

RECEIVED

Oct 02 2025

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas**

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2022-CP-36-00392

The Pointes of Plantation Pointe
Owners Association, Inc., Appellant,

v.

Michael D. Lucas and Angelita R. Lucas, Respondents.

INITIAL REPLY BRIEF OF APPELLANT

William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
SC Bar No. 771

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES 2

INTRODUCTION 3

ARGUMENTS 3

 I. The Trial Court Misapplied the Definition of “Structure” 3

 II. The Complaint Adequately Pleaded a Violation..... 4

 III. The Trial Court Ignored Material Factual Disputes 4

 IV. The Trial Court Erred in Denying Injunctive Relief..... 5

 V. Respondents Failed to Provide the Covenants Referenced in Their Motion 5

 VI. The South Carolina Homeowners Association Act Does Not Bar Enforcement of
 the HOA Documents 5

CONCLUSION 7

CERTIFICATE OF COUNSEL..... 8

TABLE OF AUTHORITIES

Cases

<u>Oxman v. Sherman</u> , 239 S.C. 218, 122 S.E.2d 559 (1961).....	4
<u>Pilkington v. McBrain</u> , 274 S.C. 312, 262 S.E.2d 916 (1980).....	4

Statutes

<u>S.C. Code Ann. § 27-30-130</u>	6
---	---

Rules

Rule 208(b)(1)(C), <u>SCACR</u>	3
Rule 59(e), <u>SCRCP</u>	7

INTRODUCTION

Appellant respectfully submits this Reply Brief in response to the Respondents' arguments and the trial court's order granting summary judgment. The trial court erred in its interpretation of the governing documents and in granting summary judgment despite genuine disputes of material facts. The HOA's enforcement action was grounded in valid, recorded governing documents, and the concrete pad installed by Respondents constitutes a horizontal improvement subject to ARC approval.

Appellant brings to the Court's attention that the Statement of the Case in the Brief of Respondent is not presented as a counter-statement of the case and under Rule 208(b)(1)(C), SCACR, the Statement of the Case should contain a "concise history of the proceedings" and "[t]he statement shall not contain contested matters". Instead, the Statement of the Case should have been designated as Statement of the Facts or as argument. Therefore, the Court should consider those statements as Statement of the Facts or as argument.

ARGUMENTS

I. The Trial Court Misapplied the Definition of "Structure"

The HOA's governing documents—including Regulation No. 1 and the Architectural Guidelines—define "horizontal improvements" as permanent structures less than 18 inches above grade, which require ARC approval and must be set back at least 10 feet from property lines. (Affidavit of Dougal Kear filed April 16, 2025). The 36-by-16-foot concrete pad installed by the Lucases falls within this definition. It was installed without ARC approval and within the setback zone.

Respondents argue that “other structures” is used synonymously with a building or house. (Brief of Respondent, p. 9). Clearly, the HOA has exercised through its architectural guidelines to show that there is a distinction between houses and other structures such as horizontal improvements. So, Respondent’s argument and the trial court’s narrow interpretation of “structure” as limited to buildings contradicts the plain language of the HOA’s documents and South Carolina precedent that enforces covenants according to their unambiguous terms.

II. The Complaint Adequately Pleaded a Violation

The Complaint referenced the governing documents and alleged that the Lucases constructed a permanent improvement without ARC approval and in violation of setback requirements. (Complaint filed September 30, 2022). South Carolina law requires liberal construction of pleadings. See Oxman v. Sherman, 239 S.C. 218, 122 S.E.2d 559 (1961); Pilkington v. McBrain, 274 S.C. 312, 262 S.E.2d 916 (1980). The Respondents’ own filings acknowledged the installation of the pad needed ARC approval (Respondents’ Motion for Summary Judgment, p. 2) and acknowledged the pad is within 10 feet of the property line. (Respondents’ Motion for Summary Judgment, Exhibit 3). The Respondents argue that the Complaint failed to cite a specific enforceable covenant, but the HOA’s Memorandum (Plaintiff’s Memorandum in Opposition to the Granting of Summary Judgment) and affidavit of Dougal Kear (Affidavit of Dougal Kear) clarified that Regulation No. 1 and the Architectural Guidelines were the basis for enforcement.

III. The Trial Court Ignored Material Factual Disputes

There are genuine disputes of material fact that preclude summary judgment: Whether any valid approval existed for the concrete pad (the 2009 and 2012 references

were informal and expired under Section 5.5 of the Guidelines); Whether the pad violates the 10-foot setback (the HOA's survey evidence shows it does; the Lucases provided no rebuttal evidence).

IV. The Trial Court Erred in Denying Injunctive Relief

Injunctive relief is appropriate where a covenant violation is ongoing and unapproved. The pad remains in place, unapproved, and in violation of the HOA's rules. The trial court's denial of injunctive relief was based on its erroneous conclusion that no violation occurred. Once that conclusion is reversed, injunctive relief should be reconsidered.

V. Respondents Failed to Provide the Covenants Referenced in Their Motion

Respondents' motion for summary judgment refers to paragraph 2 of the covenants but fails to include the covenants as an exhibit or provide any recording information. (Respondents' Motion for Summary Judgment). Presumably, the covenants referred to in paragraph 2 are the restrictive covenants recorded in Book 298 at Page 233 on March 10, 1989, as referenced in the trial court's order. This omission undermines the evidentiary basis for the motion and precludes proper judicial review of the covenants' applicability.

VI. The South Carolina Homeowners Association Act Does Not Bar Enforcement of the HOA Documents

During the motion hearing, counsel for Defendants argued that the HOA documents were unenforceable under the South Carolina Homeowners Association Act due to lack of recording information. Specifically, they claimed that the two documents included in the affidavit of Dougal Kear lacked recording information and therefore could

not be enforced. (Transcript of Hearing, p. 9, line 16-p. 10, line10). However, the trial court's order does not adopt this reasoning as a basis for granting summary judgment. Counsel for Plaintiff stated during the hearing that the documents were recorded, and the Trial judge did not request further proof. (Transcript of Hearing, p. 17, lines 7-16).

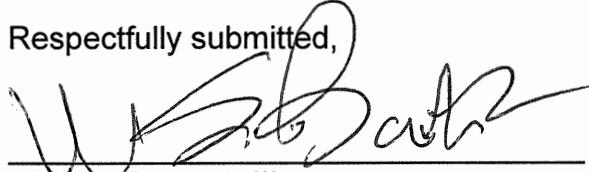
If requested by this Court, Plaintiff can furnish the recorded documents as supplemental to the record. These documents are of public record and can be easily obtained. Moreover, if the documents were recorded prior to the effective date of the Act, they remain enforceable under the Act. Regulation No. 1 as cited by Appellant was effective as of July 15, 2008 (Plaintiff's Memorandum in Opposition to the Granting of Summary Judgment, Exhibit "A"), and the Architectural Guidelines were effective as of June 20, 2007 (Plaintiff's Memorandum in Opposition to the Granting of Summary Judgment, Exhibit "B"). Both were recorded prior to the implementation of S.C. Code Ann. § 27-30-130¹ and did not need to be recorded a second time.

¹ S.C. Code Ann. § 27-30-130 was effective as of May 17, 2018, and required documents not previously recorded to be recorded by January 10, 2019.

CONCLUSION

Appellant respectfully requests that this Court reverse the trial court's order granting summary judgment, vacate the denial of the HOA's Rule 59(e), SCRCP motion, and remand the case for further proceedings, including a full evidentiary hearing on the merits of the HOA's claims and its request for injunctive relief.

Respectfully submitted,



October 2, 2025

William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
bill@boothlawfirm.com
SC Bar No. 771

Attorney for Appellant

RECEIVED

Oct 02 2025

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2022-CP-36-00392

The Pointes of Plantation Pointe
Owners Association, Inc., Appellant,

v.

Michael D. Lucas and Angelita R. Lucas, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Initial Reply Brief of Appellant complies with Rule 211(b), SCACR.

October 2, 2025



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
bill@boothlawfirmssc.com
SC Bar No. 771

Attorney for Appellant

RECEIVED

Oct 02 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2022-CP-36-00392

The Pointes of Plantation Pointe
Owners Association, Inc., Appellant,

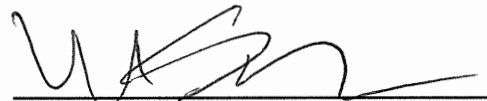
v.

Michael D. Lucas and Angelita R. Lucas, Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on October 2, 2025, by emailing a copy of same to Respondent's counsel of record, Kathleen M. McDaniel, Esquire, at kmcdaniel@burnetteshutt.law. A copy of said email is attached hereto as Exhibit "A"

October 2, 2025



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
SC Bar No. 771
Attorney for Appellant

EXHIBIT "A"

From: [William Booth](#)
To: ["kmcdaniel@burnetteshutt.law"](mailto:kmcdaniel@burnetteshutt.law)
Bcc: [William Booth](#)
Subject: The Pointes of Plantation Pointe Owners Association vs. Lucas – Appellate Case No. 2025-001400 (Our File No. 5519.2422)
Date: Thursday, October 2, 2025 1:18:52 PM
Attachments: [Initial Reply Brief of Appellant.PDF](#)

Kathleen - Attached in Adobe format for service upon you is the Initial Reply Brief of Appellant.

Bill Booth
Attorney, Booth Law Firm, LLC
address: 3231 Sunset Blvd., Ste. A, West Columbia SC 29169
email: Bill@boothlawfirm.com
phone: 803-791-4035
fax: 803-791-3159
website: www.BoothLawFirmSC.com