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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2019-CP-26-06550
Appellate Case No. 2023-000451

Tony Giovino, Carter Tackett, Richard Aquino,
Bill West, and Shoreham Towers Homeowners Association, ... Appellants.

v.

Marshall Griffin, ...Respondent,

APPELLANTS' REPLY TO RESPONDENT'S RETURN TO APPELLANTS' PETITION FOR REHEARING

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Myrtle Beach, South Carolina

September 2, 2025

INTRODUCTION

Pursuant to Rule 240(f), SCACR, Appellants respectfully submits this Reply to Respondent's Return to Appellants' Petition for Rehearing.

ARGUMENTS

I. The TRO Was Used As A Hammer At Trial In Complete Disregard Of The Legal Principle That A Temporary Injunction Is Without Prejudice To The Rights Of Either Party-Respondent's Own Return Used The TRO As A Weapon.

Incredibly, Respondent's Return states that there was no risk of prejudice, even though the jury repeatedly, over 35 times, heard from Respondent's counsel that a judge issued a TRO against the Appellants. How can there be "…no risk of prejudice…" when the Board members, under cross examination, had to repeatedly testify that actions they took, as Board members, had to be redone, reversed, or halted because a state court judge issued an order. Even in this Appeal, the prejudice continues for Respondent, in his Return to this Petition, uses the TRO to the prejudice of Appellants when he wrote "*…although the Appellants returned some of the converted property, they did not do so voluntarily*." *Emphasis added.* (Respondent's Return, page 3).

Also in his argument, Respondent argues that the TRO did not influence the finding that the planters are not common elements. However, the Master Deed clearly identified the planters as common elements and Respondent testified, two (2) different times, that the planters were common elements:

> Q. And you agree that the planters are common elements?
>
> A. That's correct. (R. p. 00368, lines 15-17).
>
> Q. I think you told the jury on direct that you agree that the planters are common elements?
>
> A. That's correct. (R. p. 00371, lines 10-11).

It is a fact that Respondent's counsel, in his cross examination and his closing statement, referred to the TRO being applicable to the planters. The only plausible explanation for the jury finding that the planters are common elements is that the TRO dealt with the planters-certainly not the Master Deed nor the unequivocal testimony of Respondent that the planters were common elements.

II. The Court Of Appeals Penalized Appellants For Following Legal Advice When They Treated The Roof Terrace As A Common Element.

Respondent, in his return, ignores the salient testimony of the Appellants' legal counsel, Roger Roy. Mr. Roy did not testify, nor even insinuate, that the Shoreham Board acted outside of his legal guidance that the roof terrace was a common elements. Instead, he testified that he provided legal guidance that the roof terrace was a common element and encouraged the Board to devise rules and regulations as to the roof terrace. In a March 19, 2019 letter to the Appellant, Carter Taggart, a Board member, Mr. Roy wrote the following about the rooftop area: "I'm very concerned that this area could be a great liable (sp) to the Association due to the unsafe areas that would be accessible by the owners, immediate families, guests and invitees. I would encourage the Board to devise rules and regulations concerning this area as to when and how it may be used. These rules should limit the activity on the rooftop". (Defendants' Exhibit 23, R. p. 01195).

The Appellants accepted the legal guidance from Roger Roy that the roof was a common element. (R. p. 00647, line 13 to R. p. 00648, line 10). As Appellant Bill West testified, the Board sought legal counsel to give advice and guidance. (R. p. 00657, lines 9-15). The Board prepared rooftop rules and regulations, which were reviewed by Roger Roy and he testified that they "…were well thought out and very appropriate". (R. p. 00766, lines 9-16).

The statutory protections afforded to the Board members by South Carolina Subsections 33-31-832(a) and 33-31-830(b)(2), were ignored and now there exists a South Carolina published

appellate decision which dissuades persons from serving as a director on a non-profit association board of directors.

III. It Is Not The Providence Of The Court Of Appeals To Create Fictitious Ambiguities, By Ignoring The Plain Meaning Of Words.

In Respondent's Return, he argues that the Shoreham Towers Master Deed is ambiguous with respect to the words "roof terrace". The decision of the Court of Appeals that a roof terrace is not a roof "…in the traditional sense…" does not make sense and appears to be an excuse to manufacture a non-existent ambiguity. In a South Carolina horizontal property regime, of which Shoreham Towers is, the roof is a common element. Code of Laws of the State of South Carolina, Section 27-31-20(f)(2) & (3). The Shoreham Towers roof terrace is the roof. The Appellant Association repaired this roof terrace, a common element, in 2019, which roof repair was done by a professional roofing contractor (R. p. 00728, line 23 to R. p. 00735, line 18; and R. p. 00636, line 4 to R. p. 00637, line 4). As discussed in the Petition for Rehearing, the Respondent voted, as a Shoreham director, for the Association to this repair.

In addition, in his Return, Respondent argues that an ambiguity exists with respect to the size of his Unit. Apparently, his Unit is now larger in square footage than the 2,630 square feet he was deeded. However, at trial Respondent testified that his Unit is 2,630 square feet, as stated in the Master Deed and that his Unit size did not change over the years. (R. p. 00345, lines 13-24). This testimony is consistent with the fact that since the purchase of his Unit, Respondent only paid property taxes and his Shoreham annual, and special, assessments based on his Unit size being 2,630 square feet.

CONCLUSION

Based on the foregoing, and the matters set forth in Appellants' Petition for Rehearing, Appellants pray that this Court grant a rehearing of this matter and amend its Decision by reversing

the jury verdict in its totality and finding that the roof, planters, and elevator lobby are common elements as plainly stated in the Master Deed.

Respectfully submitted,

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Bill West, and Shoreham Towers Homeowners Association, ... Appellants.

PROOF OF SERVICE

I, Henrietta U. Golding, attorney for Appellants, hereby certify that **Appellants' Reply to Respondent's Return to Appellants' Petition for Rehearing** was served on Respondent on September 2, 2025, via email (*see attached*) to counsel of record for Respondent, addressed as follows:

John M. Grantland, Esquire Crawford A. Krebs, Esquire Post Office Box 6648 Columbia, South Carolina 29260 Email: jgrantland@murphygrantland.com ckrebs@murphygrantland.com	Thomas C. Brittain, Esquire Brittan Law Firm 4614 Oleander Drive Myrtle Beach, South Carolina 29577 Email: tommyb@brittainlawfirm.com

Respectfully submitted,

BURR & FORMAN LLP

By: s/Henrietta U. Golding
Henrietta U. Golding, SC Bar #2173

Attorneys for the Appellants

Subject: Marshall Griffin v. Tony Giovino 2023-000451

Date: 9/2/2025 11:20 AM

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Good Morning Counselors,

Attached please find Appellants' Reply to Respondent's Return to Appellants' Petition for Rehearing and Proof of Service, which I will be filing with the Court momentarily.

Sheila

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