

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

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Case No. 2022-CP-36-00392

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

v.

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

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**BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in granting summary judgment by concluding the concrete pad was not a "structure" subject to HOA approval under Regulation No. 1 and the Architectural Guidelines.
- II. Whether the trial court erred in finding the HOA failed to plead a specific covenant violation despite referencing the governing documents.
- III. Whether the trial court erred in dismissing the HOA's claim for injunctive relief based on its interpretation of the governing documents.
- IV. Whether the trial court failed to consider material factual disputes regarding the expiration of prior approvals and the proximity of the pad to the property line.

## STATEMENT OF THE CASE

This appeal arises from a final order entered by the Honorable Frank R. Addy, Jr. in the Court of Common Pleas for Newberry County, granting summary judgment in favor of the defendants, Michael D. Lucas and Angelita R. Lucas (hereinafter collectively referred to as "Lucas"), in Civil Action No. 2022-CP-36-00392. (R. pp. 4-7). The Appellant, The Pointes of Plantation Pointe Owners Association, Inc. ("the HOA"), initiated this action to enforce restrictive covenants and architectural guidelines governing the use of property within the Plantation Pointe subdivision. (R. pp. 8-12).

The underlying dispute concerns the installation of a 36-by-16-foot concrete pad on Lots 86 and 87, owned by Lucas, without prior approval from the Architectural Review Committee ("ARC") and in violation of setback requirements. The HOA alleged that the pad constituted a "structure" or "horizontal improvement" under the governing documents and was installed within ten feet of the property line, contrary to Section 6.13 of the Architectural Guidelines and Regulation No. 1. (R. pp. 60-67).

The HOA filed a complaint seeking injunctive relief and enforcement of the covenants. (R. pp. 8-12). Lucas answered, denying the allegations and asserting that prior approval had been granted in 2009 and reaffirmed in 2012. (R. pp. 13-29). Lucas submitted a motion for summary judgment. (R. pp. 30-54). The HOA filed a Memorandum in Opposition to the Granting of the Motion for Summary Judgment (R. pp. 55-59), and the Affidavit of Dougal Kear, the acting Chair of the Board of Directors of the HOA. (R. pp. 60-67). On May 28, 2025, after an in-person hearing, Judge Addy granted summary judgment in favor of Lucas, concluding that the concrete pad was not a

“structure” subject to regulation under the HOA’s governing documents and that the HOA had failed to plead a specific covenant violation in its Complaint. (R. pp. 4-7).

The HOA timely filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, arguing that the Court failed to address material issues of fact and law, including the applicability of the ARC approval requirement and the expiration of any prior approvals. (R. pp. 68-71). The motion was denied by written order. (R. pp. 1-3).

The HOA now appeals the trial court’s order granting summary judgment and the denial of its motion to alter or amend. The issues on appeal concern the interpretation and enforcement of restrictive covenants, the scope of architectural control, and the propriety of summary judgment in light of disputed facts.

#### **STATEMENT OF THE FACTS**

The Pointes of Plantation Pointe Owners Association, Inc. is a nonprofit corporation responsible for enforcing the restrictive covenants and architectural guidelines governing the Plantation Pointe subdivision in Newberry County, South Carolina. (R. pp. 4-7). The defendants, Michael D. Lucas and Angelita R. Lucas, are homeowners within the subdivision and own Lots 86 and 87, located at 1023 Peninsula Drive. (R. pp. 4-7).

In 2022, Lucas installed a 36-by-16-foot concrete pad, on their property and the pad was constructed within ten feet of the property line shared with Lot 88, owned by David and Dorothy Kincaid (hereinafter collectively the “Kincaids”). (R. pp 4-7). The pad has been used for recreational purposes, including basketball and badminton, and two portable basketball goals were placed at either end. (R. pp. 13-29). Prior to installing the

concrete pad on their property, Lucas, believing that no further approval was needed, did not submit specific plans to the Architectural Review Committee (the "ARC").

The HOA contends that the concrete pad constitutes a "horizontal improvement" under Section 6.13 of the Architectural Guidelines, which defines such improvements as permanent structures less than eighteen (18) inches above natural grade. These improvements require prior ARC approval and must be set back at least ten feet from any property line. (R. pp. 60-67). The HOA further asserts that Lucas was aware of the approval process, having submitted ARC requests for other projects in 2021 and 2023. (R. pp. 60-67).

Lucas argues that they received informal approval for the pad in 2009 via email correspondence with then ARC Chairman Tom Brown and that this approval was reaffirmed in 2012 during a board meeting.<sup>1</sup> (R. pp. 30-54). However, the HOA maintains that any such approval, assuming that Lucas had prior approval, expired after one year pursuant to Section 5.5 of the Architectural Guidelines, which states that ARC approval lapses unless construction begins within 365 days. (R. pp. 60-67).

The HOA filed suit in 2022 seeking injunctive relief and enforcement of the restrictive covenants. The Complaint alleged that Lucas violated the governing documents by constructing a permanent structure without approval and within the required setback. (R. pp. 4-7). Lucas denied the allegations and filed a counterclaim asserting that the HOA's enforcement was arbitrary and discriminatory. (R. pp. 13-29).

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<sup>1</sup> The response from Brown stated that a "formal letter" would be separately issued but the formal letter was never issued.

Lucas filed a Motion for Summary Judgment without the submission of affidavits. (R. pp. 30-54). On May 28, 2025, the Honorable Frank R. Addy, Jr. granted summary judgment in favor of Lucas, concluding that the concrete pad was not a “structure” subject to regulation under the HOA’s governing documents and that the HOA failed to plead a specific covenant violation. The Court also found that the pad did not encroach on neighboring property and that there was no evidence of nuisance or noise sufficient to warrant injunctive relief. (R. pp. 4-7).

The HOA filed a timely Motion to Alter or Amend Judgment under Rule 59(e), SCRCP, arguing that the Court failed to address the applicability of the horizontal improvement provisions and the expiration of prior approvals. (R. pp. 68-71). The motion was denied. (R. pp. 1-3).

This appeal follows.

## **ARGUMENT**

### **I. The Trial Court Erred in Concluding the Concrete Pad Was Not a Structure Subject to Regulation**

The trial court’s conclusion that the concrete pad installed by Lucas was not a “structure” within the meaning of Regulation No. 1 and the governing documents is contrary to both the plain language of the HOA’s rules.

Regulation No. 1, adopted by the Board of Directors of the Pointes of Plantation Pointe Owners Association, defines architectural control broadly to include “all houses and other structures” and explicitly prohibits the erection of any structure other than a single-family dwelling and garage without prior approval. (R. pp. 55-59). The Architectural Guidelines further clarify that “horizontal improvements”—defined as permanent

structures less than 18 inches above natural grade—must be approved by the Architectural Review Committee (ARC) and may not be placed closer than ten feet to any property line, except for driveways and turnarounds. (R. pp. 60-67).

The concrete pad at issue is a 36-by-16-foot permanent slab installed in 2022, used for recreational purposes including basketball and badminton. It is located within ten feet of the property line shared with the Kincaids. The Affidavit of Dougal Kear, Chair of the HOA Board, confirms that the pad was installed without ARC approval and violates the setback requirements and approval process outlined in the Architectural Guidelines. (R. pp. 60-67).

The trial court's narrow interpretation of "structure" as limited to buildings such as dwellings and garages ignores the HOA's express language regulating horizontal improvements. South Carolina courts have consistently held that restrictive covenants must be enforced according to their plain and unambiguous terms. In Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014), the Court of Appeals reversed a trial court's failure to enforce a covenant requiring residential use, holding that even non-building uses such as horse grazing constituted a violation when not approved.

Here, the concrete pad is a permanent improvement that falls squarely within the definition of a horizontal improvement requiring ARC approval. The trial court's failure to apply the HOA's clear regulatory language constitutes reversible error.

## II. The Complaint Adequately Referenced the Governing Documents and Pleaded a Violation

The trial court erred in concluding that the HOA's complaint was deficient for failing to identify a specific covenant violation. The Complaint explicitly references the recorded

restrictive covenants and amendments governing the Lucas property, which includes the Revised Declaration and Regulation No. 1. (R. pp. 8-12). The Complaint alleges that Lucas constructed a permanent concrete structure without ARC approval and in violation of the setback requirements and sought injunctive relief to enforce compliance.

South Carolina law requires that a complaint must be liberally construed in favor of the pleader if the allegations fairly constitute a cause of action. See Pilkington v. McBrain, 274 S.C. 312, 262 S.E.2d 916 (1980) (where the complaint alleges that the pleader sustained damages and even though the damages were not specified and there was no motion to make more definite and certain, the complaint was satisfactory).

Moreover, Lucas's own filings—including their Answer and Motion—acknowledge that the concrete pad was installed without formal ARC approval and that it is located within ten feet of the property line. These admissions confirm that the HOA's Complaint raised genuine issues of material fact regarding covenant compliance.

### III. The Trial Court Erred in Denying Injunctive Relief

The trial court's dismissal of the HOA's request for injunctive relief was based on its erroneous conclusion that no covenant violation occurred. Once that conclusion is reversed, the denial of injunctive relief must also be reconsidered.

Restrictive covenants are enforceable in equity, and injunctive relief is the appropriate remedy where a violation threatens the integrity of a planned residential community. In Cedar Cove Homeowners Ass'n v. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2006), the Court of Appeals reversed a mandatory injunction where the HOA failed to act before construction was complete, but emphasized that injunctive relief is proper when a violation is ongoing and unapproved.

Here, the concrete pad remains in place, unapproved, and in violation of the HOA's setback and approval requirements. The pad's proximity to the neighboring property has generated complaints of noise and disruption, as documented in the Kear affidavit. (R. pp. 60-67). The HOA has a duty to enforce its covenants uniformly to preserve neighborhood harmony and avoid selective enforcement claims.

Lucas's argument that prior approval was granted in 2009 is unavailing. Even assuming such approval existed, it expired after one year under Section 5.5 of the Architectural Guidelines. No extension was requested or granted. The pad was installed more than a decade later, in 2022, without notice to the ARC or Board.

Equity favors enforcement. Lucas was aware of the approval process, having submitted multiple requests in prior years. They chose to bypass that process for the concrete pad. The HOA acted promptly upon learning of the installation and sought judicial enforcement. Injunctive relief is warranted to compel compliance and prevent future violations.

#### IV. Material Factual Disputes Precluded Summary Judgment

Summary judgment is a "drastic remedy" that is only appropriate when there are no genuine issues of material fact and when the moving party is entitled to judgment as a matter of law. Rule 56, SCRCP; Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (recognizing that summary judgment must "be cautiously invoked to ensure that a litigant is not improperly deprived of a trial."). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party," Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329, 673 S.E.2d 801, 803 (2009), and

“[a]ll ambiguities, conclusions and inferences arising in and from the evidence must be construed most strongly against the movant for summary judgment.” Williams v. Chesterfield Lumber Co., 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976). The trial court’s order disregarded multiple factual disputes that should have precluded summary judgment.

First, there is a dispute over whether any valid approval for the concrete pad existed. Lucas relies on a 2009 email exchange with a former ARC chair, but the HOA contends that such approval, even if granted, expired in 2010 and was never renewed. The affidavit of Dougal Kear confirms that no written request or application was submitted for the pad. (R. pp. 60-67).

Second, there is a factual dispute regarding the pad’s location relative to the property line. The HOA’s survey evidence shows that the pad is within ten feet of the line, violating the setback requirement. Lucas denies encroachment but offers no survey or expert evidence to rebut the HOA’s findings.

Third, the pad’s use and impact on neighboring properties is contested. The HOA presented evidence of noise complaints and recreational use inconsistent with residential harmony. (R. pp. 8-12). Lucas denies nuisance but admits to using the pad for basketball and other activities. (R. pp. 13-29).

These disputes are material to the HOA’s claims and should have been resolved at trial. The trial court’s grant of summary judgment improperly deprived the HOA of its right to present evidence and obtain judicial enforcement of its covenants.

## CONCLUSION

The trial court erred in granting summary judgment in favor of Lucas and dismissing the claims of The Pointes of Plantation Pointe Owners Association, Inc. The governing documents—including Regulation No. 1 and the Architectural Guidelines—clearly require prior approval for horizontal improvements such as the concrete pad installed by Lucas. The pad was constructed without ARC review, within ten feet of the property line, and in violation of the HOA's established procedures and setback requirements.

The trial court's narrow interpretation of "structure" disregards the plain language of the HOA's rules and undermines the HOA's ability to enforce uniform standards essential to preserving the character and harmony of the community. Moreover, the Court failed to address material factual disputes regarding the existence and expiration of any prior approvals, the pad's location, and its impact on neighboring properties.

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

Respectfully submitted,

November 20, 2025



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CERTIFICATE OF COUNSEL

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

November 20, 2025



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