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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE ROBERT J. BONDS  
CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2025-000030  
CIVIL ACTION NO. 2021-CP-07-01655

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Stanley S. Stroup, as Trustee of the Stanley S. Stroup Revocable Trust dated November 10, 2003; Peter Trager, and Vacation Inn, LLC, each both individually and derivatively,

**RESPONDENTS,**

versus

Sea Pines South Beach Owners' Association, Inc.,

**APPELLANT.**

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**INITIAL REPLY BRIEF**

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## STATEMENT OF ISSUES IN REPLY

- I. The Trial Court erred in ruling that the Association's Covenants and 1985 Modification did not permit the Association to levy special assessments for the dredging of Braddock Cove which adjoins the property development governed by the Covenants.
  - A. The Plaintiff Members' lawsuit brought in 2021 to challenge the validity of the 1985 Modification is barred by the applicable six (6) year or twenty (20) year statute of limitations.
  - B. The Association's members' prior approval of the levy of special assessments for the dredging of Braddock Cove and the Plaintiffs Members' failure to challenge such special assessments until 2021 ratifies the 1985 Modification and cures any alleged invalidity thereof.
  - C. The doctrines of laches, waiver, and equitable estoppel bar the Plaintiff Members from challenging the validity of the 1985 Modification, of which they have long had actual or constructive notice of, by a lawsuit brought in 2021.
  - D. The plain and unambiguous provisions of the Covenants and the 1985 Modification (1) expand the definition of "Common Property" to include Braddock Cove, an adjoining waterway of significant benefit to the planned development, and (2) are reasonable, definite, and harmonious with public policy.
  - E. Dredging is a type of construction or reconstruction for which special assessments may be levied under the terms of the Covenants.
- II. The Trial Court erred in ruling that the plain and unambiguous language of the Association's Covenants did not permit the Association to levy annual assessments.
- III. The Association appealed the Trial Court's dismissal of its Counterclaim; further, any purported failure to appeal the dismissal of the Counterclaim does not serve as basis for affirming the Trial Court's erroneous grant of a declaratory judgment and accompanying injunction in favor of the Plaintiff Members.

## ARGUMENT IN REPLY

**I. The Trial Court erred in ruling that the Association’s Covenants and 1985 Modification did not permit the Association to levy special assessments for the dredging of Braddock Cove which adjoins the property development governed by the Covenants.**

In 1985, the members of the Association voted to protect their property values within the Sea Pines South Beach community by including the boat channels, waterways, channel markers, and salt marsh open space areas of the adjacent Braddock Cove as a “Common Property” under the Covenants. [R.pp. \_\_\_; 1985 Modification.] This act by the members of the Association gave the Association the ability to levy, upon the assent of three-fourths (3/4) of the vote at a duly called meeting, special assessments for the dredging of Braddock Cove. [R.pp. \_\_\_; \_\_\_; Covenants, Art. V, Section 4; Art. VIII, Section 1.] The vote by the members of the Association to amend the Covenants to permit assessments for the dredging of Braddock Cove furthered the express purpose of the creation of the Association – to preserve the values of the South Beach community properties and to maintain the boat channels. [R.p. \_\_\_; *Id.* at p. 1.] In accordance with the Covenants and the 1985 Modification, the Association’s members approved three special assessments for the dredging of Braddock Cove in 2001, 2013, and 2017. [R.p. \_\_\_; Joint Stips., ¶ 22.]

Prior to this lawsuit, the 1985 Modification had been in place for thirty-six (36) years. The members of the Association three times approved special assessments for the dredging of Braddock Cove based upon the long-standing language of the 1985 Modification. For thirty-six (36) years, no member of the Association challenged the 1985 Modification or the corresponding special assessments. For thirty-six (36) years, the Association conducted its operations under the Covenants and the 1985 Modification with approval by its members.

The three Plaintiff Members in this case voluntarily became owners of real property subject to the Covenants for which their interests in this lawsuit are based in 2002 (Stroup), 2007 (Trager<sup>1</sup>), and 2003 (Vacation Inn). They each had actual or constructive notice of the 1985 Modification recorded in Beaufort County when taking title to their properties and were therefore on notice that Braddock Cove was a designated Common Property under the Covenants. At least one special assessment for the dredging of Braddock Cove had occurred in 2001 prior to when each Plaintiff Member took title to the property from which their interest in this lawsuit derives.<sup>2</sup>

While the Plaintiff Members portray a plight of forced submission to the terms of 1985 Modification, each member willingly took title to property subject to the Covenants and joined an Association whose members decided to protect Braddock Cove for the preservation of the community's property values. After joining the community and Association, these Plaintiff Members did not raise any objections to the 1985 Modification and stood by while the Association continued to operate under the 1985 Modification by levying two additional special assessments for the dredging of Braddock Cove in 2013 and

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<sup>1</sup> The Plaintiff Members reference in footnote 25 of their Respondents' Brief that Trager bought property in 1983 before the adoption of the 1985 Modification. Trager, however, transferred his rights in such property under a new deed recorded in 2007, and his claims in this lawsuit derive from his property interest acquired in 2007. [R.p. \_\_\_\_; Joint Stips., ¶ 3.] But given that Trager did own property in the community prior to the adoption of the 1985 Modification and was aware of the 1985 Modification when it was voted upon, it raises the question of why Trager did not object to or challenge the 1985 Modification at that time or within the applicable six-year or twenty-year statute of limitations as discussed later in this Reply Brief.

<sup>2</sup> As noted in the Appellant's Brief, at the time of the 2001 special assessment, Trager and Robert Gossett, the managing member of Vacation Inn, lived on or owned property subject to the Covenants and did not challenge the validity of the 2001 assessment. [R.pp. \_\_\_\_; Joint Stips., ¶¶ 3, 5-7.]

2017, with each Plaintiff Member participating in the vote for the 2013 assessment and Stroup voting in favor of it. [R.p. \_\_\_\_;Vote Composite for 2013 Meeting, p. 3.]

After sitting by for years without objecting to or challenging the 1985 Modification (Stroup – nineteen (19) years) (Trager – fourteen (14) years) (Vacation Inn – eighteen (18) years), these Plaintiff Members decided in 2021 to bring this lawsuit challenging for the first time the right of the Association to levy special assessments for the dredging of Braddock Cove. As set forth in the Association’s Appellant’s Brief, the (1) the election by the Association’s members to adopt the 1985 Modification and corresponding levy of special assessments for the dredging of Braddock Cove, (2) the notice to the Plaintiff Members of the 1985 Modification before taking property title subject to the Covenants, and (3) the long delay by any person or entity, including the Plaintiff Members, to legally challenge the 1985 Modification precludes the ability of the Plaintiff Members to now attack the 1985 Modification and corresponding assessments. Multiple legal and equitable doctrines prohibit the Plaintiff Members’ belated challenge, including lack of standing, expiration of the statute of limitations, ratification, waiver, laches and equitable estoppel.

The Plaintiff Members contend throughout their brief that they are not barred from challenging the Association’s ability to levy special assessments for the dredging of Braddock Cove because they are only seeking prospective relief and are merely seeking the Court to interpret the Covenants. But for the Plaintiff Members to reach their argument that the Association cannot levy such special assessments, the Plaintiff Members must invalidate the 1985 Modification which they cannot legally or equitably do. The 1985 Modification is part of the Covenants and gives the Association the authority to levy special assessments for the dredging of Braddock Cove. The Plaintiff Members’ inability to

challenge the 1985 Modification to remove it from the Covenants eviscerates their argument that the language of the Covenants prohibits the levy of special assessments for the dredging of Braddock Cove.

In response to the Plaintiff Members' Respondents' Brief, the Association primarily relies upon the arguments previously set forth in its Appellant's Brief, but addresses certain contentions of the Plaintiff Members more particularly below.

**A. The Plaintiff Members' lawsuit brought in 2021 to challenge the validity of the 1985 Modification is barred by the applicable six (6) year or twenty (20) year statute of limitations.**

The Plaintiff Members argue they are not barred by the statute of limitations from challenging the effectiveness of the 1985 Modification because they are only seeking prospective relief and an interpretation of the Covenants. But throughout this case, the Plaintiff Members seek to challenge the conditions precedent to the effectiveness of the 1985 Modification and the manner in which the 1985 Modification was adopted – events which occurred thirty-six (36) years prior to the lawsuit filed by the Plaintiff Members. Every argument of the Plaintiff Members stems from whether the 1985 Modification was properly adopted and whether its language is a part of the Covenants. The Plaintiff Members seek to eliminate Braddock Cove as a designated Common Property under the Covenants, and to do so, they must, in effect, remove the 1985 Modification from the Covenants.

This is where the significance of the statute of limitations is relevant. The adoption of the 1985 Modification stood unchallenged for thirty-six (36) years. Statute of limitations bring clarity and allow parties to conduct business without continued fear of legal challenges. Statutes of limitations are not technicalities. They are essential to a “well-

ordered judicial system,” and “embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). The 1985 Modification had been a part of the Covenants for thirty-six (36) prior to this lawsuit and relied upon by the Association and its members. The Plaintiff Members’ lawsuit seeking to remove the 1985 Modification from the Covenants came at least sixteen (16) years too late.<sup>3</sup>

The Plaintiff Members cannot obtain their desired outcome in this lawsuit unless they void the 1985 Modification and remove it from the Covenants. The time to void the 1985 Modification has long expired.<sup>4</sup> The Trial Court erred in not applying the statute of limitations as a matter of law to bar the Plaintiff Members’ legal challenge to the validity of the 1985 Modification. Because the Plaintiff Members are barred from challenging the

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<sup>3</sup> The applicable statute of limitations for challenging the 1985 Modification was either six (6) years for an action upon a contract or obligation, S.C. CODE ANN. § 15-3-530(1), or twenty (20) years for an action upon a sealed instrument. S.C. CODE ANN. § 15-3-520(b).

<sup>4</sup> In Section I.F. of their Respondents’ Brief, the Plaintiff Members claim certain conditions precedent were not met prior to the adoption of the 1985 Modification, but the expiration of the statute of limitations bars any suit challenging the validity of the amendment. See Appellant’s Brief, Section I.C. Further, the Association demonstrated in its Appellant’s Brief that the Plaintiff Members had presented no evidence supporting their contention that the conditions precedent for the adoption of the 1985 Modification were not met thirty-six (36) years earlier. See Appellant’s Brief, Section I.F.

In footnote 21 of their Respondents’ Brief, the Plaintiff Members have also asserted that the definition of “Common Properties” could not be amended because it was not a covenant and that only covenants were subject to amendment. Whether a term or definition was properly amended is now barred by the expiration of the statute of limitations for the same reasons as whether condition precedents were or were not satisfied is now barred. Additionally, in the introductory paragraphs of the Covenants, all “covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens” are defined as “the covenants” which are “hereinafter set forth.” [R.p. \_\_\_\_; Covenants, p. 1.] This paragraph establishes that anything in the document thereafter following is defined as a part of “the covenants,” including Article I setting forth the Definitions which includes the term “Common Properties.” Therefore, the definition of “Common Properties” may be amended under Article VIII, Section 1 of the Covenants. [R.p. \_\_\_\_; Id. at p. 10.]

validity of the 1985 Modification, it, as well as its designation of Braddock Cove as a “Common Property,” remains a part of the Covenants.

**B. The Association’s members’ prior approval of the levy of special assessments for the dredging of Braddock Cove and the Plaintiffs Members’ failure to challenge such special assessments until 2021 ratifies the 1985 Modification and cures any alleged invalidity thereof.**

Assuming only for argument’s sake that there was any sort of procedural deficiency or other invalidity of the 1985 Modification, the fact that the Association has been levying special assessments for the dredging of Braddock Cove based upon the 1985 Modification since 2001 with the approval and participation from its members shows that the authority of the Association to act upon the language of the 1985 Modification has been ratified by its members as a matter of law.

In arguing that the doctrine of ratification is inapplicable, the Plaintiff Members contend the members’ votes approving the 1985 Modification and special assessments for the dredging of Braddock Cove were acts of the Association as principal authorizing its own acts. This argument by the Plaintiff Members misconstrues the parties’ relationships and how the doctrine of ratification applies.

The members each belong to the Association which acts on the members’ behalf. [R.p. \_\_\_; Covenants, Art. I, Section 1.(h).] The members are the principal and the Association is the agent in this relationship. Where the Association, as agent, put the 1985 Modification up for a vote and also put forth special assessments based upon the language of the 1985 Modification up for a vote and the members, as the principal, approved the adoption of the 1985 Modification and corresponding levy of special assessments, the principal members have ratified the authority of the Association to act with respect to the 1985 Modification. See Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d

801, 803 (Ct. App. 1989) (delineating the three essential elements of ratification as (1) acceptance by the principal of the benefits of the agent's acts, (2) full knowledge of the material facts, and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements).

The Plaintiff Members further argue that the members of the Association cannot ratify purportedly invalid acts not authorized by the Covenants. Ratification, however, is only applicable when there is no prior authority. 2A C.J.S. *Agency* § 52 (2013). (“Ratification proceeds upon the assumption that there has been no prior authority. However, once a ratification has occurred, it is equivalent to original, prior, or previous authority.”). If the adoption of the 1985 Modification was in any way improper, the members by their later acts have nevertheless ratified its terms. If the Covenants somehow originally prohibited the Association from designating Braddock Cove as Common Property,” the members by their later conduct have also ratified this act as well. The doctrine of ratification is applicable to the facts of this case and validates the adoption of the 1985 Modification and its designation of Braddock Cove as a “Common Property.” The Trial Court erred as a matter of law in not applying the doctrine of ratification to these facts.

**C. The doctrines of laches, waiver, and equitable estoppel bar the Plaintiff Members from challenging the validity of the 1985 Modification, of which they have long had actual or constructive notice of, by a lawsuit brought in 2021.**

As set forth in the Appellant’s Brief, the well-documented delay of the Plaintiff Members or anyone to challenge the terms of the 1985 Modification or the Association’s levy of special assessments for the dredging of Braddock Cove in 2001, 2013, and 2017 invokes the doctrines of laches, waiver, and equitable estoppel.

The Plaintiff Members assert the terms of the Covenants prevent the Association from raising the defenses of waiver and estoppel against the Plaintiff Members and rely upon Article VIII, Section 3 which provides “failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter.” [R.p. \_\_\_; Covenants, Art. VIII, Section 3 (emphasis added).] This clause is inapplicable because the Plaintiff Members do not seek to enforce any covenant. Rather, the Plaintiff Members are seeking the removal of Covenant terms – the 1985 Modification – and the restriction of Covenant language giving the Association the power to levy special assessments. The Plaintiff Members are attempting to avoid the terms of the Covenants, not enforce them.

The Plaintiff Members also argue the asserted equitable defenses of laches, waiver, and estoppel cannot apply to them because it must be shown that they intended to relinquish their right to question future assessments. Their failure, however, to timely object to past assessments for the same dredging has led the Association to believe its course of conduct was proper and correct, and the Association has entered into agreements to participate in the dredging of Braddock Cove. [R.pp. \_\_\_; see SIDA Agreement.]

The Plaintiff Members’ course of conduct gave no indication to the Association that it could not levy, upon required approval by the members, special assessments in the future for the dredging. Estoppel arises when the estopped party fails to act at the “first proper and opportune moment.” Provident Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994) (internal citation omitted). Waiver arises when a party takes acts that are inconsistent with the continued assertion of a right. Id. The

Plaintiff Members did not seasonably act at the first opportunity and instead participated in votes for dredging with no objection. The Plaintiff Members' past course of conduct bars their current legal challenge to the levy of special assessments for the dredging of Braddock Cove.<sup>5</sup>

Finally, the Plaintiff Members assert equitable defenses are not available when claims are based upon an unambiguous, written contract. In making this argument, the Plaintiff Members assume that the Covenants exist without the 1985 Modification having any effect, and they state that the Covenants cannot be amended by equitable estoppel. But the Covenants were amended in 1985 to designate Braddock Cove as a "Common Property" and no one, including the Plaintiff Members, ever challenged that amendment until thirty-six (36) years later. Assessments were levied based upon that amendment, also without objection by anyone. The doctrines of equitable doctrines of laches, waiver, and equitable estoppel operate to prohibit the Plaintiff Members from now challenging the 1985 Modification and actions taken and to be taken based upon the modification. The Trial Court erred in failing to apply these equitable doctrines due to the conduct of the Plaintiff Members in failing to timely object to or challenge the 1985 Modification or prior levy of special assessments.

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<sup>5</sup> The Plaintiff Members argue the equitable defenses of laches, waiver, and estoppel do not apply to their claims for prospective relief. The Association disagrees because the Plaintiff Members' past conduct is a waiver of their right to challenge future assessments for the same thing. Nevertheless, even if these particular equitable doctrines do not apply, the members have ratified the Association's authority to levy special assessments for the dredging of Braddock Cove as set forth in Section I.B. hereof, and the Court need not reach these additional equitable defenses.

**D. The plain and unambiguous provisions of the Covenants and the 1985 Modification (1) expand the definition of “Common Property” to include Braddock Cove, an adjoining waterway of significant benefit to the planned development, and (2) are reasonable, definite, and harmonious with public policy.**

The 1985 Modification is a part of the Covenants, and, as set forth above, the Plaintiff Members have no basis for removing it from the Covenants. As such, the Plaintiff Members next claim the 1985 Modification does not mean what it expressly says.

The 1985 Modification expanded the definition of “Common Properties” to now include two categories of common property. The new definition of “Common Properties” after the 1985 Modification reads:

1. those areas of land with any improvements thereon which are deeded to the Association and designated in said deed as “Common Properties;” and
2. all boat channels, waterways, channel markers and salt marsh open space areas of Braddock Cove, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina.

[R,pp. \_\_\_; \_\_\_; Covenants, Art. I, Section 1.(c); 1985 Modification.]

The Plaintiff Members disagree with this plain expansion of the definition of “Common Property” and contend the condition that property must be deeded to the Association remains in effect with respect to Braddock Cove. But it would have been meaningless to amend the Covenants at all to designate certain property as “Common Property” if such property nevertheless had to be deeded to the Association as set forth in the original definition of “Common Properties.” Thus, it is clear that the 1985 Modification added a second pathway for property to become “Common Property” under the Covenants – deeded property plus Braddock Cove. No Supplementary Declaration is required because Braddock Cove is not being added as Common Property via a deed.

The Plaintiff Members then argue that notwithstanding the Association's members expressly amending the Covenants to include "Braddock Cove" as "Common Property" and in spite of this amendment existing as a part of the Covenants for thirty-six (36) years, further ratified as a part of the Covenants through the members' acts of voting for the levy of special assessments for the dredging of Braddock Cove, other terms of the Covenants prohibited the members from agreeing to include Braddock Cove as a "Common Property."

The Plaintiff Members assert Braddock Cove cannot qualify as a "Common Property" as voted upon by the Association's members because its waterways cannot be subject to any fees or rules by the Association. While the Covenants give the Association the right to charge fees and adopt operating rules for use of Common Properties, nothing in the Covenants mandate that the Association must charge fees and adopt such rules. Braddock Cove can therefore remain a designated Common Property without the Association charging fees or adopting rules for its use.

The Plaintiff Members further argue that the waterways of Braddock Cove cannot be devoted to and intended for the use and enjoyment of the property owners within the community, but, as a public waterway, Braddock Cove is in fact usable by the property owners as members of the public. See State ex rel. Medlock v. S.C. Coastal Council, 289 S.C. 445, 448-50, 346 S.E.2d 716, 718-19 (1986) (citing S.C. CONST. art. XIV, § 4 ("All navigable waters shall forever remain public highways free to the citizens of the State . . . .").

The Plaintiff Members are adamant that under the Covenants, the members could not elect to designate Braddock Cove as a Common Property. The preamble to the Covenants, however, expressly states the intent to create a planned unit development

community consisting of, among other things, boat channels and other Common Properties for the benefit of the community and the intent to preserve the property values of the community by maintaining such boat channels. [R.p. \_\_\_; Covenants, p. 1.] The 1985 Modification designating Braddock Cove as a Common Property is entirely consistent with the intent behind the adoption of the Covenants and serves to fulfill the purpose of the Covenants.

Further, as set forth in the Appellant's Brief, the South Carolina Nonprofit Corporation Act supports the Association's authority to amend the definition of "Common Property." Under this Act, unless otherwise provided in a corporation's articles of incorporation, "every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power . . . (3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State for regulating and managing the affairs of the corporation; . . . (10) to conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this State; . . . (17) to carry on a business; [and] (18) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation. S.C. CODE ANN. § 33-31-302. This power granted to nonprofits has been described as "unbridled." See id., Official Comments.

The Plaintiff Members contend the broad powers granted under the Nonprofit Corporation Act do not apply because the Association is prohibited under its Certificate of Incorporation from amending the definition of "Common Property" under the Covenants. There is no limitation on such power contained in the Certificate of Incorporation. Rather,

the Certificate of Incorporation recognizes the purpose of the Association is to improve, maintain, and operate the common properties for the benefit of the health, welfare, and recreation of the Association's members. [R.pp. \_\_\_; Certificate of Incorporation.] The Certificate of Incorporation does not prohibit the Association's authority to designate common property. Accordingly, Section 33-31-302 of the Nonprofit Corporation Act does not limit the ability of the Association to define "Common Property" and in fact supports the Association's authority to designate common property to carry out its business and protect the property values of the members in the Sea Pines South Beach community.

The Association's members did not merely designate some arbitrary piece of property as Common Property in the 1985 Modification. Rather, the members voted to designate and protect the immediate adjacent waterway to the community as Common Property as contemplated in the preamble of the Covenants and which is central to the enjoyment of the community. The members reaffirmed and ratified the intent to protect Braddock Cove for the preservation of their property values throughout the years by approving special assessments for the dredging of its waterways.

The Plaintiff Members' belated public policy concerns – raised thirty-six (36) years later – are unfounded.<sup>6</sup> The covenant of the Association's members to pay special assessments for Braddock Cove do touch and concern their properties because the dredging of Braddock Cove enhances the value of the properties within the community. See Harbison Cmty. Ass'n, Inc. v. Mueller, 319 S.C. 99, 102, 459 S.E.2d 860, 862 (Ct. App.

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<sup>6</sup> The State of South of South Carolina, through its agencies, has also authorized certain entities, including The South Island Dredging Association, Inc., of which the Association is a member, to dredge Braddock Cove, so there are no public policy concerns with private entities dredging public property. [R.pp. \_\_\_; \_\_\_; SIDA Agreement; DHEC Permit.]

1995); see also Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 357 n.10, 628 S.E.2d 902, 911 n.10 (Ct. App. 2006) (“Covenants that require property owners to pay to a developer or homeowners' association assessments that have a beneficial effect on the value of the owners' properties touch and concern land and therefore ‘run with the land.’”). Nothing further is required under South Carolina law for the enforceability of the covenant to pay special assessments related to Braddock Cove. The Trial Court erred in failing to give effect to the language of the Covenants and the 1985 Modification.

**E. Dredging is a type of construction or reconstruction for which special assessments may be levied under the terms of the Covenants.**

Because the 1985 Modification, which the Plaintiff Members are legally and equitably barred from challenging, amends the term “Common Properties” to include “all boat channels, waterways, channel markers, and salt marsh open space areas of Braddock Cove,” the Association is authorized to levy special assessments for the cost of any construction or reconstruction relating to Braddock Cove. [R.p. \_\_\_; Covenants, Art. V, Section 4.] The Plaintiff Members urge this Court that dredging cannot be considered a form of construction or reconstruction and in doing so, they dismissively cast aside the Supreme Court’s recognized definition of the term “construct” and classification of dredging as construction by the federal and state governments and permitting authorities.

The Supreme Court has recognized that the definition of “construct” includes “mak[ing] ready for use.” Taylor v. Lindsey, 332 S.C. 1, 5 498 S.E.2d 862, 864 (1998) (citing *Black’s Law Dictionary* 312 6th ed. (1990)). Dredging makes Braddock Cove navigable and ready for use. [R.pp. \_\_\_; \_\_\_; South Beach Fall 2021 Newsletter, p. 7 (“To maintain adequate depths for boat navigability in Braddock Creek and its marinas they

must be dredged periodically to remove the pluff mud, which naturally moves in with our tides.”); Essential Fish Habitat Assessment for Braddock Cove, p. iv (“[D]redging is needed because shoaling of these areas and the existing shallow depths prevent navigation of recreational and commercial vessels in many areas during much of the tidal cycle.”).]

The federal North American Industry Classification System places dredging under “Heavy and Civil Engineering Construction.” 13 C.F.R. § 121.201 (2014). The Plaintiff Members offer no meaningful response as to why dredging should not be considered construction under this standard used by federal agencies.

The Plaintiff Members further discount the very permits issued by the Department of the Army and the South Carolina Department of Health and Environmental Control (“DHEC”) for the dredging of waterways, including Braddock Cove. It is without question that these permits consider dredging a construction activity. The permits contain terms and conditions applicable to construction projects, such as the reference to (1) drawings, plans, and specifications [R.pp. \_\_\_; \_\_\_; Permits, pp. 1-2, 43]; (2) performance bond requirements [R.p. \_\_\_; *Id.* at p. 7]; (3) mandatory pre-construction meetings and conferences [R.pp. \_\_\_; *Id.* at pp. 7-9]; (4) construction personnel [R.pp. \_\_\_; *Id.* at pp. 11, 44]; (5) requirements and limitations of the “construction area” and “construction site” [R.pp. \_\_\_; *Id.* at pp. 11, 44]; and (6) use of a dredge contractor. [R.p. \_\_\_; *Id.* at p. 50.]

Federal and state authorities consider dredging a type of construction. Accordingly, there was no factual basis for the Trial Court to find that dredging is not an activity of construction or reconstruction for which the Association is permitted to levy special assessments.

**II. The Trial Court erred in ruling that the plain and unambiguous language of the Association’s Covenants did not permit the Association to levy annual assessments.**

The Covenants contain a clause under which each owner covenanted and agreed to pay to the Association annual assessments. Under this clause, the Association is given express authority to levy annual assessments. [R.p. \_\_\_\_; Covenants, Art. V., Section 1.] In 2021, the amount of the annual assessment for each property owner was \$20.00 a year. [R.p. \_\_\_\_; South Beach Fall 2021 Newsletter, p. 2.]

The Covenants contain a separate clause delineating the use of the annual assessments and what items can be paid for with funds collected through annual assessments. [R.p. \_\_\_\_; Id. at Art. V, Section 2.]

In their lawsuit, the Plaintiff Members challenged the authority of the Association to levy annual assessments, not the use of the annual assessments. [R.pp. \_\_\_\_; Compl., ¶¶ 8, 35, 52.9.] The authority of the Association to levy assessments is expressly given without condition in the Covenants, and there is no condition set forth in Article V, Section 1 that the Association must currently own Common Property to levy annual assessments.<sup>7</sup> How the Association may use the collected annual assessments is a separate issue. The Trial Court erred in ruling that the Association has no authority under the Covenants to levy annual assessments.

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<sup>7</sup> In the Appellant’s Brief, the Association has also pointed out that Braddock Cove is a designated “Common Property” under the 1985 Modification and therefore, Common Property does exist for which the Association can use the levied annual assessments and it was error for the Trial Court to rule otherwise. The Association also argued in its Appellant’s Brief that the Trial Court’s order enjoining the Association from levying annual assessments should also be reversed because of the Plaintiff Members’ lack of standing, the expiration of the statute of limitations, and the doctrines of ratification, laches, waiver, and equitable estoppel.

**III. The Association appealed the Trial Court’s dismissal of its Counterclaim; further, any purported failure to appeal the dismissal of the Counterclaim does not serve as basis for affirming the Trial Court’s erroneous grant of a declaratory judgment and accompanying injunction in favor of the Plaintiff Members.**

The Plaintiff Members further argue the Trial Court’s ruling on the Association’s Counterclaim is an independent ground for affirming its grant of a declaratory judgment and accompanying injunction to the Plaintiff Members. This is a fundamentally erroneous proposition for two reasons.

First, the Association appealed the Trial Court’s denial and dismissal of its Counterclaim which sought a declaratory judgment that it is entitled to levy annual and special assessments under the Covenants, as well as money damages for due and unpaid assessments by the Plaintiff Members. [R.pp. \_\_\_; Answer and Counterclaim, ¶¶ 86-92.] In its Order and Judgment, as well as its Order denying the Association’s motion to alter, amend, or reconsider, the Trial Court stated its dismissal of the Counterclaim was based upon the “same reasons” for the grant of the declaratory judgment and accompanying injunction to the Plaintiff Members. [R.pp. \_\_\_; \_\_\_; Order and Judgment, pp. 2, 29; Order on Reconsideration, pp. 3, 38.]

In fact, in each order, the Trial Court only mentioned its ruling on the Counterclaim twice. Once in the introduction and once in the conclusion with the same sentence: “The Association’s counterclaims are denied and dismissed for the same reasons.” [R.pp. \_\_\_; \_\_\_; Order and Judgment, pp. 2, 29; Order on Reconsideration, pp. 3, 38.] The Trial Court provided no additional analysis of its ruling on the Counterclaim.

The Association has appealed all necessary rulings of the Trial Court with respect to its grant of the declaratory judgment and accompanying injunction to the Plaintiff

Members, which also serve as the same basis for the reasoning behind the Trial Court's dismissal of the Counterclaim. In its Appellant's Brief, the Association has requested this Court to reverse the grant of the declaratory judgment and accompanying injunction to the Plaintiff Members, to reinstate the Counterclaim, and to remand for further proceedings on the Counterclaim. Therefore, the Plaintiff Members are incorrect that the Trial Court's ruling as to the Counterclaim serves as an independent basis for affirming its ruling on the declaratory judgment and accompanying injunction to the Plaintiff Members because the Association has also appealed the dismissal and denial of its Counterclaim.

Second, even if this Court should somehow deem the Trial Court's dismissal and denial of the Counterclaim unappealed, that ruling by the Trial Court, which the Plaintiff Members acknowledge is separate and independent of the Trial Court's ruling on their declaratory judgment and accompanying injunction, would not prevent this Court from considering the appeal of the Trial Court's grant of a declaratory judgment and accompanying injunction to the Plaintiff Members that the Association cannot levy special and annual assessments because the Association has appealed all necessary rulings underpinning such ruling.

## CONCLUSION

For the reasons set forth herein and in the Appellant's Brief, the Association respectfully requests this Court to reverse the Trial Court's declaratory judgment and accompanying injunction prohibiting the Association from (1) levying special assessments for the dredging of Braddock Cove; and (2) levying any annual assessments. The Association requests this Court to further reinstate its Counterclaim and remand for further proceedings.

Respectfully submitted,

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September 29, 2025.

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**SC Court of Appeals**

**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant Sea Pines South Beach Owners' Association, Inc., do hereby certify that I have this date served the foregoing Initial Reply Brief, dated September 29, 2025, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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A copy of the sent email is enclosed with this Certificate of Service.

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**Date:** Monday, September 29, 2025 1:54:00 PM  
**Attachments:** [2025-000030 Stroup v. Sea Pines South Beach Owners" Ass"n \(Initial Reply Brief\) \(3893996\).pdf](#)

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Pursuant to the Supreme Court's Order dated April 24, 2024, please find served upon you the Initial Reply Brief on behalf of Appellant Sea Pines South Beach Owners' Association, Inc.

Thank you,  
Carmen Ganjehsani

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