THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas

Martin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2025-001276
Civil Case No. 2022-CP-07-00453

PALMETTO BAY MARINA, LLC.....Appellant,

vs.

YACHT CLUB OF HHI HOMEOWNERS, INC.....Respondent.

RESPONDENT'S FINAL BRIEF

January 8, 2026

s/ Terry A. Finger
Terry A. Finger, S.C. Bar No. 2012
FINGER, MELNICK, BROOKS & LABRUCE, P.A.
Post Office Box 24005
Hilton Head Island, SC 29925-4005
Telephone: (843) 681-7000
Email: tfinger@fingerlaw.com
Attorney(s) for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUES

1. Was the Deed Restriction too ambiguous and vague to be enforced?
2. Did the record and facts found by the Trial Judge support a finding of laches?
3. Did the record and facts found by the Trial Judge support a finding that the Statute of Limitations expired?
4. Were Respondent's Business Records properly admitted by the Lower Court?
5. Was Finding of Fact 14 in the Lower Court Order "harmless error"?

STATEMENT OF THE CASE

This case was commenced by Appellant on March 16, 2022. Appellant sought an injunction prohibiting the storage of Member boats on adjacent real estate owned by Respondent, pursuant to a restriction from a contract of sale dated January 25, 1979.

Respondent filed an answer on May 3, 2022 raising the following defenses:

a) Statute of limitations;

b) laches;

c) Rule Against Perpetuities;

d) no privity of contract;

e) Appellant's claims were extinguished by the bankruptcy of Sea Pines in 1986; and

f) merger.

The case was referred to the Honorable Marvin H. Dukes, III as Master in Equity for Beaufort County. The case was tried on May 15, 2024. On July 1, 2024, Judge Dukes filed his order dismissing Appellant's Complaint on the statute of limitations and laches defenses.

Appellant filed a Motion to Alter or Amend on July 9, 2024. The Motion to Alter or Amend was denied by Judge Dukes on July 9, 2024.

Appellant filed a Notice of Appeal on June 26, 2025.

STANDARD OF REVIEW

An action to enforce restrictive covenants by injunction is an action in equity. *South Carolina Dep't of Natural Res. V. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). On appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence. *Townes Assoc. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). While this standard permits a broad scope of review, an appellate court will not disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility. *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989).

AGRUMENT NUMBER 1

The deed restriction was too ambiguous and vague to be enforced.

The Lower Court found that Respondent's property was bound by a deed restriction from a Contract of Sale dated January 25, 1979. The Contract of Sale was terminated by an Assignment and Termination Agreement dated October 6, 1981. R at 240. The only paragraph of the Contract of Sale relevant to the deed restriction is Paragraph 10.

Paragraph 10 stated:

> [Respondent] may store boats owned by it. It shall not store on the property boats owned by its members, if [Appellant] has available storage space at its customary rates.

This key phrase of this deed restriction is "at its customary rates." It is ambiguous as to which entity the words "its" and "customary" is referring to. It is also vague as to the meaning of "customary."

A restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542, (2006). Thus, courts tend to strictly interpret restrictive covenants, and to enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by a plain and unmistakable implication. Id.; *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 269, 363 S.E.2d 891, 894 (1987).

> *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009) states: Accordingly, while there is no formulaic balancing test, we find that this Court has consistently held that lower courts should consider equitable doctrines when determining whether to enforce a restrictive covenant and enjoin a landowner from using their land in a manner that violates the covenant. Indeed, an action to enforce a restrictive covenant is an action in equity, and to hold that a court must issue an

injunction as a matter of law upon a finding that a restrictive covenant has been violated is erroneous.

The word "customary" is important. Customary is not a defined term. The Respondent "customary" charge was $40.00 per month regardless of the size of the boat. The $40.00 per month rate was recently implemented and the rate was $30.00 per month for years R at 191.

Appellant and sister company both operate at the Palmetto Bay Marina. The testimony from Appellant's manager, John K. Scott, is not clear whether the $3.00 per day per foot was Appellant's charges or the sister company's charges. The sister company is a different entity than Appellant. This creates further ambiguity. R. at 126-7.

Appellant charged $3.00 per foot of boat per day at Palmetto Bay Marina. In response to questions from the Court, Appellant stated it did not have customers that kept their boat with Appellant for a whole year like the Respondent's members. Appellant further stated it changed far less at another of its facilities. The Court found $3.00 per foot a day was not customary.

It has been Respondent's business practice to charge $40.00 per month for boat storage. This was "its customary rate." Appellant's monthly rate for a 30 foot boat would be $2,790.00 for a month with 31 days. This is not customary.

These findings of fact, along with the legal requirement to construe any ambiguity, vagueness, or doubts in favor of the free use of the property mandates affirmance of the Lower Court ruling denying the injunction.

ARGUMENT NUMBER 2 AND 3

Balancing the equities supports the denial of the injunction.

In *Queens Grant II HPR v. Greenwood Development Corp.*,368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006)

> Laches was defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done."

In *Archambault v. Sprouse*. 215 S.C. 336, 55 S.E.2d 70 (1949) the Court stated:

> If there has been unreasonable delay in asserting claims, or if, knowing his rights, a party does not seasonably avail himself of means at hand for their enforcement, but suffer his adversary to incur expense or enter into obligations or otherwise change his position, or in any way by inaction lulls suspicion of his demands to the harm of the other, or, if there has been actual or passive acquiescence in the performance of the act complained or, then equity will ordinarily refuse her aid for the establishment of an admitted right, especially if an injunction is asked. It would be contrary to equity and good conscience to enforce such rights when a defendant has been led to suppose by the work, silence or conduct of the plaintiff that there was no objection to his operations. Diligence is an essential prerequisite to equitable relief of this nature. Quiescence will be a bar when good faith requires vigilance. But so long as there is no knowledge of the wrong committed and no refusal to embrace opportunity to ascertain facts, there can be no **laches**. Upon the discovery of infringement of rights, such reasonable expedition is required to their prompt assertion as is consistent with due deliberation as to the proper means for relief.

The question of laches is largely a factual one. *Maxwell v. Smith*, 228 S,C, 182, 89 S.E.2d 280 (1955). The Lower Court made the following Findings of Fact and Conclusions of Law in its Order:

1. Member boats have been stored on the property since 1979. Fact Finding 6.
2. Appellant was aware of the storage of boat on Respondent's property since before Appellant acquired the property in 2019. Fact Finding 6.

3. No effort was previously made by Plaintiff or any predecessor in title to complain about or attempt to stop member boats from being stored. Fact Finding 6.

4. Storage rates at a different location on Hilton Head owned/controlled by the owner of Appellant charges approximately 25% of the rates charged at Palmetto Bay. Fact Finding 11.

5. The $3.00 per foot per day is not "customary," it is punitive in nature. Fact Finding 12.

6. The statute of limitations expired. Conclusion Law 3.

7. The storage of boats was plainly visible to Appellant and predecessors in title. Conclusion Law 3.

8. Member boat storage is part of Respondent's business model, attracts members, and it part of the revenue stream. Conclusion Law 4.

9. Extreme delay is asserting rights under the deed restriction is unreasonable and would be prejudicial to Respondent. Conclusion Law 4.

10. Appellant's predecessors in title abandoned or surrendered the claim Appellant now asserts. Conclusion Law 4.

The Respondent has continually stored Member boats on the property in an open and visible manner for many decades without any objection. The factual findings are all supported by the evidence. These factual findings support the Lower Court's ruling that the defense of statute of limitations and/or laches preclude the issuance of an injunction.

It would be contrary to equity and good conscience to enforce the deed restriction when Respondent has been operating for decades and has been led to suppose by the word, silence or conduct of Appellant and Appellant's predecessors that there was no objection to Respondent's

business practices. See, *Archambault v. Sprouse*, supra. *Rabon v. Mali*, 289 S.C. 37, 344 S.E.2d 608 (1986).

ARGUMENT NO. 4

The Business Records of Respondent Were Properly Admitted.

The testimony of Michael Gilroy and Atlee "Sonny" Compher properly authenticated the business records. Michael Gilroy became a member in Respondent in 2009 and was the Commodore/Chief Executive Officer at the time of the trial. R. at 166. He had been on the Board since 2012. R. at 175.

Gilroy was the custodian of the business records. R. at 175. Gilroy found documentation in Respondent's business records showing boat storage since at least 2010. R. at 178. Appellant's counsel, in referring to Gilroy, stated that the "individual that is testifying is the Commodore today, which may make him the custodian." R. at 178.

Atlee Compher joined the Respondent as a member in 2002. R. at 195. He was and continues to be very active in the governance of Respondent. He has been on the Board since 2007 and was the commodore in 2011-2012. R. at 196. He has been the Chairman of the Yard and he has written monthly reports on boat storage. R. at 196. The records prepared by Compher were introduced into evidence without a contemporaneous objection. R. at 197-8.

The testimony of Gilroy and Compher met the requirements of the Uniform Business Records Act. They were both custodians and qualified witnesses that testified about the identity of the documents, the mode of preparation in the regular course of business and the records were prepared on a monthly basis at or near the time of the activity.

Appellant argues that some of these business records were from a prior Yacht Club entity. The testimony of Gilroy and Compher showed that Respondent stepped into the shoes of the initial

Yacht Club based upon an effort to save real estate taxes. The entities operated exactly the same, from the same location, the business records did not lose their identity, or relevance.

The Lower Court was correct in allowing the admission of the testimony and documents.

ARGUMENT 5

Appellant argues that Finding of Fact 14 in the Lower Court Order was an error. If it was an error, it was harmless.

Rule 61 of the South Carolina Rules of Civil Procedure state:

> "No error in either the admission or exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

This rule embodies the principle of that litigation should not be reversed for inconsequential mistakes. The standard in whether the error affected a substantial right or the outcome of the trial. If Finding of Fact 14 is an error, it was inconsequential and did not affect any substantial rights or the outcome of the trial. The reference to Appellant trying to pressure Respondent into selling did not impact the trial result. Reversal in unwarranted because sufficient admissible evidence supported the Lower Court Order.

CONCLUSION

For all of the foregoing reasons, this Honorable Court should affirm the Lower Court rulings. Additionally, this Honorable Court may affirm for any grounds appearing in the Record.

Respectfully submitted,

Terry A. Finger, S.C. Bar No. 2012
Finger, Melnick, Brooks & LaBruce, P.A.
Post Office Box 24005
Hilton Head Island, SC 29925-4005
Telephone: (843) 681-7000
Email: tfinger@fingerlaw.com
Attorney for Respondent