Yu THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-002070
Case No. 2022-CP-40-01147

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 RESPONDENT

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II. Whether the Master-in-Equity correctly ruled that the three-year statute of limitations applied to Appellants' declaratory judgment action, rather than the twenty-year statute of limitations applicable to actions upon a sealed instrument.

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STATEMENT OF THE CASE

Appellants James A. Leonard, III, Sheryl A. Leonard, Merrie P. Grant, G. Duncan Grant, and Pamela K. Smith (collectively, "Appellants") filed this declaratory judgment action on March 4, 2022, in the Richland County Court of Common Pleas, seeking declarations that: (i) a January 1998 assignment (the "Assignment") assigning the WildeWood Lot Restrictions referenced in Appellants' deeds and chains of title to WildeWood Sections I-IV Homeowners Association, Inc. ("HOA" or "Respondent") is invalid; (ii) a February 1998 declaration amending the Declaration of Covenants, Conditions and Restrictions to the existing WildeWood Lot Restrictions (the "Amended Declarations") is invalid; (iii) the HOA lacks authority to adopt a resolution imposing a $40 monthly Value Retention Assessment (the "Assessment"); and (iv) the HOA lacks authority to lien a homeowner's property for nonpayment of assessments ("Lien Authority").

Respondent answered on April 4, 2022, asserting, *inter alia*, that Appellants' claims are time-barred by the applicable statutes of limitations. On October 19, 2022, the parties consented to a reference to the Honorable Joseph M. Strickland, Master-in-Equity for Richland County.

On November 10, 2023, Respondent moved for summary judgment on the grounds that Appellants' claims were time-barred under S.C. Code Ann. § 15-3-530(1) as they knew of the Assessment, Assignment, Amended Declarations and Lien Authority more than three years prior to filing suit. In support of the motion, on April 18, 2024, Respondent filed the affidavit of Gail Bragg, the HOA's president, with supporting exhibits, and the Master heard oral argument that same day. (Aff. Bragg). No counter affidavits or supporting evidence was offered into the record by Appellants.

At the April 18, 2024 hearing, Respondent argued that Appellants had failed to effectively oppose Respondent's motion under Rule 56, SCRCP (Tr. at p. 17, ln 12-p. 19, ln 21; p. 40, ln 6-

20), which Respondent hereby asserts as an additional sustaining ground under Rule 220(c), SCACR. (*See* Resp. Br. at pp. 24-28).

By order dated November 1, 2024, the Master granted summary judgment and dismissed the Complaint with prejudice. In his order, the Master held that Appellants' declaratory judgment action was barred by the three-year statute of limitations applicable to contracts, S.C. Code Ann. § 15-3-530(1). The Master further found that Appellants' request for declaratory judgment regarding the HOA's Lien Authority was moot because Respondent released the lien in question. Notice of entry of the Order was provided to the parties on November 1, 2024. On December 2, 2024, Appellants filed their Notice of Appeal.

STANDARD OF REVIEW

Summary judgment "expedite[s] the disposition of cases which do not require a fact finder." *Englert, Inc. v. LeafGuard USA, Inc*., 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008). When reviewing a grant of summary judgment, an appellate court "applies the same standard that governed the trial court under Rule 56(c), SCRCP." *David v. McLeod Reg'l Med. Ctr*., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006)). Pursuant to Rule 56(c), summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

Any disagreement over evidence or its meaning must be material, in addition to being both genuine and concerning an issue of fact. *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) ("Only disputes over facts that might affect the outcome of the suit . . . will properly preclude the entry of summary judgment."). The Supreme Court has clarified the standard

of review for summary judgment, stating the "mere scintilla" standard does not apply; the proper standard is the "genuine issue of material fact" standard as set forth in the text of the rule. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023).

To effectively oppose a motion for summary judgment, an adverse party "may not rest upon the mere allegations or denials of his pleadings;" instead, either by affidavit or as otherwise provided in Rule 56, he "must set forth specific facts showing there is a genuine issue for trial." Rule 56(e), SCRCP. If the adverse party does not so respond, "summary judgment, if appropriate, shall be entered against him." *Id* . "[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David*, 367 S.C. at 250, 626 S.E.2d at 5.

Here, Respondent's Motion and the Master's Order present a legal question—whether Appellants' declaratory judgment action is time-barred by the applicable statute of limitations. All material facts are either expressly admitted or undisputed by Appellants. Appellants do not dispute the dates they purchased their properties; the date the WildeWood Lot Restrictions were assigned to the HOA; the date the HOA approved the Amended Declaration; the date the HOA voted to adopt the Value Retention Assessment (of which Appellants admit they had notice); and the date the Assessment was approved by the Board and filed with both the Richland County Register of Deeds and the South Carolina Secretary of State.

Because all material facts are either admitted or undisputed and the only question is one of law, summary judgment was appropriate.

STATEMENT OF FACTS

I. HISTORY OF THE VALUE RETENTION ASSESSMENT.

In 2018, "The Members Club at Wood Creek and WildeWood, LLC," the owner-operator of the Wood Creek and WildeWood golf courses and related amenities in and around the WildeWood neighborhoods, went out of business. First Citizens Bank initiated foreclosure proceedings, and both the Wood Creek and Wildewood properties were offered for foreclosure sale. To protect property values, preserve the character of the WildeWood neighborhoods, and prevent the property from falling into disrepair, abandonment, or incompatible commercial or residential development, approximately fifty WildeWood residents (the "Investor Group") approached the WildeWood homeowners' associations—including Respondent—with a proposal for the Investor Group to purchase and continue to operate the WildeWood property as a private country club, if the HOAs would agree to financially support the club through a monthly assessment to HOA members. (Compl. at ¶¶ 22-23; Bragg Aff. Ex. 5; Tr. p. 8, ln 5-22).

The Investor Group's proposal provided that it would purchase, improve, and operate the foreclosed property as a private club, subject to a deed restriction obligating the Investor Group to operate the property solely as a private club and prohibiting the sale or other development of the property for a minimum period of 25 years. (Bragg Aff. Ex. 5; Tr. p. 35, ln 1-22). Additionally, HOA members would receive limited rights to use certain club amenities—such as access to the club pool, golf, tennis, walking trails, food and beverage services and certain neighborhood social events—which were not previously benefits of their HOA membership. *Id*. In exchange for the deed restriction and the continued protection of the HOA members' property values, a $40 per month per HOA member assessment would be implemented, billed, and collected by the HOA and paid to the new club (the "Value Retention Assessment" or "Assessment"). *Id*. While this offer

was initially characterized as a "social membership," HOA members were not required to become club members; they simply had limited rights (akin to a license) to use certain club amenities if they so chose. (Bragg Aff. at ¶ 7; Tr. p. 35, ln 1-22).

Five participating WildeWood HOAs, including Respondent, overwhelmingly approved the Resolution through a duly noticed vote of a quorum of their members. Respondent's vote occurred on November 27, 2018. (Bragg Aff. ¶ 9, Ex. 5-6; Tr. p. 9, ln 4-13). Appellants admit that they each received notice of the Resolution and the right to vote.[1] The Resolution was then filed with the Richland County Register of Deeds on January 10, 2019, and a deed restriction restricting the property to use as a private country club for 25 years was filed on October 16, 2019.[2] (Resolution; Declaration of Use Restrictions).

II. DEVELOPMENT OF THE WILDEWOOD COMMUNITY AND CREATION OF THE WILDEWOOD SECTIONS I-IV HOMEOWNERS' ASSOCIATION, INC.

Appellants James and Sheryl Leonard (the "Leonards") own 131 Running Fox Road (the "Leonard Property"). Appellants Merrie and Duncan Grant (the "Grants") own 55 Running Fox Road (the "Grant Property"). Appellant Pamela Smith (a/k/a Pamela McFadden) owns 120 Duck Pond Road (the "Smith Property"). (Compl. at ¶¶ 2, 8, 13). All three parcels lie within the WildeWood neighborhood in Richland County and were originally owned—as were the other neighborhood lots—by the Manning Company, Health Manning, and Donnie Boyd (the

[1] On February 1, 2023, Respondent served its First Set of Requests for Admission on Appellants (Resp. MSJ, Ex. G), and Appellants did not respond. Thus, the Master-in-Equity correctly deemed the Requests admitted pursuant to Rule 36(a), SCRCP (requests for admission that the opposing party does not respond to within thirty days are deemed admitted).

[2] Here, and elsewhere within this Brief, Respondent cites to matters of public record. The Master-in-Equity correctly took judicial notice of these facts. *Philips v. Pitt Cnty. Mem. Hosp*., 572 F.3d 176, 180 (4th Cir. 2009) (finding courts "may properly take judicial notice of matters of public record").

"Developers"), who subdivided and developed each section in turn. (Tr. p. 5, ln 14-p. 6, ln 6; Bragg Aff. ¶ 3)

When an original lot purchaser bought property from the Developers, their deed included restrictive covenants that ran with the land and expressly reserved to the Developers the right to alter and amend them. (Compl. at ¶¶ 5, 7, 11, 17). As each section neared completion, the Developers transferred the rights to enforce and amend the restrictions to a homeowners' association for that section. (Tr. p. 5, ln 14-p. 6, ln 6; Bragg Aff. ¶ 3). One such homeowners' association was Olde WildeWood Homeowners Association, Inc. ("Olde Wildewood HOA"), which was formed in April of 1996. (Olde Wildewood Articles of Amendment). In 1997, Olde Wildewood HOA changed its name to Wildewood Sections I-IV Homeowners Association, Inc. ("Respondent"), and amended their Bylaws (the "Bylaws"). *Id.*

For the first four sections (WildeWood Sections I, II, III and IV)—which included the Appellants' properties—the Developers assigned their rights to Respondent. (Assignment). The Developers' Assignment to Respondent was memorialized in a writing titled "Assignment of Covenants, Conditions and Restrictions Affecting Lots in Sections I, II, III, and IV of the WildeWood Subdivision," dated January 19, 1998, and recorded with the Richland County Register of Deeds on January 26, 1998 (the "Assignment"). (Compl. at ¶ 19; Bragg Aff. at ¶ 3; Assignment). This Assignment was proper because it was based on the restrictions, covenants, and conditions contained in each deed from the Developers ("Grantors") to the original lot purchasers. On February 23, 1998, Respondent, pursuant to its Bylaws, approved an Amended Declaration of Covenants, Conditions and Restrictions (the "Amended Declarations") as an amendment to the WildeWood Lot Restrictions, which was recorded on March 26, 1998. (Compl. at ¶ 12; Bragg Aff. at ¶ 3; Amended Declarations).

III. APPELLANTS' ACQUISITION OF THEIR PROPERTIES AND PARTICIPATION IN THE HOA.

The Leonards, Ms. Merrie Grant, and Ms. Pamela Smith[3] purchased their properties in 1985, 1994, and 2001, respectively. (Compl. at ¶¶ 6, 12, 18; Resp. MSJ, Ex. A-B, D-F). In 2013, Ms. Grant subsequently conveyed the Grant Property to herself and her husband, Appellant Duncan Grant, as joint tenants with a right of survivorship. (Compl. at ¶ 12; Resp. MSJ, Ex. C). Each of the Appellants' deeds, or the deeds in their chains of title, indicated that their purchases were subject to certain covenants, conditions and restrictions that are appurtenant to and ran with the land and which the Developers reserved the right to alter, amend or release for their benefit.

Each of the Appellants have participated to varying degrees in the HOA since its formation in 1996, or in Ms. Smith's case, since she purchased her property in 2001. Appellants have either acquiesced to the HOA's formation or, in Ms. Smith's case, chosen to purchase property within the HOA. The Appellants have voted in HOA elections and on various amendments to the HOA's bylaws and covenants, paid HOA assessments (excluding the Value Retention Assessment), availed themselves of statutes designed to protect members of homeowners' associations, voiced complaints to the HOA Board, and benefited from the enforcement of the HOA's rules. (Bragg Aff. at ¶¶ 4-5, Ex. 1-3, 5). At no time prior to the initiation of this lawsuit did Appellants inform the HOA that they did not consider themselves to be members of the HOA or not bound by the restrictive covenants applicable to their respective properties. (Bragg Aff. at ¶ 6).

On November 26, 2018, Appellant Smith filed a complaint with the South Carolina Department of Consumer Affairs, alleging that the HOA's actions regarding the special vote on the Investor Group's proposal were noncompliant with the HOA's bylaws. (Appellant Smith

[3] In November 2003, Ms. Smith conveyed a one-half interest in her property to Douglas McFadden via quitclaim deed. In October 2012, pursuant to a divorce decree, Douglas McFadden reconveyed his interest back to Ms. Smith via quitclaim deed. (Compl. ¶ 18; Resp. MSJ, Ex. E-F).

Complaint; Tr. p. 41, ln 22-25). In doing so, Ms. Smith took advantage of a statute specifically designed to protect homeowners' association members. The Leonards, in addition to voting on numerous HOA measures in the past, also voted by proxy against the Investor Group's proposal. (Bragg Aff. at ¶ 8, Ex. 5). In their own words, they "are and have been very supportive of the HOA for the last 35 years in its endeavors to maintain the quality appearance, beautification and security of WildeWood Sections I-IV." (*Id*. at Ex. 4). All of the Appellants have at various times in the past twenty years declined to pay HOA dues, had liens for non-payment filed against their properties, and later paid the HOA to remove the liens. (*Id*. at Ex. 1-3).

ARGUMENTS

I. APPELLANTS' FIRST ISSUE ON APPEAL FAILS BOTH PROCEDURALLY AND ON ITS MERITS.

A. Appellants Failed to Preserve Their First Issue on Appeal.

Appellate courts may not address an issue unless it was both raised to and ruled upon by the trial court. *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009) (citing *Lucas v. Rawl Family Ltd. P'ship.*, 359 S.C. 505, 598 S.E.2d 712 (2004)). Indeed, "it is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Appellants now argue—for the first time on appeal—that because their declaratory judgment action "requires interpretation" of their respective deeds, it is an "equitable action" to which no statute of limitations should apply. (App. Br. at 19). This argument was not made to the lower court or preserved for appellate review. Neither Appellants' unfiled Brief in Opposition, nor their argument at the hearing raised this issue. The lower court never ruled on it, and Appellants never requested such a ruling. This new framing represents a tactical shift, not a continuation of

an argument previously preserved. Nowhere in the trial court record did Appellants argue that their claims were "equitable" or that equitable principles should govern, nor did they seek "interpretation" of their deeds or challenge the general applicability of a statute of limitations of some duration. Accordingly, this argument is not properly before this Court and should be disregarded. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003).

B. If Preserved, Appellants' First Issue on Appeal Fails on its Merits.

A suit for declaratory judgment may be either legal or equitable in nature depending on the "main purpose" of the action and the type of relief sought. *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001); *see also Jacobs v. Service Merchandise Co*., 297 S.C. 123, 375 S.E.2d 1 (Ct. App. 1988). "Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law." *Noisette v. Ismail*, 299 S.C. 243, 384 S.E.2d 210 (Ct. App. 1989) *rev'd in part*, 304 S.C. 56, 403 S.E.2d 122 (1991). Thus, where a party seeks to resolve legal rights or obligations rather than obtain equitable remedies such an injunction, rescission or reformation, the action is legal in nature and subject to legal defenses, including applicable statutes of limitations. *See Harvey v. S.C. Dep't of Corr.*, 338 S.C. 500, 508, 527 S.E.2d 765, 769 (Ct. App. 2000) (finding that because Plaintiffs' declaratory judgment action sounded in law, "a limitations defense may be available to bar recovery").

In *Noisette*, this Court rejected the characterization of a declaratory judgment action as "equitable" where "the underlying action neither allege[d] an equitable cause of action nor [sought] equitable relief." *Noisette*, 299 S.C. at 248, 384 S.E.2d at 313. The same holds true here. Appellants' Complaint requests that the court "inquire into the matters alleged herein," "determine

the issues set forth in Paragraph [27][4]," and grant "such other and further relief as may be just and proper." (Compl. at 4-5). Appellants ask the court to declare: (a) "Whether the purported assignment … was valid; (b) Whether the Restrictive Covenants … were effective [to] amend the 'Wildwood Restrictions;' (c) Whether the actions taken by [Respondent] in 2018 to attempt to require homeowners to pay an assessment for a 'Pool and Social Member' [were valid]; and (d) Whether [Respondent] has the power to file a lien against a homeowner for an unpaid assessment for a 'Pool and Social Membership.'" (Compl. ¶ 27). Appellants confirm that "[t]he primary purpose in bringing this action was to challenge the validity of Respondent's authority to enact the pool and social club assessments voted on in November 2018." (App. Br. at 14). Appellants do not seek any equitable remedies such as injunction, rescission, reformation or specific performance.

Although their causes of action and relief sought are distinctly "legal," Appellants argue that this action is equitable (and therefore not beholden to any statute of limitations) by claiming that determination of their requests would require the court to "interpret" language in their deeds. However, the documents at issue—the 1998 Assignment and Amended Declarations, as well as Appellants' respective deeds and chains of title—are clear and unambiguous.

"The construction of a clear and unambiguous deed is a question of law for the court." *South Carolina Dept. of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001) (citing *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987); *see also Penza v. Pendleton Station, LLC*, 404 S.C. 198, 743 S.E.2d 850 (Ct. App. 2013); *Bennett v. Inv. Title Ins. Co*., 370 S.C. 578, 635 S.E.2d 649, 655 (Ct. App. 2006); *Hunt v. Forestry Comm'n*, 358 S.C. 536, 568, 595 S.E.2d 846, 848 (Ct. App. 2004). Even if the Appellants had

[4] While Appellants' Complaint requests the court "determine the issues set forth in Paragraph 16," Respondent assumes they intended to reference Paragraph 27 as it outlines Appellants' requests for declaratory judgment; Paragraph 16 is simply a factual allegation.

argued that the language of their respective deeds and the deeds within their chains of title is ambiguous, "the determination of whether language in a deed is ambiguous is [also] a question of law," not equity. *Proctor v. Steedley*, 398 S.C. 561, 573 n. 8, 730 S.E.2d 357, 363 n. 8 (Ct. App. 2012).

Each of the Appellants' deeds and chains of title reference covenants that run with the land yet remain subject to the Grantor's right to alter, amend or release the same at will. Deeds in Appellant Smith's chain of title contain specific language stating, "this conveyance is made subject to … covenants and restrictions … imposed and/or reserved by Deed Book D-336 at page 358." (Smith Deed, 1980; Smith Deed, 1981; Smith Deed, 1982). Deed Book D-336 at page 358 is the initial conveyance from the Developers (specifically, the Heathcote Corporation) into an individual buyer in 1974, and states at Paragraph 17: "the above restrictions shall be appurtenant to and run with the land … [but] 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." (Smith Deed, 1974). The Grants' own deed notes that "[t]his conveyance is made subject to existing … restrictions of record." (Resp. MSJ, Ex. B). Those "restrictions of record" are described in the December 30, 1976, Deed from Wildewood I Associates to Donald V. Richardson, which states in Paragraph 20: "It is understood that the above restrictions shall be appurtenant to and run with the land" and that the Grantor "reserves the right to alter, amend, or release the same at will." (Grant Deed, 1976). Finally, the Leonards' own deed makes each lot "subject to conditions and restrictions," expressly reserving to the Grantor the power to amend or release them "at will." (Resp. MSJ, Ex. A).

This language unambiguously reserves to the Grantor the right to alter, amend or release the restrictions "at will." Appellants did not ask the court to invalidate, enjoin or interpret any ambiguous language in their deeds. Instead, they challenged the Grantor's power to assign its

authority to an HOA, arguing that once a developer sold all lots in a planned development, it had no interest left to assign. *See Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp*., 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006). Without addressing the merits of this argument, which is not before this Court, it is beyond dispute that this argument can be made irrespective of the language in Appellants' deeds. Accordingly, this action is not equitable simply because it involves real property. If that were the law, no statute of limitations would apply to matters involving real property. Such is obviously not the case.

Appellants acknowledge that their declaratory judgment action also challenges Respondent's right to file a lien against a homeowner for non-payment of Assessments, as well as the validity of the Amended Declarations, Bylaws and Resolution granting such authority. (Compl. ¶ 27). Fundamentally, "[a] lien can be created only by a contract with the owner of the property . . . or by a statute or by operation of the common law." 51 Am. Jur. 2d Liens § 11. In the HOA context, a lien to secure assessments typically arises through contract—namely, restrictive covenants contained within the chain of title.

South Carolina courts have long recognized that "a restrictive covenant is a voluntary contract between the parties." *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). Accordingly, "[c]ovenants requiring property owners to pay fees for improvements, maintenance, or other services to the homeowners' association," are deemed "contractual in nature and bind the parties to the covenants in the same manner as other contracts." *First Fed. Sav. & Loan Ass'n of Charleston v. Bailey*, 316 S.C. 350, 354-55, 450 S.E.2d 77, 79-80 (Ct. App. 1994). In *Bailey*, this Court made clear that a homeowners' association has a "contractual right to charge and lien [an owner's] property" where the covenants so provide. *Id*. at 355, 450 S.E.2d at 80.

Because restrictive covenants are contracts, "[r]estrictive covenants are construed like contracts," and "an action to construe a contract is an action at law." *Snow v. Smith*, 416 S.C. 72, 88, 784 S.E.2d 242, 250 (Ct. App. 2016). Appellants' challenge to the HOA's authority to file a lien for nonpayment sounds in contract, requiring the court to apply the covenants (contracts), which is an inherently legal function. *Id*. at 88, 784 S.E.2d at 250. Therefore, Appellants' fourth claim is legal in nature, not equitable.

Because Appellants neither allege ambiguity nor seek equitable relief—but instead, seek resolution of contractual rights and obligations—their action is "legal" in nature. Accordingly, the Master correctly applied a statute of limitations.

II. APPELLANTS' DECLARATORY JUDGMENT ACTION IS TIME-BARRED.

"Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 438, 661 S.E.2d 73, 80 (2008). "An action upon a contract, obligation, or liability" is subject to a three-year statute of limitations (S.C. Code Ann. § 15-3-530(1)), whereas "an action upon a sealed instrument, other than a sealed note and personal bond" is subject to a twenty-year statute of limitations. S.C. Code Ann. § 15-3-520(b). A statute of limitations "begins to run when a party knows or should know, though the exercise of due diligence, that a cause of action might exist." *Anonymous Taxpayer*, 377 S.C. at 439, 661 S.E.2d at 80. The test for whether a plaintiff knew or should have known a cause of action might exist is "objective rather than subjective," *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 183-84, 708 S.E.2d 787, 793 (Ct. App. 2011), and the court must determine "whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another

party might exist." *Young v. S.C. Dep't of Corrs*., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

A. The Master-in-Equity Correctly Ruled That a Three Year, not Twenty Year, Statute of Limitations is Appropriate.

Appellants acknowledge that their "primary purpose in bringing this action was to challenge the validity of Respondent's authority to enact the [Value Retention Assessment] voted on in November 2018." (App. Br. at 14). As discussed above, the Assessment was enacted via resolution and amendment to Respondent's Bylaws, with a vote duly noticed to all HOA members on November 12, 2018. (Bragg Aff. Ex. 5). Appellants admit receiving notice of the Resolution, scheduled meeting and vote. A quorum of the HOA's members voted to authorize the Assessment on November 27, 2018. (Tr. p. 9, ln 4-13). While the Grants and Appellant Smith did not vote, the Leonards voted against the Resolution by proxy. (Bragg Aff. Ex. 5). Shortly thereafter, the Resolution was filed with the Richland County Register of Deeds on January 10, 2019, and a deed restriction restricting the property to use as a private country club for 25 years was filed on October 16, 2019. (Resolution; Declaration of Use Restrictions).

Because Appellants make clear that the "primary purpose" of their action is to challenge Respondent's authority to enact the Assessment, their suit is necessarily one upon a contract—and governed by the three-year statute of limitations under S.C. Code Ann. § 15-3-530(1).

Restrictive covenants in governing documents of a homeowners' association are "contractual in nature and bind the parties to the covenants in the same manner as other contracts." *Bailey*, 316 S.C. at 354-55, 450 S.E.2d at 79-80. Here, the Assessment was adopted by resolution, embodied in an amendment to Respondent's Bylaws, and recorded in the public records—precisely the type of covenant that *Bailey* deemed contractual. None of the writings related to the

Assessment are sealed instruments within the meaning of S.C. Code Ann. § 15-3-520(b), and Appellants do not contend they are.

South Carolina courts have held that covenants "are construed like contracts," so principles of contract interpretation apply in determining their validity and enforceability. *Snow*, 416 S.C. at 88, 784 S.E.2d at 250. The Assessment covenant must therefore be analyzed under familiar contract principles—another hallmark that this dispute is primarily upon a contract.

"A homeowners' association has a contractual right to charge and lien [an owner's] property where the covenants so provide." *Bailey*, 316 S.C. at 354-55, 450 S.E.2d at 79-80. Respondent's authority to impose the Assessment springs directly from the Resolution approved by vote in November 2018 and recorded January 2019. The authority to lien for nonpayment springs from the Amended Declarations recorded in 1998. These enforcement rights are no different than any other contractual remedy for breach.

Accordingly, because Appellants' "primary purpose" is to challenge Respondent's contractual authority to impose the Assessment, their action sounds in contract and is subject to the three-year statute of limitations in § 15-3-530(1). The twenty-year statute of limitations for sealed instruments, § 15-3-520(b), should not apply.

To persuade this Court to apply a twenty-year statute of limitations, Appellants argue that their challenge to Respondent's authority to adopt the Assessment requires a court to determine the validity of the underlying Assignment and Amended Declarations from 1998 (arguably, both "sealed instruments") and therefore this is "an action upon a sealed instrument" under § 15-3-520(b). (App. Br. at 14-15). However, Appellants do not seek to enforce any rights based upon, nor do they request interpretation of, the 1998 Assignment or the Amended Declarations. Their rights to bring this suit do not arise from those documents. At best, the Assignment and the

Amended Declarations are evidence relevant to whether Respondent's Assessment is lawful. Thus, Appellants' Complaint does not assert "an action upon a sealed instrument" under § 15-3-520, and the Master correctly applied the three-year statute of limitations. *See, e.g., Wilson v. Jayma,* No. 2017-002223, 2021 WL 4449623, at *3 (Ct. App. Sept. 29, 2021) (finding that because the crux of the plaintiff's action was not to assert a right based on a sealed document, Plaintiff's action did not assert "an action upon a sealed instrument" within the meaning of § 15-3-520).

B. The Three-Year Statute of Limitations for Appellants' Action Expired Before Their Action Was Commenced.

Appellants filed this action on March 4, 2022. Notice of the meeting and vote on the Resolution authorizing the Value Retention Assessment was provided to each member, including Appellants.[5] A quorum of HOA members approved the Assessment by an overwhelming vote on November 27, 2018, with the Leonards voting "no" by proxy. (Bragg Aff. Ex. 5; Tr. p. 9, ln 4-13). Appellants were thus on notice in November of 2018 that "some right of [theirs] ha[d] been invaded, or that some claim against [the HOA] might exist." *Young*, 333 S.C. at 719, 511 S.E.2d at 416.

In an attempt to avoid the unavoidable, Appellants cite the Resolution's language: "[t]his resolution is expressly conditioned on the golf course and related property being purchased by the WildeWood Investor Group." (App. Br. at 17; Resolution). They argue that because the Investor Group did not close on the purchase of the property until September 2019, the Resolution was not "effective," and their claims were not "actionable," until then—pushing the three-year statute of limitations period to September 2022. But their arguments misstate well-established South Carolina law and statute.

[5] See *supra* n. 1.

The South Carolina Homeowners Association Act (S.C. Code Ann. § 27-30-110 et seq.) makes clear that "[r]ules, regulations, and amendments to rules and regulations . . . are effective upon passage or adoption." S.C. Code Ann. § 27-30-130(B)(1)(A). Thus, the Resolution became effective on November 27, 2018—the date it was adopted—and the three-year statute of limitations therefore expired on November 27, 2021. As explained above, a statute of limitations begins to run when a plaintiff knew or should have known a cause of action might exist, not when a claim becomes "actionable." *See Anonymous Taxpayer*, 377 S.C. at 439, 661 S.E.2d at 80; *Hiller*, 392 S.C. at 183-84, 708 S.E.2d at 793; *Young*, 333 S.C. at 719, 511 S.E.2d at 416. Because HOA rules amendments are effective upon adoption, Appellants could have challenged the Resolution before the Investor Group completed its purchase. Accordingly, their attempt to re-set the three-year period lacks support under South Carolina law.

C. Even If The Twenty-Year Statute of Limitations Applies, Appellants' Action is Still Time-Barred.

The Developers of the first four WildeWood sections—in which Appellants' properties are located—assigned their rights to Respondent on January 19, 1998 (the "Assignment"). (Compl. at ¶ 19; Bragg Aff. at ¶ 3; Assignment). On February 23, 1998, Respondent adopted Bylaws and approved an Amended Declaration of Covenants, Conditions and Restrictions (the "Amended Declarations") amending to the WildeWood Lot Restrictions. (Compl. at ¶ 12; Bragg Aff. at ¶ 3). These amended restrictions and Bylaws expressly state the authority to lien for unpaid assessments. (Bylaws at p. 17; Amended Declarations ¶ 13).

The Leonards, Appellant Merrie Grant, and Appellant Smith purchased their properties in 1985, 1994, and 2001, respectively. (Compl. at ¶¶ 6, 12, 18; Resp. MSJ, Ex. A-B, D-F). In 2013, Appellant Grant conveyed the Grant Property to herself and her husband, Appellant Duncan Grant, as joint tenants with a right of survivorship. (Compl. at ¶ 12; Resp. MSJ, Ex. C). Each Appellant

is charged with the knowledge of the restrictions recorded in their deeds and chains of title when they acquired their properties. *See Harbison Cmty. Ass'n, Inc v. Mueller*, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995) ("A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title.").

The Leonards and Grants each owned their properties at the time of the January 1998 Assignment and the February 1998 Amended Declarations, and each had notice of the Respondent's formation in 1996 as the Olde Wildewood HOA and subsequent name change in 1997 (Article of Amendment, Olde Wildewood). Both participated in the HOA. In 1998, the HOA placed a lien on the Grants' property for failure to pay HOA dues, which was recorded November 25, 1998. (Notice of Lien, the Grants). The Grants later made this payment, and the lien was released on April 23, 2003. (Cancellation of Lien, the Grants). Any argument that Appellant Duncan Grant was not on notice of the HOA's existence until the conveyance of the Grant Property from his wife, Merrie Grant, into herself and Duncan Grant is factually incorrect. Thus, any claim regarding the Assignment or Amended Declarations by the Grants or Leonards became time-barred in February 2018 (if the twenty-year statute is applicable), over three years before this action was filed.

Appellant Smith, who purchased her property in 2001, is charged with actual and constructive notice of the Assignment and Amended Declarations at that time. Additionally, she was further notified of the HOA's existence when it placed a lien on her property for unpaid dues, which was recorded September 23, 2002, and later satisfied on January 6, 2004. (Notice of Lien, Smith; Cancellation of Lien, Smith). Accordingly, her twenty-year statute of limitations, if applicable, expired in 2021, over a year before this action was filed.

The HOA's existence and actions over the past twenty-five years comes as no surprise to the Appellants. The Leonards and Grants were on notice of their right to challenge the Assignment to the HOA upon its creation, and for many years thereafter, yet they did not do so. Similarly, Appellant Smith took no action when she purchased her property in 2001. The Appellants acquiesced to the formation of the HOA, voted in elections and on various amendments to the covenants, availed themselves of statutes designed to protect HOA members[6], voiced complaints to the HOA Board, paid HOA dues for many years (which they now seek to characterize as "voluntary donations"), and benefited from enforcement of the covenants and architectural guidelines. All were on notice that they could have challenged the validity of the January 1998 and February 1998 Assignment and Amended Declarations for over twenty years before filing their Complaint in March 2022. They cannot now claim ignorance to avoid the statute of limitations.

Thus, even if a twenty-year statute of limitations applies, Appellants' claims are time-barred, and the Master properly dismissed their case.

III. THE MASTER-IN-EQUITY CORRECTLY RULED THAT APPELLANTS' CHALLENGE TO THE HOA'S AUTHORITY TO IMPOSE A LIEN FOR UNPAID ASSESSMENTS WAS MOOT BASED ON THE HOA'S FILING OF A RELEASE OF NOTICE OF DELINQUENT ASSESSMENT LIEN.

A. Appellants Failed to Preserve Their Third Issue on Appeal.

Like Appellants' first argument, this argument was not properly preserved for appellate review. The Master held oral argument on Respondent's motion on April 18, 2024, and instructed both parties to submit proposed orders thereafter. Respondent submitted its proposed order on May 23, 2024, serving a copy on Appellants' counsel. Respondent's cover letter stated:

> "At the [April 18, 2024] hearing, we noted that one of [Appellants'] claims – namely the Leonard's challenge to the HOA's authority to file a lien against [their] property for unpaid

[6] On November 26, 2018, Appellant Smith filed a complaint with the South Carolina Department of Consumer Affairs, alleging the actions taken by the HOA were not compliant with the HOA's Bylaws. (Resp. MSJ, p. 5-6; Tr. at p. 16, ln. 11-16).

> HOA dues and assessments – was brought within the applicable limitations period of three (3) years and was not subject to summary judgment. Following the hearing, the HOA agreed to release its lien. Enclosed herewith is a copy of a Release of Notice of Delinquent Assessment Lien that was filed by the HOA on May 22, 2024 and recorded in the Richland County Register of Deeds in Book 2925 at page 1202 . . . This filing renders [Appellants'] claims with respect to the lien as moot…"

(Respondent's Cover Letter for Proposed Order). Respondent's proposed order addressed the lien-related declaratory judgment claim as follows:

> "With regards to whether the HOA had the power to file a lien against the Leonards for failure to pay the Value [Retention] Assessment, this Court is informed that the lien at issue was filed by the HOA on February 8, 2021…. However, information provided by the HOA after the hearing makes clear that a Release of Notice of Delinquent Assessment Lien was filed by the HOA on May 22, 2024,,,. Accordingly, Plaintiff's final claim with regards to the HOA's authority to file the lien is now moot."

(Respondent's Proposed Order). The Master signed Respondent's proposed order on November 1, 2024—162 days after its submission. Despite being given the opportunity to do so, Appellants never objected to Respondent's proposed order, or otherwise took issue with the Master's determination that the lien authority issue was moot.

For the first time on appeal, Appellants argue that their declaratory judgment claim was not limited to the Leonards' property but also sought a ruling on the HOA's general authority to file liens against "any property." (App. Br. at 19-21). However, this argument was never presented to the Master, despite Appellants having ample opportunity to raise it before the order was entered. Thus, this issue was not preserved for appellate review and should not be considered. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94 ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("[A]n issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review.").

B. If Preserved, Appellants' Third Issue on Appeal Fails on its Merits.

The US Supreme Court has explained that whether a declaration judgment action has become moot depends on "whether the facts alleged . . . show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant … a declaratory judgment." *Preiser v. Newkirk*, 422 U.S. 395, 402 (1975). South Carolina courts follow this principle, holding that "[t]he courts generally decline to pronounce a declaration in a suit wherein the rights of the plaintiff are contingent upon the happening of some event which . . . may never take place." *Park v. Safeco Ins. Co. of America*, 251 S.C. 410, 414, 162 S.E.2d 709, 711 (1968); *see also Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002).

In *Preiser*, the US Supreme Court considered whether a prisoner's challenge to a transfer from a medium to a maximum-security facility without a hearing was moot. By the time of review, the inmate had not only been returned to his original facility but later transferred to a lower-security institution. The Court determined that because the inmate suffered no continuing adverse consequences (i.e., he had been returned to his pre-suit position), and because there was no ongoing threat of repetition, the inmate's declaratory judgment action was moot. The Court explained that courts cannot decide abstract or hypothetical disputes, and any subjective fear that he might be transferred again was too remote and speculative. *Preiser*, 422 U.S. 395.

Similarly, Appellants face no ongoing consequences from the released lien, and any fear that future liens may be filed against their property is speculative. As of the hearing on this summary judgment motion, Appellant Smith, the Grants, and the Leonards each had delinquent balances of $4,855.82, $5,115.82, and $4,778.43, respectively, for both unpaid HOA dues and Value Retention Assessments for the preceding five, four and three years, respectively. (Bragg Aff. Ex. 1-3). At the time of the hearing, no liens were filed on Appellant Smith and the Grants'

properties. Although a lien was initially filed against the Leonards' property, that lien was released prior to the Master's Order. Respondent has not filed any further liens despite Appellants' continued non-payment of dues.

The record of events since the passing of the Assessment does not bear out a genuine claim of an injury or possible injury "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id*. at 402. Like *Preiser*, while Appellants correctly state that there is a *possibility* of future liens on their property, "such speculative contingencies afford no basis for [this court's] passing on the substantive issues [Appellants] would have [it] decide." *Id*. at 403. If the Respondent files a lien on an Appellant's property, it may be challenged at that time. Because no liens exist, the Master properly determined that Appellants' request for declaratory judgment as to Respondent's authority to file a lien against their property for non-payment of the Value Retention Assessment was moot.

South Carolina recognizes three narrow exceptions to the mootness doctrine, but none are argued by Appellants, or apply here. First, the "imperative and manifest urgency" exception applies only where the issue is of significant public importance, not in cases involving private disputes among homeowners. *Sloan v. Greenville Cnty*., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009); *See Ashmore v. Greater Greenville Sewer Dist*., 211 S.C. 77, 44 S.E.2d 88 (1947) (holding the "imperative and manifest urgency" exception is not appropriate for purely private controversies). Whether a private HOA may impose liens under its governing documents implicates no public officers, presents no question of state-wide application, and is squarely governed by existing statutory and judicial authority.

Similarly, the second exception, concerning matters "capable of evading review," does not apply because liens remain on the property indefinitely and may be challenged through

declaratory, quite title, or slander of title actions. Thus, there is no danger that judicial review will be thwarted by the passage of time. *See Sloan v. Friends of Hunley*, 369 S.C. 20, 630 S.E.2d 474 (2006); *Byrd v. Irmo High Sch*., 321 S.C. 426, 468 S.E.2d 861 (1996).

Finally, the collateral consequences exception does not apply. This exception is most often invoked in criminal appeals involving post-conviction consequences, and in civil cases only where unresolved legal issues have demonstrable ongoing effects, such as interest accrual or uncertainty regarding a statute of repose. *See Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001) (criminal conviction); *Protopapas v. Wall, Templeton & Haldrup, P.A.*, 442 S.C. 217, 228, 898 S.E.2d 150, 155 (Ct. App. 2023) (statute of repose); *Collins Music Co. v. IGT*, 365 S.C. 544, 549, 619 S.E.2d 1, 3 (Ct. App. 2005) (accruing post-judgment interest). Appellants seek no such relief.

IV. THE MASTER-IN-EQUITY'S GRANT OF SUMMARY JUDGMENT SHOULD BE AFFIRMED BASED ON ADDITIONAL SUSTAINING GROUNDS APPEARING IN THE RECORD ON APPEAL.

Under Rule 220(c), SCACR, this Court "may affirm … upon any ground(s) appearing in the Record on Appeal." Thus, even if the Master erred in granting summary judgment on the grounds outlined above, affirmance is proper based on additional grounds supported by the Record.

A. The Master-in-Equity Correctly Granted Summary Judgment Where Appellants Failed to Comply with Rule 56's Evidentiary Requirements.

Under Rule 56(e), SCRCP, when a motion for summary judgment is supported by affidavits that meet the requirements of personal knowledge, admissible facts, and the affiant's competence, the non-moving party "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

South Carolina courts strictly enforce this rule. As this Court has stated, "a party may not rest upon the mere allegations or denials of his pleading to defeat a motion for summary judgment." *Froneberger v. Smith*, 406 S.C. 37, 50, 748 S.E.2d 625, 632 (Ct. App. 2013) (internal citation omitted). Our state Supreme Court has further explained that Rule 56(e), when read in conjunction with Rule 56(f), requires the opposing party not only to come forward with affidavits or other evidence showing a genuine issue for trial but, at a minimum, submit an affidavit explaining why additional time for discovery is needed. *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001); *see also Coker v. Cummings*, 381 S.C. 45, 54–55, 671 S.E.2d 383, 388 (Ct. App. 2008).

Here, Appellants offered no evidence opposing Respondent's Motion for Summary Judgment. Respondent filed its motion on November 10, 2023, and on April 18, 2024 supported it with the affidavit of Gail Bragg, current president of the HOA, which complied with Rule 56(e). (Bragg Aff.). Appellants failed to provide any responsive evidence or request additional time for discovery. Instead, they did precisely what Rule 56(e) forbids: they relied solely on unverified allegations in their Complaint and an unfiled two-and-a-half-page memorandum of law that merely reiterated their allegations. Notably, that memorandum included only a single sentence addressing the applicability of the statute of limitations.

Because Respondent's motion was properly supported by affidavit and Appellants did not respond as required by Rule 56(e), the Master properly granted summary judgment. Rule 56(e) is clear: "if [a party] does not so respond, summary judgment, if appropriate, shall be entered against him."

B. Appellants Lack Standing to Challenge Respondent's Lien Authority on Third-Party Property.

To avoid mootness, Appellants attempt to reframe their declaratory judgment action as a challenge to Respondent's authority to lien "any party," not just the Leonards' property. (App. Br. at 20). This exposes a critical flaw: Appellants lack standing to challenge the HOA's Lien Authority on property they do not own.

A plaintiff must have standing to institute an action. *Joytime Distribs. & Amusement Co., Inc. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). At its core, standing requires "a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999). In South Carolina, standing may be established by statute, by constitutional standing, or under the public importance exception. *Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 433 S.C. 405, 412, 859 S.E.2d 263, 266 (Ct. App. 2021), *aff'd*, 437 S.C. 258, 878 S.E.2d 861 (2022) (citing *Bodman v. State*, 403 S.C. 60, 66-67, 742 S.E.2d 363, 366 (2013)). "A party seeking to establish standing carries the burden of demonstrating each element." *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 449, 790 S.E.2d 763, 770 (2016).

To meet constitutional standing, a plaintiff must show an injury in fact that is concrete, particularized, and actual or imminent—not conjectural. *Joseph*, 417 S.C. at 449, 790 S.E.2d at 770; *ATC S., Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). To be particularized, an injury "must affect the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330 5(2016) (internal citations omitted). Section 15-53-30 of the S.C. Code confers statutory standing for declaratory relief to those "whose rights, status or other legal relations are affected" by a contract, statute, or other legal instrument. "Despite [Section 15-53-

30's] broad language, it has its limits." *Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 183, 912 S.E.2d 389, 398 (Ct. App. 2024).

Here, Appellants fail to meet the threshold requirements for constitutional and statutory standing for the same reasons. Appellants have no interest in whether a lien can be filed against property that they do not own and cannot be said to have suffered an "injury in fact" because they have no "legally protected," "concrete and particularized" interest therein. Whether a lien is placed on property not owned by Appellants does not affect them in any personal and individual way. Moreover, a "hypothetical" or "conjunctural" future lien that may or may not be assessed, regardless of the Appellants' interest in the property, does not qualify as an "injury in fact." It follows therefore that Appellants possess no enforceable rights in property belonging to others. As such, their claim lacks both the "injury in fact" and the enforceable "rights" that may be "affected" which are required to invoke both constitutional and statutory standing.

Nor can Appellants find refuge in the public importance exception. This narrow doctrine allows courts to hear cases that lack standing only if they involve issues of such broad public consequence that resolution is necessary to guide future conduct. *Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012). This case does not qualify. This case is a private dispute concerning restrictive covenants in a homeowners' association, with no statewide impact or public policy at stake. Unlike cases where the exception was applied to tax levies, government regulations, or public elections, this action concerns only the internal mechanics of a neighborhood association. *See Charleston County Parents for Public Schools, Inc. v. Moseley*, 343 S.C. 509, 541 S.E.2d 533 (2001). Judicial resolution of this matter will guide no one beyond the parties.[7]

[7] If this Court finds Appellants have standing and that Respondent's withdrawal of the lien on the Leonards' property does not render this issue moot, then simple logic dictates that this aspect of their declaratory judgment action must also be dismissed as barred by either the twenty-year or

Appellants essentially seek an advisory opinion on an issue that does not personally affect them. Standing doctrine prohibits that request for good reason: it ensures courts resolve only actual controversies between parties with something real at stake. Because no liens are filed on Appellants' properties, their claims must be dismissed for lack of standing.

CONCLUSION

For the foregoing reasons and any others appearing in the Record on Appeal, the judgment of the Master-in-Equity should be affirmed. Appellants' claims are legal in nature and thus subject to a three-year statute of limitations, which expired months before this suit was filed. Even if a twenty-year statute of limitations applies (which it should not), their claims are still time-barred, as Appellants knew of and acquiesced to the HOA's authority for over two decades before filing suit. Appellants' challenge to the HOA's authority to lien is either moot, without standing, or time-barred as well.[8] Finally, Appellants failed to properly contest Respondent's Motion for Summary Judgment pursuant to Rule 56(e), SCRCP, which requires that the motion be granted.

These Appellants—the Leonards, the Grants, and Ms. Smith—have resided in their homes in WildeWood, respectively, since 1985, 1994 and 2001. The Leonards and Grants have been on notice of Respondent's existence and authority since its inception in 1998; and Ms. Smith, since 2001. Both the Grants and Ms. Smith have had prior liens placed on their property by Respondent for non-payment of dues, in 1998 and 2002, both of which were satisfied and withdrawn by Respondent. Nevertheless, they waited until March of 2022 to challenge the 1998 Assignment, the

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three-year statute of limitations. If there is no requirement that there be an actual lien on Appellants' properties in order for them to challenge the HOA's authority, then they were on notice of the HOA's asserted authority to lien property for non-payment of assessments as of February 1998, when this authority was expressly asserted in the HOA's Bylaws and Amended Declarations; or alternatively, at the latest, when actual liens were filed on their properties 1998 (Grants) and 2002 (Smith).

[8] See *infra*, n. 7.

1998 Amended Declarations, the 1998 Authority to file liens, and the 2018 Value Retention Assessment. Whether a twenty-year or a three-year statute of limitations applies, their claims are time-barred. The Master's grant of summary judgment should be affirmed.

Respectfully submitted,

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May 29, 2025

Columbia, South Carolina

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May 29 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

Appellate Case No.: 2024-002070
Case No. 2022-CP-40-01147

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

The undersigned certifies that on the date indicated below, Motion for Leave to Amend Initial Brief via email, a copy of said email is attached hereto as **Exhibit A**, at the following address:

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Exhibit A

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From: Tyer, Sara
Sent: Thursday, May 29, 2025 2:46 PM
To: Allen Bullard; syrettlaw@sc.rr.com
Cc: Willis, Richard; Tamasitis, John; Rattray, Brandon; Martin-Rothrock, Kimberly; Watson, Jennifer
Subject: RE: James A. Leonard, III, Sheryl A. Leonard, Merrie P. Grant, et al. v. WildeWood Section I-IV Homeowners Association, Inc. / Appellate Case No.: 2024-002070
Attachments: Grant; 2025-05-29; Motion for Leave to Amend Respondent's Initial Brief - with attachment.pdf

Good afternoon,
Please find attached Motion for Leave to Amend Respondent's Initial Brief in the above-referenced matter.

Thank you,
Sara

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