THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-CP-18-1716

King's Grant Homeowners Association, Inc.,

Respondent,

v.

Elwood Dixon and Jennifer Dixon,

Appellants.

FINAL BRIEF OF RESPONDENT

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INTRODUCTION

In this action, the Respondent, King's Grant Homeowners Association, Inc. (the "HOA"), seeks to collect from the Appellants, Elwood and Jennifer Dixon (the "Dixons"), past-due regime fees. The Dixons deny any delinquency, claiming that they have paid all properly-assessed regime fees, and that the additional fees sought to be collected herein by the HOA are founded upon an improper increase in such fees. According to the Dixons' interpretation of the governing documents, **any** increase in regime fees required a majority vote of the HOA's membership and, because the disputed (i.e., increased) fees were not occasioned by such a majority vote—but rather action of the HOA's Board of Governor's—they did not have to pay them.

Respectfully, the Dixons are mistaken. In fact, as the circuit court correctly recognized (in reversing the magistrate's court on the HOA's appeal), the HOA's governing documents allow the HOA's Board of Governors to increase the annual regime fee—without a majority vote of the HOA membership—so long as the fee remains below the maximum allowable maintenance charge as determined by the Consumer Price Index ("CPI") inflation calculator ("CPI Calculator"). Because, under any view of the evidence, all of the annual regime fees at issue here were below this

allowable maximum, all such fees were properly assessed by the HOA's Board of Governors and are properly due and owing from the Dixons to the HOA, as the circuit court correctly found.

Most respectfully, this Honorable Court should affirm the circuit court's order.

STATEMENT OF THE ISSUE ON APPEAL

I. Did the circuit court err by reversing the magistrate's court's ruling that the HOA committed a breach of contract by failing to meet the "requirements" set forth in the HOA's By-Laws by not holding a meeting of the HOA membership and not obtaining the vote of the "required" 51% of the HOA membership?

STATEMENT OF THE CASE

The HOA commenced this action against the Dixons on March 23, 2011, filing a complaint in the magistrate's court for past-due regime fees in the amount of $406.08. (R. pp. 12-15.)[1] The Dixons answered, denying the HOA's claim, contending that the regime fees sought to be collected were founded upon an improper increase in such fees. (R. pp. 16-18.) The Dixons also filed a counterclaim against the HOA in the amount of $7,500; specifically, this total amount was comprised of: (1) $30 for alleged overpaid regime fees in 2006, plus an additional $15 interest "of 63 months

[1] The HOA later filed an amended complaint specifically adding to its claim against the Dixons its costs and attorneys' fees in collecting the past-due regime fees. (R. p. 29.) The Dixons answered and denied this complaint. (R. p. 31.)

at 10% daily," and (2) for punitive damages in the amount of $7,455 for alleged intentional breach of the HOA's governing documents and denying their participation in board elections "the past few years." (R. p. 19.) The HOA timely answered and denied the Dixons' counterclaim. (R. pp. 22-28.)[2]

On August 1, 2011, a bench trial was held in the magistrate's court before the Honorable Charlene C. Snowden. On August 22, 2011, the magistrate's court issued an Order of Final Disposition, ruling in favor of the Dixons (but not granting them any monetary award[3]). (R. pp. 10-11; Supp. R. pp. 25-29.)

The HOA timely appealed the magistrate's court's decision to the circuit court. (Supp. R. pp. 1-2.) The HOA's appeal was heard in the circuit court on December 9, 2011, the Honorable Diane Schafer Goodstein presiding. (R. pp. 36-49; Supp. R. pp. 3-24.) By order entered April 4, 2012, the circuit court reversed the magistrate's court's decision and entered judgment in favor of the HOA against the Dixons for past-due regime fees in

[2] The Dixons later filed an amended counterclaim to include attorney fees. (R. p. 32.) The HOA timely answered and denied this counterclaim. (R. p. 34.) The HOA would also note that, at all times, the Dixons have proceeded in this matter *pro se*.

[3] The Dixons did not take an appeal to the circuit court from any aspect of the magistrate's court's decision.

the amount of $440 plus any applicable late charge[4] and remanded the matter to the magistrate's court for a determination of any costs and attorneys' fees reasonably owed by the Dixons to the HOA.[5] (R. pp. 1-9.)

The Dixons' appeal to this Court followed.

STANDARD OF REVIEW

The standard of review to be applied by the circuit court in an appeal from the magistrate's court is prescribed by S.C. Code Ann. § 18-7-170:

> Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

As this Court has recognized, the circuit court's scope of review is broad, with it being "readily apparent," that "Section 18-7-170 confers authority upon the Circuit Court to reverse a magistrate's findings of fact when exercising appellate jurisdiction in an appeal from a magistrate's judgment." Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App.

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[4] Section II, Item 2 of the Declaration of Restrictions and Article VI, Section 1 of the By-Laws both provide that, with respect to delinquent regime fees, "[a] late charge of $5 per month shall be charged for each month late or portion thereof." (R. pp. 54, 64, 86, 96.)

[5] Article VIII of the HOA's By-Laws provides that "[w]henever a member shall become delinquent by virtue of failure to pay the annual regime fee as prescribed herein, such member shall be required to reimburse the [HOA] for all costs; administrative, legal and otherwise incurred incident to the subsequent collection of the delinquent fee." (R. pp. 56, 87-88.)

1984); *see also* Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 234, 312 S.E.2d 20, 21 (Ct. App. 1984) ("Sections 18-7-140 and 18-7-170 give the Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses.").[6]

In contrast to the broad scope of review afforded the circuit court on review of a decision of the magistrate's court, when an appeal is taken from the circuit court's appellate decision, this Court's review is more limited, and the circuit court's decision is entitled to great deference. Unless this Court finds an error of law on the part of the circuit court, the circuit court's decision should be affirmed if there are any facts supporting its decision. Hadfield v. Gilchrist, 343 S.C. 88, 92-94, 538 S.E.2d 268, 270-71 (Ct. App. 2000).

[6] S.C. Code Ann. § 18-7-140 provides: "[t]he [circuit] court shall have the same power over its own determinations, and shall render judgment thereon in the same manner, as

ARGUMENT

I. The circuit court did not err by reversing the magistrate's court's ruling that the HOA committed a breach of contract by failing to meet the "requirements" set forth in the HOA's By-Laws by not holding a meeting of the HOA membership and not obtaining the vote of the "required" 51% of the HOA membership.

The HOA believes that the Dixons' appeal of the circuit court's order is appropriately viewed as presenting the singular issue and argument thereon set forth herein. The Dixons' brief, however, sets forth five (5) separate arguments against the circuit court's ruling. Respectfully, and although not entirely clear to the HOA, the Dixons' arguments are unavailing.

The HOA is simply unable to understand the Dixons' Argument I. The HOA submits that it is not sufficient to undermine the circuit court's decision and, further, that it is conclusory and rightfully considered abandoned. O'Laughlin v. Windham, 330 S.C. 379, 386, 498 S.E.2d 689, 693 (Ct. App. 1998) ("An issue is deemed abandoned if an appellant fails to provide argument and supporting authority for an alleged error."). Argument II appears to be founded upon Florida case law concerning covenants running with land, which the Dixons conflate with the Board of Governors' actions to increase regime fees. It would not appear to have any

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the circuit court in actions pending therein, without trial by jury, and may allow either

relevance to the instant matter concerning the Dixons' payment of regime fees, and it is likewise unavailing and conclusory and rightfully deemed abandoned. Id. It appears that Arguments III and IV may be challenging the circuit court's determination that the HOA's Board of Governors could raise regime fees based on the CPI Calculator without a majority vote of the HOA membership (i.e., the actual ruling of the circuit court). If so, this challenge is addressed and refuted below. Argument V appears to be making a technical argument about the proof of delinquency offered by the HOA. The HOA submits that its proof of the delinquency is ample—indeed, the Dixons admitted to the circuit court that they did not pay the invoiced amounts of regime fees. (R. p. 100; R. pp. 36-49; Supp. R. pp. 3-24.) Moreover, § 18-7-170 expressly directs the circuit court to "give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits." The circuit court properly did so.

In any event, the Dixons did not make a motion under Rule 59(e), SCRCP, to ask the circuit court for a ruling on any other matter (allegedly raised below) beyond that actually ruled upon in the circuit court's order. Consequently, to the extent that the Dixons' appellate challenge to the circuit court's decision includes argument outside the confines of the matter

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party to amend his pleadings upon such terms as shall be just."

ruled upon in the circuit court's order, such challenge is not properly before this Court on appeal. Elam v. S.C. Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.") (emphasis in original). Looking then to the substance of circuit court's order, the HOA submits that it is rightfully affirmed.

The Dixons cannot show any reversible error on the part of the circuit court in finding that the HOA's Board of Governors properly raised regime fees (without a majority vote of the HOA membership) in all instances disputed here. Indeed, in their brief, the Dixons even concede that they "do not argue the validity of whether or not [the HOA's] Board [of Governors] could raise 'maintenance fees' within the CPI." (Initial Brief of Appellants p. 4.)

According to the Declaration of Restrictions, in the section expressly pertaining to the "**Annual Regime Fee**,"[7] "[e]ach owner of a lot within King's Grant on the Ashley subject to these Restrictions is deemed to covenant and agree to pay to the [HOA] an annual assessment for the continuation of an operation fund the amounts hereinafter set forth. The sums so received shall be used to provide funds for the maintenance,

[7] (R. pp. 64-65, 96-97 (emphasis in original).)

landscaping and beautification of the common areas currently owned by the [HOA] . . . ." (R. pp. 64, 96.) "The administration of the operating fund shall be vested with the Board of Governors of the [HOA] according to its Bylaws." (Id.) "The amount of the assessment may be adjusted by the [HOA] where, in its discretion, such adjustment is necessary to accomplish the purposes of the Maintenance Fund as set out above. **Any adjustments shall correspond to any increase or decrease in the cost of living as shown by the CPI Calculator as published by the Bureau of Labor Statistics of the United States Department of Labor. The base year for determining such increase or decrease shall be the year 1971.**" (R. pp. 64-65, 96 (emphasis added).)

In order to calculate the **maximum** maintenance charge, i.e., the maximum annual regime fee, the HOA's Board of Governors uses the CPI Calculator as published by the Bureau of Labor Statistics of the United States Department of Labor for the cost of living adjustment. At trial, the HOA's treasurer, Warren Knudsen, testified at length about how the HOA's Board of Governors determines the annual regime fee. During his testimony, the HOA introduced its Exhibit 3, which consisted of CPI inflation calculations for the year 2002 and the years 2004-2011. (R. pp. 69-77; Supp. R. p. 29) To determine the maximum maintenance charge, the

Board of Governors must enter the base amount of sixty dollars ($60) and the base year of 1971, which represents the amount and year of the first annual regime fee. The only variable is the assessment year for the regime fee. Once the information is entered into the CPI Calculator, the calculated amount represents the maximum maintenance charge (i.e., the maximum allowable charge); notably, this is not the annual regime fee.[8] The respective maximum maintenance charges for 2002 and 2004-2011 were as follows: $266.52 (in 2002); $279.85 (in 2004); $289.33 (in 2005); $298.67 (in 2006); $307.17 (in 2007); $318.97 (in 2008); $317.83 (in 2009); $323.05 (in 2010); and $334.76 (in 2011). (R. pp. 69-77.) The maximum maintenance charge has never been exceeded for any year. In fact, the annual regime fee has consistently been less than the maximum maintenance charge—the highest regime fee assessed at any time during subject period was $175. (R. p. 68.) Addressing "Regime Fees," the By-Laws further provide that "[e]ach owner of a lot in King's Grant Subdivision shall pay to the [HOA] each year the sum as determined by the Board of Governors based on the computation allowed within the Declaration of Restrictions, Section II." (R. p. 54.)

[8] The CPI Calculator is publicly available at www.bls.gov/data/inflation_calculator.htm.

The circuit court correctly identified error in the magistrate's court's ruling stemming from apparent confusion about the "first" By-Laws (i.e., the 2002 By-Laws) and the later amendment of Article X therein reflected in the 2010 By-Laws.[9] In short, any suggestion that the By-Laws were improperly amended is not only wrong but a red herring; under any version of the By-Laws, the Board of Governors properly assessed the annual regime fees and there was indeed no "requirement" (as found by the magistrate's court) for a majority vote of the HOA membership to do so, because the maximum maintenance charge was never exceeded.

During trial, the Dixons provided the magistrate's court with a copy of the 2002 By-Laws wherein Article X reads:

> The **By-Laws** of the [HOA] may be amended, modified, suspended, reinstated, repealed and substituted for by other provisions upon the majority vote of the [Board of] Governors, **provided the maximum maintenance charge shall not be increased without approval of a majority of the members.**

(R. p. 88 (emphasis added).) Accordingly, as correctly recognized by the circuit court, the plain language of the 2002 Article X provides that a

[9] The magistrate's court found that "[u]pon examination of both the parties it was apparent from the testimony presented that the first By-Laws of King Grant states that changes to the fee can be made with the majority vote of the membership. There was no vote of the membership to increase the regime fee." (Supp. R. p. 29.) That court further ruled that "[t]he [HOA] failed to meet the requirements set forth in the By-Laws by not

majority the Board of Governors may amend the By-Laws so long as the annual regime fee does not exceed the maximum maintenance charge for that year according to the CPI Calculator. Jordan v. Security Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) ("Where the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect."). Nowhere in the 2002 By-Laws, including Article X, is a majority vote of the HOA membership required to increase the annual regime fees if the fee does not exceed the maximum maintenance charge.

Further, Article X of the By-Laws was, as the circuit court correctly recognized, duly amended by the Board of Governors,[10] with the 2010 By-Laws reading as follows:

> The **By-Laws** shall not be subject to change without a seventy-five percent (75%) majority vote of the Board or a fifty-one percent (51%) majority

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holding a membership meeting and obtaining the required 51% of the membership and therefore breached the contract with the homeowners Mr. and Mrs. Dixon." (Id.)

[10] The Dixons argued that the **By-Laws** were illegally amended based on Section IV, Item 6, of the **Declaration of Restrictions**, which states "[t]he covenants and restrictions of **this Declaration** may be amended at any time and from time to time by an agreement signed by at least fifty-one (51) percent of the property owners whose votes are within King's Grant on the Ashley." (R. pp. 66, 98 (emphasis added).) The plain language of Section IV, Item 6 of the Declaration of Restrictions, however, sets forth only the process for amending the **Declaration of Restrictions, not the By-Laws**. Article X of the 2002 By-Laws provided that a majority vote of the Board of Governors may amend the By-Laws except, of course, for the prohibition on increasing the maximum maintenance charge without a majority vote of the HOA membership. (R. p. 88.) Therefore, the HOA's Board of Governors legally amended the By-Laws, as the circuit court correctly found.

> vote of the members of the association, **with the exception of a cost of living adjustment as provided by Section 2 Item 3 as provided for in the Declaration of the Restrictions**, and are to be held in trust by the association attorney.

(R. p. 56 (emphasis added).) Here, majority vote of the members of the HOA is only required to change the **By-Laws**. A majority vote of the HOA membership is not required for "**Adjustments in Annual Assessment for Maintenance Fund**,"[11] which are addressed in Section 2, Item 3 of the Declaration of Restrictions (the "exception" expressly identified in Article X), and which provides for the CPI Calculator to determine the maximum maintenance charge. (R. pp. 64-65, 96-97.)

Neither the Declaration of Restrictions nor By-Laws (before or after amendment) prohibit the HOA's Board of Governors from increasing the annual regime fee so long as the annual regime fee does not surpass the maximum maintenance charge according to the CPI Calculator. The circuit court correctly recognized the magistrate's court's error in ruling that the HOA "failed to meet the requirements set forth in the By-Laws by not holding a membership meeting and obtaining the required 51% of the membership and therefore breached the contract with the homeowners Mr. and Mrs. Dixon," because there were no such "requirements;" no

[11] (emphasis in original.)

membership vote was required for the Board of Governors to increase the annual regime fee as long as it remained lower than the maximum maintenance charge according to the CPI Calculator, which it did. The circuit court's ruling is not erroneous as a matter of law and, with respect to matters of fact, the circuit court's ruling (which is entitled to great deference) is amply supported by the record and is not undermined by any argument set forth by the Dixons.

CONCLUSION

For the reasons set forth herein and, pursuant to Rule 220(c), SCACR, for any other ground appearing in the record, the HOA asks that the Court affirm the decision of the circuit court.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for the Respondent above named, do hereby certify that I have served the **Final Brief of Respondent** on the above-named Appellants by depositing a copy of the same in the United States Mail, postage prepaid, on February 19, 2013, addressed as follows:

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I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for the Respondent above named, do hereby certify that I have served the **Final Brief of Respondent** and **Rule 211(b) Certification of Respondent** on the above-named Appellants by depositing a copy of the same in the United States Mail, postage prepaid, on February 19, 2013, addressed as follows:

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RESPONDENTS' CERTIFICATION FOR FINAL BRIEF

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I, Russell G. Hines, do hereby certify that the Final Brief of Respondents complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of August 13, 2007.

Respectfully submitted,

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