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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2024-000794
Opinion No. 6138 (S.C. Ct. App. filed February 18, 2026)

Kenneth S. Hoffman, Linda J. Hoffman, Harold W. Walters,
Terrence Whitlock, and Barrie Whitlock,.....Appellants

v.

Saad Holdings, LLC, and Carl L. Jones, as Personal Representative
of the Estate of Anne E. Jones, deceased,.....Respondents.

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellants Kenneth S. Hoffman, Linda J. Hoffman, Harold W. Walters, Terrence Whitlock, and Barrie Whitlock petition the Court to rehear this matter. Appellants assert the Court overlooked or misapprehended the following points:

1. The Court mis-names the subdivision twice on the first page of the opinion. It is "Providence Point" and not "Plantation Point."

2. In its opening paragraph, the Court mischaracterizes Appellants' reasons for seeking an injunction. Appellants did not seek "to enjoin Gregory Saad from walking across his undeveloped real property." Appellants sought an injunction prohibiting purely recreational use or use other than for residential purposes of the property (as restricted by the Covenants). This Court misapprehends this point precisely the same way the trial court did.

3. The Court correctly cites the standard of review and holds that it "can find facts in accordance with its own view of the evidence."

4. The Court overlooked or misapprehended the manner in which Appellants argued the Characterization of the Use argument and erroneously found the argument was abandoned. This is a factual question that the Appellants argued that the trial court misapprehended. Appellants asked the Court to find facts in accordance with its own view of the evidence related to the trial court's characterization of the use. The authority for this is cited in the standard of review, which permits this Court to find facts in accordance with its own view of the preponderance of the evidence.

5. The Court overlooked or misapprehended Appellants' argument that Saad was not merely using the property to walk to his docks. Saad was using the property to:

   (a) Acquire boat dock permits from the Corps (if he did not own the property adjacent to the lake, he could not obtain dock permits);

   (b) Run utilities and service to his docks (power, water, etc.). He could not get service if he did not own property adjacent to the lake;

   c) Park vehicles;

   d) Access the boat docks;

   None of these uses are residential in nature or incidental to residential use of the property as required by the Covenants.

5. The Court overlooked or misapprehended that the Covenants at issue in this matter expressly state, "No lot shall be used for other than residential purposes." The chosen wording excludes ALL other uses that are not for residential purposes. This is very different from a covenant that says "cannot be use for business or commercial purposes" or "cannot be uses for multi-family" or some other wording that contains only specific exclusions. The wording of the Covenants specifically excludes all other uses that are not for residential purposes. The Court overlooked or misapprehended that its ruling ignores the law that "Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998).

6. The Court overlooked or misapprehended that in South Carolina, covenants are contractual in nature. Parties are free to contract however they want, even in ways that others might

find absurd. That is, the owners in Providence Point all agreed that "No lot shall be used for other than residential purposes." By doing so, they agreed that all other uses except for residential purposes would be prohibited. As such any use that is not residential or incidental to "residing" on the lot is and should be prohibited.

7. The Court overlooked its prior holding in *Kinard v. Richardson,* 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014) (citing *Easterly*, 256 S.C. 336, 342–44, 182 S.E.2d 671, 674 (1971)), and that the Court's ruling is completely inconsistent therewith. The Court overlooked or misapprehended that the only evidence in this matter is that Saad made no use of his property that "involves the act of residing in a single-family dwelling" and that he admits that he does not intend to make any residential use of the property.

8. The Court overlooked that in *Kinard,* Paragraph five of the Restrictive Covenants prohibited any use other than single–family residential use. **The Court held that, "Single-family residential use" involves the act of residing in a single-family dwelling.** *See Easterly*, 256 S.C. at 342–44, 182 S.E.2d at 674 (emphasis added) (interpreting a restriction providing that no structure "shall be erected upon any of [the] residential lots other than one single family private dwelling house" and stating, "No apartment house or duplex of any type shall be erected or maintained on any of the lots" and holding that the general plan of the residential neighborhood had been maintained since its inception because only single family dwellings had been erected on the lots); *Maxwell v. Smith*, 228 S.C. 182, 193–94, 89 S.E.2d 280, 285 (1955) (interpreting a covenant restricting use of lots to "residential purposes" and stating that a lake stocked with minnows and pools holding minnows for ultimate sale in a nearby city were elements of a commercial installation in violation of the covenant); *id.* at 194–95, 89 S.E.2d at 286 (holding that even if the commercial use stopped, the lake and pools were on vacant lots and, therefore, must be viewed as "not incident to residential use"). Accord *Kinard v. Richardson.*

9. The Court overlooked or misapprehended that its ruling violates longstanding law that covenants are to be construed according to plain meaning of words used. "Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." [*Kinard*, 754 S.E.2d at 894] *Taylor*, at 4, 498 S.E.2d at 863–64 (quotation marks omitted). When "the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning." *Shipyard Prop. Owners' Ass'n v. Mangiaracina*, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App.1992). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property."

Taylor, 332 S.C. at 5, 498 S.E.2d at 864 (citation and quotation marks omitted). However, this rule of strict construction "'should not be applied so as to defeat the plain and obvious purpose of the instrument.'" *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001) (quoting *Taylor*, 332 S.C. at 4–5, 498 S.E.2d at 863–64).

Appellants respectfully request that the Court grant this Petition, rehear this matter, withdraw its prior opinion, and issue a new opinion reversing the circuit court judge and remanding the matter for further proceedings consistent with the Court's mandate.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar# 13536)
206 North Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com
ATTORNEY FOR THE APPELLANTS

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Anderson, South Carolina

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PROOF OF SERVICE

I certify that I served copies of the **Petition for Rehearing** by e-mail and by United States Mail, postage paid, addressed to:

jraffini@pruittandpruitt.com

Joshua B. Raffini, Esq.
Pruitt & Pruitt
101 N. Murray Ave.
Anderson, South Carolina 29625
Attorney for Respondents

s/Daniel L. Draisen
Daniel L. Draisen SC Bar No. 13536
The Injury Law Firm, P.C.
2006 North Main Street
Anderson, South Carolina 29621

March 5, 2026

THE INJURY LAW FIRM, P.C.

2006 N. MAIN STREET
ANDERSON, SOUTH CAROLINA 29621
(864) 888-8887
daniel@injuredSC.com
www.injuredSC.com

DANIEL L. DRAISEN, ESQ.
*Licensed in SC and OK

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Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Kenneth S. Hoffman, et al. vs. Saad Holdings, LLC, et al.
Appellate Case No. 2024-000794

Dear Mrs. Kitchings:

Enclosed please find for filing the **Petition for Rehearing** on behalf of Appellants, along with the original Proof of Service. I will send you the $50.00 filing fee today by mail under separate cover.

Please let me know if you need anything else.

With kind regards,

THE INJURY LAW FIRM, P.C.

Daniel L. Draisen

DLD
Enclosures
cc: Joshaua B. Raffini, Esq.