

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY  
CIRCUIT COURT

Kristi F. Curtis, Circuit Court Judge

Case No. 2017-CP-14-00127  
Appellate Case No. 2024-001875

**RECEIVED**  
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SC Court of Appeals

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

v.

Kim Bevier, .....Appellant.

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**FINAL REPLY BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

Table of Authorities ..... ii

Argument .....1

I. Respondent fails to address Appellant’s argument that the question of what legal entity has the authority to enforce the Covenants was never raised or ruled on in Respondent’s motion to partial summary judgment or on appeal.....1

II. Only the legal entity named in the Covenants themselves can enforce the Covenants.....2

III. Appellant’s appeal and the arguments contained therein are totally legitimate and no sanctions should be imposed.....4

**TABLE OF AUTHORITIES**

**CASES**

*Sealy v. Dodge*, 289 S.C. 543, 347 S.E.2d 504 (1986).....1

*Rogers*, 336 S.C. at 537, 520 S.E.2d at 817.....1

*Owenby v. Owens Corning Fiberglas*, 313 S.C. 181, 437 S.E.2d .....1

*Palmetto Air v. Bevier*, Unpublished Opinion No. 2022-UP-361.....1

## ARGUMENT

**I. Respondent fails to address Appellant's argument that the question of what legal entity has the authority to enforce the Covenants was never raised or ruled on in Respondent's motion to partial summary judgment or on appeal.**

Appellant and Respondent agree that the issue of whether the Covenants are enforceable against Respondent was ruled on by the Circuit Court in Respondent's favor and the Court of Appeals affirmed. With that issue being decided and the case having been remanded back to Circuit Court, all other issues not previously ruled on were set for a trial on April 1, 2024. This was not simply a "damages hearing" as Respondent argues in its initial brief. This hearing would have encompassed whether Appellant actually violated the Covenants and if so, what damages were sustained. It would also have included Appellant's argument that only Palmetto Air Plantation Property Owners Association, Inc. is the proper legal entity to enforce the Covenants and any other defenses Appellant may have had. The only issue that had been decided at that point was whether the Covenants were enforceable against Appellant.

Both parties agree that to establish res judicata, the Respondent must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Sealy v. Dodge*, 289 S.C. 543, 347 S.E.2d 504 (1986); *Rogers*, 336 S.C. at 537, 520 S.E.2d at 817; *Owenby v. Owens Corning Fiberglas*, 313 S.C. 181, 437 S.E.2d. Respondent's argument is that "the applicability of the Covenants on the Appellant has been decided by this Court in *Palmetto Air v. Bevier*, Unpublished Opinion No. 2022-UP-361." Respondent makes no attempt to address Appellant's argument that the issue of Respondent not having the

authority to be the proper enforcing party was never raised or ruled on by the Circuit Court or the Court of Appeals.

The only issue before the Circuit Court on Respondent's motion for partial summary judgment was the enforceability of the Covenants. No mention was made of whether Respondent was the proper legal entity to bring an enforcement action. (R., p. 80, Respondent's Brief in Support of Partial Summary Judgment, p. 4, Order Granting Respondent Partial Summary Judgment). Appellant challenges Respondent to point to any mention of what legal entity has the right to enforce the Covenants being raised or ruled on in Respondent's motion for partial summary judgment, the order on this motion, Respondent's Court of Appeal's Brief and the Court of Appeals decision. There is no mention of this issue at all, and it is not fair to say that it was previously raised or ruled on.

As a result, the second and third elements of res judicata cannot be met because the subject matter of the prior ruling was different from what is now before the court and this issue was not adjudicated in the former suit. For these reasons and the other reasons set forth in more detail in Appellant's initial brief, this court should reverse the Circuit Court's holding that the question of whether Respondent has the authority to enforce the Covenants is res judicata.

## **II. Only the legal entity named in the Covenants themselves can enforce the Covenants.**

Respondent asserts in its brief that the "Covenants state in Section 1.7 as follows: "Association shall mean the Palmetto Air Plantation Owners Association, Inc." Respondent goes on to argue that the Circuit Court was correct to hold that the difference

between this name and Respondent's name Palmetto Air Plantation Homeowners Association, Inc. is merely a "slight discrepancy" and therefor can be ignored.

Appellant would show that Respondent incorrectly quotes Section 1.7 of the Covenants. The Association is not defined as the "Palmetto Air Plantation Owners Association, Inc." It is defined as the "Palmetto Air Plantation *Property* Owners Association, Inc." (emphasis added). (R., p. 312).

Section 12.2 of the Covenants explicitly states who may enforce the Covenants. "Section 12.2 **Who May Enforce.** Any action to enforce these restrictions may be brought by Declarant or by the Board of the Owners Association or any Property Owner in the subdivision." (R., p. 330). Since the Covenants define "Association" as "Palmetto Air Plantation Property Owners Association, Inc.", no entity that is not the Declarant, a property owner and not named "Palmetto Air Plantation Property Owners Association, Inc." may bring an enforcement action regardless of how slight the name difference is. For example, an entity named "Palmetto Air Plantation Land Owners Association, Inc." would not be the proper party to bring this enforcement action. Similarly, a nearby neighborhood's homeowners association of a different name would not be the proper party to bring this enforcement action. If such entities could bring enforcement actions against owners in the Palmetto Air Plantation, rogue entities or even multiple entities could claim to be able to enforce these Covenants and bring enforcement actions.

In its brief, Respondent points out testimony where Appellant voted to approve the Covenants arguing that this is somehow relevant to who the proper party to bring this enforcement action is. If a citizen votes for speeding laws to be enforceable against him on South Carolina highways, this does not mean a North Carolina highway patrolman

has jurisdiction to enforce speeding laws in South Carolina just because North Carolina and South Carolina have slightly different names. What Appellant voted for was for these Covenants to be enforceable by the “Palmetto Air Plantation Property Owners Association, Inc.”, not this or any similarly named company.

Having a name different in any way from the entity actually authorized to enforce the Covenants disqualifies that entity from being able to enforce them. Simply because the name of the entity attempting to enforce the Covenants is close to the entity who actually has the authority to enforce them does not give that entity the authority to do so. Fudging it a little is not acceptable especially in an enforcement action with significant disciplinary results at stake. There should be absolutely no question that the enforcing body has the proper authority to do so.

For these reasons and the other reasons set forth in more detail in Appellant’s initial brief, this court should reverse the Circuit Court on this issue and determine that Respondent does not have the authority to enforce the Covenants and remand to the Circuit Court for further findings consistent with this ruling.

**III. Appellant’s appeal and the arguments contained therein are totally legitimate and no sanctions should be imposed.**

In its final argument, without citing any basis, Respondent seeks sanctions asserting this appeal is totally without merit and frivolous. Assuming Respondent is seeking sanctions pursuant to Rule 269 of the South Carolina Appellant Court Rules, without reasserting all of Appellant’s arguments raised in this and its initial brief, Appellant contends that these arguments are totally legitimate and have a strong chance of success. As a result, no sanctions should be imposed.

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