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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Steven C. Kirven, Master in

Equity

Case No. 2023-CP-37-00620

Ex Parte: Christopher A. Pierce, Appellant

Foxwood Hills Property Owners Association, Respondent,

v.

Michael D. Jewell, Lori Marcengill, South Carolina Department of Motor Vehicles,
Defendant's,

of which Michael D. Jewell is an Appellant.

Case No. 2025-000223

REPLY BRIEF OF APPELLANTS

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TABLE OF AUTHORITIES

CASES

1. Kiekel Vs. Four Colonies HOA Kansas Appellate Court 162 p.3d 57 Kan. Ct. App. 2007
Restrictions are primary document to Bylaws - Accepted around US and in South Carolina
2. Pierce Vs. Foxwood Hills Property Owners Association - Bankruptcy Court (2023) C/A no. 20-02092-HB Adv. Pro. No. 20-80049-HB
Christopher Pierce (ex-parte appellant) affirms restrictions preempt Bylaws with FHPOA
3. Foxwood Hills Property Owners Association v. Wayne Raffadlt Circuit Court, Oconee County
SC Case No. 2023CP3700703

STATUTES AND RULES

1. Lis Pendens Statute of South Carolina S.C. Code of Laws Ann. S. 15-11
2. Rule 19 SCRPC
3. Rule 56 SCRPC

Response to Respondent's Statement of the Case

Appellant and ex parte appellant respond to respondent's brief. With regard to the appellants' motion for correction, appellants have both indicated that they were concerned that respondent failed to provide proper facts and dates for the statement of the case and the respondent agreed in his opening sentence states that the Summons and Complaint was filed January 2, 2025. This is erroneous information and it's not true. This was when the actual order or final judgment in the foreclosure case occurred, not the start of the case. The actual start of the case was August 17, 2023.

Respondent goes on to describe different dates and times events occurred during the case and one of them was December 14, 2025 in which he stated a hearing was held before circuit court Judge Kervin on that date and the court denied appellant Jewell's motion to set aside judgment. That event is false because that particular date hasn't even occurred yet.

Next respondent on page 4, first paragraph states that he filed a summary judgment motion on March 22, 2025. This is also false and there's no evidence he filed any motion as the final order for the case was

issued January 2, 2025 that date above, March 22nd, is well after the final order and when the case was actually sent to the South Carolina Appeals court.

The respondent has produced sloppy work in his initial brief and numerous dates are incorrect and incredible the most glaring being the the start of the case being January 2, 2025 when the actual start of the case was August 17th 2023. Because these dates are all incorrect, one is left to wonder whether any of the other fact of the case produced by the respondent in his statement of the case is actually accurate or incorrect. The Appeals Court is left with an inaccurate picture of events that occurred in this case as a result, and is misled as to how the case developed. The most important being the end of the case, and start of the case. Because if we were to believe the respondent that the case started in 2025, then all the previous case information including the rulings that occurred from the hearing on December 5, 2024 would then be invalid and inaccurate. So this provides a misleading impression on the events of this case. The appellants meanwhile have provided accurate information to the South Carolina Appeals Court. Without an accurate case record the Appeals Court justices will have difficulty rendering a decision on the case. To my knowledge the appellants have all presented an accurate representation of case facts.

A Pattern of Misrepresentation

There is also see a pattern of false affidavits filed by the respondent starting with the affidavit that was filed on October 12, 2023. That affidavit was false stating that Appellant Jewell had not Answered the Summons and Complaint when he had in fact done so timely. Respondent goes on to say that he inadvertently had filed a false affidavit. But that is not correct and false because at the time his law firm was actively engaged in discussions with Appellant Jewell on settling the case. So to say he

inadvertently filed that affidavit is misleading to the court and false. Respondent intentionally filed the affidavit willingly and knowing that he had on going settlement discussions with appellant Jewell. It is the belief of the appellants that the goal was of depriving Mr Jewell of his rights in common Pleas Court to a jury request as jury trials are accept there as apposed to that in Master in Equity Court. There was no inadvertence at all as respondent states in his first paragraph in his Statement of The Case. He also goes on to mislead the court further by saying that he had learned of the error with the Affidavit of Default and that he amended the affidavit of default making it clear that Jewell was not in default and had not been treated as being in default. This is also false because he was treated as in default because the case was then referred from Common Pleas to Master in Equity Court on the same day October 12, 2023. It is also misleading in that respondent impliees he recognized the error of filing Affidavit of Default on his own and corrected it. He had to be told by the court which was then told by Appellant Jewell that he had made an error and that the affidavit was false. Without this, the court and the respondent would have failed to recognize that a false affidavit had been filed. So the picture that's being painted by the respondent is inaccurate and completely and misleading to the Appeals Court. The only accurate conclusion is that the respondent attorney John Kay or Hutchens Law Firm intentionally filed the false affidavit in order to deprive appellant Jewell of his rights to ask for a jury trial in Common Pleas Court. We do not know what the result would have been in Common Pleas had he asked but he was never had an opportunity to ask because the case was then referred to Master in Equity prematurely thereby denying Appellant Jewell of his due process rights in asking for a jury trial in Common Pleas Court.

Respondent also goes on to say that on page 3 that at no time was appellant Jewell treated as if he were in default. Of course he was treated as in default because that's why the case was then referred from

common pleas to master inequity Court on the same day, October 12, 2023. So that statement by the respondent is also false.

There are so many errors and inconsistencies that are offered by the respondent in his initial brief that one has to ask themselves whether any information can even be trusted. Respondent also goes on in other affidavits to also state information that's inaccurate such as Mr Jewell owing loans and mortgages and things like that and in other affidavits which itemize damages amounts. This information that is all inaccurate demonstrates to the court that there are genuine issues of material fact in dispute and that summary judgment is completely and absolutely inappropriate. Simply put, the attorney for the respondent has shown a pattern of sloppy inaccurate erroneous facts and information that are misleading to the court and are also misled the circuit Court into believing that there were no genuine issues of material fact when in fact there had been many many genuine issues of material fact and dispute. Because of this the circuit court erroneously granted Summary Judgment against Jewell. The facts do matter and resulted in a negative outcome for Appellant Jewell as a result of these distortions for both Respondents Summary Judgment motion and his jury motion.

Response to Respondent's Standard of Review

While appellants agree as to the standard of review as being de novo for summary judgment we find that the respondent has not met the requirements he states as to standards of reviews such as recognizing the point of summary judgment in the cases that he lists. Appellants clearly provided facts that are in dispute that would be considered genuine material facts that were included in appellants affidavit that were largely ignored by the circuit Court Judge Kervin and Judge Kervin then favored the respondents

affidavit while ignoring the appellants affidavit. Had Judge Kervin properly reviewed appellants affidavit he would have recognized clearly that there were numerous genuine issues of material fact in dispute and ruled against summary judgment. Also it's important that respondent believes that factual findings of circuit court should be accepted by the appellate Court. Appellates disagree! Those facts that Judge Kervin found were result of simply listening to or acknowledging respondents affidavit while ignoring appellant's affidavit. One of the most important issues was that the appellants had made clear that the fines and charges for property violations were in dispute that they disputed the amounts of the fines and whether they had the right to even charge those fines. This was clearly brought out in Appellant's affidavit.

Respondent's Argument For Summary Judgment

As to the argument section for Summary Judgment, respondent indicates that the bylaws were the contract and the they established the right to charge fines and dues and other things but have failed to prove that in any of their writings as to the specifics of charging for example \$33.33/ day fines there is no indication of that in the bylaws in fact provided for the right to charge those fines. And these charges directly conflict with the mechanism for property violations in the restrictions. Therefore there's a conflict between restrictions and bylaws and it is appellants belief based on well settled case law by *Pierce v Foxwood Hills Property Owners Association ("FHPOA")* and *Kiekel V Four Colonies HOA* that restrictions preempt bylaws so they don't have a right to charge fines and other charges that they think they have right to charge and that was clearly challenged in the affidavit presented by the appellant. Clearly establishing a genuine material fact in dispute. Additionally in Oconee Circuit Court Case 2023CP3700703 on the final order of that case Wayne Raffaldt was relieved of over \$28,000 in fines charged against him property violations over the years. This occurred in February of 2025. The actual

amount of dues he actually owed was only a few thousand dollars, but John Kay , Respondent's lawyer asked for over \$40,000 in damages. This frivolousness and overcharging of fines has resulted in many good people in Foxwood Hills losing their properties for a false cause by the . Appellant Jewell is charged by FHPOA as owing about \$8000 in fines which are similarly absurd and falsely charged. This is clearly a fact in dispute and summary judgment never should have been granted.

Respondent has failed to show that there is a valid appeals process that appellant violated. in fact Jewell was involved in numerous conversations and executive session meetings with the board of directors of FHPOA and had properly engaged in challenging and appealing those dues and other charges he was being charged. So he had another genuine issue of material fact in the he had challenged those dues amounts that were listed as something that he should have to pay. Not only that he was never at any time offered any amenities and so why should he now be required to pay that so numerous issues of material fact that were in dispute. respondent has failed to meet the standard required for summary judgment in that those numerous issues of material fact existed that were in dispute. Add to it the question is to the validity and authenticity accuracy of his affidavits a pattern of false information appearing in the affidavits can only lead one to say that these affidavits are not to be relied on by the court or by anyone else.

Responded goes on to state that he believes that the rights to charge dues assessments and violations are clearly outlined in the bylaws of the respondent. This is also false there is much conflict between the bylaws and the restrictions and it is not clear and is nothing specified that they have rights charge \$33.33 for each day somebody violates what they perceive as restriction so the amounts and the authority and the mechanism are all challenged numerous issues of genuine material fact in dispute. Respondent would like the court to believe that everything is clearly outlined in the bylaws but they are not clearly

outlined and there's the much conflict between restrictions and the bylaws. And just one example is that the mechanism for violations of of covenants is already listed as mechanism where somebody can go to court in law and equity to challenge somebody who's violated one of the restrictions instead the the bylaws state that they have they can try to go and enforce those themselves that directly conflicts with the mechanism that already exists in the restrictions therefore there's numerous issues of conflict and numerous issues of genuine dispute that exist. Jewel did also not make any payments because he was waiting to settle these issues before he made a final payment. So he wasn't going to make a payment until it was settled and it never was settled.

Also in regards to motions compel. Motion to compel was properly filed and should have been heard on December 5, 2024 the motion was never presented by the circuit court Judge Kervin thereby denying Mr Jewel his right of due process and challenging some of the facts of the case because he didn't have all the facts he was denied that by John Kay who failed to provide answers to much of his Discovery probably estimated to be about 10% answered and 90% was unanswered. therefore Mr Jewell did not have facts available to him that he could have used to dispute respondents motion for summery judgment. Appellant Jewell was denied his due process rights, the right to challenge facts, and have all facts available to him by Judge Kervin not presenting the Motion to Compel on December 5, 2024.

Response to Respondent's Argument Against Motion For Joinder

Respondent erroneously states that, "Pierce had been assisting Jewel since the beginning.". This statement is false and misleading as Pierce wasn't even aware that appellant Jewell had a case back in August 17, 2023 and didn't even know Jewell. Respondent goes on to discuss the type of fonts used by appellent Pierce and numerous cases involving Pierce and others and litigation with the respondent is

the exact same unusual font used by appellant Jewell in this case. Respondent is engaged in idle speculating as to different fonts used in preparation of documents that has no bearing on this Motion for Joinder. This information is speculative and misleading by the respondent and has no relevance at all in his argument and does not comply with ACR 208 as to Argument in a Respondent Brief. In fact it further violates ACR 208 in that there are certain elements to be included in the argument section and none of them is discussing fonts and whether somebody's assisting somebody in a case. This information is all irrelevant and should not be contained in the argument section of respondents brief and only serves as an unnecessary distraction. Respondent goes on to further mislead the court in arguing that Appellant Pierce tried to obtain a quit claim deed a month before the December 5th, 2024 hearing. Once Pierce obtain the deed he immediately filed for joinder in order to protect his rights to the property under South Carolina law rule 19 SCRPC.

In Berkeley case respondent cites has no relevance to the case because appellant Pierce is joining with the idea to protect his interest not protect other people's interest in the lawsuit or worry about the result for the existing parties, only to protect his own interests under rule 19. Pierce has every right to protect his interest in the property and the Lis Pendans statute does not prevent Pierce from protecting his rights or cause him to give up rights as respondent states. The Lis Pendans just simply notices the public that there was a pending lawsuit and that that lawsuit could cloud the title of that property such that a prospective purchaser might choose a property that does not have a lawsuit with it. Pierce naturally paid less for his interest in the property knowing that it was somewhat clouded with this lawsuit but did not preclude him from protecting his interests under rule 19. Pierce maintains he has a right to protect his interests under rule 19 and that it does not matter whether it's a Lis Pendans or a year had elapsed, but that he still had a right to engage and participate in the lawsuit to protect his

interests. The fact that he was not allowed to participate in the lawsuit caused him and other appellant Jewell other owner to lose the hearing and potentially lose the property. Had Pierce been involved, who had more experience in civil law, he might have been able to protect that interest and not have summary judgment rendered against the appellant Jewell. So by the judge preventing him from participating in the lawsuit he thereby prevented appellant Pierce from protecting his rights and therefore losing an interest in the property because now he was being foreclosed on. Pierce maintains he would have an interest in the property and to protect the property by engaging as a party defendant in the lawsuit. Rule 19 South Carolina Rules of Civil Procedure clearly states that he's allowed to join to protect that interest. So the court by denying that participation by Pierce as a party defendant prevented Pierce from protecting his interests. Respondent improperly implies that Lis Pendens statute 15-11-20 denies Pierce the right to participate in lawsuit but that is not what the statute says it simply implies that he's bound by the encumbrances on the property and Pierce accepts that. But it does not take away his right to adequately defend his rights in the property. There is nothing in any of those Lis Pendens statutes that prevents Pierce from joining as a party defendant in this case.

Response to Respondent's Argument Against Jury Trial Request

Appellant Jewel had a jury requests and also Court reference requests. Initially as indicated in some of the early discussions, the appellant Jewell was denied the right to ask for a jury in Common Pleas Court because the case had been referred to Master in Equity court prematurely due to the false affidavit filed by the respondent. Had Jewell had the opportunity in Common Pleas Court he may have received a jury trial and then perhaps an advisory jury in Master and Equity Court. But we will never know if he would have received the jury trial because he never had a chance to ask because he was prematurely referred

to Master in Equity Court with the false affidavit filed by the respondent. Therefore Jewell deserves an advisory jury in Master in Equity Court to be fact finders in his case.

Jewell was clearly denied his due process rights due to respondent filing his false affidavit.

Conclusion

It's important for the Appeals Court to recognize that respondent has consistently provided false, erroneous, misleading, and sloppy information in his filings to the court including his initial brief of the respondent. Considering this information that much of it is false and misleading the affidavits that were used to ask for summary judgment should be considered null and void by the court because they mislead and distort the factual records of what actually happened. Summary Judgment under Rule 56 SCRPC is not appropriate as facts are in dispute and Mr Jewell deserves a right to a final hearing whereupon an advisory jury can render a decision on the facts of the case, and the court can render opinions on issues of law.

Pierce must be joined as a party defendant in the case because Pierce has the right to protect his interest in the property as a party defendant under Rule 19 SCRPC .

Jewell deserves a right to a jury as respondent deprived him of his right to a jury by filing a false affidavit and prematurely having the case referred to Master in Equity Court without having the right to request a jury in Common Pleas Court. This in addition to previous facts in the Initial Brief.

Thank you for your consideration.

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Defendant's,

of which Michael D. Jewell is an Appellant.

CERTIFICATE OF SERVICE

Christopher A. Pierce does certify that he deposited in first class mail a copy of

Reply Brief of Appellants to: John Kay, Hutchens

Law Firm, P.O. Box 8257 Columbia, SC 29201 on September_8_, 2025.

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