THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
Steven C. Kirven, Master in Equity Oconee County

Appellate Case No. 2025-000223

Ex Parte: Christopher A. Pierce.....Appellant,

Foxwood Hills Property Owners' Association .....Respondent,

v.

Michael D. Jewell, Lori L. Marsengill, and South Carolina Department of Motor Vehicles,..... Defendants,

of which Michael D. Jewell is an Appellant

INITIAL BRIEF OF FOXWOOD HILLS PROPERTY OWNERS' ASSOCIATION

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STATEMENT OF THE CASE

Respondent, Foxwood Hills Property Owners Association ("Respondent"), filed a summons and complaint on January 2, 2025 in the Court of Common Pleas for Oconee County, seeking foreclosure of property located in the Foxwood Hills community known as 428 Odessa Avenue in Westminster, South Carolina owned by Michael D. Jewell ("Appellant Jewell") based upon failure to pay balances owed to Respondent pursuant to the Second Amended Bylaws of Foxwood Hills. The Respondent filed an amended summons and complaint on September 5, 2023. The Respondent's amended complaint also contained a cause of action seeking possession of the manufactured home located on the property as part of the land. The Appellant Jewell sent a written letter to counsel for the Respondent but apparently failed to file it with the Clerk of Court for Oconee County. The letter sent by Defendant Jewell did not contain any counterclaims. On October 12, 2023, Respondent inadvertently filed an affidavit of default in the case that included Appellant Jewell as there was no record of the letter in the filings with the Clerk of Court. On December 6, 2023, Appellant Jewell filed a motion to set aside judgment; however, no default judgment had been entered against him. Upon learning of the error with the affidavit of default, Respondent's counsel filed an amended affidavit of default on December 23, 2023, making it clear that Jewell was not in default and had not been treated as being in default. Respondent filed its motion for summary judgment on March 22, 2024, and a hearing was held before Judge Kervin on December 14, 2025, the court denied Appellant Jewell's motion to set aside judgment as moot due to the fact that no judgment had ever been entered against him. At no time was Appellant Jewell treated as if he were in default. The court then granted Appellant Jewell a ninety-day continuance in the case. Appellant Jewell then filed a document labeled "amended answer" on February 23, 2024, without leave of court or the consent of the Respondent. At no time did Appellant Jewell request a jury trial in his answers and did not do so until March 25 of 2024 when

Appellant Jewell filed a motion entitled "Motion for Court Reference", wherein he requested the case be returned to circuit court and requested a jury trial. The Respondent filed a motion for summary judgment on March 22, 2025. A hearing was held before the Master in Equity on April 11, 2024, on the summary judgment motion. At that hearing, the parties announced that a settlement had been reached in the matter. The court also took up the matter of the Motion for Court Reference filed by Appellant Jewell as the motion dealt with the jurisdiction of the Master in Equity to hear the case. The Master in Equity found that he had jurisdiction to hear the case pursuant to Rule 53 of the South Carolina Rules of Civil Procedure and denied the Appellant's motion.

The settlement agreement between the parties involved a potential sale of the Property by Appellant Jewell and the agreement by the Respondent to accept a certain amount of proceeds from the sale to resolve the Appellant's account with the Respondent. The settlement was contingent on the Property selling as planned. The sale of the Property did not take place, and the case then moved forward. On November 4, 2024, Christopher A. Pierce ("Appellant Pierce") filed a motion entitled "Motion of Adjudicative Joinder" in which he requested that he be joined in the case as a defendant as he had recently acquired an interest in the Property. On November 11, 2024, Appellant Jewell filed another motion to demand a jury trial in the case.

On December 5, 2024, a hearing was held before the Master in Equity on the Respondent's motion for summary judgment, the motion for joinder filed by Appellant Pierce, and the motion for jury trial filed by Appellant Jewell. At the hearing, the Master in Equity denied the motions for jury trial and for joinder and granted the Plaintiff's motion for summary judgment.

The Master's Order and Judgment of Foreclosure and Sale was entered on January 2, 2025, and this appeal followed.

STANDARD OF REVIEW

The standard of review in a motion for summary judgment case is *de novo*. "The purpose of summary judgment is to expedite dispositions of cases which do not require the services of a fact finder." *George v. Fabri,* 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). A motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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." *Standard Fire v. Marine Contracting*, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990); Rule 56(c), SCRCP. If the non-moving party has not shown a genuine issue of material fact, "summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP. The "mere scintilla" standard does not apply under rule 56(c) and the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2003).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438, (Ct. App. 2003) (citing Rule 56(c), SCRCP; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.* To avoid the granting of a Motion for Summary Judgment by Plaintiff, "[i]t is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "The trial court should grant summary

judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case." *Harris v. Rose's Stores*, 315 S.C. 344, 346, 433 S.E.2d 905, 906, (Ct. App. 1993) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

The appeal from the trial court's denial of the Appellants' motions is subject to de novo review. *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 611 S.E.2d 305 (Ct. App. 2005). However, the factual findings of the trial court in this regard must be honored if those findings are reasonably supported by evidence in the record. *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E.2d 602 (2010).

ARGUMENT

1. The trial court properly granted summary judgment to the Respondent.

Respondent established in the lower court its right to foreclose its homeowner's association lien. The dues, assessments, and other charges are authorized by the Respondent's bylaws as recorded in the Office of the Register of Deeds for Oconee County and purchasers of properties in the Foxwood development take ownership of their properties subject to those bylaws as a contract or agreement. The action for foreclosure of homeowners' association lien is, in essence, that of breach of contract. "The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *South Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012) (citing *Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

Respondent has shown that the contract exists by virtue of the recorded bylaws of the property association, and that Appellant Jewell breached the terms of the contract by failing to pay the dues and assessments as they became due. Respondent's Affidavit of Debt filed on November

20, 2025, confirmed that Appellant Jewell failed to make the required payments and has made no payments to the Respondent for dues and assessments since the subject Property was conveyed to him on July 12, 2019. Respondent's Affidavit also confirms the amount owed to Respondent by Appellant Jewell, which satisfies the third and final element of this cause of action. Further, Respondent provided to the Master in Equity, a transaction history of the account detailing the amounts due and owing to the Respondent by Appellant Jewell. At the hearing before the Master in Equity, Appellant Jewell did not submit evidence of payment to refute the foregoing portions of Respondent's Affidavit and Exhibits. Respondent proved "the existence of the contract, or agreement, its breach, and the damages caused by such breach." *Kemper*, 399 S.C. at 491-92, 732 S.E.2d at 209.

Appellant Jewell did not provide any evidence showing that Respondent's claims were inaccurate and did not produce evidence, in the form of proof of payment(s) or otherwise, that could refute Respondent's claim that the dues, assessments, and other charges are in default and show that there is no genuine issue for trial." *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). Because Appellant Jewell failed to meet his burden, Respondent was entitled to the relief sought in its foreclosure cause of action.

Appellant Jewel claimed in his affidavit (App. Aff. Para 2) the Respondent does not have authority to charge various amounts for dues, assessments, violations, or late charges when those matters are clearly outlined in the bylaws of the Respondent were of record when Appellant Jewell purchased the Property in 2019. It is important to note that although Appellant Jewell received his deed to the Property on July 12, 2019, he did not record his deed until November 3, 2021. The Second Revised Bylaws of Foxwood Hills Property Owners Association were recorded on January 9, 2019, in the Office of the Register of Deeds for Oconee County in Book 2427 Page 177 and

were attached as an exhibit to the Respondent's Affidavit in support of its motion for summary judgment. The authority for the charges to Appellant Jewell are clearly outlined in the bylaws: power to impose fees, dues, and assessments upon its members (Bylaws Art. 7, Section 1(o)), power to pursue delinquent or refused payment of any fees, dues, and assessments and to determine the appropriate means of collection in each instance of delinquency or refusal, including the initiation of legal proceeding to effect collections (Bylaws Art X Section 1(g)), to fix the amount of any fees, dues, or assessments imposed on the membership (Bylaws Art. XI Section (d)), power to charge and collect dues and assessments (Bylaws Art. XV Section 1-5), enforcement of the Bylaws, rules and regulations by fines and other sanctions (Bylaws Art. XXII Section 1).

The Appellants' argument regarding the motion to compel is without merit. This matter was not raised at trial and is not properly preserved for this appeal. Appellant Jewell served discovery requests on January 12, 2023. Appellant Jewel then filed a motion to compel discovery on February 23, 2023, when he did not receive the discovery responses within thirty days. Om March 11, 2024, Respondent responded fully to the Appellant's discovery requests and Appellant Jewell did not pursue the motion to compel and never stated that the discovery was insufficient until he submitted his affidavit in response to Respondent's motion for summary judgment.

Appellant Jewell's affidavit filed November 26, 2024 provides no dispute of the Respondent's affidavit of debt and the contractual agreement between the Respondent, The Association's bylaws. Appellant Jewell merely states that he disagrees with the Respondent's affidavit and exhibit and simply questions where the authority for those charges come from. The answer is simple – the authority lies within the Second Amended Bylaws of the Association.

2. <u>The trial court properly denied the Appellant's motion for joinder.</u>

Appellants argue that the Master in Equity erred in denying Appellant Peirce's motion to be joined in the case under Rule 19, SCRCP. This case was filed on August 17, 2023, and the Respondent's Lis Pendens was also filed that day. Appellant Pierce had been assisting Appellant Jewell in this case since the beginning. The type font used by Appellant Pierce in numerous cases involving Pierce and others in litigation with the Respondent is the exact same unusual type font used by Appellant Jewell in this case. After the settlement agreement between the parties was voided, Appellant Pierce obtained a quit claim deed from Appellant Jewell for an interest in the Property a month prior to the final hearing in this case on December 5, 2024.

"The question of the [the intervenor's] interest must be determined in relation to the overall subject matter of the action and not in relation to the particular issue that is before the Court." *Berkeley Elec. Coop., Inc. v. Mt. Pleasant*, 302 S.C. 186, 190, 394 S.E.2d 712, 714. Appellant Pierce obtained his interest in the property via a deed recorded October 29, 2024, over a year after the Lis Pendens in this case was filed on August 17, 2023, so his newly acquired interest did not attach to the property as far as the foreclosure action is concerned. Appellant Pierce was fully aware of the pending lawsuit and had assisted Appellant Jewell in the case previously, so he had actual notice of the action as well as record notice by virtue of the filing of the Lis Pendens. Appellant Pierce was present in the courtroom at the hearing on April 11, 2024, and was fully aware of the litigation and that the Property was subject to the Respondent's lien and the foreclosure action. The Master in Equity determined that the interest acquired by Pierce was subject to the Respondent's Lis Pendens and complete relief could be accorded among those already parties to the case without the addition of Pierce. Therefore, Pierce was not a necessary party under Rule 19, SCRCP.

Appellant Pierce argues that he could not protect his interest unless he were brought into the case. To meet this requirement Pierce would need to show that he "would have difficulty adequately protecting its interests if not allowed to intervene." *Berkeley Elec. Coop., Inc.*, 302 S.C. at 190, 394 S.E.2d at 714. As shown above, Appellant Pierce has no interest in the property such that would make him a necessary or property party to the within action. Any interest he has is subject to the foreclosure Lis Pendens. Pierce was aware of the foreclosure since the initiation of the lawsuit in 2023 and appeared in court with Mr. Jewll on several occasions. This was just an attempt for Appellant Pierce to handle the litigation of this matter for Appellant Jewell.

The absence of Appellant Pierce in the litigation did not leave Appellant Jewell to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of Pierce's claimed interest. The Master in Equity's ruling to not allow Pierce into the current lawsuit did not affect any of the current parties to the litigation in any way.

Appellant Pierce obtained whatever interest he may have in the Property after the filing of the Respondent's Lis Pendens. South Carolina's Lis Pendens statute § 15-11-20 (S.C. Code Ann. 1984) provides that "every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action." "A properly filed Lis Pendens binds subsequent purchasers or encumbrancers to all proceedings evolving from the litigation." *South Carolina Nat'l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562 (1987).

3. The trial court properly denied the Appellants' motion for jury trial.

On November 20, 2024, Appellant Jewell filed a motion seeking a jury trial in this case. Under Rule 38, South Carolina Rules of civil Procedure, a party may demand a jury trial if it is

requested timely. Rule 38(b), SCRCP requires such a request to be made within ten (10) days after the service of the last pleading directed to such issue. Appellant Jewell did not request a jury trial in his amended answer filed in this case on February 23, 2024. More than ten days passed between the date Appellant Jewel filed his Amended Answer (without leave of court and without the consent of the Respondent) and the date he filed his motion for jury trial; therefore, Appellant Jewell was not entitled to a jury trial in this case. Additionally, this case is a foreclosure action brought by the Plaintiff and is an equitable matter. "If the claim is equitable, there is no right to a jury trial." *Loyola Federal Savings Bank v. Thomasson Properties, 318 S.C. 92, 456 S.E.2d 423, 424* (Ct. App. 1995). Additionally, Appellant Jewell did not include any counterclaims against the Respondent in his Answer or Amended Answer that he filed in the case. As the case was one for foreclosure of a mortgage and there were no counterclaims, the case was properly referred to the Master in Equity pursuant to Rule 53(b), SCRCP.

At the hearing conducted by the Master in Equity on April 11, 2024, the court specifically dealt with Appellant Jewell's motion to send the case back to the Court of Common Pleas (Settlement Order P. 1, Para. 1). The Master in Equity found that he did have jurisdiction to hear the case and denied the motion to have the case returned to the Court of Common Pleas. Appellant Jewell did not appeal this order of the court. The issue of the Master in Equity's jurisdiction has been previously decided and is now the law of the case. "The law of the case doctrine promotes judicial economy and finality..." *Walker v. Kelly*, 589 F.3d 127, 137 (4th Cir. 2009).

The Appellant Jewell argues that he never had the opportunity to ask for a jury trial, but that statement is incorrect. The South Carolina Rules of Civil Procedure allow a Defendant to seek a jury trial; however, Appellant Jewell failed to do so timely as required by Rule 38(b),

SCRCP. The Appellant waived his right to a jury trial by failing to properly request one in a timely fashion.

CONCLUSION

There are myriad reasons why Appellants' efforts to overturn the final judgment rendered in this case should fail. The Respondent presented sufficient evidence to show the elements of its case through the deed given to Appellant Jewell, the Bylaws of the Respondent Association and the failure of the Appellants to make any payments whatsoever pursuant to the bylaws since 2019. The Respondent requests that the Court affirm the decision of the Master in Equity in this matter.

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