IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
The Honorable Thomas L. Hughston Jr.

Appellate Case No. 2024-001547
Case No. 202O-CP-18-1856

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SC Court of Appeals

Joseph R. Davis and Jennifer Davis, individually
and as representative of all those similarly situated,.....Appellants- Respondents,

v.

River Oaks Homeowners Association, Inc.,.....Respondent-Appellant,

and

Halcyon Real Estate Services, LLC, and
Dorchester Real Estate Services, Inc ..... Respondents.

APPELLANTS-RESPONDENTS FINAL RESPONSE BRIEF

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INTRODUCTION

This appeal is brought by only one of the three named Defendants. River Oaks Home Owner Association, Inc. ("River Oaks") is the only Defendant that seeks to challenge class certification. Class certification is not challenged by Defendant Halycon Real Estate Services, LLC ("Halcyon"), which settled on a class-wide basis. Nor is class certification challenged by Dorchester Real Estate Services, Inc. ("DRES"), which is in default. Rather, this present challenge comes from River Oaks alone, who concedes its cross appeal is moot in the present posture of the case. (Resp-App. Brief, p. iv).

River Oaks states that if the grant of summary judgment is affirmed (which is highly unlikely), its appeal is moot and will be withdrawn. (Resp-App. Brief, p. iv). If summary judgment is overturned (which is highly likely), then this appeal is interlocutory. Notwithstanding, River Oaks fails to establish that the lower court abused its discretion in certifying a class under Rule 23, SCRCP. This appeal should be dismissed.

STATEMENT OF CASE

On October 11, 2017, Joseph and Jennifer Davis ("Davis") filed this matter asserting class allegations seeking, in part, to declare River Oaks and its property management companies, Halcyon and DRES, to be without authority to enforce developer-imposed restrictive covenants against approximately 645 homes in 9 different neighborhoods. The Davis also asserted River Oaks had no authority to levy or collect assessment fines, fees or impose liens against those homes pursuant to the River Oaks Declaration or River Oaks Bylaws (R. p. 60). The Complaint asserts on a non-class basis violations of the Unfair Trade Practices Act. On a class basis, the Complaint asserts causes of

action for unjust enrichment, money had and received, negligent misrepresentation, constructive fraud, slander of title, declaratory judgment, abuse of process, aiding and abetting, and conversion. (R. p. 60.)

River Oaks and Halcyon filed responses on January 2, 2018, and January 10, 2018, respectively. (R. p. 2684). January 10, 2018, the Davis filed a Request for Rule 55(a), Entry of Default, Affidavit of Default and Affidavit of Service as to DRES. (R. pp. 3875-3881). January 23, 2018, a "Rule 5(a) Entry of Default was entered against DRES. (R. p 3882). December 14, 2018, Appellants filed a Motion for Class Certification (R. pp. 142-145). The motion states:

> For the time period commencing January 1, 2014 to present for any homeowner who has owned real property identified on the Woodington I Plat, Woodington II Plat, Woodington III Plat Phase I, Woodington III Phase II, Appian I Plat, Appian II Plat, Appian III Plat, Palmetto Plantation Plat, River Chase Plat Phase I, River Chase Plat Phase I Part II, River Chase Plat Phase II, and Ansley Point Plat, who did not execute the River Oaks Declaration (as defined in Complaint) and from whom River Oaks, Halcyon, and/or DRES have sought to collect or collected from said homeowners assessments, late fees, administrative fees, covenant fines, interest, filing fees, bad check fees, attorney fees, other fees or charges and/or filed a lien against the homeowners real property pursuant to the following covenants, restrictions, and/or declarations: Woodington I, II, and III Covenants, Appian I Covenants, Appian II Covenants, Appian III Covenants, Palmetto Plantation Covenants, River Chase Covenants, Ansley Pointe Covenants, River Oaks Declaration. (as defined in the Complaint)

November 6, 2019, the parties entered a Consent Order striking the matter from the roster under Rule 40(j), SCRCP. (R. pp. 1-6). The matter was restored by Order filed November 20, 2020. (R. pp. 7-10)

December 23, 2020, River Oaks filed a "Motion for Partial Summary Judgement." (R. pp. 146-147). On March 10, 2021, the Davis filed a Motion for Summary Judgment and Supporting Memorandum. (R. pp. 148-159). March 24, 2021, a hearing was held on

three pending motions, followed by hearings on June 4, 2021 and July 7, 2022 addressing supplement submissions relating to the cross motions for summary judgment and motion for class certification. On August 16, 2022, the Court entered three (3) Orders: (1) Order Denying Plaintiffs' Motion for Partial Summary Judgment; (2) Order Denying Defendants' Motion for Partial Summary Judgment; and (3) Order granting Class Certification. ("Class Order") The Class Order defined the class as:

> For the time period commencing January 1, 2014 to present for any homeowner who owns or has owned real property identified on the Woodington I Plat and Woodington II Plat who did not execute the Declaration[1] and from whom River Oaks, Halcyon, and/or DRES have sought to collect or collected from said homeowners' assessments, late fees, administrative fees, covenant fines, interest, filing fees, bad check fees, attorney fees (R. pp. 19-32).

On August 26, 2022, Plaintiffs filed a "Motion for Reconsideration, in part "seeking a determination that the class should contain all neighborhoods, not just the Woodington neighborhoods." (R. pp. 1201-1202). River Oaks also filed a Motion for Reconsideration of the Class Order on August 26, 2022. The Court denied both Motions for Reconsideration on December 6, 2022, by way of separate Form 4 Orders. (R. p. 33).

The matter was set to be tried before the Honorable T. I. Hughston Jr., on June 12, 2024. At the commencement of the proceedings, the parties acknowledged that the Defendant, DRES was is in default (R. p. 2664) and liability as to DRES was established as to all causes of action asserted against it on a class basis. Additionally, settlement with Halcyon on a class-wide basis was placed on the record with the parties acknowledging the need for compliance with Rule 23, SCRCP and further court approval of the settlement. (R. pp. 2585-2588). The Court then proceeded to hear renewed cross motions for summary judgment, which, in essence, sought the opposite relief.

[1] The Class Order defines the River Oaks Declaration as being solely that certain document filed in the Dorchester County Register of Deeds on May 26, 2000.

The Court entered an Order on July 24, 2024, granting Rivers Oaks' motion for summary judgment and denying Davis's Motion for Summary Judgment. (R. pp. 36-57). On August 3, 2024, Davis filed a Motion for Reconsideration. (Mot. Recon. 2024). Reconsideration was denied on August 15, 2024. (R. pp. 58-59). Plaintiffs filed a Notice of Appeal with this Court on September 13, 2024, followed by a Notice of Appeal by River Oaks on September 16, 2024.

SUMMARY OF FACTS

Appellants call to the Court's attention the facts set forth in Appellants' Statement of the Case and Factual Background as set forth and Appellants' initial appellate brief filed in this appeal on January 7, 2025, and incorporate said facts herein by reference thereto.

Additionally, Appellants would bring the Court's attention to a couple of particularly relevant facts to this response brief. First, the Woodington I and Woodington II neighborhoods collectively contain 131 lots (Plats) and are subject to the same developer-imposed restrictive covenants that were imposed upon the lots in the mid-1980's (R. pp. 3003-3008). River Oaks recorded the River Oaks Declaration on May 26, 2000 (R. pp. 2715-2756). Appellant's purchased the subject property in the Woodington I neighborhood in 2005 (R. pp. 331-333). Appellant's filed the complaint in this action in October of 2017 (R. p. 60). Appellant's moved for class certification in December of 2018. Appellant's sold the subject property in July of 2020 (R. pp. 399-402). The Order of Class Certification was granted in August of 2022. (R. pp. 19-32). An approved Class Notice (R. pp. 2259) was mailed to 228 identified class members. Only 6 class members opted out of the class. (R. p. 1977).

CLASS ACTION STANDARD OF REVIEW

Whether a class should be certified rests in the discretion of the trial court. *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 88, 687 S.E.2d 321, 324 (2009). In considering a motion to certify a class,

the Court may not look to the merits of the claims when determining whether to certify a class. *Tilley v. Pacesetter Corp*., 333 S.C. 33, 508 S.E. 2d 16 (1998). The Supreme Court of South Carolina "has expressed the viewpoint that class actions are favored in this state[.]" *Grazia v. S.C. State Plastering,* LLC, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2011). Plaintiffs bear the burden of proving all five requirements for class certification. *Gardner v. South Carolina Dept. of Revenue,* 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003).

ARGUMENT

1. THIS APPEAL SHOULD BE DISMISSED.

"[A]n issue that is contingent, hypothetical, or abstract is not **ripe** for judicial review." *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.,* 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006). An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. *Jackson v. State,* 331 S.C. 486, 489 S.E.2d 915 (1997). Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable. *See* Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 122 (1999). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

River Oaks concedes the relief it seeks through this appeal is not available and moot. (Resp-App. Brief, p. iv) River Oaks seeks through this cross-appeal relief from an Order that no longer has

application to it. This Court can grant no relief to River Oaks in the case's present posture. The appeal should be dismissed.

If the Court reverses summary judgment as it should, the issue raised by River Oaks here is interlocutory. Class certification orders are not immediately appealable. *See Eldridge v. City of Greenwood*, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992) ("Orders under Rule 23, SCRCP are interlocutory and thus, immediately appealable only in certain circumstances."); *see also Ferguson v. Charleston Lincoln Mercury, Inc*., 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002) ("Usually, an order denying class certification is interlocutory and not immediately appealable."). River Oaks seeks the review of an Order that either has no application to it or is interlocutory. The appeal is improper and should be dismissed.

2. THE GRANT OF CLASS CERTIFICATION WAS NOT AN ABUSE OF DISCRETION.

It is well settled in South Carolina that Rule 23, SCRCP endorses a more expansive view of class action availability than its federal counterpart, Rule 23, FRCP. *Salmonsen v GCD*, 377 S.C. 442, 661 S.E. 2d 81 (2008). "[T]he class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23." *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 576–77, 703 S.E.2d 197, 204 (2010), citing, *Califano v. Yamasaki*, 442 U.S. 682, 701, 99 S. Ct. 2545 (1979).

The South Carolina Supreme Court has expressed the viewpoint that class actions are favored in this state and our rules are more expansive than the federal counterpart:

> Our state class action rule differs significantly from its federal counterpart. The drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRCP, endorses a

> more expansive view of class action availability than its federal counterpart. *Littlefield v. South Carolina Forestry Comm'n,* 337 S.C. 348, 354–55, 523 S.E.2d 781, 784 (1999).

Id. at 576–77.

The lower court properly granted class certification it simply did not provided for a broad enough class definition.

A. Davis is an adequate representative with no antagonistic interests.

River Oaks complains the appointed Class Representative is inadequate. It does so on improper and irrelevant grounds. The Class Representative is adequate.

South Carolina Rule of Civil Procedure 23(a)(4) requires that the named plaintiff fairly and adequately protect the interests of the class. That protection involves two factors: (1) counsel must be qualified, experienced and generally able to conduct the proposed litigation; and (2) plaintiffs' claims must be sufficiently interrelated and not antagonistic to the class claims. *Waller v. Seabrook Island Property Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990).

Here, River Oaks does not raise any issues with class counsel but rather focuses on the alleged antagonistic nature of Davis' interests. River Oaks complains that Davis has antagonistic interests because the action, in essence, seeks a determination that the homeowner association is acting through an invalid and unenforceable declaration that does not attach to and run with the land of subject real properties.

"The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class." *Sperry Rand Corp. v. Larson,* 554 F.2d 868 (8th Cir.1977). The issue of whether a named plaintiff will adequately protect the interests of the class members is a question of fact which depends upon the circumstances of each case." *Waller v.*

Seabroook Island Property Owners Ass'n, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990), citing *McGowan v. Faulkner Concrete Pipe Co*., 659 F.2d 554 (5th Cir.1981).

The purpose of seeking a court determination if a homeowners' association is operating without proper authority, which may result in injunctive relief barring the homeowner's association from acting unlawfully towards homeowners, is not improper. Indeed, seeking a court ruling based upon the law is the essence of a proper purpose, irrespective of possible outcomes. River Oaks' argument that the homeowners' association may not be able to operate as it has in the past is more analogous to a merits type argument "A court may not look to the merits when determining whether to certify a class." *Tilley v. Pacesetter Corp*., 333 S.C. 33, 43, 508 S.E.2d 16, 21 (1998). The argument has no application when considering whether to grant class certification.

Further, River Oaks attack of Davis is based on unsupported facts. There is no evidence that supports nor does River Oaks cite to any evidence for its claims: "a large portion of Davis' class continues to live in and contribute to River Oaks" (RO Brief, p. 1). By contrast the minutes of the annual River Oaks member meetings evidence extremely limited participation in the River Oaks association by homeowners throughout all 11 neighborhoods River Oaks claims to represent.[2] Nor can River Oaks provide evidence of its assertion that "through the active participation of these class members, River Oaks actively provides benefits and services to the community." (RO Brief, p. 2). Likewise, there is no support for River Oaks position the class contains "members who do not wish for the disbanding of their neighborhood homeowners association." (RO Brief, p. 3)

[2] For example, the River Oaks annual member budget passing meeting minutes for the January 24, 2017, meeting evidence that of 674 lots combined within the 11 neighborhoods, more than 150 of those lots were not defined as being in good standing by River Oaks at the time. Further, only 31 lot owners out of 674 lots attended the annual meeting, which is less than 5%. An additional 27 lot owners voted on budget via proxy. For a total vote on the budget of 57 out 674 lot owners. That certainly does not evidence lot owners from any neighborhood, much less the potential class members of Woodington I & II, are contributing and participating in the River Oaks association (R. pp. 461-464).

River Oaks suppositions are contrary to reality. An approved Class Notice (R. p. 2259) was mailed to 228 identified class members. Only 6 class members opted out of the class. (R. pp. 2258-2261). That is less than 6% of the total class members. The class members have spoken through their election not to opt out. The lack of members opting out clearly indicates their desire to participate and seek a ruling.

The alleged distinctions between class members are manufactured and of no moment. Davis seeks the same relief for all class members. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1275–1276 (11th Cir. 2021) (applying test of whether conflict is "fundamental" and goes to specific issue in controversy; rejecting objector's argument that representatives were inadequate because some class members had state law statutory damages claims while other did not; "[m]inor differences in the interests of the class representatives and the class are not enough to defeat class certification under the adequacy requirement."); Marshall v. Holiday Magic, Inc., 550 F.2d 1173, 1177 (9th Cir. 1977) Additionally, Davis has established his commitment and desire to vigorously pursue the claims by making himself available for deposition and trial. There is no conflict of economic interests. Davis is an adequate representative.

B. Davis clearly understands the action.

A named plaintiff is *not* required to be familiar with the contents of pleadings that are basically concerned with technical legal matters or explain facts relating to other victims of the challenged conduct. *Kamen v. Kemper Fin. Servs., Inc.*, 908 F.2d 1338, 1349 (7th Cir. 1990), *rev'd on other grounds*, 500 U.S. 90, 111 S. Ct. 1711, 114 L. Ed. 2d 152 (1991) ("When defendants' counsel took [plaintiff's] deposition and learned that she knew little about either the Fund or the case and had given counsel free reign, they learned only that this case fits the norm.") Notwithstanding Davis is familiar with his pleadings and the relief he seeks.

Davis understands the Complaint and testified as follows in this deposition:

This case is about making sure that what happened to me by the homeowners' association does not happen to anybody else. That is what I would like to see happen with this (R. p. 1554)**…**

Q. Okay. And what would you like to see done out of this?
A. *As I said earlier, I would like to have no other homeowner to receive a call like I did who -- and this attorney who represented the homeowners' association indicate -- excuse me -- that they're going to foreclose on your property for a $484 bill that you have been actively engaged in communicating with their agent, Halcyon; and the actual documents of River Oaks Homeowners' Association stating that we will -- you know, in February of that year that we allow 45 days. So there was so many conflicting statements, and the actions do not support the statements by the homeowners' association. And after receiving this phone call and the emotional distress that it caused, I started doing the research, and going, we found that you don't have legal standing.* (R. p. 1554)**…**

Q. Mr. Davis, in addition to the claims that you are making as an individual, I understand this lawsuit involves class allegations; is that correct?
A. *Yes.*
Q. And you are alleging that River Oaks does not have the authority to act as the
23 homeowners' association with the Woodington neighborhood; is that correct?
A. *Yes.* (R. p. 1554)**…**

Q. Okay. Can you tell me why you want to have a class action lawsuit over those claims?
A. Could you define claims?
Q. What does a class action mean to you, sir?
A. *It is where I am representing a group of homeowners who I do not want to have to experience the actions that I've had to experience for reasons that I don't feel are justified..* (R. p. 1555)**…**

Q. Okay. Do you believe you are the best choice to represent the interest of the class?
A. *I believe I have a sincere desire to make sure that nobody has to experience a phone call of foreclosing on your property for $484.* (R. p. 1555)**…**

A. *Because I would like to see a proper resolution to the issue addressed in the Complaint.*
Q. What is the proper resolution?
A. *As determined by the Court, what is allowed by the HOA, if it is legally correct. And if it's not, then it needs to be addressed by the Court.* (R. p. 1555)**…**

A. *An address of the issues in the Complaint be determined, and then once that's determined, then a clear definition of how the association will address itself, if one exists in the future, so that what occurred to me will not occur to any other homeowner* (R. p. 1556)**…**

Q. Mr. Davis, what do you think that River Oaks itself -- not McCabe, Trotter& Beverly, not DRES, Dorchester, or Halcyon -- but what do you think River Oaks itself did wrong?

A. *The formation of River Oaks was not legally done, and they do not have the legal authority to make assessments, liens, interest.* (R. p. 1575)

A. *I am not here to destroy. I am just here to address the issue.* (R. p. 1577) …

The case of *Georganne Apparel Inc. v. Todd,* 303 S.C. 87, 399 S. E. 2d 16 (Ct. App. 1990) cited by River Oaks simply does not apply here. In *Georganne,* the named Plaintiff and its attorney attempted to defend against direct violations of a Court Order by claiming "they did not know which Complaint was involved." *e* at 91. The Court finding this position to be simply incredulous in dicta stated a plaintiff is required to know its pleadings.

Here, as noted above, unlike in *Georganne* the Plaintiff knows his pleadings. He knows what relief he is seeking. And unquestionably counsel for Plaintiff knows the pleadings, relief sought and applicable law as evidenced by the multiple memoranda submitted in the matter. Familiarity with technical legal issues is not a factor for consideration in class certification. The Court properly certified the class.

C. Davis owned at the time of filing of the Complaint and several years after.

"The rights and liabilities of the parties, that is, their rights to an action for judgment or relief, depend upon the facts as they existed at the time of the commencement of the action, and not at the time of trial. *American Agricultural Chemical Co. v. Thomas,* 206 S.C. 355, 360, 34 S.E.2d 592, 594 (1945). Likewise, the Court of Appeals, in *Brock v. Bennett*, 313 S.C. 513, 518, 519, 443 S.E.2d 409, 412 (Ct. App. 1994) analyzing whether a plaintiff had standing "at the time this action was commenced," determined a lack of standing since Brock was not a member of the church when he brought action to gain control of the church.

Davis owned the real property located in the River Oaks Community at the time suit was commenced. They have the right and personal stake to say: you, Defendant, misrepresented that we

owed you monies you claimed were owed by us, and you should return them to us. Standing is and was proper.

3. THE COURT DID NOT ABUSE ITS DISCRETION BY DETERMINING NUMEROSITY WAS MET.

Deference is given to the lower courts in granting class certification absent an error of law. *Waller vs. Seabrook Island Property Owners Ass'n,* 300 S.C. 465, 388 W. E. 2d 799 (1990) No definite standard exists as to what size class satisfies the requirements of Rule 23(a)(1). *Haywood v. Barnes*, 109 F.R.D. 568, 576 (E.D. N.C. 1986). However, where the class numbers are at least 40, joinder been determined to be impracticable, and where the class numbers in the hundreds, joinder is clearly impracticable. *See, e.g., Swanson v. American Consumer Industries*, 415 F.2d 1326, 1333 (7th Cir. 1969) (reversing denial of class certification in a securities case involving 151 class members), and Newberg on Class Actions § 3:12 (5th ed. 2021). For the "gray area" cases between twenty and forty members, J.A. 1916 (quoting J.A. 1081), "all the circumstances of the case should be taken into consideration" in evaluating the impracticability of joinder, *Ballard v. Shield of S.W. Va., Inc*., 543 F.2d 1075, 1080 (4th Cir. 1976).

Here the class members had been identified as being in excess of 100 and ultimately ended up being of 200. The Court correctly determined numerosity had been met.

4. **THE ELEMENTS OF COMMONALITY AND TYPICALLITY WERE ESTABLISHED**.

Common questions of law and fact exist as to all members of the class. To establish commonality, a party must show "questions of law or fact common to the class." Rule 23(a)(2), SCRCP. The South Carolina Court of Appeals discussed the issue of common questions of law or fact in the case of *McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157-158 (Ct. App. 1986). The Court stated that:

> *It is important to note that the subsection does not demand all questions of law and fact to be common, only that there be common issues among the class. In fact, a single common issue will suffice if it is important enough. (Emphasis added).*

See also, *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Ct. App. 2011).

Commonality is met when the class shares a determinative issue. *Gardner* at. 200-201. The questions of law in this litigation are identical amongst the class members, namely, whether the River Oaks Declaration runs with the land and is enforceable; and whether the Woodington Covenants are enforceable by River Oaks?

River Oaks suggestion that individual issues will need to be addressed, is nothing but a red herring. All class members were charged the same assessments. The fines improperly imposed against class members are recorded in River Oaks records. The common issues of the parties' rights and duties under the River Oaks Declaration and Woodington Covenants outlined in the motion predominate, and commonality was satisfied.

The "typicality" requirement of Rule 23(a)(3), SCRCP requires that the claims or defenses of the representative parties be typical of the claims or defenses of the class. *Pope v. Heritage Communities, Inc*., 395 S.C. 404, 717 S.E. 2d 765 (Ct. App. 2011). "The mere fact that the plaintiffs may be entitled to different amounts of damages does not prevent them from banding together and asserting their rights jointly in one action." *McGann v. Mungo*, 287 S.C. 561, 340 S.E. 2d. 154 (Ct. App. 1985).

Here, the claims and defenses of the Plaintiff are typical of the claims and defenses of the class. The claims of Davis and the class arise from the same course of conduct and same legal theories. During the time period relevant to this action River Oaks imposed assessments and fines, and enforced the Woodington Covenants based solely upon River Oaks' assertion the River Oaks

Declaration granted River Oaks the authority to do so. Thus, Davis's claims are tantamount to being identical much less typical of those of the class members.

CONCLUSION

For the reasons and arguments set forth herein above as well as those set forth in Appellants, Joseph and Jennifer Davis' initial appellant brief filed on January 7, 2025, and incorporated herein by reference, Appellants respectfully ask this Court to dismiss Respondent/Appellant River Oaks' cross appeal or in the alternative Appellants request this Court reverse in part the lower court's order of class certification and find that though the ordering of class certification was correct the class definition in the Order of Class Certification should have include the applicable lots of the additional seven neighborhoods in addition to the Woodington Neighborhoods as set forth in Appellants Motion for Class Certification filed on December 14, 2018.

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