues regarding the land parcel itself. (Amended Complaint, ROA 147-185).

Section 15-53-80 of the Declaratory Judgments Act requires that "all persons shall be made parties who have or claim *any* interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." (emphasis added). When the Complaint and Amended Complaint were filed, the Alliance was an interested party under the Declaratory Judgments Act on two bases: (1) it was the *applicant* named on the zoning change application at issue; and (2) it was the *owner* of the underlying land. (Amended Complaint pars. 6, 15, 36-40; ROA 148, 150-151, 155-160).

"Applicant" and "landowner" are not synonymous terms in the context of zoning change applications. An applicant can be, and often is, a party other than the landowner. In this case they happened to be the same entity. The fact that the Alliance transferred the land to a third party after litigation had commenced and while an appeal was pending, does not change the fact that the Alliance remains an interested party as the *applicant* in the underlying action, as well as the *owner* of the land at the time of the events in the underlying action. These two roles are independent of and in addition to the current ownership of the land. The Alliance cannot avoid its interest in the litigation by voluntarily transferring ownership of the land after the fact.

Over and above the Alliance's status as the applicant and former owner, there are not sufficient facts of record to establish whether the Alliance continues to have an interest related to its former ownership of the land. Apart from the recorded Deed attached as an Exhibit to the Alliance's Motion, there are no facts of record about the following matters: (1) the relationship between the Alliance and the transferee, and whether there are common members or financial or other interests between these two entities; and (2) inasmuch as this transfer took place while litigation was pending, the nature and details of any agreements between the Alliance and the transferee relative to the outcome of the litigation.

Appellants submit that the Alliance remains an interested party in this matter regardless of the transfer of interest. The appropriate course of action under Rule 25(c) is for the Alliance to remain as a party.

MOTION FAILS TO CITE APPLICABLE RULES

The Alliance cites SCRCF, Rule 21 (misjoinder and nonjoinder of parties), and SCACR, Rule 240 (general motions) in support of its motion. These rules do not specifically address transfers of interest applicable to the present case.

The Alliance cites four cases in its motion, none of which is relevant to the issue before the court. Two of the cases, *Carolina Alliance for Fair Employment v. South Carolina Dept.*, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999), and *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010) have to do with the requirements for standing of a Plaintiff in a Declaratory Judgment action. Standing is not the issue in the present situation. The other two cases, *Bauknight v. Pope*, 2020 WL 3989494, and *Jones v. Rogers Townsend & Thomas*, 2022 WL 2966387, are unpublished *per curiam* opinions that have no precedential value. Regardless, the facts of these two cases are relevant only to the general authority of the trial court to "re-align" or dismiss parties when necessary under circumstances that are not relevant to the facts in this case or to the Alliance's Motion to Dismiss. If this Court is inclined to consider unpublished Opinions and Orders, Appellants respectfully request it to consider the Order filed on January 6, 2025, in the pending case of *Bryant v. Georgetown County*, Appellate Case No. 2023-001776, which involved a transfer of land and Motion to Dismiss in facts squarely on point with the present case.

WHEREFORE, Appellants respectfully request this Honorable Court to deny the Alliance's Motion to Dismiss.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned hereby certify that APPELLANTS' RETURN IN OPPOSITION TO THE MOTION TO DISMISS OF RESPONDENT ALLIANCE FOR ECONOMIC DEVELOPMENT FOR GEORGETOWN COUNTY was served this 9th day of June, 2025, upon Respondents by emailing a copy of same to the primary email address of counsel of record listed in the AIS system as set forth below. Copies of said emails are attached hereto in accordance with SC Appellate Court Rules and related orders.

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June 9, 2025



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Powers v. Georgetown County, Appellate Case No. 2023-001306

1 message

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Mon, Jun 9, 2025 at 8:45 AM

To: Tommy Morgan <tommy@smithrobinsonlaw.com>, Sydney Douglas <Sydney.Douglas@smithrobinsonlaw.com>, Shanon Peake <shanon.peake@smithrobinsonlaw.com>, "Gilliam, James" <jgilliam@burr.com>

Cc: "Hubbard, Patrick" <phubbard@law.sc.edu>

Dear Counsel:

Attached please find Appellants' Return in Opposition to the Alliance's Motion to Dismiss which is hereby served upon you and will be filed with the Court of Appeals.

Thank you,
Cindy Person
Pat Hubbard
ATTORNEYS FOR APPELLANTS

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Legal Counsel & Executive Director

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 **Powers Return in Opposition to MTD 06.09.2025f.pdf**
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