

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Circuit Court for the Second Judicial Circuit

Courtney Clyburn Pope, Circuit Court Judge

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Case No. 2024-000898

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SC Court of Appeals

Albert D. Barwick, Ann R. Barwick, Gordon G. Holscher, II,  
Billy R. Jeffcoat, Connie M. Jeffcoat, Harriet A. Jones, Ernest J. Matheson, Jr.,  
Thomas L. Reading, Kenneth W. Pippen, Jr., and Ignas K. Skrupskelis,..... Appellants,

vs.

Edisto Lake, Inc., Edisto Lake Ridge, LLC,  
Edisto Lake Property Owner's Association, Inc., and Terry M. Hutto, Jr.,.....Respondents.

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**FINAL BRIEF OF APPELLANTS**

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**STATEMENT OF ISSUES ON APPEAL**

1. Whether the lower court erred by failing to interpret the restrictive covenants in their entirety, thereby enforcing all applicable covenants and restrictions as a unified whole.
2. Whether hunting should be prohibited within the subdivision because it constitutes a noxious and offensive activity, in violation of the covenants restricting such activities.

## STANDARD OF REVIEW

An action to enforce restrictive covenants by injunction is an action in equity. *South Carolina Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299, 302 (2001). In an equitable action, this court may make findings according to its own view of the preponderance of the evidence. *Id.*

On appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence. *Townes Assoc. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). When the underlying action is a declaratory action to declare whether the restrictive covenants are enforceable the proper scope of review is *De Novo*. *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539, (2006).

"The standard of review for a declaratory judgment action is therefore determined by the nature of the underlying issue." *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163, (Ct.App.2003).

## STATEMENT OF THE CASE

This appeal arises from the trial court's erroneous interpretation and enforcement of restrictive covenants governing property use within a residential subdivision. The lower court failed to interpret the covenants and restrictions together, enforcing only some of the restrictive covenants, which allowed hunting on the Respondent's property. This appeal seeks to have the covenants construed as a unified document, with hunting prohibited as a noxious and offensive activity under the terms of the subdivision's covenants.

Appellants initiated the above referenced action with the filing of a Summons and Complaint in the Aiken County Court of Common Pleas on August 14, 2019 (R. 32). Appellants

Complaint asserted causes of action against Respondents for violating the covenants and restrictions, and sought a declaration in those regards. (R. 32). Respondents timely answered Appellant's Summons and Complaint (R. 39) (R. 43). Appellants subsequently amended their Complaint adding claims to join Edisto Lake, Inc., Edisto Lake Ridge, LLC and the Edisto Lake Property Owner's Association, Inc. (the "POA") as parties to the case (R. 12) (R. 49). Respondents timely answered Appellant's Amended Summons and Complaint (R. 57)(R. 62)(R. 68).

All parties consented to the dismissal of Timmy O-Neal Brazell and an Order was signed by Judge Clifton B. Newman (R. 23).

The case was tried before the Honorable Courtney Clyburn Pope, Presiding Judge of the Aiken County Common Pleas. (R. 89 – 327). At that trial S. Jahue Moore, Esquire, of Lexington, South Carolina represented the Appellants. W. Joseph Moore, Esquire of Columbia, South Carolina appeared for Edwin H. Cooper, Jr. and Clarke W. McCants, III, Esquire of Aiken appeared for Respondent Hutto (R. 4). As set forth later Mr. Cooper was dismissed from this case pursuant to an Order dated October 27, 2022. (R. 4). Before the trial in March 2022 began the Respondents jointly presented and argued certain motions (R. 4).

Mr. Cooper also moved to be dismissed from this case, contending that there was no basis to find that he is personally liable with respect to the Respondents' claims and causes of action for this matter. (R. 4). All of the motions presented by the Respondents were taken under advisement by the Court pending the presentation of testimony and other evidence at the trial for this case (R. 4).

A number of exhibits were introduced at the trial held before the Court in March 2022 (R. 4) (R. 328). Those include the covenants and restrictions for the Edisto Lake Community as well as a plat of the development.

Upon the conclusion of the presentation of evidence at the trial in March 2022 the Respondents renewed their pre-trial motions (R. 4). After consideration of those motions the Court ruled that Mr. Cooper should be dismissed from this case and Edisto Lake, Inc., Edisto Lake Ridge, LLC, and the POA should be joined as Respondents herein. (R. 4).

After the new Respondents were joined, and an amended complaint was served and answered, the Court reconvened the trial for this matter on November 15, 2023 (R. 4).

Before the trial began on November 15, 2023, the Court conducted a pre-trial conference with counsel for the parties. (R. 4). At that conference Mr. S. Jahue Moore expressed that the Appellants did not seek to recover monetary damages from the Respondents, and their request for relief in this matter is limited to a declaration setting forth that hunting and the discharge of firearms are prohibited by the terms and provisions of the covenants and restrictions for the Edisto Lake Community (R. 4). In that regard counsel for the Respondents expressed and agreed that it would also be appropriate for the Court to include in its ruling a finding that all of the Parties in this case, including the Appellants, should comply with the covenants and restrictions governing the Edisto Lake Community, and the Court's Order should further provide that the operation of a hunt club or hunting preserve, or similar business or commercial entity, is prohibited within the Community (R. 4).

At the pre-trial conference counsel for the Parties also expressed that it was not necessary for the Court to hear further testimony in this matter, or consider any further documentary or similar evidence, and it would be appropriate for the Court to render a decision based upon the existing record (R. 4). The Court also asked counsel to present memorandums setting forth the positions of their respective clients, which they did and which have been reviewed and considered by the Court. (R. 4).

A Final Order of the Honorable Courtney Clyburn Pope was filed on May 31, 2024 (R. 4). Appellants filed a Motion for Reconsideration on May 15, 2024 (R. 76). The Court denied Appellants Motion for Reconsideration (R. 1).

Appellants timely filed their Notice of Appeal with the Court of Appeals on or about May 31, 2024 (R. 87).

### **STATEMENT OF THE FACTS**

This matter involves the interpretation of certain covenants and restrictions which govern a development in Aiken County known as the Edisto Lake Community (R. 4). The Appellants are residents of that Community, as well as the Respondent Terry M. Hutto, Jr. and his family. (R. 4).

The Appellants commenced this case alleging, among other things, that Respondent Hutto had violated those covenants and restrictions, and sought a declaration in those regards (R. 4).

The Parties stipulated that all restrictions apply to both Edisto Lake and Edisto Ridge. (R. 93). The whole area is known as Edisto Lake (R. 93). The restrictive covenants state the property is restricted to single-family residential development houses and single-family residential usage. (R. 329) (R. 393).

The Declaration was executed by Edisto Lake Ridge, LLC in 2006 and was duly recorded. (R. 329). Respondent Hutto was conveyed his property in 2019 from Edisto Lake Ridge, LLC (R. 329). As set forth in Exhibit A to that 2019 deed, the land conveyed to Hutto was a portion of the property conveyed to the LLC by Edisto Lake, Inc. by deed dated December 29, 2003 (R. 415). Exhibit A contained in the Declaration provides what lands are subject to the Declaration and what land is excepted (R. 415).

Additionally as set forth in the Declaration, "all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, affirmative obligations, and conditions . . . which shall run with the land." (R. 329).

The developers deed to the various owners in the subdivision contains restrictions very similar to those found in the 2006 Declaration. (R. 415). Respondent Hutto's property is subject to these restrictions and therefore his use of the property as a hunting reserve violates the restrictions. (R. 415).

Respondent Hutto was conveyed his property in 2019 and this property was part of certain property previously conveyed by Edisto Lake, Inc. to Edisto Lake Ridge, LLC in 2003 (R. 415) (R. 344). The 2003 deed provided that, "This conveyance is made subject to easements, conditions and restrictions of record and otherwise affecting the property." (R. 415).

Respondent Hutto's property is subject to the developer deed restrictions."(R. 415).

Here, and as reflected in the various land records, deeds, and promotional materials, the developer identified that the subdivision would be, among other things, an equestrian friendly community with hunting only permitted, if at all, on specific areas (specially planted fields). (R. 415) (R. 329) (R. 344). Moreover, the developer deeds contained a restriction allowing hunting only on a specific area in the subdivision. (R. 415). The entire subdivision, and the lots in the subdivision, may be subject to an implied restrictive covenant or a negative reciprocal easement prohibiting hunting (and particularly commercial hunting), or hunting only a very specific area of the subdivision. Respondent Hutto's use of his property if encumbered by reciprocal negative easement would clearly run afoul of this.

The Declaration of Covenants Conditions and Restrictions for Edisto Lake Ridge provides on page 26 that the Declarant may enforce the covenants "until such time as Declarant, or its successors, sells the last Lot in the subdivision; and thereafter any Lot Owner may enforce restrictions, easements, covenants, and conditions . . . by proceeding at law or in equity against any person violating or attempting to violate .... (R. 450).

However, on page 3 of the same document, it provides that the "easements, restrictions, covenants ... shall run with the land ... and be binding on all parties . . . and shall inure to the benefit of each Owner thereof." (R. 427).

Based on this language, any owner of a lot in the subdivision should have the present right to enforce the Declaration and its restrictive covenants and not have to wait until the developer sells of the last lot. Any owner can bring an action for breach of the covenant and also ask for injunctive relief against the person who is violating the covenant (or is about the violate the covenant). (R. 425).

Several of the Appellants testified at the trial held in March 2022. (R. 104-326). They related that they were residents of the Edisto Lake Community and brought this action contending Mr. Hutto was using parts of the community as a private hunting preserve and in violation of its covenants and restrictions. (R. 5). Appellants testified that they had heard gunshots during certain parts of the day and found spent shotgun shells on property within the development. (R: 5). The Court knows that a deer stand is used for the specific purpose of shooting deer and other animals, which is contrary to a single-family residential usage and the idea of a wild life preserve. (R. 95).

Additionally, in this case testimony provided that “counsel for Respondents expressed and agreed it would also be appropriate for the Court to include in its ruling a finding that all the Parties in this case, including the Appellants, shall comply with the covenants and restrictions governing the Edisto Lake Community, and the Court’s Order should further provide that the operation of a hunt club or hunting preserve, or similar business or commercial entity, is prohibited within the Community. (R. 7).

Furthermore, Respondents did not disagree that the restrictive covenants for Edisto Lake prohibited the operation of hunting clubs or preserves within the community. (R. 8). All parties stipulated to admitting the restrictive covenants. (R. 8).

Hunting should be prohibited within the subdivision because it constitutes a noxious and offensive activity under the restrictive covenants. (R. 232) (R. 252) (R. 313). The Declaration of Covenants specifically prohibits “noxious or offensive activity” or anything that “may become an annoyance or nuisance.” (R. 439). Article VII, Section 3 of the Declaration is clear in its intention to preserve the residential character of the subdivision and to prohibit activities that could disrupt this peaceful environment. (R. 439). There has been the sound of high-powered gunshot noises started coming from the land. Firing high-powered rifles or any type of hunting or high-powered highly is contrary to single-family residential uses. (R. 95) (R. 96) (R. 108) (R. 114) (R. 115) (R. 146) The restrictive covenant against loud noises has been enforced by the homeowners association to the point that gasoline-powered golf carts have not been allowed to sue the road. The guns are loud. The guns are offensive to the community. (R. 97).

Article VII, Section 21 provides that, “No hunting will be permitted on or over Edisto Lake, or any roads or parkways within the Property.” (R. 447). In this case, the Declaration does not expressly define Edisto Lake and the specific hunting restriction does not refer to the lots in the

subdivision. (R. 447). If "Edisto Lake" means the subdivision lands, Respondent Hutto's hunting reserve would clearly violate the restriction because "Edisto Lake" means subdivision lands.

Article VII, Section 1 provides, among other things, that "no use shall be made of the property or any right or privilege appurtenant thereto, other than for private residential purposes of a single family." (R. 438). Respondent Hutto's use of his property as a hunting reserve would offend this restriction. A hunting reserve is not compatible with using the property for a private residential purposes of a single family.

Article VII, Section 3 of the Declaration prohibits "noxious or offensive activity" being carried out on any lot or anything that "may become an annoyance or nuisance." (R. 439). The firing of guns in or around this equestrian friendly subdivision could very well constitute noxious or offensive activity or an annoyance, etc. (R. 439-440). The language of the restriction even uses noise as an example. (R. 439).

In this case, several of the Appellants testified at the trial held in March 2022. (R. 104-326). The Appellants related that they were residents of the Edisto Lake Community and brought this action contending Respondent Hutto was using parts of the community as a private hunting preserve and in violation of its covenants and restrictions. (R. 5). Appellants testified that they had heard gunshots during certain parts of the day and found spent shotgun shells on property within the development. (R. 5). The sound of gun shots and spent shotgun shells on the property are offensive and/or noxious.

The trial of this matter began before the Court in Aiken, South Carolina on March 21, 2022. (R. 4). At that trial S. Jahue Moore, Esquire, of Lexington, South Carolina represented the Appellants. (R. 4). W. Joseph Moore, Esquire of Columbia, South Carolina appeared for Edwin H. Cooper, Jr. and Clarke W. McCants, III, Esquire of Aiken appeared for Respondent Hutto. (R.

5). As set forth later Respondent Cooper was dismissed from this case pursuant to an Order dated October 27, 2022. (R. 9).

Before the trial in March 2022 began the Respondents jointly presented and argued certain motions. (R. 5). Both Respondents moved to join Edisto Lake, Inc., Edisto Lake Ridge, LLC and the Edisto Lake Property Owner's Association, Inc. (The "POA") as parties in this case. (R. 5). Edisto Lake, Inc. and Edisto Lake Ridge, LLC are two companies which were formed by Mr. Cooper to develop the property and community where Edisto Lake is located. (R. 5). Those companies remain active today. (R. 5). The POA is an entity formed to govern the Edisto Lake Community and is comprised of owners of real property there. (R. 5).

Mr. Cooper also moved to be dismissed from this case, contending that there was no basis to find that he is personally liable with respect to the Appellants' claims and causes of action for this matter. (R. 5). All of the motions presented by the Respondents were taken under advisement by the Court pending the presentation of testimony and other evidence at the trial for this case. (R. 5).

Several of the Appellants testified at the trial held in March 2022. (R. 5). . The Appellants related that they were residents of the Edisto Lake Community and brought this action contending that Mr. Hutto was using parts of the Community as a private hunting preserve and in violation of its covenants and restrictions. (R. 5). The Appellants testified that they had heard gunshots during certain parts of the day and had found spent shotgun shells on property within the development. (R. 5). Based upon this evidence they asked the court to issue a declaration that Respondent Hutto was violating those covenants and restrictions. They also asked that this Court interpret certain other provisions of those covenants and restrictions.

Respondent Hutto testified at the trial before the Court. (R. 6)

Respondent Hutto and his wife currently own property within the Edisto Lake development. (R. 6). Respondent Hutto testified that his wife and family reside on a portion of the property owned by them and at no point had they organized or operated any type of hunting or similar preserve, or allowed anyone to hunt or conduct similar activities on property within the development. (R. 6).

Mr. Cooper also testified at the trial of this case and described the history, formation and development of Edisto Lake. (R. 6). He stated that Edisto Lake, Inc., Edisto Lake Ridge, LLC and the POA remain viable corporate entities today, and governance of Edisto Lake is currently the responsibility of the POA. (R. 6).

A number of exhibits were introduced at the trial held before the Court in March 2022. (R. 6). Those exhibits include the covenants and restrictions for the Edisto Lake Community as well as a plat of the development. (R. 6).

Upon the conclusion of the presentation of evidence at the trial in March 2022 the Respondents renewed their pre-trial motions. (R. 6). After consideration of those motions the Court ruled that Mr. Cooper should be dismissed from this case and Edisto Lake, Inc., Edisto Lake Ridge, LLC, and the POA should be joined as Respondents herein. (R. 6).

After the new Respondents were joined, and an amended complaint was served and answered, the Court reconvened the trial for this matter on November 15, 2023 where Mr. S. Jahue Moore again appeared for the Appellants, Mr. McCants again appeared for the Respondent Hutto, Mr. W. Joseph Moore appeared for the newly joined Respondents Edisto Lake, Inc. and Edisto Lake Ridge, LLC and Paul K. Simons, Jr., Esquire of Aiken appeared for the POA. (R. 7).

Before the trial began on November 15, the Court conducted a pre-trial conference with counsel for the parties. (R. 7). At that conference Mr. S. Jahue Moore expressed that the Appellants

did not seek to recover monetary damages from the Respondents, and their request for relief in this matter is limited to a declaration setting forth that hunting and the discharge of firearms are prohibited by the terms and provisions of the covenants and restrictions for the Edisto Lake Community. (R. 7). In that regard, counsel for the Respondents expressed and agreed that it would also be appropriate for the Court to include in its ruling a finding that all of the Parties in this case, including the Appellants, should comply with the covenants and restrictions governing the Edisto Lake Community, and the Court's Order should further provide that the operation of a hunt club or hunting preserve, or similar business or commercial entity, is prohibited within the Community. (R. 7).

At the pre-trial conference, counsel for the Parties also expressed that it was not necessary for the Court to hear further testimony in this matter, or consider any further documentary or similar evidence, and it would be appropriate for the Court to render a decision based upon the existing record. (R. 7). The Court also asked counsel to present memorandums setting forth the positions of their respective clients, which they did and which have been reviewed and considered by the Court. (R. 7).

The Court found, concluded, and declared that the covenants and restrictions for the Edisto Lake Community allow hunting within certain areas of that development. (R. 10). Those covenants and restrictions, however, do not allow hunting on or over Edisto Lake, or on any roads or parkways located within the Property. By implication, the discharge of firearms within the Edisto Lake Community for purposes of hunting is allowed, subject to the remaining provisions of the covenants and restrictions. (R. 10).

This Court further found, concluded, and declared that all residents of the Edisto Lake Community are bound to abide by and with the covenants and restrictions governing the

Community, and the operation of a hunt club or hunting preserve, or similar business or commercial activities, is prohibited within that development. (R. 10).

Appellants filed a Motion for Reconsideration arguing that the Court overlooked serious factual issues in the case and have overlooked the fact there are two separate restrictive covenants which apply. (R. 76-77).

Even if the first restrictive covenant allowed hunting, the second one prohibited various activities of a disruptive nature. (R. 76-77).

The Court should have applied a standard which did not provide for a negative implication but, rather, looked at the last document of record as being conclusive. (R. 76-77).

The Court simply looked at the first restrictive covenant and did not cover the applicability of the second covenant and the language which prohibits noxious and offensive activities. (R. 76-77) (R. 114) (R. 182).

If the document is ambiguous, which it is, then the Court should have allowed parole evidence as to the meaning of the document. (R. 9) (R. 77) (R. 254).

The hunting and shooting within a residential subdivision designed as a pastoral setting for horses is obviously a noxious or offensive activity and violates the covenants which are on record. (R. 76-77) (R. 96) (R. 210).

There has been a misapplication of the law and the facts in this case and a reconsideration should be had. (R. 76-77).

The Court denied Appellants Motion for Reconsideration (R. 1-3).

Appellants timely filed their Notice of Appeal with the Court of Appeals on or about May 31, 2024. (R. 87-88).

## ARGUMENT

### **I. THE COURT ERRED IN FAILING TO READ THE RESTRICTIVE COVENANTS TOGETHER AND ENFORCE ALL COVENANTS IN THEIR ENTIRETY**

The Court erred in failing to read the restrictive covenants together and enforce all covenants in their entirety. The paramount rule in the construction and enforcement of restrictive covenants is to ascertain and give effect to the intent of the parties as determined from the entire document. The South Carolina Supreme Court has emphasized this principle, stating that "when enforcing a restrictive covenant the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *RV Resort & Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc.*, 386 S.C. 313, 688 S.E.2d 555 (2010) (emphasis added); *Saro Investments v. Ocean Holiday P'ship*, 314 S.C. 116, 123, 441 S.E.2d 835, 839 (Ct. App. 1994); *Cnty. Servs. Assocs., Inc. v. Wall*, 421 S.C. 575, 583, 808 S.E.2d 831, 835 (Ct. App. 2017).

The lower court failed to adhere to this principle by not considering the covenants in their entirety. The restrictive covenants must be read together to give full effect to the intent of the parties. The Supreme Court of South Carolina has consistently held that "[t]he intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well-settled rule of law or public policy." *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009).

Restrictive covenants are contractual in nature, and the court is required to give effect to the intent of the parties as determined from the language of the covenants and surrounding circumstances. *Bomar v. Echols*, 270 S.C. 676, 244 S.E.2d 308 (1978). *Cnty. Servs. Assocs., Inc. v. Wall*, 421 S.C. 575, 583, 808 S.E.2d 831, 835 (Ct. App. 2017). Restrictive covenants contained

in a separate instrument, specifically referred to in deed and easily to be found of record, are just as fully and effectually a part of the deed as if copied therein. *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (1951). Where deed to Respondents contained no mention of building restrictions but referred to prior deed which was link in chain of title to Respondents, Respondents were directly charged with notice of recitals in prior deed relating to restrictions. *Id.* A covenant is enforceable against a subsequent grantee even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant . . . A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title." *In re Foster*, 552 B.R. 102, 106 (Bankr. D.S.C. 2016).

The lower court improperly isolated certain covenants rather than construing them as a whole, which would have shown a clear intent to prohibit certain activities, including hunting, that are inconsistent with the character of the subdivision.

a. Declaration

The Declaration was executed by Edisto Lake Ridge, LLC in 2006 and was duly recorded. (R. 329). Respondent Hutto was conveyed his property in 2019 from Edisto Lake Ridge, LLC. (R. 329). As set forth in Exhibit A to that 2019 deed, the land conveyed to Hutto was a portion of the property conveyed to the LLC by Edisto Lake, Inc. by deed dated December 29, 2003. (R. 415). Exhibit A contained in the Declaration provides what lands are subject to the Declaration and what land is excepted. (R. 415) This excepted land includes certain property conveyed to the LLC by Edisto Lake, Inc. by deed dated December 29, 2003. (R. 415). Respondent Hutto's land is not part of the land excepted in the Declaration. (R. 415).

Additionally, the subdivision is subject to the restrictive covenants expressly set forth therein. As set forth in the Declaration, "all of the properties described above shall be held,

sold and conveyed subject to the following easements, restrictions, covenants, affirmative obligations, and conditions . . . which shall run with the land." (R. 329). Although the 2019 deed to Hutto does not reference the Declaration or any restrictive covenants, Mr. Hutto's land would still be subject to the Declaration of record, specifically because his land was not part of the land excepted in the Declaration. (R. 329-343). Therefore, the covenant is enforceable against Respondent.

a) Developers Deed

The developers deed to the various owners in the subdivision contains restrictions very similar to those found in the 2006 Declaration. (R. 415-418). Respondent Hutto's property is subject to these restrictions and therefore his use of the property as a hunting reserve violates the restrictions.

Respondent Hutto's property is subject to the developer deed restrictions. Respondent Hutto was conveyed his property in 2019 and this property was part of certain property previously conveyed by Edisto Lake, Inc. to Edisto Lake Ridge, LLC in 2003. (R. 415-418). (R. 344-346). The 2003 deed provided that, "This conveyance is made subject to easements, conditions and restrictions of record and otherwise affecting the property." (R. 344-346).

Respondent Hutto's property is subject to the developer deed restrictions. Therefore, Respondent Hutto is in violation of the "private residential" restriction and/or the "offensive activity restriction". Even if none of Hutto's land is subject to the express restrictions found in the various land instruments, Respondents lots are all subject to implied covenants or subject to a negative reciprocal easement.

"A restriction on the use of the property must be created in express terms or by plain and unmistakable implication." *Cnty. Servs. Assocs., Inc. v. Wall*, 421 S.C. 575, 583, 808

S.E.2d 831, 835 (Ct. App. 2017). "Restrictive covenants on the use of property may be created in express terms or by implication . . . Where they arise by implication, the restrictions are said to create a reciprocal negative easement." *Bomar v. Echols*, 270 S.C. 676, 679, 244 S.E.2d 308, 310 (1978).

Four elements must be established to show a reciprocal negative easement:

- (1) There must be a common grantor.
- (2) There must be a designation of the land or tract subject to restrictions.
- (3) There must be a general plan or scheme of restriction in existence for the designated land or tract. *Id.*; and
- (4) The restrictive covenants must run with the land. 20 Am.Jur.2d, *supra*.  
If the above elements are satisfied, the restrictions are enforceable against the grantor and subsequent grantees of lots in the restricted area who take with actual or constructive notice of the restrictions.

*Id.*

Where they arise by implication and subdivided land is involved, restrictions are termed reciprocal negative easements. *Bomar v. Echols*, 270 S.C. 676, 244 S.E.2d 308 (1978); 20 Am.Jur.3d Covenants, Conditions, and Restrictions, 173 (1965), Reciprocal negative easements are enforceable by any grantee against any other grantee "where the owner of a tract of land subdivides it and sells the distinct parcels thereto to separate grantees, imposing restrictions on its use pursuant to a general plan of development or improvement. . . ." [Emphasis supplied]. *McDonald v. Welborn*, 220 S.C. 10, 18, 66 S.E.2d 327, 331 (1951).

*Reyner v. Stephens*, 289 S.C. 575, 578, 347 S.E.2d 878, 880 (1986).

"An implied covenant is based on the surrounding circumstances, the documents as a whole and the terms expressed in the written instruments." *Saro Investments v. Ocean Holiday P'ship*, 314 S.C. 116, 123, 441 S.E.2d 835, 839 (Ct. App. 1994). "The court should consider the language found in the deeds and the surrounding circumstances." *Shoney's, Inc. v. Cooke*, 291 S.C. 307, 313, 353 S.E.2d 300, 304 (Ct. App. 1987).

"To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts." *Shipyard Prop. Owners' Assin v. Mangiaracina*, 307

S.C. 299, 309, 414 S.E.2d 795, 802 (Ct. App. 1992). If almost all of the deeds going out from the developer contained the same restrictions, this would support the finding of a general plan or scheme of restriction for all of the subdivision lands and lands once owned by the developer.

Here, and as reflected in the various land records, deeds, and promotional materials, the developer identified that the subdivision would be, among other things, an equestrian friendly community with hunting only permitted, if at all, on specific areas (specially planted fields). (R. 415-418) (R. 329-343) (R. 344-346). Moreover, the developer deeds contained a restriction allowing hunting only on a specific area in the subdivision. (R. 415-418). The entire subdivision, and the lots in the subdivision, may be subject to an implied restrictive covenant or a negative reciprocal easement prohibiting hunting (and particularly commercial hunting), or hunting only a very specific area of the subdivision. Respondent Hutto's use of his property if encumbered by reciprocal negative easement would clearly run afoul of this.

Additionally, any owner should be allowed to sue to enforce the various restrictive covenants express or implied. "Where the owner of a tract of land subdivides it and sells the distinct parcels thereto to separate grantees, imposing restrictions on their use pursuant to a general plan of development or improvement, such restrictions may be enforced by any grantee against another grantee." *Hamilton v. CCM, Inc.*, 274 S.C. 152, 160, 263 S.E.2d 378, 382 (1980); *See also Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014) (owner of property that was subject to restrictive covenants preventing commercial activity had standing to bring action against neighbors, whose property was subject to same covenant, for alleged violations of the covenant; developers intended for neighbors' property to be part of subdivision, and developers expressed that intention in the restrictive covenants, deeds, and plats affecting the property).

The Declaration of Covenants Conditions and Restrictions for Edisto Lake Ridge provides on page 26 that the Declarant may enforce the covenants "until such time as Declarant, or its successors, sells the last Lot in the subdivision; and thereafter any Lot Owner may enforce restrictions, easements, covenants, and conditions . . . by proceeding at law or in equity against any person violating or attempting to violate .... (R. 450).

However, on page 3 of the same document, it provides that the "easements, restrictions, covenants ... shall run with the land ... and be binding on all parties . . . and shall inure to the benefit of each Owner thereof." (R. 427). Based on this language, any owner of a lot in the subdivision should have the present right to enforce the Declaration and its restrictive covenants and not have to wait until the developer sells of the last lot. Any owner can bring an action for breach of the covenant and also ask for injunctive relief against the person who is violating the covenant (or is about to violate the covenant). *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014).

An action seeking an injunction to enforce restrictive covenants sounds in equity. *Santoro v. Schulthess*, 384 S.C. 250, 261, 681 S.E.2d 897, 902 (Ct.App.2009). "[U]pon a finding that a restrictive covenant has been violated, a court may not enforce the restrictive covenant as a matter of law. Rather, the court must consider equitable doctrines asserted by a party when deciding whether to enforce the covenant." *Buffington v. T.O.E. Enters.*, 383 S.C. 388, 394, 680 S.E.2d 289, 292 (2009). *Snow v. Smith*, 416 S.C. 72, 90, 784 S.E.2d 242, 251 (Ct. App. 2016). Therefore, the restrictive covenants apply to Respondent Hutto.

In this case, several of the Appellants testified at the trial held in March 2022. (R. 104-326). They related that they were residents of the Edisto Lake Community and brought this

action contending Mr. Hutto was using parts of the community as a private hunting preserve and in violation of its covenants and restrictions. (R. 5). They testified that they had heard gunshots during certain parts of the day and found spent shotgun shells on property within the development. (R. 5).

Additionally, in this case testimony provided that “counsel for Respondents expressed and agreed it would also be appropriate for the Court to include in its ruling a finding that all the Parties in this case, including the Appellants, shall comply with the covenants and restrictions governing the Edisto Lake Community, and the Court’s Order should further provide that the operation of a hunt club or hunting preserve, or similar business or commercial entity, is prohibited within the Community. (R. 5).

Furthermore, Respondents did not disagree that the restrictive covenants for Edisto Lake prohibited the operation of hunting clubs or preserves within the community. (R. 5). All parties stipulated to admitting the restrictive covenants. (R. 93) (R. 111) (R. 134).

The court's failure to enforce all applicable covenants has resulted in an incorrect interpretation of the parties' intent and the general plan of the subdivision.

Therefore, the Court erred in failing to reach the restrictive covenants together and enforce all covenants in their entirety.

## **II. HUNTING SHOULD BE PROHIBITED AS IT IS A NOXIOUS AND OFFENSIVE ACTIVITY IN VIOLATION OF THE RESTRICTIVE COVENANTS**

Hunting should be prohibited within the subdivision because it constitutes a noxious and offensive activity under the restrictive covenants. The Declaration of Covenants specifically prohibits “noxious or offensive activity” or anything that "may become an annoyance or nuisance." (R. 439). Article VII, Section 3 of the Declaration is clear in its intention to preserve the residential

character of the subdivision and to prohibit activities that could disrupt this peaceful environment. (R. 439).

Generally restrictive covenants should be strictly construed and all doubts resolved in favor of free use of property, but such covenants should not be construed to defeat a plain and obvious purpose of the instrument. *Cothran v. Stroman*, 246 S.C. 42, 142 S.E.2d 368 (1965). The Court has held that the operation of a one-operator beauty parlor, even if it did not constitute a noxious or offensive activity, was a violation of restrictive covenant to the effect that no lot shall be used except for residential purposes nor anything done thereon which might become an annoyance or nuisance to the neighborhood. *Id.*

In *Blanks v. Rawson*, the court enforced a similar covenant restricting "noxious or offensive activity" and held that the placement of a dog pen near the property line, which created an odor, constituted a nuisance. *Blanks v. Rawson*, 296 S.C. 110, 370 S.E.2d 890 (Ct. App. 1988). Similarly, hunting involves the discharge of firearms, the presence of wild game, and potential safety concerns for other residents. These factors render hunting not only a disturbance but also a potential danger, thus fitting squarely within the scope of prohibited noxious and offensive activities under the restrictive covenants.

The general scheme of the subdivision is one of residential use, not recreational or commercial activities such as hunting. The Court held that restrictive covenants, including reciprocal negative easements, are enforceable when imposed pursuant to a general plan of development. *Reyner v. Stephens*, 289 S.C. 575, 578, 347 S.E.2d 878, 880 (1986); and *Bomar v. Echols*, 270 S.C. 676, 244 S.E.2d 308 (1978). The subdivision's plan of development, as reflected in the covenants, limits activities to single-family residential use, and any deviation from this general scheme undermines the reliance interests of property owners within the subdivision.

Hunting, as it involves the use of firearms and potential noise, is inherently incompatible with the residential nature of the subdivision. Courts have consistently held that property restrictions prohibiting offensive activities must be construed in favor of maintaining the peaceful enjoyment of residential property. *Kinard v. Richardson*, 407 S.C. 247, 265, 754 S.E.2d 888, 898 (Ct. App. 2014). Given the subdivision's residential character, hunting is clearly an activity that falls outside the scope of permissible use and constitutes a noxious or offensive activity under the governing documents.

#### A. Hunting Restriction

Article VII, Section 21 provides that, "No hunting will be permitted on or over Edisto Lake, or any roads or parkways within the Property." (R. 447). In this case, the Declaration does not expressly define Edisto Lake and the specific hunting restriction does not refer to the lots in the subdivision. (R. 447). If "Edisto Lake" means the subdivision lands. Respondent Hutto's hunting reserve would clearly violate the restriction because "Edisto Lake" means subdivision lands.

#### B. Private Residential Restriction

Article VII, Section 1 provides, among other things, that "no use shall be made of the property or any right or privilege appurtenant thereto, other than for private residential purposes of a single family." (R. 438-439). Respondent Hutto's use of his property as a hunting reserve would offend this restriction. A hunting reserve is not compatible with using the property for a private residential purposes of a single family.

"Single-family residential use involves the act of residing in a single-family dwelling." *Kinard v. Richardson*, 407 S.C. 247, 265, 754 S.E.2d 888, 898 (Ct. App. 2014). Even if Hutto intends to continue residing on the property, his additional use of the property as a hunting reserve, and especially if he opens up hunting to guests and/or paying customers, would a use that is far

beyond using it for private residential purposes. *Id.* (neighbors violated a restrictive covenant that prohibited any use of the property other than for single family residential use when they leased tract of open land adjacent to their residence to the operators of an equestrian center for the purposes of using the tract as a horse pasture to enhance their equestrian business; neighbors' tract was not used for residential purpose, but rather, it was used for a commercial venture.). *Id.*

In this case, Respondent Hutto's use of the hunting reserve and even as a commercial venture, this further reinforces that he would not be using the property for a private residential use only. *Id.*; See also *Cothran v. Stroman*, 246 S.C. 42, 142 S.E.2d 368 (1965) (operation of a one-operator beauty parlor, even if it did not constitute a noxious or offensive activity, was a violation of restrictive covenant to the effect that no lot shall be used except for residential purposes).

### **C. Noxious or Offensive Activity/Annoyance/Nuisance Restriction.**

Article VII, Section 3 of the Declaration prohibits "noxious or offensive activity" being carried out on any lot or anything that "may become an annoyance or nuisance. (R. 439-440). The firing of guns in or around this equestrian friendly subdivision could very well constitute noxious or offensive activity or an annoyance, etc. (R. 439-440). The language of the restriction even uses noise an example. (R. 439).

"Restrictions prohibiting the use of property for offensive or noxious purposes . . . will be construed against the party seeking to enforce them." 26A C.J.S. *Deeds* ' 425. However, loud gun noises emanating from Hutto's property, and especially in a subdivision where many of the neighbors own horses who could be frightened by the noise, could very well trigger a violation of the restriction. *Blanks v. Rawson*, 296 S.C. 110, 370 S.E.2d 890 (Ct. App. 1988) (court applying a restriction providing that "no noxious or offensive activity shall be had or

done upon any lot in the subdivision and nothing shall be had or done thereon which constitutes or becomes an annoyance or nuisance to the neighborhood” and holding that a neighbor’s placement of a dog pen a property line constitute nuisance where pen was not regularly cleaned, and odor was created by its condition.).

In this case, several of the Appellants testified at the trial held in March 2022. (R. 104-326). They related that they were residents of the Edisto Lake Community and brought this action contending Mr. Hutto was using parts of the community as a private hunting preserve and in violation of its covenants and restrictions. (R. 5). They testified that they had heard gunshots during certain parts of the day and found spent shotgun shells on property within the development. (R. 5). The sound of gun shots and spent shotgun shells on the property are offensive and/or noxious.

Respondent’s use of the property would be offensive and/or noxious. Therefore hunting should be restrictive.

### CONCLUSION

The lower court erred in failing to interpret the restrictive covenants as a whole and enforce all applicable restrictions. Additionally, hunting should be prohibited as it is a noxious and offensive activity under the covenants, which were established to preserve the residential character of the subdivision. The Appellant respectfully requests that this Court reverse the trial court's ruling and prohibit hunting within the subdivision in accordance with the restrictive covenants.

*(Signature on the following page)*

Respectfully submitted,

s/ S. Jahue Moore

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September 30, 2025

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STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Circuit Court for the Second Judicial Circuit

Courtney Clyburn Pope, Circuit Court Judge

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SC Court of Appeals

Case No. 2024-000898

Albert D. Barwick, Ann R. Barwick, Gordon G. Holscher, II,  
Billy R. Jeffcoat, Connie M. Jeffcoat, Harriet A. Jones, Ernest J. Matheson, Jr.,  
Thomas L. Reading, Kenneth W. Pippen, Jr., and Ignas K. Skrupskelis,..... Appellants,

vs.

Edisto Lake, Inc., Edisto Lake Ridge, LLC,  
Edisto Lake Property Owner's Association, Inc., and Terry M. Hutto, Jr.,.....Respondents.

**PROOF OF SERVICE**

I, Diane M. L. Corley, an employee of the Moore Bradley Myers Law Firm, P.A.,  
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October 1, 2025

The Honorable Jenny Abbott Kitchings  
 Clerk, South Carolina Court of Appeals  
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SC Court of Appeals

RE: Albert D. Barwick, et al, v. Edisto Lake, Inc., et al,  
 Appellate Case No.: 2024-000898

Dear Ms. Kitchings:

You will please find enclosed the Final Brief of the Appellants and Proof of Service with regard to the above matter. We are filing the same with the Court today.

Thank you in advance for your assistance in this matter.

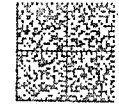
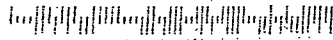
Sincerely,

Diane M. L. Corley  
 Legal Assistant to S. Jahue Moore

/dc

Enclosures

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