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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2026-000690
Case No. 2024-CP-07-00156

Queens Grant Regime, II, Inc., Horizontal Property Regime, ... Respondent,

vs.

Greenwood Resorts and Communities, Inc. d/b/a Palmetto Dunes Resort and Callaway Brands, Inc. d/b/a Top Tracer Golf, ...Appellants,

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APPELLANTS GREENWOOD RESORTS AND COMMUNITIES, INC. D/B/A PALMETTO DUNES RESORT AND CALLAWAY BRANDS, INC. D/B/A TOP TRACER GOLF'S PETITION FOR SUPERSEDEAS

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rule 241 of the South Carolina Appellate Court Rules, Appellants Greenwood Resorts and Communities, Inc., d/b/a Palmetto Dunes Resort and Callaway Brands, Inc., d/b/a Top

Tracer Golf, by and through its undersigned counsel, submits this Motion for Stay or Supersedeas of the trial court's February 13, 2026, Order Granting Temporary Injunctive Relief and Setting Rule 65(c) Bond and/or the March 30, 2026 Amended Order Granting Temporary Injunctive Relief and Setting Rule 65(c) Bond, and in support thereof states the following:

FACTS/PROCEDURAL BACKGROUND

1. Respondent alleges that Appellants' operation of a golf course driving range on Hilton Head Island (Beaufort County), South Carolina allows golf balls to pass onto Respondent's property, resulting in trespass, property damages, and an unreasonable risk of physical injury. Respondent seeks monetary damages and injunctive relief.
2. The driving range was built in 1967. Respondent's condominiums were constructed on property adjacent to the driving range seven years later in 1974.
3. Respondent alleges that prior to 2021, the driving range and condominiums coexisted peacefully, with only a marginal number of golf balls exited the range boundary. Appellant

estimates about five balls a day would exit the range boundary.

4. In 2021, Appellants incorporated Toptracer technology into the driving range, which uses image sensors to track golf balls in flight and provide users with more data and a platform for virtual games and training modes. Respondent alleges, without qualification or verification, that this has attracted a larger crowd to the driving range, including serious, casual, and first-time golfers and, as a result, has increased the number of errant shots that exit the range over the protective netting.

5. In response to Respondent's complaints, Appellants took numerous measures and precautions to limit the number of errant golf balls that pass onto Respondent's property, including:

    a. raising the height of the netting that borders the properties from fifty (50) to seventy (70) feet in October 2021, at a cost of $373,000;

    b. installing new "tee-less" hitting mats to limit a hitter's ability to hit an errant golf ball onto Respondent's property in May 2022, at a cost of $12,681; and

c. replacing their range balls with “Flight Restricted” golf balls in March 2023, at a cost of $28,000.

(See **Exhibit 1**, Second Affidavit of Alex Franseen, ¶ 4.)

6. As a result of these changes, errant golf balls passing onto Respondent’s property dropped by roughly 80%. Nevertheless, Respondent filed suit on January 23,2024, seeking monetary damages and a permanent injunction requiring Appellants to cease operations and, on January 24, 2024, Respondent filed a Motion for a Temporary Restraining Order. (See **Exhibit 1**, ¶ 3, Exhibit A thereto.)

7. A hearing was held on Respondent’s Motion for Temporary Restraining Order in 2024 and the trial court indicated that it would not shut down Appellants’ business but agreed that more needed to be done to reduce the number of errant golf balls and ordered the parties to mediation. A December 2024 mediation between the parties resulted in an impasse.

8. Afterward, Appellants sent Respondent a written, detailed post-mediation settlement proposal outlining additional steps Appellants could take to further reduce errant golf balls. (See **Exhibit 2**, 2/27/2025 Proposal.) Respondent did

not respond to Appellants, did not offer any counterproposal or settlement terms, and instead sought injunctive relief.

9. On December 9, 2025, **three days before a reconvened hearing on Respondent's Motion for TRO**, Respondent filed an Amended Motion altering the relief sought from a TRO to a Preliminary Injunction. (See **Exhibit 3**, Plaintiff's Amended Motion for TRO and/or Temporary Injunction.) Appellants were not given the ten (10) day notice required by Rule 6(d), SCRCP, and the trial court heard Respondent's Amended Motion over Appellants' objection.

10. The trial court granted Respondent's Motion and, on February 13, 2026, entered an Order Granting Temporary Injunctive Relief and Setting Rule 65(c) Bond requiring Appellants to cease certain operations relating to the driving range for a period of sixty (60) days beginning on January 15, 2026 (and ending on March 15, 2026). (See **Exhibit 4**, 2/13/2026 Order.) During that period, the Court dictated that Appellants were to submit a plan to the trial court outlining modifications to the design and operation of the driving

range to allow operations to resume without continued trespass, damage, or danger. (See id.)

11. The February 13 Order further required Respondent to post a Rule 65(c), SCRCP, bond in the amount of seventy-five thousand dollars ($75,000.00) and was to take immediate effect upon the payment of the bond. (See id.)

12. By March 14, 2026, which was a day before the suspension period (as written within the subject order) was to end, Appellants served and filed a Notice of Appeal with the South Carolina Court of Appeals seeking review of the February 13 Order. At that point, no bond had been posted and the Order was not operative. Appellants served and filed its Notice of Appeal in the abundance of caution.

13. On March 20, 2026, four days after the day the sixty (60) day period expired, Respondent filed with the trial court a Notice of Posting Injunction Bond. (See **Exhibit 5**, Plaintiff's Notice of Posting Injunction Bond.) Contemporaneously, Plaintiff also filed a Motion to Modify the February 13 Order pursuant to Rule 62, SCRCP. (See

Exhibit 6, Plaintiff's Rule 62(c) Motion to Modify Clerical Error on February 13, 2026, Order Granting Temporary Relief.) In its Motion, Respondent argued that the February 13 Order contains a "clerical error" and requested the trial court alter the effective date of the temporary injunction from January 15, 2026, to March 30, 2026. (See id.)

14. On March 30, 2026, the trial court entered an Amended Order Granting Temporary Injunctive Relief and Setting Rule 65(c) Bond, ordering that the sixty (60) day suspension period now began on March 20, 2026, and would run until May 19, 2026. (See **Exhibit 7**, 3/30/2026 Amended Order.)

LAW/ANALYSIS

15. Appellants respectfully request this Court grant its Petition for Supersedeas and stay the February 13 and/or March 30 Orders and prevent the trial court from further extending or otherwise modifying the order until such time as the issues raised by Appellants in their appeal may be resolved to prevent any unlawful curtailment of Appellants' business operations.

16. While Rule 241(a) of the South Carolina Appellate Court Rules generally provides for an automatic stay of matters decided in the order on appeal, Rule 241(b)(8) provides that orders granting an injunction are not subject to the general rule.

17. In cases subject to an exception, Rule 241(c), SCACR, allows for a party to move for an order imposing a supersedeas of matters decided in the order on appeal. While applications for supersedeas are generally first made to the lower court, a party may seek relief from the appellate court when extraordinary circumstances make it impracticable to first seek relief from the lower court. See Rule 241(d)(1), SCACR. Any unnecessary delay by the lower court shall constitute an extraordinary circumstance. Id.

18. In determining whether to issue an order pursuant to Rule 241, the appellate court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. "The purpose of a supersedeas is to stay

proceedings in the trial court, to preserve the status quo pending the determination of the appeal, and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." Graham v. Graham, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (quoting 83 C.J.S. Supersedeas § 8 at 896 (1953)). The granting of this relief under the Rule does not affect the validity of the order until the order is reversed or modified by the appellate court. See Rule 241(c)(4), SCACR.

19. Appellants submit that a petition for supersedeas to the trial court would be impracticable due to the delay already extant, as evinced by the trial court in entering the February 13 and March 30 Orders. Moreover, the trial court has already determined that a temporary injunction is appropriate, a conclusion Appellants are currently seeking review, and asking the trial court to put a stay on itself before Appellants seek redress with this Court would be impracticable.

20. Appellants further submit that supersedeas is necessary to preserve the jurisdiction of the appeal due to the fact that the suspension period would have run its course, provided the suspension period is not further extended by the trial court, and damage to Appellants would be done, before initial briefing is completed.

21. At this juncture, the status quo is for Appellants to continue operating its driving range, and Appellants are entitled to supersedeas to preserve the fruits of a meritorious appeal that will otherwise be lost. See Graham, 301 S.C. at 130, 390 S.E.2d at 470.

22. As a result of the February 13 and March 30 Orders, Appellants face the unlawful curtailment of its business operations which will most certainly result in significant losses. By virtue of The Masters, The Heritage, and spring break, this period of time (April) is one of the busiest times of year for Appellants. Jobs at Appellants' golf operations are at stake.

23. As previously stated, Appellants have already spent over $413,000 to reduce the number of errant golf balls entering Respondent's property. Further extension of the height of the netting is estimated to cost between $800,000 and $1,000,000.

24. In comparison, Respondent has claimed roughly $40,000 in property damage as a result of errant golf balls over the last four years. A question has been previously posed if Respondents' averments are appropriate based on an argument of standing (i.e., Any property damage claims that may exist for individual homeowners arguably cannot be asserted by the regime – these would be claims to be asserted by the individual homeowners themselves. This is not a class action).

25. The projected financial impact of the February 13 Order on Appellants was estimated to be substantial. Appellants have submitted sworn testimony regarding the effect of any injunction on their operations. The projected impact of the March 30 Amended Order is significantly worse because it

would impose the suspension period during prime golf season. Significantly more rounds of golf are played in the spring owing to warmer weather, spring break, the Masters Tournament, and the Heritage Tournament (scheduled for April 13-19, 2026).

26. The driving range which the trial court seeks to enjoin from operating employs the equivalent of seven (7) full-time employees and, in the first half of 2025, generated a total of $359,325 in revenue. The trial court's Orders would put seven (7) people out of work for two months and cost Appellants in excess of $120,000 in lost revenue.

27. Appellants submit that the closure of the driving range would also have a substantial negative impact on the entirety of its business operations due to golfers electing not to play at Appellants' course as a result of the lack of access to the driving range. Appellants' golf course averages more than 5,000 rounds of golf played a month and, in the first half of 2025, generated $3,047,000 in revenue.

28. Appellants face additional losses and damages due to: already-paid costs for advertising for a facility that would be closed, increased expenses for call center call volume to field inquiries and complaints about the driving range being closed, the impact of negative Google and golf course reviews, and the costs associated with updating the website and booking platform.

29. Again, the trial court's Amended Order would have an even greater negative impact on Appellants by impairing prime golf season.

30. While Appellants will file appellate briefs with this Court fully fleshing out the reasons why the trial court's Orders must be reversed, Appellants would show as further and additional grounds in support of this Petition, that the issuance of the temporary injunction was improper for the following reasons:

    a. <u>This case is now over two years old and is within months of trial. Not to mention the fact that Respondent first became aware of the increase in errant golf balls in 2021. The time for exigency has come and gone. At this point, the injunction is</u>

purely punitive. *See Quince Orchard Valley Citizens Ass'n v. Hodel*, 872 F.2d 75, 79–80 (4th Cir. 1989) ("Since an application for preliminary injunction is based upon an urgent need for the protection of [a] Plaintiff's rights, a long delay in seeking relief indicates that speedy action is not required.")

b. Appellants did not have proper notice that Respondent was seeking a completely different type of relief with a different standard and offering different relief and the trial court erred in proceeding. See Rules 65(a) and 6(d), SCRCP.

c. The trial court's Orders lack the necessary analysis and conclusions required of an order granting temporary injunctive relief. Indeed, the very purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. See Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). More specifically, when seeking a preliminary injunction, "the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." See id. The trial court's Orders fail to explain why an injunction is necessary to maintain the status quo, does not address how Respondent will suffer immediate, irreparable harm in spite of the uncontested facts showing that Appellant has already reduced the number of errant golf balls to roughly the pre-2021 levels; completely fails to address whether Respondent is likely to succeed on the merits, and completely fails to explain how any available legal remedy is inadequate. Consequently, the trial court's Orders are controlled by errors of law and factual conclusions without evidentiary support and must be reversed due to an abuse of discretion. See Zabinski v.

Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001) (The granting of temporary injunctive relief is within the sound discretion of the trial court and will not be overturned absent a controlling error of law or factual conclusions without evidentiary support); see also Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.").

d. Appellants' losses will number in the hundreds of thousands of dollars, if not more. Nevertheless, the trial court found that a "low or nominal bond" of $75,000 is appropriate, a conclusion that lacks evidentiary support. See Rule 65(c), SCRCP; Zabinski, 346 S.C. at 601, 533 S.E.2d at 121.

31. The foregoing gives rise to a tenable basis for reversal and supports supersedeas at this time.

32. Appellants respectfully request this Court grant its Petition for Supersedeas and stay the February 13 and March 30 Orders and prevent the trial court from further extending or otherwise modifying the order until such time as the issues raised by Appellants in their appeal may be resolved to prevent any unlawful curtailment of Appellants' business operations.

33. **In addition, because of the prospective severe effects of the injunction, Appellants request that they be able to maintain normal operations until this Court can dispose of this Petition**.

WHEREFORE**,** Appellants respectfully request that this Court enter an order staying or imposing a supersedeas of the February 13, 2026, Order Granting Temporary Injunctive Relief and Setting Rule 65(c) Bond and March 30 Amended Order Granting Temporary Injunctive Relief and Setting Rule 65(c) Bond.

The facts presented in this petition are supported by sworn affidavit and, therefore, this petition is verified in accordance with Rule 241(d)(3), SCACR.

Respectfully submitted,

COLLINS & LACY, P.C.

By: *s/Christian Stegmaier*

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APPELLANTS GREENWOOD RESORTS AND COMMUNITIES, INC. D/B/A PALMETTO DUNES RESORT AND CALLAWAY BRANDS, INC. D/B/A TOP TRACER GOLF'S PETITION FOR SUPERSEDEAS

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PROOF OF SERVICE

I hereby certify that I have served **APPELLANTS GREENWOOD RESORTS AND COMMUNITIES, INC. D/B/A PALMETTO DUNES RESORT AND CALLAWAY BRANDS, INC. D/B/A TOP TRACER GOLF'S PETITION FOR SUPERSEDEAS** upon all parties by electronic mail to the below listed counsel on March 30, 2026, at the following address:

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[SIGNATURE PAGE FOLLOWS]

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