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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Ninth Judicial Circuit

Honorable Mikell R. Scarborough
Master-in-Equity

Civil Action No.: 2022-CP-10-04952

Spartina Bay Plantation Property Owners' Association, Inc..... Appellant.

v.

Stephen C. Wells and Randi P. Wells. Respondents.

RECORD ON APPEAL - VOLUME IV OF IV

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RECORD ON APPEAL
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stephen C. Wells and Randi P. Wells,

Plaintiffs,

vs.

Spartina Bay Plantation Property
Owners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04952

**DEFENDANT'S MOTION TO
ALTER/AMEND THE JUDGMENT
GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

TO: TIMOTHY J.W. MULLER, ATTORNEY FOR PLAINTIFF

Defendant Spartina Bay Plantation Property Owners' Association, Inc. ("the POA"), by and through its undersigned counsel, hereby moves this Court for an Order pursuant to Rule 59(e), SCRCP altering or amending its judgment granting Plaintiffs Stephen C. Wells and Randi P. Wells' ("Plaintiffs") Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment.

Argument

- 1. The Court's Order improperly and permanently deprives the POA of its members' legal right to use the community dock, thus making the alleged easement illusory.**

While the Plaintiffs strategically did not plead a cause of action seeking a declaration that the POA had no further rights to the community dock as a result of the disputed Easement Agreement that is the subject of this lawsuit, there can be no doubt that removing the POA members right to use the community dock was a goal of this litigation. This Court's Order hands the community dock to the Plaintiffs, to the detriment of all members of the POA so that the Plaintiffs going forward will pick and choose whom they wish to give access to what has been a community dock since the community's inception.

Contrary to the terms of each written agreement before the Court, and with no case law supporting a merger of the POA's dock lease into the disputed Easement agreement, this Court's finding that the Lease has merged into and been replaced by the Easement Agreement results in the POA no longer having any right of access to its community dock. To the extent the Easement Agreement is deemed valid by the Court, it makes no mention of the community dock, and its drafters could not reasonably have intended to deprive the POA of its community dock while simultaneously granting the POA permanent access to the ingress/egress area to the dock. *See McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248, 612 S.E.2d 462, 465 (Ct. App. 2005) (quoting *Georgetown Mfg. & Warehouse Co. v. S.C. Dep't of Agric.*, 301 S.C. 514, 518, 392 S.E.2d 801, 804 (Ct. App. 1990)) (“[c]ommon sense and good faith are the leading touchstones of a contract and contracts are to be so construed as to avoid an absurd result[.]”).

Article VI, Section 1 of the POA's CCRs, as amended, mandates that “the [POA] shall own or lease the dock...as well as the strip of land designated as Dock Easement[.]”¹ (See **Exhibit A** to the POA's Motion for Summary Judgment). As no evidence of a bill of sale to the community dock exists, the 2001 Lease is the only document that provides the POA access to both the Ingress/Egress Area (Tract 1) and the community dock (Tract 2):

¹ Article VI, Section 1 also provide that “the [POA] shall receive a deed or lease for the strip of land designated as Dock Easement and a Bill of Sale for the Dock prior to the first sale of the first lot within the subdivision.” There is no evidence, however, that such a bill of sale exists.

TRACT 1: All that certain piece, parcel or strip of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as “25’ DOCK INGRESS/EGRESS EASEMENT” on a plat prepared by Jerry L. Fowler, RLS #15178, entitled “A BOUNDARY SURVEY OF 4.31 ACRES TMS 025-00-00-038 SURVEYED FOR: STORE CREEK TRUST” dated September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book DD at Page 27, said strip having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully, ~~and at large~~ appear.

TRACT 2: All that certain piece, parcel or tract of marshland situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as “2.95 ACRES MARSH” on a plat prepared by Jerry L. Fowler, RLS #15178, entitled “A BOUNDARY SURVEY OF 4.31 ACRES TMS 025-00-00-038 SURVEYED FOR: STORE CREEK TRUST” dated September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book DD at Page 27, said tract of marshland having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully and at large appear.

(See **Exhibit C** to the POA’s Motion for Summary Judgment; see also **Exhibit F** to the POA’s Motion for Summary Judgment).

The CCRs’ mandate that the POA own or lease the dock further demonstrates that the POA cannot get rid of the Lease without either (1) an amendment of the covenants; (2) an affirmative vote of 100% of Class A members during a duly noticed meeting or a vote properly authorized by the Board of Directors (see **Exhibit A** to the POA’s Motion for Summary Judgment, Article VI, Section 4 and Article X, Section 3(a) of the CCRs); or (3) securing a deed to the community dock.

In stark contrast to the Lease, the Easement Agreement only purports to grant the POA ingress and egress rights over the ingress/egress area, and further provides that “[the POA] shall have no other rights in and to any other portion of [Lot B] except the Easement Area[.]” – i.e. no further rights to the community dock. (See **Exhibit B** to the POA’s Motion for Summary Judgment).

Further demonstrating an issue overlooked by the Court is the plain text of the Easement Agreement’s integration clause, which purports to merge only “[a]ny and all prior to contemporaneous oral agreement or prior written agreements regarding the Agreement[.]” and in turn defines “Agreement” as “this Easement Agreement.” As the Court noted, generally prior negotiations merge into a deed. See *Hughes v. Greenville Country Club*, 283 S.C. 448, 450, 322 S.E.2d 827, 828 (Ct. App.

1984). However, those prior negotiations are only related to the specific document in question, and South Carolina also recognizes that a merger does not occur when it is contrary to the intent of the parties. *See Id.* at 450-51, 322 S.E.2d at 827.

Thus, to the extent it is valid, the term “this Easement Agreement” – which encompasses the entire scope of the intended merger – cannot reasonably be said to merge with the full Lease, or at a minimum, the rights that the Lease confers in the dock which are not contemplated by the Easement Agreement. The plain text demonstrates that “the Agreement” by definition does not include prior agreements, such as the Lease. If the parties to the Easement Agreement intended to merge in the prior Lease or any other prior agreements, they would have said so, and to imply an intention to merge the Lease into the Easement Agreement is re-writing the Easement Agreement.

Likewise, because the Easement Agreement does not provide any rights to the community dock, the Easement Agreement cannot reasonably be read to merge the provisions of the Lease pertaining to the community dock. This interpretation leads to the absurd result of the POA having an easement in the pathway to the community dock, but no access to the dock itself, in violation of the POA’s Covenants.

The Court’s Order is also contrary to the intent of the parties to the disputed Easement Agreement, to the extent it is valid. As former president Bruce Matrisciani (“Matrisciani”) made clear, his entire purpose for pursuing the Easement Agreement was to secure permanent access to the community dock. However, as Matrisciani acted entirely on his own, without oversight from the POA Board are required by the Bylaws, Matrisciani unilaterally and without authority entered into an easement that defeated his entire intention. Matrisciani testified:

Q: And what were your discussions about with Karen as far as a permanent access solution to the dock?

A: Karen, I feel like I'm an idiot if I own this home and generations from now can't use the dock. They're going to think their great grandfather is an idiot. What can we do?

Q: Okay.

(See **Exhibit H** to the POA's Motion for Summary Judgment, Depo of Matrisciani, p. 44:10-15).

Despite Matrisciani's stated intent to secure a permanent access to the community dock, he unilaterally signed an Easement Agreement that, ironically, deprives the POA of all legal rights to the community dock – which is the outcome of this Court's Order. Nevertheless, it is clear that to the extent the Easement Agreement is valid, the parties never intended for the Easement Agreement to replace the Lease's provisions regarding access to the community dock.

Therefore, the POA respectfully urges the Court to reconsider its Order finding that the disputed Easement Agreement replaced the Lease, as it improperly denies the POA of a valuable asset in a manner that was not contemplated or intended by the parties to the Easement Agreement, and burdens the POA with obligations to maintain an easement area that provides a pathway to nowhere, while also unnecessarily paying twenty-five percent (25%) of the Wells' property taxes in perpetuity, while receiving no benefit at all.

2. The Court erred in finding that Matrisciani had authority to bind the POA to the Easement Agreement.

The Court erred in finding the POA authorized Matrisciani to sign the Easement Agreement which in turn is a ruling that deprives the POA of its right to access the community dock. In finding that no genuine issue of material fact existed as to whether Matrisciani had authority to execute the Easement

Agreement on behalf of the POA, the Court reversed the standard on summary judgment requiring all inferences to be made in favor of the non-moving party, and gave undue weight to Matriscioni's contradictory and self-serving statements regarding his authority, while also misapprehending the portions of the Bylaws dealing with the president's execution of contracts on the POA's behalf. See *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 566, 813 S.E.2d 292, 304 (Ct. App. 2018) (quoting *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 130, 399 S.E.2d 163, 165 (Ct. App. 1990)) (“[t]he law is clear in this state that statements made by an agent concerning the existence or extent of his authority are insufficient standing alone to establish agency[]”); *Orphan Aid Soc. v. Jenkins*, 294 S.C. 106, 109-10, 362 S.E.2d 885, 887 (Ct. App. 1987) (discussing how a corporate president does not have apparent authority by virtue of his position, and his own representations regarding his authority are of no consequence to the analysis).

The Bylaws plainly lay out the limited circumstances in which a POA *president* may execute a contract on the POA's behalf:

President. The president shall be the principal executive officer of the Association and, subject to the control of the directors, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members and of the directors. **He may sign, with the secretary or, any other proper officer of the Association thereunto authorized by the directors,** certificates for membership of the Association, any deeds, mortgages, bonds, **contracts, or other instruments which the directors have authorized to be executed**, except in cases where the signing and execution thereof shall be expressly delegated by the directors or by these by-laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the directors from time to time.

(Emphasis added). (See **Exhibit A** to the POA's Motion for Summary Judgment, Article VII, Section 5 of the Bylaws).

The Court nevertheless misinterpreted the Bylaws in a manner that renders superfluous the requirement that the secretary sign a contract alongside the president. *See Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 416-17, 756 S.E.2d 148, 153 (2014) (citing *Crown Laundry & Dry Cleaners v. U.S.*, 29 F. Cl. 506, 515 (1993)) (explaining that contractual interpretations which “render[] provisions of a contract meaningless or superfluous” are disfavored). As the Court noted, Article X, Section 1 of the Bylaws permits the Board to authorize an officer to sign a contract on the POA’s behalf. The Court failed to address Article VI of the Bylaws which requires the Board of Directors to duly notice meetings and have a quorum (which constitutes the Board’s “manner of acting”), all to establish that the Board had authorized an officer to sign a contract on behalf of the POA. (See **Exhibit A** to the POA’s Motion for Summary Judgment, Article VI to the Bylaws). However, the Wells’ did not produce any evidence that the Board had waived the requirement that Matrisciani sign the Easement Agreement with the secretary or that he was authorized under Article VI to sign the Easement Agreement without the Secretary. Matrisciani’s neglect in obtaining the secretary’s signature or the Board’s authorization to sign alone was all-the-more glaring because the secretary had been involved in the negotiations, had expressed to Matrisciani his objection to key aspects of the Easement Agreement, and cautioned Matrisciani that he should discuss the Easement Agreement with the members prior to signing. (See **Exhibits P** and **Q** to the POA’s Motion for Summary Judgment). At a minimum, these terms regarding the president’s authority to execute agreements are inconsistent, which creates a question of fact that should not be resolved under Rule 56(c), SCRC. *See Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878-79 (explaining that a contract is ambiguous when its terms are inconsistent, and that ambiguity in the contract’s language creates an issue of fact).

Regardless of the process laid out in the Bylaws, Matrisciani himself testified that the POA was governed through votes held during meetings, using Robert’s Rules, during his time as POA president:

Q ...I want to back up to your time as president, which at least we're looking at 2009, and I think probably until 2014. How was the POA governed during that period of time when you were president? How were decisions made?

A Meetings. Votes.

Q Okay.

A. Following Robert's Rules.

Q Okay. And so an action to be effective would need a vote by the board?

A Correct.

Q Following Robert's Rules; right?

A Correct.

(See **Exhibit H** to the POA's Motion for Summary Judgment, Depo. of Matrisciani, 36:19-37:6).

This testimony is consistent with the Bylaws' restriction that the Board can only act through a majority of directors present at a meeting with quorum present. (See **Exhibit A** to the POA's Motion for Summary Judgment, Article VI, Section 7 of the Bylaws). It also reflects the advice Matrisciani received from the POA's former lawyer to hold a meeting to confirm a prospective easement agreement. (See **Exhibit R** to the POA's Motion for Summary Judgment). Matrisciani nevertheless conceded that he did not follow the procedures that he testified governed the POA in signing the Easement Agreement:

Q So you did not have a meeting with the directors with a quorum present using Robert's Rules where you were approved to sign the 2012 easement agreement?

...

A Correct.

(See **Exhibit H** to the POA's Motion for Summary Judgment, Depo. of Matrisciani (59:2-7)).

This admission, at a minimum, creates a genuine issue of fact as Matrisciani's authority to execute the Easement Agreement. In the intervening time, Matrisciani hired a new attorney, negotiated the Easement Agreement entirely on his own, and signed the Easement Agreement, without any action from the Board.²

Therefore, even assuming for the sake of argument that the Court correctly determined that the Board's authorization of the Easement Agreement need not be in writing, it is beyond dispute that (1) the Board's authorization needed to be made at a duly noticed meeting with a quorum present, and (2) there was no meeting where approval of the Easement Agreement could have occurred. As the POA secretary warned the members nearly four months after the Easement Agreement was signed, the POA had not had a meeting for two years and needed to do so to stay "legal and functioning[.]" (See **Exhibit R** to the POA's Motion for Summary Judgment). The undisputed evidence also shows that Matrisciani was still negotiating the terms of the Easement Agreement with the Coxes as late as November 9, 2011, over one year since the Board's prior meeting. (See **Exhibits Q** and **U** to the POA's Motion for Summary Judgment). Accordingly, by the procedures set out in the Bylaws and Matrisciani's own

² As established above, the Board can only "act" through a majority of directors present at a meeting in which a quorum is present. (See **Exhibit A**, Article VI, Section 7 of the Bylaws).

testimony concerning how those procedures were implemented during his time as president, the Board could not have approved the final version of the Easement Agreement that Matrisciani signed prior to its execution.

Likewise, the Court erred in finding that meeting minutes from years prior to the Easement Agreement being signed established no genuine issue of material fact. (See **Exhibits G, T, and U** to the POA's Motion for Summary Judgment). This is particularly true where none of those meeting minutes contemplated the key provisions of the Easement Agreement, including (1) depriving the POA of the legal right to their community dock; (2) depriving the POA of the often-utilized right to vehicular access to the community dock; and (3) requiring the POA to pay twenty-five percent of Lot B's property taxes, despite substantial improvements to Lot B since the Lease's execution.

Additionally, none of the meeting minutes that the Court relied on authorized Matrisciani to negotiate and sign an easement agreement with material concessions not contemplated by the Board, or even contemplate those concessions at all. By contrast, those meeting minutes contemplated Matrisciani working to find a way to secure a permanent access to the community dock – but it did not grant him authority to sign any document without Board approval. Nonetheless, it is indisputable that the Easement Agreement provides precisely the opposite of permanent access to the community dock.

The fact that Matrisciani's ultra vires actions ultimately cost the POA its right to access the community dock, to the extent this Court does not reconsider its decision, highlights the need for the procedural safeguards in the Bylaws that he disregarded. See *Fisher v. Shipyard Council of Co-Owners, Inc.*, 415 S.C. 256, 251, 781 S.E.2d 903, 911 (2016 (explaining that actions taken by a corporation in violation of its own bylaws are ultra vires)).

For these reasons, the Court erred in finding no genuine issue of material fact as to Matrisciani's authority.

3. The Court erred in finding that the Board and members approved of the Easement Agreement.

It is undisputed that there was no meeting of the POA Board for well over a year prior to the Easement Agreement's execution. Yet, the Court nonetheless relied on Matrisciani's testimony that "every single board member agreed to this agreement. [The Board] voted on it." (Order, pg. 10) (quoting Depo of Matrisciani, p. 48:1-5, 18-22), despite Matrisciani's own conflicting testimony that there never was a meeting in which the Easement Agreement was approved – a factual issue that must be resolved in the POA's favor at the summary judgment stage.

Because the Board had not held a meeting since 2010, it was not possible for the Board to have voted on the 2012 Easement Agreement in a manner that complies with the Bylaws. Although the Court found that the Bylaws did not require evidence of a vote to be memorialized in writing, this conclusion contradicts the plain language of the Bylaws, which unambiguously requires Board actions to be taken at a meeting. (See **Exhibit A** to the POA's Motion for Summary Judgment, Article VI, Section 7 of the Bylaws). Accordingly, the Court erred in finding no genuine issue of material fact as to whether the Board approved the Easement Agreement.

Likewise, the Court misapprehended or misapplied the evidence in finding that the members authorized Matrisciani to sign the Easement Agreement. Although the Court correctly noted that the Bylaws permit the members or Board to establish procedures for voting by telephone, the Plaintiffs produced no evidence that either the Board or members had established such a procedure. (See **Exhibit A** to the POA's Motion for Summary Judgment, Article IV, Section 3(d); Article V, Section 7 of the Bylaws). And even if the Plaintiffs' argument is correct that a meeting may be held by telephone, it does not eliminate the notice requirements established by the Bylaws, and a series of random phone calls can hardly be considered a meeting congregated under the procedures required by the Bylaws. (See **Exhibit**

A to the POA's Motion for Summary Judgment, Article VI, Section 5 of the Bylaws). Matrisciani did not testify to, nor did the Wells' produce any evidence of notice of the telephone calls being given to the directors or members with the time periods prescribed by the Bylaws, nor did the Plaintiffs provide any contemporaneous notes or minutes showing that Matrisciani's testimony is in any way credible. Thus, Matrisciani's self-serving testimony that he called each member and read the Easement Agreement verbatim to them (which itself strains the limits of credulity) in order to receive their approval was insufficient to establish a genuine issue of fact that the members had approved the Easement Agreement.

4. The Court erred in finding no genuine issue of material fact as to whether the POA ratified Matrisciani's unauthorized execution of the Easement Agreement.

A plaintiff asserting that a principal ratified its alleged agent's unauthorized action must establish each of the following: "(1) acceptance of the benefits of the agent's acts, (2) the principal's full knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal's intent to accept the unauthorized arrangements." *Stilner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 192, 717 S.E.2d 74, 78 (Ct. App. 2011) (citing *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989)). Likewise, silence or failure to repudiate the agent's unauthorized acts does not constitute a ratification of an agent's actions as a matter of law, "unless the silence or acquiescence in question cannot be explained on any other theory than that of ratification." *Id.* at 191-92, 717 S.E.2d at 78 (quoting 2A C.J.S. *Agency* § 71 (2003) (emphasis added)).

Here, the Court erred in finding no genuine issue of material fact as to any of these three required elements. There was no benefit that the POA could have accepted until 2100, when the Lease's term expired. Likewise, the Court erred in finding that the meeting minutes from four months after the

Easement Agreement was unilaterally recorded by Matrisciani removes any genuine issue of fact as to whether the POA ratified the Easement Agreement.

Respectfully, the Court misapplied South Carolina law on ratification in finding that POA had notice of the Easement Agreement's terms, including its pedestrian limitation. To establish ratification, the plaintiff asserting a principal ratified the agent's unauthorized acts must show that "**the principal has actual knowledge** of the relevant material facts." *Id.* at 192, 717 S.E.2d at 79 (quoting Restatement (Third) of Agency § 4.06 cmt. b (2006)). Accordingly, the meeting minutes' suggestion that the Easement Agreement was available in digitized form was insufficient to establish *actual* knowledge of the substantial concessions Matrisciani had attempted to bind upon the POA. (See **Exhibit V** to the POA's Motion for Summary Judgment).

The May 12, 2012 meeting minutes relied on by the Court also do not give any hint that the Easement Agreement was ever voted on. (See **Exhibit V** to the POA's Motion for Summary Judgment). While the Court found the POA's bylaws do not require a vote to be evidenced in writing, the fact that these meeting minutes reflect several other votes being taken but *not* a vote on the Easement Agreement is conclusive evidence that no vote to ratify the Easement Agreement was ever taken.³ Moreover, the subject meeting was first meeting to occur since the Easement Agreement was unilaterally signed and recorded by Matrisciani, and thus the first opportunity for the members to vote on it.

The Wells' also failed to meet their burden showing no genuine issue of material fact as to whether the POA accepted the terms of the unauthorized Easement Agreement. As the Court noted in its Order, POA members continued to drive on the Ingress/Egress Area after the Easement Agreement

³ In fact, the POA's ordinary course of business at meetings was to record the votes taken. See *e.g.* **Exhibits G, T, U, and V** to the POA's Motion for Summary Judgment.

was signed, as was their right under Lease. Likewise, the May 2012 meeting minutes also demonstrate the POA's reaffirmation of its members' right to use the community dock, despite the Court finding that the POA's rights to the community dock merged into the Easement Agreement.

These issues create, at a minimum, a genuine issue of material fact as to whether the POA ratified the unauthorized Easement Agreement.

Conclusion

For these reasons, the POA respectfully requests that the Court reconsider its Order granting the Wells' motion for summary judgment and denying the POA's motion for summary judgment.

This 28th day of April, 2025.

Respectfully submitted,

EARHART OVERSTREET LLC

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2022-CP-10-04952
4

5 Stephen C. Wells and Randi P. Wells,)

6)

7 Plaintiffs,)

8)

9 vs.)

10)

11 Spartina Bay Plantation Property)

12 Owners' Association, Inc.,)

13)

14 Defendant.)

15
16
17
18 Hearing before the Honorable Mikell R.
19 Scarborough, reported by Josie Allen Boehm, Registered
20 Professional Reporter and Notary Public, at 100 Broad
21 Street, Courtroom 2A, Charleston, South Carolina,
22 February 10th, 2025 commencing at 2:31 p.m.
23
24
25

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1 THE COURT: That gets us to our next case,
2 and that case is captioned Stephen and Randi Wells
3 versus Spartina Bay POA. Y'all come on up.

4 All right. So in this case, it's 2022-CP-
5 10-4952. Got Mr. Tim Muller and Ms. Mary Moore; is
6 that right?

7 MS. MOORE: Yes, Your Honor.

8 THE COURT: Glad to have you for the
9 plaintiffs.

10 And Mr. Steve Kropski and Maxwell Seferian
11 for the defendant Spartina POA.

12 I have had a chance to review both of your
13 memos and motions for summary judgement. I generally
14 take them up in the order they were filed. I'm happy
15 to do that, but it might make more sense to hear from
16 the plaintiffs and then the defense and reply that
17 way. Doesn't matter to me.

18 I got a much bigger book from Mr. Muller's
19 office, I can tell you that. So I decided against my
20 good judgement to start there and that's kind of where
21 I did this. Does that work for you?

22 And then I did see there was a motion to
23 exclude Mr. Yates' expert opinion testimony, and we'll
24 get to that in the process.

25 Okay. And I see Mr. Yates sitting back there

1 quietly. But I will be glad to hear from you. Okay.

2 So go ahead, Mr. Muller.

3 MR. MULLER: Thank you, Your Honor. So we're
4 back. And if you recall, we had a motion for
5 judgement on the pleadings earlier this year, and Your
6 Honor directed us to do a little discovery.

7 THE COURT: Well, it wasn't earlier this
8 year.

9 MR. MULLER: It was last year. So about a
10 year ago.

11 To do some discovery, depositions. We have
12 done that. So I think we definitely have -- we pulled
13 back the curtain a little bit and have seen a little
14 more.

15 THE COURT: First thing I should ask you, the
16 Court of Appeals always sends them back to me when I
17 get cross motion for summary judgement. There's law
18 that says you can presume that there's no question of
19 fact and the parties can go forward, but every time I
20 do that, they tell me there's a question of fact.

21 So I will be asking that question from time
22 to time. And there's some in there somewhere, I
23 suspect.

24 Anyway, this has to do with access and access
25 easement to a dock; is that correct?

1 MR. MULLER: That's correct.

2 THE COURT: And this is on Edisto Island.

3 MR. MULLER: You've got it.

4 THE COURT: Beautiful piece of property. I
5 drive by it all the time to time.

6 The one thing I'm going to ask you about,
7 there was something about a deck. And I had a hard
8 time distinguishing between the deck and the dock.

9 I don't know -- if I've got photographs, I
10 don't remember seeing them.

11 MR. MULLER: So essentially what that is,
12 Your Honor, is kind of a stationary wooden structure.
13 We'll call it a deck or platform, whatever you want to
14 call it, with a couple of feet off the ground.

15 Basically what we've been able to conclude is
16 we think it was probably built by the original owner
17 of the property who built the house before the POA
18 came into existence.

19 THE COURT: Okay.

20 MR. MULLER: But it was on our client's
21 property. And, now, it happened to be in the area
22 what they would later designate as ingress/egress
23 easement to the community dock. However, there's
24 never been anything, any document anywhere, that's
25 ever referenced that plat as a structure that was

1 being conveyed to the property owner's association
2 anywhere.

3 And in their POA's -- the current POA
4 president's deposition, he testified as much. There's
5 nothing out there that establishes that that's common
6 property. Unfortunately, the POA elected to -- once
7 it was removed from the plaintiffs' property that they
8 gave them an assessment, \$2,500, that they estimated
9 in their -- I don't know how they drew it. It would
10 cost \$2,5000 to rebuild.

11 So the intent is to rebuild that in the
12 middle of an access easement. And so backing up just
13 a second, the reason why it was removed is there was a
14 DHEC notice that was sent to our clients saying it had
15 to be removed because it was over the critical line,
16 and our clients called DHEC and confirmed asking if
17 they didn't remove it, would they get a fine, and they
18 said yes.

19 The POA president said, no, you can't do
20 that. So our folks said, well, can you give us any
21 evidence that this is POA property or anything? And
22 the answer is no. We don't have anything, but we're
23 saying it's common property, so you can't move it, and
24 we're going to work with DHEC.

25 So he removed it, and then they get an

1 assessment, and that's pretty much it. So if you look
2 at the POA representative, in his testimony that we
3 cited in our memo of law, there's absolutely no
4 support that that's common property or they had any
5 basis to impose an individual assessment under the
6 recorded declaration and covenants.

7 THE COURT: Was the deck located within the
8 easement or --

9 MR. MULLER: It is. But, again, it's an
10 ingress/egress easement. And, you know, just as you
11 would get an easement for a water line, that doesn't
12 mean you own everything within the 10 foot utility
13 easement, you know, above the ground. You don't own
14 the fence and the structures. You just have the
15 limited right that's set forth in the easement.

16 THE COURT: Right of access.

17 MR. MULLER: Right.

18 THE COURT: Okay. And there is a dock,
19 correct?

20 MR. MULLER: Correct, and there's a community
21 dock. And the only rights that the POA ever had in
22 that community dock or, frankly, the easement that
23 we're here to talk about, the access easement, was
24 previously under this 99-year commercial triple net
25 lease that they entered into with the POA, the former

1 owners of the property, and then that was modified by
2 the easement agreement that was executed in 2012.

3 THE COURT: All right. So let's start there.
4 I saw that's one of the issues in the case is does the
5 lease agreement survive or was it merged into the
6 access easement, so let's just kind of go from there.
7 I will let you take off.

8 MR. MULLER: Well, essentially we believe
9 that there's no issue of material fact in any of this,
10 of course. But we have three causes of action. One
11 for declaratory judgement, one for breach of easement
12 agreement, and also for injunctive relief that we
13 think is necessary here because even if the Court
14 affords us some declaratory judgement, it's clear from
15 the POA's testimony that they're just going to
16 continue to allow this conduct without kind of any
17 kind of direction otherwise, and we want to be able to
18 have some form of mechanism that, well, should Your
19 Honor find the easement agreement is valid that
20 essentially forces compliance so we don't have to come
21 back to you in the future.

22 This is a small neighborhood on Edisto, as
23 you know. It's 11 lots, over half of which are
24 vacant. I think the -- if I had to summarize the
25 theme of this case, it seems pretty clear there's an

1 easement agreement the POA entered into.

2 There's four sets of meeting minutes from
3 back in those days that were authorized. We have the
4 former board president testifying that he got
5 authorization from the board of directors to finalize
6 the agreement, talked about, presented to everybody.

7 And, frankly, the validity of the easement
8 agreement, the burden of proof is on the defendant
9 here. They're trying to challenge an easement
10 agreement that was recorded 13 years ago. I just
11 don't think that we have to rely on, as their current
12 POA president says, the developer's intent or what
13 realtors know or something like that.

14 We should be able to rely on the documents.
15 And that's really the central issue here. And if you
16 looked at the memo, we cited to quite a bit of
17 deposition testimony and the fact that, you know, the
18 only evidence that we found in this case is that
19 indeed it was authorized and it is a valid easement
20 agreement.

21 There's nothing to the contrary and certainly
22 nothing to meet that burden of proof.

23 THE COURT: Okay. It's not an ambiguous
24 document?

25 MR. MULLER: It's not. And I don't -- no. I

1 don't think that's been a challenge of theirs that
2 it's ambiguous. I just think that essentially what we
3 have here is a group of property owners that bought
4 lots, more recently, a few years ago.

5 My best guess is that when they purchased
6 their properties, they didn't do the title search of
7 the property that had the community dock so they
8 didn't see the easement agreement.

9 It's been out there for the world to know
10 about, but they didn't find them. And this is a
11 argument that's been kind of created after the fact to
12 say, oh, well, that board president and those
13 directors and those members that voted in meetings
14 previously, well, that wasn't authorized. It doesn't
15 meet some retrospective, you know, standard of what
16 boards have to do in an 11-lot community in Edisto,
17 and the majority of the property owners don't even
18 live there, of course.

19 But the fact is if you look at the bylaws
20 themselves, it authorizes how this was authorized.
21 There's no requirement that the board of directors
22 have to meet in person or it has to -- these
23 authorizations have to be in writing.

24 Yes, they do have to have a meeting, but
25 meetings are authorized to be over the phone. They

1 still meet over Zoom.

2 So these kind of hurtles and these standards
3 that the defendants have now made really are just --
4 they're great arguments, but they don't -- essentially
5 they don't reconcile with the facts of what actually
6 happened back then. And, yeah, in terms of the lease
7 agreement, so backing up a step, essentially what that
8 was, again, it was an oddly-worded commercial trip on
9 that lease.

10 Cookie Boykin, I think he was the original
11 developer. He basically did a lease agreement for the
12 community dock and the access easement.

13 There was a major concern from the board at
14 that time that what happens in 2100? All the POA's
15 property rights go away. All of a sudden, that
16 community dock will go back to our clients or their
17 successors in interest. They will lose all rights to
18 those community docks and they will have no ability to
19 get over to the community docks.

20 So the interest from the community at that
21 time is reflected from, again, the only evidence we
22 received in this case from testimony of POA members
23 and the president, and I think those were the only two
24 that were living there back then, is that this was
25 authorized and they wanted to proceed in that to get

1 perpetual rights to an easement agreement.

2 And they had their attorney, Karen DeJong,
3 prepare that. Worked with the homeowners at the time,
4 the owners of our predecessors of our property, the
5 Coxes, and both parties signed an easement agreement,
6 and it was recorded.

7 And, frankly, you know, when we deposed the
8 POA's president, they didn't -- they had no affidavit,
9 no deposition of legal counsel. They could have
10 consulted legal counsel.

11 I know there's argument here about oh, no,
12 pedestrian is supposed to be perpetual. And maybe
13 that would be an argument if the word "perpetual"
14 wasn't already in the same sentence.

15 So it's clear that pedestrian was a
16 requirement that's always been an issue with the
17 vehicles back there. I think the -- it didn't happen
18 as much obviously when there were no homes out there.
19 There's a few more homes, so now it's increased and
20 frankly, you know, it's a small community.

21 Our clients were trying to live with it for a
22 while. But, you know, I think there's some characters
23 out there, but that's frankly a bit of a side show.

24 It's just the fact that there's vehicles that
25 are parked out there, vehicular access, and it doesn't

1 comply with the easement agreement, and the POA's
2 adamant about recognizing the validity of that
3 easement agreement.

4 THE COURT: So it drove the train to get the
5 lawsuit filed is people driving to the dock?

6 MR. MULLER: And parking on the dock. Before
7 this was filed, there was also a resident who is now a
8 board of director that had a fishing charter
9 operation, and he parks his boat on the community
10 dock.

11 So there -- our clients believe they were
12 actually running their operation off of there for a
13 while. I don't think that's still happening to the
14 best of our knowledge, but it still detracts from the
15 quality of life when you have people coming back and
16 forth early morning, late night after a day on the
17 water.

18 So, you know, that was another reason that
19 kind of started this because it's not just property
20 owners that are back there. It's a lot of other
21 unknown people that even their current board president
22 doesn't know who they are.

23 That's why we really kind of needed an answer
24 to this in terms of the validity of the easement
25 agreement itself. I mean, in terms of that piece of

1 this, it's just -- the burden of proof is on them to
2 establish that it was invalid. There's really no
3 support for this argument, and it's just legal
4 arguments.

5 And with respect to the lease, there's
6 several reasons why this easement agreement replaces
7 that lease. Number one, we're talking about precisely
8 the same geographical area, and that's referenced in
9 the plats. The plat the easement agreement references
10 is the same as the most recent one.

11 THE COURT: Did you include the plat as one
12 of your exhibits? I was looking for that.

13 MR. MULLER: I was going to say, someone did.
14 I know it was in there. And I think we had maybe in
15 our earlier memo as well.

16 It is the exact same area of property but
17 obviously the lease is -- different property rights
18 than the easement agreement.

19 Also, the easement agreement has the
20 integration clause. So that's evidence that it was
21 supposed to be merged in. The defendants take the
22 position, well, no, the easement -- the integration
23 clause only refers to the document itself, which is
24 kind of ridiculous because we're talking about an
25 easement area, not just the document.

1 And the presumption is under South Carolina
2 law that that does merge prior agreements into the
3 most recent one.

4 In addition, there's a doctrine of law called
5 the merger doctrine for a property law. And you're
6 talking about the same geographic area that that would
7 merge -- the more recent one would control
8 essentially -- and we cited this in our memo. I don't
9 have the citations memorized, but we did cite to quite
10 a bit of law for support of that.

11 And just for the fact that those two cannot
12 be reconciled with the ingress/egress easement
13 specifically on our clients' property, we believe that
14 the law the easement agreement -- and then as a third,
15 I suppose if parol evidence was necessary, there were
16 no less than three or four sets of minutes that talked
17 about this.

18 So before they even voted -- go back to the
19 minutes. They talked about approaching that 99-year
20 lease with an easement agreement.

21 So the full membership talked about this.
22 They talked about replacing it with an easement
23 agreement or some deed or something that had perpetual
24 rights.

25 THE COURT: Your position being they knew at

1 some point in time the lease was going to come to an
2 end?

3 MR. MULLER: They absolutely did. And that's
4 what the -- that's what the former president testified
5 to. That was a concern was getting the perpetual
6 rights.

7 And that's what they talk about. That's what
8 they voted on twice. And the POA's president
9 recognized that. He acknowledged that fact in his
10 deposition.

11 The only thing that I gathered was his big
12 beef is that, well, no, it was a different legal
13 counsel that they authorized you to work with. So
14 somehow by using a different attorney, all of a
15 sudden, that directive just vanished and they have to
16 go again. I don't know.

17 But I don't think they have any support for
18 that to the extent that that's even a real argument.
19 I mean, again, I just don't -- there's really nothing
20 in there that establishes that that easement agreement
21 is invalid, and if that is the case, then I think
22 everybody else falls in line. We're just asking for
23 the Court's intervention with upholding the terms of
24 the easement agreement. And it's really as simple as
25 that.

1 We believe that everything that we have cited
2 to really doesn't have any issue of material fact.
3 And welcome to take any questions, though, if you have
4 any.

5 THE COURT: So from a factual standpoint,
6 what got the ball rolling was people driving down to
7 the end of the easement area to get access to the
8 dock; is that right?

9 MR. MULLER: Right.

10 THE COURT: And one of those was the fellow
11 who was running his business out of there?

12 MR. MULLER: Right.

13 THE COURT: Commercial fisherman of some
14 sort?

15 MR. MULLER: Yes. But, again, that is not --
16 all of that activity is kind of really just the back
17 story of why we're here. All we're seeking is the
18 Court's interpretation of recorded property documents.
19 You don't need to --

20 THE COURT: I understand that, but there's
21 got to be a reason they got the ball rolling.

22 And your argument is that -- one of your
23 arguments is these documents are of record and
24 therefore everyone has notice of them because they
25 have constructive notice.

1 MR. MULLER: That's correct.

2 THE COURT: Because they were of record. So
3 everybody who buys there should know what the rules
4 are relative to these terms of the easement agreement.

5 MR. MULLER: Right. That's correct.

6 THE COURT: All right. And then there was
7 some discussion about the adjoining land owner allowed
8 people to come in there and there's a dock or a fence
9 or something was being built.

10 MR. MULLER: We're not -- we have not brought
11 that up. We have not signed -- that was part of our
12 complaint. We're not continuing with the issue with
13 the fence or the AirBnB.

14 Frankly, we just don't know enough. We asked
15 the board president questions about that, but we did
16 not cite that in our memo of law. There's just -- I
17 mean, I think it's an open interpretation question
18 whether it's a repair -- or what did we call it?
19 Something new. A new construction fence. So we're
20 just -- we are abandoning that.

21 THE COURT: If the adjoining land owner wants
22 to allow people to come on his property and walk
23 across the property line and go onto the property,
24 don't have any problem with that?

25 MR. MULLER: I mean, again, we don't think

1 that's proper but we're not raising that as part of
2 this memo in motion.

3 THE COURT: Okay.

4 MR. MULLER: Yeah. From what we have heard
5 from the POA president is that eventually they will
6 build a house and presumably, just like our client,
7 probably won't want parades of F150s parking in his
8 lawn and walking over to the community dock.

9 THE COURT: About how deep is your client's
10 lot? That's what I was looking for.

11 MR. MULLER: So it looks like, Your Honor,
12 just for ease, the plat is Exhibit F to our memo, to
13 defendant's memo.

14 It looks like it's around 400 feet all the
15 way to the marsh from -- is that the end of the
16 property line over there?

17 But a portion of that is kind of a roadway.
18 So but more or less, somewhere around there. And
19 then, yeah, I think that's about right. The most
20 recent plat -- and we mentioned this before last time
21 we were here.

22 The original plat that was referenced had a
23 larger area that was abandoned by a subsequent plat.
24 So this is the later plat that applies. That's why I
25 was referencing the easement agreement and the lease.

1 So for all intents and purposes, the earlier plats
2 were no longer.

3 THE COURT: The lease agreement access would
4 be different from the easement agreement access?

5 MR. MULLER: It is. It's different, Your
6 Honor, because, number one, there's a pedestrian
7 requirement on the easement agreement that was
8 negotiated between the POA and the former owners of
9 the property, and that's the big one obviously that
10 we're here about today, but there's also other
11 property rights.

12 There's a little bit of distinction in terms
13 of the consideration for that and the obligation that
14 the POA pays 25 percent of the taxes for the lot each
15 year just for those property rights.

16 So that's why it's important. Again, these
17 terms are different in the two documents. So they
18 don't -- you know, I think the defendant's position
19 is, well, even if the easement agreement is valid then
20 the lease can be, too.

21 But that may be true with respect to the dock
22 itself but I don't see how you can reconcile that with
23 the specific easement agreement that's discussing the
24 ingress area on our clients' property.

25 THE COURT: Okay. All right. Very good.

1 Okay. Thank you, Mr. Muller.

2 Mr. Kropski?

3 MR. SEFERIAN: We agree with Mr. Muller that,
4 you know, this lease and this easement agreement is
5 not ambiguous.

6 THE COURT: Okay.

7 MR. SEFERIAN: So what we're really here
8 about is whether the easement replaces the lease. And
9 the issue with the lease that came up a little bit
10 previously with the president is that the lease grants
11 additional rights on top of the easement. The POA's
12 rights to the dock and the ingress/egress area are
13 through the lease.

14 The bylaws do state -- the covenants do state
15 that the POA shall own the community dock and the
16 strip of land designated as the ingress/egress area,
17 and it also stipulates that the POA shall receive a
18 bill of sale for the ingress/egress area.

19 Both sides have looked and there's just no
20 evidence that the bill of sale has ever devised to the
21 POA.

22 THE COURT: All of that in the original --

23 MR. SEFERIAN: In the original covenants,
24 correct.

25 THE COURT: Okay.

1 MR. SEFERIAN: And so the lease gives the POA
2 rights not just to the ingress egress area that is
3 referenced in the easement agreement, it also gives
4 the POA rights to the dock itself. So essentially --

5 THE COURT: Is that even in question? The
6 right to the dock, is that in question?

7 MR. MULLER: Yes.

8 THE COURT: Y'all contend that there's a
9 question that y'all own the dock versus the
10 neighborhood owning the dock?

11 MR. MULLER: Your Honor, I mean, that is for
12 the Court's interpretation. But in our complaint, we
13 are talking about the dock access area, not the dock
14 itself.

15 So the easement agreement does not talk about
16 the marsh portion of our clients' property. So to the
17 extent the lease agreement is valid, it provides the
18 POA the property rights over the dock in our
19 impression.

20 However, with respect to the physical area in
21 the egress area, that has been replaced by the
22 easement agreement.

23 THE COURT: Okay. All right. As relates to
24 access?

25 MR. MULLER: Correct.

1 THE COURT: The dock itself, who built the
2 dock?

3 Did your clients build the dock?

4 MR. MULLER: No. Our client purchased the
5 property in 2020, the predecessors, Cookie Boykin.
6 I'm not sure who built the dock, but the dock was
7 never -- I think they did. I think it was the trust.
8 I think it was Cookie Boykin's trust that built the
9 dock.

10 But one wrinkle is that they never -- it was
11 never updated to DHEC or anybody that it was going to
12 be in the POA. We have referenced that as an exhibit,
13 but it's actually in the declaration, the original
14 DHEC documents, for the community. And it's in the
15 trust still to this day.

16 THE COURT: The dock?

17 MR. MULLER: Which is in the trust, which is
18 a predecessor interest to our clients.

19 So to the extent they have any property
20 rights in the community dock and the marsh portion of
21 our clients' property, it's through that lease
22 agreement.

23 THE COURT: Okay.

24 MR. MULLER: If Your Honor determines that's
25 still valid. But that was not part of our claim. Our

1 claims are with respect to the dock access easement.

2 THE COURT: Aren't y'all asking also to get
3 reimbursed 25 percent of your taxes?

4 MR. MULLER: That's correct, under the
5 easement agreement.

6 THE COURT: Under the easement agreement? Is
7 that strictly for use of the easement or is that for
8 use of the dock?

9 MR. MULLER: In the easement agreement?

10 THE COURT: Yeah. Yeah.

11 MR. MULLER: Pull it up here.

12 THE COURT: Y'all look at that. Let me get
13 back to you.

14 I'm trying to narrow this thing down
15 somewhat.

16 MR. SEFERIAN: And, Your Honor, there is a
17 little bit of a gray area whether it was the declarant
18 who was doing these things back when the property was
19 originally developed versus the owner of lot B because
20 it was both Mr. Boykin.

21 THE COURT: It's another Cookie Boykin. He
22 was in here last week.

23 MR. SEFERIAN: But, Your Honor, the issue
24 with the plaintiffs' position is, if you heard, their
25 position is that the lease merges into the easement

1 agreement.

2 Now, we can get into why we disagree with
3 that. But just taking that at its logical end, that
4 would extinguish the POA's right to a dock. So what
5 happened here is we had an easement agreement signed
6 without authority that now requires the POA to pay 25
7 percent of the now developed lot B.

8 So they're paying more. They have less
9 rights because now they have a pedestrian easement
10 agreement versus not having a pedestrian requirement.

11 And now taking the position to the logical
12 end, the lease agreement has now merged into the
13 easement agreement, which we disagree with. But, Your
14 Honor, if that were the case, the POA would have an
15 easement to nowhere and it would have been based on an
16 easement agreement that was never voted on by either
17 the board or the members.

18 And, again, Your Honor, the lease runs until
19 2100. You heard testimony about how it references
20 different plats. We think on its face, it's hard to
21 believe that the lease would have been intended to
22 merge into the easement agreement when it's granting
23 rights to both the dock and the easement agreement --
24 excuse me, into the dock and the easement area, the
25 ingress/egress area.

1 It makes it all the more perplexing that the
2 former president decided to sign this agreement when
3 the lease agreement references an existing plat that
4 identifies a dock easement on what became the current
5 ingress/egress area.

6 But if I may jump back a little to the --

7 THE COURT: Let me ask you this. I pulled
8 your Exhibit F, which looks to be the 2001 --
9 September 17, 2001 boundary survey of lot B, 4.31
10 acres.

11 It shows the 50-foot right of way coming in,
12 which I believe to be Marsh Bluff Court I believe.
13 Correct?

14 MR. SEFERIAN: Correct.

15 THE COURT: Makes reference to survey for
16 Store Creek trust, who was Mr. Newton, right?

17 MR. SEFERIAN: Correct, Your Honor.

18 THE COURT: So he still owned it at the time.
19 He sets forth this 25 -- and it doesn't say feet, but
20 it is 25 feet dock, ingress/egress easement. It goes
21 down and takes a jag and becomes like a block there at
22 the end, right?

23 So that gets you access to the marsh. And
24 then approximately three acres of this is marsh. So
25 1.36 acres of highland, and then I think this is lot

1 B. I think that's been consistent throughout.

2 All right. So that 25 foot dock
3 ingress/egress easement it shows on this plat, is that
4 consistent with the lease agreement --

5 MR. SEFERIAN: Correct, Your Honor.

6 THE COURT: -- language? Because this would
7 have been about the time the lease was being done, was
8 it not?

9 MR. SEFERIAN: Correct, Your Honor.

10 THE COURT: 2001?

11 MR. SEFERIAN: Correct.

12 THE COURT: All right. And then of course
13 we've got -- I think in 2012, you've got the easement
14 agreement that comes down the pipe?

15 MR. SEFERIAN: Correct.

16 THE COURT: All right. Is that easement
17 area, does that remain consistent with the easement
18 agreement?

19 MR. SEFERIAN: Your Honor, the easement
20 agreement references a different survey, but it is the
21 same area that's identified as the dock ingress/egress
22 area.

23 MR. MULLER: And, Your Honor, if I may, I
24 might be able to clarify. They resized the plat from
25 the original one you're talking about because a part

1 of that area was abandoned, so it got smaller. And
2 that was, I think, incorporated as part of the
3 amendment.

4 MR. KROPSKI: First amendment, Your Honor,
5 just to clarify, I think you're looking at the
6 ingress/egress pathway basically to the dock.

7 That hasn't changed. It was the other areas,
8 this side, that changed, so I think for all intents
9 and purposes, this is the same.

10 MR. MULLER: The back portion near the marsh
11 also changed. Part of that was also abandoned.

12 THE COURT: Made smaller, I assume? Because
13 it takes up half a lot, half the marsh lot, correct?

14 MR. MULLER: It got smaller. And ultimately
15 the part that was considered the dock access easement
16 became the same in both documents.

17 THE COURT: All right. This plat appears to
18 have been attached to a deed. Hold on.

19 This is DD27 as Exhibit F.

20 There was the Bobby Frank plat, too, sometime
21 thereafter, correct?

22 MR. SEFERIAN: Correct. That was the 2000
23 street plat that was referenced in the first
24 amendment, which the first amendment was done -- the
25 survey was done in 2003.

1 The first amendment might have been done a
2 little bit after, but the first amendment was
3 primarily done to -- once the dock was finished, class
4 A members were assigned slips on the dock, and that
5 was the primary purpose of the first exhibit, which
6 referenced that 2003 survey.

7 THE COURT: Yeah. And I saw you referenced
8 class A and B members. What's the difference?

9 MR. SEFERIAN: So class A members are the
10 members that do not have waterfront access on their
11 own property.

12 So the members that are class B members have
13 their own docks at their home. The class A members
14 are the ones that do not have access to the water, and
15 so they have slips on the community dock, assigned
16 slips on the community dock.

17 THE COURT: Okay. So class B members got
18 water access, class C do not?

19 MR. SEFERIAN: Correct.

20 THE COURT: Land lock versus water locked.

21 MR. SEFERIAN: Correct.

22 THE COURT: All right. And there's, what,
23 four waterfront lots? Am I right about that? Looks
24 like they were done different.

25 MR. KROPSKI: I think there's three class B

1 members. Three class B, and so the rest each have a
2 slip.

3 THE COURT: Okay. All right. Very good. Go
4 ahead. I'm sorry.

5 MR. SEFERIAN: Your Honor, if I could jump
6 back to after the signing of this easement agreement
7 and kind of the lead-up to with execution, you heard
8 Mr. Muller mention that -- and there are meeting
9 minutes from back in the day that contemplate some of
10 these changes.

11 Now, to give you just a little bit of
12 background, the reason this issue originally popped up
13 was the former, not Mr. Boykin, but subsequent owner
14 of lot B from Mr. Boykin was indicted and the federal
15 government actually took position of lot B, and there
16 was some concern within the community that the
17 government would sell lot B to some new owner and the
18 lease, you know, and the restrictive covenants weren't
19 going to be recognized.

20 Now, ultimately, what happened was the Court
21 did get a motion from the federal court that allowed
22 the subsequent owner to take possession subsequent to,
23 you know, the recorded lease and the restrictive
24 covenants, so that didn't end up being an issue.

25 There was some testimony from the former

1 president, Mr. Matrisciani, that he was concerned for
2 his great grandchildren that, you know, maybe they
3 would be mad at my great grandfather because they
4 don't have access to the lease.

5 Now, the meeting minutes that we have access
6 to from that time that Mr. Muller referenced are from
7 2009 and 2010. The easement agreement was signed in
8 2012, and there wasn't a meeting for over a year prior
9 to that. It was November 2010.

10 And there was some discussion about working
11 with Barr, Unger & McIntosh to potentially get a
12 resolution to the issue, potentially get a, you know,
13 perpetual right of access to the area, but, again, the
14 last meeting minute where that was even discussed, not
15 voted on, but discussed, you know, the potential of
16 doing that was in November 2010.

17 So between 2010 and 2012, Mr. Matrisciani
18 hired a new lawyer, somehow works out this agreement
19 with the Coxes, the former owners of lot B.

20 He does discuss it a little bit with the --
21 we have letters of intent back and forth with the
22 former secretary, Mr. Ron Ferrell where Ron Ferrell,
23 who is the former secretary, cautions him, you know,
24 lot B has been developed. We don't want to pay the 25
25 percent tax that ended up in the easement agreement.

1 Somehow that ended up in there anyways, and
2 there's no record of any meeting at all that happened
3 between 2010 and 2012, let alone a vote that would
4 authorize this.

5 If I can mention the relevant bylaw
6 provision, because the plaintiff mentioned that we're
7 trying to arbitrarily after the fact enforce some
8 unfair standard on what the former president should
9 have done, but all we're saying is that these bylaws
10 are here for a reason and should have been complied
11 with.

12 The bylaws require that the board -- it
13 references their manor of acting. It makes clear that
14 the act of the majority of the director is present at
15 a meeting at which a corum is present shall be the act
16 of the directors.

17 Now, there was no meeting. Mr. Matrisciani
18 did testify that he called some of the other members,
19 and he testified that he read verbatim the agreement
20 to them.

21 Whether that happened or not, I don't know,
22 but I do know that that's not in compliance with the
23 bylaws.

24 The bylaw provisions in respect to the
25 president state that he may sign with the secretary or

1 any other proper officer of the association any deeds,
2 mortgages, bonds, contracts, or other instruments
3 which the directors have authorized to be executed.

4 So there was no meeting, Your Honor, where
5 this was authorized. It's beyond dispute that the
6 secretary didn't authorize it as well.

7 The plaintiff's brief references another
8 section relating to contracts that does state that the
9 board can authorize any officer to sign a contract.
10 But, again, that has to be something that the board
11 can authorize, that actually have authorized.

12 Mr. Matrisciani did testify that during his
13 time as president, the POA was governing through
14 meetings and votes, and specifically that they were
15 always following Robert's rules.

16 And there's really no dispute, Your Honor,
17 that nothing about the way this easement agreement was
18 signed was in compliance with Robert's rules because
19 there simply was no meeting.

20 And I would agree with Mr. Muller that the
21 bylaws don't necessarily have to say -- don't
22 necessarily say a meeting, you know, it has to be in
23 writing; however, you know, meeting minutes exist to
24 reflect what happened at the meetings.

25 If you look at the minutes from those times,

1 they reference other votes, and they show
2 affirmatively that certain votes were taken.

3 There's no evidence that any vote was ever
4 presented about this easement agreement, and there's
5 no evidence that after the fact a vote was ever taken
6 to ratify Mr. Matrisciani's signing of the easement
7 agreement.

8 It just appears, Your Honor, that this was
9 all done on his own. There's really no dispute either
10 that this was a ultra vires action.

11 This was certainly not in the ordinary of
12 course of business to sign to the easement agreement.
13 The easement agreement radically shifted the POA's
14 rights to pedestrian -- which, you know, pedestrian
15 might not sound like a big deal, but as you know, Your
16 Honor -- there's some members who are either elderly
17 or who have elderly relatives that can't walk down to
18 the dock. They rely on being able to drop them off on
19 a golf cart or dropping their fishing gear off so they
20 can go fishing.

21 So the pedestrian limitation does not appear
22 in any of the prior meeting minutes, does not appear
23 to have ever been contemplated by anybody. And in the
24 years that follow the signing of this easement
25 agreement, nothing changed. I mean, people continued

1 to use the docket. They always have vehicular access.
2 It never was an issue with any of the subsequent
3 owners until this particular dispute with Mr. Wells
4 and another homeowner that was referenced cropped up.

5 So, again, Your Honor, I would just say that,
6 you know, we're not trying to enforce an arbitrary
7 standard. We're simply trying to enforce the bylaws
8 that have been in.

9 This was never contemplated by the board. It
10 was never authorized by the board. No meeting minutes
11 reflect either a vote authorizing it or a vote after
12 the fact ratifying it.

13 The POA never ratified it, either through
14 their actions and never stopped using vehicles on the
15 ingress/egress area, and they had not been paying the
16 25 percent.

17 THE COURT: Has that never been paid?

18 MR. SEFERIAN: That has never been paid, Your
19 Honor.

20 There may have been some question about once
21 the litigation started whether they were paid.

22 THE COURT: Okay.

23 MR. SEFERIAN: This is more on the background
24 issues, but if you heard Mr. Muller say -- the POA has
25 tried to accommodate the Wellses.

1 The neighbor on the opposite end of the
2 ingress/egress area tried to, as a way of
3 accommodating the Wellses, said, all right, you know,
4 to be respectful of the Wellses, you can park on my
5 lot and walk from there, and the Wellses response to
6 that was let's build a fence so they can't do that.

7 There's really no dispute that what the
8 Wellses are trying to do is limit access to not just
9 the ingress/egress area but to the dock itself.

10 And, again, just to go back to our original
11 point, really the only way that their argument would
12 make sense for the ingress/egress -- excuse me for the
13 lease to merge into the easement agreement would be to
14 say that the POA does not have any more rights to the
15 dock. They now have an easement to nowhere that their
16 former president signed and they really never had any
17 input in.

18 THE COURT: Okay. One second. So I'm
19 looking at the minutes from March of 2009. This is
20 the annual POA meeting which was attended by all of
21 two people. Bruce Matrisciani and Ron Ferrell. And
22 not in attendance, everybody else, it says.

23 Very active board member there. It says at
24 the bottom, in addition, they're concerned with the I
25 guess the government being involved with the ownership

1 of this lot, lot B.

2 It was at that time was owned by C and D
3 Distributors, which is under indictment for contract
4 fraud. And in addition, we will be pursuing a
5 termination of that lease and deeding of the property
6 to the POA.

7 Originally rejected by Charleston County,
8 they would not agree to allow that small piece of land
9 to be separately deeded. That's 2009. That was
10 Exhibit G., which I think is 7. 8.

11 So I'm assuming the next exhibit -- hold on.
12 I skipped over it.

13 MR. SEFERIAN: Your Honor, the next meeting
14 is actually Exhibit T to our brief. It's October 17th
15 of 2009.

16 THE COURT: October '09.

17 I found the November 6th, 2010. Which one
18 did you refer me to?

19 MR. SEFERIAN: It's October 17, 2009. What's
20 going on? They tell you about this. If you look down
21 at the third full paragraph, it says it was agreed
22 that either a deed to the dock or a permanent easement
23 should be pursued.

24 The options were listed as hire an outside
25 attorney to do a title search to recommend a way

1 forward; two, use Barr Unger and McIntosh who was
2 currently working on recovering back dues. Doesn't
3 look like there is a third option.

4 And then the next set of bullet points below,
5 it says: It was agreed that Bruce would work with
6 Barr, Unger, McIntosh to, one, provide a copy of the
7 recorded deed to the dock; two, obtain either a dock
8 easement or a lease in perpetuity; and, three, the
9 fees are expected to exceed \$2,000. We have a
10 checkpoint going forward.

11 And then while we're on it, Your Honor, I
12 will point you to the next exhibit. That's the final
13 meeting that occurred between, you know, this meeting
14 and the easement being signed.

15 And so I will move you down to -- point you
16 to section 5, dock easement issues. And I will point
17 to the next page.

18 It was pointed out that we had spent \$2,650
19 with Barr, Unger, McIntosh this year to accomplish the
20 deeding of this property. After a good deal of
21 discussion, there was a general feeling of no
22 confidence in Unger and a motion was made by Garland
23 McWhirter to contact the Jensen Law Firm to get
24 resolution to the perpetual lease issue and to get an
25 estimate of costs to update the restrictive covenants

1 if changes were needed to the dock assignment or dock
2 privilege languages.

3 The motion was seconded by Jim Cox and passed
4 unambiguously. We think that means unanimously.

5 I think we agreed on that. Okay. So, again,
6 this is 2010. The easement agreement was signed in
7 2012.

8 I don't think there's any dispute that this
9 language is vague enough that it does not authorize
10 Bruce to negotiate a whole agreement, not present that
11 agreement to the board, not have a vote on that, not
12 have a vote on that before it's signed, authorize him
13 to sign without the secretary as the bylaws require.

14 And then, you know, it references a Jensen
15 firm. The lawyer that Bruce ended up that --
16 Mr. Matrisciani ended up contacting was Karen deJong,
17 so approving her hire was not contemplated by these
18 minutes either.

19 And just a similar issue, Your Honor, is
20 Exhibit X, which was a letter from Wayne Unger, the
21 former attorney. And he sent Mr. Matrisciani a letter
22 with the subject "easement and lease" telling him you
23 need to have a meeting to confirm these actions.

24 So Mr. Matrisciani knew he needed to have a
25 meeting. I can't speak to why he didn't, but he

1 negotiated this agreement that was not authorized.

2 The Coxes were there. Mr. Cox, as of this
3 November 2010 meeting, he knew this was not approved
4 either. He might not have been thinking of it at
5 that. Perhaps he got such a good deal with the
6 easement agreement that he took no issue with it, but
7 he had actual knowledge and certainly constructive
8 knowledge through the easement history, the covenants
9 as well, about what the president can sign.

10 There's really no question that the POA never
11 represented to the Coxes that Mr. Matrisciani had
12 authority to sign this agreement. It's not clear why
13 they went forward with it, but these meeting minutes
14 from, again, two years prior to the easement being
15 signed don't show he had any authority to negotiate
16 and then sign this easement agreement without a
17 subsequent reading or subsequent approval from the
18 board.

19 THE COURT: I could have sworn I saw a
20 November 10 meeting.

21 MR. SEFERIAN: Correct. That was the Exhibit
22 U I was reading from.

23 THE COURT: Was there no 2011 meeting?

24 MR. SEFERIAN: There was no 2011 meeting.
25 And we also referenced a letter from the former

1 secretary who mentioned, you know, we haven't had a --
2 we haven't had a meeting in two years. We need to
3 have a meeting to keep this legal.

4 That same secretary at the meeting after the
5 board -- after the easement was signed even suggested
6 we need to -- we need to, you know, modify the board
7 so that it's more active.

8 So there really is no question, and it's even
9 contemplated at the time that the board was not
10 functioning as, you know, set out in the bylaws.

11 THE COURT: What about this one from May 12
12 of '12, dock easement? The fact that we -- perpetual
13 dock easement was finalized, was announced and stated
14 it was available in digitized form for anyone who
15 wanted a copy. Sounds look ratification to me.

16 MR. SEFERIAN: So it was announced, but it's
17 not really clear that people knew what was being
18 referenced there.

19 MR. KROPSKI: Your Honor, with respect to
20 May, if you look at the meeting minutes, there are
21 actual votes.

22 There's no vote for this. There's two other
23 items that do have a vote.

24 This has no vote. This was recorded in
25 January, and then all of a sudden, it pops up in May.

1 And they say, oh, it's online. It doesn't say it's
2 recorded. It doesn't say this is not a draft. It
3 just says it's in electronic form.

4 THE COURT: It confirms what we just
5 discussed. Garland moved that the minutes of November
6 6th, 2010 be approved as written.

7 So that tells me the last time there was a
8 meeting was November of '10. Move for second motion
9 was approved.

10 First issue up, dock easement is announced,
11 available in digitized form. So that was in 2012?

12 MR. KROPSKI: Correct, after it was recorded.
13 So the entire idea that this thing is recorded -- the
14 fact that it's recorded makes it valid and binding. I
15 don't believe that that argument holds water.

16 I'd also want to bring up page 44 of
17 Mr. Matrisciani's deposition. It's sort of
18 instructive because I would like to tie this up a
19 little bit so that we can get down to what this is
20 really about.

21 And on page 44 of his deposition, which is
22 Exhibit H to our memorandum, the defendant's
23 memorandum, the question was: And what were your
24 discussions about with Karen as far as a permanent
25 access solution to the dock?

1 He says: Karen, I feel like I'm an idiot if
2 I own this home and generations from now can't use the
3 dock. They're going to think their great grandfather
4 was an idiot. What can I do?

5 Well, what did he do? He eliminated the
6 access to the dock for all the members by virtue of
7 this easement agreement. There is no mechanism for
8 the members to use the dock.

9 And that's the main issue in this case is
10 that if the easement agreement is approved and the
11 lease is terminated, we know what's going to happen
12 next. The Wellses are going to say you can't use that
13 dock. Here is the easement agreement. You can take
14 this pathway and you can stop where the dock starts.

15 That's clearly not the intention of the dock.
16 It's called a community dock. The covenants state
17 that this is going to be a community dock, and we
18 don't know that it was never deeded. We know it
19 wasn't recorded, and Cookie Boykin says I don't have
20 anything from back then, which probably doesn't
21 surprise you. That's the issue here.

22 THE COURT: Did you tell me that every land-
23 locked homeowner has some sort of berth on the dock?

24 MR. KROPSKI: They have assigned boat slips,
25 but they don't have access to the actual -- but that

1 doesn't give them a right to use the dock. Those are
2 assigned via the POA.

3 So without a right to the use of the dock,
4 which is in a lease, there's no right for any of these
5 folks to go onto the dock.

6 THE COURT: Aren't we talking about two
7 separate items, then?

8 MR. KROPSKI: No. This is the easement
9 agreement. If the easement agreement is valid and the
10 lease is terminated, the POA --

11 THE COURT: I understand that argument, but
12 I'm not sure I agree with that, either. Their
13 argument is it merges everything into it, but if it
14 didn't discuss it, would it not survive?

15 In other words --

16 MR. KROPSKI: Well, that is our position.
17 Even if this is a valid easement agreement, the
18 easement agreement really doesn't kick in until 2100
19 when the lease terminates.

20 The language of the --

21 THE COURT: Whoa, you're going way too far.
22 All right. So we've got an issue with -- we've got a
23 dock. I understood it was a community dock.

24 If you live in that community, you should
25 have access to that dock; that would be what I would

1 think. Now, how you get there can often be a
2 difficult process.

3 That case is called Martin versus Bay, and it
4 was on Edisto as well. Okay. I heard that one. Had
5 to draw lines for these people because they hated each
6 other. We're getting there.

7 MR. KROPSKI: If you look at Exhibit X, it's
8 about seven pages, eight pages of every complaint
9 about people going into this easement area or this
10 walkway.

11 So we're confident we know if that lease is
12 terminated, which we don't believe is the case, even
13 if the easement agreement is valid, we still think the
14 lease is valid for a little longer.

15 If that lease is terminated, by all accounts,
16 it seems lot B is the owner of the dock and we're a
17 hundred percent clear on what will happen, the same
18 thing that's happened with the easement area.

19 THE COURT: That would be a reason why the
20 HOA would pay 25 percent of their value because that
21 value is going to be assigned to that lot, right?

22 MR. KROPSKI: Well, the value of the easement
23 area --

24 THE COURT: Y'all's contention is that the
25 easement agreement is ineffective. That's what I

1 understand.

2 MR. KROPSKI: We believe it's invalid, but we
3 also don't believe it has any reference to the dock at
4 all. It's exclusively the pathway. So without the
5 lease, there is no dock. It is the lone dock, and
6 they can do whatever they want, and we know exactly
7 what they're going to do.

8 Despite being called a community dock and
9 there being assigned boat slips, we know we're going
10 to end up back in front of you. That's the point.

11 And I wanted to bring up the Matrisciani
12 testimony because that shows how careless and reckless
13 this was. It was a rogue act and it's been pieced
14 together afterward. To say oh, well, maybe it was a
15 telephone vote. Well, it wasn't because there was
16 never a notice of a vote or a meeting. There was
17 nothing like that.

18 It was a guy who said I called some people.
19 We have never seen who he called. We don't know. You
20 know, that's where the evidence is, but it is not our
21 burden to demonstrate a negative.

22 We have no record of there being a vote.
23 This document is bad for everyone in the community,
24 including Mr. Matrisciani. It does the exact thing he
25 didn't want to happen.

1 Pardon me. I just wanted to kind of button
2 up a little bit.

3 THE COURT: All right. Anything further?

4 MR. SEFERIAN: No. Thank you, Your Honor.

5 THE COURT: Mr. Muller, let me hear from you.

6 MR. MULLER: Couple things, Your Honor.
7 First of all, it is a burden of proof. This is an
8 easement agreement. So their premise that we don't
9 know what happened and just kind of -- that's not
10 enough.

11 That's not -- that doesn't satisfy the burden
12 of proof to invalidate an easement agreement from 13
13 years ago.

14 The other thing, I would renew our statute of
15 limitations argument that their entire counterclaim is
16 barred by the statute of limitations. But to the
17 extent you don't agree with us on that and they can
18 challenge us -- their counterclaim was filed 11 years
19 after trying to seek to invalidate this easement
20 agreement, I'm glad to go into the details.

21 Yes, the minutes reflected in November of
22 2010 that there was a second vote to proceed with
23 getting this easement agreement in about January of
24 2012, that was done.

25 Their discussion about -- you know, in the

1 meetings, you can see a lot of the meetings have
2 proxies. So there were votes.

3 I would also add that in terms of the POA's
4 own representative, they were talking about the same
5 meeting minutes. As Your Honor referenced the 2012
6 meeting, especially the ratification.

7 "And this is disclosing a deed that the
8 99-year lease to the dock's access was replaced by an
9 easement agreement?"

10 "Right."

11 "It also contains information that the
12 provision of the POA would pay 25 percent of the lot B
13 property owners' taxes in exchange for this permanent
14 access?"

15 "Correct."

16 "Correct. It also says that this has all
17 been recorded and all property owners agree that they
18 were aware of this, correct?"

19 "Yes."

20 "Are you aware sitting here today that
21 anyone -- that any of this information in here is
22 incorrect?"

23 "No."

24 That's the POA's representative. So, I mean,
25 they don't have any proof that this wasn't ratified.

1 The only evidence we have in this case from actual
2 members -- they didn't go dig up old members that
3 lived there and said this wasn't authorized, this
4 wasn't approved. We're just nitpicking minutes that
5 says, oh, there's insufficient evidence of action when
6 there's no requirement for that even in the bylaws.

7 So the only evidence that we have is the
8 testimony from the former board president and another
9 member who was, I guess, the president following Bruce
10 Matrisciani, and they testified that they were all
11 aware of the easement agreement, they were aware of
12 the pedestrian requirement.

13 THE COURT: Okay. But we know
14 Mr. Matrisciani was deposed because we have seen his
15 deposition. I'm assuming your client has been
16 deposed?

17 MR. MULLER: Yep.

18 THE COURT: Anybody track down Mr. Cox,
19 Mr. and Mrs. Cox?

20 MR. MULLER: There was no deposition of the
21 Coxes.

22 THE COURT: I'm just asking.

23 MR. MULLER: And, again, you know, our
24 clients are the -- they came in in 2020, so this
25 predates -- and they're just trying to seek compliance

1 with an easement agreement that the POA prepared and
2 executed and drafted and had their attorney record.

3 THE COURT: Well, I'm of the opinion that the
4 HOA is afraid that if your argument succeeds that your
5 clients are going to cut them off from the dock. Is
6 that --

7 MR. MULLER: That is not accurate. And if
8 you read our complaint, Your Honor, it says that we're
9 contending that the merger doctrine, with respect to
10 the access easement, the roadway, those are replaced
11 with the easement agreement they signed. So those are
12 permanent easement rights.

13 With respect to the dock, I mean, our
14 position is that -- the easement agreement did not
15 talk about the dock itself.

16 So, I mean, I don't see an issue with the
17 lease existing with respect to the dock area, but it
18 does not -- by operation of law, the roadway, the
19 pedestrian requirement, those replace that.

20 And you asked about the 25 percent
21 requirement in the easement agreement that says as
22 consideration for just compensation for this easement,
23 the property owners association agrees to pay 25
24 percent of the real estate tax assessed for lot B on
25 an annual basis unless agreed otherwise in writing by

1 both parties.

2 So that's an ongoing obligation of the POA
3 that is, again, why we feel we need some directive
4 here that they have that obligation to continue paying
5 that --

6 THE COURT: And I asked that question earlier
7 but I wasn't sure what the answer was. Have they been
8 reimbursed anything ever?

9 MR. MULLER: They paid this year I think --

10 MR. KROPSKI: Your Honor, this year was the
11 first year. In the previous 10, 15 years, it was
12 never paid.

13 THE COURT: Okay. Yet there's been a house
14 there the whole time, right? Wasn't this Cookie
15 Boykin's house?

16 MR. MULLER: Yep.

17 THE COURT: Now it's passed through C and D
18 and went to Cox and now it's Wells.

19 MR. KROPSKI: There was a structure. I think
20 Cookie built it after the initial lease was done, so
21 it was an empty lot at that time.

22 MR. MULLER: And, Your Honor, I want to
23 highlight what I just heard is this lease is sort of
24 enforceable but sort of not. It's kind of a cake and
25 eat it, too, thing.

1 The merger clause -- the integration clause
2 in this easement agreement, to the extent that it's
3 valid, which we don't believe it is, it states this
4 agreement is an integrated agreement and expresses the
5 complete agreement and understanding of the parties,
6 any and all prior or contemporaneous oral agreements
7 or prior written agreements regarding the agreement
8 will be merged herein.

9 So that means all the statements and
10 negotiations, whatever we do, are not enforceable.
11 This is, you know, the declaration of the parties. It
12 doesn't reference the property or the easement or the
13 lease.

14 And so to the extent that this might be
15 enforceable, I don't know how we get to the point
16 where the lease itself, which does grant greater
17 rights to the POAs, is not still valid. That is also
18 recorded and any property owners is going to have
19 notice of that as well.

20 MR. MULLER: Your Honor, under the merger
21 doctrine, which we have cited all those cases, I mean,
22 the easement agreement was the most recent document.
23 It does replace those property rights.

24 THE COURT: As it relates to the easement,
25 correct?

1 MR. MULLER: Correct.

2 THE COURT: Because the problem you have
3 prior is you have a provision for a deed and it just
4 never happened. That was the concern. That's what
5 got them started on this process?

6 MR. MULLER: That' right.

7 THE COURT: Then it goes to the IRS and
8 everybody throws their hands up and says we have a
9 real problem here.

10 So they meet in 2009. In 2010, they talk
11 about it. They don't meet in 2011. And then there's
12 a question of what happened pertaining in the
13 meanwhile?

14 MR. KROPSKI: There's not really a question
15 of what happened. Mr. Matrisciani was worried that
16 his kids weren't going to be able to use the dock in
17 200 years from now, 100 years from now, and they are
18 not going to be leasing the dock a hundred years from
19 now.

20 MR. MULLER: Your Honor, he testified that it
21 was brought to the board of directors and they voted
22 on it.

23 They are implying that nefarious conduct that
24 votes did not occur just because they are looking at
25 minutes from 13, 14 years ago that don't prove

1 something.

2 But, again, they have the burden of proof to
3 establish the invalidity of the agreement.

4 MR. KROPSKI: Your Honor, to clarify,
5 Mr. Matrisciani testified there was no formal vote, no
6 formal meeting.

7 There was no -- so there was no vote on this.
8 We know that. His suggestion is that he called people
9 up and they did a -- over we have no idea how much
10 time, a phone call with each of these members and
11 said, oh, is this good with you? We don't know what
12 he read.

13 So unfortunately, I mean, most of these folks
14 are deceased at this point. A lot of these members
15 are dead unfortunately.

16 However, that needs to be clear is that he
17 even testified they did not have a formal vote. They
18 did not have a formal meeting using Robert's rules or
19 anything he said they had to do before.

20 THE COURT: Okay.

21 MR. MULLER: And I think we're also reading
22 into requirements that are not requirements here, so I
23 will just leave it at that, and we can disagree.

24 THE COURT: I don't know that I've looked at
25 it that closely.

1 But I'm looking at the Frank plat now, which
2 is EG 457 from 2003. And this clearly cut down the
3 size of the easement down by the waterfront.

4 It went from a large block down to, I don't
5 know, that looks like it's still 75 feet wide, but
6 it's only 37 and a half feet deep.

7 MR. MULLER: Correct.

8 THE COURT: Okay. So it --

9 MR. MULLER: And we referenced that in our
10 complaint, Your Honor, but I don't have that copy.

11 THE COURT: Existing dock ingress/egress
12 easement, which is a plat. So if it exists, there's
13 no question about that.

14 The question then becomes what are the terms
15 of use, right? That's what changed. In the easement
16 agreement, what changed is it became pedestrian access
17 as opposed to vehicular or any other type of access?

18 MR. MULLER: Correct.

19 THE COURT: And then the payment of the
20 money.

21 MR. MULLER: Right. And recovery of
22 attorney's fees if we have a dispute like this if
23 we're having to enforce the easement agreement.

24 MR. KROPSKI: The 25 percent, the question
25 you asked earlier, what are they paying for? They're

1 paying for nothing. Because as soon as the lease is
2 gone and the dock is gone, they're paying another 25
3 percent for the easement.

4 THE COURT: I understood him to say he's not
5 arguing the lease itself is gone, the lease to the
6 right to use the dock.

7 MR. KROPSKI: I don't know how you can argue
8 that the lease is valid for certain purposes and not
9 valid for others. This is convenient for me, but
10 that's not.

11 You know, the lease is either terminated via
12 the easement agreement --

13 THE COURT: Is that your argument? He's not
14 making that argument that I hear.

15 MR. KROPSKI: I understand he's trying to
16 make an argument. The merger document does not say
17 you can pick and choose what you want.

18 THE COURT: But the easement agreement didn't
19 touch anything to do with the dock, did it?

20 MR. KROPSKI: The easement agreement does not
21 mention the dock at all. That's correct. But I don't
22 know how the lease provision regarding ingress/egress
23 could then merge when the dock portion doesn't.

24 THE COURT: Okay.

25 MR. KROPSKI: I mean, that's the position.

1 The merger doctrine does not state you can cherry-pick
2 out and rewrite an agreement.

3 I was at the Supreme Court and they told me
4 you can't rewrite agreements.

5 THE COURT: Yeah. We try that all the time.

6 MR. KROPSKI: And that's what that is doing
7 effectively. Hey, we're going to rewrite this
8 agreement.

9 THE COURT: Well, then, I know the HOA is not
10 in favor of the language that would only allow
11 pedestrian access, and they sure don't want to have to
12 pay 25 percent of the tax bill.

13 But how would you reconcile that? What's
14 your position? They can just continue to drive down
15 there and park wherever they wanted to?

16 MR. KROPSKI: Within the bounds of what's
17 reasonable. And if someone is misbehaving, that is
18 entirely out of the lease or the easement agreement.
19 That's an issue that the POA board deals with in terms
20 of the covenants and community standards.

21 If somebody is being loud, that is something
22 that should be dealt with, and we discussed that.
23 Look, there is a problem between some of these
24 neighbors, as I'm sure you can gather.

25 And when there's bad things happening, even

1 when it's a board member, they have tried to get him
2 to dial it back, and it's something -- those are
3 within the covenants and restrictions, rather than
4 using property rights to try to hinder or move
5 somebody out of a community.

6 That's what it comes down to. Again, this is
7 a pretty long pathway with older folks. If everyone
8 has a dock slip -- you know, the reason that people
9 drive down there with their golf carts --

10 THE COURT: Maybe y'all can get a solution by
11 letting them have a golf cart down there.

12 You tried to mediate this thing and talk
13 about that?

14 MR. KROPSKI: We did, Your Honor.

15 THE COURT: And that went nowhere?

16 MR. MULLER: We tried. But, again, I think,
17 you know, the problem with a lot of this is that, you
18 know, rewriting their own easement agreement that they
19 prepared to provide us less rights that we're not even
20 confident that they'll comply with without any court
21 directive is a little tough to sell.

22 MR. KROPSKI: And, again, there's three,
23 Mr. Wells, Mr. Matrisciani, and a guy Glendale, who
24 are the faction that wants this to be done this way,
25 and the rest of the members don't.

1 It's unfortunate, but this is every single
2 HOA case.

3 THE COURT: This is my second of the day.

4 All right. I'm going to take it under
5 advisement, and I'm going to review the language of
6 the lease agreements, the restrictive covenants, the
7 easement agreement, and the plats. And I will give
8 y'all an answer in relatively short order.

9 But I think to some degree, I'm trying to
10 reconcile how we're going to get there. I don't know
11 any other way to get this one done.

12 MR. MULLER: It's not a split the baby case
13 unfortunately.

14 MR. KROPSKI: Your Honor, just outside of
15 mediation, but the POA has tried to come up with a
16 reasonable solution and so --

17 THE COURT: Well, he's got -- because when he
18 bought it, he bought it with an access easement. He
19 knows that people are going to be coming across his
20 property. There's no question about that. And that's
21 just the way it's going to be, and I had a hard time
22 explaining easements to people who aren't from here.
23 So I don't know whether that's this case or not. But
24 they got a dock sitting out there in the middle of the
25 creek that looks like a pretty nice size dock.

1 MR. MULLER: And it's not -- Your Honor, I,
2 mean, contrary to the way they painted it, they're
3 very nice people. I just think they feel like they've
4 been kind of taken advantage of by a new board that
5 doesn't want to comply with an easement agreement that
6 already exists.

7 THE COURT: I understand. All right. Very
8 good. Thank you.

9 (Off the record at 3:48 p.m. on February
10 10th, 2025.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 24th DAY OF JUNE 2025.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	COUNTY OF CHARLESTON
	)	CASE NO. 2022-CP-10-04952
STEPHEN C. WELLS AND RANDI P. WELLS	)	
	)	
Plaintiffs,	)	
	)	
v.	)	AFFIDAVIT OF BRUCE MATRISCIANI
	)	
SPARTINA BAY PLANTATION	)	
PROPERTY OWNERS' ASSOCIATION, INC.	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED before me Bruce Matrisciani who, being duly sworn, deposes and says as follows:

1. I have personal knowledge of the facts set forth in this Affidavit. I believe any such facts are true and accurate to the best of my knowledge, except those matters stated upon information and belief.

2. I am over the age of 18 and a resident of South Carolina, County of Charleston.

3. I am the owner of Lot 5 in the Spartina Bay Plantation Subdivision on Edisto Island, South Carolina and have resided at this property since 2006.

4. I served as President of the Spartina Bay Property Owners Association, Inc. ("SBPOA") from approximately 2009 to 2014.

5. During my term as President of the SBPOA and with the knowledge of SBPOA members during such time, I contacted James and Catherine Cox ("the Coxes") on behalf of SBPOA to negotiate an easement agreement to replace the 99-year lease on the strip of land designated for access to the community dock for all Class A members.

6. After I contacted the Coxes and negotiated the terms of an easement agreement, I reached out to all of the then members of SBPOA by telephone to inform them of the potential easement agreement and to get their approval. Every member I spoke with approved of the Easement Agreement. Thereafter, the SBPOA retained Karen DeJong, Esq., to draft and record the Easement Agreement subject to the approval of the Coxes and their respective attorney.

7. On January 25, 2012, I signed the Easement Agreement as the President of the SBPOA to replace the 99-year Lease and to grant Class A members permanent pedestrian use of the easement area to access the community dock. The Easement Agreement was recorded February 22, 2012, with the Charleston County Register of Deeds in Book 0234, Page 897.

8. On April 10, 2012, the SBPOA Board issued a letter to all members informing them that the easement agreement had been recorded, further offering a copy of the digitized version for review. A copy of the April 10, 2012 letter is attached as EXHIBIT A.

9. At a SBPOA meeting held May 12, 2012, I also confirmed that the easement agreement was finalized and available for review. No SBPOA member or anyone else ever requested a copy of the Easement Agreement in response to my knowledge.

10. The members of SBPOA at the time of my presidency were aware of and approved the Easement Agreement with the Coxes in order to replace the 99-year lease.

11. I am also aware of a deck/platform that was previously located on property currently owned by Plaintiffs Stephen C. Wells and Randi P. Wells and partially located within the ingress/egress easement area that was removed in 2022.

12. To my knowledge, the deck/platform was located at its location before removal since at least 2007.

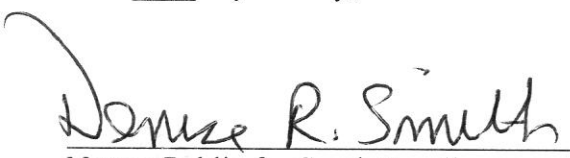
13. To my knowledge, the deck/platform was not owned by the SBPOA and the SBPOA did not construct nor pay for the construction of the deck/platform located on the Wells' property. I am also unaware of any bill of sale, deed, or other document that transferred ownership of the deck/platform to the SBPOA.

FURTHER AFFIANT SAYETH NOT.



Bruce Matriciani

SWORN TO BEFORE ME
This 13th day of May, 2024



Notary Public for South Carolina
My Commission Expires: 5-23-29

11/21/24

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Ninth Judicial Circuit

Honorable Mikell R. Scarborough
Master-in-Equity

Civil Action No.: 2022-CP-10-04952

Spartina Bay Plantation Property Owners' Association, Inc..... Appellant.

v.

Stephen C. Wells and Randi P. Wells. Respondents.

NOTICE OF APPEAL

Appellant Spartina Bay Plantation Property Owners' Association hereby appeals the Order of the Honorable Mikell R. Scarborough dated May 01, 2025 denying the Appellant's Motion to Alter or Amend the Court's Order dated April 16, 2025 granting Respondents' Motion for Summary Judgment and dismissing Petitioner's Counterclaim with prejudice. The Order of May 01, 2025 is attached as **Exhibit A** and the Order of April 16, 2025 is attached as **Exhibit B**.

[SIGNATURE ON FOLLOWING PAGE]

This 27th day of May, 2025.

Respectfully submitted,

EARHART OVERSTREET, LLC

s/ Steven R. Kropski

Steven R. Kropski

S.C. Bar No.: 101441

Maxwell J. Seferian

S.C. Bar No.: 105855

Andrew S. Platte

S.C. Bar No.: 77801

Earhart Overstreet, LLC

P.O. Box 22528

Charleston, SC 29413

(843) 972-9400

*Attorneys for Appellant Spartina
Bay Plantation Property Owners'
Association, Inc.*

Other Counsel of Record:

Timothy J.W. Muller

Mary Harriet Moore

40 Calhoun Street, Suite 450

Charleston, SC 29402

843-577-6726

Attorneys for Respondents

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Ninth Judicial Circuit

Honorable Mikell R. Scarborough
Master-in-Equity

Civil Action No.: 2022-CP-10-04952

Spartina Bay Plantation Property Owners' Association, Inc..... Appellant.

v.

Stephen C. Wells and Randi P. Wells. Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Stephen C. Wells and Randi P. Wells via electronic service to their attorneys of record, Timothy J.W. Muller and Mary H. Moore, at tmuller@rosenhagood.com and mhmoore@rosenhagood.com.



Paralegal to Steven R. Kropski

Tavia Stockdale

From: Tavia Stockdale
Sent: Tuesday, May 27, 2025 4:05 PM
To: Tim Muller; Mary Harriet Moore
Cc: Steve Kropski; Max Seferian; Andrew Platte; Jessica McDonald
Subject: Wells v. Spartina Bay - Notice of Appeal
Attachments: Spartina Bay Notice of Appeal with Orders.pdf

Good afternoon,

Please see the attached Notice of Appeal to be filed with the Court of Appeals. Should you have any issues with the attached, please let me know.

Best,



Tavia S.E. Stockdale

Paralegal

Direct 843-628-3785

PO Box 22528, Charleston, SC 29413

Exhibit A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1004952

Stephen C Wells et al
PLAINTIFF(S)

Spartina Bay Plantation Property Owners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Upon consideration of the Defendant's Motion to Alter/Amend the Judgment, filed April 28, 2025, the Court's Order finds that the Property Owners' Association members have a legal right of pedestrian access across Plaintiff's property to, from, and for the use of the community dock. This Court respectfully denies the remainder of the Motion.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/01/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Stephen C Wells , plaintiff, et al VS Spartina Bay Plantation Property Owners Association Inc

Case Number: 2022CP1004952

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2025-05-01 13:12:04 page 3 of 3

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-04952
	)	
STEPHEN C. WELLS AND RANDI P. WELLS,	)	
	)	
	)	ORDER GRANTING PLAINTIFFS'
Plaintiffs,	)	MOTION FOR SUMMARY
	)	JUDGMENT AND DENYING
v.	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
SPARTINA BAY PLANTATION	)	
PROPERTY OWNERS' ASSOCIATION,	)	
INC.,	)	
	)	
Defendant.	)	
_____	)	

This matter came before the Court on February 10, 2025, for a hearing involving Plaintiffs Stephen C. Wells and Randi P. Wells' ("Plaintiffs" or "Wells") Motion for Summary Judgment and Defendant Spartina Bay Plantation Property Owners' Association, Inc.'s (hereinafter "Defendant" or "SBPOA") Motion for Summary Judgment. Participating at the hearing were Timothy J.W. Muller, Esquire and Mary Harriet Moore, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff, and Steven R. Kropski, Esquire and Max Seferian, Esquire of Earhart Overstreet, LLC, as counsel for Defendant.

Notice of the hearing was duly given to all interested persons. After careful consideration of the motions, pleadings, exhibits, affidavits, deposition testimony, documentary evidence, memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that Plaintiffs' motion for summary judgment is GRANTED and Defendant's motion for summary judgment is DENIED for the reasons stated herein.

STANDARD OF REVIEW

Summary judgment is appropriate where no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Fender & Latham, Inc. v. First Union Nat'l Bank of S.C.*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994); *The Kitchen Planners, LLC v. Freidman*, 440 S.C. 456, 892 S.E.2d 297 (2023). “The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). Summary judgment is properly regarded not as a procedural shortcut, but as an integral part of the rules of civil procedure which are designed to secure the just, speedy, and most inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Summary judgment is appropriate where further inquiry into the facts of the case is not necessary to clarify the application of the law. *See Carolina Chloride, Inc. v. S.C. Dep't of Transp.*, 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011). Thus, it is appropriate “when the evidence is susceptible of only one reasonable interpretation[.]” *Holmes v. E. Cooper Cnty. Hosp., Inc.*, 408 S.C. 138, 154, 758 S.E.2d 483, 492 (2014) (internal quotations omitted). This occurs when “plain, palpable, and undisputable facts exist on which reasonable minds cannot differ.” *ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 551, 854 S.E.2d 11, 174 (Ct. App. 2021), *reh'g denied* (Feb 12, 2021) (internal quotations omitted).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

FINDINGS OF FACT & PROCEDURAL HISTORY

Plaintiffs are the owners of the real property situated at 1499 Marsh Bluff Court, Edisto Island, South Carolina (hereinafter "Property") based on the Deed of James W. Dorn & Jan V. Dorn f/k/a Jan V. Hipp to Stephen C. Wells & Randi Popp Wells, dated March 9, 2020, and recorded with the Charleston County Register of Deeds ("ROD") on March 11, 2020, in Book 0865, Page 916 (hereinafter "Wells Deed"). Defendant Spartina Bay Plantation Property Owners' Association, Inc. ("Defendant" or "SBPOA") is the property owners' association created for the residential community where Plaintiffs' Property is located and was created by virtue of a Declaration of Restrictive Covenants, Conditions, and Restrictions of Spartina Bay Plantation Subdivision dated October 13, 2001, and recorded with the Charleston County ROD on October 16, 2001, in Book D385, Page 260 (hereinafter "Declaration"). Defendant is the purported beneficiary on behalf of certain of its members for use of a community dock and a separate ingress/access easement located on the Plaintiffs' Property. See Declaration, at pp. 1; 6.

i. Background of Easement Agreement

In 2001, Article VI of the Declaration originally attempted to identify certain portions of the subject Property as intended to be owned or leased to Defendant, including a community dock, referenced as Exhibit C to the Declaration, and a strip of land designated as a dock easement for

access to the community dock, referenced as Exhibit B to the Declaration. Declaration at p. 6; Ex. B & C. The Declaration references a plat prepared by Jerry L Fowler RLS #15178, entitled “A BOUNDARY SURVEY OF 4.31 ACRES TMS 025-00-00-038 SURVEYED FOR: STORE CREEK TRUST.” *Id.* Absent from the Declaration is any recording information for such plat. Article VI memorializes that Defendant intended to receive a deed or lease for the strip of land designated as a dock easement and a bill of sale for the dock prior to sale of the first lot within the subdivision. *Id.* No bill of sale was ever known to be issued or recorded for the dock and no deed was issued for the land designated as the dock easement. Dep. of Def.’s Rule 30(b)(6) deponent, Lawrence Evans (“hereinafter “Evans”), P’s Memo in Supp. of Sum. J., Ex. I, at 223:15-224:16. On October 12, 2001, N.C. Boykin as Substitute Trustee of Peters Point Trust, entered into a ninety-nine (99) year lease as landlord with the Defendant in an attempt to benefit Class A members of Defendant with the ability to use a 25-foot dock ingress/egress area and 2.95 acres of marshland located on the subject Property, recorded in the Charleston County Register of Deeds in Book 390, Page 257 (hereinafter identified as “Lease”). *See* Lease, at ¶¶ 1-2; Ex. A. The Lease provided that all the terms, covenants and conditions shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of both parties. *Id.* at ¶ 10(b).

Following several conveyances of the subject Property, James S. Cox and Catherine T. Cox became owners of the Property more fully described in a deed from the Internal Revenue Service, Jeannine A. Hammet Special Agent in Charge, Criminal Investigations, Internal Revenue Service, Charlotte Field Office to James L. Cox and Catherine T. Cox (hereinafter identified as “Coxes”) dated March 29, 2010, and recorded on April 2, 2010, with the Charleston County ROD in Book 0115, Page 404. The Defendant and the Coxes negotiated the terms of an easement agreement to replace the Lease and prior plat references of the dock ingress/egress on the Property, ultimately

culminating in the execution of the subject Easement Agreement by Defendant's board president at the time, Bruce Matrisciani ("Matrisciani"), and the Coxes, with an effective date of January 25, 2012, and recorded with the Charleston County ROD on February 22, 2012, in Book 0234, Page 897 (hereinafter "Easement Agreement"). Am. Aff. of Bruce Matrisciani at ¶¶ 4 – 7. Defendant and/or its agents, participated in the drafting and negotiation of the Easement Agreement and further directed its filing with the Charleston County ROD through Defendant's legal counsel. *Id.* No evidence was submitted contradicting the material facts that former SBPOA President Matrisciani executed the Easement Agreement, that the SBPOA's attorney recorded the Easement Agreement, or that the purpose of the Easement Agreement was to replace the Lease for Defendant's access on the subject Property.

ii. Non-compliance

Plaintiffs submitted evidence as to numerous violations of the Easement Agreement, including the violation of the limitation on pedestrian use of the easement area. *See* Stephen Wells Dep. 35:12-25; 36:1-24; 69:17-25; 70:1-25; 71:24-25; 72:1-13; 73:1-25. Plaintiffs testified as to multiple vehicles driving and parking both within and outside of the easement area identified by the Easement Agreement and on the Plaintiffs' Property; access by unknown individuals on Plaintiffs' Property; a fishing charter boat on the community dock located on Plaintiffs' Property; and individuals using a vacant lot next to Plaintiffs' Property and not owned by Defendant as a parking lot, resulting in access to the easement area through the neighboring property rather than from the entrance on Marsh Bluff Court. *Id.* Plaintiff Stephen Wells testified that Defendant took no action to restrict individuals from operating vehicles in the easement area, but instead Defendant contested the validity of the Easement Agreement. *See* Stephen Wells Dep. 67:1-25; 68:1-12. Defendant thereafter filed a counterclaim against Plaintiffs challenging the validity of the

Easement Agreement in response to Plaintiffs' Complaint seeking this Court's declaratory judgment and enforcement of the Easement Agreement. See Answer and Counterclaim of Defendant.

iii. Procedural History

Plaintiffs filed this lawsuit on October 26, 2022, seeking: (1) declaratory judgment with respect to the parties' rights and obligations under the Easement Agreement, (2) Breach of Easement Agreement, and (3) Temporary, Preliminary, and Permanent Injunction for Defendant's compliance with the Easement Agreement. Defendant filed an Answer and Counterclaim challenging the validity of the Easement Agreement on December 30, 2022. On December 19, 2023, Plaintiffs filed a Motion for Judgment on the Pleadings. This motion was heard on February 22, 2024, and denied so the parties could conduct discovery. Pursuant to the scheduling order in this case, the parties conducted discovery and several depositions occurred. On November 21, 2024, both the Plaintiffs and Defendant filed Motions for Summary Judgment and the parties' respective motions were heard on February 10, 2025.

ANALYSIS

I. This Court Grants Summary Judgment as to Plaintiffs' Claim for Declaratory Judgment and Denies Defendants' Counterclaim for Declaratory Judgment on the Following Issues.

Pursuant to S.C. CODE ANN. § 15-53-30, "[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." Plaintiffs have rights

or interests under the above-referenced Easement Agreement for which they seek a declaration of rights. This Court grants declaratory judgment upon the following issues raised in this action.

A. Plaintiffs Have Standing as Successors-In-Interest Concerning the Easement Agreement.

Plaintiffs, by virtue of their current ownership of the Property and servient estate, are successors-in-interest concerning the Easement Agreement and have standing to seek Defendant's compliance with the terms, conditions, and requirements of the Easement Agreement. Plaintiffs are the owners of the subject Property and servient estate as evidenced by the Wells Deed and prior duly recorded deeds. *See* Wells Deed. As such, Plaintiffs have standing to seek Defendant's compliance with the Easement Agreement as owners of the subject Property. Further, Plaintiffs have standing in this dispute as successors-in-interest based on the applicability of paragraph 15 of the Easement Agreement affecting Plaintiffs' property executed by and between the Coxes, as grantors and previous owners of the Plaintiffs' property, and Defendant, as grantee. The Easement Agreement provides that the terms, conditions, and requirements shall be binding on and inure to the benefit of the parties and their respective heirs, successors, and assigns. *See* Easement Agreement at § 15. Plaintiffs, through the Wells Deed and previously duly recorded property instruments within the chain of title, are successors-in-interest concerning the Easement Agreement as the current owners of the Property and servient estate. Therefore, as a threshold matter, this Court finds that Plaintiffs are entitled to declaratory judgment that Plaintiffs have standing to seek Defendant's compliance with the terms, conditions, and requirements of the Easement Agreement as successors-in-interest to the grantors of the Easement Agreement and the subject Property.

B. The Easement Agreement is Legal, Valid, Binding, and Enforceable Obligations of the Defendant.

The evidence submitted provides that Defendant and the Coxes negotiated the terms of an easement agreement to replace the Lease and prior plat references of the dock ingress/egress on the Property, ultimately culminating in the execution of the subject Easement Agreement by Defendant's board president at the time and the Coxes, with an effective date of January 25, 2012. See *Matrisciani Am. Aff.* ¶¶ 4 – 10. Defendant and its agents, participated in the preparation and recording of the Easement Agreement as evidenced by the signature of Defendant's then Board president and the recording of the document with the Charleston County ROD by Defendant's legal counsel. See *Matrisciani Am. Aff.* ¶¶ 4 – 10; Easement Agreement. Notably, Defendant and its current board members challenge the validity of the Easement Agreement in response to this action but admit that it contains the signature of Defendant's former Board President. See Answer and Counterclaim at ¶ 47.

“A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments.” *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) (quoting 28A C.J.S. Easements § 57 (1996)). As such, Plaintiffs are “entitled to rely on recorded deeds and plats to determine their rights in respect to property.” *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 236, 662 S.E.2d 452, 457 (Ct. App. 2008). Specifically, “[t]he purpose of the recording statute is to protect a subsequent buyer without notice; therefore, once recorded, deeds and easements are valid to subsequent purchasers without notice.” *Ward v. Evans*, 387 S.C. 401, 409-10, 693 S.E.2d 7, 11 (Ct. App. 2010); see also *O’Neal v. Pearson*, 2007 WL 8327921 at *3 (Ct. App. July 6, 2007) (citing *Davis v. Monteith*, 289 S.C.

176, 182, 345 S.E.2d 724, 727 (1986) (“When a deed is valid and regular on its face, it is presumed to be valid in all respects.”).

Moreover, the burden of proof is “upon the party asserting the invalidity of the easement contract.” *Wilson v. South Carolina State Highway Dep’t.*, 264 S.C. 22, 212 S.E.2d 61 (1975); *see also Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 138 (1986) (citing *Wilson v. Wilson*, 117 S.C. 454, 112 S.E. 330 (1920) (“Generally, the party attacking the deed has the burden of proof.”); *Wilson v. Wilson*, 117 S.C. 454, 112 S.E. 330, 332 (1920) (“A deed ordinarily, when properly executed, is presumed to be what it purports to be. And the party assailing it is charged with the burden of rebutting this presumption and proving his case. He who avers and charges must ordinarily prove. The burden of proof is on him.”). Here, the SBPOA has offered no evidence to prove its assertion that Mr. Matrisciani, the president of the SBPOA at the time, did not have the authorization of the board to sign the Easement Agreement. All evidence submitted points to the contrary.

i. SBPOA President Matrisciani had the Capacity and Authority to Execute the Easement Agreement.

The SBPOA bylaws provide that the President shall be the principal executive officer of the Association, and subject to the control of the directors, shall in general supervise and control all of the business and affairs of the Association, and may sign with the secretary or any other proper officer of the Association, deeds, mortgages, bonds, contracts, or other instruments which the directors have authorized to be executed. Declaration, at Book D385, pg. 294. However, relevant to signing agreements, Article X, Section 1, “Contracts” more specifically provides that the President may be authorized to sign agreements without additional officers: “[t]he directors may authorize any officer or officers, agent or agents to enter into any contract or execute and

deliver any instrument in the name of and on behalf of the association, and such authority may be general or confined to specific instances.” *Id.*, at Book D385, pg. 298 (emphasis added).

Mr. Matrisciani testified both by affidavit and in his deposition that he had authorization from the SBPOA members and its directors to sign the Easement Agreement over ten years ago. See Matrisciani Am. Aff. ¶¶ 6-10 (“The members of SBPOA at the time of my presidency were aware of and approved the Easement Agreement with the Coxes in order to replace the 99-year lease.”); see also Matrisciani Dep. 48:1-5, 18-22 (“But every single board member agreed to this agreement. We voted on it.”). Defendant has offered no evidence contradicting Mr. Matrisciani’s testimony regarding his authorization to enter into the Easement Agreement. Furthermore, nowhere do the bylaws provide that such authorization must be in writing or otherwise memorialized in meeting minutes. Mr. Evans, the corporate representative of the SBPOA, acknowledged and agreed to this fact:

Q: We’re just about done with this document. Let’s look at Section 1, “Contracts. The directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of an on behalf of the association, and such authority may be general or confined to specific instances.”

Do you see that?

A: I do.

Q: Do you disagree with that?

A: No.

Q: Do you agree with me that this contemplates that the directors may authorize one or more officers to execute and deliver any contract or instrument in the name of an on behalf of Spartina Bay POA?

A: That’s the way it reads.

Q: Does it say anywhere in this provision that this authorization has to be in writing?

A: No, it does not.

Evans Dep. 288:13-25, 289:1-7. Mr. Matrisciani is clear that he was authorized by the SBPOA to enter into the Easement Agreement, discussed the Easement Agreement with all SBPOA members at the time, and that the members of SBPOA agreed to and approved the agreement. See

Matrisciani Dep. 60: 1-4. His testimony was further corroborated by Glenn Dill, another member and former President of SBPOA. *See* Dill Dep. 103:4-8.

There is also no support in the SBPOA bylaws that all member and director actions are confined to in-person meetings. Article IV and Article V of the SBPOA bylaws permit procedures for member votes by mail, telephone or other form of communication. Declaration, at Book D385, pg. 290-292. Former SBPOA President Matrisciani testified that such bylaws enabled voting by means other than annual in-person meeting. *See* Matrisciani Dep. 136: 10-12 (“[Q:] Do you think that this contemplates that members may vote by mail, telephone, or other form of communication? [A:] Yes.”). President Matrisciani also testified that he had spoken in-person and over the phone with the board of directors about the Easement Agreement and received their approval. *Id.* at 136: 25-138:22.

SBPOA offers no evidence to prove that the SBPOA did not authorize Mr. Matrisciani to execute the easement, that the Easement Agreement was not distributed to SBPOA members, and that the SBPOA members at the time did not approve the Easement Agreement. The corporate representative of SBPOA, Mr. Evans, testified to this fact:

Q: So here we have the POA confirming, at least in a meeting, that the dock easement had been finalized and was available for anyone who wanted a copy; is that right?

A: Yes.

Q: Are you aware of anyone that disputed the fact that the Easement Agreement had been finalized?

A: I cannot speak to that.

Q: Okay. You can't speak to that; you're here for the POA?

A: Right. And we don't have any records saying that anybody spoke out against it or anything else. We also don't have any records that – there's a document out there; the specifics of the documents weren't discussed at any time.

Q: I understand from the minutes. But sitting here today, as the POA representative, are you aware of any proof that the updates were not provided to POA members about the Easement Agreement during this time?

A: Only what – the only updates that we have are what we have. There was the – there was the – there was only the one reported concession of paying for 25 percent of the taxes.

Q: So sitting here today, do you have any proof that the POA members were not updated in terms of the specifics of the Easement Agreement during this time period?

A: I don't have any proof that they were not any more than I have any proof that they were.

Evans Dep. 100:11-25, 101:1-25, 102:1-4; *see also* Evans Dep. 126:8-15 (“Q: . . .you don't have any proof, sitting here today, that the Easement Agreement was not distributed by POA members when it was negotiated back around 2011 or 2012, correct? A: I don't have evidence in either direction.”). SBPOA's representative also did not dispute SBPOA meeting minutes disclosing the existence and recording of the Easement Agreement to SBPOA members for the purpose of replacing the Lease, the provision that SBPOA obligation of paying twenty-five percent of the Property's taxes in exchange for a permanent easement, and an acknowledgement that all SBPOA members were aware of this information after the Easement Agreement was recorded. Evans Dep. 106:22-25, 107:1-25, 108:1-6.

There is also significant evidence in SBPOA's documents demonstrating that its members were aware of and approved the Easement Agreement both before and after the Easement Agreement was signed and recorded. For example, there is an April 10, 2012, letter to SBPOA members that states:

As you know we have been working on obtaining a perpetual easement to the Dock area to replace the 99 year term that has been in effect. The agreement has been agreed to and recorded. . . . The agreement is digitized, please advise Ron Farrell if you would like to receive a copy by email.

Plaintiff's Memo in Supp. of Sum. J., Ex. K (hereinafter “April 10, 2012, Letter – Plaintiffs_0094”). In fact, before the execution of the Easement Agreement by Defendant, there were no less than three sets of SBPOA meeting minutes evidencing member discussion and

decisions to replace the 99-year lease with the permanent ingress/egress rights ultimately acquired by Defendant through the Easement Agreement, two of which included unanimously approved motions to resolve this precise issue. Plaintiff's Memo in Supp. of Sum. J., Ex. L, SBPOA_0163-0164; 0169 (SBPOA Meeting Minutes for Minutes of Nov. 6, 2010, Oct. 17, 2009, & Mar. 28, 2009) ("hereinafter SBPOA Meeting Minutes"). In a unanimous vote at the SBPOA meeting on October 17, 2009, SBPOA members adopted a motion specifically to have President Matrisciani work with SBPOA's legal counsel "**to attain either a dock easement or lease in perpetuity.**" SBPOA Meeting Minutes, at SBPOA_0167 (emphasis added).

Alternatively, Defendant argues that the Easement Agreement required unanimous consent of Class A Members to be enforceable. Mr. Matrisciani testified that he received consent of all current owners, which would necessarily include Class A Members, to enter the Easement Agreement. Defendant has not offered evidence establishing that the Easement Agreement was not unanimously approved by Class A Members. Defendant has not presented any testimony, whether by affidavit or deposition from Class A Members from such time, to support that the Easement Agreement was not unanimously approved nor has it presented any evidentiary support for this argument.

Defendant's claim of an alleged insufficiency of documentary evidence from thirteen or more years ago for authorization of the recorded Easement Agreement, despite the existence of evidence to the contrary, does not meet the SBPOA's burden to prove invalidity of the Easement Agreement. Therefore, this Court holds that SBPOA has failed to show that Mr. Matrisciani lacked authority to enter into the Easement Agreement on behalf of SBPOA. Accordingly, there is no genuine issue of material fact that SBPOA President Matrisciani had the capacity and authority to execute the Easement Agreement.

ii. The Easement Agreement was Approved and has Been Ratified by Defendant.

Under South Carolina law, “[r]atification, as it relates to the law of agency, means the express or implied adoption and confirmation by [a principal] of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent.” *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989) (citing *Barber v. Carolina Auto Sales*, 236 S.C. 584, 115 S.E.2d 291 (1960)). “Ratification exists upon the concurrence of three elements; (1) acceptance by the principal of the benefits of the agent’s acts, (2) full knowledge of the facts, and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements.” *Id.* (citing 2A C.J.S. Agency § 71 (1972)). Here, the Easement Agreement was written and entered into in 2012. Since that time, the SBPOA has repeatedly ratified the Easement Agreement, despite its assertion otherwise in this action.

After the Easement Agreement was executed by the Coxes and Mr. Matrisciani on behalf of the SBPOA, the Easement Agreement was recorded in the Charleston County ROD on February 22, 2012. On April 10, 2012, the SBPOA board issued a letter to all members of SBPOA informing them that the Easement Agreement had been recorded, and a digitized version was available for their review. Matrisciani Am. Aff. ¶ 8; *see also* April 10, 2012, Letter – Plaintiffs_0094. Further, at a SBPOA meeting held on May 12, 2012, then President Mr. Matrisciani confirmed the Easement Agreement was finalized and available for review. Matrisciani Am. Aff. ¶ 9; SBPOA Meeting Minutes at SBPOA_0161 (“The fact that the perpetual dock easement was finalized was announced and it was stated that it was available in digitized form for anyone who wanted a copy.”). Thus, from April 2012 until present, the SBPOA and its members have been on notice of the Easement Agreement and its pedestrian requirement. Even further, SBPOA produced documents including dock operating rules, which provided: “Dock access across Lot B is a

pedestrian access only by easement agreement.” P’s Memo. in Supp. of Sum. J., Ex. M (hereinafter “Dock Rules SBPOA_902 – SBPOA_903”) (emphasis in the original). It was not until recently that the SBPOA Board rescinded the dock rules that contained the pedestrian limitation. *See* Dill Dep. 109:25, 110:1-14.

Defendant has provided no evidence disputing that SBPOA members were informed of the Easement Agreement prior to and following its recording. The evidence submitted indicates that not only was the Easement Agreement approved by SBPOA members, but also that SBPOA members were aware of and ratified the Easement Agreement following its recording. Accordingly, this Court finds, irrespective of any claimed procedural defects in the approval of the Easement Agreement before its recording, of which this Court finds none, Defendant also ratified the Easement Agreement based on the evidence submitted by the parties.

iii. The Easement Agreement was Recorded More Than Ten Years Prior To This Action Under S.C. CODE ANN. § 15-3-340 And No Action Was Taken By Defendant To Dispossess Plaintiffs Or Their Predecessors-In-Interests With The Rights Acquired In The Real Property Identified In The Easement Agreement.

Pursuant to S.C. CODE ANN. § 15-3-340, “[n]o action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises within ten years before the commencement of the action.” This action was filed on October 26, 2022, two years after Plaintiffs purchased the property. In contrast, despite the existence of this filed property instrument, Defendant failed to challenge the validity of the Easement Agreement until Defendant filed its on counterclaim on December 30, 2022, nearly eleven years after the Easement Agreement was recorded on February 22, 2012, and over ten years after this Court finds Defendant further ratified the Easement Agreement. Accordingly, this Court declares that the Easement Agreement

was approved and ratified since 2012, and Defendant's counterclaim falls outside the ten-year limitation for Defendant to be able to sustain any claim under S.C. CODE ANN. § 15-3-340 to recover real property rights allegedly seized or limited as a result of the Easement Agreement.

Defendant's counterclaim seeks this Court's determination of the validity of an easement which is an issue of law while the determination of the scope of an easement is an action in equity. *See Gooldy v. Storage Center-Platt Springs, LLC*, 422 S.C. 332, 338, 811 S.E.2d 779, 782 (2018) ("The question of whether an easement exists is a factual question in an action at law."); *Inlet Harbour v. South Carolina Dep't of Parks, Recreation, and Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008) (citing *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997) ("Apart from the issue of an easement's creation, however, the determination of the scope of an easement is an action in equity."); *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487, S.E.2d 187, 190 (1997) ("The determination of the existence of an easement is a question of fact in a law action and subject to any evidence standard of review when tried by a judge without a jury.")).

Defendant is attempting to affirm its rights to the possession of the easement area and divest Plaintiffs of the property rights contained within the Easement Agreement and granted to Plaintiffs as successor-in-interest to the Property and Easement Agreement. Defendant failed to attempt to seize the property rights granted to Plaintiffs and their predecessors-in-interest in the Easement Agreement or otherwise challenge the Easement Agreement within ten years from its approval and ratification. Therefore, this Court finds that Defendant may not sustain any action arising under § 15-3-340 nearly eleven years after the Easement Agreement was recorded on February 22, 2012, and over ten years after this Court finds Defendant further ratified the Easement Agreement.

C. The Lease and All Prior Rights Held By Defendant In The Ingress/Egress Easement Area On Plaintiffs' Property Were Replaced and Merged Into The Easement Agreement.

This Court finds that the Easement Agreement extinguished or merged any prior property rights held by the SBPOA in the same dock access easement depicted in previously prepared plats, such as those referenced in the Declaration, any amendments thereto, and the Lease. South Carolina has long recognized the merger doctrine since the case of *St. Philip's Church v. Zion Presbyterian Church*, 23 S.C. 297 (1885), which provides that a deed is absolute on its face and in its terms and any and all negotiations are merged into the deed. *See Hughes v. Greenville Country Club*, 283 S.C. 448, 450, 322 S.E.2d 827, 828 (Ct. App. 1984) (prior written agreements are merged into a subsequently recorded conveyance covering the same property). A party claiming that merger was not intended must prove so by clear and convincing evidence under South Carolina law. *Shoney's Inc. v. Cooke*, 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987).

Furthermore, the Easement, executed by Defendant and consistent with an intended merger, also contains an integration clause, which provides: This Agreement is an integrated agreement and expresses the complete agreement and understanding of the Parties. **Any and all prior or contemporaneous oral agreement or prior written agreement regarding the Agreement will be merged herein.** *See* Easement Agreement at ¶ 13 (emphasis added). The Declaration, First Amendment to the Declaration, the Lease, and all referenced plats identified as the dock access easement pertain to the same easement area as the Easement Agreement. Because of this fact and since the Easement Agreement specifically includes an integration clause, there are no grounds to assert that the Defendant has any property rights in the easement area other than those expressly granted to the Defendant in the Easement Agreement. *See Wilson v. Landstrom*, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984) (“A merger clause expresses the intention

of the parties to treat the writing as a complete integration of their agreement.”); 30 S.C. JUR. CONTRACTS § 38, *Integration and Merger* (Feb. 2024) (“A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement.”); *see also Rye v. Tahoe Truckee Sierra Disposal Co., Inc.*, 222 Cal. App. 4th 84 (2103) (where access easement identified the same area as 99-year lease, court found that the lease was abandoned).

Defendant argues that the integration clause does not merge the Lease because the Easement Agreement defines “the Agreement” as “this Easement Agreement” and therefore it only integrates prior or contemporaneous agreements regarding the document itself and apparently not the identical subject matter of the agreement, the underlying easement. SBPOA has presented no evidence that the integration clause was intended to have such a non-sensical interpretation, particularly since the Easement Agreement and Lease grant inconsistent property rights to Defendant in the same identical geographic area of the ingress/egress dock easement.

This Court finds that no further evidence is necessary to determine that the Lease and all prior rights held by Defendant in the ingress/egress easement area on Plaintiffs’ Property were replaced and merged into the Easement Agreement. Nevertheless, a review of materials submitted by the parties shows that SBPOA intended for the Easement Agreement to replace the Lease. SBPOA’s communications and meeting minutes demonstrate this intent. For example, the letter dated April 10, 2012, to SBPOA members from Ron Farrell, SBPOA’s then secretary, provides: “[a]s you know, we have been working on obtaining a perpetual easement to replace the 99-year term that has been in effect.” April 10, 2012, Letter – Plaintiffs_0094. Another example is the November 6, 2014, SBPOA meeting minutes, which memorialize:

It was then reported that initially, when the lots were purchased, that there was a 99-year lease on the access to the dock for the Property Owners. A lawyer was hired to correct this and an agreement was reached with Lot B property owners

that changed the agreement, as of December 2012, to a permanent access to the Spartina Bay Plantation dock and common area.

SBPOA Meeting Minutes at SBPOA_0146-47. Yet another example is the SBPOA annual meeting minutes of March 28, 2009:

The other issue is that this property owns the piece of common property along side which serves as access to the docks. Spartina Bay has a 99 year lease on that property. . . . In addition we will be pursuing a termination of that lease and deeding of the property to the POA.

SBPOA Meeting Minutes, at SBPOA_0169.

The corporate representative of SBPOA also testified to this fact.

Evans Dep. 231:4-7 (“Q: So the idea was, whether it was a deed, lease or an easement, something perpetual rather than a lease that has a hard stop date? A: Correct.”); Evans Dep. 108:19-24 (“Q: All right. But this information was presented, and this is the fourth set of minutes where we’re talking about replacing the 99-year lease agreement with respect to the dock access area with some permanent access, correct? A: Correct.”)

Former SBPOA President Matrisciani also testified to this intended effect. Matrisciani Dep. 48:1-5, 18-22.

Based on the submitted SBPOA documentation, it is evident that SBPOA’s intent and purpose of the Easement Agreement was to replace the lease, and it did so through the integration clause. However, even if the integration clause were not deemed to merge such prior property rights into the more recent Easement Agreement, the merger doctrine does the same by operation of law. Therefore, this Court finds that the Lease and all prior rights held by Defendant in the ingress/egress easement area on Plaintiffs’ Property were replaced and merged into the Easement Agreement.

D. Defendant's Change in Attorneys is Not Sufficient to Affect the Validity of the Easement Agreement.

Defendant's 30(b)(6) deponent and Defendant's counsel have also disputed the validity of the Easement Agreement on the grounds that the SBPOA ultimately utilized a different attorney than the attorney initially hired to complete the task of replacing the Lease with the Easement Agreement. See Evans Dep. 95:25-97:10. However, Defendant has cited no support for the assertion that the substitution of legal counsel to complete the SBPOA's directive of replacing the 99-year Lease with the Easement Agreement somehow invalidated such authorization approved by motion and a documented vote of the SBPOA membership. Rather, substitution of legal counsel for this task was addressed and adopted through unanimous motion at SBPOA's Nov. 6, 2010, meeting. SBPOA Meeting Minutes, at SBPOA_0163. Further, former President Matrisciani testified that the SBPOA Board hired Karen DeJong, Esq. to replace the prior legal counsel then working on obtaining the perpetual easement rights and that the members were pleased with the substitution of legal counsel. Matrisciani Dep. 43: 4-12; 21-24; 97:19- 98:11. The Easement Agreement was recorded by the DeJong Law Firm, LLC, on behalf of the SBPOA, as shown on the Recorder's Page of the Easement Agreement. Easement Agreement, at Plaintiffs_062.

The fact that all evidence received in this case, including SBPOA meeting minutes, show that multiple attorneys were retained by SBPOA and its members for the task of obtaining an easement or lease in perpetuity to replace the 99-year Lease is highly indicative that such actions were approved. Further, without any evidence to the contrary, it can be presumed that SBPOA's attorney would not have recorded the Easement Agreement had it been invalid.¹ Notably, despite

¹ Former SBPOA President Mr. Dill testified to the thoroughness of Ms. DeJong as an attorney stating: "And I have subsequently dealt with that attorney and required an amendment to our covenants. And that attorney was so thorough, I thought I was going to throw up with everything that she wanted as evidence of what was going - - what supported the change to those covenants. In fact, when I said, look, I have all the votes here, I will scan and send these votes to you from all the people; she said, I want the originals . . . And I hand carried the originals to her. And she - - so I know

this case having been filed since 2022, Defendant has not spoken with Ms. DeJong, nor presented any testimony of Ms. DeJong via affidavit or deposition to support its allegations that the Easement Agreement was invalid or lacked any necessary authorization before it was signed and recorded.²

E. Defendant Is Obligated To Comply With The Terms, Conditions, And Requirements Of The Easement Agreement.

Defendant is a party to the Easement Agreement which it negotiated, prepared, executed, and recorded and therefore must comply with the terms, conditions, and requirements of the Easement Agreement. Under South Carolina law, “[t]he language of an easement determines its extent.” *Plott v. Justin Enters.*, 374 S.C. 504, 513, 649 S.E.2d 92, 96 (Ct. App. 2007) (quoting *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 67, 558 S.E.2d 902, 906-07 (Ct. App. 2001)). “Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in plain, ordinary, and popular sense.” *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). “The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it.” *Plott*, 374 S.C. at 514, 649 S.E.2d at 96 (quoting *Smith v. Comm’rs of Pub. Works of Charleston*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994)). “The intention of the parties must be determined by a fair interpretation of the grant or reserve creating the easement.” *Springob v. Farrar*, 334 S.C. 585, 595, 514 S.E.2d 135, 141 (Ct.

her activity then was probably - - I say probably, the way she always conducted her business, and she would have been very thorough with Mr. Matriscioni before she would have taken this and filed it. That’s all I got to say on that.” Dill Dep. 68:8-25.

² SBPOA’s testimony from Mr. Evans stated: “Q: As the POA’s counsel during the time of recording – preparation and recording of the Easement Agreement – the 2012 Easement Agreement – you would agree with that, correct, that she was legal counsel related to the 2012 Easement? A: Yes. Q: Do you agree that Ms. DeJong potentially could have information with respect to the validity of the Easement Agreement? A: Yes. Q: And has anyone from the board spoken to her? A: No. I would have loved to talk to her about it.” Evans Dep. 170:24-25, 171:1-13.

App. 1999) (citing *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 420, 143 S.E.2d 803, 807 (1965)).

i. Defendant Is Obligated to Pay Twenty-Five (25%) Of The Real Estate Tax Assessed For the Property on An Annual Basis As Consideration And Just Compensation For The Easement Rights Granted to Defendant in the Easement.

The Easement Agreement provides: “[a]s consideration and just compensation for this Easement, the Property Owners Association agrees to pay twenty-five (25%) of the real estate tax assessed for Lot B on an annual basis unless agreed otherwise in writing by both parties.” Easement Agreement, at ¶ 6. Taken in its plain and ordinary meaning, paragraph 6 of the Easement Agreement requires Defendant to pay twenty-five (25%) percent of the real estate tax assessed for Plaintiffs’ Property. No amendments were submitted by the parties to demonstrate that Defendant and the Plaintiffs, or their predecessors in interest, have ever agreed otherwise in writing. Additionally, Defendant has paid this property tax payment in the past to Plaintiffs, which is admitted by Defendant’s corporate representative, Mr. Evans. Evans Dep. at 164:17-19 (“Q: Since being on the board, has the POA paid the 25 percent tax bill of the entire Lot B? A: Yes.”). Defendant may not now ignore the terms, conditions, and requirements of the Easement Agreement because it disputes commitments made by its prior directors, officers, and members. As further intent of this long-term obligation of Defendant, the 99-year Lease likewise contained a similar requirement for the ingress/egress rights on Plaintiffs’ Property. Lease, at Book 390, pg. 258 (“The Tenant shall pay to the Landlord the sum of 25% of the total tax bill for said parcel”). However, because this Court finds that the Easement Agreement integrated the terms of the Lease with respect to the subject easement, Defendant is obligated to pay twenty-five percent (25%) of the real estate tax on Plaintiffs’ lot annually as specifically provided in the Easement Agreement.

ii. Defendant's Use of The Easement Area is Limited to Pedestrian and Non-Vehicular Ingress and Egress On, Over and Across the Easement Area.

The Easement Agreement details that use of the easement area is limited to pedestrian and non-vehicular use. Paragraph 2 of the Easement Agreement provides as follows:

Access Easement: Grantors hereby grant, bargain, sell and release unto Grantee, its successors and assigns, for the benefit of the Grantee Property, a perpetual, exclusive, appendant, appurtenant, transferable easement (the "Access Easement") on, over and across the Grantor Property **for pedestrian ingress and egress on, over and across the Easement Area**. This Easement Area is more fully shown as "Existing Dock Ingress/Egress Easement" on Plat by Robert Frank Surveying, dated April 2, 2003, revised on June 19, 2003 and recorded in the Charleston County RMC Office on June 26, 2003 in Book EG, Page 457. **Grantee shall have no other rights in and to any other portion of the Grantor Property except the Easement Area**. Grantors hereby reserve the right, for itself and its tenants, invitees, permittees, agents, representatives, successor and assigns, to use the Access Easement in common with Grantee for any purposes not inconsistent with Grantee's rights under this Agreement.

Easement Agreement at ¶ 2 (emphasis added). The language of the Easement Agreement taken in its plain, ordinary, and popular meaning determines the rights created by the easement. Here, the easement is dedicated as an "Access Easement." *Id.* Courts may take judicial notice of the meaning of words or phrases. *See Brown v. Piper*, 91 U.S. 37, 42 (1875) ("Among the things of which judicial notice is taken are the laws of nations; the general customs and usages of merchants; the notary's seal; **vernacular language**; the customary abbreviations of Christian names; the accession of the Chief Magistrate to office; and his leaving it." (emphasis added)); 29 AM. JUR.2D EVIDENCE § 91, *Judicial Notice of Meanings of Words and Phrases; Signs and Symbols* (Feb. 2024) ("In general, courts take judicial notice of the meaning of English words and phrases by consulting dictionaries or encyclopedias.").

The Merriam-Webster Dictionary defines access as "permission, liberty, or ability to enter, approach, or pass to and from a place" and "a way or means of entering or approaching." *See* P's Memo in Supp. of Sum. J. Ex. N, "Access." *Merriam-Webster.com Dictionary*, Merriam-Webster,

<https://www.merriam-webster.com/dictionary/access>. Last accessed Mar. 10, 2025. “Access” clearly limits the use of the easement area to coming and going to and from a place. See *Snow v. Smith*, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016) (“[a]ccess is defined in Black’s Law Dictionary as ‘[a] right, opportunity, or ability to enter, approach, [or] pass to and from.’”). The Easement Agreement also provides that the easement area is for pedestrian *ingress* and *egress*. Ingress is defined in Black’s Law Dictionary as “the act of entering [;] the right or ability to enter; access.” See *Ingress*, Black’s Law Dictionary (12th ed. 2024). Egress is defined as “the act of going out or leaving [;] the right or ability to leave; a way of exit.” See *Egress*, Black’s Law Dictionary (12th ed. 2024). Additionally, an ingress and egress easement is defined as “the right to use land to enter and leave another’s property.” See *Easement*, Black’s Law Dictionary (12th ed. 2024). Therefore, this Court holds that the Easement Agreement is unambiguous in that Defendant’s use of the easement area is limited to ingress and egress across the easement area.

Finally, any access, ingress, or egress on the easement area by Defendant, its members and individuals using the easement area through Defendant’s right of access is limited to pedestrian use. The Merriam-Webster Dictionary defines pedestrian as “going or performed on foot,” “of, relating to, or designed for walking,” and “a person going on foot.” See *Pedestrian*, <https://www.merriam-webster.com/dictionary/pedestrian>. Last accessed Mar. 10, 2025. Therefore, taken in its plain, ordinary, and popular meaning, “pedestrian” means by foot or person on foot. Access utilized by other means, such as vehicular access, including golf carts, all-terrain vehicles and all other forms of non-pedestrian access, is violative of the terms of the Easement Agreement. By extension, uses inconsistent with the act of coming and going across the easement area by pedestrian means, such as parking, loitering, or the placement of any structures or items in the easement area, are not permitted under the Easement Agreement. Based on the clear and

unambiguous language of the Easement Agreement, this Court finds that Defendant's use of the easement area is limited to pedestrian and non-vehicular use for access across the easement area.

F. Defendant Shall Pay Plaintiffs' Court Costs And Reasonable Attorney's Fees Associated With This Action, Including Any Appeal for Plaintiffs' Enforcement Of The Terms Under The Easement Agreement.

Plaintiffs are entitled to court costs and attorneys' fees under the unambiguous terms of the Easement Agreement. "The law is clear in South Carolina that attorney fees are recoverable when authorized by contract or statute." *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 483, 458 S.E.2d 431, 438 (Ct. App. 1995) (citing *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993)). "When the contract provides for 'reasonable attorney's fees' without specifying a rate or amount, the amount of fees to be awarded is left to the discretion of the court." *Id.* (citing *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992)).

The Easement Agreement provides:

In the event that any party hereto shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action shall be entitled to its court costs and reasonably attorney fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorney fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

Easement Agreement, at ¶ 8. Plaintiffs have brought an action against Defendant to enforce the terms of and declare rights under the Easement Agreement. As this Court finds that Plaintiffs are the prevailing party with respect to their claims seeking enforcement of the terms and obligations of Defendant under the Easement Agreement, this Court finds that Plaintiffs are entitled to payment by Defendant of all court costs and reasonable attorney fees in this action and directs Plaintiffs' counsel to submit an affidavit of all court costs and attorney's fees incurred by Plaintiffs in this action to this Court for the rendering of a judgment of court costs and attorney's fees against Defendant.

II. This Court Finds That Plaintiffs' Requested Reimbursement of an Individual Assessment in the Amount of \$2,500.00 Paid to Defendant Arising out of Plaintiffs' Removal of a Deck on Plaintiffs' Property Shall be Subject to a Damages Hearing by This Court Unless Otherwise Resolved By the Parties.

In their Complaint, Plaintiffs have alleged breach of the Easement Agreement by Defendant in seeking reimbursement of a payment made associated with an individual assessment levied by Defendant against Plaintiffs for removal of a deck that was previously located on Plaintiffs' Property. See Complaint, at ¶¶ 64-70. As previously confirmed, Defendant's rights to the easement area are limited to ingress and egress only. Under the Easement Agreement, Defendant does not have any property right to construct or maintain any structures within the easement area under the Easement Agreement and Defendant has not cited any evidence providing Defendant with such rights.

Defendant has provided no evidence of proof of ownership of the removed deck from Plaintiffs' Property in response to Plaintiffs' claims involving the deck. SBPOA concedes this fact through its corporate representative and Board President.

Evans Dep. 202:15-19 ("Q: Did you represent to Ms. Woodruff that this was - - this deck was owned by the property owners association? A: I did not. I couldn't say that with any - - I couldn't say who it was owned by."). Additionally, two former board presidents testified accordingly. Matrisciani Dep. 125:17- 24 ("Q: Yeah. And you were not aware of the POA ever paying for construction of the deck platform located on the Wells' property? A: No. Q: And you're not aware of any bill, sale, deed, or any other document that transferred ownership of the deck platform to the POA? A: No."); Dill Dep. 113:13-17 ("Q: And you're not aware of any bill of sale, deed, or any document that would convey ownership of that deck that used to exist on the Wells' property that was removed to the property owners' association? A: I'm not.")

Moreover, Plaintiffs submitted testimony concerning Defendant's imposition of the individual assessment for removal of the deck and Defendants' receipt of such payment in the amount of \$2,500.00. See Evans Dep. 206:22-208:18.; P's Memo in Supp. of Sum. J. at pp. 41-

42. Mr. Evans admitted that SBPOA imposed and deposited an individual assessment against Plaintiffs for the deck removal despite having no proof of SBPOA's ownership. *Id.*

Nevertheless, based on the fact Plaintiffs are seeking monetary damages under their cause of action for breach of contract for reimbursement of the individual assessment, this Court finds that a damages hearing is necessary to determine any damages Plaintiffs are entitled to recover from Defendants for the levied individual assessment. Accordingly, if a resolution of Plaintiffs' claim for reimbursement of costs cannot be resolved between the parties, this Court will hold a damages hearing limited to this singular issue.

IT IS ORDERED that the Motion for Summary Judgment filed by Plaintiffs on November 21, 2024 is hereby GRANTED and that the Motion for Summary Judgment filed by Defendant on November 21, 2024 is hereby DENIED; and

FURTHER ORDERED that: (1) Plaintiffs have standing as successors-in-interest concerning the Easement Agreement; (2) the Easement Agreement is legal, valid, binding, and enforceable obligations of the Defendant; (3) the Lease and all prior rights held by Defendant in the ingress/egress easement area on Plaintiffs' Property were replaced and merged into The Easement Agreement; (4) Defendant is obligated to comply with the terms, conditions, and requirements of the Easement Agreement, including Defendant's obligation to pay twenty-five (25%) of the real estate tax assessed for the Property on an annual basis as consideration and just compensation for the easement rights granted to Defendant in the easement and Defendant's use of the easement area is limited to pedestrian and non-vehicular ingress and egress on, over and across the easement area; (5) Defendant shall pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiffs' enforcement of the terms under the Easement Agreement; and (6) Plaintiffs' requested reimbursement of an individual assessment

in the amount of \$2,500.00 paid to Defendant arising out of Plaintiffs' removal of a deck on Plaintiffs' Property shall be subject to a damages hearing by this Court unless otherwise resolved by the parties; and

FURTHER ORDERED that Defendant's counterclaim is dismissed with prejudice.

AND IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

Dated: _____



Charleston Common Pleas

Case Caption: Stephen C Wells , plaintiff, et al VS Spartina Bay Plantation Property Owners Association Inc

Case Number: 2022CP1004952

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2025-04-16 12:41:32 page 29 of 29