THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Brian L. Boger, Special Referee

Appellate Case No. 2022-000947

Lisa Cruz,..……..……..…...…...Respondent,

v.

Heyward Bouknight and Kathy Bouknight……...……Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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STATEMENT OF ISSUES

I. Did the lower court err reversibly in granting summary judgment against Appellants for the ostensible violation of a restrictive covenant prohibiting the use of a trailer as a residence when the Appellants' house is a manufactured home that is not a vehicle equipped to be towed on a street or highway?

II. Did the lower court err reversibly in ordering Appellants to remove their home from their property?

ARGUMENT

The Respondent, Lisa Cruz (hereinafter "Cruz"), is of course pleased to have won a judgment below that requires her neighbors, the Appellants, Heyward and Kathy Bouknight (hereinafter "the Bouknights"), to get rid of their house. (R. pp. 1-18.) In her desire to hang onto that judgment, though, Cruz has made arguments that betray her position and illustrate why the Bouknights are entitled to the judgment's reversal.

I. Bibco Corp. v. City of Sumter does not say what Cruz says it does.

Cruz's argument relies on Bibco Corp. v. City of Sumter, 332 S.C. 45, 504 S.E.2d 112 (1998). Her reliance on that case is misplaced.

Bibco did not conclude that manufactured homes are the same as mobile homes, nor did it conclude that either of those things are trailers. Id. at 47-54. In Bibco, rather, the Court observed that the City of Sumter's zoning ordinance defined the term "mobile home" *under that ordinance* with the same definition as "manufactured home" under 42 U.S.C. § 5402(6). Bibco, 332 S.C. at 51-52.

By no means does Bibco stand for the proposition that *mobile home* and *manufactured home* have identical definitions in any context other than under the City of Sumter zoning ordinance. Indeed, we know they have different definitions. S.C. Code Ann. §§ 40-29-20(9) & 56-19-10(39). Further, in this state law case, we know that the state law definition of *manufactured home*, S.C. Code Ann. § 40-29-20(9), is not the same as the definition under 42 U.S.C. § 5402(6) used by the City of Sumter in Bibco, 332 S.C. at 51-52.

Bibco does not require this court to affirm. See id. Bibco, rather, spoke to a situation under a local ordinance that used a different definition of *manufactured home* than does our state's law. Id.; 42 U.S.C. § 5402(6); S.C. Code Ann. §§ 40-29-20(9) & 56-19-10(39).

II. Cruz attempts a semantic sleight of hand.

Cruz's argument essentially goes like this:

1) This court said in Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987), that a mobile home is a trailer;
2) A mobile home is a structure that falls within the definition of a manufactured home, S.C. Code Ann. § 40-29-20(9); and
3) That means that the Bouknights' manufactured home (and, by extension, every manufactured home) is a trailer.

This reasoning falls apart. First, let us examine definitions.

> "Mobile home" means every vehicle which is designed, constructed, and equipped principally as a permanent dwelling place and is equipped to be moved on streets and highways, but which exceeds the size limitations prescribed in Section 56-3-710 and which cannot be licensed and registered by the Department of Motor Vehicles as a "house trailer."

S.C. Code Ann. § 56-19-10(39) (emphasis added).

> "Manufactured home" means a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in it.

S.C. Code Ann. § 40-29-20(9). The latter definition contains nothing about being equipped to be moved on streets and highways. Id.

All mobile homes probably do fall under the definition of *manufactured home* – but that does not mean that vice-versa is true. Nothing in its definition requires a manufactured home to be a vehicle that is equipped to be moved on streets and highways. Id. Every structure

that meets the definition of *manufactured home* and that is also a vehicle that is built with the parts to make it towable down streets and highways probably meets the definition of *mobile home*. S.C. Code Ann. §§ 40-29-20(9) & 56-19-10(39). But a manufactured home is not required to be equipped in the way that a mobile home is. S.C. Code Ann. §§ 40-29-20(9) & 56-19-10(39).

Further, while every mobile home may meet the definition of trailer, every manufactured home does not. "'Trailer' means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle." S.C. Code Ann. § 56-19-10(34) (emphasis added); accord Heape, 293 S.C. at 345 (defining trailer as "a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile"). A manufactured home may or may not be a "vehicle . . . designed . . . for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle." S.C. Code Ann. § 56-19-10(34). The Bouknights' manufactured home is not so designed. (R. p. 78 ln. 12-24, p. 143.)

Besides, Heape is of dubious precedential value to the extent that it can be read to hold that *trailer* and *mobile home* are synonyms. Following its decision in Heape, this court decided Henry v. Chambron, 304 S.C. 351, 404 S.E.2d 518 (Ct. App. 1991), which, as discussed in the Bouknights' primary brief, undercuts the reading of Heape that was given by the special referee and Cruz. In any event, though, nothing in Heape states that every structure that meets the definition of *manufactured home* is also "a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile." Heape, 293 S.C. at 345.

Every poodle is a dog. Not every dog is a poodle. Perhaps every mobile home is a manufactured home, but every manufactured home is not a mobile home. S.C. Code Ann. §§ 40-29-20(9) & 56-19-10(39).

III. Neither Cruz's argument nor the special referee's order is consistent with the law of how covenants must be construed.

Citing nothing, Cruz argues that "[t]railer, as the developer meant in 1954, encompassed mobile homes, which are more modernly called manufactured homes." (Initial Brief of Respondent p. 7.) Nothing in the record or the law substantiates the notion that the word "trailer" in the covenants (R. pp. 34, 132) was meant to include houses like the Bouknights', which do not meet the definition of *trailer*. Heape, 293 S.C. at 345 (trailer is "a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile").

The law does not require – or allow – the meaning of "trailer" in the covenants to embrace a vague slang term that is at odds with every recognized definition of the word under our state's law, e.g., id., and that would have it cover an object that is incapable of being trailed, i.e. "hauled by a tractor, truck, or automobile." Id. The law in this state remains that "where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998). Even if Cruz's desired construction of the covenants were of equal soundness to one grounded in recognized definitions of this term, precedent would still require the use of the least restrictive construction – something the special referee refused to do. Id.

IV. Cruz's argument is inconsistent with the burden of proof.

Cruz writes as though the Bouknights failed to prove that their house was never equipped as a trailer. (Initial Brief of Respondent pp. 13-14.) This ignores that, in this case, which Cruz brought (R. pp. 29-40), an absence of evidence favors the Bouknights.

The party bearing the burden of proof must prove, with evidence, each material allegation that the opposing party does not admit. See Baugh & Sons Co. v. Graham, 150 S.C. 398, 401, 148 S.E. 220 (1926) (plaintiff bears burden of proof in civil case); Williams v. Metro. Life Ins. Co., 202 S.C. 384, 25 S.E.2d 243, 246 (1943) (every essential fact must be pled and proven). Restrictive covenants are contracts. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987); Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014); Queen's Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902, 913 (Ct. App. 2006); Houck v. Rivers, 316 S.C. 414, 418, 450 S.E.2d 106, 109 (Ct. App. 1994). A claim that a party has violated a restrictive covenant is a claim that the party has breached the contract embodied in the covenants. See Kinard, 754 S.E.2d at 893; Queen's Grant, 628 S.E.2d at 913. In a breach of contract case, the plaintiff bears the burden of proof to establish each necessary element of the case. McCord v. Laurens Cnty. Health Care Sys., 429 S.C. 286, 292, 838 S.E.2d 220, 223 (Ct. App. 2020).

Cruz bore the burden to prove that the Bouknights' house structure is a trailer. Cruz failed to meet that burden. Cruz may contend that she met that burden by pointing out that the Bouknights signed a County of Lexington document entitled "mobile home affidavit." (R. pp. 84.) Despite its title, that document contains no statement to the effect that the structure at issue is a mobile home or that it has the requisites of a mobile home. (R. pp. 84.) The only evidence in the record about whether the Bouknights' house ever met the definition of *trailer*

or even *mobile home* is Kathy Bouknight's testimony to the effect that the Bouknights' house has *not* been equipped with wheels, axles, a tongue, or any other parts necessary for it to be towed. (R. p. 78 ln. 12 through p. 79 ln. 7.) This did not establish that, as a matter of law, the Bouknights' house is a trailer. Indeed, it established that Cruz failed to prove that it is a trailer.

V. The Bouknights' argument about the propriety of ordering them to remove their house is preserved.

Cruz contends that the issue of whether the special referee erred in ordering the Bouknights to remove their house is unpreserved for this court's review. When an order grants relief not previously argued for or contemplated by what was presented to the court, the aggrieved party must address the new issue through a motion made under Rule 59(e), SCRCP, to preserve the issue for appeal. Stevens Aviation, Inc. v. DynCorp Intern. LLC, 394 S.C. 300, 307, 715 S.E.2d. 655, 659 (Ct. App. 2011); Bennett v. Rector, 389 S.C. 274, 284, 697 S.E.2d 715, 720 (Ct. App. 2010). The Bouknights argued this point, without objection, as part of their motion to reconsider. (R. p. 175 ln. 22 through p. 176 ln. 12.) The issue was created by the special referee's order and did not exist beforehand. (R. pp. 17-18.) It is preserved for review. Stevens Aviation, 394 S.C. at 307; Bennett, 389 S.C. at 284.

VI. Out-of-state cases are at best a wash for the parties.

Cruz cites some out-of-state cases for the idea that *trailer* and *mobile home* and *manufactured home* all mean the same thing. Jurisdictions across the country are split on whether they treat manufactured homes (or, for that matter, mobile homes) as "trailers" with regard to covenants prohibiting trailers. "What Is 'Mobile Home,' 'House Trailer,' 'Trailer House,' or 'Trailer' Within Meaning of Restrictive Covenant" 83 A.L.R.5th 651 (2000 & Supp.). This split appears fairly even among the states. See id. Some jurisdictions interpret "trailer" broadly, and some do not adopt a broad interpretation that would put a manufactured

home within the scope of what a "trailer" is. Id. Cruz provided the special referee with examples of cases from other jurisdictions interpreting the term "trailer" broadly enough to embrace a manufactured home. E.g., White v. McGowen, 364 Ark. 520, 222 S.W.3d 187 (2006); Beacon Hills Homeowners Ass'n, Inc. v. Palmer Properties, Inc., 911 S.W.2d 736 (Tenn. Ct. App. 1995). The Bouknights provided examples of such cases taking the contrary view, that a manufactured home is not a trailer. E.g., Hutchison v. Hill, 3 P.3d 242 (Wyo. 2000); Howell v. Hawk, 750 N.E.2d 452 (Ind. Ct. App. 2001).

Given the split of authority, examination of how other jurisdictions treat this issue is of limited assistance, essentially a wash between the parties' positions. What is of much more significance is this state's law – which favors the Bouknights.

CONCLUSION

The law required the special referee to rule for the Bouknights. This court should reverse the special referee's decision and remand this case for further proceedings consistent with that reversal.

Respectfully submitted,

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CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

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I certify that I have served the foregoing brief on the date given below by emailing it to counsel for the Respondent at the address(es) noted below.

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