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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CLARENDON COUNTY  
COURT OF COMMON PLEAS

The Honorable Kristi F. Curtis Circuit Court Judge

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Case No. 2024-00187

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Palmetto Air Plantation Homeowners Association, Inc. ....Respondent,

v.

Kim E. Bevier.....Appellant.

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INITIAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE ISSUE OF ENFORCEABILITY OF THE COVENANTS AGAINST THE APPELLANT WAS RES JUDICATA.
- II. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE APPELLANT CANNOT NOW RAISE THE ISSUE OF THE ENFORCEABILITY OF THE COVENANTS AGAINST THE APPELLANT BY THE RESPONDENT.
- III. THE COURT OF APPEALS SHOULD SANCTION THE APPELLANT FOR BRINGING A FRIVOLOUS APPEAL.

## STATEMENT OF THE CASE

This action was commenced by the filing of a Summons and Complaint in the Court of Common Pleas for Clarendon County on April 17, 2017 (R. p. ). Along with the Complaint, the Respondent sought injunctive relief by filing a Motion for a Temporary Restraining Order on April 18, 2017 (R. p. ). On June 6, 2017, The Honorable R. Ferrell Cothran, Jr. granted the Respondent's request for a Temporary Restraining Order (R. p. ).

The Appellant filed his Answer to the original Complaint on June 16, 2017, R. p. ). By agreement, the Respondent filed an Amended Summons and Complaint on June 28, 2017 (R. p. ). The Appellant filed his Answer to the Amended Summons and Complaint on July 7, 2017. Over three months later, the Appellant filed a Motion to Amend his Amended Answer (R. p. ). A hearing was held on March 20, 2018, in which the Court granted Appellant's Motion to Amend his Amended Answer (R. p. ). On March 22, 2018, the Appellant filed his Second Amended Answer and Counterclaim (R. p. ).

On July 19, 2018, the Respondent filed a Motion for Partial Summary Judgment and Memorandum in support (R. p. ). The parties agreed to a stipulation of facts on August 21, 2018, and agreed that the Motion for Partial Summary Judgment would be heard without oral argument (R. p. ). The Appellant filed his memorandum in opposition to the Motion for Partial Summary Judgment on August 25, 2018 (R. p. ). The Court then filed its Order granting Respondent's Motion for Summary Judgment (R. p. ).

The Appellant next filed a Notice of Appeal with the South Carolina Court of Appeals (R. p. ). The South Carolina Court of Appeals heard the matter in Appellate Case No. 2019-000516. The Court of Appeals affirmed the Partial Summary Judgment Order of Judge Cothran, *See Palmetto Air v. Bevier*, Unpublished Opinion No. 2022-UP-361. (R. p. ).

The parties were next before the Court of Common Pleas on April 1, 2024, for a hearing before the Honorable Kristi F. Curtis on the issue of damages (R. p. ). At that hearing, the Appellant's Motion for Summary Judgment, which was filed on February 21, 2023, was heard by the Court (R. p. ). In his Motion for Summary Judgment, the appellant raised the issue for the first time in this litigation that the Respondent is not the named homeowner's association as is stated in the Covenants (R. p. ). The Covenants state in Section 1.7 as follows: "Association shall mean the Palmetto Air Plantation Owners Association, Inc." The Respondent's name is Palmetto Air Plantation Homeowners Association, Inc. The difference in the names is "Owners" in the Covenants versus "Homeowners" in the Plaintiff's name (R. p. ). Also, Judge Curtis stated in her Order: "Furthermore, the bylaws of the Plaintiff that were recorded in the Clarendon County RMC office refer to the Plat and Tax Map numbers for the property, and they are the bylaws for the property, notwithstanding any slight discrepancy in name. Therefore, the Court would find that the Defendant cannot now claim that Plaintiff is not the proper party in this matter. The Court would find that the Defendant cannot now rely on the difference in the names as a defense." (R. p. ).

The Appellant filed a Motion to Reconsider Judge Curtis's ruling, and that Motion

was denied by the Court (R. p. ). This appeal followed that ruling.

### STATEMENT OF FACTS

On or about July 11, 2001, the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (R. p. ). The Appellant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants ." The Appellant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina was filed as alleged and that the Appellant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied" (R. p. ).

On May 21, 2003, before signing the contract of sale, W.C. Coffey, Jr., Esquire, wrote a letter to the Appellant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that the Appellant later purchased. Mr. Coffey further references a meeting between himself, the Appellant, and his late wife, wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (R. p. ).

The Appellant and Respondent entered into a contract of sale for two lots on May 23, 2003 (R. p. ). The contract of sale was signed by Kim Bevier and his

wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26." (R. p. ).

At closing, a Preliminary Attorney's Title Certificate was provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (R. p. ).

On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Appellant. It states in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223" (R. p. ).

On September 4, 2004, the organizational meeting was held by the homeowners of Palmetto Air Plantation (R. p. ). At that meeting, the Appellant and his wife were in attendance along with other homeowners of Palmetto Air Plantation (R. p. ). The purpose of the meeting was to approve the By-Laws of Palmetto Air Plantation Homeowners' Association and to establish an initial Board of Directors for the association (R. p. ). As previously stated, the Appellant and his wife were present (R. p. ). Not only was the Appellant present, but he voted in the approval of the By-laws of the Association (R. p. ). The Appellant also fully participated in the meeting and was named as an initial member of the Association's Board of Directors (R. p. ).

The underlying action was commenced by the filing of a Summons and Complaint

in the Court of Common Pleas for Clarendon County on April 17, 2017, by the Respondent (R. p. ). Along with the Complaint, the Respondent sought injunctive relief by filing a Motion for a Temporary Restraining Order on April 18, 2017 (R. p. ). On June 6, 2017, The Honorable R. Ferrell Cothran, Jr. granted the Respondent's request for a Temporary Restraining Order (R. p. ).

The Appellant filed his Answer to the original Complaint on June 16, 2017, (R. p. ). By agreement, the Respondent filed an Amended Summons and Complaint on June 28, 2017 (R. p. ). The Appellant filed his Answer to the Amended Summons and Complaint on July 7, 2017. Over three months later, the Appellant filed a Motion to Amend his Amended Answer (R. p. ). A hearing was held on March 20, 2018, in which the Court granted Appellant's Motion to Amend his Amended Answer (R. p. ). On March 22, 2018, the Appellant filed his Second Amended Answer and Counterclaim (R. p. ).

During the April 4, 2018, deposition of the Appellant, the following exchange took place between the Respondent's attorney and the Appellant :

Q. All right. So, let's go back to your contention that the Covenants—I want to get a clear understanding from you why the Covenants don't----aren't applicable to you."

A. Because they have never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. Okay. My lay understanding of this is that any Restrictive Covenants need to be either stipulated in a conveyance or referenced in a conveyance if recorded

elsewhere. None of those things happened when Joe sold all the land as Mid Eastern Truck Wash sold all the land to Palmetto Air Plantation, LLC. Okay?

A. All right. Joe, at that point in time, lost his rights as Declarant because more than twenty-five (25) – he retained zero percent of the lots at that time. He can't act as a declarant after he sold all of the property.

A. So you ask---why I don't believe the covenants apply to my land---that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed: Okay? Not subject---I guess it's subject to restrictions, zoning, easements, and all that jazz that apply, but it did again; it did not bind the covenants to my property, and, indeed, I don't think they could unless they refiled themselves . (R. p. ).

On July 19, 2018, the Respondent filed a Motion for Partial Summary Judgment and Memorandum in support (R. p. ). The parties agreed to a stipulation of facts on August 21, 2018, and agreed that the Motion for Partial Summary Judgment would be heard without oral argument (R. p. ). The Appellant filed his memorandum in opposition to the Motion for Partial Summary Judgment on August 25, 2018 (R. p. ). The Court then filed its Order granting Respondent's Motion for Summary Judgment (R. p. ).

The Appellant next filed a Notice of Appeal with the South Carolina Court of Appeals (R. p. ). The South Carolina Court of Appeals heard the matter in Appellate Case No. 2019-000516. See *Palmetto Air v. Bevier*, Unpublished Opinion No.

2022-UP-361. (R. p. ).

The parties were next before the Court of Common Pleas on April 1, 2024, for a hearing before the Honorable Kristi F. Curtis on the issue of damages (R. p. ). At that hearing, the Appellant's Motion for Summary Judgment, which was filed on February 21, 2023, was heard by the Court (R. p. ). In his Motion for Summary Judgment, the appellant raised the issue for the first time that the Respondent is not the named homeowner's association as is stated in the Covenants (R. p. ).

The Covenants state in Section 1.7 as follows: "Association shall mean the Palmetto Air Plantation Owners Association, Inc." The Respondent's name is Palmetto Air Plantation Homeowners Association, Inc. The difference in the names is "Owners" in the Covenants versus "Homeowners" in the Plaintiff's name (R. p. ). Also, Judge Curtis stated in her Order: "Furthermore, the bylaws of the Plaintiff that were recorded in the Clarendon County RMC office refer to the Plat and Tax Map numbers for the property, and they are the bylaws for the property, notwithstanding any slight discrepancy in name. Therefore, the Court would find that the Defendant cannot now claim that Plaintiff is not the proper party in this matter. The Court would find that the Defendant cannot now rely on the difference in the names as a defense." (R. p. ).

#### **STANDARD OF REVIEW**

An action to enforce restrictive covenants is an action in equity. *Buffington v. T.O.E. Enter.*, 383 S.C. 388, 393, 680 S.E.2d 289, 291 (2009); see also *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) (stating while action potentially might require the court to construe a contract, the underlying action was a declaratory action to

declare whether the restrictive covenants were enforceable and thus the standard of review was for an action in equity). On appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence. *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). While this standard permits a broad scope of review, an appellate court will not disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility. *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989).

### **ARGUMENT**

**1. THE SOUTH CAROLINA COURT OF APPEALS HAS RULED THAT THE COVENANTS ARE BINDING ON THE APPELLANT**

The Honorable R. Ferrell Cothran, Jr., Judge of the Third Judicial Circuit, granted a Partial Summary Judgment to the Respondent on the issue of the enforceability of the Declaration of Covenants against the Appellant. The Defendant then appealed that Order to the South Carolina Court of Appeals. The South Carolina Court of Appeals heard the matter in Appellate Case No. 2019-000516. The Court of Appeals stated as follows when it affirmed the Partial Summary Judgment Order of Judge Cothran:

The circuit court granted partial summary judgment in favor of Palmetto Air, finding the Declaration of Covenants was enforceable against Bevier. Specifically, the circuit court determined that the restrictive covenants were created when Mid-Eastern executed and recorded the Declaration of Covenants. It further determined Bevier had actual and constructive knowledge of the Declaration of Covenants. Bevier filed Rule 59(e), SCRCP motion to reconsider, which the circuit court denied.

Moreover, Bevier had constructive notice of the restrictive covenants because the Declaration of Covenants was properly recorded within his chain of title when Mid-Eastern filed and recorded it with the Clarendon

County Register of Deeds office before it conveyed the land to Palmetto Air. See *Harbison Cmty. Ass'n*, 319 S.C. at 103, 459 S.E.2d at 863 ("A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title."); *Howorka v. Harbor Island Owners' Ass'n*, 292 S.C. 381, 386, 356 S.E.2d 433, 436 (Ct. App. 1987) (finding homeowner had constructive notice of a declaration of covenants by virtue of its recordation against the burdened property).

R. p. See *Palmetto Air v. Bevier*, Unpublished Opinion No. 2022-UP-361.

The Court of Appeals was aware that Mid-Eastern was the original owner of the property in question, so all of the facts that the Appellant Defendant relies upon regarding the transfer of the property from Mid-Eastern to Palmetto Air Plantation were known to the Court of Appeals. If the Court of Appeals believed that there was a problem created regarding the applicability of the Covenants to the Appellant's property or with the enforceability of the Covenants by the Respondent, the Court of Appeals could have addressed the issue when it ruled, and it did not. The validity of the Covenants and their applicability to the Appellant have been resolved and are now moot and *res judicata* by Order of the South Carolina Court of Appeals. The Court of Appeals ruling was not appealed by the Appellant, and it is now the law of this case. Defendant is estopped from continuing to argue that the Covenants do not apply to him, and for him to continue to argue this very issue that has already been decided in this matter is contemptuous.

"The doctrine of *res adjudicata* (or *res judicata*) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action." *First Nat'l Bank v. United States Fid. & Guar. Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will

conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992); *Treadaway v. Smith*, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); *Foran v. USAA Cas. Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between these parties. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999); *Rogers v. Kunja Knitting Mills, U.S.A.*, 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999). Res judicata prevents a litigant “from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm’n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987); accord *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999). “Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy, and avoids the harassment of relitigating the same issues.” James F. Flanagan, *South Carolina Civil Procedure* 642 (2d ed. 1996).

To establish res judicata, the Respondent must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Sealy v. Dodge*, 289 S.C. 543, 347 S.E.2d 504 (1986); *Rogers*, 336 S.C. at 537, 520 S.E.2d at 817; *Owenby v. Owens Corning Fiberglas*, 313 S.C. 181, 437 S.E.2d

130 (Ct. App. 1993). For determining whether res judicata applies, the identity of the parties in the first lawsuit also includes persons in privity with the named parties. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

In this case, the issue of the applicability of the Covenants on the Appellant has been decided by this Court in *Palmetto Air v. Bevier*, Unpublished Opinion No. 2022-UP-361. The Appellant's continued argument against this ruling and the thinly veiled argument of enforceability by the Respondent is without merit and frivolous.

2. **THE CIRCUIT COURT CORRECTLY RULED THE APPELLANT CANNOT NOW STATE THAT THE RESPONDENT IS NOT THE PROPER PARTY TO ENFORCE THE COVENANTS**

For the first time in this litigation, the Appellant has raised the issue that the Respondent cannot enforce the Covenants against the Appellant because the Respondent's name, Palmetto Air Plantation Homeowner's Association, Inc., is not the same name that is designated by the Covenants as the governing body designated in the Covenants.

The Covenants state in Section 1.7 as follows: "Association shall mean the Palmetto Air Plantation Owners Association, Inc." The Respondent's name is Palmetto Air Plantation Homeowners Association, Inc. The difference in the names is "Owners" in the Covenants versus "Homeowners" in the Plaintiff's name (R. p. ).

Judge Curtis stated in her Final Order as follows: "Furthermore, the bylaws of the Plaintiff that were recorded in the Clarendon County RMC office refer to the Plat and Tax Map numbers for the property, and they are the bylaws for the property, notwithstanding any slight discrepancy in name. Therefore, the Court would find that the Defendant

cannot now claim that Plaintiff is not the proper party in this matter. The Court would find that the Defendant cannot now rely on the difference in the names as a defense.” (R. p. ).

Furthermore, during the trial of the case before the Circuit Court, the Appellant testified regarding the facts and circumstances that led up to the naming of the Respondent by the homeowners of Palmetto Air Plantation. The Appellant testified as follows:

10 Q: Do you remember being at the -- the meeting in September 10 of 2000 -  
11 - September 2nd, 2004, where the bylaws were  
12 approved?

13 A: Of course, I do.

14 Q: And you were there and you voted to approve them?

15 A: I thought -- I thought at that time before I did my legal  
16 research that it was okay to delay, he didn't have to have a  
17 homeowners' association when he filed the covenants. I later  
18 found out that was wrong.

19 Q: But you also agreed at that meeting that the name of the  
20 of the association would be Palmetto Air Plantation Homeowners  
21 Association, did you not?

22 A: **I did, but I didn't know he didn't have the legal**  
23 authority to do that because your former colleague in your law  
24 firm was there.

24 Q: I'm going to hand you the Court of Appeals opinion. It  
25 says these covenants run with your property. Do you  
(R. p. emphasis added).

1 understand that?

2 A: Yes, I do.

3 Q: And did you appeal that order from the Court of Appeals  
4 to the South Carolina Supreme Court?

5 A: My attorney appealed it because they weren't mentioned in  
6 my deed. The appeals court said that they can apply even if  
7 my deed -- they were not referenced in my deed. I'm not  
8 arguing whether they apply or not. I'm arguing that the  
9 homeowners' association is not legal and that it was created  
10 as a vehicle for Joe Witt to avoid the payment of the  
11 maintenance costs.

12 Q: But in September 2004, you voted --

13 A: I thought it --

14 Q: -- this illegal -- according to you.

15 A: I was --

16 Q: Let me ask the question, Mr. Bevier.

17 A: I was deceived at that meeting by the presence of the  
18 attorney who had closed the land sale with me.

19 Q: **So you were deceived into voting for a homeowners'**

**20 association in a -- in a -- that governs property in an**  
**21 association that you are a member of?**

**22 A: And I decided not to be a member anymore after you sued**  
23 me. And when I began to do the research, that's when I  
24 stopped paying lot fees.

25 Q: But the -- but the South Carolina Court of Appeals has  
(R. p. emphasis added)  
1 stated that these covenants are binding on your property.

2 A: These covenants –

**3 Q: So you can't unilaterally just opt out. You understand**  
**4 that?**

**5 A: The covenants do apply. Your homeowners' association is**  
**6 not legal, and they cannot enforce them.**

**7 Q: My homeowners' association is not legal that you voted to**  
**8 approve?**

**9 A: Yes.**

10 MR. MCKENZIE: No other questions, Your Honor.  
(R. p. emphasis added).

On September 4, 2004, the organizational meeting was held by the homeowners of Palmetto Air Plantation (R. p. ). At that meeting, the Appellant and his wife were in attendance along with other homeowners of Palmetto Air Plantation (R. p. ). The purpose of the meeting was to approve the By-Laws of Palmetto Air Plantation

Homeowners' Association and to establish an initial Board of Directors for the association (R. p. ). As previously stated, the Appellant and his wife were present (R. p. ). Not only was the Appellant present, but he voted in the approval of the By-laws of the Association (R. p. ). The Appellant also fully participated in the meeting and was named as an initial member of the Association's Board of Directors (R. p. ).

This case was commenced on April 17, 2017. During the course of the past eight years and six months, the Appellant has amended his Answer twice, filed numerous Motions, and has appealed the applicability of the Covenants to the South Carolina Court of Appeals. For the first time, after eight and a half years of litigation, the Appellant now contends that the Respondent's name is not the correct name of the homeowner's association and therefore the Respondent cannot enforce the Covenants against the Appellant.

In arguing this absurd position, the Appellant ignores the fact that when the Homeowners Association was created and named, he was at the organizational meeting on September 4, 2004, which approved the By-Laws of the Respondent and was named as a member of the Board of Directors of Palmetto Air Plantation Homeowners Association (R. p. ). For the Appellant to now take the position that the Respondent cannot enforce the Covenants is an absurd position.

As Judge Curtis rightfully stated: Therefore, the Court would find that the Defendant cannot now claim that Plaintiff is not the proper party in this matter. The Court would find that the Defendant cannot now rely on the difference in the names as a defense." (R. p. ).

3. **THE COURT OF APPEALS SHOULD SANCTION THE APPELLANT FOR BRINGING A FRIVOLOUS APPEAL**

Plaintiff would show that the appeal filed by the Appellant has no merit and was filed in an effort to delay, stall, and circumvent the prior rulings of this Court and the Clarendon County Court of Common Pleas.

In support of sanctioning the Appellant, the Respondent would ask the Court to consider the length of judicial time this matter has taken to this point. The expenditures of the Respondent in having to defend this frivolous action. The undisputed fact that the Appellant's property is governed by the Covenants. The meritless contention of the Appellant that the Respondent cannot enforce the Covenants against his property because of its name, especially taking into consideration that the Appellant voted to create the name that he now claims is not proper.

**CONCLUSION**

For the above-mentioned reasons, the Respondent would ask this Court to rule in favor of the Respondent and deny the frivolous appeal of the Appellant.

Respectfully Submitted,

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October 4, 2025

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