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Aug 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

HONORABLE CARMEN T. MULLEN, III, Circuit Court Judge

Appellate Case No. 2023-000277

SLF III – HARDEEVILLE, LLC, Respondent,

v.

RSV – HARDEEVILLE, LLC, Appellant.

RETURN TO APPELLANT’S PETITION FOR REHEARING

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Pursuant to the Court's letter dated August 15, 2025, Respondent submits this Return to the Petition for Rehearing from the Appellant, dated August 6, 2025.

While the Respondent disagrees with the Court's finding that the Reed-HTI Assignment is ambiguous, Respondent is prepared to submit evidence of the parties' intent such that the broader context of the assignment can be considered consistent with the Court's Unpublished Opinion No. 2025-UP-263, filed July 23, 2025 ("Opinion"). Of note, in Appellant's Petition for Rehearing, it appears Appellant is making the following requests of the Court:

1. Rehear the case or issue a new opinion finding that the Reed-HTI Assignment does not restrict or prevent Appellant from exercising the rights it believes are accorded to it under the DA and PDD for conversion of property from residential to light industrial use.
2. Issue a revised opinion deleting any reference to a remand for trial and reserve the issues raised herein for consideration by the Circuit Court on remand.
3. Preserve Appellant's ability to make arguments it sets forth in its Petition for Rehearing in subsequent proceedings.

Unless the Court grants Appellant's first request to rehear the case and/or issue a new opinion, the case shall be remanded forthwith.

In its Opinion, the Court found that while neither party contended to the circuit court that the contract was ambiguous, the parties presented differing interpretations of the language used in the Assignment. The Court cites *Beaufort Cty. Sch. Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 709 S.E.2d 85, 90 (Ct. App. 2011) regarding the cardinal rule of contract interpretation being to ascertain and give legal effect to the parties' intentions as determined by the contract language. This provision is important in light of Appellant's argument in its Petition for Rehearing

that the Court should not consider the intentions of the parties and find for Appellant based on legal analysis of restrictive covenant precedent.

Respondent continues to contend that Item 1(a) of the REED-HTI Assignment assigned certain rights, privileges and obligations under the DA regarding development and use of the property for certain enumerated items only, *and for no other use or purpose*, and that Appellant shall not be entitled to any other development rights under the DA or the PDD – all of which are retained by Assignor to be assigned Respondent.

Section 1(b) of the REED-HTI Assignment states that Appellant “covenant and agree not to develop or use the Property in a manner inconsistent with the foregoing development rights assigned by Assignor to Assignee pursuant to Paragraph 1(a) above, or for any use name specifically listed in Paragraph 1(a).” Respondent continues to contend that these provisions in the Assignment demonstrate an intent to restrict the range of uses for the property and are, therefore, unambiguous. However, based on the Court’s finding that the assignment is silent regarding conversion of the residential acreage, but contains an expressed prohibition on the conversion of the acreage designated general commercial use, the assignment is ambiguous.

The Court further states that the assignment either conveyed all of JPR’s development rights, including conversion rights, or it restricted development of the residential acreage only to the uses and purposes set forth in Item 1(a) of the Assignment. Therefore, the argument put forth by Appellant in its Petition for Rehearing that the Court can consider the Assignment to be a Restrictive Covenant is meritless.

Respectfully submitted,

s/Cheryl D. Shoun

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PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing of Respondent on Appellant RSV – Hardeeville, LLC by emailing a copy of the same to the following counsel of record for Appellant using the primary email address listed in the Attorney Information System.

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August 21, 2025.

s/ Laura O. Patat
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