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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable Michael R. Scarborough, Master-In-Equity
Civil Action No.: 2023-CP-10-02281
Appellate Case No. 2025-001775

GRAND OAKS BOULEVARD ASSOCIATION, INC.,

Appellant,

v.

PROXIMITY NEIGHBORHOODS MASTER ASSOCIATION, INC.,

Respondent.

APPELLANT'S INITIAL BRIEF

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II. STATEMENT OF THE CASE

On 11 May 2023, the Appellant, Grand Oaks Boulevard Association, Inc. ("Grand Oaks"), brought a debt collection/breach of contract action against the Respondent, Proximity Neighborhoods Master Association, Inc. ("Proximity"). (*Comp.*, pp.1-4). Grand Oaks sought to collect from Proximity certain assessments (the "Annual Assessments") relating to and/or established for "the creation and continuation of the Grand Oaks Boulevard Maintenance Fund for maintaining entrance signs and landscaping and beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard". (*Id.,* at 3, para. 8).[1] Proximity denied the material allegations. (*Answer*, paras.1, 3, 5, 7-8). Proximity later filed an amended response, again denying the material allegations (*Amd. Answer*, paras.1, 3, 5, 7-8), but now asserting a declaratory judgment counterclaim seeking a judicial declaration of the effect of the relevant recorded real estate documents on Proximity's obligation to pay the Annual Assessments. (*Counterclaim*, at paras. 2-9). Grand Oaks denied the counterclaim's material allegations (*Reply*, paras. 1-6), and asserted various affirmative defenses including, *inter alia*, equitable estoppel and the proposition Proximity was bound by previously recorded documents. (*Id.*, at paras. 7-8).[2]

On 2 November 2023, Grand Oaks moved for summary judgment asserting the "various recorded Covenants and Restrictions binding upon the [both Grand Oaks and Proximity] require[d] [Proximity] to pay an Annual Assessment[s] to [Grand Oaks] to partially fund the maintenance of entrance signs and landscaping and beautification of

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[1] Grand Oaks sought to recover $18,759.00 for the 2022 annual assessment and $20,718.00 for the 2023 annual assessment, "together with [all] assessments accruing thereafter, late charges, interest, attorney fees and the costs of th[e] action." (Comp., p.4, para. 11).

[2] The parties, by consent, referred the matter to the Master-In-Equity for Charleston County. (Reference Order, pp.1-3).

Grand Oaks Boulevard and Ashley Gardens Boulevard . . . ." (*Grand Oaks MSJ*, p.1). Grand Oaks also asserted Proximity "ha[d] failed to pay such Annual Assessments for 2022 and 2023 notwithstanding [Grand Oaks'] timely demand [and, therefore, Grand Oaks] [wa]s entitled . . to judgment against [Proximity] for the total amount of[, among other damage,] the 2022 and 2023 Annual Assessments . . . ." (*Id.*). Grand Oaks supported its motion with various documents. (*Schumann Aff. I*, pp.1-3; *Dodds Aff.*, pp.1-3; *Schumann Aff. II*, p.1; *Proximity RFA Answers*, pp.1-5).[3]

On 13 February 2025, Proximity moved for summary judgment seeking, *inter alia*, a judicial declaration that (1) the Proximity "[p]roperty [wa]s not subject to and bound by the *Grand Oaks [Covenants]*; (2) Proximity [wa]s not required to pay the annual assessment(s) under the *Grand Oaks [Covenants]*; [and] (3) Proximity did not breach the *Grand Oaks [Covenants]* by not paying the 2022, 2023, and 2024 [Annual] [A]ssessments . . . ." (*Proximity MSJ*, p.2). Proximity also supported its motion with various documents. (*Duc Affidavit*, pp.1-2).

The Master-In-Equity held a hearing on 17 June 2025, to consider the parties' respective summary judgment motions. (*Tr.*, pp.1-37). By order dated 21 June 2025, the Master-In-Equity denied Grand Oaks' motion and granted Proximity's motion. (*Order*, pp.1-6). Grand Oaks then moved for reconsideration, *etc*. (*Recon. Mot.*, pp.1-4). By SCRCP Form 4 Order dated 7 August 2024, the Master-In-Equity denied Grand Oaks' rehearing request. (*SCRCP Form 4 Order*, pp.1-3). This appeal followed.

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[3] On 9 May 2025, Grand Oaks amended its summary judgment request seeking the same relief as before, but also asserting Proximity was required to not only pay the 2022 and 2023 Annual Assessments, but also the 2024 and 2025 Annual Assessments. (Grand Oaks Amd. MSJ, pp.1-2). This amended motion was similarly supported. (Schumann Aff. III, pp.1-2).

III. STATEMENT OF THE FACTS

A. The Creation Of The Grand Oaks Plantation Development

The modern version of the Grand Oaks Plantation neighborhood is located in the West Ashley area of Charleston County, on land which was believed to have formerly been part of the greater Stono Preserve. Prior to the 1900s, the land was worked by tenant farmers, many of whom were formerly enslaved people and their descendants. The property changed hands on several occasions over the years including Bees Landing, L.P.'s ("Bees Landing") ownership of most or all the land. By deed dated 23 March 1994, Bees Landing, L.P. transferred the property to Bees Resources, L.P ("Bees Resources").[4] In late October 1998, Bees Resources initiated the genesis of the Grand Oaks Plantation when it filed the *Grand Oaks Covenants*.[5] Beginning in the early 2000s and pursuant to the *Grand Oaks Covenants*, the land was developed into the current overall Grand Oaks Plantation residential community, the name evoking the area's historical nature while describing a modern suburban residential neighborhood.

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4 *See* Deed recorded in Book W241 t Page 403. All the real estate documents referenced herein were recorded in the Charleston County Office of the Register of Deeds (the "ROD Office").

5 *See* Declaration of Covenants and Restrictions – Grand Oaks Plantation recorded at Book P313 at Page 895 (the "Grand Oaks Covenants"). (Comp., para. 4; Schumann Aff,. I, para. 1). The Grand Oak Covenants were subsequently amended and/or supplemented several times. *See generally* Amended and Restated Declaration of Covenants and Restrictions – Grand Oaks Plantation recorded on 7 April 2000, in Book M345 at Page 573; Amendment to Amended and Restated Declaration of Covenants and Restrictions – Grand Oaks Plantation recorded on 20 December 2001, in Book T391 at Page 850); Supplemental Declaration recorded on 16 November 2004, in Book G516 at Page 255; Supplemental Declaration recorded on 24 November 2004, in Book F517 at Page 574; Supplemental Declaration recorded on 25 July 2005, in Book N546 at Page 065, which was later re-recorded on 31 October 2005, in Book J560 at Page 005; Supplemental Declaration recorded on 6 May 2005, in Book X535 at Page 375; Supplemental Declaration recorded on 16 August 2005, in Book O549 at Page 759; and Supplemental Declaration recorded on 6 January 2006, in Book V568 at Page 883. (*Id.*.; Schumann Aff,. I, para. 1). The original document, together with the initial amended version and the supplemental declarations will be collectively referred to as the "Grand Oak Covenants" unless the context requires specific reference to a particular document in the collection.

B. Grand Oaks Boulevard, *Etc.* Maintenance

The main entrance to the Grand Oak Plantation is by way of Grand Oaks Boulevard. Bees Resources was understandably concerned with ensuring this principal access was maintained in a consistent and presentable manner. Consequently, Bees Resources specifically addressed this issue in the *Grand Oaks Covenants*, noting, in pertinent part, as follows:

> **3. PRESERVATION OF TREES AND NATURAL GROWTH ALONG PARKWAY**
>
> No trees or natural undergrowth upon any portion of the premises conveyed and located within fifty (50') feet of the right-of-way of Grand Oaks Boulevard may be removed by the owner without the written approval of [Bees Resources]. The purpose of this covenant is to maintain the natural appearance and beautification along the right-of-way of the Grand Oaks Boulevard.
>
> **4. SIGNS:** No signs of any kind or description may be located or displayed upon any portion of the premises conveyed and located within fifty (50') feet of the right-of-way of Grand Oaks Boulevard without the express written approval of [Bees Resources] as to the style, size, materials of construction[,] and exact placement of such signs. [Bees Resources] reserves the right to approve the design, size, style and construction materials of each sign so that signs may be compatible in appearance with other signs along [Grand Oaks] Boulevard. Entrance-way signs and directional signs to each development shall be permitted by the Developer adjacent to the Boulevard right-of-way . . . .

(*Grand Oaks Covenants*, pp.1-2) (Bolding in original). Moreover, Bees Resources, using the *Grand Oaks Covenants*, created a funding method to guarantee adequate finances to maintain Grand Oaks Boulevard in a consistent and presentable manner. The *Grand Oaks Covenants* provided

5. (a) BOULEVARD LANDSCAPE ANS SIGN MAINTENANCE FUND: The owner for each tract bordering upon or having as its access Grand Oaks Boulevard hereby covenants with the owner of each such tract, and the owner by the acceptance of a deed, is deemed to covenant and agree to pay an annual assessment for a creation and continuation of the Grand Oaks Boulevard Maintenance Fund (the "Fund") as hereafter set forth. The amounts in the Fund received by the Developer shall be used solely for maintaining entrance signs and landscaping and beautification of Grand Oaks Boulevard. Only owners of tracts which border upon Grand Oaks Boulevard or which use the Boulevard for the principal access from Bees Ferry Road to the tract shall have this covenant imposed upon their property.

(b) ASSESSMENT AND PAYMENT DATES: Commencing January 1 2000, and on the same date of each year thereafter, each owner of a tract bordering or having as its principal access from Bees Ferry Road by way of the Grand Oaks Boulevard shall pay to the Developer its pro-rata share of the Fund which shall be the estimated cost of maintaining the entranceway signs and the annual landscape maintenance of Grand Oaks Boulevard. The Developer shall at the commencement of each year prepare a budget based on actual reasonable bids for the landscape maintenance service and costs of maintenance and repairs of entranceway signs. The cost shall include the expenses of management, fertilization, seeding, cutting, planting, picking up trash and debris and all allied costs to maintain and beautify the Boulevard . . . .

(c) DELINQUENT ASSESSMENTS AND PRORATIONS: The assessment herein imposed shall be delinquent if not paid within sixty (60) days after first due. In the event that legal action is commenced by the Developer (or the Association hereafter described) to collect such delinquency all attorney's fees and court costs in connection with such legal proceedings shall be paid by the owner in addition to any delinquent assessments . . . .

* * *

(e) ASSIGNMENT OF MAINTENANCE FUND TO GRAND OAKS BOULEVARD ASSOCIATION, INC.: It is the plan of the Developer that the authority and responsibility of maintaining the entranceway signs, the landscaping[,] and the beautification of Grand Oaks Boulevard shall ultimately be vested in a non-profit corporation to be organized by the

> Developer to be known as Grand Oaks Boulevard Association, Inc.[6] The directors and officer of the association shall be elected by the owners and tracts of properties utilizing the Boulevard and subject to the maintenance assessment in accordance with the by-laws of that corporation. By this covenant, the Developer reserves the right for itself and its successors and assigns to delegate at such time as it deems appropriate the administration of the maintenance Fund herein established provided, however, that at such time as the Developer has completed to its terminus Grand Oaks Boulevard and has sold two-thirds of the acreage either abutting upon or using for its principal access the Grand Oaks Boulevard, the balance of the unexpended funds shall be paid to [Grand Oaks] and thereafter the authority to collect and administer the assessments herein provided shall be vested in [Grand Oaks] and payments shall be made to [Grand Oaks].

(*Id*., at pp.2-4) (Bolding in original).[7]

Given the terms, conditions, responsibilities, and duties contained in the *Grand Oaks Covenants*, the Master-In-Equity acknowledged that it was evident the "primary purpose [of the *Grand Oak Covenants*] [wa]s to maintain the entranceway signs, appearance, and the landscaping along the right-of-way of [both] Grand Oaks Boulevard and Ashley Gardens Boulevard . . which is [and remains] the entrance [to the] Grand Oaks Plantation [residential development]." (*Order*, p.1).

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6 Grand Oaks was incorporated as a South Carolina non-profit corporation on 27 November 2001. *See generally* Entity Profile - Business Entities Online - S.C. Secretary of State (last viewed on 2 January 2026)..

7 The Amended and Restated Declaration of Covenants and Restrictions – Grand Oaks Plantation recorded on 7 April 2000, in Book M345 at Page 573 (the "4/7/2000 Amended/Restated Declaration") added Ashley Gardens Boulevard as a roadway entitled to the same maintenance and upkeep protection previously provided to and afforded Grand Oaks Boulevard. (4/7/2000 Amended/Restated Declaration, paras. 5-6; Schumann Aff. I, para. 4). Consequently, the owners of any parcels abutting or using either Grand Oaks Boulevard or Ashley Gardens Boulevard as their primary ingress/egress from Bees Ferry Road were subject to the Annual Assessments from Grand Oaks.

C. Grand Oaks Succeeds To Bees Resources' Assessment Rights

Pursuant to the conditions and requirements of the *Grand Oaks Covenants* Bees Resources (*i.e*., the Developer) ultimately transferred its authority over and responsibility for maintaining the entranceway signs, the landscaping, and the beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard over to Grand Oaks. (*Schumann Aff. II*, para. 2). Undisputedly, Grand Oaks is the entity "charged with the responsibility of administering, enforcing[,] and complying with the [*Grand Oaks Covenants*]." (*Id.*; *Comp.*, para. 4, *Schumann Aff. I*, para. 1; *Proximity RFA Answers* No. 1).

D. The Proximity Neighborhoods Property

Grand Oaks Plantation has 11 separate neighborhoods in the overall residential development, including Proximity, The Landing, The Commons, Autumn Chase, and Hamilton Grove. On 6 November 2014, Grand Bees Development, LLC ("Grand Bees")[8] and The Ryland Group, LLC, by filing the *Proximity Covenants*,[9] agreed to combine

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[8] Grand Bees "purchased [what is now the Proximity Neighborhoods] Property from Bees Resources . . pursuant to a Limited Warranty Deed filed in the ROD on November 16, 2004 at Book T523, Page 116." (Order, p.2). Furthermore, the "Limited Warranty Deed stated that the [what is now the Proximity Neighborhoods] Property was being conveyed subject to the Grand Oaks [Covenants]." (*Id.*).

[9] *See* Declaration of Covenants, Conditions, and Restrictions for The Proximity Neighborhoods Master Association, Inc. recorded on 10 November 2014, in Book 0439, Page 959 (the "Proximity Covenants"). (Comp., para. 5; Schumann Aff. I, para. 3). The Proximity Covenants were subsequently amended and/or supplemented on several occasions. *See generally* First Amendment to Declaration of Covenants, Conditions, and Restrictions for Proximity Neighborhoods Master Association, Inc. recorded on 30 July 2018, in Book 0736, Page 423; Second Amendment to Declaration of Covenants, Conditions, and Restrictions for Proximity Neighborhoods Master Association, Inc. recorded on 4 March 2019, in Book 0780, Page 777; Supplement to Declaration of Covenants, Conditions, and Restrictions for Proximity Neighborhoods Master Association, Inc. recorded on 1 July 2019, in Book 0805, Page 358; Third Amendment to Declaration of Covenants, Conditions, and Restrictions for Proximity Neighborhoods Master Association, Inc. recorded on 15 August 2020, in Book 0907, Page 122; and Supplement to Declaration of Covenants, Conditions, and Restrictions for Proximity Neighborhoods Master Association, Inc. recorded. on 8 March 2021, in Book 0968, Page 252.

certain real estate property in the Grand Oaks Plantation development by filing the *Proximity Covenants* and created the genesis of the Proximity neighborhoods. The *Proximity Covenants*, charged Proximity responsibility of operating, administering, and enforcing compliance with the *Proximity Covenants*. (*Order*, p.2; *Comp.*, para. 5; *Schumann Aff. I*, para. 3).

The *Proximity Covenants* described the property Grand Bees "contributed" to the creation of the Proximity Neighborhoods (the "Proximity Neighborhoods Property") as follows:

> ALL that certain piece, parcel, or tract of land, together with any improvements thereon, situate, lying[,] and being in the City of Charleston, Charleston County, South Carolina, shown and designated as "TRACT D2, 310.669 ACRES TOTAL, 97.424 ACRES WETLANDS, 213.245 ACRES HIGHLAND," on that certain plat entitled "SUBDIVISION PLAT OF TRACT D, BEES LANDING, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Jeffrey Steven Cooper, S.C.R.L.S. 12516, of Forsberg Engineering and Surveying, Inc., dated September 9, 2004, last revised on October 12, 2004, and recorded on October 15, 2004 in Plat Book EH at Page 427 in the RMC Office for Charleston County, South Carolina . . . .

(*Proximity Covenants*, at Exh. A; *Comp.*, para. 6; *Schumann Aff. I*, para. 4).

Almost exactly ten years before the *Proximity Covenants* were filed, Bees Resources filed a supplemental declaration to the *Grand Oaks Covenants*[10] which subjected the Proximity Neighborhoods Property to the obligations and responsibilities set forth in the *Grand Oak Covenants*. The *11/16/2004 Supplemental Declaration* provided:

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[10] *See generally* Amended and Restated Declaration of Covenants and Restrictions – Grand Oaks Plantation recorded on 7 April 2000, in Book M345 at Page 573 which was specifically referenced in the Supplemental Declaration recorded on 16 November 2004, in Book G516 at Page 255 (the "11/16/2004 Supplemental Declaration").

> [Bees Resources] does hereby declare, express[,] and decree, for itself and its heirs, successors and assigns, that the property more fully described on Exhibit A[**11**] attached hereto and incorporated herein by reference (the "Property")[**12**] shall be used, held, owned, mortgaged, developed[,] and enjoyed subject to and in accordance the terms and provisions of the [*Grand Oak Covenants*], as said [*Grand Oak Covenants*] may have been amended or may in the future be amended by instrument in writing recorded in the [ROD] for Charleston County, South Carolina. It is the intention of [Bees Resources] to make the Property subject to the [*Grand Oaks Covenants*] as fully and to the same extent as if the Property had originally been described in the [*Grand Oaks Covenants*].

(*11/16/2004 Supplemental Declaration*, p.1). The Proximity Neighborhoods Property was made subject to the *Grand Oak Covenants* including the responsibility for paying the Annual Assessments to maintain and preserve both Grand Oaks Boulevard and Ashley Gardens Boulevard. (*Comp.*, para. 6; *Schumann Aff. I*, para. 5).**13**

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11 The real property at issue was described in the referenced Exhibit A as follows:

> ALL that certain piece, parcel, or tract of land, situate, lying[,] and being in the City of Charleston, Charleston County, South Carolina, shown and designated as "Tract D2, 310.669 Acres Total, 97.424 Acres Wetlands, 213.245 Acres Highland," on a plat by Forsberg Engineering and Surveying, Inc., dated September 9, 2004 entitled in part "SUBDIVISION PLAT OF TRACT D, BEES LANDING, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," and recorded or to be recorded in the [ROD] Office for Charleston County, South Carolina at Plat Book EH at Page 427 . . . .

11/16/2004 Supplemental Declaration, p.3.

12 The "Property" as described and referenced in the 11/16/2004 Supplemental Declaration is now the area known as the Proximity Neighborhoods Property.

13 The Master-In-Equity acknowledged that "property [which] Proximity manages and operates is off Bees Ferry Road located next to the Grand Oaks Plantation, a portion of which includes the property [involved herein and] designated as "TRACT D-2 310.669 ACRES TOTAL 97.424 ACRES WETLANDS 213.245 ACRES HIGHLAND" on certain Plat recorded in the ROD on October 15, 2004, in Plat Book EH, at Page 427." (Order, p.2) (Capitalization in original). This was, of course, the same property Grand Bees combined with Ryland Homes to create the Proximity Neighborhoods Property.

1. *Proximity Is The Largest Collection Of Neighborhoods In Grand Oaks Plantation*

Pursuant to the *Grand Oaks Covenants*, "each neighborhood's [Annual] [A]ssessment [wa]s based on the proportion of the neighborhood's acreage of the overall Grand Oaks [Plantation] acreage as recorded on the original (analogue) plats; and rounded up to the next integer[and] is not based on the number of units developed in that neighborhood." (*Schumann Aff. III*, at Exh. A). Proximity was and remains the largest neighborhood in Grand Oaks Plantation. (Id.) Proximity is comprised of some 214 acres - more than double the acreage of the next largest neighborhood, namely Mount Royal/Harrington Place listed at 104 acres. (*Id*.).[14]

2. *Proximity Borders/Abuts Ashley Gardens Boulevard*

As noted previously, "[t]he *Grand Oaks [Covenants]* provide[d] that the owner of each tract 'bordering or having as its access on Grand Oaks Boulevard or Ashley Gardens Boulevard' [was required to] pay an [A]nnual [A]ssesment for the creation and continuance of the Grand Oaks Maintenance Fund' as set forth in the *Grand Oaks [Covenants]*." (*Order*, p.3, *4/7/2000 Amended/Restated Declaration,* at p.4) (Citation omitted).[15] Furthermore, the *Grand Oaks Covenants* provided "[o]nly owners of tracts which border upon Grand Oaks Boulevard and Ashley Gardens Boulevard or which use th[os]e Boulevard[s] for the principal access from Bees Ferry Road to their property shall

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[14] Grand Bees or one of its successors and/or assign owned and controlled the Proximity Neighborhoods Property from 14 October 2004 (Proximity Memo. MSJ, p.4; 11/16/2004 Supplemental Declaration, p.3) until sometime in 2023, when the Proximity Neighborhoods Property became owners' controlled and managed. (Proximity Memo. MSJ, p.4, Exh. G).

[15] The 4/7/2000 Amended/Restated Declaration added Ashley Gardens Boulevard as a roadway entitled to the same maintenance and upkeep protection previously provided to and afforded Grand Oaks Boulevard. (4/7/2000 Amended/Restated Declaration, paras. 5-6; Schumann Aff. I, para. 6).

have this covenant imposed upon their property." (*4/7/2000 Amended/Restated Declaration,* at p.4) Plainly stated, the *Grand Oaks Covenants* created a two-prong obligation scenario where the owners of any parcels either ***abutting or using*** either Grand Oaks Boulevard or Ashley Gardens Boulevard as their primary ingress/egress from Bees Ferry Road were subject to the Annual Assessments. (*Id.*; *Grand Oaks Covenants*., at p.2; *4/7/2000 Amended/Restated Declaration*, paras. 5-6; *Schumann Aff. I*, para. 6). Consequently, a property owner's obligation to pay the Annual Assessments could logically originate from ***either*** (a) using Grand Oaks Boulevard or Ashley Gardens Boulevard as the property owners' principal assess to Bees Ferry Road ***or*** (b) the property owners' property abutting either Grand Oaks Boulevard or Ashley Gardens Boulevard.

While Proximity Neighborhoods' residents can use Proximity Drive to gain access Bees Ferry Road (*Order*, pp.3, 4; *Proximity Memo. MSJ*, pp.3, 5), they are also able to use Grand Oaks Boulevard and Ashley Gardens Boulevard for similar access, as well gaining access from various other throughfares, albeit in somewhat circuitous ways. (*Id.*). Based on Proximity Drive's existence as the neighborhoods' primary access to Bees Ferry Road, the Master-In-Equity agreed Proximity did not have to pay its share of the Annual Assessments. (*Order*, pp.1-6). The Master-In-Equity, however, ignored the second prong of the *Grand Oaks Covenants* which obligated Proximity's payment of the Annual Assessments based solely on its property ***bordering and/or abutting*** Grand Oaks Boulevard and/or Ashley Gardens Boulevard. The evidence showed (*Schumann Aff. I*, para. 4) and Proximity ***admitted*** the property abutted Ashley Garden Boulevard. (*Proximity RFA Answers*, No. 3; *Proximity Memo. MSJ*, pp.3, 5, Exh. C).[16]

[16] The Master-In-Equity did not address Grand Oaks' ability to require Proximity to pay the Annual Assessments via the "abutting/bordering" method in his written decision. (Order, pp.1-

E. The Corrective Limited Warranty Deed

On or about 16 July 2012, some eight years after the Proximity Neighborhoods Property was made subject to the *Grand Oaks Covenants*, Bees Resources and Grand Bees collectively executed a document entitled *Corrective Limited Warranty Deed*[17] by which Bees Resources:

> . . .[wa]s minded to execute and deliver the within Corrective Limited Warranty Deed to correct the error [of burdening the Proximity Neighborhoods Property with the *Grand Oaks Covenants*] and [to] convey to [Grand Bees] the [Proximity Neighborhood] [P]roperty[, free and clear of the [obligations, duties, responsibilities, and conditions] of the [*Grand Oaks Covenants*], as amended. . . ."

(*Order*, p.2; *Corrective Limited Warranty Deed*, p.1).

Pursuant to the *Grand Oak Covenants* and the continued residential development of overall Grand Oak Plantation, either Bees Resources (*as developer*) or Grand Oaks (*as Bees Resources' designated successor*) had been administering and collecting the Annual Assessments from those property owners " 'bordering upon or having as its access on Grand Oaks Boulevard or Ashley Gardens Boulevard' . . .'for the creation and continuance of the Grand Oaks Maintenance Fund' as [required by] the *Grand Oaks [Covenants]*.' " (*Order*, p.3) (Internal citation omitted). No one disputes Grand Oaks has distributed the Annual Assessments to all of the relevant property owners and, in turn, those property owners have appropriately paid the assessed fees ensuring maintenance and beautification of both Grand Oaks Boulevard and Ashley Gardens Boulevard.

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6). Grand Oaks sought reconsideration, *inter alia*, specifically on this issue (Recon. Mot. para. 13), which the Master-In-Equity denied. (*SCRCP* Form 4 Order, pp.1-3).

[17] Order, p.2; Corrective Limited Warranty Deed, pp.1-4. *See* Corrective Limited Warranty Deed dated 16 July 2012, and recorded in the ROD on 25 July 2012, in Book 0266at Page 615 (the "Corrective Limited Warranty Deed").

Notwithstanding Proximity's constructive record notice of the existence of the *Corrective Limited Warranty Deed*, Proximity knowingly and voluntarily paid Proximity's pro-rata share of the Annual Assessments to Grand Oaks since Proximity came into existence.[18] Even though various corporate entities have, at various times, managed the Proximity Neighborhoods Property, including Lennar Carolinas, LLC, not one of those management entities either challenged or refused to honor Grand Oaks yearly request for payment from Proximity of Proximity's *pro-rata* share of the Annual Assessment. This included Proximity's failure to ever assert that the *Corrective limited Warranty Deed* altered the parties' respective responsibilities as had been imposed by the *Grand Oaks Covenants* by and through the *11/16/2004 Supplemental Declaration*.

Proximity dutifully paid its assessed share until 2022 when Proximity suddenly refused to make any further payments. Apparently, Proximity had become property owner-managed around that time and "questioned the assessments imposed upon it by [Grand Oaks] pursuant to the *Grand Oaks [Covenants]*." (*Order*, p.3). Proximity asserted the *Corrective Limited Warranty Deed* effectively eliminated Proximity's obligation to pay any portion of the Annual Assessments. (*Counterclaim*, paras. 3-5; *Proximity MSJ*, p.2).

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[18] Each of Proximity's managing entities had record notice of the Corrective Limited Warranty Deed once the document was recorded in the ROD. *See generally* Powell v. SB Municipal is the Custodian of LBSC-11, LLC, 2024 WL 611889, at *1 (S.C., 14 Feb. 2024) (*per curiam*) (*citing* S.C. Code Ann. § 30-7-10 (Thomson Reuters West 2007)). *See also* Raglins Creek Farms, LLC v. Martin, 2023 WL 2015768, at *2 (S.C.App., 15 Feb. 2023) (*citing* Binkley v. Rabon Creek Watershed Conservation District of Fountain Inn, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct.App. 2001) ("Property owners are charged with constructive notice of instruments recorded in ***their chain of title***." (Emphasis in original)); Palmetto Air Plantation Homeowners Association, Inc. v. Bevier, 2022 WL 4362404, at *3 (S.C.App., 21 Sept. 2022) (*per curiam*) (*citing* Harbison Community Association, Inc. v. Mueller, 319 S.C.99, 103, 459 S.E.2d 860, 863 (Ct.App. 1995); Howorka v. Harbor Island Owners' Association, 292 S.C. 381, 386, 356 S.E.2d 433, 436 (Ct. App. 1987)).

IV. ARGUMENT AND CITATION OF AUTHORITY

Standard Of Review

"Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment."[19] "Summary judgment is [only] proper when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law."[20] " 'In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment.' "[21] "Summary judgment is not proper when further inquiry into the facts is necessary 'to clarify the application of the law.' "[22] "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party."[23]

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19 Waterfall Investment and Construction Group, LLC v. A&E Construction & Maintenance, LLC, 2025 WL 2237372, *1 (S.C.App., 6 Aug. 2025) (*citing* Knight v. Austin, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012)).

20 *Id.* (*citing* Rule 56(c), SCRCivP; Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023)).

21 Target Motors, LLC v. Grand Strand Nissan, Inc., 2025 WL 1950260, at *1 (S.C.App., 16 July 2025) (*per curiam*) (*quoting* deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 262–263, 536 S.E.2d 399, 403 (Ct.App. 2000)).

22 Williams v. Jeffcoat, 444 S.C. 224, 234, 906 S.E.2d 588, 593 (2024) (*quoting* USAA Property & Casualty Insurance Company v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008)).

23 Singleton v. Sherer, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008). *See also generally* Wall v. Dye, 2024 WL 3357621, at *2 (S.C.App., 10 July 2024) (*quoting* Baughman v. American. Telephone & Telegraph Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (*quoting* Watson v. Southern Railway Co., 420 F.Supp. 483, 486 (D.S.C. 1975)) (" 'Since it is a drastic remedy, summary judgement should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.' ").

A. THE *CORRECTIVE LIMITED WARRANTY DEED* DID NOT ELIMINATE PROXIMITY'S OBLIGATION TO PAY THE ANNUAL ASSESSMENTS.

Proximity argued and the Master-In-Equity agreed that the so-called *Corrective Limited Warranty Deed* effectively nullified the force and effect of the *11/16/2004 Supplemental Declaration* which imposed the *Grand Oaks Covenants* on the real estate which ultimately became the Proximity Neighborhoods Property. Those arguments and the Master-In-Equity's decision are meritless since Bees Resources had no authority to issue the *Corrective Limited Warranty Deed* some eight years after the *11/16/2004 Supplemental Declaration* was filed and, in any case, violated the *Grand Oaks Covenants* as it bound current property owners to higher assessments absent their written consent.

"Covenants requiring the payment of maintenance assessments are contractual in nature and bind the parties to the covenants in the same manner as other contracts."[24] "[W]here the language imposing such covenants is unambiguous, the covenants will be enforced according to their obvious meaning."[25] Without question, the Annual Assessments "pay for [the] maintenance[, upkeep, and beautification] of [both Grand Oaks Boulevard and Ashley Gardens Boulevard which are] common areas in the [Grand Oaks Plantation residential] community [and] [t]hese common areas enhance the value of all of the properties in the [entire residential] community."[26]

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24 First Federal Savings & Loan Association of Charleston v. Bailey, 316 S.C. 350, 354, 450 S.E.2d 77, 79-80 (Ct.App. 1994) (*citing* Seabrook Island Property Owners Ass'n v. Pelzer, 292 S.C. 343, 356 S.E.2d 411 (Ct.App. 1987)).

25 *Id.*, 316 S.C. 350, 354, 450 S.E.2d 77, 79 (*citing* Shipyard Property Owners Association v. Mangiaracina, 307 S.C. 299, 414 S.E.2d 795 (Ct.App. 1992)).

26 Harbison Community Association v. Mueller, 319 S.C. 99, 102, 459 S.E.2d 860, 862 (Ct.App. 1995) (*citing* Four Seasons Homeowners Association v. Sellers, 62 N.C.App. 205, 302 S.E.2d 848 (1982) (a covenant to pay assessments to finance [common areas] in a subdivision touches and

In *Queens Grant II Horizontal Property Regime v. Greenwood Development Corp*,, this Court of Appeals acknowledged that "[c]ovenants [which] require property owners to pay to a developer or homeowners' association assessments that have a beneficial effect on the value of the owners' properties touch and concern land and therefore 'run with the land.' "[27] This Court of Appeals further stated that "[r]estrictive covenants differ from contracts [since] they 'run with the land', meaning that they are enforceable by and against later grantees."[28] Moreover, "[r]estrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which 'touch and concern' land, and therefore, run with the land."[29] The *Grand Oaks Covenants*, therefore "run with the land".[30]

" 'The word 'covenant' means to enter into a formal agreement, to bind oneself in contract, and to make a stipulation.' "[31] "Restrictive covenants will be enforced unless

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concerns every homeowner's lot in the subdivision even though the facilities are not adjacent to each lot), *certiorari denied*, 309 N.C. 461, 307 S.E.2d 364 (1983); Neponsit Property Owners' Association v. Emigrant Industrial Savings Bank, 278 N.Y. 248, 15 N.E.2d 793 (1938) (a covenant to pay assessments touches and concerns the land if the money is used to maintain common areas, thus providing a benefit to the landowner)).

27 Queens Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 357 fn.10, 368 S.E.2d 902, 911 fn.10 (Ct.App. 2006) (*citing* Mueller, 319 S.C. 99, 102, 459 S.E.2d 860, 862).

28 *Id.*, 368 S.C. 342, 361, 368 S.E.2d 902, 913 (*citing* 17 S.C. Jurisprudence, Covenants, § 18 (Thomson Reuters West 2005)).

29 *Id.* (*citing* Epting v. Lexington Water Power Co., 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jurisprudence, Covenants, §§ 18-19 (Thomson Reuters West 2005))..

30 *See generally* Carpenter v. Measter, 2013 WL 8482282, at *6 (S.C.App., 6 Feb. 2013) (*quoting* Mueller, 319 S.C. 99, 102, 459 S.E.2d 860, 862).

31 Cedar Cove Homeowners Association, Inc. v. DiPietro, 368 S.C. 254, 269, 628 S.E.2d 284, 291 (Ct.App. 2006) (*quoting* 20 Am.Jur.2d, Covenants, Conditions, and Restrictions, § 1.1 (Thomson Reuters West 2002) (Footnotes omitted in original) (Anderson, J., *dissenting*).

they are indefinite or contravene public policy."[32] "[A] developer may generally reserve to himself[herself, or itself] the right to amend restrictive covenants in his sole discretion, and may do so without the consent of the grantee, so long as [the developer] exercises that right in a reasonable manner."[33] Furthermore, "where the language imposing such covenants is unambiguous, the covenants will be enforced according to their obvious meaning."[34]

Bees Resources specifically reserved its legal and contractual rights to change, modify. amend, supplement, and/or alter the *Grand Oaks Covenants.* (*Grand Oaks Covenants*, para. 12). Nevertheless, there were certain limitations on that ability:

> **12. MODIFICATION:** During the initial phase of development and so long as [Bees Resources] owns more than fifty {50%) percent of the developable acreage along Grand Oaks Boulevard or of the tracts using the Boulevard for principal access to the Bees Ferry Road, [Bees Resources] for itself and its successors and assigns reserve the right to modify, cancel, alter[,] or change these covenants: provided, in no case, shall [Bees Resources] modify, alter[,] or change these covenants in such a manner as to impose additional assessments upon any owner without such owner's express written consent. That at such time as [Bees Resources] has

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[32] Queens Grant II Horizontal Property Regime, 368 S.C. 342, 362, 368 S.E.2d 902, 913 (*citing* Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987)).

[33] *Id.* (*citing* Flamingo Ranch Estates, Inc. v. Sunshine Ranches Homeowners, Inc., 303 So.2d 665, 666 (Fla. 2nd DCA.1974) (*citing* Johnson v. Three Bays Properties No. 2, Inc., 159 So.2d 924, 925 fn.1 (Fla 3rd DCA 1964)), *cited with approval in* Wright v. Cypress Shores Development Company, Inc., 413 So.2d 1115, 1123–24 (Ala.1982); Rossman v. Seasons at Tiara Rado Associations, 943 P.2d 34, 37 (Colo.App. 1996); Markey v. Wolf, 92 Md.App. 137, 607 A.2d 82, 94 (1992); Appel v. Presley Companies, 111 N.M. 464, 806 P.2d 1054, 1056 (1991); Scoville v. SpringPark Homeowner's Association, Inc., 784 S.W.2d 498, 509 n. 7 (Tex.App.1990); Lakemoor Community Club, Inc. v. Swanson, 24 Wash.App. 10, 600 P.2d 1022, 1025 (1979)). Nevertheless, "when a developer fails to expressly reserve a right to amend the covenants, amendments are not allowed." *Id.*, 368 S.C. 342, 363, 368 S.E.2d 902, 914 (*citing* Heritage Federal Savings & Loan Association v. Eagle Lake & Golf Condominiums, 318 S.C. 535, 541, 458 S.E.2d 561, 565 (Ct.App.1995); Shipyard Property Owners' Association v. Mangiaracina, 307 S.C. 299, 414 S.E.2d 795).

[34] First Federal Savings and Loan Association of Charleston v. Bailey, 316 S.C. 350, 354, 450 S.E.2d 77, 79-80 (*citing* Mangiaracina, 307 S.C. 299, 414 S.E.2d 795) (Internal footnote omitted).

> conveyed more than fifty (50%) percent of the developable acreage along Grand Oak Boulevard or of the tracts using the Boulevard for principal access to the Bees Ferry Road, the right to modify, cancel[,] or alter these covenants shall be vested in [Grand Oaks].

(*Grand Oaks Covenants*, para. 12). Bees Resources continued this specific modification reservation in the later amended and restated version of the *Grand Oaks Covenants*. (*4/7/2000 Amended/Restated Declaration*, para. 13).**35** Bees Resources, however, was prohibited from any modifications if Bees Resources had conveyed out more than 50% of the relevant property or if a modification effectively imposed non-consents additional assessments on any property owner. (*Id*.; *Grand Oaks Covenants*, para. 12).

1. ***The Corrective Limited Warranty Deed Was Unenforceable As Bees Resources Did Not Have The Right In 2012 To Alter And/Or Amend The Grand Oak Covenants***

The modification provision of the *Grand Oaks Covenants* granted Bees Resources, as well as its successors and assigns, the unfettered ability to modify, cancel, change, and/or alter the *Grand Oak Covenants* "[d]uring the initial phase of development and so long as [Bees Resources] own[ed] more than fifty {50%) percent of the developable acreage along Grand Oaks Boulevard or of the tracts using the Boulevard for principal access to the Bees Ferry Road . . . ." (*Grand Oaks Covenants*, para. 12).**36**

" 'Real covenants have been defined as ' 'agreement[s] . . to do, or [to] refrain from doing, certain things with respect to real property[, and] [t]herefore, covenants, 'in a sense are contractual in nature and bind the parties thereto in the same manner as would any

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35 As previously referenced the 4/7/2000 Amended/Restated Declaration included Ashley Gardens Boulevard as part of the roadway maintenance and beautification processes covered by the Annual Assessments.

36 Ashley Gardens Boulevard was later added to this section of the **MODIFICATION** provision. (4/7/2000 Amended/Restated Declaration, para. 13).

other contract.' ' "[37] The "[w]ords of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution."[38] Consequently, "the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document."[39] " 'When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning.' "[40] "Accordingly, when 'the language imposing restrictions . . is unambiguous, the restrictions will be enforced according to their obvious meaning.' "[41]

From the beginning of the development of the Grand Oaks Plantation residential project Bees Resources understandably vested itself with the authority to change the *Grand Oaks Covenants* essentially at will.[42] On the other hand, once Bees Resources

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37 Chandelle Property Owners Association v. Armstrong, 444 S.C. 292, 304-305, 906 S.E.2d 599, 606 (Ct.App. 2024) (*quoting* Queen's Grant II Horizontal Property Regime, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (*quoting* 20 Am.Jur.2d, Covenants, Conditions, and Restrictions, § 1 (Thomson Reuters West 2005)) (Second alteration in original).

38 Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998) (*citing* Marriott Corp. v. Combined Properties Limited Partnership, 239 Va. 506, 391 S.E.2d 313 (1990)). *See also* 20 Am.Jur.2d, Covenants, § 171 (Thomson Reuters West 1995) ("The words of the covenant will be given their commonly held meaning as of the date the covenant was written, not as of some subsequent date.").

39 Matsell v. Crowfield Plantation Community Services Association, 393 S.C. 65, 71, 710 S.E.d2 90, 93 (Ct.App. 2011) (*citing* Taylor, 332 S.C. 1, 4, 498 S.E.2d 862, 863-864) (Internal quotation marks omitted in original).

40 Community Services Association, Inc. v. Wall, 421 S.C. 575, 582, 808 S.E.2d 831, 835 (Ct.App. 2017) (*quoting* Moser v. Gosnell, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999)).

41 *Id.*, 421 S.C. 575, 582-583, 808 S.E.2d 831, 835 (*quoting* Shipyard Property Owners' Association v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801). Importantly, " 'court[s] [are] without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed.' " Snow v. Smith, 416 S.C. 72, 88, 784 S.E.2d 242, 250 (Ct.App. 2016) (*quoting* Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct.App. 2009)).

42 *See generally* Dorchester County Assessor v. Middleton Place Equestrian Center, LLC, 414 S.C. 453, 466, 778 S.E.2d 919, 926 (Ct.App. 2015). The Grand Oaks Covenants, however, contained two important restrictions on Bees Resources' ability to change/modify the covenants,

sold off 50% of the developable acreage at issue both Bees Resources and its successors and assigns, were collectively ***barred*** from thereafter unilaterally altering, canceling, and/or otherwise amending the *Grand Oaks Covenants*. Most importantly, the *Grand Oaks Covenants* then specifically provided that when Bees Resources, in fact, "ha[d] conveyed [to third parties] more than fifty (50%) percent of the developable acreage along Grand Oaks Boulevard or of the tracts using the Boulevard for principal access to the Bees Ferry Road, the right to modify, cancel[,] or alter these covenants ***shall [then] be vested in [Grand Oaks]***." (*Grand Oaks Covenants*, para. 12) (Emphasis supplied).[43]

Consequently, "[p]ursuant to Paragraph 6. Section (e) of the [*4/7/2000 Amended/Restated Declaration*], [Grand Oaks] was given the authority and responsibility by [Bees Resources], after [Bees Resources] had sold [or otherwise conveyed two-thirds] of the acreage owned by [Bees Resources], to maintain the entrance signs. the landscaping and the beautification or Grand Oaks Boulevard and Ashley Gardens Boulevard." (*Schumann Aff*. I, para. 2). Importantly, the evidence further indicated, ***by sometime in 2007***, Bees Resources had completely ***divested itself of two-thirds of the relevant developable acreage*** and, thereby was contractually bound to transfer responsibility for the operation and collection of the Annual Assessments over to Grand Oaks as was required by the *Grand Oaks Covenants*. (*Schumann Aff. II*, para. 2) (Emphasis supplied).

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namely (a) Bees Resources transferred its modification rights to Grand Oaks once Bees Resources conveyed more than 50% of its owned acreage and/or (b) Bees Resources attempted a modification which imposed an additional assessment upon any property owner's without the owner's written consent. (Grand Oaks Covenants, para. 12; 4/7/2000 Amended/Restated Declaration, para. 13).

43 Again, Ashley Gardens Boulevard was later also added to this section of the **MODIFICATION** provision. (4/7/2000 Amended/Restated Declaration, para. 13).

It is clear the *Grand Oaks Covenants* permitted Bees Resources to transfer responsibility for managing and administering the Annual Assessments to Grand Oaks ***only after Bees Resources had sold or conveyed 66.6%*** of the developable acreage. (*Grand Oaks Covenants*, pp.3-4; *4/7/2000 Amended/Restated Declaration,* p.6). Since Bees Resources made that transfer to Grand Oaks in 2007 (*Schumann Aff. II*, para. 2), that necessarily meant Bees Resources had also obviously ***conveyed well in excess of 50%*** of the relevant real estate either sometime prior to 2007 or contemporaneously to the 2007 transfer. Consequently, by sometime in ***2007*** Bees Resources, as well as any of its successors and assigns, had completely ***lost*** the ability to modify, change, cancel, amend, and/or otherwise alter the *Grand Oaks Covenants* since such ability had, as a matter of contract law, been automatically transferred over to and become contractually vested in Grand Oaks.

It was ***not until some five or so years later*** when, on 16 July 2012, Bees Resources executed the *Corrective Limited Warranty Deed* which ostensibly withdrew and/or exempted Proximity *nunc pro tunc* from being subject to the *Grand Oaks Covenants*.[44] Bees Resources, however, pursuant to the very terms and conditions of the *Grand Oaks Covenants*, did not have the authority ***in 2012*** to enter into the *Corrective Limited Warranty Deed* since Bees Resources' ability and legal authority to change the *Grand Oaks Covenants* had previously terminated ***in 2007*** when such rights were contractually transferred over to Grand Oaks. Bees Resources' execution of the

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[44] As noted, the Corrective Limited Warranty Deed was executed and recorded on 16 July 2012. (Counterclaim, para. 4; Corrective Limited Warranty Deed, pp.1-5). The Proximity Covenants were adopted on 6 November 2021. (Proximity MSJ Memo, at Exh. B). Proximity did not, however, obtain administrative control over the Proximity Neighborhoods Property until 2023. (*Id.*, p.4).

Corrective Limited Warranty Deed must necessarily be considered as an *ultra vires* act as Bees Resources had neither legal nor contractual rights to promulgate the document. Consequently, for all practical purposes, the *Limited Corrective Warranty Deed* was void and without any binding effect at the time it was entered into and recorded.

The Master-In-Equity incorrectly concluded the *Limited Corrective Warranty Deed* exempted Proximity from the *Grand Oaks Covenants*' requirements to pay the Annual Assessments. In 2012 Grand Oaks was the sole entity authorized to alter, cancel, or otherwise change the *Grand Oaks Covenants*. Bees Resources had relinquished that right in 2007.[45] The Master-In-Equity's decision must be reversed in all respects and this matter remanded with directions to enter judgment for Grand Oaks.

2. ***Even If The Corrective Limited Warranty Deed Was Properly Adopted It Was Unenforceable As The Corrective Limited Warranty Deed Violated The Grand Oak Covenants***

Assuming, *arguendo*, the *Corrective Limited Warranty Deed* was legally promulgated (a prospect Grand Oaks strenuously denies), the very terms and conditions of the *Grand Oaks Covenants* clearly and unequivocally prevent the *Corrective Limited Warranty Deed* from accomplishing its intended purpose of completely exempting Proximity from having to pay the Annual Assessments mandated by the *Grand Oaks Covenants*.

While Bees Resources clearly reserved the right, albeit under certain circumstances, to modify, alter, and/or change the *Grand Oaks Covenants*, Bees Resources did, however, impose a significant obstacle to any legitimate modification, or

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[45] First Federal Savings and Loan Association of Charleston v. Bailey, 316 S.C. 350, 354, 450 S.E.2d 77, 79-80 (*citing* Shipyard Property Owners Ass'n v. Mangiaracina, 307 S.C. 299, 414 S.E.2d 795).

alteration, and/or change dealing with monetary assessments.[46] The *Grand Oaks Covenants* specifically ***absolutely prohibited*** Bees Resources from making any change to the *Grand Oaks Covenants* which had the effect of imposing additional monetary assessment "upon and [property] owner without such [property] owner's written consent." (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13). Bees Resources' adoption of the *Corrective Limited Warranty Deed* and Proximity's use of the document as the purported "legal" justification to deny making any further Annual Assessment payments to Grand Oaks does exactly that and, in turn, violates the terms and conditions of the *Grand Oaks Covenants*.

Since the acreage of the Proximity Neighborhoods Property is so substantial in comparison to the other neighborhoods in overall Grand Oaks Plantation development, Proximity's respective *pro-rata* share of the Annual Assessment was likewise substantial as compared with the other neighborhoods.[47] The evidence showed the following:

(a) The Grand Oaks' annual budget for 2021 was $70,074.00 with Proximity assessed the sum of $18,220.00 or approximately **26%** of the total (*Schumann Aff.* I, at Exh. E),

(b) The Grand Oaks' annual budget for 2022 was $72,597.00 with Proximity assessed the sum of $18,744.00 or approximately **26.5%** of the total (*Id.*, at Exh. F),

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[46] This impediment was in addition to the restriction Bees Resources placed upon itself in the Grand Oaks Covenants which mandated the transfer to Grand Oaks of the right to modify, cancel, etc. the Grand Oaks Covenants once Bees Resources transferred more than 50% of the relevant acreage. (Grand Oaks Covenants, para. 12; 4/7/2000 Amended/Restated Declaration, para. 13).

[47] The Proximity Neighborhoods Property is the largest neighborhood in Grand Oaks Plantation with acreage of some 214 acres. (Schumann Aff. III, at Exh. A). The Proximity Neighborhoods Property is more than double the acreage of the next largest neighborhood – Mount Royal/Harrington Place – 104 acres). (*Id.*).

(c) The Grand Oaks' annual budget for 2023 was $80,612.00 with Proximity assessed the sum of $20,718.00 or approximately **25.7%** of the total (*Id.*, at Exh. G),

(d) The Grand Oaks' annual budget for 2024 was $126,050.00 with Proximity assessed the sum of $32,644.00 or approximately **27.1%** of the total (*Schumann Aff.* III, at Exh. A), and

(e) The Grand Oaks' annual budget for 2025 was $116,608.00 with Proximity assessed the sum of $30,605.00 or approximately **26.21%** of the total (*Id.*).

The evidence consistently showed Proximity's percentage share of the Annual Assessment averaged around 26% of the total budget for Grand Oaks and clearly was the largest and most significant contributor to the Annual Assessment. (*Schumann Aff. I*, at Exhs. E-G; *Schumann Aff. II*, at Exh. A).

When Proximity unilaterally decided to cease making its required yearly *pro rata* contribution to the Annual Assessments, this refusal placed Grand Oaks in a precarious position with approximately 26% of the Annual Assessments' normally projected revenue missing and presently uncollectable. Grand Oaks addressed the ongoing contractual dispute with Proximity in its 2023 budget, noting:

> We will have depleted most of [Grand Oaks'] reserve funds by the end of 2024 to cover the ***significant delinquencies of Tract 02 (Proximity/Grand Bees) for 2022 and 2023***. Without the special assessment accounting for bad debt and the significant legal expenses in the ongoing litigation process against [Proximity], we will not be able to pay for our main expenses, *i.e*. street lighting and landscaping along the collector roads, Ashley Gardens [Boulevard] and Grand Oaks [Boulevard]. We do not know when the outstanding debt can be collected and have to prepare accordingly. . . . . Once all debt has been paid or collected from Grand Bees/Proximity through liens and possibly foreclosures, we will [either] reimburse all neighborhoods immediately[or] invest the funds [in secure CDs or U.S. Treasury bonds in order to] reduce the 2025 assessment accordingly. Please note that the presently

> ***outstanding debt accounts for approximately 50% of our regular budget*** and that ***we must assume that [Proximity as] representing the largest [Grand Oaks] neighborhood will continue their delinquency into 2024***. Less than 1% of the assessment hike is due to inflation in service premiums; [some] 56.56% are caused are caused by the delinquent Proximity . . . .

(*Id.*, at Exh. G) (Emphasis supplied).

Unfortunately, Grand Oaks' message in 2023 proved prophetic as Grand Oaks was forced to increase the 2024 Annual Assessment for each affected neighborhood and/or entity by ***57.56%***. (*Id.*).[48] In this vein, Grand Oaks advised its constituents:

> ***We are forced to continue to add a special bad debt assessment for the outstanding 2024 dues of the delinquent Tract 02 [Proximity/Grand Bees]***. . . . . Depending on the [result of the pending litigation, Grand Oaks] will redistribute any collected bad debt funds to Grand Oaks' neighborhoods according to the acres of highland outlined in the original property plats upon which [Grand Oaks'] [A]nnual [A]ssessments are based. This INCLUDES [Proximity] that would receive 26.25% of their own bad debt as a reimbursement. ***Currently and for the [third] year all other neighborhoods observe an increased assessment solely due to the [three]-year delinquency of [Proximity].***

(*Schumann Aff. III*, at Exh. A) (Capitalization in original and emphasis supplied).

Each of the effected neighborhoods and/or entities were forced to bear significant increases in their respective *pro rata* shares of the Annual Assessments due to Proximity's unjustified and unwarranted reliance on the *Corrective Limited Warranty Deed* to forego its yearly payments. *Directly contrary* to the specific modification prohibition in the *Grand Oaks Covenants*, Bees Resources' adoption of the *Corrective Limited*

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[48] In 2023 Grand Oaks moderately increased the Annual Assessment by 10.53% for all neighborhoods and entities except for Meeting Street at Grand Oaks and The Landing at Grand Oaks which were increased, for reasons not relevant herein, by 38.49%. (Schumann Aff. I, at Exh. F).

Warranty Deed directly "impose[d] additional assessments upon [property owners] without such [property] owner[s'] express written consent." (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13).

There was no evidence showing the owners' of property subject to the Annual Assessments had provided Bees Resources with any type of written consent granting Bees Resources the consensus authority to modify the *Grand Oaks Covenants* by adopting the *Corrective Limited Warranty Deed*. The effected property owners had no reason, motivation, and/or incentive to provide such written consents to Bees Resources since, by doing so, the property owners were then guaranteed to continually pay significantly increased Annual Assessments. With Proximity exempt from paying its share of the Annual Assessments everyone else was forced to pay more since Proximity was the largest neighborhood in Grand Oak Plantation development and, until 2022, had paid and was scheduled to pay the greatest percentage of the Annual Assessments.

Bees Resources improperly executed the *Corrective Limited Warranty Deed* since by doing so Bees Resources directly violated the explicit terms and conditions of the *Grand Oaks Covenants*. Even if Bees Resources had the "authority" to promulgate the *Corrective Limited Warrant Deed*,[49] Proximity was unable to use the *Corrective Limited Warrant Deed* as a legitimate basis to refuse to pay the Annual Assessments. The *Corrective Limited Warrant Deed* undeniably violated the *Grand Oaks Covenants* by imposing additional assessments upon the effected property owners without their written consent.

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[49] Again, Grand Oaks strenuously contests the prospect Bees Resources had the legal and/or contractual ability to even issue the Corrective Limited Warranty Deed.

The Master-In-Equity incorrectly concluded the *Corrective Limited Warranty Deed* exempted Proximity from paying its share of the Annual Assessments. His decision must be reversed in all respects and this case remanded with directions to enter judgment for Grand Oaks.

B. PROXIMITY WAS EQUITABLY ESTOPPED TO DENY ITS OBLIGATION TO PAY THE ANNUAL ASSESSMENT.

Assuming, *arguendo*, Bees Resources properly executed and recorded the *Corrective Limited Warranty Deed* and also assuming, *arguendo*, the *Corrective Limited Warranty Deed* did not violate the *Grand Oak Covenants*, Proximity was estopped to deny it was required to pay its share of the Annual Assessments.[50] Proximity asserted the *Corrective Limited Warranty Deed* was valid and, in turn, properly absolved Proximity of any obligation to pay any amount of the Annual Assessments. (*Counterclaim*, paras. 4-6, *Proximity MSJ*, pp.1-2). Notwithstanding Proximity's assertions, even though the *Corrective Limited Warranty Deed* was issued on 16 July 2012 (ostensibly completely exempting Proximity from the *Grand Oaks Covenants*), Proximity, nevertheless, voluntarily, knowingly, and willingly paid its share of the Annual Assessments in 2012 and continued to do so through 2021, some nine years longer than Proximity now claims it was obligated.[51]

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50 Grand Oaks asserted its equitable estoppel argument in its response to Proximity's Counterclaim. (Reply, para. 7). This was a proper assertion of the equitable estoppel doctrine. *See generally* Companion Property and Casualty Insurance Company v. U.S. Bank National Association, 2015 WL 7568613, at *8 (D.S.C., 24 Nov. 2025) (*quoting* Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992) ("[T]he doctrine of waiver or equitable estoppel may be invoked as affirmative defenses to counterclaims . . . ."); Nash v. Tara Plantation Homeowners Association, Inc., 2010 WL 10080093, at **4-5 (S.C.App., 12 July 2010) (*per curiam*)). *See also* Buffington v. T.O.E. Enterprises, 383 S.C. 388, 392, 680 S.E.2d 289, 291 (2009).

51 Taking the Corrective Limited Warranty Deed to its most extreme, Proximity could have and, in fact, did assert, not only was Proximity not obligated to pay any Annual Assessments

In *Seabrook Island Property Owners Association v. Pelzer*, this Court of Appeals addressed an individual property owner's claim the POA had improperly assessed him fees for several years based on an incorrect formula and, in turn, the property owner "sought a refund of all assessments paid in excess of what was due under a proper method of assessment for the years 1976 through 1983."[52] While the Trial Court found for the POA on all claims, this Court of Appeals reversed on the assessments, but agreed the property owner was estopped to collect the excess assessments.[53] This Court of Appeals stated:

> As regards refund of payments from 1976 through 1983, the equities clearly favor the [POA]. The annual charges for those years were assessed in good faith. [The property owner] had constructive knowledge that the maintenance charges were not being assessed in accordance with the restrictive covenants and bylaws. Nevertheless, he acquiesced in the method of assessment and paid the charges. The [POA] expended the moneys for purposes authorized by the bylaws. [The Property Owner] received the benefit of those expenditures. He cannot now return the benefits or restore the [POA] to its former position.

made from 16 July 2012 forward, but since the Corrective Limited Warranty Deed was intended to correct the original transfer deed between Bees Resources and Grand Bees and exempt Proximity from the Grand Oaks Covenants from the very beginning, *nunc pro tunc*, then Proximity was ***never obligated*** to pay any of the Annual Assessments. (Counterclaim, pp.4-5, para. 9.d.; Proximity MSJ, p.2). Proximity could, therefore, argue it was entitled, by virtue of the Corrective Limited Warranty Deed, to be reimbursed for all of the Annual Assessments it paid from the first time onwards. This scenario shows, however the complete illogical and unworkable nature of the Corrective Limited Warranty Deed in the first instance. In any case, a refund of the previously paid Annual Assessments is prohibited. *See generally* Knightsbridge Property Owners Association, Inc. v. Nadeau, 2018 WL 2129859, at *1 (S.C.App., 9 May 2018) (*per curiam*).

52 Seabrook Island Property Owners Association v. Pelzer, 292 S.C. 343, 346-348, 356 S.E.2d 411, 413-414).

53 *Id.*, 292 S.C. 343, 347-348, 356 S.E.2d 411, 414.

> For these reasons, the [C]ircuit [C]ourt correctly held [the property owner] [wa]s estopped to claim a refund. If a party stands by and sees another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position, his silence is acquiescence and it estops him from later seeking relief.**54**

In *Nash v. Tara Plantation Homeowners Association, Inc.*, this Court of Appeals, in a case very similar to this one, addressed three property owners' declaratory judgment claims their respective properties were not encumbered by the covenants for the entire subdivision and, thereby, they were, *inter alia*, ***not obligated*** to pay the annual HOA Dues.**55** The Trial Court agreed with the HOA and this Court of Appeals affirmed, acknowledging:

> The doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury. The elements of equitable estoppel as to the party estopped are: (1) conduct amounting to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention or expectation that such conduct will be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The elements as to the party claiming the estoppel, are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.**56**

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54 *Id.*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (*citing* McClintic v. Davis, 228 S.C. 378, 90 S.E.2d 364 (1955). *See also generally* Knightsbridge Property Owners Association, 2018 WL 2129859, at *1; Nash v. Tara Plantation Homeowners Association, Inc., 2010 WL 10080093, at *5; Queens Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 358,, 368 S.E.2d 902, 911.

55 Nash, 2010 WL 10080093, at **1-2.

56 *Id.,* 2010 WL 10080093, at *5 (*citing* Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct.App. 2006); Southern Development Land & Golf Co. v. South Carolina Public Service Authority, 311 S .C. 29, 33, 426 S.E.2d 748, 750 (1993)).

Furthermore, this Court of Appeals noted:

> As stated above, the [property owners] paid dues, voted on [HOA] issues, and participated in meetings for years before asserting their lots were not bound by the Covenants. The [property owner]s had access to the same facts that give rise to their current contention they are not bound by the Covenants. During this time, the [HOA] maintained the entranceway to the subdivision with landscaping, lighting, and placement of a sign. Until [the property owners] brought this action in . . 2005, none of the [property owner]s took any action inconsistent with their lots being bound. The trial court held: The [HOA] was 'prejudiced by the [property owners'] delay by spending money and effort regarding the landscaping improvements, sign and lights adjacent to the [property owners'] properties, all of which implicitly considered the disputed lots as part of the subdivision and was done without any reason to believe such a contention would be made.' We find the evidence supports this finding. Accordingly, we find no error in the trial court's ruling that the [property owners] are estopped from or have waived their contention the Covenants do not apply to their lots.[57]

In this case, Proximity (or Grand Bees) paid the Annual Assessment, initially to Bees Resources and then to Grand Oaks, from Grand Bees' purchase and management of the real estate and the inception of the Proximity Neighborhoods Property[58] 's inception as a neighborhood, as well as certainly from July 2012 until 2022 when it unilaterally chose to stop. From July 2021 until 2022, Proximity "had access to the same facts that give rise to [Proximity's] current contention [it is] not bound by the *[Grand Oak] Covenants*[, but did not assert its non-obligation position until involved in this case]."[59] Moreover, during the 2012 to 2022 time frame, Grand Oaks "maintained the [Grand Oaks

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[57] *Id.*, 2010 WL 10080093, at *6.

[58] As noted before, the Proximity Neighborhoods Property was managed/controlled by Grand Bees, as well as a number of subsequent assigns and successors before Proximity assumed control in 2023. (Proximity Memo. MSJ, p.4, Exh. G; 11/16/2004 Supplemental Declaration, p.3).

[59] Nash, 2010 WL 10080093, at *6.

Boulevard] entranceway to the subdivision[, together with Ashley Gardens Boulevard, as well as], landscaping, lighting, and [maintenance and] placement of [signage]."[60] "Until [Proximity] brought [its counterclaim herein, Proximity failed to take] any action inconsistent with [Proximity] being bound [by the *Grand Oaks Covenants*]."[61] Consequently, Grand Oaks:

> . . . was [necessarily] prejudiced by [Proximity's] delay [in paying its share of the Annual Assessments] by spending money and effort regarding [maintenance of Grand Oaks Boulevard and Ashley Gardens Boulevard], landscaping improvements, sign[age,] and lights adjacent to [Proximity's] properties, all of which implicitly considered [Proximity's] disputed lots as part of the [overall Grand Oaks Plantation] subdivision and was [undertaken by Grand Oaks] without any reason [for Grand Oaks] to believe such a contention would be made [by Proximity]."[62]

Proximity's "[e]stoppel by silence arises where [Proximity] ow[ed] [Grand Oaks] a duty to speak [about the *Corrective Limited Warranty Deed*] refrain[ed] from doing so and thereby le[d] [Grand Oaks] to believe in the existence of an erroneous state of facts[, that Proximity would pay the Annual Assessments]."[63] Consequently, Proximity's "[s]ilence, whe[ther] it [wa]s intended, or when it [simply] ha[d] the effect of misleading a[nother] party, [such as Grand Oaks,] may [legitimately] operate as equitable estoppel."[64] Furthermore, "[t]here is no requirement that the person whose silence misleads another[, such as Proximity,] have actual knowledge of the true facts if circumstances are such that

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[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] Southern Development Land & Golf Co., 311 S .C. 29, 33, 426 S.E.2d 748, 751 (*citing* Ridgill v. Clarendon County, 192 S.C. 321, 6 S.E.2d 766 (1939)).

[64] *Id.*, (*citing* Welch v. Edisto Realty Co., 170 S.C. 31, 169 S.E. 667 (1933)).

knowledge [wa]s necessarily imputed to [Proximity].[65] This is the situation herein as Proximity, of course, would have had, at a minimum, constructive knowledge of the *Corrective Limited Warranty Deed* as it was in Proximity's chain of title.[66]

Proximity's own actions from 16 July 2012 until 2022 in paying the Annual Assessments to Grand Oaks without any reservations, restrictions, and/or objections effectively prevents Proximity from refusing to do so. Grand Oaks has expended funds in, among other things, maintaining Grand Oaks Boulevard and Ashley Gardens Boulevard, in continuing and maintaining the landscaping, and signage upkeep. Grand Oaks' expenditures have, both directly and indirectly, benefited Proximity. Grand Oaks had no way to assume Proximity would unilaterally cease its payments of the Annual Assessments in 2022 given Proximity's prior payment actions. Proximity was and remains equitably estopped from shirking its contractual responsibility to pay the Annual Assessment.

The Master-In-Equity incorrectly concluded equitable estoppel did not apply to compel Proximity to pay the Annual Assessment. His decision must be reversed in all respects and remanded with directions to enter judgment for Grand Oaks.

C. THE MASTER-IN-EQUITY SHOULD HAVE GRANTED GRAND OAKS RULE 59(e), *SCRCP*, MOTION.

After the Master-In-Equity issued his decision (*Order*, pp.1-6), Grand Oaks filed its *Motion to Alter or Amend Judgment* (*Recon. Mot.*, pp.1-4) requesting the Master-In-Equity to "alter or amend the Order so as to find and conclude" the various contentious issues

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65 *Id.*, (*citing Accord* Alwes v. Hartford Life & Accident Ins. Co., 372 N.W.2d 376 (Minn.App. 1985)).

66 *See* Oak Forest Homeowners Association, Inc. v. Dennison, 2025 WL 3772138, at * (S.C.App., 31 Dec. 2025) (*per curiam*).

differently than was done previously. (*Id.*). The Master-In-Equity refused and, by form order dated 7 August 2025, denied the motion. (*SCRCP Form 4 Order*, pp.1-3).. The Master-In-Equity's decision was incorrect and should be reversed in all respects.

" 'The purpose of Rule 59(e), *SCRC[iv]P*, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.' ' "[67] Furthermore, "it is proper to view a Rule 59(e), [*SCRCivP*,] motion not only as a vehicle to request the trial court 'alter or amend the judgment', but also as a vehicle to seek 'reconsideration of issues and arguments[since] [a] motion under Rule 59(e), [*SCRCivP*,] long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule."[68] "Consequently, a party [is encouraged by our appellate decisions] to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented."[69]

Grand Oaks presented substantial evidence showing Bees Resources did not have the legal and/pr contractual authority to execute the *Corrective Limited Warranty Deed* in 2012 since by operation of the *Grand Oaks Covenants* Bees Resources had lost that right of modification. The *Grand Oaks Covenants* required Bees Resources to transfer to Grand Oaks all rights to cancel, alter, modify, and/or change the *Grand Oaks Covenants* once Bees Resources conveyed out more than 50% of the developable

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67 Coward Hunt Construction Co., Inc. v. Ball Corp., 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct.App. 1999) (*quoting* Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (*quoting* Budinich v. Becton Dickinson & Co., 486 U.S. 196, 200 (1988)).

68 Elam v. South Carolina Department of Transportation, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

69 *Id.,* 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-779 (*citing* Arnold, 309 S.C. 157, 420 S.E.2d 834; Curcio v. Caterpillar, Inc.,355 S.C. 316, 585 S.E.2d 272 (2003); James Flanagan, South Carolina Civil Procedure, 474-475 (2d ed. 1996)).

acreage along Grand Oak Boulevard and Ashley Gardens Boulevard or of the tracts using Grand Oak Boulevard and Ashley Gardens Boulevard for principal access to the Bees Ferry Road. (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13). By sometime in 2007, Bees Resources had conveyed out more than 50% of the relevant acreage and transferred modification rights to Grand Oaks. (*Schumann Aff. II*, para. 2). The evidence showed in 2012 when Bees Resources executed the *Corrective Limited Warranty Deed* Bees Resources and no authority to do so as the ability to modify the *Grand Oaks Covenants* had 100% vested Grand Oaks in 2007. The *Corrective Limited Warranty Deed* never had any legal or contractual authority and was void *ab initio*. Grand Oaks was the only entity which possessed the authority to issue the *Corrective Limited Warranty Deed* and clearly did not do so.

Even if Bees Resources had the legal and/or contractual authority to issue the *Corrective Limited Warranty Deed* the document still was without effect and void as a matter of contractual law since the *Corrective Limited Warranty Deed* violated the *Grand Oaks Covenants*' very terms and conditions. The *Grand Oaks Covenants* prohibited any modification and/or alteration/change to the *Grand Oaks Covenants* which had the effect of imposing additional assessments upon any owner of property covered by and/or subject to the *Grand Oaks Covenants* without such owner's express written consent. (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13). The *Corrective Limited Warranty Deed* exempted Proximity, the largest neighborhood in Grand Oaks Plantation, from having to pay the Annual Assessment. Consequently, any shortfall in Grand Oaks' annual budget - used to compute each neighborhoods' and/or entities' respective *pro rata* share – would then fall on all of the other involved

neighborhoods and entities thereby imposing additional assessments. There was no evidence Bees Resources solicited any such written consents from the effected property owners or that such written consents were ever provided. The *Corrective Limited Warranty Deed*, even if Bees Resources had the authority to issue is in the first instance, was without any force and effect in any case.

Grand Oaks presented substantial evidence showing the *Grand Oaks Covenants* obligated property owners, like Proximity, to pay the Annual Assessments when those property owners' real estate either (a) adjoined, bordered, and/or abutted Grand Oaks Boulevard or Ashley Gardens Boulevard or (b) which used Grand Oaks Boulevard or Ashley Gardens Boulevard as the property's principal access to and from Bees Ferry Road. While Proximity argued the Proximity Neighborhoods Property's principal access to Bees Ferry Road was via Proximity Drive, the evidence showed (*Schumann Aff. I*, para. 4) and Proximity conceded the Proximity Neighborhoods Property adjoined, bordered, and/or abutted Ashley Garden Boulevard. (*Proximity RFA Answers*, No. 3; *Proximity Memo. MSJ*, pp.3, 5, Exh. C).

Proximity was contractually obligated to pay its *pro rata* share of the Annual Assessments due to its property abutting, bordering, and/or adjoining Grand Oaks Boulevard or Ashley Gardens Boulevard. The *Grand Oaks Covenants* did not specify the degree and/or percentage of the effected owners' property which had to border, adjoin, and/or abut Grand Oaks Boulevard or Ashley Gardens Boulevard. All the *Grand Oaks Covenants* provided was that the effected owners' property simply border, adjoin, and/or abut Grand Oaks Boulevard or Ashley Gardens Boulevard. Undisputedly, Proximity's' property did so. (*Proximity RFA Answers*, No. 3; *Proximity Memo. MSJ*, pp.3, 5, Exh. C).

The Master-In-Equity should have granted Grand Oaks' Motion to Alter or Amend as the evidence clearly demonstrated Grand Oaks was entitled to judgment as a matter of law. This Court of Appeal's should reverse the Master-In-Equity's decisions in all respects.

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Appellant, Grand Oaks Boulevard Association, Inc., respectfully requests this Court of Appeals to reverse the Master-In-Equity in all respects and remand this matter back with directions to enter judgment for Grand Oaks.

Respectfully submitted:

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