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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2024-002150

Poly-Med, Inc., Technology Drive 51, LLC,
Technology Drive 52, LLC, and PMI Properties LLC . . . . . Respondents,

v.

Research Park, LLC . . . . . Appellant / Respondent.

APPELLANT'S / RESPONDENT'S FINAL BRIEF IN RESPONSE TO THE OPENING BRIEF OF RESPONDENTS / APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Appellate Decisions

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

I. Whether the trial court correctly held that the Covenants' maintenance-fee formula is plain and unambiguous, and that each property owner is obligated to pay the fee as calculated, subject only to RPLLC's discretion to reduce it.

II. Whether the trial court declined to impose a judicially created limitation capping the annual maintenance fee at actual expenditures for "maintenance and upkeep," where no such limitation appears in the text of the Covenants.

III. Whether the trial court erred in the invocation of the implied covenant of good faith and fair dealing to restrict RPLLC's use of maintenance-fee proceeds beyond the express terms of the Covenants, and if not, whether it was correct to limit damages to expenditures beyond "maintenance and upkeep" as narrowly defined.

IV. Whether the trial court erred in granting judgment in favor of RPLLC on Respondents' / Appellants' conversion action.

V. Whether the trial court abused its discretion in ordering Respondents / Appellants to remove "temporary" trailers from their property after finding a continuing breach of the Covenants, and whether this issue now moot because Respondents / Appellants have complied with the order.

VI. Whether the trial court correctly held that RPLLC has sole discretion under the Covenants to designate and convey "Common Area" property and that no duty to convey arises until all parcels are sold, such that Respondents' / Appellants' breach-of-contract claim and request for mandatory injunction were properly rejected (if they were even preserved for review).

VII. Whether all named Respondents / Appellants are proper parties with standing to enforce the Covenants where their pleadings and testimony contained inconsistent assertions regarding fee-simple ownership of Park property.

COUNTER-STATEMENT OF THE CASE

This case arises from cross-appeals following a non-jury trial concerning the construction and enforcement of restrictive covenants governing a commercial research park in Anderson County. Appellant / Respondent Research Park, LLC ("**RPLLC**") has previously provided this Court with a fairly comprehensive Statement of the Case. (See RPLLC Op. Br. at 2-5.) RPLLC hereby incorporates that prior Statement, and will endeavor to use this Counter-Statement to highlight matters that are specifically germane to Respondents' cross-appeal.

At trial in October 2023, Respondents pursued claims for breach of contract (the Covenants), conversion, unjust enrichment, and injunctive relief. (See R. 73.) A prior request for an accounting was resolved by agreement in June 2023. (R. 6.) RPLLC also asserted its own counterclaim for breach of the Covenants. (R. 120.)

The trial court disposed of these claims in multiple orders that yielded inconsistent rulings. On Respondents' contract claim, the court held that the Covenants unambiguously authorized RPLLC to assess maintenance fees according to the formula established by the Covenants, but nevertheless imposed liability under the implied covenant of good faith and fair dealing—an unpleaded theory raised sua sponte by the court after trial—for use of fee proceeds beyond "maintenance and upkeep," as that phrase was narrowly defined by the court. (R. 8 & 26.) The court rejected Respondents' arguments that RPLLC had breached by failing to form a property-owners' association, designate common areas, or convey common property to an association. (R. 26.) The court further denied Respondents' request for injunctive relief, (id.), and after reconsideration, entered judgment for RPLLC on conversion, (R. 46 & 50). Respondents' unjust enrichment claim was also rejected. (R.

539:1-20.) The only damages and attorneys' fees awarded in Respondents' favor stemmed from the unpleaded good-faith theory. (R. 8, 26 & 71.)

On RPLLC's counterclaim, the court found Respondents in breach of the Covenants for maintaining "temporary" office trailers well beyond their permitted duration, and ordered their removal. (R. 8.) That injunction is separately challenged in Respondents' cross-appeal; however, Respondents have since removed the trailers, which may render the issue moot.[1]

These inconsistent rulings were issued through successive Form 4s, formal orders, and a December 20, 2024 summary order. That sequence produced both RPLLC's appeal and Respondents' cross-appeal, and frames the jurisdictional and Rule 54(b) questions discussed below.

Finally, questions remain as to whether all named Respondents were proper parties with standing to enforce the Covenants. Discrepancies in ownership, including conflicting allegations regarding the property ownership of Poly-Med, Inc. and PMI Properties, LLC, bear on the scope of Respondents' claims and are preserved for review.

RPLLC noticed its appeal on December 19, 2024 (amended December 23, 2024), and Respondents filed their cross-appeal on December 27, 2024. (See R. 1453, 1506 & 1561.)

[1] RPLLC is presenting this issue separately in a motion to dismiss filed contemporaneously with this brief.

COUNTER-STATEMENT OF FACTS

As with the Counter-Statement of the Case, RPLLC incorporates the Statement of Facts presented in its opening brief, (RPLLC Op. Br. at 6-13), and will endeavor here to focus only on facts that are specifically germane to the issues presented in Respondents' cross-appeal.

There is no dispute that the Clemson University Advanced Materials Center (referred to hereinafter as "**the Research Park**" or "**the Park**") is governed by the Covenants, which were recorded in 1986. (Resps.' / Appellants' Op. Br. at 4.) The Covenants have never been amended. (Id.) The South Carolina Research Authority ("**SCRA**") was established as the initial administrator of the Covenants, (R. 729 at Art. I, § 1.3), and RPLLC is the successor to the Authority's administrative rights and privileges. (Resps.' / Appellants' Op. Br. at 9).

There is also no dispute that the Covenants authorize RPLLC to assess Park property owners an annual maintenance fee; that the Covenants specify the method by which the fee is calculated; that the Covenants give RPLLC the discretion—but not an obligation—to reduce the amount of the fee in any given year; and that, according to the Covenants, each property owner is obligated to pay the amount of fee assessed. (R. 743 at Art. VI, § 1; R. 751-52 at Art. IX.) For the duration of Respondents' presence in the Park, dating back to at least 2009, they were charged—and paid—$600 per acre annually. (R. 453:20-23.) Through their complaint, Respondents demanded an accounting from RPLLC. Though the Covenants do not require RPLLC to give an accounting to any property owner, in July 2023, the parties agreed to jointly select a forensic professional to prepare an accounting and provide a report. (R. 6.)

That, perhaps, is where the parties' agreements on the material facts end. Respondents contend that the Covenants require RPLLC to designate common areas and convey them to a property-owners' association. (Resps.' / Appellants' Op. Br. at 6.) The Covenants, however, state that the Authority may create or designate common areas in its sole discretion. (R. 730-33 at Art. II.) Respondents further argue that RPLLC may not charge maintenance fees in excess of actual expenditures for "maintenance and upkeep." (Resps.' / Appellants' Op. Br. at 24-27.) The Covenants contain no such limitation. Instead, they establish a specific calculation method, obligate property owners to pay the assessed fee, and confirm RPLLC's discretion to reduce the fee. (R. 743 at Art. VI, § 1; R. 752 at Art. IX.) The trial court later adopted a narrow definition of "maintenance and upkeep," limiting it to physical asset preservation, which is a central point of dispute in these appellate proceedings. (See, e.g., R. 8.)

Respondents have continued to assert that RPLLC used maintenance fees to pay its mortgage. (Resps.' / Appellants' Op. Br. at 13.) The trial evidence showed that RPLLC is a single-member LLC, that it managed the Park, that it earned a management fee for its services, that the management fee was being used to service RPLLC's mortgage, and that all the payables and receivables regarding maintenance fees collected from Park property owners were accounted for in the report of the parties' joint forensic examiner. (See R. 330:13-14, 369:15-19, 392:17-393:21 & 468:13-469:8; see also R. 797.) The record further reflects that RPLLC's predecessor also earned a management fee for administering the Park, and that such fee was paid out of annual maintenance funds. (R. 598:13-600:9.)

Respondents initially advanced other theories of breach, including an allegation that RPLLC attempted to sell Park property to unqualified buyers, but those claims were abandoned at trial and are not before the Court. (See R. 539:21-541:3; R. 8.)

Finally, questions remain regarding Respondents' standing. The Covenants provide that only "Owners"—defined as those holding fee simple title to Park property—may enforce their terms. (R. 730 at Art. I, § 1.6; R. 757 at Art. XII, § 2.) Respondents' pleadings and trial testimony contained inconsistent assertions about whether PMI Properties, LLC or Poly-Med, Inc. held title to Park property. The initial complaint alleged PMI Properties, LLC was an owner while Poly-Med, Inc. was merely a lessee. (See R. 78 at ¶¶ 27 & 28.) At trial, Respondents gave inconsistent testimony about those parties' property ownership interests. (Compare Resps.' / Appellants' Op. Br. at 3-4 with R. 335:25-336:4 & 415:16-417:16.) During trial, Respondents made a motion to amend their pleadings to conform to the evidence, which the court granted. Immediately after trial, Respondents filed an amended complaint reflecting that amendment. Even in the amended complaint, Respondents alleged that Poly-Med, Inc. was a lessee of parcels owned by PMI Properties, LLC and others. (See R. 149 at ¶¶ 31 & 32.) RPLLC admitted the property-ownership allegations of both complaints. In any event, inconsistencies remain as to whether all Respondents are proper parties with standing to enforce the Covenants.

These facts provide the context for the issues raised in Respondents' cross-appeal.

ARGUMENT

I. THE TRIAL COURT'S DECISION TO APPLY THE COVENANTS AS WRITTEN DOES NOT CONSTITUTE REVERSIBLE ERROR.

Respondents' appeal turns on whether the Covenants' maintenance-fee formula means what it says. The trial court held—repeatedly—that the formula is plain and unambiguous: that each owner must pay the per-acre fee as calculated according to the Covenants, subject only to the Authority's discretion to reduce it. (R. 8 & 26.)

Respondents now ask this Court to add limitations that the text does not contain: a cap tied to actual expenditures; extrinsic reliance on SCRA's statutory context; avoidance of hypothetical "absurd" results; and vague appeals to "common sense" or "good faith." (Resps.' / Appellants' Op. Br. at 25-27.) Yet Respondents have never identified any textual ambiguity that would allow such judicial revision.

Nor have Respondents shown that the formula produces unfair results in practice. According to the Covenants, the maintenance fee at issue is payable in advance, making the construction Respondents have proposed simply unworkable. (R. 735 at Art. IV, § 1.) And, despite express authority to charge far more, RPLLC has always charged Park property owners $600 per acre owned per year—the same rate as its predecessor. (R. 374:1-375:8.) Respondents—sophisticated commercial actors—accepted these obligations when they purchased Park property in 2011, and reaffirmed their acceptance of those obligations when they purchased more property in 2019.

Under settled South Carolina law, courts must enforce unambiguous contracts as written. Because the fee formula is unambiguous, the judgment should be affirmed.

A. The Relevant Portion of Respondents' Opening Brief

On Page 24 of their opening brief, Respondents assert that "[t]he circuit court erred in finding that 'Defendant had the unambiguous right to charge the prescribed amount in the Covenants, which was $300 per acre compounded 10% annually [since 1986], for maintenance and upkeep." (Resps.' / Appellants' Op. Br. at 24.) They concede—as they must—that this holding of the trial court rests on the plain language of the Covenants. (Resps.' / Appellants' Op. Br. at 26.) For ease of reference, the relevant passage of the Covenants is set out once again:

> Section 1. Maintenance Fee to the Authority. Prior to the conveyance of any portion of the Property to the Association as Common Area, each Owner shall pay the Authority a maintenance fee for the maintenance and upkeep of the Park. The fee shall be computed on the basis of $300.00 per acre per annum and it shall be payable in advance in equal monthly installments. The per acre fee of $300.00 shall be for the calendar year 1986. It shall increase by 10% compounded annually each year until the Authority conveys any portion of the Property to the Association as Common Area, after which conveyance this maintenance fee shall terminate and the Owner's sole liability and responsibility shall be to pay whatever Assessments are due the Association. In any year, the Authority may reduce this fee in its sole discretion.

(R. 743 at Art. VI, § 1.)

Respondents nonetheless contend that the trial court's application of the plain language of the Covenants constitutes error because: (i) a "wholistic" reading of the Covenants reveals that Research Park's authority to charge a maintenance fee pursuant to the calculation quoted above is actually, and additionally, constrained by the purposes for which the funds collected may be spent, (Resps.' / Appellants' Op. Br. at 27); and (ii) the application of the Covenants as written would lead to a consequence that is "patently absurd," (id. at 26).

B. The maintenance-fee-calculation provision of the Covenants is plain and unambiguous, and requires no resort to principles of contract construction.

Respondents argue that the maintenance-fee provision quoted above, when "read in context," is implicitly limited by the amount of money that is actually needed for "maintenance and upkeep." (Resps.' / Appellants' Op. Br. at 26.) Their analysis is misguided.

Courts first ask whether the language of the contract at issue is ambiguous, which is a question of law for the court. Portrait Homes-S.C., LLC v. Penn. Nat'l Mut. Cas. Ins. Co., 442 S.C. 515, 579, 900 S.E.2d 245, 280 (Ct. App. 2023) (citing Williams v. Gov't Employees' Ins. Co. (GEICO), 409 S.C. 586, 594, 762 S.E.2d 705, 710 (2014)). The standard of review is de novo. See, e.g., Callawassie Island Members Club, Inc. v. Dennis, 425 S.C. 193, 198, 821 S.E.2d 667, 669 (2018). An ambiguous contract is one that "is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business." Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). "If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." Portrait Homes, 442 S.C. at 578, 900 S.E.2d at 279 (citation omitted).

Here, the trial court expressly held on several occasions that the provision at issue was unambiguous. (See R. 8, 24, 38 & 51-52; see also R. 479:25-481:19, 484:7-488:9, 547:1-548:10.) Respondents have never explained how the text at issue is ambiguous.

Unless they can do so, then the maintenance-fee provision of the Covenants must be applied exactly as it is written, and the trial court's ruling must be affirmed.

C. The plain text of the maintenance-fee provision undermines the very construction that Respondents are presently advocating.

Respondents explicitly contend that RPLLC cannot charge a fee greater than the amount actually needed for "maintenance and upkeep." (Resps.' / Appellants Op. Br. at 26-27.) That reading is inconsistent with the calculation method that the Covenants expressly provide. The same provision states that the fee "shall be payable in advance." (R. 743 at Art. VI, § 1.) Yet a fee tied to actual expenditures can't be paid in advance—the amount of those expenditures can't be known until they're paid. The only workable reading of the Covenants is the one that the plain language of the text provides: the fee is calculated according to the stated formula, charged on that basis, payable on that basis, and paid in advance.

Respondents have urged this Court to reject contract constructions which are "patently absurd." (Resps.' / Appellants' Op. Br. at 26.) RPLLC would respectfully suggest that the very construction Respondents have proposed cannot withstand their own standard of review.

D. It would be improper for a court to fail to apply the plain, unambiguous provisions of a contract merely because one of the parties complains that the application of the provision, as written, would lead to "patently absurd" consequences.

Respondents ask this Court to create new limitations on the maintenance-fee formula to avoid what they describe as "patently absurd" results. (Id.) But "[u]nder South Carolina contract law, if a contract is neither illegal nor ambiguous, courts must enforce it 'according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the

parties' failure to guard their rights carefully." Richards v. Spicer, ___ S.C. ___, ___, 915 S.E.2d 486, 490 (2025) (quoting Lee v. Univ. of South Carolina, 407 S.C. 512, 518, 757 S.E.2d 394, 397 (2014) (additional citations and quotations omitted)). Respondents have never claimed that the maintenance-fee provision is illegal, and the trial court has repeatedly found it unambiguous. Accordingly, the maintenance-fee provision must be enforced as written.

The equities reinforce this conclusion. Poly-Med, Inc. is a big business; it has 185 employees and manufactures biomedical products. (R. 415:9-15.) The other Respondents are real estate holding companies. (R. 415:20-416:6.) Together, they purchased and developed more than twenty acres in the Park, in different years, and all fully subject to the Covenants. To say the least, they are sufficiently sophisticated to know, understand, and appreciate the obligations that they have voluntarily undertaken by locating within the Park and becoming subject to its Covenants. See, e.g., Lucey v. Meyer, 401 S.C. 122, 140, 736 S.E.2d 274, 284 (Ct. App. 2012) (identifying a party's sophistication among the factors pertinent to the analysis of "the fundamental fairness of the bargaining process" in contracts, specifically pertaining to restrictive covenants) (citations omitted).

It is also fair to question the timing associated with Respondents' concerns about the "patently absurd" results that may follow from the simple application of the plain, unambiguous terms of the Covenants. The Covenants were established in 1986 and have never been amended. Respondents' first property acquisition in the Park was in 2011. *Were they concerned then about the "patently absurd" results that may result from the maintenance-fee established by the Covenants?* If they were, those concerns were never raised. And even if Respondents were to have had concerns, obviously, those concerns

didn't carry much weight. After all, Respondents bought more property in the Park in 2019. (R. 280:1-18.)

It is also worth considering how likely Respondents' fears about "patently absurd" consequences are to happen. Certainly, under the plain language of the maintenance-fee-calculation method established by the Covenants, RPLLC is authorized in this year—2025—to charge Park property owners a fee in excess of $12,000 per acre owned. It has not; it has never charged any more than its predecessor; and in fact, in each year of RPLLC's ownership of the Park, it has exercised its discretion (as unambiguously established by the Covenants) to charge Park property owners $600 per acre owned—far less than the amount authorized. (R. 374:1-376:5.) In sum, this aspect of Respondents' argument is not grounded in practical reality. And it would not be proper for a court to modify a lawful, unambiguous contract between sophisticated parties because of one party's fear that "patently absurd" consequences may follow. See, e.g., Sloan v. Greenville County, 356 S.C. 531, 546-47, 590 S.E.2d 338, 346 (Ct. App. 2003) ("A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract nature.") (citations omitted).

E. Reliance on circumstances pertinent to SCRA are immaterial and not appropriate for construction of the Covenants.

Respondents have made a curious argument involving SCRA. It appears to be their contention that, because SCRA is a public corporation authorized by statute to issue revenue bonds, the maintenance-fee-calculation method established by the Covenants necessarily implies that the calculation method should be limited to the amount sufficient—

but not greater than necessary—to pay for "maintenance and upkeep" of the Park. (Resps.' / Appellants' Op. Br. at 26.)

To be clear, what Respondents propose is for the Court to create a new formula, one that caps maintenance fees at the lesser of actual expenditures or the prescribed per-acre method. And there is no support for that interpretation anywhere in the Covenants. Nor would it be a proper exercise of judicial authority. See, e.g., Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 178, 557 S.E.2d 708, 711 (Ct. App. 2001) (citing and quoting C.A.N. Enters., Inc. v. South Carolina Health & Human Servs. Fin. Comm'n, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988)).

Respondents' argument relies on speculation about legislative intent, that the General Assembly intended for SCRA to raise funds for the development and administration of the Park through the issuance of revenue bonds, and that SCRA had the specific intention to do so at the time of the declaration of the Covenants. (Resps.' / Appellants' Op. Br. at 26.) There is simply no evidence for any of these assertions. None is cited in Respondents' brief, and none was presented to the trial court. Speculation is not competent evidence of intent. See, e.g., Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 501-02 (Ct. App. 2007) ("Parties [to a contract] are governed by their outward expressions and the court is not at liberty to consider their secret intentions." (quotation and citations omitted)); see also Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (citation omitted).

Respondents' reliance on extrinsic context is misplaced for an additional reason: extrinsic evidence is relevant only if the contract is ambiguous. As the trial court repeatedly

held, the maintenance-fee provision is unambiguous, and Respondents have never demonstrated otherwise. (R. 8 & 26.)

To consider such information in the construction of the Covenants would also be an impermissible use of extrinsic evidence. "In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument . . . ." Portrait Homes, 442 S.C. at 578, 900 S.E.2d at 279 (citations omitted). "Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract. However, if a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties." Id. (citations and internal alterations omitted). "If a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms." Id. (citation and quotation omitted).

The maintenance-fee-calculation method established by the Covenants is plain and unambiguous. Consequently, there is no opportunity for Respondents to invoke extrinsic evidence—especially evidence that is indisputably speculative—to alter the Covenants.

F. The doctrine of good faith cannot be used to rewrite the Covenants' unambiguous maintenance-fee formula.

On Page 27 of their opening brief, Respondents have expressly invited this Court to reverse the trial court and hold that "common sense and good faith" require the maintenance-fee calculation to be limited by the amount that is sufficient, but not greater than necessary, to pay for actual expenditures of "maintenance and upkeep." The undersigned has engaged in a reasonably thorough search of the appellate decisions of this State and has not identified any case which holds that the terms of a contract—whether

expressed or implied—may be modified through genuflection to vague notions of "good faith." Certainly, in limited circumstances (which are not involved in this dispute), a court may utilize the power of equity in furtherance of reforming a contract. See, e.g., Belin v. Stikeleather, 232 S.C. 116, 122, 101 S.E.2d 185, 187-88 (1957) (citations omitted). But even that relief requires proof by clear and convincing evidence. A mere tip of the hat to "good faith" is thoroughly insufficient to authorize a court to modify contractual terms.

To the extent that Respondents are attempting to invoke the implied covenant of good faith and fair dealing, that argument is equally unavailing. The Supreme Court has explicitly held that such covenant "may not be relied on to create new contractual duties not expressly stated or fairly implied in the contract itself." Road, LLC v. Beaufort County, 443 S.C. 11, 24, 902 S.E.2d 336, 372 (2024). Yet that is exactly what Respondents are inviting this Court to do: reverse the court below and, in reliance on "good faith," create a new contractual obligation that modifies the clear, unambiguous maintenance-fee-calculation method established by the Covenants to add a new limitation based on actual expenditures. Because the maintenance-fee provision is unambiguous, the doctrine of good faith cannot be used to alter it, and the trial court's judgment should be affirmed.[2]

G. Section Concluding Statement

The trial court faithfully applied the Covenants as written. Respondents urge this Court to do what South Carolina law does not allow: to treat an unambiguous provision as ambiguous; to import speculative limitations found nowhere in the text of the parties'

[2] Moreover, the doctrine of good faith and fair dealing is not available to a party who is in breach of the very contract it has sued upon. See, e.g., Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (1999) (citing Parks v. Lyons, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951)); see also John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc., 443 S.C. 424, 446, 904 S.E.2d 889, 900-01 (Ct. App. 2024).

contract; to rely on speculative, extrinsic context that has no contractual force; and to stretch the doctrine of good faith beyond its settled boundaries. Each of these arguments invites judicial rewriting of the parties' agreement.

South Carolina law is clear. when a covenant is plain and unambiguous, courts enforce it as written—regardless of whether one party later finds the bargain unwise or imagines that "patently absurd" results might someday follow. The record confirms that the maintenance-fee formula is unambiguous, that Respondents are sophisticated parties who knowingly accepted its terms, and that in practice no "absurd" consequences have ever occurred.

Because the Covenants' maintenance-fee provision is valid, plain, and unambiguous, the trial court's judgment should be affirmed.

II. THE TRIAL COURT PROPERLY DENIED RESPONDENTS RELIEF UNDER THEIR THEORY OF CONVERSION, AND THAT DECISION SHOULD BE AFFIRMED.

This portion of the cross-appeal concerns Respondents' challenge to the trial court's disposition of the conversion action. Their theory rests on two propositions: first, that the trial court lacked jurisdiction to correct its earlier rulings when it later entered judgment for RPLLC on conversion; and second, that RPLLC's collection of maintenance fees pursuant to the Covenants somehow constitutes conversion. (Resps.' / Appellants' Op. Br. at 27-31.) Both fail.

As to jurisdiction, Rule 54(b), SCRCP, makes clear that interlocutory orders remain subject to revision until final judgment, and the trial court expressly retained conversion under advisement. No authority supports Respondents' suggestion that jurisdiction lapsed in the interval before final judgment.

As to substance, South Carolina law forecloses conversion where, as here, a party lawfully collects amounts it is contractually entitled to receive. The Covenants unambiguously prescribe the fee-calculation method and obligate owners to pay fees as calculated. Conflating the lawful collection of fees with later disputes about how those funds are spent does not state a cognizable claim for conversion.

For these reasons, the trial court correctly granted judgment for RPLLC on the conversion cause of action, and its decision should be affirmed.

A. The Relevant Portion of Respondents' Opening Brief

Respondents' arguments in support of reversing the trial court's judgment in favor of RPLLC on conversion are set out at Pages 27 through 32. There appears to be three arguments: (i) that the trial court's error arises from the decision that RPLLC "had the unambiguous right to charge the prescribed amounts in the Covenants;" (ii) that the trial court lacked jurisdiction to revise a prior decision; and (iii) that the facts and circumstances of the conversion claim as presented constitute a valid cause of action, contrary to the trial court's ruling. (Resps.' / Appellants' Op. Br. at 27.) The first argument—as to the alleged error in the trial court's decision regarding the maintenance-fee-calculation—has been addressed at length above. Those counterarguments apply with equal force here and are incorporated by reference. Instead, the balance of this section will focus on the refutation of Respondents' second and third arguments.

B. Standard of Review

An action for conversion is an action at law. See, e.g., Blackwell v. Blackwell, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct. App. 1986). "[W]hen reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to

correction of errors of law, and the appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence." Mazloom v. Mazloom, 382 S.C. 307, 316, 675 S.E.2d 746, 751 (Ct. App. 2009) (citation omitted).

C. There was no procedural impropriety in the trial court's judgment in favor of RPLLC as to the conversion cause of action.

From Pages 27 to 31 of their opening brief, Respondents argue that the trial court's decisions which led to a judgment in RPLLC's favor on the conversion cause of action are plagued by procedural improprieties that render the disposition of conversion subject to reversal, culminating with the following conclusion:

> Thus, to the extent the court's September 26, 2024, order is inconsistent with the court's ruling in Plaintiffs' favor on Plaintiffs' Maintenance Fee Breach Claim, the court's September 26, 2024, order is an improper alteration of the court's ruling in Plaintiffs' favor on Plaintiffs' Maintenance Fee Breach Claim without jurisdiction.

(Resps.' / Appellants' Op. Br. at 31.)

Respondents' argument seems to be as follows: (i) in a decision issued on February 29, 2024, the trial court granted judgment in favor of Respondents on the conversion cause of action; (ii) RPLLC filed a motion for reconsideration that challenged the trial court's judgment on conversion and the damages award in Respondents' favor; (iii) by order entered July 29, 2024, the trial court affirmed its damages award; and, consequently, (iv) the trial court's entry of judgment in RPLLC's favor on the conversion claim, which occurred by order dated August 27, 2024, constitutes an impermissible alteration of the court's judgment on damages and was lacking in jurisdiction. (Id. at 27-31.) As explained below, Respondents have omitted some critical procedural details in their argument, and their position is without merit.

For this discussion, the following timeline may be useful:

1. This case was tried without a jury over October 10 & 11, 2023. (See R. 269.)

2. By Form 4 entered November 6, 2023, the trial court presented its judgment on the matters tried and directed counsel for Respondents to prepare a formal order for the court's review and execution.

    a. Despite requesting a formal order, the Form 4 indicated that the order "ends the case." (R. 8.)

    b. For purposes of appellate review, a Form 4 order is not sufficiently final if it specifies that a formal order will follow. See, e.g., Metts v. Mims, 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2009).

3. Confused by the conflicting indications of the trial court's Form 4, the undersigned filed a consolidated motion pursuant to Rules 52, 54, and 59, SCRCP, on November 16, 2023. (R. 1033.) Among various other grounds, RPLLC sought reconsideration of the decisions regarding the application of good faith and fair dealing, the interpretation of "maintenance and upkeep," and the amount and propriety of damages awarded. (Id.)

4. The trial court entered its more formal order of judgment on February 29, 2024. (R. 26.)

5. On March 8, 2024, RPLLC filed a second motion pursuant to Rules 52 and 59, SCRCP, specifically incorporating the first motion for reconsideration and identifying additional bases for reconsideration presented by the court's February 29 decision, including the matter of conversion. (R. 1137.)

6. By Form 4 entered on July 29, 2024, the trial court denied many of RPLLC's grounds for reconsideration, but specifically held "[t]he issue[] of conversion . . . under advisement." (R. 43.)

7. Because some—but not all—matters presented for reconsideration had been decided adversely to RPLLC, on August 25, 2024, RPLLC attempted to take its first appeal of the issues that had ostensibly been finally decided to this Court. (R. 1348.)

8. However, by order entered October 14, 2024, this Court held that RPLLC's initial appeal was premature specifically because the trial court was holding other matters under advisement, citing Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986). (R. 54.)

9. In the meantime, by Form 4 entered on August 27, 2024, the trial court granted judgment in RPLLC's favor as to conversion. In this decision, the court instructed RPLLC to prepare a more formal order. (R. 46.)

10. The trial court's more formal order regarding conversion was entered on September 26, 2024. (R. 50.)

11. On October 7, 2024, Respondents filed their own motion for reconsideration as to the conversion judgment granted in RPLLC's favor. (R. 1441.)

12. By Form 4 entered on December 17, 2024, the trial court denied Respondents' motion for reconsideration. (R. 68.)

13. On December 20, 2024, the trial court entered a summary order reflecting all the court's dispositions of the various causes of action, and confirming that judgment was entered in favor of Respondents only as to its action for breach of contract, and

only on the theory of breach of the implied duties of good faith and fair dealing. (R. 71.)

14. RPLLC filed its second notice of appeal on December 19, 2024, and filed an amended notice of appeal (to include the December 20 summary decision) on December 23, 2024. (R. 1506.)

It appears to be Respondents' argument that, somehow, the trial court lost jurisdiction between July 29, 2024 and August 27, 2024 to resolve RPLLC's then-outstanding motion for reconsideration on the issues that included conversion. This argument lacks merit, and for a variety of reasons.

First of all, in his order of July 29, 2024, the trial judge expressly held the issue of conversion under advisement. (R. 43.) "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2006) (citations omitted).

Second, Rule 54(b), SCRCP, squarely resolves Respondents' argument:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties.

Rule 54(b), SCRCP (emphasis added).

The dispute implicated in this appeal involved "more than one claim for relief," the July 29, 2024 order of the trial court represented "a final judgment as to one or more but

fewer than all of the claims," and such order did not assert a "an express determination that there is no just reason for delay" or "an express direction for the entry of judgment." (See R. 43.) Therefore, "the order . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties." Rule 54(b), SCRCP. An order "adjudicating all the claims and the rights and liabilities of the parties" was not issued until December 20, 2024. (R. 71.)

Respondents have cited Ness v. Eckerd Corp., 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002), and Heins v. Heins, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001), for the proposition that a trial court may not sua sponte amend its judgments more than ten days after the date on which the judgment was issued. These cases are wholly inapposite to the matter at hand. Both Ness and Heins involved decisions that the trial court vacated on its own initiative—not in response to any pending Rule 59 motion on which the vacatur was premised—more than 10 days after the vacated order had been issued. Rule 54 was not implicated in Ness or Heins.

The procedural circumstances of the instant case are quite distinct. Here, RPLLC filed plenary motions under Rules 52, 54 and 59 arising from the trial court's decision of February 29, 2024. The trial court's order of July 29, 2024 resolved some, but fewer than all, of the issues presented in RPLLC's motions. (R. 43.) In the July 29 order, the court expressly reserved its jurisdiction to decide the issues regarding conversion. (Id.) Importantly, the trial court's decisions regarding conversion, as reflected in the Form 4 of August 2024 and the more formal order of September 2024, do not modify the court's prior

decisions regarding a breach of the duty of good faith and fair dealing; but even if they did, under Rule 54(b), the court had the express authority to do so.[3] (R. 46 & 50.)

Third, Respondents' contention that the September 26 order resolving conversion was somehow in irreconcilable tension with the trial court's prior decisions of February 29 and July 29 is groundless. Respondents have consistently—and errantly—conflated two discrete issues: (1) how is the annual maintenance fee contemplated by the Covenants calculated; and (2) how may annual maintenance fee funds collected be spent. This continuing confusion, it appears, is what presently gives rise to Respondents' claim that the trial court's disposition of conversion in RPLLC's favor cannot be squared with the trial court's disposition of the maintenance-fee-expenditure issue in Respondents' favor (through the implied duty of good faith and fair dealing).

The trial court was not confused, though. The trial court properly recognized that the issue of maintenance-fee calculation and collection was separate from the issue of maintenance-fee expenditures. (R. 50.) Furthermore, the trial court correctly held that conversion arises from the wrongful taking of control of another's property, and does not address the circumstance where ownership of property has been lawfully transferred pursuant to a legal obligation, but following such transfer, the transferor objects to the purposes for which the property was used. (Id.) All of this is reflected in the trial court's decisions, which hold that RPLLC had the "unambiguous right" under the Covenants to charge and collect the maintenance fee according to the calculation method established by

[3] Candidly, the undersigned is very confused about Respondents' argument. *Do Respondents contend that the later-filed order on conversion resulted in a reversal of the trial court's decision in their favor on the breach of the duty of good faith and fair dealing?* If that is the case, then Respondents are in a dramatically different position in these appellate proceedings.

the Covenants, but that it was a breach of the duty of good faith and fair dealing for RPLLC to have used the funds to pay for anything other than ordinary physical asset preservation. (R. 33-37.)

There is also no indication that the trial court found its orders inconsistent between its judgment in Respondents' favor and its judgment in RPLLC's favor. The trial court found RPLLC liable for breach of the implied covenant of good faith and fair dealing; RPLLC sought reconsideration of both that decision and the decision to award Respondents' damages based on that theory. But those decisions were affirmed by Form 4 issued on July 29, 2024. (R. 43.) Nearly a full month later, the court granted RPLLC's motion for reconsideration on conversion and entered judgment in its favor. (R. 46.) The court did not take any opportunity to correct any perceived inconsistency between the judgments on those causes of action, or modify damages, ostensibly because it did not perceive any inconsistency at all between those decisions.

As a final rebuttal to Respondents' suggestion that, somehow, following the July 29 decision, the trial court lost jurisdiction to resolve the conversion action, the undersigned would humbly remind both the Court and counsel that RPLLC tried to take an initial appeal from the July 29 decision, perceiving that some issues decided therein may have become subject to a final decision from which appeal could be taken, despite the fact that other issues in the case remained for consideration. This Court dismissed this initial attempt to take an appeal, instructing all parties to wait until there was a final decision as to all issues. (R. 54.)

Respondents are arguing that the trial court lost jurisdiction after July 29 to decide any issues about conversion that might be in conflict with prior decisions about the implied

duty of good faith and fair dealing (despite the absence of conflicts); at the same time, this Court declined jurisdiction because there was no final order from which an appeal could be taken. Therefore, it seems to be Respondents' argument that, between July 29 and December 19 (when RPLLC's second notice of appeal was filed), no court had jurisdiction over the matters decided in the court's July 29 decision. Which is in clear derogation of the express provisions of Rule 54(b), SCRCP.

For all of these reasons, there is simply no merit to Respondents' assertion that the trial court's disposition of the conversion action affected the prior orders awarding judgment and damages against RPLLC. One had nothing to do with the other. And even if the August 27 and September 26 orders regarding conversion did affect the judgment previously entered, under Rule 54(b), SCRCP, the court was authorized to make such revisions, and the terms of the later-entered orders would take precedence over those that were entered earlier.

D. The trial court's judgment in favor of RPLLC on conversion must be affirmed.

On this matter, little needs to be said beyond what is reflected in the trial court's decision of September 26, 2024, granting judgment in favor of RPLLC on conversion, which is quoted at length:

> As to Plaintiffs' cause of action for conversion, one of the issues raised in Defendant's post-trial motions is that Plaintiffs could not have prevailed on their action for conversion as a matter of law, and that therefore, to the extent the Court's written decision of February 23, 2024 held otherwise, the decision should be reversed and corrected. Upon due consideration of the facts and pertinent legal authorities, Defendant's motion is granted.
>
> In the initial written decision regarding this dispute, this Court held that, under the pertinent covenants, "Defendant had the unambiguous right to charge the prescribed amounts in the covenants, which was $300 per acre compounded 10% annually" going back to 1986. The undisputed evidence at trial was that, for the duration of Defendant's ownership of the Clemson

Research Park, Defendant had charged property owners $600 per year per acre owned, and that this was substantially less than the amount authorized by the covenants, which is a mathematical fact. Accordingly, the Court held that the amount Defendant had charged property owners under the covenants was consistent with the covenants, while also holding that Defendant's use of funds collected from property owners for anything other than "maintenance and upkeep," as that term is defined in this Court's prior decision, was inconsistent with the covenants.

Plaintiffs' interpretation of the covenants appears to conflate two issues: collection of maintenance fees and their expenditure. It appears to be Plaintiffs' contention that, under the covenants, Defendant may only collect maintenance fees from property owners necessary to cover "maintenance and upkeep;" that the collection of any amount of maintenance fee in excess of what is necessary for "maintenance and upkeep" constitutes conversion.

To reach this construction, however, the Court would have to disregard the plain language of the covenants, which establish the method by which annual maintenance fees are calculated, and which further establish that each property owner's obligation is to pay the maintenance fees as calculated. And, while the covenants do give Defendant the authority to reduce the amount of the maintenance fee in any given year according to its discretion, the covenants do not establish an obligation to do so. Therefore, if the Court were to adopt Plaintiffs' construction of the covenants, the Court would also be required to create a new term in the covenants—one providing an alternative method of calculating the maintenance fee—even though the covenants already establish the method by which the fee is calculated. Consistent with well-established precedent, the Court declines the invitation to create a new contractual obligation.

The question of whether Defendant's collection of maintenance fees remains distinct from the question of how the maintenance fees are spent. And the immediate issue before the Court—with respect to Plaintiffs' conversion action—relates solely to collection.

Conversion is the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. See, e.g., SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). An action for conversion "cannot arise from the exercise of a legal right" of ownership over the property allegedly converted. Kirby v. Horne Motor Co., 295 S.C. 7, 11, 366 S.E.2d 259, 261-62 (Ct. App. 1988) (citation omitted).

In the instant case, and consistent with the foregoing discussion, Defendant's collection of the maintenance fee does not constitute conversion. As long as Defendant charges Clemson Research Park property

> owners an amount no greater than $300 per acre compounded by 10% annually, going back to 1986, Defendant's imposition of such charges is permissible under the covenants. And, since the covenants establish that each property owner's obligation is to pay the maintenance fee, Defendant has the right to collect such fee from each property owner. Accordingly, when a property owner tenders the maintenance fee to Defendant, it is doing so expressly pursuant to its contractual obligations. Plaintiffs' payment of their contractual obligations does not constitute a conversion, see, e.g., Owens v. Zippy Mart of S.C. Inc., 268 S.C. 383, 234 S.E.2d 217 (1977), and that is separate and apart from the real matter in dispute, which is how the funds collected were spent.
>
> For these reasons, Defendant's motion for reconsideration as to the issue of conversion is granted. As a matter of law, Plaintiffs have failed to state a legally cognizable cause of action for conversion, and judgment on Plaintiffs' conversion action is hereby directed in Defendant's favor.

(R. 50.)

RPLLC knows not what else to say. As a matter of law, a party cannot convert property that it was in lawful ownership and possession of. RPLLC charged maintenance fees to Respondents in an amount authorized by the Covenants, and collected maintenance fees from Respondents in an amount authorized by the Covenants; and, according to the Covenants, Respondents were obligated to pay the amount of fees they were assessed. To the extent that Respondents wish to question the propriety of RPLLC's collection of maintenance fees, their attention is misplaced, and the circumstances do not constitute a cause of action for conversion.

E. Section Concluding Statement

Respondents' conversion arguments fail on both procedure and substance. Procedurally, the circuit court retained jurisdiction under Rule 54(b), SCRCP, expressly held the conversion issue under advisement on July 29, 2024, and resolved it before any final judgment entered on December 20, 2024. The authorities Respondents cite address sua sponte alterations outside any pending post-trial motion and are inapposite.

Substantively, conversion does not lie because lawful collection pursuant to contract is not a wrongful exercise of dominion. The Covenants unambiguously fix the fee-calculation method and obligate owners to pay that fee; the Authority's discretion to reduce does not create a duty to do so. Respondents' attempt to recast a dispute over use of funds into a claim about collection asks the Court to supply new terms to an unambiguous agreement—something South Carolina law does not permit.

Because (1) the trial court acted within its continuing jurisdiction in resolving conversion before final judgment, and (2) lawful fee collection cannot constitute conversion as a matter of law, the order granting judgment to RPLLC on the conversion claim should be affirmed.

III. THE TRIAL COURT'S DECISIONS REGARDING RESPONDENTS' "TEMPORARY" TRAILERS SHOULD BE AFFIRMED.

Respondents' trailer argument may be reduced to a narrow question: whether the trial court abused its discretion in granting injunctive relief after finding Respondents liable for a continuing breach of the Covenants. That finding of breach is unchallenged and is now the law of the case. As for the relief awarded, the injunction is supported by the record, consistent with South Carolina precedent, and—if not moot—reflects a careful balancing of the equities.

A. The Relevant Portion of Respondents' Opening Brief

On Pages 34-38 of their Opening Brief, Respondents contend that the trial court erred in rendering judgment in RPLLC's favor as to RPLLC's counterclaim against Respondents for their ongoing violation of the Covenants with respect to the continuing presence of so-called "temporary" office trailers on their premises. It appears that Respondents' argument on this point can be distilled down to two discrete issues: (1) that

the trial court committed reversible error in failing to engage in a balancing-of-equities analysis; and (2) had the court engaged in such an analysis, it would have found the equities to have favored Respondents and would have refrained from imposing injunctive relief. (See Resps.' / Appellants' Op. Br. at 36.) Each of these complaints may be dispatched with relative ease.

B. Standard of Review

Respondents have asserted that the standard of review applicable to this aspect of their appeal is de novo. (Resps.' / Appellants' Op. Br. at 23.) But that's not exactly right. A more accurate statement would be that the standard is hybrid: that, as to factual determinations made in furtherance of the issuance of an injunction, the standard of review is de novo; but, as to the trial court's decision to exercise its discretion to impose injunctive relief based on an evaluation of the facts presented, the court's decision is measured by the abuse of discretion standard. Compare Richland County v. South Carolina Dep't of Revenue, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (Kittredge, J.) ("An order granting or denying an injunction is reviewed for abuse of discretion.) (citation omitted), with Cedar Cove Homeowners Ass'n v. DiPietro, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct. App. 2006) (Kittredge, J.) ("Because the Association's action is one to enforce restrictive covenants by injunction, it is in equity, and we may find facts in accordance with our own view of the evidence.") (citation omitted). Consistent with the abuse of discretion standard, the trial court's decision granting injunctive relief should not be disturbed on appeal unless that decision is based on either: (1) an error of law; or (2) factual findings made without adequate evidence. See Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627

S.E.2d 687, 689 (2006); see also Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997).

C. Clarification of Respondents' Position

In addressing Respondents' position on appeal with respect to the trailer issue, it is important to consider not only what Respondents are appealing, but also what they're not. Obviously, Respondents are appealing from the trial court's decision to grant injunctive relief. But nowhere and at no time have Respondents appealed from the trial court's decision that led to injunctive relief—the determination that Respondents were in breach of the Covenants. In other words, because the trial court found Respondents to be in breach, it awarded injunctive relief; and for their part, Respondents have only ever contested the court's remedy for their breach—never the conclusion that Respondents were in breach.

The record bears this out. Respondents' first motion to reconsider was filed on November 16, 2023; there is no suggestion of reconsideration of the trial court's determination that Respondents were in breach of the Covenants. (R. 1096.) Respondents seem to have filed another motion for reconsideration on November 22, 2023, but this challenges the award of an injunction—not the finding of breach. (R. 1115.) After the court issued a more formal order on its initial disposition of the issues presented at trial, Respondents did not file a motion to reconsider at all, much less a motion asking for reconsideration of the finding of their being in breach. On September 26, 2024, the trial court entered a formal order that resulted in a full adjudication of the issues regarding the "temporary" trailers. (R. 50.) Respondents filed a motion for reconsideration on October 7, 2024, as to issues decided in the September 26 order, but made no mention of

reconsideration for any issues regarding the trailers. (R. 1441.) In these appellate proceedings, Respondents have asserted that one of the issues on appeal is whether "the circuit court err[ed] in ruling against [Respondents] on [RPLLC's] Trailer Removal Claim." (Resps.' / Appellants' Op. Br. at 2.) Yet, in the very section of argument that addresses this issue, it is clear that Respondents' objection is directed at the propriety of an award of injunctive relief—explicitly based on whether the court failed to balance the equities and which party is favored by the equities—not on the underlying conclusion that Respondents were in breach.

The implications of Respondents' failure to preserve a challenge to the finding that they are in breach—or perhaps to even challenge that conclusion, at all—are significant. It has become the law of the case that, at the time of trial, Respondents were in breach of the Covenants. The fact of Respondents being in breach precludes, as a matter of law, a judgment in their favor against RPLLC based on a breach of the implied duty of good faith and fair dealing. And, for purposes of these appellate proceedings, the narrow question presented on this issue is simply whether the trial court properly exercised its discretion to award RPLLC injunctive relief in light of Respondents' breach.

D. This aspect of Respondents' appeal is moot.

During the course of these appellate proceedings, the undersigned was advised by Mr. Zubi—one of Respondents' legal counsel—that the trailers whose removal was ordered by the trial court have been removed from Respondents' premises. It appears to be the case that Respondents have fully complied with the trial court's injunction. If that information is correct, the issue of the propriety of the court's award of injunctive relief has become moot and need not be decided by this Court. See Curtis v. State, 345 S.C. 557, 568, 549

S.E.2d 591, 597 (2001) ("[A]n appellate court limits its review to the issues necessary to a proper disposition of the appeal, and will not consider immaterial or moot questions, [this rule] applies when reviewing decrees and orders relating to injunctions.") Contemporaneously with the submission of this appellate brief, RPLLC is filing a motion to dismiss on jurisdictional grounds to present this issue squarely to the Court for disposition.

E. There is no merit to the assertion that the trial court failed to balance the equities.

This is the primary argument raised by Respondents in furtherance of this portion of their appeal, (Resps.' / Appellants' Op. Br. at 36), and it is fair to question how they could possibly know what the trial judge did or did not consider. Perhaps their argument rests on the proposition that, because neither the Form 4 of November 6, 2023 nor the more formal order of February 29, 2024 provides a detailed statement of facts and circumstances to support the award of injunctive relief, that necessarily means the trial court failed to consider the equities. That, of course, is inconsistent with the appellate decisions of this State which recognize that, when it comes to issuing injunctions, trial courts enjoy a presumption that their orders implicitly consider a balancing of equities. See, e.g., Wynock v. Carroll, 289 S.C. 338, 340, 345 S.E.2d 503, 504 (Ct. App. 1986).

It is also fair to question why the more formal order of February 29 omits any specific findings of facts or circumstances through which the trial court may have expressed its view of the equities. It's no great mystery. The Form 4 of November 6 directed counsel for Respondents to prepare a more formal order for the court's signature; they did so, and their work became the formal order that was issued on February 29. (R. 8 & 26.) This results in a strange argument that Respondents are making: that the trial court's

decision imposing injunctive relief ought to be reversed since the order—which Respondents drafted at the court's request—does not reflect the court's contemplation of the relative equities. In other words, Respondents caused the very problem that they now complain of, and oddly, are blaming the court for their own work. The undersigned is not aware of any decision which holds that a party who drafts an order at the court's direction, which is signed in essentially the same form as it was submitted, may successfully later set the order aside because of its omissions. It is one thing for a litigant to sandbag his opposition through the artful drafting of a proposed order that becomes the decision of the court; it is quite another for the litigant to utilize the same strategy to sandbag the court itself.

Furthermore, if Respondents are so vexed on appeal that the trial court's decision awarding injunctive relief failed to expressly mention a balancing of the equities, it is curious why that omission was never raised previously. Certainly, after the issuance of the February 29 decision (which Respondents drafted), they could have filed a motion for reconsideration with the trial court to solicit some clarity on the issue of the relative equities. They didn't. Perhaps in their reply Respondents may explain why they deemed a timely motion under Rules 52 or 59, SCRCP, unnecessary to raise the very issue they now complain of.

The reality is simple: the trial court did in fact consider the relative equities, and this is evident from the various orders issued by the court. The court's Form 4 of November 6 held that the continued presence of the trailers upon Respondents' premises was a breach of the Covenants and must be removed, but expressly stated that they need only be removed "within a reasonable time period" and invited each party to submit position statements on

what a "reasonable time period" should be. (R. 8.) Respondents filed three memoranda thereafter, each complaining about the difficulty in complying with the court's order. (See R. 1115, 1128 & 1342.) Ultimately, the trial court refrained from imposing any date-certain by which the trailers must be removed, and instead, ordered a process by which Respondents would need to provide RPLLC with status updates regarding their progress toward removal. Quite clearly, the trial court acknowledged Respondents' concerns with complying with the injunction and created a process by which the Covenants may be honored without causing Respondents' undue hardship. *Is this not the very balancing of equities that Respondents claim to be missing?*

F. A de novo review of the operative facts would not change the outcome.

The set of facts that guided the trial court's disposition of the trailer issue are few and beyond serious dispute. The testimony at trial was that, in 2017, Respondents received permission from RPLLC's predecessor to install office trailers on their premises; however, and importantly, the request for permission was for the installation of "temporary" trailers. Six years later—when this case was tried—the "temporary" trailers were still located on Respondents' premises and they had no plans for removal. This fact alone led the trial court to conclude that the "trailers that were once considered temporary structures in accordance with the Covenants[] have gone past the time period in which they can reasonably be considered temporary. As such, these trailers are in violation of the Covenants." (R. 8.)

These were the facts before the trial court, and a de novo lens does not change their view. After all, it was Respondents' testimony that they asked for and received permission to install "temporary" trailers; it is undisputed that the trailers remained on Respondents'

premises years later and through trial; and it was Respondents' testimony that they had no firm plans to remove the trailers. All the trial court had to do—and did do—is find that "temporary" trailers that had been present on Respondents' premises for six years with no end in sight were no longer temporary, had exceeded the scope of permission that had been given for their installation, and had become non-compliant with the Covenants.

Respondents' arguments against these facts are unavailing. It seems to be their position that the permission they received for the installation of "temporary" trailers was of unlimited duration; that "temporary" really means "indefinite." There is, of course, no legal or linguistic support for this assertion. Respondents have also argued that the ongoing presence of the non-compliant trailers upon their premises did not "violate any Park rule or regulation." (Resps.' / Appellants' Op. Br. at 36.) This is false. The Covenants quite clearly empower the Authority (or its successor) to review and reject or approve any property owner's plans for physical improvements. (R. 752-53 at Art. IX, § 1.) Respondents had permission to install office trailers temporarily and did not have the authority to expand the scope of that permission unilaterally into perpetuity. Respondents contend that their violation of the Covenants wasn't hurting anyone. The fact of the Covenants' violation is a sufficient harm on which to basis the imposition of injunctive relief. See, e.g., AJG Holdings, LLC v. Dunn, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009) (citation omitted).

Respondents' arguments about the hardship they will suffer if forced to comply with the court's injunction are equally unavailing. They contend that "[r]emoving the [t]railers, moving the affected employees and providing them with new offices will be a substantial burden and expense." (Resps.' / Appellants' Op. Br. at 37.) Yet, as mentioned above,

they've apparently already complied with the injunction and removed the trailers from their premises.

G. Section Concluding Statement

In sum, Respondents' challenge to the court's trailer order fails at every step. The underlying finding of breach is undisputed and is now the law of the case. The propriety of injunctive relief may in any event be moot, as Respondents have—by their own representations—already complied with the order. Even if the issue remains justiciable, the standard of review is deferential, and the record amply supports the trial court's exercise of discretion. The court presumably—and in fact—balanced the equities by structuring relief that allowed Respondents time and flexibility to comply while protecting the Covenants. The operative facts are straightforward: "temporary" trailers remained on the property for years with no plan for removal, a violation the court was both authorized and obliged to remedy. Far from an abuse of discretion, the trial court's order represents a measured and equitable enforcement of the Covenants, consistent with South Carolina law and the settled expectations of all property owners in the Park.

IV. THE TRIAL COURT'S DECISION IN FAVOR OF RPLLC ON RESPONDENTS' "COMMON AREA CONVEYANCE CLAIM" SHOULD BE AFFIRMED.

Respondents' "Common Area Conveyance Claim" fails as a matter of law and equity. The Covenants expressly grant RPLLC sole discretion to designate and convey "Common Area," and impose no obligation until the sale of the last parcel of land within the Park. Because the Covenants are not silent, the trial court correctly declined to imply additional terms, properly rejected Respondents' breach of contract theory, and therefore had no basis to impose injunctive relief. Each of these rulings should be affirmed.

A. The Relevant Portion of Respondents' Opening Brief

On Pages 32 through 34 of their Opening Brief, Respondents contend that the trial court erred in failing to require RPLLC to establish a property-owners' association, in failing to designate Park property as "Common Area," and in failing to order RPLLC to transfer such "Common Area" property to the association. In fact, Respondents have demanded that at least ten acres of Park property owned by RPLLC be designated as "Common Area" and conveyed to the association. (Resps.' / Appellants' Op. Br. at 34.) And further, that "the Court must imply a reasonable period of time" within which such conveyance must occur. (Id. at 33.)

B. Standard of Review

Respondents assert that the standard of review is de novo. Regrettably, it's not that simple. Respondents' "Common Area Conveyance Claim" has multiple layers, like an onion, and it would seem that each involves a differing standard of review.

On the surface, Respondents are appealing the trial court's decision to refrain from imposing an injunction on RPLLC that would require RPLLC to create a property-owners' association, designate Park property as "Common Area," and transfer such property to the association. The standard of review for a trial court's decision as to an award of injunctive relief is the hybrid of de novo and abuse of discretion, as discussed in § III.B, above.

In this case, however, if injunctive relief were to have been granted in Respondents' favor, they would have necessarily had to prevail on their underlying breach of contract action. They didn't. So, the question is whether it was error for the court to rule against Respondents on their breach of contract for the "Common Area Conveyance Claim." For purposes of these appellate proceedings, the standard of review applicable to an action at

law tried without a jury is "limited to correction of errors of law, and the appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence." Mazloom v. Mazloom, 382 S.C. 307, 316, 675 S.E.2d 746, 751 (Ct. App. 2009) (citation omitted).

But wait—there's more. In order for the trial court to have found in Respondents' favor on the breach of contract issues presented in this portion of the cross-appeal, it would have been necessary for the court to acknowledge implied terms of the Covenants. The precise question is therefore whether it was error for the trial court to refrain from recognizing implied terms in the Covenants, and the standard of review would again seem to be a hybrid of de novo and abuse of discretion. More specifically, it seems that de novo review would be appropriate to determine whether a contract was silent on a material term, and whether the intent of the parties may be inferred from the contents of the agreement; however, an abuse of discretion standard would seem to be appropriate to the extent the court may rely on extrinsic evidence—that is, evidence of the parties' intent as may be reflected through their negotiations or course of dealing, or perhaps evidence of industry customs and usage—to supply a material term by implication. See, e.g., Maccaro v. Andrick Devel. Corp., 280 S.C. 96, 311 S.E.2d 91 (Ct. App. 1984).

C. The trial court's decision to refrain from acknowledging implied terms in the Covenants was correct and should be affirmed.

In furtherance of their "Common Area Conveyance Claim," Respondents assert that the trial court should have implied two terms into the Covenants: (1) to designate a discrete amount of Park property, of no less than ten acres, as "Common Area;" and (2) to mandate that RPLLC convey such property to a property-owners' association within a "reasonable" amount of time thereafter. (Resps.' / Appellants' Op. Br. at 32-33.)

The initial question is whether the Covenants are silent on these issues. They're not.

With respect to "Common Area" property, the Covenants are quite clear that the Authority has the sole and absolute discretion to designate which parts of Park property, if any, may comprise "Common Area." This is amply established in Article II of the Covenants, regarding the "Plan of Development," which emphasize that the Park "shall consist of whatever mix of Parcels and Common Areas as the Authority may designate and/or construct, in its sole discretion." (R. 730-33 at Art. II,; see also R. 751 at Art. IX.)

With respect to the conveyance of "Common Areas," the Covenants are also clear about when this may happen, and when it must happen. No "Common Area" could be conveyed to a property-owners' association until the fifth anniversary of the declaration of the Covenants. (R. 733 at Art. II.) Furthermore, no "Common Area" can be conveyed to an association "unless such conveyance will result in the Authority owning less than one-half of the Property so that the Authority will be entitled to less than one-half the votes in the [a]ssociation." (Id.) It is not clear—even to Respondents—whether this condition has been satisfied. (Resps.' / Appellants' Op. Br. at 14 n.30.) Ultimately, "[t]he Authority shall convey all Common Areas to the Association no later than ninety (90) days after the date of closing the sale of the last Parcel in the Park." (R. 732 at Art. II.)

Therefore, under the regime established by the Covenants, RPLLC may not even be authorized to transfer "Common Area" property to an association. And even if it is presently capable of doing so, it has the discretion—but not the obligation—to designate Park property as "Common Area" and convey it to the association. By the plain language

of the Covenants, RPLLC is required to convey "Common Area" to the association only upon the "sale of the last Parcel in the Park," and even then, within ninety days thereafter.

In short, the Covenants are not silent as to what Park property may be designated "Common Area," and when that property must be conveyed. And because the Covenants speak to the very issues for which Respondents have invited the acknowledgment of implied terms, the injection of implied terms into the Covenants would not be proper. The trial court correctly declined Respondents' invitation to modify the Covenants through the acknowledgment of implied terms, and that decision should be affirmed.

D. The trial court's decision to find in favor of RPLLC on Respondents' breach of contract action based on the "Common Area Conveyance Claim" was correct and should be affirmed.

In the absence of implied terms dictating what Park property RPLLC must designate as "Common Area" and when that property must be conveyed to an association, there is no merit to Respondents' argument for breach. As a matter of law, RPLLC cannot be in breach of a provision of the Covenants of which it is given sole discretion in the matters of whether and to what extent it may choose to perform. Nor can RPLLC be in breach of the Covenants for failing to convey "Common Area" property when its obligation to convey has not yet matured, and in fact, where conveyance may be presently prohibited by the Covenants.

In any event, the trial court's decision to find in favor of RPLLC on Respondents' breach of contract action based on the "Common Area Conveyance Claim" was proper and should be affirmed under the applicable standard of review.

E. The trial court's decision to deny Respondents injunctive relief on their "Common Area Conveyance Claim" was correct and should be affirmed.

Injunctive relief does not exist in a vacuum; it is a remedy that becomes available once an underlying wrong has been established. In the absence of an underlying wrong, there is no lawful basis on which to sustain an injunction. See, e.g., Kennerty v. Etiwan Phosphate Co., 17 S.C. 411, 419 (1882); Lombard Iron Works & Supply Co. v. Town of Allendale, 187 S.C. 89, 96, 196 S.E. 513, 516 (1938).

In the instant case, the trial court declined to inject contract terms by implication into the Covenants. Respondents were therefore unable to prevail on their breach of contract action, to the extent it was based on their "Common Area Conveyance Claim." And, without prevailing on their underlying cause of action, Respondents were not entitled to injunctive relief, and the court was not empowered to impose it. The trial court properly denied Respondents' request for injunctive relief, and that decision should be affirmed, regardless of whether it is evaluated by a de novo standard or for abuse of discretion.

F. Section Concluding Statement

Respondents' "Common Area Conveyance Claim" asks this Court to do what the Covenants do not: create mandatory obligations where the declarant provided discretion. The Covenants are explicit that the designation of "Common Area" lies "in the sole discretion" of the Authority and that conveyance may occur only after certain preconditions are satisfied. (R. 730-31 at Art. II.) Respondents' invitation to imply additional terms cannot be squared with this express language.

South Carolina law is clear that courts may not rewrite contracts or supply terms that contradict the parties' agreement. Here, the Covenants already establish when, how, and under what circumstances "Common Area" may be designated and conveyed.

Imposing a judicially-created timeline would not "fill a gap" but would fundamentally alter the bargain struck by the parties.

Because the Covenants speak directly to these issues, and because the trial court's findings are supported by both the text of the Covenants and the evidentiary record, its decision was correct as a matter of law. Without an underlying breach, Respondents' request for injunctive relief necessarily fails. The circuit court's judgment should therefore be affirmed in its entirety.

V. RESPONDENTS ARE NOT ENTITLED TO ANY AWARD OF ATTORNEYS' FEES.

A. The Relevant Portion of Respondents' Opening Brief

On Page 38 of their Opening Brief, Respondents boldly assert that they are entitled to even more attorneys' fees than they have been previously awarded. Not only does RPLLC disagree, but consistent with the contents of the cross-appeal, RPLLC would respectfully suggest that Respondents are not entitled to any award of fees whatsoever. In furtherance of this discussion, RPLLC here incorporates by reference the arguments presented in its Opening Brief against the award rendered in favor of Respondents, as well as the reasonableness of the award. (RPLLC Op. Br. at 41-49.)

B. Standard of Review

"The review of attorney fee awards pursuant to a contract is governed by an abuse of discretion standard." Laser Supply & Servs, Inc. v. Orchard Park Assocs., 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009).

C. Poly-Med, Inc. is not entitled to attorneys' fees.

Consistent with the foregoing discussion, Poly-Med, Inc. was not a proper party to the Complaint, was not an "Owner" as defined by the Covenants, was not competent to

engage in legal action to enforce the Covenants against RPLLC, (R. 730 at Art. I, § 1.6), and by the plain language of the Covenants, is not entitled to participate in an award of attorneys' fees, even if one had been properly imposed.

Respondents contend that Poly-Med, Inc. is nonetheless eligible to participate in an award of attorneys' fees because the trial court granted their motion to conform their pleadings to the evidence presented at trial. (R. 578:18-20.) This is a curious argument. As discussed above, Respondents requested and were granted leave at trial to amend their complaint to conform to the evidence. At that time, Respondents did not indicate how they wished their pleadings to be amended. Immediately after trial, however, Respondents filed an amended complaint which showed exactly what their intention was: they wished to amend their complaint to assert new theories of relief under the action for breach of contract—oddly, the theories added were those they lost on; they did not add a theory of breach for the implied duty of good faith and fair dealing. (R. 145.) Importantly for the present discussion, their Amended Complaint continued to allege that Poly-Med, Inc. was merely the lessee of Park property. It is difficult to understand how Respondents may contend that their oral motion to amend their pleadings contemplated a change to a party's standing through property ownership, when the amended pleading they filed following the motion continued to deny the property ownership of that very party.

Assuming that Respondents' oral motion did, somehow, pertain to Poly-Med, Inc.'s property ownership (and therefore standing to sue), it is not a proper use of Rule 15(b), SCRCP, to amend the pleadings to conform to evidence since the amendment would materially alter the rights and relations of the litigants. See Johnson v. Finney, 246 S.C. 366, 378 143 S.E.2d 722, 728 (1965) ("It is proper, during the trial of a case, for the Court

to allow an amendment to conform the pleading to the facts proved, *provided such amendment does not materially* or substantially change the claim or defense of the party seeking the same." (emphasis added)).

Respondents have also argued that, under the Covenants, even holders of a leasehold interest may bring enforcement action as third-party beneficiaries. (Resps.' / Appellants' Resp. Br. at 20.) This is another example of Respondents reading the Covenants according to what they wish the Covenants said, and not what the Covenants actually say.

> In any suit or action brought by the Authority, an Owner, the Association or a first lienholder or their heirs, successors or assigns to enforce any of the terms, provisions, or restrictive covenants of this Declaration, the prevailing party shall be entitled to his costs and disbursements and reasonable attorneys' fees in such suit or action and any appeal thereof.

(R. 748 at Art. VI, § 5.)

Poly-Med, Inc. is not the Authority, or an Owner, or the Association; it does not occupy the position of a first lienholder with respect to any Park property; by its own allegations, it is not a successor in ownership to any Park property. And it is not an assignee.

In Respondents' brief in response to the cross-appeal, they assert the following: "To be the lessee of an Owner is to be the assignee of the Owner to the extent of the leasehold interest." (Resps.' / Appellants' Resp. Br. at 20.) This proposition of law is utterly fictitious. "In South Carolina, it is well established that an assignee stands in the shoes of its assignor." Twelfth RMA Partners, LP v. Nat'l Safe Corp., 335 S.C. 635, 639-40, 518 S.E.2d 44, 46 (Ct. App. 1999) (internal quotation and alterations omitted) (citation omitted). Through the assignment, the assignor transfers his rights and privileges in

property to the assignee, generally without reservation. It is a specific type of transaction, and there is no law to suggest that a lessee also becomes the assignee of the landlord's interest in the landlord's property by operation of law. In fact, according to Respondents' logic, a lessee could exercise his landlord's rights of alienation without first obtaining the landlord's consent. That proposition alone turns several centuries of well-established property law on its head.

Respondents have also suggested that Poly-Med, Inc. may enforce the Covenants—and qualify for an award of attorneys' fees for having done so—by virtue of being a third-party beneficiary to the Covenants. (Resps.' / Appellants' Resp. Br. at 20.) This, too, is made up. "A third-party beneficiary is a party that the contracting parties intend to directly benefit." Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (citation omitted). The trial court did not conclude that Poly-Med, Inc. was a third-party beneficiary to the Covenants—nor was it asked to. And the Covenants don't establish tenants as third-party beneficiaries. In fact, the Covenants draw a clear distinction between "Owners"—which are those who own "fee simple title" to any Park property—and tenants. (Compare R. 730 at Art. I, § 1.6 with R. 735 at Art. IV, § 2.) It is fair to demand that Respondents provide any evidence whatsoever that Poly-Med, Inc.—as a tenant of a property Owner—was intended to be competent to enforce the Covenants against the Authority and to be entitled to an award of attorneys' fees.

D. Respondents were not prevailing parties.

For reasons that have been explained in depth elsewhere, Respondents are not prevailing parties for purposes of an award of attorneys' fees under the Covenants. They prevailed on none of their theories of breach of the Covenants. The one theory of breach

that they prevailed on—for violation of the implied duty of good faith and fair dealing—was a theory that Respondents never raised or litigated; it was raised sua sponte by the lower court following trial. (R. 26.) And, by virtue of being found in breach of the Covenants themselves, Respondents could not prevail on such a theory as a matter of law. Respondents lost on their conversion action; they lost on their request for injunctive relief. Their action for unjust enrichment was dismissed. The only aspect of Respondents' claim on which they could plausibly claim to have prevailed was on the action for an accounting. But even that is problematic. Respondents are not entitled to an accounting under the Covenants, and ultimately, an accounting was performed by virtue of an agreement between the parties.

E. RPLLC is the only prevailing party.

RPLLC countersued Respondents to enforce the Covenants—to require Respondents to remove the "temporary" office trailers that had become non-compliant with the Covenants—and won. Respondents' trailers are now gone.

Certainly, in the wake of all the trial court's decisions regarding the underlying dispute, Respondents have a right to claim victory on a portion of their maintenance fee claim. But that victory is reflected by a decision in their favor on a theory of breach that was never raised or litigated, and to which Respondents were not entitled, by virtue of themselves being in breach of the Covenants they sued upon. In the event that the trial court is reversed on its award in favor of Respondents, it will be difficult for Respondents to articulate any legitimate basis to claim a victory in their favor, leaving RPLLC as the only party who prevailed in this litigation, and entitling RPLLC to an award of attorneys' fees in its favor.

F. Section Concluding Statement

Respondents are not entitled to any award of attorneys' fees. Poly-Med, Inc. does not qualify under the Covenants, either as an Owner, assignee, or third-party beneficiary. Respondents themselves were adjudicated to be in breach and did not prevail on their pleaded theories of relief. By contrast, RPLLC obtained judgment on its counterclaim enforcing the Covenants, secured removal of the noncompliant trailers, and is the only true prevailing party. The trial court abused its discretion in awarding fees to Respondents, and any fee award in this case should be vacated and awarded instead to RPLLC.

CONCLUDING STATEMENT

With respect to the issues presented in Respondents' cross-appeal, and in light of all arguments raised herein, the decisions of the trial court in RPLLC's favor should be affirmed on these and any other basis that may appear in the record. RPLLC respectfully requests an award of its costs, fees, and expenses incurred herewith, arising from both contract and statute, and an order for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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September 24, 2025
Greenville, South Carolina

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2024-002150

Poly-Med, Inc., Technology Drive 51, LLC,
Technology Drive 52, LLC, and PMI Properties LLC . . . . . .Respondents / Appellants,

v.

Research Park, LLC . . . . . .Appellant / Respondent.

CERTIFICATION OF CONFORMITY

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The undersigned counsel for Appellants hereby certifies that the Final Brief to which this Certification is attached complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

The undersigned counsel for Appellant / Respondent hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

Document(s): Appellant's / Respondent's Final Response Brief.

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