THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge
Case No.: 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust
dated October 12, 2010, as amended .....….Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association ..... Respondents.

RESPONDENT'S INITIAL BRIEF

Douglas W. MacKelcan, Esq.
Skyler C. Wilson, Esq.
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Ph: (843) 727-0307
Attorneys for Respondents

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STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err in granting summary judgment based on the statute of limitations when the evidence established no genuine issue of material fact that Appellant was or should have been aware of the facts giving rise to his claims over disputed parking allocation in 2014 and 2015 but did not file suit until 2019?

II. Did the Circuit Court err in granting summary judgment when there was no genuine issue of material fact that Adesso's current commercial parking space allocation complied with the Master Deed and Adesso PUD?

III. Should this Court reverse the circuit court's ruling on the effect of a 2017 settlement agreement Appellant signed when the circuit court's ruling pertained to defendants who are not Respondents, and the ruling has no impact on Respondents' summary judgment?

STATEMENT OF THE CASE

Appellant asserts the homeowner's association—of which he is a member owning multiple commercial units—violated city zoning ordinances and the governing documents by misallocating parking spaces for his units. He also alleges he was wrongfully assessed amounts on his commercial units. Appellant purchased the units in December 2014 with no due diligence when the parking conditions existed four years before filing suit. The circuit court correctly determined Appellant's claims were barred by the three-year statute of limitations, and that he was accurately assessed under the homeowner's association's governing documents.[1] This Court should affirm.

STATEMENT OF FACTS

The Adesso is a mixed-use development comprising 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements. **Amd. Compl. at ¶ 9-10**. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201. ***Id.*** Holder Properties, Inc.

[1] Appellant does not appear to challenge on appeal the issue of charging assessments to his units, which Respondents argues below. Nevertheless, Respdonent includes those facts in its Statement of the Case to ensure the Court is aware of those facts and rulings below.

(Holder) developed the Adesso. **Amd. Compl. at ¶ 11**. On January 14, 2008, Defendant ADESSO/Columbia, LLC—as then-owner of the Adesso—recorded the Master Deed. ***Id.* at ¶ 2**. The Master Deed established the Adesso Horizontal Property Regime and created the Association to, among other things, manage the Regime's affairs, prescribe rules for the use of the Regime's General Common Elements, **MISO MSJ Ex. 3 (Adesso Master Deed), p. 20 at § XV**, and to "maintain[], repair[], and replace[] all of the General and Limited Common Elements…". ***Id.* at § XXII.**

Moreover, the Association acting through its Board of Directors has the authority "[t]o make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association." **MISO MSJ Ex. 4 (Adesso Bylaws) at § 4(j)(i).** Generally, when calculating annual assessments to unit owners each owner is assessed an amount for his or her share of the Association's expenses equal to the share of the interest his or her unit bears in relation to the entire undivided interest of the Regime. **MISO MSJ Ex. 5 (Affidavit of C. Michael Munson) at ¶¶ 9-10.** Appellant's Commercial Units comprise a total 8.54279% interest in the total undivided interest of the Regime. ***Id.* at ¶ 11**. However, when creating annual assessment budgets for the Adesso, the Master Deed also requires:

> [S]eparate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; likewise, costs, expenses, and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units…

MISO MSJ Ex. 3 at § V(A)(3)(iii).

Additionally, the Master Deed identifies certain Limited Common Elements benefitting either Residential and Commercial Units, or solely Commercial Units. **MISO MSJ Ex. 5 at ¶¶ 14-15.** "Retail Parking Spaces as identified in Exhibit 'C' [to the Master Deed] shall be Limited Common Elements, limited to the use of the Commercial Unit it/they serve. Such spaces shall be marked with identification information designating the limited use of such…[and]…may not be reassigned and shall remain a Limited Common Element relating to the Commercial Unit." **MISO MSJ Ex. 3 at § V(C)(5).** Notwithstanding this provision, ADESSO/Columbia, LLC, with the consent and joinder of the required number of unit owners, recorded a certain Fourth Amendment to Master Deed of Adesso Horizontal Property Regime (Fourth Amendment) on April 22, 2013. **MISO MSJ Ex. 6**. On April 23, 2013, Holder, as developer, relinquished control of the Association to the condominium owners. **MISO MSJ Ex. 1 at ¶ 85.**

In contravention of the Master Deed, the Fourth Amendment reassigned the Retail Parking Spaces—specifically spaces numbered 001-017, 108, 157, and 220-221—either to the use of both Commercial and Residential guests, or as leased spaces to the United States Marine Corps and one Adesso resident. **MISO MSJ Ex.6 at pp. 6-7.** Further, the reassignment of the Retail Parking Spaces violated the commercial parking requirements established by the governing zoning ordinance, the Adesso Planned Unit Development (PUD), as amended by letter of Holder Properties, Inc. dated January 24, 2008 (January 2008 PUD Amendment). **MISO MSJ Ex. 7** (Deposition of Rachel Lynn Bailey), **Pltf.'s Ex. 5.** Per the January 2008 PUD Amendment, the Adesso Commercial Units were required to have a total of at least twenty-six (26) dedicated parking spaces, with nineteen (19) restricted access spaces within the building itself, and seven (7) spaces located along Main and Blossom Streets. **MISO MSJ Ex. 7 (Bailey Depo. Tr. 51:1-12)**. The January 2008 PUD Amendment also provided a formula to calculate the required number of

parking spaces based upon future increases or decreases in the Commercial Units' square footage. ***Id.*** **(Bailey Depo. Tr. 128:25-129:15**). The Adesso PUD, as amended, rather than general City of Columbia zoning ordinances controls the parking requirements for the Adesso. ***Id.*** **(Bailey Depo. Tr. at 98:24-25, 99:1-12)**.

Appellant purchased the Adesso Commercial Units on December 5, 2014. **MISO MSJ Ex. 2 at ¶ 16.** He did not purchase the properties from Respondents or Holder. Instead, Appellant purchased them from Ford Elliott. **MISO MSJ Ex. 8 (Tadros Depo. Tr. at 169:17-19)**. Appellant is a sophisticated and well-educated physician who holds a board certification in psychiatry from the American Board of Psychiatry and Neurology and has been in private practice since 1993. ***Id.*** **(Tadros Depo. Tr. at 9:12-15).** Additionally, by 2014, Appellant possessed significant prior experience with commercial real estate acquisitions, having previously acquired four (4) commercial properties—three of which were acquired for investment purposes. ***Id.*** **(Tadros Depo. Tr. at 13:23-15:14).**

However, despite his prior experience, Appellant did not personally inspect the Commercial Properties or review any of the recorded documents relating to the Adesso development prior to his purchase. ***Id.*** **(Tadros Depo. Tr. at 66:21-67:1; 89:24-90:7)**. Appellant did not actually visit the Adesso Commercial Units until late 2016 or early 2017—between two and three years after his purchase of the units. ***Id.*** **(Tadros Depo. Tr. at 229:19-230:2)**. Appellant did not personally communicate with Respondents at all prior to purchasing the Commercial Units. ***Id.*** **(Tadros Depo. Tr. at 125:17-25, 127:15-19)**. Moreover, Appellant's professional advisor did

not communicate with Respondents about the transaction. ***Id.*** **(Tadros Depo. Tr. at 126:3-5; 127:2-5, 7-11; 129:17-25).**[2]

On March 4, 2015, Appellant was notified by a representative of Holder—which provided property management services to the Association until May 2016—that a lottery would be held among the Adesso owners to determine leasing rights for three of the Adesso Commercial Parking Spaces. ***Id.*** **(Tadros Depo. Tr. at 90:12-19)**. Appellant was informed that such rights would be sold to the highest bidder. ***Id.*** The Adesso Master Deed specifically prohibits the leasing of the Commercial Parking Spaces in this manner. ***Id.*** **(Tadros Depo. Tr. at 90:20-22)**. Appellant further testified that had he known this at the time, he would not have agreed to lease the parking spaces. ***Id.*** **(Tadros Depo. Tr. at 88:10-89:17).** Additionally, in March 2015, Appellant was notified by one of his tenants—the United States Marine Corps Recruiters—of issues relating to the allocation of Commercial Parking Spaces at the Adesso. ***Id.*** **(Tadros Depo. Tr. at 91:5-92:7).** Specifically, the Marines informed Appellant of their intent to vacate their leased recruiting center space Appellant was not able to secure parking for them. ***Id.***

Despite being made aware of the Marines' complaints regarding parking, as well as being required to lease back Commercial Parking Spaces almost immediately after he took ownership of the Commercial Units, Appellant took no action to investigate the parking requirements of the Adesso Master Deed or the Adesso PUD until 2017. ***Id.*** **(Tadros Depo. Tr. at 92:8-12)**. Similarly, Appellant paid assessments to the Association for two (2) years, without taking any action to determine or investigate their propriety under the Adesso governing documents until around February 15, 2017. ***Id.*** **(Tadros Depo. Tr. at 37:18-24; 130:23-132:3).** Around that time,

[2] Appellant brought a negligence action in Richland County against his former advisor regarding the purchase of the Adesso Commercial Units, which he settled and is no longer pending. *See Tadros v. Elliott & Lathan Properties, LLC, et al*, Case No.: 2017-CP-40-07120.

Appellant believed that the assessments being charged to his Commercial Units violated the Master Deed, and although Appellant has failed to specifically identify what he believes is a proper formula for calculating such assessments, he determined any such formula by speaking with his tenants regarding their usage of the Adesso building. ***Id.*** **(Tadros Depo. Tr. at 132:4-7).**

Appellant did not file this action until February 14, 2019—over four (4) years after his purchase of the Adesso Commercial Units. Appellant asserts causes of action for: (1) Negligence/Gross Negligence; (2) Breach of Master Deed; (3) Declaratory Judgment; (4) Injunctive relief; (5) Violation of the South Carolina Unfair Trade Practices Act; (6) Negligent Misrepresentation; and (7) Constructive Fraud. **Compl.**

After extensive discovery, Respondents moved for summary judgment, arguing the claims should be dismissed based on the applicable statute of limitations, that Respondents accurately assessed Appellant, Respondents made no false representations to Appellant, and that the parking spaces available to Appellant comply with the Master Deed and city zoning. **12.28.20 MSJ; MISO MSJ**. In addition, Appellant agreed to withdraw the SCUTPA claim. ***Id.*** After a hearing on January 7, 2021, the circuit court granted Respondents summary judgment on July 15, 2021, agreeing with nearly all of Respondents' arguments. **7.15.21 Order**. The court's formal order followed on September 21, 2021. **9.21.21 Order**. Appellant timely moved to reconsider, which was denied. ***See*** **10.1.21 Mtn. to Rec.; 9.19.22 Order**. Appellant subsequently noticed this appeal.

On appeal, Appellant asserted errors with the transcript of the summary judgment hearing required a new summary judgment hearing, which the Court of Appeals denied but remanded for reconstruction. **11.6.23 Order.** Judge Newman held two hearings on reconstruction, resulting in a December 1, 2025 Order reconstructing the record. **12.1.25 Order.**

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56, SCRCP." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003) (quoting Rule 56(c), SCRCP). "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" *Grimsley v. S.C. L. Enf't Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)).

A party opposing a motion for summary judgment may not rest on mere allegations or denials contained in their pleadings and must do more than show "there is some metaphysical doubt as to the material facts." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Rather, they must set forth specific facts showing that there is a genuine issue of material fact. *Id.*; *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301-302 (2023) (holding the "mere scintilla" standard does not apply under Rule 56(c), SCRCP, and that the opposing evidence must instead present a "meaningful factual basis" of the critical issue).

ARGUMENT

As a threshold matter, it appears that Appellant is only appealing the issue related to parking allocation, as opposed to the calculation and charging of assessments. Appellant

references in the statement of issues on appeal only specifically the parking allocation issue. *See* **App. Br. at 4.** In addition, Appellant's arguments on the statute of limitations and merits of his claims (first two issues) pertain only to the parking allocation issue and not the charging of assessments. **App. Br. at 8-10** (arguing the court should not have granted summary judgment based on statute of limitations on the parking allocations claim); **App. Br. at 10-11** (arguing the court erred in resolving disputed factual issues on parking allocation).

Because Appellant did not include the assessment charging as an issue in the statement of issues on appeal, this Court need not consider it and the circuit court's decision on that issue should be affirmed. *See* Rule 208(b)(1)(B), SCACR (stating no point will be considered that is not in the statement of issues on appeal). Further, because Appellant did not include arguments on the assessment charging issue, it is abandoned. *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) (finding issue of motion to strike damages abandoned on appeal for lack of argument on the issue in brief, even if noted in statement of issues on appeal). Respondent addresses below Appellant's arguments on the parking allocation issue.

I. The circuit court correctly granted summary judgment based on the statute of limitations and did not toll the statute because there was no genuine dispute of material fact that Appellant actually knew of the issues outside of the statute of limitations and Respondents did not prevent Appellant from filing suit.

The circuit court granted Respondents summary judgment because there was no genuine issue of material fact that Appellant knew or should have known of the facts giving rise to his claims outside of the three-year statute of limitations. The circuit court also noted equitable tolling was not applicable to toll the statute of limitations. **9.21.21 Order at 9.** Appellant argues both rulings were in error. This Court should affirm.

A. Appellant was on constructive notice of facts giving rise to his claims in 2014, and had actual knowledge of parking allocation issues in 2015, both of which are outside of the statute of limitations.

The circuit court found that Appellant could have discovered his parking space and assessment claims by as early as December 2014 when he purchased his units, and by no later than March 2015 when his tenants raised parking issues. **9.21.21 Order at 8.** The court held there was no genuine issue of material fact that Appellant "had at least constructive knowledge of the existence of his potential parking-and-assessment-related claims by no later than March 2015." **9.21.21 Order at 10**. Appellant argues that circuit court erred in granting summary judgment that he should have known in 2014 when he purchased his units because the record contains evidence demonstrating he did not discover alleged violations until years later. **App. Br. at 8**. Appellant also asserts that summary judgment was improper based on communications from Adesso and zoning officials regarding parking in 2015, 2017 and 2018. **App. Br. at 8-9**. The circuit court correctly granted summary judgment.

"[A]n action upon a contract, obligation, or liability, express or implied," must be brought within three years of the date on which the cause of action accrues. S.C. Code Ann. § 15-3-530(1). A cause of action accrues at the time a person knew or, by exercise of reasonable diligence, should have known that he had a cause of action. The objective test is whether a person of common knowledge and experience should have known the operative facts. *Wilson v. Shannon*, 299 S.C. 512, 519, 386 S.E.2d 257, 258 (Ct. App. 1989). A statute of limitations analysis requires "very little to start the clock." *Maher v. Tietex Corp*., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting *Roe v. Doe* 28 F.3d 404, 407 (4th Cir. 1994)). Whether the plaintiff understands the full extent of the damages is immaterial to the issue of whether the statute begins to run. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). Furthermore, the statute begins

to run on the date the plaintiff discovered or should have discovered the injury, not on the date that the plaintiff discovers the identity of the wrongdoer. *Tollison v. B & J Machinery Co., Inc*., 812 F. Supp. 618, 620 (D.S.C. 1993).

"Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts. Therefore, this person is presumed to have actual knowledge of the undisclosed facts." *Spence v. Spence*, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) (citing *Strother v. Lexington County Recreation Com'n*, 332 S.C. 54, 64 n.6, 504 S.E.2d 117, 122 n. 6 (1998)). Moreover, "constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world." *Id*. The recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. *Spence*, 368 S.C. at 119, 628 S.E.2d at 876; *see Epps v. McCallum Realty Co.*, 139 S.C. 481, 499, 138 S.E. 297, 303 (1927) ("[R]ecording amounts to notice, whether known or unknown, because the means of information are at hand.").

Appellant filed suit on February 14, 2019. Thus, if he knew or should have known about the facts giving rise to his claims before February 14, 2016, his claims are barred by the statute of limitations.

The circuit court did not err in finding no genuine issue of material fact that Appellant was on constructive notice of facts giving rise to his claims as early as when he first purchased his Units in December 2014. The statute of limitations is triggered under the discovery rule if Appellant "should have known" of the facts giving rise to his claims. There is no genuine issue of

material fact that Appellant should have known of the facts giving rise to his parking allocation claims when he purchased the units. The Adesso Master Deed was publicly recorded on January 14, 2008. The January 2008 Amendment to the Adesso PUD, which is also a public record, was submitted to the City of Columbia Zoning Department and approved in 2008. Both documents control the allocation of Commercial Parking Spaces at the Adesso. Additionally, the Fourth Amendment to the Adesso Master Deed was recorded on April 22, 2013. These documents were all of matters of public record at the time Appellant purchased the Commercial Units in December 2014 and establish no genuine issue of material fact that he was on constructive notice when he purchased his Units, which is outside the three-year statute of limitations.

Furthermore, setting aside constructive notice, had Appellant or his agent exercised reasonable diligence in connection with the Commercial Units purchase, they would have examined the publicly-available Adesso PUD documents—including the 2008 PUD Amendment—and would have been able to determine the Fourth Amendment's allocation of Commercial Parking Spaces violated the zoning requirements of the Adesso PUD. Importantly, Appellant testified that after he eventually read the documents, he understood how he might have parking allocation claims, supporting a determination there was no genuine dispute he "should have" been aware of the facts giving rise to his claims when he purchased his Units. Appellant testified that he understood the Fourth Amendment violated the Master Deed in allocating Commercial Parking Spaces (**Tadros Depo. Tr. 62:10-63:15**), and that he was also able to determine the allocation of spaces at the Adesso violated the 2008 PUD Amendment. **Tadros Depo. Tr. 70:16-71:3**.

His lack of actual knowledge as of 2014, however, is inconsequential because the discovery rule requires acting with due diligence. The record is clear that Appellant did not actually exercise

any due diligence prior to purchasing his Units—he did not inspect the Units (**Tadros Depo. Tr. 66:21-67:1**), he did not review any recorded documents (**Tadros Depo. Tr. 89:24-90:7**), and he did not communicate with Respondents (**Tadros Depo. Tr. 125: 23-25, 127: 15-19**). If he had reviewed this information prior to purchase, he would have been aware of the facts giving rise to his claims.

In sum, whether by constructive notice or if Appellant had executed due diligence, Appellant would have known at the time he purchased his Units in December 2014 of facts giving rise to the claims he asserts in this lawsuit. Because December 2014 is more than three years before he filed suit (February 2019), Appellant's claims are barred.

The circuit court did not err in finding Appellant knew or should have known of his claims in 2015, when one of his tenants complained about commercial parking allocation. Notably, Appellant appears to admit this fact in his brief: "the evidence shows that the parking issues became apparent only after complaints from Appellant's tenant in **2015**." **App. Br. at 8**. Because he admits the issues were apparent in 2015 and that more than three years before he filed suit, the claims are barred by the statute of limitations.

Even if disputed, there is no genuine issue of material fact that Appellant was aware of the parking allocation issues in March 2015. Appellant admitted in his deposition he had actual knowledge in early 2015 of parking-related issues raised by both Holder and the Marines. **Tadros Depo. Tr. 88: 10-89:17; 90:12-19; 91:5-92:7**). Had Appellant further investigated these issues, he would have discovered his Commercial Units did not have all the parking spaces to which they were entitled under the Master Deed or the Adesso PUD. Therefore, as late as March 2015, there was sufficient information, of public record and otherwise, relating to the then-existing improper allocation of Adesso Commercial Parking Spaces to put a person of common knowledge and

experience, in the exercise of reasonable diligence, on notice of the existence of Appellant's parking-related claims. Appellant was required to bring an action to enforce his parking-related claims by 2018 at the latest. But Appellant did not file this action until February 14, 2019. Therefore, as they relate to the allocation of Commercial Parking Spaces at the Adesso, Appellant's claims are barred by the applicable statute of limitations. Accordingly, this Court should affirm the circuit court.

B. Equitable tolling does not toll the statute of limitations because there is no genuine issue of material fact that Respondents did not prevent Appellant from filing suit earlier, and Respondents made no misrepresentations about resolution.

The circuit court found that equitable tolling did not apply because Appellant did not produce evidence of related false statements or justifiable reliance. **9.21.2 Order at 9**. Appellant argues the circuit court erred by not considering evidence to equitably toll the statute of limitations. **App. Br. at 9**. Specifically, Appellant argues there is evidence in the record that Appellant sought clarification from Respondents about the parking dispute and the settlement agreement, and the Respondents' attorney represented the settlement agreement did not affect the parking claims. **App. Br. at 10**. Appellant asserts these communications caused him to reasonably delay filing suit. The circuit court correctly determined equitable tolling did not apply.

"'Tolling' refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (quoting 51 Am. Jur. 2d *Limitation of Actions* § 169 (2000)). "Equitable tolling . . . is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine." 51 Am. Jur. 2d *Limitation of Actions* § 153. It "applies in cases where a litigant was prevented

from filing suit because of an extraordinary event beyond his or her control." *Hooper*, 386 S.C. at 115, 687 S.E.2d at 32 (quoting *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (N.M. 2005)).

The party asserting the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Hooper*, 386 S.C. at 115, 687 S.E.2d at 32. "[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Id.* 386 S.C. at 116, 687 S.E.2d at 33. The doctrine may be applied when it is justified under all the circumstances. *Id.* "Any inequitable circumstances preventing a party from initiating a timely lawsuit suit must be truly beyond the control of the plaintiff." 51 Am. Jur. 2d *Limitation of Actions* § 153.

For example, this Court affirmed a lower court's ruling tolling a statute of limitations applicable to a homeowner's association in claims against a developer when the developer controlled the association, and the Court found it difficult to believe a developer-controlled association would sue the developer. *See Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 372, 725 S.E.2d 112, 125 (Ct. App. 2012). Under those extraordinary circumstances, the association was effectively prevented from filing suit based matters outside of its control. Thus, equitable tolling applied.

Unlike *Magnolia*, Appellant has not shown extraordinary circumstances existed beyond his control that prevented him from filing suit. Appellant relies on vague communications between him and Respondents over a settlement agreement irrelevant to the parking allocation claims. Nothing in those communications rises to the level of extraordinary circumstances preventing him from filing suit. Further, nothing in the record, shows Respondents did anything—via representation or otherwise—to prevent him from filing suit earlier on his claims for parking allocation. Indeed, according to Appellant's own arguments, he voluntarily chose to delay filing

suit because of communications. If his choice was voluntary, then not filing suit within the statute could not have been due to circumstances beyond his control. Accordingly, the circuit court correctly refused to toll the statute of limitations.

As an additional matter, Appellant cites *Vines v. Self Memorial Hosp.* in support of his equitable tolling argument. However, *Vines* does not discuss equitable tolling. Instead, *Vines* involved claim a defendant should have been estopped from claiming the statute of limitations as a defense. 314 S.C. 305, 308, 442 S.E.2d 909, 911 (1994). Equitable tolling is different from equitable estoppel because it does not require a misrepresentation. *See Magnolia N. Prop. Owners' Ass'n, Inc.*, 397 S.C. at 372, 725 S.E.2d at 125. The *Vines* court held, as a matter of law at summary judgment, that estoppel was not warranted because the plaintiff had not presented evidence the defendant's conduct induced a delay in filing the lawsuit. 314 S.C. at 308, 442 S.E.2d at 911 The court found that estoppel is warranted when there are representations or conduct that a claim will be settled without litigation or that a lawsuit is not necessary. *Id.* But even ongoing settlement negotiations will not bar a defendant from claiming the statute of limitations defense. *Id.*

Under *Vines*, there is no evidence that Respondents made express representations or conducted themselves in a manner to induce Appellant to delay filing suit. There were no statements that a lawsuit was not necessary or that a claim would be settled without litigation, on which Appellant relied to wait to file suit. Furthermore, the communications on which Appellant relies pertain to a settlement agreement he signed concerning construction defects, nothing related to the parking allocation. And the circuit court did not find Appellant's claims barred as to Respondents based on the settlement agreement. Even if the settlement agreement was relevant, the communications Appellant references at most could be classified as ongoing settlement

discussions, which *Vines* notes are insufficient to warrant estoppel. Accordingly, estoppel does not apply, and the circuit court appropriately ruled. Therefore, this Court should affirm.

II. Even if not barred by the statute of limitations, the circuit court correctly granted summary judgment because there were no genuine issues of material fact that the parking allocation for Appellant's Units complied with the Master Deed and PUD.

The circuit court ruled that "the allocation of Commercial parking spaces at the Adesso complies with both the Master Deed and the Adesso PUD, which is the applicable City of Columbia Zoning Ordinance." **9.21.21 Order at 10.** Appellant argues there is conflicting evidence preventing summary judgment showing parking allocation did not comply with the Master Deed. **App. Br. at 10**. This Court should affirm.

Appellant sought declaratory and injunctive relief as to the number of parking spaces allocated to commercial units. In declaratory relief, he pled he was "entitled to have the number of parking spaces as required by the City of Columbia Planning and Zoning Department ordinances applicable to the exclusive use of the commercial units in the Adesso." **Amd. Compl. at ¶ 59**. Similarly, Appellant sought a permanent injunction that Respondents "take action to allocate and designate the correct number of parking spaces for the exclusive use of the commercial units." **Amd. Compl. at ¶ 43.**

The South Carolina Declaratory Judgment Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Id*. A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. *Id*. Moreover, "[a]

declaratory judgment should not address moot or abstract matters." *Sunset Cay, LLC*, 593 S.E.2d 462 at 466 (*citing Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951)).

"The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). "An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004); *see also Riverwoods, LLC v. Cnty. of Charleston*, 349 S.C. 378, 389, 563 S.E.2d 651, 657 (2002) (finding taxpayers had an adequate remedy at law by paying taxes under protest and, therefore, could not show irreparable harm). Moreover, "[i]n deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant." *Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at 689.

As to declaratory relief, the parking-related matters underpinning Appellant's claim are moot. There is no genuine issue of material fact that Appellant's Commercial Units have the requisite number of parking spaces to which they are entitled under the Adesso PUD and applicable City of Columbia zoning ordinances. In June 2018, Respondents changed the signage for, or otherwise restricted access to, 21 parking spaces within the Adesso, to limit the spaces designated for the use of the Commercial Units to "retail use only," **Bailey Depo. Tr. 99: 16-19; 104:2-20,** to bring the allocation of Commercial Parking Spaces into compliance with Section V of the Master Deed. Moreover, based upon the availability of sufficient additional on-street parking

within 400 feet of the Adesso to serve the Commercial Units, the City of Columbia Zoning Administrator made a final determination that no known zoning violations relating to parking exist at the Adesso. **Bailey Depo. Tr. 99: 20-101: 21; 103: 9-104: 25**; **Bailey Depo. Pltf's Ex. 2**. Therefore, with regard to Appellant's parking-related claims, Appellant has failed to present a justiciable controversy, or the declaratory judgment claim is moot, because there are the requisite number of parking spots under the Master Deed, and the zoning administrator approved available parking.

There is also no genuine issue of material fact on Appellant's permanent injunction claim. Appellant would not benefit from the grant of an injunction in his favor and cannot show irreparable harm or inadequate remedy at law. Respondents took the action Appellant desires in June 2018 by designating 21 spaces for Commercial Units only, such that Appellant's Commercial Units have been allocated the correct number of parking spaces pursuant to the Adesso Master Deed, the Adesso PUD documents, and applicable City of Columbia zoning ordinances. The City of Columbia agreed and found no zoning violations. Further, Appellant could have an adequate remedy at law by bringing a claim under the Declaratory Judgment Act for a determination on compliance with the governing documents and zoning, as he did. Accordingly, because Appellant has already obtained the relief he seeks with regard to the allocation of Commercial Parking Spaces at the Adesso, Appellant cannot show he would benefit from an injunction and has not established irreparable harm or lack of an adequate remedy at law.

Therefore, this Court should affirm the circuit court's ruling and affirm summary judgment because there is no genuine dispute of material fact that the current parking allocation within the Adesso complies with the applicable documents and zoning.

III. Appellant's arguments on the impact of the settlement agreement are irrelevant and inconsequential to a determination of this appeal because the circuit court did not rely on the settlement agreement to grant Respondents summary judgment.

Appellant argues the court ruled "Appellant's claims were barred by a settlement agreement executed in May 2017 resolving construction defect litigation involving the Adesso development." **App. Br. at 12**. Appellant argues the settlement agreement does not apply to the allocation of commercial parking spaces. **App. Br. at 12**. Appellant's arguments are misguided.

The circuit court in its July 15, 2021 Form 4 Order ruled that Appellant's claims against Defendants Holder Properties and Adesso/Columbia, LLC were released, waived, and dismissed via the May 2017 settlement agreement. **7.15.21 Order**. However, Appellant resolved claims against those defendants, and the order on appeal contains no ruling on the settlement agreement. **9.21.21 Order.** Because the circuit court's grant of summary judgment as to *Respondents* was not based on the 2017 settlement agreement, this Court need not review or address Appellant's argument to the contrary.

CONCLUSION

For the foregoing reasons, this Court should affirm the circuit court's grant of summary judgment to Respondents.

April 13th, 2026.

s/Skyler C. Wilson
Douglas W. MacKelcan, Esq.
Skyler C. Wilson, Esq.
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Ph: (843) 727-0307
Attorneys for Respondents