STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Queens Grant Regime, II, Inc., Horizontal Property Regime, Plaintiff, vs. Greenwood Resorts and Communities, Inc., d/b/a Palmetto Dunes Resort and Callaway Brands, Inc., d/b/a TopTracer Golf, Defendants.	)	CIVIL ACTION NO.: 2024-CP-07-00156 Order Denying Petition for Supersedeas and Finding Bond Amount Appropriate

In accordance with the Court of Appeals' instructions this Court held an expedited hearing on April 10, 2026, in Greenville County, South Carolina. Present for the Plaintiff was Gregory M. Alford, Esquire. Present for the Defendants was Christian Stegmaier, Esquire, and Alex Franseen, a representative of the Defendants. On April 14, 2026, I issued a Form 4 Order, as an initial Ruling and ordering the Plaintiffs' counsel to prepare and submit a proposed formal Order for this Courts consideration.

The Court of Appeals remanded this with the following instructions:

> "After careful consideration, we remand this case to the circuit court for an expedited hearing on Appellants' petition for a writ of supersedeas. See Rule 241(d)(1), SCACR ("Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal."). We express concern that Appellants appear to have been required to cease operations from January 15, 2026 until March 15, 2026, and that the sixty-day period was renewed without consideration of whether the amount of the nominal bond should increase. On remand, the court shall reconsider the amount of the bond in light of the ongoing nature of the injunction."

In accordance with the Court of Appeals' directives and having reviewed the record in this case, memoranda and exhibits submitted by the parties, having heard the arguments of counsel,

and having carefully considered the matter, this Court now makes the following findings of fact and conclusions of law:

Background

On February 13, 2026, the Court issued its Order Granting Temporary Injunction Relief and Setting Rule 65(c) Bond (the "Injunction"). The Injunction stated an effective date of January 15, 2026, twenty-nine (29) days prior to its entry, and required that a bond be posted before the "suspension" of golf ball hitting went into effect. The suspension under the Injunction was limited to a period of sixty (60) days. However, Plaintiff was unable to obtain the requisite $75,000 security bond until March 20, 2026.

Defendants filed their Notice of Appeal on March 16, 2026, appealing the February 13, 2026, Order. Thereafter, on March 20, 2026, Plaintiff filed a Motion pursuant to Rule 62 SCRCP to Modify Clerical Error and a Notice of Posting Injunction Bond. Defendants filed a response, along with an email stating its position that the injunction, if ever effective, had expired by its own terms. On March 25, 2026, via email, this Court responded to the arguments of counsel:

> "Mr. Alford, pls amend the order to provide the sixty (60) days shall begin upon the filing of the necessary bond—it was not a scriveners error–the intent of my order to stop the operations while defendants develop a concrete plan to rectify the situation—I whole heartedly disagree with Mr. Stegmaier's interpretation—there is no need for a hearing -thank you
> Lawton"

The Amended Order was filed March 30, 2026. Although the original Order filed February 13, 2026, contained an effective date of January 13, 2026, the 60-day suspension did not begin until March 30, 2026.

On March 30, 2026, Defendants filed an Amended Notice of Appeal and a Petition for Supersedeas with the South Carolina Court of Appeals. Defendants first filed their Petition for Supersedeas directly to the Court of Appeals.

Petition for Supersedeas

A. Turning to Defendant's motion for supersedeas, this Court begins with Rule 241(d)(1) SCACR which provides:

> **"Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal. The issuance of an ex parte order or decision, or an unnecessary delay by the lower court or administrative tribunal in ruling on this application shall constitute an extraordinary circumstance."**

Rule 241 requires that a party first seek supersedeas from the trial court except where extraordinary circumstances exist making it impracticable before invoking this Court's jurisdiction. Therefore, in order to petition the Court of Appeals directly and avoid applying to the lower court first, the Defendants must show extraordinary circumstances.

The Defendants, in paragraph 19 of their application, state the following justification for proceeding directly to the Court of Appeals despite the text of Rule 241(d):

> **"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."**

At the hearing, the Defendants were unable to explain to this Court how the delay in entering the February 13, 2026, and March 30, 2026, Orders served to create extraordinary circumstances. In point of fact, rather than create extraordinary circumstances, this Court finds that the delay operated solely to the benefit of the Defendants to allow them additional time to get control of their operations such that they no longer posed a danger to the Plaintiffs before the 60 day suspension had even begun.

The second sentence of 241(d)(1) provides:

> **". . . decision, or an unnecessary delay by the lower court or administrative tribunal in ruling on this application shall constitute an extraordinary circumstance."**

The Defendants do not cite, nor does the record reflect any "unnecessary delay" in the ruling on "this application." Defendants cite the "delay extant and evinced in entry of the injunction order and its effective date as justification for "extraordinary circumstances" However, Rule 241 does not refer to any delay, other than an unnecessary delay by a lower tribunal on "this application," the application that Rule 241(d) states "must to first be made to the lower court . . ."

This Court finds that the Defendants have failed to show any delay (much less an unnecessary delay) in ruling on their application for supersedeas, sufficient to obviate Rule 241(d)(1) 's requirement that the application be "first made to the lower court." Therefore, this Court denies the Defendants petition for supersedeas for failure to show extraordinary circumstances as required by 241(d)(1).

B. Defendants' Petition Lacks Proper Verification and Competent Evidentiary Support

Rule 241(d)(3), SCACR, provides in pertinent part for purposes of this motion:

> **"A person seeking an order lifting an automatic stay or granting a writ of supersedeas must file a written petition verified by the client."**

This requirement is mandatory and Rule 241 contains no exceptions thereto. This omission is not a minor or technical defect. Petitions for extraordinary relief are decided on an expedited basis and often without the benefit of a fully developed record.

Defendants assert that the petition is verified in accordance with Rule 241(d)(3) by asserting that

> "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."

However, the requirements and purpose of a verification are different from the requirements and purpose of affidavits. The distinction is empirical and important. The South Carolina Courts provide practitioners with a verification at https://www.sccourts.org/court-forms/?id=scca403cp. The language in Form SCCA 403CP reads:

> **"_____ and _____, being duly sworn say that they are the Petitioners herein and have read the foregoing Petition and know the contents thereof, and that the same is true of their knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true."**

Defendants' argument that an evidentiary affidavit meets the requirements and purpose of a verification is without merit. Rule 241(d)(3) requires that the petition itself be verified by the petitioner through a written verification. The submission of affidavits does not satisfy this requirement. Defendants appear to conflate the separate and distinct requirements of Rule 241(d)(3) and Rule 241(d)(4)(A). Rule 241(d)(3) requires "a written petition verified by the client." Rule 241(d)(4)(A) mandates that if the facts are disputed, the petition shall be supported by affidavits or other sworn statements.

Affidavits submitted in support of any disputed factual allegations contained in the petition do not substitute for the required verification of the petition itself. Here, the affidavits submitted by Alex Franseen relate only to the underlying facts of the case and do not constitute a verification of the Petition as required by Rule 241(d)(3).

In *Searcy v. Dep't. of Educ., Transp. Div.* 303 S.C. 544, 402 S.E.2d 486 (Ct.App.1991), the Court of Appeals addressed this issue and held that a claim made pursuant to this chapter must be verified. Further, the court held if a verified claim is not filed, the two year statute of limitations applies. In addition, in a pre-Tort Claims Act case, this Court held that when a plaintiff seeks to sue a political subdivision he "must fully comply with the prescribed terms and conditions of the statute, and the filing of a claim as required ... is an essential prerequisite to a right

of action." *Cochran v. City of Sumter*, 242 S.C. 382, 386, 131 S.E.2d 153, 155 (1963) (overruled to the extent that it holds an action may not be maintained against the State without its consent in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)). Further, this Court in Cochran held that when a statute requires verification, failure to comply will invalidate the notice, even if no prejudice results to the other party, as a verification is a matter of substance and not form. Id. 131 S.E.2d at 156. Therefore, Rink's argument that his letter fulfilled the objective of a verified claim by putting the Hospital on notice is also without merit. *Rink v. Richland Memorial Hosp.*, 310 S.C. 193, 422 S.E.2d 747 (S.C. 1992).

Defendants cite *Rockland Industries v. Interior Designers, Inc., of South Carolina*, for the proposition that the affidavit replaces the required verification. In *Rockland Industries v. Interior Designers, Inc., of South Carolina*, the court held that an affidavit appended to a statement of account which was attached to a complaint could not serve to verify the complaint. The plaintiff had served his complaint without a verification, but with the affidavit and statement of account. The defendant answered with a general denial of the allegations of the complaint which was also unverified. The trial court granted the plaintiffs motion to strike the answer as "sham and frivolous" and the defendant appealed. The South Carolina Supreme Court recognized that the affidavit was appended to the statement of account in accordance with section 10-1531 of the South Carolina Code and was permitted solely for evidentiary purposes in default cases and forms no part of the pleadings.... The form of the verification of a complaint is set forth in Section 10-604, and there is nothing to indicate that the affidavit permitted by Section 10-1531, for purely evidentiary purposes, was intended to take the place of such verification. In order to verify a complaint, the allegations thereof must be verified in the manner required by Section 10-604. In no other way can the practitioner know with certainty whether to treat the prior pleading as verified." Since the plaintiffs

affidavit was not intended as, nor did it meet the requirements of, a verification, the court reversed the lower court judgment and allowed the general denial to stand. *Rockland Industries v. Interior Designers, Inc.*, 263 S.C. 338, 341, 210, S.E.2d 468, 469 (1974).

These principles apply with equal force here. The form of a verification for Appellate motions and petitions is provided by the Courts for a specific purpose. A Rule 241 petition for supersedeas seeks extraordinary relief and is often considered on an expedited basis and limited record. The verification requirement is directed at the contents of the pleading and the knowledge of the Petitioner thereof. Verifications become part of the pleadings. On the other hand, the affidavit requirement under Rule 241(d)(3)(A) is directed at the disputed factual allegations.

Allowing an unverified petition to proceed would undermine the safeguards built into the Rules. Because Defendants have failed to comply with Rule 241(d)(3), their Petition fails. Therefore, this Court denies the threshold requirements for consideration under Rule 240. Pursuant to Rule 240(g), this Court denies the Petition.

Supersedeas Is Not Warranted Under Rule 241(c), SCACR

Turning to the substantive requirements Rule 241(c)(2) provides that:

> **"2. In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of 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."**

A. Supersedeas Is Not Necessary to Preserve Jurisdiction or Prevent Mootness

Rule 241(c)(2), SCACR, provides that supersedeas may be granted only where necessary to preserve the jurisdiction of the appellate court or prevent a contested issue from becoming moot.

Defendants have failed to demonstrate either. The issues on appeal, whether injunctive relief was properly granted and whether Defendants' conduct constitutes an actionable nuisance, remain live regardless of the temporary duration of the injunction. Because of the dangerous nature

of the Defendants operations, the issues would not become moot if supersedeas were granted because the Plaintiffs would still be subject to damage and danger. See *Carter v. Lake City Baseball Club, Inc*. 218 S.C. 255, 62 S.E.2d 470.

Defendants argue that upon the filing of their appeal the Court of Appeals is vested with exclusive jurisdiction under Rule 205 SCACR. The Court finds this argument is without merit based on Rule 62 SCRCP. Further, the Court of Appeals remanded this matter thereby confirming this Court's jurisdiction.

If supersedeas is not granted the Court of Appeals will still have jurisdiction over the Appeal due to the ongoing nature of this matter.

B. Supersedeas Would Not Preserve the Status Quo

This Court finds that the "status quo" in this matter is the state of affairs before the Defendants changed their business model from a traditional driving range which serves an accessory use to a golf course to an entertainment and venue which serves food and alcohol. Granting supersedeas would not preserve that condition, it would reverse it by allowing the conduct the trial court determined to be unlawful and dangerous to resume.

Defendants further contend that enforcement of the trial court's Order during Heritage week and spring break is "purely punitive in effect, whatever its stated justification." This argument is both factually and legally misplaced. The injunction was not entered to punish Defendants, but to prevent an ongoing and documented safety hazard involving errant golf balls entering a residential community. The timing of the Order reflects the procedural posture of the case, not any punitive intent. Indeed, the trial court exercised restraint over an extended period, attempting to allow Defendants opportunities to implement corrective measures. During the multiple hearings in this matter, the Court issued numerous warnings and implored the Defendants

to take meaningful steps to eliminate the danger, before ultimately concluding that injunctive relief was necessary to protect the Plaintiffs from injury until such time the Defendants got control of their operations.

Although not intentional in its timing, the risk to residents is heightened, not diminished, during periods of increased use of the driving range, such as spring break and Heritage week. Increased volume of use necessarily increases the frequency of errant shots, thereby amplifying the danger to individuals lawfully occupying their homes. Defendants' focus on lost revenue ignores the central issue before this Court: the ongoing risk of physical injury. Rule 241 does not permit supersedeas to avoid economic inconvenience, particularly where doing so would allow a known and continuing danger to persist.

C. Supersedeas Would Permit Ongoing Irreparable Harm and Danger

Supersedeas is particularly inappropriate where it would allow ongoing irreparable harm to continue during the pendency of an appeal. That is precisely the case here.

The record demonstrates that errant golf balls are not isolated or incidental, but rather frequent, unpredictable, and dangerous projectiles entering a residential community. These golf balls travel at significant speed and force and are capable of causing serious bodily injury, including head trauma, broken bones, or worse.[1] Residents, guests, and children cannot occupy outdoor areas throughout Queens Grant Regime II, including patios, walkways, and garden spaces, because it places them directly within the zone of danger created by Defendants' operations.

This Court finds that the Defendants have failed to establish that supersedeas is necessary or appropriate to preserve appellate jurisdiction, prevent mootness or to maintain the status quo. See *Carter v. Lake City Baseball Club, Inc*. 218 S.C. 255, 62 S.E.2d 470.

[1] See - Affidavit of Plaintiff's expert, Michael Johnstone filed February 26, 2025.

Additional Issues raised in Defendants Petition

In paragraph 9 of the petition, Defendants assert that they did not receive sufficient notice on the Plaintiffs Amended Motion for TRO and/or Temporary Injunction, citing Rule 6(d) SCRCP. This argument is about merit. Throughout this case the Defendants have been well aware of the temporary remedy which Plaintiffs were seeking an Order from this Court preventing Defendants' operations from inflicting further damage and injury to the Plaintiff and its members. Second, Rule 65(a) which governs injunctions provides that no temporary injunction shall be issued without notice to the adverse party. The Defendants have had more than ample notice through multiple hearings of the type of relief sought by the Plaintiffs, but more importantly, the type of relief this Court would be forced to order if they failed to implement effective measures to safely and legally operate their new business model.

In paragraph 30 the Defendants argue that the time for exigency has come and gone based on the age of case. However, this is inconsistent with the representation of its counsel that the Defendants were actively pursuing and attempting to implement measures to decrease the danger. Further, in the case of an ongoing trespass and nuisance which occasions constantly occurring grievances a court in equity should interfere by injunction to stay the wrong and protect the Plaintiffs property and personal rights. *Carter v. Lake City Baseball Club, Inc*. 218 S.C. 255, 62 S.E.2d 470.

The Duration of the Injunction

The Court of Appeals has further stated and directed:

> "We express concern that Defendants appear to have been required to cease operations from January 15, 2026 until March 15, 2026, and that the sixty-day period was renewed without consideration of whether the amount of the nominal bond should increase. **On remand, the court shall reconsider the amount of the bond in light of the ongoing nature of the injunction."**

The Court of Appeals is concerned about the "ongoing nature of the injunction." However, the injunction was never intended nor desired to be "ongoing." The "suspension" under the Injunction was intended to expire after 60 days, unless modified by the Trial Court. The March 30, 2026, Order provides: **"Sixty (60) days from the commencement of the suspension period, or as soon thereafter is practicable, the Court shall hold a hearing to determine whether or not the suspension or the bond should be modified in any way."**

The Injunction could become "ongoing" if the Defendants fail to follow the directives of the trial court to get professional help to modify their operations such that the Plaintiffs are no longer being damaged or placed in danger. If, at the end of the 60 days, the Defendants have not presented the Court with some type of plan to restart operations which addresses (or even makes a good faith attempt to address) the unsafe conditions, then the Court will hear the parties and further consider, under Rule 62(c), whether the injunction should be modified inclusive of the issue as to whether the bond amount should be changed.

The Bond Amount is Appropriate Under Rule 65(c)

The bond amount is in the discretion of the Trial Court. As to the determination of the bond amount, Rule 65(c) of the SCRCP provides in pertinent part:

> ". . . no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, **in such sum as the court deems proper,** for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

Unlike other published cases involving smell, noise, traffic and/or inconvenience, this case involves ongoing actual physical damage and without the injunction a substantial likelihood of further damage and injury. As in *Shaw (infra),* danger trumps economic inconvenience. The equities in this case are clearly and convincingly in favor of stopping the unjustified and dangerous manner in which the Defendants operate their business. In *Shaw v. Coleman* the Court of Appeals

affirmed that equitable relief may properly restrict the use of property notwithstanding inconvenience in the form of economic consequences, emphasizing that financial impact does not outweigh the need to enforce lawful restrictions and protect affected parties from danger and injury. *Shaw v. Coleman*, 645 S.E.2d 252, 373 S.C. 485 (S.C. App. 2007) (emphasis added). See also *Carter v. Lake City Baseball Club, Inc*. 218 S.C. 255, 62 S.E.2d 470.

The Franseen Affidavits Demonstrate That the Economic Impact Is Limited and That The $75,000 Bond Is More Than Sufficient

A. Financial Impacts on Defendants

Defendants rely heavily on the affidavits of Paul A. Franseen to assert economic harm. However, the Affidavits provide only gross revenues. The gross revenue number which shows that the golf range revenue for the first 168 days of 2024 was $163,032 and the golf range revenue for the first 170 days of 2025 was $164,000. This equates to a two-year average of $967 per day. The Court required a $75,000 bond for a 60-day suspension of golf range activity. This Court finds the bond is therefore more than sufficient to cover any potential actual loss (even at the gross revenue number) if the injunction were improvidently issued.

Importantly, the injunction did not shut down all of Defendants' operations. The Court expressly allowed continued food and beverage sales and other non-ball-hitting activities. As the Franseen affidavits acknowledge, those operations generate significant revenue (more than the range ball sales do). Accordingly, Defendants have continued to operate substantial portions of their business during the injunction period.

Where a lawful business is operated in an unlawful or unreasonable manner so as to materially interfere with neighboring property rights, injunctive relief is appropriate notwithstanding economic impact. *See LeFurgy v. Long Cove Club Owners Ass'n, Inc.,* 313 S.C. 555, 558, 443 S.E.2d 577, 579 (Ct. App. 1994). In this Court's opinion, under such circumstances,

the economic impact of compliance is not a "wrongful-injunction damage" **but a consequence of** bringing operations into conformity with the law.

B. The Ability of the Plaintiffs to Pay.

The injunction was entered to prevent an ongoing safety hazard involving numerous recorded acts of errant golf balls entering a residential community and causing physical injury and physical damage. The Plaintiffs are not a large owners association and have suffered actual physical damage and danger. Requiring Plaintiffs to post a substantial bond as a condition of safety during a Court ordered suspension would improperly shift the burden of Defendants' conduct onto the injured parties. Equity does not require such a result. *See Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 467, 626 S.E.2d 684, 689 (Ct. App. 2006).

Based on this review, the Court expressly finds that the bond amount is not "low or nominal" but is appropriate under the present circumstances. This Court reminds the parties that it remains available pursuant to Rule 62 SCRCP to address any aspect of this injunction including the bond or modification based on any additional evidence or safety measures to be implemented. The Court is willing to entertain test periods, allowing the Defendants to become operational within the bounds of the law as soon as Defendants are willing to do so.

WHEREFORE IT IS ORDERED:

1. The Defendants' Petition for Supersedeas is DENIED;
2. The Amount of the Bond, as reconsidered, is appropriate.

AND IT IS SO ORDERED.

The Honorable R. Lawton McIntosh

Beaufort Common Pleas

Case Caption: Queens Grant Regime Ii Inc Horizontal Property Regime VS Greenwood Resorts And Communities Inc , defendant, et al

Case Number: 2024CP0700156

Type: Order/Other

S/R. LAWTON McINTOSH

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