THE 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

Appellate Case No. 2025-001052

SPARTINA BAY PLANTATION PROPERTY OWNERS ASSOCIATION, INC.,

Appellant,

v.

STEPHEN C. WELLS AND RANDI P. WELLS,

Respondents

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court correctly ruled in finding Appellant's former president had authority to bind Appellant to an easement agreement in 2012 where the evidence presented to the trial court demonstrated that Appellant's members contemplated and agreed to such an agreement and the applicable bylaws provided such authority to Appellant's former president.

II. Whether the trial court correctly ruled in finding that Appellant further ratified the execution of the easement agreement by its former president where the evidence submitted to the trial court provided that Appellant's members were fully knowledgeable of the Easement Agreement, Appellant previously had unanimously approved by motion the action to obtain a perpetual easement to replace the property rights previously set forth in a lease on Respondents' property, and Appellant then took no action to dispute its former president's authority of the publicly recorded easement agreement for over a decade.

III. Whether the trial court correctly ruled that the Lease merged into the Easement Agreement only with respect to the ingress/egress easement area on Respondents' Property where all evidence submitted to the trial court supported such a finding and is consistent with applicable law and the trial court expressly preserved Appellant's right of use to the community dock.

STATEMENT OF THE CASE AND FACTS

This appeal arises out of Respondents' Stephen C. Wells and Randi P. Wells ("Respondents") successful enforcement of a valid easement agreement ("Easement Agreement"), effective January 25, 2012, entered into between Appellant Spartina Bay Plantation Property Owners' Association, Inc. ("Appellant" or "SBPOA") and the former owners of Respondents' property, establishing the scope and terms of an ingress/egress easement area located on Respondents' property. Following Respondents' initial efforts to enforce the terms of the Easement Agreement, Appellant, in an effort to avoid the terms of the Easement Agreement and expand Appellant's access on Respondents' Property to vehicular use, refused to recognize or comply with the Easement Agreement, resulting in the underlying case. Approximately eleven years after the execution and public recording of the Easement Agreement, Appellant for the first time challenged the validity of the Easement Agreement, despite clear evidence of the approval, adoption, negotiation, and recording of the Easement Agreement by Appellant and its members at the time. After considering the evidence submitted by the parties at their respective cross-motions for summary judgment, the trial court correctly found that Appellant failed to meet its burden of proof, that the Easement Agreement was valid, and that the terms of the Easement Agreement are binding upon Appellant and Respondents as successors-in-interest and owners of the property.

Factual Background

Respondents are owners of the real property located at 1499 Marsh Bluff Court, Edisto Island, South Carolina, (hereinafter "Property") and have owned the Property since March 2020. (R. pp. 523-27). Respondents' Property is located in a small residential community known as Spartina Bay Plantation, centered on the privately-owned Marsh Bluff Court, and originally subdivided in 2001 as a total of only eleven residential lots. (R. pp. 528). Appellant is the property

owners' association created for the residential community where Respondents' 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 Register of Deeds ("ROD") on October 16, 2001, in Book D385, Page 260 (hereinafter "Declaration"). (*Id*.) None of Appellant's current board members were residents and/or members of Spartina Bay during the time of the negotiation and approval of the Easement Agreement.

I. Background of Easement Agreement

Article VI of the Declaration originally attempted to identify certain portions of Respondents' Property as intended to be owned or leased to Appellant, 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. (R. pp. 528-76). 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. (*Id.*). Under the Declaration, Appellant was supposed 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.*). However, no bill of sale was ever issued or recorded for the dock, and no deed was issued for the land designated as the dock easement. (R. pp. 620).

Also in 2001, N.C. Boykin, as Substitute Trustee of Peters Point Trust, a former owner of the Property, entered into a ninety-nine (99) year lease as landlord with the Appellant (hereinafter identified as "Lease") in an attempt to benefit Class A members of Appellant, property owners without docks, with the ability to use the dock ingress/egress area and a dock, both located on the Property. (R. pp. 569, 575). 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)). The Lease represented the entirety of Appellant's purported community rights on the subject Property until 2012. (R. pp. 620). In 2005, through its approval and recording of the SBPOA First Amendment to the Declaration, dated March 17, 2005, and recorded at the Charleston County ROD in Book R530, Page 876, Appellant took the affirmative step of reducing the physical size of the dock ingress/egress easement area originally referenced in the Declaration and Lease by adopting a plat by Robert Frank, dated April 2, 2003, revised on June 19, 2003, and recorded with the Charleston County ROD in Plat Book EG, Page 457 ("Robert Frank Plat"), the same plat also later incorporated in the subject 2012 Easement Agreement. (R. pp. 47, 130-36).

II. Negotiation of Easement Agreement

Appellant and James S. Cox and Catherine T. Cox (the "Coxes"), former owners of Respondents' Property, negotiated the terms of the Easement Agreement to replace the Lease and prior plat references of the dock ingress/egress area on the Property, culminating in the execution of the Easement Agreement by Appellant's president at the time, Bruce Matrisciani ("Mr. 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. (R. pp. 582-84, 587-94). Mr. Matrisciani, Appellant, and its agents, participated in the drafting and negotiation of the Easement Agreement and further directed its filing with the Charleston County ROD through Appellant's then legal counsel, Karen M. DeJong, Esq. (*Id.*). Mr. Matrisciani testified that he was authorized by Appellant to enter into the Easement Agreement, that he discussed it with all members of Appellant, including its board, and that he received every member's approval of the Easement Agreement. (*Id.*)

Furthermore, records of Appellant's meeting minutes from the time substantiate the intent of Appellant's members and the negotiations of the Easement Agreement. (R. pp. 629-35). As early as March 28, 2009, Appellant's meeting minutes memorialized its members' intention to pursue replacement of the Lease. (*Id*.) Later that year, in a unanimous vote at Appellant's annual meeting on October 17, 2009, Appellant's then members adopted a motion to have Mr. Matrisciani work with Appellant's lawyer to "attain either a dock easement or lease in perpetuity." (*Id*.). Again, in the November 6, 2010, meeting minutes, another motion passed unanimously to retain another lawyer to resolve the issue to replace the 99-year lease and Appellant's officers pursued its members' motion to secure the perpetual easement. (*Id.*) Following further approvals from Appellant's then members and board, the Easement Agreement was executed by Appellant's former president and finalized by Appellant's then legal counsel. (R. pp. 582-84, 587-94).

On April 10, 2012, Appellant's officers issued a letter to its members providing "[a]s you know we have been working on obtaining a perpetual easement to the Dock are to replace the 99 year term that has been in effect. The agreement has been agreed to and recorded. Attached is a copy of your information and records." (R. pp. 628). This action was again confirmed in at Appellant's meeting on May 12, 2012, where the meeting minutes detailed that 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." (*Id.*) At the SBPOA meeting held November 6, 2014, it was again confirmed and announced that an Easement Agreement had been reached with the Property owners, that it was recorded, and that all property owners were aware of and agreed to it. (*Id.*) For over a decade, Appellant did not question the validity, the authority of its former president, nor attempt to modify or invalidate the Easement Agreement in any way. As recently as 2021, dock operating rules posted on the dock and produced from Appellant's records provided:

"[d]ock access across Lot B is a pedestrian access only by easement agreement[,]" the same limitation of use that is only contained in the Easement Agreement. (R. pp. 636-37; R. pp. 625).

However, since the execution of the 2012 Easement Agreement, the makeup of the SBPOA community has changed and Appellant is now attempting to revoke the previous actions of its membership as shown in Appellant's counterclaim seeking to invalidate the Easement Agreement. *See* (R. pp. 149-55). In its challenge before the trial court, Appellant offered no evidence to prove that Appellant did not intend to execute the agreement, that the Easement Agreement was not distributed to its members, and that Appellant's members did not approve of the Easement Agreement. The current board president and Appellant's SCRCP Rule 30(b)(6) witness, Mr. Lawrence "Eddie" Evans, testified to this fact in his deposition. (R. pp. 610-11, 614). Despite Appellant's characterization of the underlying litigation as a "neighborhood feud," Respondents have consistently and respectfully requested that Appellant enforce the terms of the Easement Agreement, including the limitation of the easement area to pedestrian ingress and egress as is set forth in the terms of the Easement Agreement.[1] (R. pp. 42-148) However, Appellant refused to comply with the Easement Agreement, despite presenting no proof of its invalidity. (*Id*.)

III. Respondents assessed for removing a deck from their Property.

As a separate but related matter, in their Complaint Respondents also sought reimbursement of payment made to Appellant associated with an individual assessment levied by Appellant against Respondents for Respondents' removal of a wooden deck that was previously

[1] Plaintiffs submitted evidence as to numerous violations of the Easement Agreement as the very reason for this legal action, including the violation of the limitation on pedestrian use of the easement area. (R. pp. 597-99). Respondents testified as to multiple vehicles driving and parking both within and outside of the easement area identified by the Easement Agreement and on the Respondents' Property; access by unknown individuals on Respondents' Property; a fishing charter boat on the community dock located on Respondents' Property; and individuals using a vacant wooded lot next to Respondents' Property and not owned by Appellant as a parking lot, resulting in access to the easement area rather than from the intended entrance on Marsh Bluff Court. (*Id*.). Respondent Stephen Wells testified that Appellant took no action to restrict individuals from operating vehicles in the easement area, but instead Appellant decided to challenge the validity of the Easement Agreement. (R. pp. 598).

located on their Property. (R. pp. 60-62). The Department of Environmental Health and Control ("DHEC")[2] issued a notice to both Respondents and Appellant of two violations of the South Carolina Coastal Zone Management Act existing on Respondents' Property, providing that an existing deck approximately 12 feet by 24 feet in size was located partially within the tidelands critical area without required authorization from DHEC, which was ordered to be removed from the critical area. (R. pp. 668-69). If Respondents did not comply with the notice within thirty days, DHEC provided it could bring an enforcement action and assess civil penalties against Respondents. (*Id*.) In response to Respondents' notice to Appellant that they intended to comply with DHEC and remove the old deck, Appellant claimed that it owned the deck but could not provide any proof of ownership or that it had any rights to own a permanent structure in the ingress/egress easement area. *See* (R. pp. 54; R. pp. 627). Instead, Appellant asserted that simply because the deck was located within the ingress/egress easement area, that the deck was transformed into community property and Appellant could then issue fines for its removal. *See* (R. pp. 54-55; R. pp. 146-48).

Following Respondents' removal of the deck to comply with the DHEC Notice, Appellant fined Respondents an individual assessment of $2,500.00, unilaterally claiming without support that the deck was a common area. (*Id*.) Appellant's Deck Assessment Notice asserted that Respondents' failure to pay the individual assessment within thirty days would result in Appellant's imposition of additional late charges against Respondents and the loss of Respondents' status as members in good standing of the SBPOA, which under the Declaration would amount to Respondents' loss of membership rights and benefits in the Association. (*Id.*) Respondents paid the assessment under protest to remain members in good standing of the SBPOA. (R. pp. 55-56).

[2] Now known as the South Carolina Department of Environmental Services.

IV. Procedural History

Respondents 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. (R. pp. 42-148). Appellant filed an Answer and Counterclaim challenging the validity of the Easement Agreement on December 30, 2022. (R. pp. 149-55). Respondents filed a Reply on January 30, 2023, and an Amended Reply February 28, 2023, asserting pertinent affirmative defenses to Appellant's Counterclaim, including the statute of limitations defense as to Appellant's counterclaim. (R. pp. 156-57; R. pp. 158-63). On December 19, 2023, Respondents 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. (R. pp. 7-9). On November 21, 2024, Respondents and Appellant filed Cross Motions for Summary Judgment and the parties' respective motions were heard before the Honorable Mikell R. Scarborough on February 10, 2025. (R. pp. 479-80; R. pp. 304-478). On April 16, 2025, Judge Scarborough issued an Order granting Respondents' Motion for Summary Judgment and denying Appellant's Motion for Summary Judgment. (R. pp. 10-38). Appellant then filed a motion to alter/amend the judgment which was denied on May 1, 2025. (R. pp. 39-41). Notably, in the May 1, 2025, Order, Judge Scarborough provided: "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." (*Id.*). Appellant's appeal followed.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). 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). Moreover, "when cross motions for summary judgment are filed, the issue is decided as a matter of law." *Neumayer v. Philadelphia Indem. Ins., Co.*, 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (citing *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). "[C]ross motions for summary judgments do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties." *Alltel Communications, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, n. 2, 731 S.E.2d 869, n. 2 (2012) (quoting *Harrison W. Corp. v. Gulf Oil Co.*, 662 F.2d 690, 692 (10th Cir. 1981)). Thus, "[w]hen cross-motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also Cullum Mech. Const., Inc. v. S.C. Baptist Hosp.*, 344 S.C. 426, 432, 544 S.E.2d 838, 841 (2001). Appellate courts review questions of law de novo and "are free to decide a question of law with no particular

deference to the circuit court." *Catawba Indian Tribe of South Carolina v. State*, 372 SC. 519, 642 S.E.2d 751 (2007) (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000)).

ARGUMENT

I. The Trial Court correctly ruled that the Easement Agreement is valid.

When parties file cross-motions for summary judgment "the parties concede the issue before us should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). Because the appellate court applies the same standard as the trial court when reviewing a grant of summary judgment, the question here is not whether there is a genuine issue of material fact but rather whether the Easement Agreement is valid or invalid as a matter of law. Critically important in this matter, **the burden of proof for invalidating an easement agreement is on the party asserting its invalidity**. *See Wilson v. South Carolina State Highway Dept.*, 264 S.C. 22, 26, 212 S.E.2d 61, 63 (1975) (emphasis added) ("The burden of proof on this issue was upon the party asserting the invalidity of the easement contract."); *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."). As such, Appellant has the burden to show that the Easement Agreement was invalid.

As the trial court's Order granting Respondents' motion for summary judgment correctly holds, Appellant failed to meet its burden of proof. Despite the opportunity over multiple years to

conduct discovery, Appellant failed to submit corroborating evidence of the Easement Agreement's invalidity in the parties' cross motions for summary judgment, because such corroborating evidence does not exist. Substantive evidence was necessary to meet the burden of proof in Appellant's counterclaim attempting to invalidate the recorded Easement Agreement and to refute Respondents' sought judicial declaration as to the validity and enforcement of the Easement Agreement.[3] Instead, Appellant focused its efforts on creating arguments on what it contends are inferences from SBPOA historical records, arguments that are inconsistent with the evidence presented to the trial court, and the same arguments it now recites on appeal. The totality of the evidence submitted to the trial court in support of the parties' cross motions for summary judgment, including deposition testimony and Appellant's own documents produced in discovery, support a finding of validity as to the Easement Agreement, establishing that Appellant's past members and officers debated, negotiated, authorized, executed, and recorded the Easement Agreement at issue with the Charleston County ROD more than a decade before this dispute arose. On this basis, the trial court correctly determined that the Easement Agreement affecting Respondents' Property is valid on several grounds.

a. Appellant's former president had actual authority to enter into the Easement Agreement.

Appellant contends that Bruce Matrisciani, the former SBPOA President, did not have actual authority to enter into the Easement Agreement because (1) the SBPOA's Bylaws do not authorize such conduct and (2) because the meeting minutes do not reflect a record of a vote

[3] This is assuming for the purposes of argument that Appellant's counterclaim was not otherwise barred by the applicable statute of limitations based on the timing of Appellant's claim, as provided in the Order Granting Respondents' Motion for Summary Judgment and Denying Appellant's Motion for Summary Judgment and as further detailed herein.

ratifying the Easement Agreement. (Appellant's Initial Br., p. 8). The trial court correctly found that both of these arguments fail.

i. The SBPOA Bylaws granted Mr. Matrisciani authority to enter into the Easement Agreement.

In its argument, Appellant relies on one provision of the SBPOA Bylaws that outline the President's duties and authority. The Bylaws provide the following with respect to the general roles of the SBPOA President:

> 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 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, ...

(R. pp. 562). Appellant contends that this provision operates as a strict limitation, arguing that SBPOA's then president could only sign agreements on behalf of SBPOA (1) with the secretary or another proper officer authorized by the directors; and (2) so long as the directors authorized the contract or instrument to be executed. (Appellant's Initial Br., p. 8).

Although SBPOA's secretary at the time was substantially involved in the process, Respondents do not contest that the secretary did not sign the 2012 Easement Agreement.[4] *See* (R. pp. 601-02; *id.*, R. pp. 594). Rather, Respondents' position is that the trial court correctly relied

[4] Testimony of former SBPOA president Bruce Mastriciani established that then secretary, Ron Farrell, nevertheless approved of the Easement Agreement since all members voted to approve the Easement Agreement. *See* (R. pp. 602). Appellant in its brief cites to a 2009 letter and 2011 note from then secretary, Ron Farrell, to argue that he "did not approve of key aspects of the Easement Agreement." (Appellant's Initial Br., p. 10). This is a mischaracterization of the evidence. Instead, these documents show there were clear negotiations between SBPOA board members and the previous owners of the Property about SBPOA securing the Easement Agreement to replace the Lease and that Mr. Farrell was involved in the process. Moreover, there is nothing to suggest that, by the time the Easement Agreement was executed in 2012, Mr. Farrell was not satisfied with all the terms of the Easement Agreement as Appellant argues without any corroborating evidence. Appellant did not depose Mr. Farrell nor get an affidavit stating that he "did not approve" the Easement Agreement despite Appellant having the burden of such proof. *See Wilson v. South Carolina State Highway Dept.*, 264 S.C. 22, 26, 212 S.E.2d 61, 63 (1975).

on Article X, Section 1 "Contracts," which is the pertinent provision of the Bylaws related to signing agreements and other instruments in the name and on behalf of the association, providing that Mr. Matrisciani had the authority to enter into the Easement Agreement. *Crenshaw v. Erskine College*, 432 S.C. 1, 15, 850 S.E.2d 1, 28 (2020) ("A proper construction of a contract requires the court to give effect to specific terms over any general language."); *see also Expo Properties, LLC v. Experient, Inc.*, 956 F.3d 217, 229 (4th Cir. 2020) ("[I]f 'one [contract provision] is general in character and the other is specific, the specific stipulation will take precedence over the general, and control it.'") (quoting *Heist v. E. Sav. Bank, FSB*, 165 Md. App. 144, 884 A.2d 1224, 1228) (Md. Ct. Spec. App. 2005)). Article X, Section 1, provides that the president may be authorized to sign agreements and other instruments without additional officers. Specifically, this section states: "**[t]he directors may authorize <u>any officer</u> or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the association, and such authority may be general or confined to specific instances**." (R. pp. 566 (emphasis added)). Nowhere in Article X, Section 1, of the Bylaws does it provide that such authority must be confined to usual business transactions as suggested by Appellant.

Appellant argues that the record is "void of evidence" demonstrating that the SBPOA Board of Directors authorized Mr. Matrisciani to sign the Easement Agreement. (Appellant's Initial Br., p. 10). To the contrary, the trial court was presented with ample evidence to hold that Mr. Matrisciani was authorized to enter into the Easement Agreement. Mr. Matrisciani testified both in affidavit and deposition testimony that he had authorization from the SBPOA members and its directors to sign the Easement Agreement. (R. pp. 584) ("The members of the 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."). Mr. Matrisciani testified as follows:

> Q: Okay. Do you remember any discussions about this term pedestrian in this January 25th, 2012, easement agreement?
>
> A: Yes. Everybody read through it; and nobody had any disagreements with it. That's why we have it.
>
> . . . .
>
> A: But every single board member agreed to this agreement. We voted on it.
>
> Q: We'll get there. Was it your understanding that this easement agreement was replacing the 99-year lease?
>
> A: Yes.

(R. pp. 602). Appellant presented no testimony or documents into evidence at the parties' cross-motions for summary judgment to discredit its former president's sworn testimony concerning the agreement of SBPOA members and its board to enter into the Easement Agreement to replace the existing 99-year lease provisions.

Given that the SBPOA Bylaws provide that directors may authorize Mr. Matrisciani, as President of the SBPOA, to execute the Easement Agreement on behalf of the SBPOA and that Mr. Matrisciani testified that he was in fact provided with such authorization, Appellant next contends that this authorization must be recorded in writing and apparently retained over a decade later. In other words, Appellant contends that Respondents, successors-in-interest to an Easement Agreement affecting their property rights, which Appellant initiated no less, must establish written authorization of Appellant's corporate actions from over a decade ago, or the authorization no longer counts, and the recorded property instrument is then void. Appellant has reversed the burden of proof. However, contrary to Appellant's argument, nowhere do the SBPOA Bylaws provide that such authorization must be in writing, let alone memorialized in meeting minutes. Lawrence Evans ("Mr. Evans"), the corporate representative of the SBPOA, even acknowledged and agreed to this fact at his deposition:

> 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.

(R. pp. 622). Mr. Matrisciani is clear that he was authorized by the board and members of the SBPOA to enter 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. Mr. Matrisciani specifically testified:

> Q: I'm asking you if they had - - prior to signing and record this, when you talked to them on the phone, had read through the complete draft of this document the exact form of which ended up being recorded?
>
> A: Yes. To my knowledge. It was a long time ago.

(R. pp. 603). His testimony was corroborated by Glenn Dill, another member and the subsequent president of the SBPOA. (R. pp. 625). Mr. Dill testified to the following:

> Q: But is it your understanding that the owners at that time had a general understanding that there was an effort to obtain an easement on lot b, an access easement, to replace the 99-year lease provisions?
>
> A: Yes.

(R. pp. 625).

Accordingly, Appellant's contention is incorrect that no evidence suggests that the SBPOA permitted Mr. Matrisciani to sign under the provisions of Article X, Section 1. Incredibly, Appellant next charges that Mr. Matrisciani's testimony is "self-serving and unsupported." (Appellant's Initial Br., p. 11).[5] Appellant has submitted no evidence of Mr. Matriciani's lack of credibility. Despite this litigation pending for approximately three years, Appellant did not offer a single witness to contradict Mr. Matrisciani or submit any corroborating evidence to the trial court to establish that Mr. Matrisciani was not authorized to execute the Easement Agreement. The burden of proof lies with the Appellant to prove the invalidity of an Easement Agreement, not the other way around. *Wilson v. South Carolina State Highway Dept.*, 264 S.C. 22, 26, 212 S.E.2d 61, 63 (1975). As such, the trial court correctly relied on the evidence in the record and witness testimony to find that Mr. Matrisciani had the authority to enter into the Easement Agreement under SBPOA's Bylaws. Moreover, Appellant's argument that any conflicting requirements in the provisions of the Bylaws should have been resolved in favor of the SBPOA for purposes of summary judgment is incorrect. As detailed, the parties filed cross-motions for summary judgment on identical issues: whether the Easement Agreement was valid or invalid. Thus, the parties conceded that this case should be decided as a matter of law.

Appellant next argues that even if Mr. Matrisciani had authority to execute the Easement Agreement under Article X, the alleged lack of documentary evidence from such time of a physical

[5] Appellant contends that Mr. Mastriciani's credibility is an issue for the trier of fact. However, in the context of cross motions for summary judgment, the Court is authorized "to assume that there is no evidence which needs to be considered other than that which has been filed by the parties." *Alltel Communications, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, n. 2, 731 S.E.2d 869, n. 2 (2012) (quoting *Harrison W. Corp. v. Gulf Oil Co.*, 662 F.2d 690, 692 (10th Cir. 1981)). If Appellant wanted to contest the credibility of Mr. Mastriciani, it could have presented witnesses to rebut his testimony. However, it did not.

board of directors meeting specifically directing Mr. Matrisciani to sign the Easement Agreement – again from records controlled by Appellant – proves that SBPOA could not possibly have authorized Mr. Matrisciani to perform such function. *See* (Appellant's Initial Br., p 12). There is no support in the SBPOA Bylaws for Appellant's artificially elevated standards that all member and director actions, votes, and authorizations must be conducted through in-person meetings, or at a meeting at all for that matter. Article IV and Article V of the SBPOA Bylaws broadly permit procedures for member votes by mail, telephone or other form of communication. (R. pp. 559-61). Former SBPOA President Matrisciani acknowledged that the Bylaws enabled voting by means other than in-person meetings. (R. pp. 606) ("[Q:] Do you think that this contemplates that members may vote by mail, telephone, or other form of communication? [A:] Yes."). Moreover, Mr. 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).[6] Article VI of the SBPOA Bylaws similarly allows the Board of Directors to adopt any rules and regulations as to the conduct and management of the Association and nowhere does it provide that Mr. Mastrisciani's authorization must derive from a recorded, in-person meeting. (R. pp. 560-61).

Appellant claims that there was "no notice, no agenda, no quorum, and no publication of the purported Easement Agreement," and that even a vote by telephone would have to be duly noticed (Appellant's Initial Br., p. 12). Appellant's argument is meritless based on the Bylaws and the evidence submitted that all SBPOA members and board members approved of and voted in favor of the Easement Agreement and its terms. (R. pp. 602). Again, the burden of proof remains with Appellant on this issue and Appellant submitted no evidence disputing that this authorization

[6] Mr. Mastriciani's authorization to enter into the Easement Agreement is consistent with multiple years of meeting minutes evidencing that all SBPOA members had discussed and voted in favor of securing an easement agreement for the same access easement area with the prior owners of the Lot B Property to replace the time-limited property rights contained in the Lease.

existed, instead distractingly pointing to alleged omissions in its own records as the basis that such acts did not occur in accordance with Appellant's Bylaws. Therefore, the trial court correctly ruled that the Bylaws gave Mr. Matrisciani authority to enter into the Easement Agreement and the ruling that the Easement Agreement is valid should be affirmed.

ii. The meeting minutes demonstrate that SBPOA members were aware of and approved the Easement Agreement.

Appellant contends that the meeting minutes, or more accurately the lack thereof, demonstrate that the SBPOA Board never gave Mr. Matrisciani authority to bind SBPOA under the Easement Agreement. There is significant evidence in SBPOA's documents from the time 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, shortly after its recording, an April 10, 2012, letter to SBPOA members that provides:

> 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.

(R. pp. 628). Before the execution of the Easement Agreement by Appellant, there were no less than three sets of SBPOA meeting minutes evidencing member discussions and decisions to replace the 99-year lease with the permanent ingress/egress rights ultimately acquired by Appellant through the Easement Agreement, two of which included unanimously approved motions to resolve this precise issue. (R. pp. 629-35). In a unanimous vote at the SBPOA meeting on October 17, 2009, SBPOA members adopted a motion specifically to have Mr. Matrisciani work with SBPOA's legal counsel "**to attain either a dock easement or lease in perpetuity**." (*Id*.) (emphasis added). When questioned about this vote and authority of the SBPOA members, current SBPOA President Evans and SCRCP Rule 30(b)(6) witness for Appellant, critically did not dispute

that this was a proper directive of the SBPOA under the Declaration and Bylaws but rather claimed it was insufficient merely because the SBPOA ultimately utilized a different attorney to complete the task, an argument continued by Appellant on appeal. *See* (R. pp. 609); (Appellant's Initial Brief, p. 15).

The trial court correctly ruled that the substitution of legal counsel to complete SBPOA's directive did not retract the authorization approved by motion of the SBPOA members to obtain the Easement Agreement on the Property. Instead, the evidence shows that the substitution of legal counsel for this task was addressed and adopted through unanimous motion at SBPOA's November 6, 2010, meeting, although such approval for substitution of legal counsel was not required under the Bylaws. (R. pp. 629-35). Further, former President Matrisciani testified that the SBPOA Board itself hired Karen DeJong, Esq. to replace the prior legal counsel then working on obtaining the perpetual easement rights, a function fully within its authority to accomplish the approved action. (R. pp. 604). As a result, Appellant's admission that the members' vote to attain the perpetual easement on Respondents' Property was a proper directive under the Declaration and Bylaws but only that substitution of legal counsel invalidated such authorization is fatal to Appellant's argument.

The trial court likewise correctly found that the evidence in this case, including SBPOA's own documents, shows that multiple attorneys were retained by SBPOA to obtain an easement or lease in perpetuity to replace the 99-year lease is highly indicative that such actions were approved and only weaken Appellant's arguments that alleged missing SBPOA documentation serve to invalidate the Easement Agreement. Once again, Appellant offered no evidence to dispute the sworn testimony of its former president and the subject meeting minutes showing that then SBPOA members and its board were aware of the terms of the Easement Agreement, authorized its

approval, and were fully informed during the process. Appellant's SCRCP Rule 30(b)(6) witness readily admitted to this lack of evidence refuting that the Easement Agreement had been provided to members and updated during the process. (R. pp. 610-11, 614). Mr. Evans further acknowledged that he had no evidence to dispute the meeting minutes demonstrating that SBPOA members intended to secure a permanent access in the form of an easement agreement specifically to replace the 99-year lease. (R. pp. 612).

Appellant's claim of insufficiency of documentary evidence from thirteen or more years ago for authorization of the Easement Agreement – despite only the submission of affirmative evidence to the contrary – does not meet Appellant's burden to prove the invalidity of the Easement Agreement in this case. Consequently, the trial court correctly ruled that Mr. Matrisciani had the authority to enter the Easement Agreement with the Coxes on behalf of Appellant.

b. Mr. Matrisciani had apparent authority

Even if Mr. Matrisciani is not deemed to have had actual authority, which is expressly denied, the trial court correctly ruled that Mr. Matrisciani had apparent authority to enter into the Easement Agreement on behalf of SBPOA. Apparent authority is "when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority." *Richardson v. P.V., Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Under South Carolina law, the elements of apparent agency are: "(1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." *Froneberger v. Smith*, 406 S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013) (citing *Graves v. Serbin Farms, Inc.,* 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991)). Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely

to create such belief. *Id.* The first element of apparent agency can be established by either: (1) affirmative conduct or (2) conscious and voluntary inaction. *Id.* (citing *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 67, 352 S.E.2d 284, 287 (Ct. App. 1986).

The meeting minutes demonstrate that several SBPOA meetings addressed and provided votes of SBPOA members in favor of securing an easement agreement on the Coxes' Property at the time, followed by discussions with every member and board members to proceed with the Easement Agreement. (R. pp. 629-35; R. pp. 602). Following such approvals and authorization, Mr. Matrisciani attained the Easement Agreement with the assistance of SBPOA's then legal counsel. (*Id.*); (R. pp. 604). The sum of this evidence provides that the affirmative conduct of the principal provided SPBOA's former president, Mr. Matrisciani, with such agency to obtain the easement agreement. Further, even if these actions were not deemed to amount to affirmative conduct on the part of SBPOA and its members, it is without question that SBPOA's failure to dispute the validity of Mr. Matrisciani's authority in executing the Easement Agreement for over a decade constitutes conscious and voluntary inaction of such authority. Any SBPOA member or board member could have disputed Mr. Matrisicani's authority to enter into the Easement Agreement on behalf of SBPOA following notice of the recorded Easement Agreement to all members. *See* (R. pp. 628). Unsurprisingly, there is no indication that any SBPOA member or anyone else ever disputed Mr. Matrisciani's authority or the Easement Agreement that was recorded and readily available to the public until Appellant filed its counterclaim in this lawsuit, seeking to avoid enforcement of the Easement Agreement.

Likewise, the second element of apparent authority is present based on the terms of the Easement Agreement. The Coxes as grantors and a contracting party necessarily relied on the approvals Mr. Matrisciani was provided to secure an easement agreement on the Property,

ultimately leading to the Coxes granting property rights and signing an easement agreement binding the Property and its future owners, now Respondents. Appellant contends that there is an issue of fact about whether Mr. Matrisciani had apparent authority because the Coxes, as members of SBPOA, "had actual or constructive knowledge that Mr. Matrisciani lacked authority to sign the Easement Agreement." (Appellant's Initial Br., p. 18). Specifically, Appellant argues that the Coxes knew that Mr. Matrisciani could not bind SBPOA to an agreement without authorization from the SBPOA board and without the secretary's signature. (*Id*.) As such, any belief the Coxes had that Mr. Matrisciani had apparent authority to enter the Easement Agreement was "not reasonable" according to Appellant's circuitous line of reasoning. (*Id.*).

First, as outlined above, the Bylaws and the evidence and only testimony submitted on this issue show that Mr. Matrisciani was authorized to sign and deliver the Easement Agreement on behalf of SBPOA without the signature of the secretary pursuant to Article X, Section 1. In addition, the Coxes had a reasonable expectation of Mr. Matrisciani's authority to enter into the Easement Agreement following years of SBPOA meetings where members not only addressed replacement of the Lease with a perpetual easement, but members also voted unanimously to approve having its president secure a perpetual easement on the Cox's then-owned Property, as reflected in SBPOA's meeting minutes. *See* (R. pp. 629-35). Therefore, Appellant's argument attacking the Coxes' supposed imputed knowledge of a non-existent Bylaw requirement is not a basis to disprove Mr. Mastrisciani's apparent authority. Second, notably missing from Appellant's argument is any evidence. Appellant offers no affidavit from either of the Coxes, no deposition testimony from the Coxes, nor any documentary evidence to support its legal arguments. Arguments of counsel are not evidence. *S.C. Dep't. of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 ("Arguments made by counsel are not evidence.").

Finally, there was unquestionably a change of position to the Cox's detriment in relying on the position of SBPOA's former president's apparent authority, should actual authority not be established. The Coxes granted a perpetual access easement across the Property, now owned by Respondents, in favor of the SBPOA, property rights that were otherwise defined to expire at the end of Lease term and revert back to the owners of the Property. (R. pp. 629-35; R. pp. 569-76). Further, the Easement Agreement contains a limitation of pedestrian access that Appellant readily asserts does not apply under the terms of the Lease. (*Id.*) In exchange for these terms, SBPOA also agreed to the payment of certain tax obligations under the terms of the Easement Agreement that the Coxes and Respondents, as successors-in-interest, are entitled to as consideration from Appellant. (*Id.*) On the grounds and law identified above, the trial court was therefore correct in finding that, without any substantiating evidence to support its allegations, Appellant's argument that Mr. Matrisciani lacked apparent authority must fail.

c. In the alternative, the SBPOA further ratified the Easement Agreement.

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 proceeds upon the assumption that there has been no prior authority." 2A C.J.S. *Agency* § 53 (2025). "However, once a ratification has occurred, it is equivalent to original, prior, or previous authority." (*Id.*) "One asserting ratification must establish the following three elements: (1) acceptance by the principal 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. *Stiltner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 191, 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)).

Here, the Easement Agreement was drafted and entered into by Appellant in 2012 following several years discussion, negotiation, and finally approval by SBPOA members. Upon its execution and recording, SBPOA and its members accepted the perpetual property rights granted by the Coxes on the subject Property for permanent access to the community dock.[7] On April 12, 2012, following the Easement Agreement's recording at the Charleston County ROD by Appellant's then legal counsel, the SBPOA 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, thereby providing full knowledge of the easement agreement and far from an act of silence on the part of SBPOA's then officers. *See* (R. pp. 584; R. pp 523-27). Further, Mr. Matrisciani testified under oath that everyone had read the Easement Agreement and did not have any disagreements with it and the board members voted before execution. (R. pp. 602). A month later, at a SBPOA meeting held on May 12, 2012, then President Mr. Matrisciani confirmed the Easement Agreement was finalized and available for review. (R. pp. 584, R. pp. 629-35). This is not mere silence but rather active adoption of the Easement Agreement.

[7] Appellant continues to suggest on appeal, without evidence, that the word "pedestrian" in the Easement Agreement was not intended and that the SBPOA board members only contemplated a "perpetual" easement agreement. (Appellant's Brief, p. 15, n. 10). The Easement Agreement contains the following language, notably including both perpetual and pedestrian terms in the same provision:

> 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.

(R. pp. 588). The access rights in the Easement Agreement are unambiguously limited to pedestrian access only and all testimony submitted to the trial court showed that then SBPOA members and its board were fully aware of the terms of the Easement Agreement. (R. pp. 602). Although unsupported under the applicable facts, Appellant did not plead a cause of action for mistake or mutual mistake as to this term.

Until 2021, dock operating rules were posted on the dock and produced from Appellant's records providing: "Dock access across Lot B is a pedestrian access only by easement agreement," the property rights granted only under the Easement Agreement. (R. pp. 636-37; R. pp. 625). It was not until after Respondents sought enforcement of the Easement Agreement that SBPOA's current Board rescinded the dock rules that contained the pedestrian limitation contained in the Easement Agreement. *See* (R. pp. 626). The behavior of the SBPOA following the execution of the Easement Agreement was not mere silence but circumstances and affirmative elections demonstrating that SBPOA members accepted and ratified the Easement Agreement. The prerequisite for ratification under South Carolina law is not a record of an agenda item at an annual meeting titled "ratification of Easement Agreement," as Appellant seemingly suggests. The full knowledge of Appellant's then members, as demonstrated by witness testimony and documentary evidence, coupled with its subsequent conduct and inaction to dispute a publicly recorded property instrument on a community ingress/egress easement for nearly eleven years later constitutes ratification. Nevertheless, Appellant provides no evidence supporting that the SBPOA did not ratify the Easement Agreement other than pointing to what it contends are deficiencies in its corporate records, which again does not meet its burden of proof. As such, the SBPOA ratified the Easement Agreement under the circumstances.

Finally, Appellant also contends that it did not ratify the Easement Agreement because "the POA does not gain any benefit from the Easement Agreement[.]" (Appellant's Initial Br., p. 20). Through the Easement Agreement, Appellant and its members gained perpetual ingress/egress access to the community dock which otherwise would have ended under the terms of the Lease and for which there was no obligation of the Respondents nor its successors to renew. Therefore,

a clear benefit was gained by the Appellant and the trial court's ruling that the SBPOA ratified the Easement Agreement should be confirmed.

II. The trial court correctly ruled that the Easement Agreement did not require unanimous consent of Class A members.

Alternatively, Appellant argues that the trial court erred in finding no genuine issue of fact as to whether the Easement Agreement required unanimous consent of Class A Members to be enforceable. (Appellant's Initial Br., p. 22). As noted above, Mr. Matrisciani testified that he received consent of all then SBPOA members, which would necessarily include Class A Members, to enter the Easement Agreement. Appellant offered no evidence to show that the Easement Agreement was not unanimously approved by SBPOA members, or more specifically Class A Members. It did not obtain any testimony whether by affidavit or deposition from any Class A Members from such time to support that the Easement Agreement was not unanimously approved nor did it present any evidentiary support for this argument. For purposes of the parties cross-motions for summary judgment, the court may assume that there is no evidence which needs to be considered other than that which has been filed by the parties. *Alltel Communications, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, n. 2, 731 S.E.2d 869, n. 2 (2012) (quoting *Harrison W. Corp. v. Gulf Oil Co.*, 662 F.2d 690, 692 (10th Cir. 1981)). Therefore, the trial court correctly ruled that Appellant failed to meet its burden to prove the invalidity of the Easement Agreement by way of Appellant's alternative argument.

Regardless, Article VI, Section 4 of the Declaration cited by Appellant is inapplicable. This section of the Declaration concerns a 100% percent vote of Class A members electing not to repair or rebuild the dock pursuant to Article VI, Section 3, text curiously omitted from Appellant's brief. (Appellant's Initial Brief, p. 22). The relevant portion of the section in bold font provides:

> Section 4. Abandonment of Dock. If one hundred (100%) percent of all Class "A" Membership of the Property Owners Association vote in writing to abandon any repair, rebuild, or use of said walkway and dock **pursuant to Article VI, Section 3 above**, then the Dock Easement as is shown on Exhibit "B" attached hereto, shall (at the option of the owner) be conveyed by the Property Owners Association to the Owner of Lot "B" (Said Lot being defined above and said owner shall be that as is designated on the records in the RMC Office in the County where said property is located).
>
> . . . .

(R. pp. 534) (emphasis added). Article IV, Section 3, in turn provides the following:

> Section 3. Repair and Maintenance of Dock. If the walkway and/or dock, as defined in Section 1 of Article VI above, are destroyed (in part or in whole), the Property Owners Association shall repair or rebuild said walkway and/or dock to their original size and configuration. The cost or expense of said repair or rebuild shall be an assessment against the Class "A" Membership of the Property Owners Association only and shall be assessed in accordance with the provisions of Article IV above. Provided however, ONE HUNDERED (100%) PERCENT OF THE CLASS "A" MEMBERS OF THE PROERPTY OWNERS ASSOCIATION MAY VOTE, IN WRITING, NOT TO REPAIR OR REBUILD SAID DOCK FACILITY. Upon the unanimous vote, in writing, then the mandatory provision for rebuilding or repair shall be null and void.

(R. pp. 533) (emphasis original). The Easement Agreement clearly does not abandon any repair, rebuilding, or use of the dock under these above-cited provisions. A plain reading of the Easement Agreement demonstrates that the terms between SBPOA and the Coxes, as predecessors-in interest to Respondents, was an exchange of consideration in the form of certain terms for the sought perpetual easement rights on the Property to the ingress/egress area that is separately referred to in Article VI, Section 4, as the "dock easement." As a result, the voting requirement of Article VI, Section 4 is inapplicable to the Easement Agreement, and the trial court correctly rejected this argument.

III. The trial court correctly ruled that the Lease merged into the Easement Agreement as to the ingress/egress easement area on Respondents' Property.

Appellant argues that a genuine issue of fact exists as to whether the Lease merged into the Easement Agreement. (Appellant's Initial Br., pp. 23-27). Again, Appellant fails to recognize the parties have accepted that this be resolved as a matter of law by virtue of their cross-motions for summary judgment on the same claim. Appellant's entire merger argument rests on the false narrative that the trial court held that SBPOA's rights to the community dock have been extinguished. (Appellant's Initial Br., pp. 24-27). The trial court made no such finding. Instead, the trial court was repeatedly clear that the SBPOA would not lose the right to access and use the community dock. The trial court specifically ruled that "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." (R. pp. 28) (emphasis added). It is uncontested that the Easement Agreement does not encompass Appellant's lease of the community dock located on the marshland portion of Respondents' Property.[8] (R. pp. 615, 620). Respondents' counsel likewise readily acknowledged during the hearing on the parties cross-motions for summary judgment that the rights of use to the community dock were not impacted by the Easement Agreement, only the access path area identified in the Easement Agreement, which for all practical purposes, is still accessible by SBPOA members but only limited to pedestrian access as a result of the Easement Agreement. *See* (R. pp. 737). In fact, Plaintiff's filed Complaint never asserted that the Easement Agreement impacted SBPOA's rights to the community dock under the Lease. (R. pp. 49, 59). Despite this unwavering request for relief from Respondents and the clear guidance in its Order granting summary judgment, the trial court again

[8] Exhibit A of the Lease identifies the areas leased by Peters Point Trust, a previous owner of the Property, to Appellant. The property description includes Tract 1, the ingress/egress easement area, as modified, at issue in this case, and Tract 2, the 2.95 acres of Respondents' marshland where the community dock is located. (R. pp. 569-76, 523-27). Appellant's SCRCP Rule 30(b)(6) witness recognized that its only rights to the community dock is through the Lease. (R. pp. 615, 620).

clarified this point for Appellant in its Order denying Appellant's Motion to Alter/Amend, noting that "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***." (R. pp. 39-41) (emphasis added). Therefore, Appellant continues to raise an argument on an issue on appeal that is not before this Court and should be denied on these grounds.

However, with respect to the dock access ingress/egress path, the trial court was correct in ruling that the 2012 Easement Agreement replaced the 2001 Lease as to the dock ingress/egress area where the documents provide for inconsistent and irreconcilable property rights in the same physical area of land identified in a plat of Robert L. Frank, dated April 2, 2003, revised on June 19, 2003, and recorded with the Charleston County ROD in Plat Book EG, Page 457 ("Robert Frank Plat").[9] *See* (R. pp. 47; R. pp. 569-76; R. pp. 588). In its brief, Appellant misleadingly asserts that the 2001 Lease and 2012 Easement Agreement do not reference the same plat survey. (Appellant's Initial Brief, p. 24). While true that the Lease originally references a plat by Jerry L Fowler, dated September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book DD, Page 27, Appellant took the affirmative step of reducing the size of the original ingress/egress easement area through its approval and recording of its First Amendment to the Declaration, dated March 17, 2005, and recorded at the RMC Office for Charleston County in Book R530, Page 876, which specifically adopted the Robert Frank Plat. *See* (R. pp. 47, 130-36). Notably, Appellant did not assert in its counterclaim or in this appeal that Appellant's First Amendment was also invalid. Accordingly, the ingress/easement area on Respondents' Property

[9] The Easement Agreement provides that: "[t]his 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." (R. pp. 587-94).

identified in the Lease, as revised through the First Amendment, is the same physical ingress/egress area incorporated and merged into the later Easement Agreement.

The Easement Agreement, prepared and executed by Appellant and consistent with an intended merger, also contains an integration clause, providing as follows: "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**." (R. pp. 590) (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 Appellant has any property rights in the easement area other than those expressly granted to the Appellant 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 (2013) (where access easement identified the same area as 99-year lease, court found that the lease was abandoned).

Appellant 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. However, once again, SBPOA has presented no evidence that the integration clause was intended to have such an interpretation

and failed to meet its burden of proof, particularly since the Easement Agreement and Lease grant vastly different and inconsistent property rights to Appellant in the same identical geographic area of the ingress/egress dock easement and cannot both be contemporaneously binding.

The evidence submitted to the trial court points to the exact opposite – the SBPOA board and members specifically intended for the Easement Agreement to replace the Lease. SBPOA's communications and meeting minutes unequivocally show this intent. For example, the April 10, 2012, letter from Ron Farrell states: "As you know, we have been working on obtaining a perpetual easement to replace the 99-year term that has been in effect." (R. pp. 628). Another example is the November 6, 2014, SBPOA meeting minutes which state:

> 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.

(R. pp. . 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 alongside 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.

(R. pp. 629-35). The corporate representative of SBPOA has also testified to this fact. (R. pp. 621) ("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."); (R. pp. 612) ("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."). Mr. Matrisciani also testified to this intended effect. (R. pp. 602). Based on the sum of the evidence submitted to the trial court, Appellant failed to prove by clear and convincing evidence that a merger was not intended. *See Shoney's Inc. v. Cooke*, 291 S.C. 307, 353 S.E.2d

300 (Ct. App. 1987). Consequently, the trial court correctly held it was SBPOA's intent and purpose of the Easement Agreement to replace the portion of the Lease concerning the ingress/egress area, described as Tract 1 in Exhibit A of 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 trial court correctly ruled that the merger doctrine does the same by operation of law. 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); *Charleston & W.C. Ry. Co. v. Joyce*, 231 S.C. 493, 504, 99 S.E.2d 187, 193 (1957) ("The doctrine of merger is founded upon the privilege, which parties always possess, of changing their contract obligations by further agreements prior to performance. The execution, deliver, and acceptance of a deed varying from the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed."). Here, the 2012 Easement Agreement relates to the same easement area as the 2001 Lease and is the last agreement signed by Appellant and the owners of the Property related to the ingress/egress easement area. As such, under the merger doctrine, the 2012 Easement Agreement replaced the 2001 Lease as to the dock ingress/egress area.

Appellant argues that, even if the merger doctrine applied, the trial court's interpretation of the Easement Agreement is incorrect because it is contrary to Mr. Matrisciani and the SBPOA's

intent to secure permanent access to the community dock. (Appellant's Initial Brief, p. 26). This argument is misplaced. As stated previously, the rights of use to the community dock were not impacted by the Easement Agreement, only the access path area identified in the Easement Agreement, which is still accessible by SBPOA members. The Easement Agreement does exactly what Mr. Matrisciani and then SBPOA members sought to do – secure access indefinitely to the community dock. Moreover, the trial court made it clear 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***." (R. pp. 39-41) (emphasis added) As such, Appellant's argument must fail because the Easement Agreement does not extinguish Appellant's right to use the community dock. Therefore, the trial court's order granting summary judgment that the Lease merged into the Easement Agreement as to the ingress/egress easement area on Respondents' Property should be affirmed.

IV. Respondents are entitled to a damages hearing for reimbursement of the $2,500 assessment issued by Appellant and paid by Respondents under protest for removal of a deck not owned by Appellant and located on Respondents' Property.

In its Order, the trial court found that Respondents' requested reimbursement of an individual assessment in the amount of $2,500.00 paid to Appellant arising out of Respondents removal of an old deck located on Respondents' Property shall be subject to a damages hearing by the trial court unless otherwise resolved by the parties. (R. pp. 35). Although not directly challenging the trial court's determination concerning a future damages hearing, Appellant argues it properly issued a $2,500.00 assessment to the Respondents because Respondents removed what Appellant contends was a "community deck" located on Respondents' Property. (Appellant's Initial Br., pp. 26-27). This same argument was presented by Appellant and rejected by the trial court at the parties' cross-motions for summary judgment.

Appellant fined Respondents an individual assessment of $2,500.00, unilaterally claiming without support that the deck was a common area. (R. pp. 54-55, 146-48). Appellants' Deck Assessment Notice asserted that Respondents' failure to pay the individual assessment within thirty days would result in Appellant's imposition of additional late charges against Respondents and the loss of Respondents' status as members in good standing of the SBPOA, which under the Declaration would amount to Respondents' complete loss of all membership rights and benefits in the Association, including the rights to vote and access to community areas, and conceivably under Appellant's position, to include even the use of community property. (*Id.*)

As detailed above, Appellant's rights to the easement area are limited to ingress and egress only. As such, Appellant has never had a right to build or own a stationary structure within the easement area that is not within Appellant's defined and limited easement scope of ingress/egress, whether under the Easement Agreement or any prior instrument identifying the ingress/egress easement area, including the Lease. Further, Appellant failed to submit evidence of a document or any other evidence providing Appellant with such rights. Appellant contends the assessment was proper merely because the Declaration allows it to issue assessments for the cost of maintenance or repair of "common areas." (Appellant's Initial Br., p. 27). This argument fails because the SBPOA has offered no evidence of proof of ownership in the deck as common property.

Appellant conceded its lack of ownership of the deck through its corporate representative, Mr. Evans. (R. pp. 618) ("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 SBPOA presidents testified accordingly. (R. pp. 605) ("Q: Yeah. And you were not aware of the POA ever paying for the 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."); (R. pp 627) ("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.). Necessarily, in order to assess fines for common areas, the SBPOA must first own the "common area." The fact that the structure was located on Respondents' Property within the ingress/egress area does not suddenly transfer its ownership to Appellant. In other words, simply being an easement holder of an easement limited in scope to ingress/egress does not equate to fee simple ownership of anything located in the easement area as Appellant incorrectly implies. Here, Appellant has not and cannot provide any evidence that it owns the deck and therefore any assessment against Respondents was improper.

Respondents also did not arbitrarily decide to remove the deck from their Property. DHEC issued a letter to Respondents on July 14, 2022, stating that the deck extended above the critical line and needed to be removed. (R. pp. 668-69). Appellant contends that Respondents had to seek community input before removing the deck from their Property, despite being unable to present any evidence of ownership. Respondents were required by a South Carolina governmental agency to remove the deck, which the SBPOA has no proof of ownership of, or face an enforcement action and civil penalties for failure to comply with DHEC's notice. Respondents were within their rights to remove the deck from their own property and, as a result, the $2,500.00 assessment by the SBPOA was improper, regardless of the irrelevant recitation of whether the Bylaws authorize Appellant to impose assessments for the repair of common areas. Therefore, the trial court appropriately determined that a damages hearing should be held with respect to amount claimed by Respondents for this improper assessment that was paid under protest to avoid Appellant's

threat in bad faith to revoke all privileges afforded to Respondents under the Declaration. (R. pp. 54-55, 146-48).

V. The trial court correctly ruled that the statute of limitations barred Appellant's counterclaim.

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 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 Respondents purchased the property and following their respectful and unsuccessful requested compliance with the Easement Agreement from Appellant. *See* (R. pp. 50-56). The Easement Agreement was recorded on February 22, 2012. *See* (R. pp. 587-94). However, Appellant filed its counterclaim seeking declaratory judgment in a claim for the recovery of real property on December 30, 2022, nearly eleven years later. *See* (R. pp. 149-55).

Nevertheless, Appellant contends the trial court erred in ruling that its counterclaim was barred by the statute of limitations because: (1) the statute of limitations does not apply to actions in equity; (2) Appellant could not challenge the validity of the Easement Agreement during Mr. Matrisciani's presidency; and (3) because its counterclaim is essentially the equivalent of an affirmative defense. (Appellant's Initial Br., p. 28). Appellant also inaccurately claims in a footnote that Respondents did not raise the statute of limitations as an affirmative defense in their reply to Appellant's counterclaim. (Appellant's Initial Brief, p. 28, n. 20). Respondents asserted the statute of limitations as an affirmative defense to Appellant's counterclaim in their Amended Reply, which was timely filed under the South Carolina Rules of Civil Procedure and never contested by Appellant. (R. pp. 159). Accordingly, Appellant's argument concerning waiver of the statute of limitations as to Appellant's counterclaim must be rejected.

i. Appellant's Counterclaim is not an action in equity.

Declaratory judgments are neither legal nor equitable. *Bundy v. Shirley*, 412 S.C. 292, 301, 772 S.E.2d 163, 168 (2015). The standard of review for a declaratory judgment action is, therefore, determined by the nature of the underlying issue. *Id.* In an attempt to avoid the statute of limitations, Appellant posits that its counterclaim is an action in equity and not at law. (Appellant's Initial Br., pp. 28-30). As a preliminary matter, Appellant did not assert this issue to the trial court, and it is therefore not preserved for appellate review. *See* (R. pp. 323-24) (not asserting its counterclaim was action in equity in response to the applicable statute of limitations); *Williams v. Jeffcoat*, 444 S.C. 224, 238, 906 S.E.2d 588, 596 (2024) (issues not preserved for appeal when not raised at summary judgment before the Master-in-Equity).

Appellant now argues that its counterclaim is seeking enforcement of SBPOA's restrictive covenants, rather than acknowledging the precise counterclaim it filed – where it alleged Appellant "*is entitled to declaratory judgment declaring the Easement Agreement void and invalid*." (R. pp. 149-55) (emphasis added). Appellant's counterclaim unquestionably sought the 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**.") (emphasis added); *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.").

Appellant cites to the case of *Hardy vs. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006), for the contention that an action to enforce restrictive covenants may require a court to interpret a contract as an action in equity. (Appellant's Initial Br., pp. 29). *Hardy* has no bearing on this appeal. In *Hardy*, the subject declaratory judgment claim on appeal involved the extension of restrictive covenants by an amendment. Unlike *Hardy*, the primary nature of both Respondents' and Appellants declaratory judgment claims is the existence and validity of the subject Easement Agreement and not the enforcement or modification of a restrictive covenant. Therefore, consistent with South Carolina law on the existence and validity of an easement, the trial court correctly ruled that Appellant's counterclaim was not an action in equity and, therefore, was barred by the statute of limitations.

Regardless, if it found that Appellant preserved this issue for appeal and the trial court incorrectly determined that Appellant's counterclaim was an action an equity, which is denied, Appellant's counterclaim should be denied on the grounds of laches. *See Robinson v. Est. of Harris*, 391 S.C. 114, 117, 705 S.E.2d 41, 43 (2011) (an action claiming a deed conveyance was invalid after an unreasonable amount of time where multiple conveyances to other purchases later occurred was barred under the doctrine of laches). As already detailed, Appellant's unreasonable amount of time in challenging the invalidity of the Easement Agreement, where multiple owners have since conveyed the Property and Respondents justifiably relied on a publicly recorded easement agreement, shows that the doctrine of laches is applicable if Appellant's counterclaim were deemed an action in equity and likewise dismissed.[10]

[10] (R. pp. 161).

ii. The SBPOA could have challenged the Easement Agreement during Mr. Matrisciani's presidency.

Appellant makes the unsubstantiated argument that because Mr. Matrisciani remained president until 2014, no one could challenge the Easement Agreement's validity until Mr. Matrisciani was no longer president. First, the notion that the SBPOA was held hostage to Mr. Matrisciani's decision does not align with the SBPOA Bylaws or South Carolina law. The SBPOA Bylaws provide specific procedures for challenging and/or removing an officer. If, as Appellant contends, Mr. Matrisciani was acting on his own, which is expressly denied and conflicts with the evidence submitted in this case, including the relevant meeting minutes and witness testimony, the SBPOA members could have removed him pursuant to Article VII of the Bylaws which states: "Any officer or agent elected or appointed by the directors may be removed by the directors whenever in their judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed." (R. pp. 562). If the SBPOA believed that Mr. Matrisciani "went rogue" and was not properly serving the SBPOA, whether before or after the Easement Agreement was executed, or following any of the announcements of the existence and availability of the recorded Easement Agreement to the SBPOA members, members could have removed Mr. Matrisciani as president and taken immediate action to challenge the Easement Agreement's validity within the statute of limitations, but they did not. Rather, this illusory argument is more likely made solely from the perspective of Appellant's current board, none of whom were members at the time of the Easement Agreement, for the purpose of trying to invalidate a binding Easement Agreement and to expand their access on Respondents' Property to vehicular use. As such, Appellant's argument must fail and the trial court's ruling that Appellant's counterclaim is barred by the statute of limitations should be affirmed.

iii. Appellant's counterclaim is not an affirmative defense and, therefore, the statute of limitations applies.

Finally, Appellant contends that its counterclaim is "effectively no different than an affirmative defense to the Wells' cause of action, which is not subject to a statute of limitations." (Appellant's Initial Br., p. 29). A counterclaim and an affirmative defense are not the same. *See* 61A Am. Jur. 2d Pleading 234 ("Counterclaims and affirmative defenses are separate and distinct terms; a 'counterclaim' is a cause of action which seeks affirmative relief, while an 'affirmative defense' defeats the plaintiff's cause of action by denial or confession and avoidance."). Appellant cannot circumvent an appliable statute of limitations to its claim by seeking the same relief through an affirmative defense.

Appellant is attempting to affirm and alter its rights to the possession of the easement area and divest Respondents of the property rights contained within the Easement Agreement and granted to Respondents as successors-in-interest to the Property and Easement Agreement. Appellant failed to make any attempt to seize the property rights granted Respondents and their predecessors-in-interest in the Easement Agreement or otherwise challenge the Easement Agreement within ten years before the commencement of this action. *See* S.C. CODE ANN. § 15-3-340. Although Appellant contends that there is no difference between its claims and Respondents, this argument must fail. The statute clearly states: "[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***." S.C. CODE ANN. § 15-3-340 (emphasis added). Respondents and their predecessors-in-interest, unlike the SBPOA, have continuously been "possessed of" the easement area since they purchased their property. On this basis, Respondents easily satisfy the requirements of the statute of limitations, and it does not bar

their claims. On the contrary, the Easement Agreement was executed and recorded more than ten years prior to this action and Appellant has not sought to alter the property rights under the Easement Agreement. As such, under section 15-3-340, any challenge to the Easement Agreement's validity by Appellant through its counterclaim is barred by the statute of limitations and the trial court's decision as to the applicability of Section 15-3-340 should be affirmed.

CONCLUSION

For the reasons stated herein, the trial court's Order Granting Respondents' Motion for Summary Judgment and Denying Appellant's Motion for Summary Judgment should be affirmed in its entirety.

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