

**STATE OF SOUTH CAROLINA  
IN THE  
COURT OF APPEALS**

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**May 22 2026**

**SC Court of Appeals**

Appeal from the Court of Common Pleas  
For Charleston County  
Honorable Michael R. Scarborough, Master-In-Equity  
Civil Action No.: 2023-CP-10-02281  
***Appellate Case No. 2025-001775***

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GRAND OAKS BOULEVARD ASSOCIATION, INC.,

Appellant,

v.

PROXIMITY NEIGHBORHOODS MASTER ASSOCIATION, INC.,

Respondent.

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**APPELLANT'S INITIAL REPLY BRIEF**

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## I. ARGUMENT AND CITATION OF AUTHORITY

### A. GRAND OAKS PROPERLY AND ADEQUATELY PRESERVED THE ARGUMENTS REGARDING THE INVALIDITY AND UNENFORCEABILITY OF THE CORRECTIVE LIMITED WARRANTY DEED.

Proximity argues Grand Oak's arguments concerning the invalidity and unenforceability of the *Corrective Limited Warranty Deed* were never raised nor ruled upon by the Master-In-Equity and, therefore, not preserved for this appeal. Proximity misinterprets the record and the issues Grand Oaks raised. Grand Oaks' arguments were raised, ruled upon, and properly preserved for appeal.

Undisputedly, our courts "have [long] emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration [and, therefore,] [i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."<sup>1</sup> On the other hand, our "civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary or deprive [a litigant] of the adjudication [of his claims] on the merits . . . ."<sup>2</sup> "[W]here the question of [issue] preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation."<sup>3</sup> Moreover, our

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<sup>1</sup> Elam v. South Carolina Dept. of Trans., 361 S.C. 9, 23, 602 S.E.2d 772, 779-780 (2004) (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); Long v. Dunlap, 87 S.C. 8, 68 S.E. 801 (1910); Gaffney v. Peeler, 21 S.C. 55 (1884)) (Cleaned up).

<sup>2</sup> *Id.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (citing Gamble v. State, 298 S.C. 176, 379 S.E.2d 118 (1989); Rule 1, SCRCivP) (Cleaned up).

<sup>3</sup> See Alliance to Preserve Old White Horse Road Corridor, LLC v. RP&L, LLC, \_\_\_ S.C., \_\_\_, \_\_\_ S.E.2d \_\_\_, \_\_\_ (Ct.App. 2026) (2026 WL 1017527, at 5, 15 Apr. 2026). (citing Royal v. Free Kindergarten Ass'n of Charleston, 445 S.C. 436, 454, 914 S.E.2d 856, 865 (Ct.App. 2025) (quoting Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring))) (Alterations in original).

courts “ ‘are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.’ ”<sup>4</sup> In addition, “ ‘[o]ur [S]upreme [C]ourt has cautioned that issue preservation ‘is not a “gotcha” game aimed at embarrassing attorneys or harming litigants.’ ”<sup>5</sup>

Proximity was the party in this matter which placed the alleged validity and enforceability of the *Corrective Limited Warranty Deed* into dispute and contention. (*Amd. Answer and Counterclaim*, p.4, paras. 4-7). Proximity essentially asserted the *Corrective Limited Warranty Deed* absolved Proximity of any responsibilities whatsoever to Grand Oaks under the *Grand Oaks Covenants* including, specifically, payment of the Annual Assessments. (*Id.*, at paras. 4-6; *06.17.2025 Hearing Tr.*, p.17, line 18 – p.18, line 24). In response, Grand Oaks asserted that once Proximity “became bound to the easements, conditions, restrictions, reservations and encumbrances contained [in] the *Grand Oaks Covenants*, . . . absent [Grand Oak’s] consent, [Proximity was not permitted to] later lawfully unilaterally release itself from . . . the *Grand Oaks Covenants*.” (*Reply*, p.2, para. 7; *06.17.2025 Hearing Tr.*, p.7, lines 12-23; p.9, line 11 – p.14, line 22; p.25, line 2 – p.26, line 1; p.29, line 16 – p.30, line 13).

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<sup>4</sup> Carolina Real Estate Holdings, LLC v. Brilin Electric, LLC, 446 S.C. 376, 385 fn.6, 919 S.E.2d 918, 923 fn.6 (Ct.App. 2025) (*quoting Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011)). In any case, “ ‘[e]rror preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.’ ” Taylor v. Amar and Kenny Gill Living Trust Dated March 15, 2019, 2025 WL 1577764, at \*4 (S.C.App., 4 June 2025) (*quoting State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010)) (Alteration in original).

<sup>5</sup> Wedgewood Condominium Association v. Centex Homes, 447 S.C. 54, 67 fn.1, 923 S.E.2d 288, 294 fn.1 (Ct.App. 2025) (*quoting Johnson v. Roberts*, 422 S.C. 406, 411, 812 S.E.2d 207, 210 (Ct.App. 2018), *affirmed*, 427 S.C. 258, 830 S.E.2d 910 (2019) (*quoting Atl. Coast Builders & Contractors, LLC*, 398 S.C. 323, 329, 730 S.E.2d 282, 285)).

Moreover, Proximity asserted in its summary judgment motion as follows:

- (a) the “*Corrective Limited Warranty Deed* . . . provide[d] that [Proximity] was conveyed free and clear of the Grand Oaks [Covenants]”,
- (b) the “Corrective Limited Warranty Deed [wa]s unambiguous”;
- (c) “Proximity [wa]s not in privity with [Grand Oaks] pursuant to the *Grand Oaks [Covenants]*”;
- (d) Grand Oaks “d[id] not have the authority to assess Proximity assessments under Paragraph 6 of the *Grand Oaks [Covenants]*,” and
- (e) “[E]ven if [Proximity] is subject to the *Grand Oaks [Covenants]*, which Proximity maintains it is not, Proximity[] falls outside the scope of Paragraph 6 of the *Grand Oaks [Covenants]*, such that [Grand Oaks] d[id] not have authority to assess Proximity.”

(*Proximity MSJ*, p.2).<sup>6</sup> The Master-In-Equity then merely “parroted” Proximity’s position concluding, among other things, (1) the *Corrective Limited Warranty Deed* freed Proximity from any responsibilities imposed by the *Grand Oaks Covenants*, (2) the *Corrective Limited Warranty Deed* absolved Proximity from paying any of Grand Oaks’ Annual Assessments, (3) Proximity did not use either Grand Oaks Boulevard or Ashley Garden Boulevard as the principal access from Bees Ferry Road to Proximity, and (4) the *Corrective Limited Warranty Deed* was unambiguous. (*Order*, pp.4).

One of the principally determinative factors involved regarding the applicability of the *Grand Oaks Covenants* to Proximity and, in turn, Proximity’s attendant obligation to then pay the Annual Assessments was a determination whether Proximity “border[ed] Grand Oaks Boulevard and Ashley Gardens Boulevard or use[d] [either Grand Oaks Boulevard or Ashley Gardens Boulevard] for the principal access from Bees Ferry Road

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<sup>6</sup> Proximity reiterated these propositions in its memorandum of law in support of Proximity’s request for summary judgment on its counterclaim and as against Grand Oaks’ principal claims. (*Memo. Supp. MSJ*, pp.1-15)

to [Proximity].” (*Grand Oaks Covenants*, para. 6(a)) (Emphasis supplied). The Master-In-Equity addressed the access prong, but completely ignored the property abutment issue even though Proximity admitted “an extremely small area of the overall [Proximity] property abuts Ashley Gardens Boulevard ‘ ‘ ” (*Proximity’s Responses to 1<sup>st</sup> RFAs*, para.3; *06.17.2025 Hearing Tr.*, p.16, line 24 – p.17, line 5; p.25, lines 14), Proximity, nevertheless, continued to vigorously contest the applicability of Paragraph 6 as clearly binding Proximity to the *Grand Oaks Covenants* notwithstanding Proximity’s admission its property abutted Ashley Gardens Boulevard.

After the Master-In-Equity issued the order granting summary judgment to Proximity (*Order*, pp.1-6), Grand Oaks moved for reconsideration,<sup>7</sup> nothing specifically as follows:

. . . That the Order be altered or amended so as to find that the *Grand Oaks [Covenants]* states that the restrictive covenants shall run with title to the property described therein and shall inure to the benefit of and be binding upon the heirs, successors and assigns of each owner of the property;

\* \* \*

. . . That the Order be altered or amended so as to find and conclude that Bees Resources, L.P., as Declarant, subjected the Proximity Property to the *Grand Oaks [Covenants]* by Supplemental Declaration . . prior to transferring the Proximity Property to Grand Bees Development, LLC;

. . . That the Order be altered or amended so as to find that the Supplemental Declaration executed by Bees Resources, LP. . . states that it is the intention of Declarant to make the Proximity Property subject to the provisions of the *Grand Oaks [Covenants]* as fully and to the same extent as if the Proximity Property had been originally described in the *Grand Oaks [Covenants]*;

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<sup>7</sup> *Smalls v. Terry*, 2026 WL 1091070, at \*1 (S.C.App., 22 Apr. 2026) (*citing* *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)) (*per curiam*).

. . . That the Order be altered or amended so as to find that the Proximity Declaration states that to the extent the Proximity Property or any portion thereof is subject to the *Grand Oaks [Covenants]*, as supplemented, amended or restated . . .

. . . That the Court alter or amend the Order so as to find and conclude that the *Corrective [Limited] Warranty Deed* from Bees Resources, LP to Grand Bees Development, LLC . . .did not make the Proximity Property free and clear of the *Grand Oaks [Covenants]* since the Supplemental Declaration recorded prior to the transfer of the Proximity Property to Grand Bees Development, LLC created a covenant to run with the Proximity Property which could not be released without the express written consent of Plaintiff which has not occurred;

\* \* \*

. . . That the Order be altered or amended so as to delete any finding or conclusion that Grand Bees Development, LLC, as Grantee, filed with the ROD a *Corrective Limited Warranty Deed* . . as Grand Bees Development, LLC did not execute the *Corrective Limited Warranty Deed* and there is no evidence in the record that Grand Bees Development, LLC was aware of, or approved, the filing of the *Corrective Limited Warranty Deed*, particularly since [Proximity] continued to pay the annual assessment to [Grand Oaks] . . after the *Corrective Limited Warranty Deed* was recorded;

. . . That the Court alter or amend the Order so as to find and conclude that pursuant to the *Grand Oaks [Covenants]* each owner of a tract bordering upon or having as its principal access from Bees Ferry Road by way of Grand Oaks Boulevard and Ashley Gardens Boulevard shall pay its *prorata* share of the estimated cost of maintaining the entranceway signs and the annual landscape maintenance of Grand Oaks Boulevard and Ashley Gardens Boulevard [and];

. . . That the Court alter or amend the Order so as to find and conclude that the Proximity Property borders upon Ashley Gardens Boulevard and, consequently, [Proximity] [wa]s required to pay to [Grand Oaks] its *prorata* share of the estimated cost of maintaining the entranceway signs and the annual landscape maintenance of Grand Oaks Boulevard and Ashley Gardens Boulevard . . .

(*Reconsideration Mot.*, pp.3-4). The Master-In-Equity, again ignoring the evidence and the law, denied Grand Oaks' reconsideration motion thereby prompting this appellate proceeding.

Contrary to Proximity’s arguments, Grand Oaks’ arguments concerning the patent invalidity and unenforceability of the *Corrective Limited Warranty Deed* were presented to the Master-In-Equity, ruled upon by the Master-In-Equity, and, even if not done so, originally, again raised in Grand Oaks’ request for reconsideration and, again, denied by the Master-In-Equity. Even if Grand Oak’s efforts constituted “ ‘the bare minimum of what an appellant must do to preserve an issue for appeal . . . this state’s jurisprudence[, nevertheless,] pairs its insistence on preservation with a hesitance to make it a straitjacket.’ ”<sup>8</sup> Consequently, considering all of the facts and circumstances of this matter, Grand Oaks properly, sufficiently, and adequately preserved all of its arguments for this appeal.<sup>9</sup>

**B. THE GRAND OAKS COVENANTS APPLY TO PROXIMITY AS THE CORRECTIVE LIMITED WARRANTY DEED WAS NOT VALIDLY ISSUED.**

The *Grand Oaks Covenants* gave Bees Resources and certain others unrestricted authority to modify, change, and/or cancel the *Grand Oak Covenants* “[d]uring the initial phase of development and so long as [Bees Resources] own[ed] more than fifty {50%} percent of the developable acreage along Grand Oaks Boulevard[, Ashley Gardens

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<sup>8</sup> Hughes on Behalf of Estate of Hughes v. Bank of America National Association, 2021 WL 4770165, at \*4 (S.C.App., 13 Oct. 2021) (citing Herron v. Century BMW, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) (“We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hypertechnical manner.”)). Cf. Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 332, 730 S.E.2d 282, 287 (Toal, C.J., *concurring in result and dissenting in part*) (“[A]n over-zealous application of appellate preservation rules denigrates the primary purpose of the judiciary, which is to serve the citizens and the business community of this state by settling disputes and promoting justice.”).

<sup>9</sup> See Alliance to Preserve Old White Horse Road Corridor, LLC v. RP&L, LLC, \_\_\_ S.C., \_\_\_, \_\_\_ S.E.2d \_\_\_, \_\_\_ (2026 WL 1017527, at 5).(citing Royal v. Free Kindergarten Ass'n of Charleston, 445 S.C. 436, 454, 914 S.E.2d 856, 865 (*quoting Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287)).

Boulevard,] or of the tracts using [Grand Oaks] Boulevard for principal access to the Bees Ferry Road . . . .” (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13). While this ability was unfettered, it was neither unending nor everlasting as the *Grand Oaks Covenants* themselves dictated when Bee Resources’ control evaporated.

In developing the overall Grand Oaks Plantation residential project Bees Resources understandably retained and preserved its unilateral authority to change, modify, and/or cancel the *Grand Oaks Covenants* for any reason or for no reason. The *Grand Oaks Covenants*, however, contained two important restrictions on Bees Resources’ ability to alter/cancel the contractual obligations contained in the *Grand Oaks Covenants*, namely Bees Resources was prohibited from altering the *Grand Oaks Covenants* (a) once Bees Resources conveyed out to third-parties more than 50% of the average Bees Resources owned in the residential development<sup>10</sup> and/or (b) if Bees Resources attempted a modification to the *Grand Oaks Covenants* which imposed an additional assessment upon any property owner without such property owner’s express written consent. (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13).

“Pursuant to Paragraph 6. Section (e) of the [*4/7/2000 Amended/Restated Declaration*], [Bees Resources gave Grand Oaks] the authority and responsibility . . . to

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<sup>10</sup> Once Bees Resources sold off 50% of the developable acreage at issue both Bees Resources and its successors and assigns, were collectively barred from thereafter unilaterally altering, canceling, and/or otherwise amending the *Grand Oaks Covenants* as the “right to modify, cancel[,] or alter these covenants ***shall [then] be vested in [Grand Oaks].***” (*Grand Oaks Covenants*, para. 12) (Emphasis supplied). Again, Ashley Gardens Boulevard was later also added to this section of the **MODIFICATION** provision. (*4/7/2000 Amended/Restated Declaration*, para. 13) (Bolding in original).

maintain the entrance signs. the landscaping and the beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard.” (*Schumann Aff. I*, para. 2; *Grand Oaks Covenants*, pp.3-4; *4/7/2000 Amended/Restated Declaration*, p.6).<sup>11</sup> In fact, in 2007, Bees Resources had divested itself of the operative developable acreage and was required to automatically transfer over to Grand Oaks the responsibility for the operation and collection of the Annual Assessments. (*Schumann Aff. II*, para. 2). Consequently, by some time in 2007, Bees Resources, or its successors and assigns, had fully forfeited the ability to modify, change, cancel, amend, and/or alter the *Grand Oaks Covenants* since Bees Resources’ modification ability had, as a matter of contract law, already been automatically transferred to and become vested in Grand Oaks.

Nevertheless, on 16 July 2012, Bees Resources, for reasons as yet undisclosed, inexplicably executed the *Corrective Limited Warranty Deed* allegedly seeking to exempt Proximity *nunc pro tunc* from any compliance under the *Grand Oaks Covenants*.<sup>12</sup> Bees Resources, however, had no authority in 2012 to promulgate the *Corrective Limited Warranty Deed* since Bees Resources’ legal authority to change, cancel, and/or modify the *Grand Oaks Covenants* had ended some five years earlier when Bees Resources contractually transferred those modification rights to Grand Oaks. Bees Resources’ execution of the *Corrective Limited Warranty Deed* was an *ultra vires* act as Bees Resources did not have any legal or contractual authority to issue the deed. The

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<sup>11</sup> This proposition is also set forth in Paragraph 5(e) of the *Grand Oaks Covenants*.

<sup>12</sup> As noted, the *Corrective Limited Warranty Deed* was executed and recorded on 16 July 2012. (*Counterclaim*, para. 4; *Corrective Limited Warranty Deed*, pp.1-5). The *Proximity Covenants* were adopted on 6 November 2021. (*Proximity MSJ Memo*, at Exh. B). Proximity did not, however, obtain administrative control over the Proximity Neighborhoods Property until 2023. (*Id.*, p.4).

*Corrective Limited Warranty Deed* was, for all practical purposes, void and without any binding effect at the time it was executed and recorded.<sup>13</sup>

The Master-In-Equity incorrectly concluded the *Corrective Limited Warranty Deed* exempted Proximity from the *Grand Oaks Covenants*' requirements to pay the Annual Assessments. In 2012 Grand Oaks was the sole entity authorized to alter, cancel, or otherwise change the *Grand Oaks Covenants*. Bees Resources had contractually relinquished that right in 2007.<sup>14</sup>

Proximity did not meet its burden of proof to justify the grant of summary judgment as there were clearly issues of fact which were still disputed, especially considering the interplay between the *Grand Oaks Covenants* and the *Corrective Limited Warranty Deed*. The Master-In-Equity's decision in Proximity's favor must be reversed in all respects.

**C. THE CORRECTIVE LIMITED WARRANTY DEED VIOLATED THE GRAND OAK COVENANTS.**

The Master-In-Equity found the *Corrective Limited Warranty Deed* completely discharged Proximity from having to pay the Annual Assessments mandated by the *Grand Oaks Covenants*. A closer reading of the *Grand Oaks Covenants* however demonstrates the *Grand Oak Covenants* prohibited the *Corrective Limited Warranty Deed* from actually accomplishing what Proximity asserted was its intended purpose.

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<sup>13</sup> A void act is one that the law treats as having never existed and such an act lacks legal effect, is unenforceable, and imposes no duty of performance upon the promisor. It is considered a legal nullity from the outset (*void ab initio*), and the promisor cannot ratify or be bound by such an act. See generally 1 Williston on Contracts, Fourth Edition, § 1:20 Thomson Reuters West May 2026 Update)

<sup>14</sup> First Federal Savings and Loan Association of Charleston v. Bailey, 316 S.C. 350, 354, 450 S.E.2d 77, 79-80 (Ct.App. 1994) (*citing Shipyard Property Owners Ass'n v. Mangiaracina*, 307 S.C. 299, 414 S.E.2d 795 (Ct.App. 1992)).

While Bees Resources reserved the right to either modify or cancel the *Grand Oaks Covenants*, Bees Resources self-imposed upon itself a major restriction for any alterations Bees Resources contemplated which involved monetary assessments. The *Grand Oaks Covenants* prohibited Bees Resources from making any change to the *Grand Oaks Covenants* which effectively imposed an additional monetary assessment “upon any [property] owner without such [property] owner’s written consent.” (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13).<sup>15</sup>

Unquestionably, the acreage comprising the Proximity Neighborhoods Property is substantial when compared to the other neighborhoods in Grand Oaks Plantation.<sup>16</sup> (*06.17.2025 Hearing Tr.*, p.8, line 25 – p.9, line 5; p.13, line 10 – p.14, line 4; p.19, line 22 – p.20, line 12; p.22, lines 10-18; *Schumann Aff. III*, at Exh. A). Consequently, Proximity’s respective *pro-rata* share of the Annual Assessment was likewise substantial, compared with the other Grand Oaks Plantation neighborhoods. (*Id.*, at p.8, line 25 – p.9, line 5; p.13, line 10 – p.14, line 4; p.19, line 22 – p.20, line 12; p.22, lines 10-18). During 2021 through 2025, Proximity’s respective share of Grand Oaks’ annual budget ranged between 25.7% and 27.1% per year (*Schumann Aff. I*, at Exhs. E-G; *Schumann Aff. III*, at Exh. A) making Proximity the most significant contributor. (*Schumann Aff. I*, at Exhs. E-G; *Schumann Aff. II*, at Exh. A).

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<sup>15</sup> Grand Oaks uses the Annual Assessments it sends out to the various neighborhoods in Grand Oaks Plantation to fund its annual budget for the maintenance and beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard. (*Grand Oaks Covenants*, para. 5; *4/7/2000 Amended/Restated Declaration*, para. 6).

<sup>16</sup> The Proximity Neighborhoods Property is the largest neighborhood in Grand Oaks Plantation with acreage of some 214 acres. (*Schumann Aff. III*, at Exh. A). The Proximity Neighborhoods Property is more than double the acreage of the next largest neighborhood – Mount Royal/Harrington Place – 104 acres). (*Id.*).

When Proximity unilaterally decided in 2021 to cease paying its yearly *pro rata* contribution to the Annual Assessments, this action placed Grand Oaks in a precarious position with over 25% of Grand Oaks' annual budget missing and presently uncollectable. (*Id.*, at Exh. G). Beginning in 2024, due to Proximity's payment refusal, Grand Oaks was forced to increase the Annual Assessment for the other Grand Oaks Plantation neighborhoods and/or entities by almost 60%. (*Id.*; *Schumann Aff. III*, at Exh. A). Those neighborhoods and/or entities were forced to bear significant increases in their Annual Assessments due to Proximity's unjustified and unwarranted reliance on the *Corrective Limited Warranty Deed*. Bees Resources' adoption of the *Corrective Limited Warranty Deed* "impose[d] additional assessments upon [property owners] without such [property] owner[s'] express written consent" (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13) even though the Grand Oaks Covenants prohibited such action.

There was no evidence property owners affected by the *Corrective Limited Warranty Deed* provided Bees Resources written consent granting Bees Resources authority to modify the *Grand Oaks Covenants* by issuing the *Corrective Limited Warranty Deed*. Absent Proximity paying its Annual Assessment property owners across Grand Oaks Plantation had to pay significantly more as Proximity was the largest neighborhood in the development and, until 2022, had paid the greatest percentage of the Annual Assessments. (*06.17.2025 Hearing Tr.*, p.8, line 25 – p.9, line 5; p.13, line 10 – p.14, line 4; p.19, line 22 – p.20, line 12; p.22, lines 10-18; *Schumann Aff. III*, at Exh. A).

Proximity's argument "Paragraph 13 of the *Grand Oaks [Covenants]* d[id] not require [Bees Resources] to obtain the owner's written consent to impose a **higher** annual maintenance assessment, it only require[d] written consent where [Bees Resources] s[ought] to impose **additional** assessments"<sup>17</sup> is non-sensical. The *Grand Oaks Covenants* prohibited any modification which "impose[d] additional assessments upon any owner without such owner's express written consent." (*Grand Oaks Covenants*, para. 12; *4/7/2000 Amended/Restated Declaration*, para. 13). An assessment which is **higher** than it would have been otherwise and which resulted directly from Bees Resources' violating the *Grand Oaks Covenants* by issuing the *Corrective Limited Warranty Deed*, clearly and reasonably constitutes an **additional assessment** to affected property owners as contemplated by the *Grand Oaks Covenants*. Just as William Shakespear stated "[t]hat which we call a rose by any other name would smell as sweet . . . ."<sup>18</sup> Regardless of how Proximity characterizes the additional funds its neighbors now have to pay due to Proximity's decision to stop paying the Annual Assessments, the result is the same and smells not so sweet from the other Grand Oaks Plantation neighborhoods. They are having to pay additional assessments for which they did not consent.

Proximity has not alleged the *Grand Oaks Covenants* were ambiguous. This "Court [of Appeals] is required to give effect to the plain meaning of the words in an unambiguous contract."<sup>19</sup> Furthermore, our court "assume the parties intended a

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<sup>17</sup> See Proximity's Initial Brief, p.16 (citing *Grand Oaks [Covenants, para.] 13*) (Bolding and emphasis in original).

<sup>18</sup> William Shakespear, *Romeo and Juliet*, Act II, Scene II.

<sup>19</sup> Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 497, 579 S.E.2d 132, 135 (2003) (citing United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 413 S.E.2d 866 (Ct.App. 1992)).

meaningful agreement, not a nonsensical or absurd one, so [our court] read agreements in a way that ‘will give effect to the whole instrument and to each of its various parts and provisions, if it is reasonable to do so.’ **20** As this Court of Appeals stated in Floyd v.

Dross:

‘Common sense and good faith are the leading touchstones of the construction of a contract[,] and contracts are to be so construed as to avoid an absurd result. Where one construction would make a contract unusual or extraordinary and another, equally consistent, would make the contract reasonable, fair[,] and just, the latter construction will prevail.’**21**

Bees Resources should never have issued the *Corrective Limited Warranty Deed*. Bees Resources actions directly violated the specific and unambiguous terms and condition of the *Grand Oaks Covenants*. The *Corrective Limited Warrant Deed* did not give Proximity the legal right to refuse to pay Grand Oaks the Annual Assessments. The *Corrective Limited Warrant Deed* violated the specific provisions of the *Grand Oaks Covenants* by imposing additional monetary assessments on other property owners in Grand Oaks Plantation without their written consent.

Proximity did not meet its burden of proof to justify the grant of summary judgment as there were clearly issues of fact which were still disputed, especially considering the interplay between the *Grand Oaks Covenants* (as amended and restated) and the *Corrective Limited Warranty Deed*. The Master-In-Equity wrongly concluded the

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**20** Herrington v. SSC Seneca Operating Company, LLC, 435 S.C. 243, 248, 866 S.E.2f 579, 581-582 (Ct.App. 2021) (*quoting* Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)).

**21** Floyd v. Dross, 442 S.C. 79, 88, 897 S.E.2d 191, 196 (Ct.App. 2024) (*citing* McCune v. Myrtle Beach Indoor Shooting Range, Inc., 364 S.C. 242, 248, 612 S.E.2d 462, 465 (Ct.App. 2005) (*quoting* Georgetown Mfg. & Warehouse Co. v. S.C. Dep’t of Agric., 301 S.C. 514, 518, 392 S.E.2d 801, 804 (Ct.App. 1990)) (Alterations in original).

*Corrective Limited Warranty Deed* excused Proximity from paying its share of the Annual Assessments. His decision must be reversed in all respects and this case remanded with directions to enter judgment for Grand Oaks or for the matter to proceed to trial.

**D. PROXIMITY WAS ESTOPPED TO DENY THE GRAND OAKS COVENANTS REQUIRED PAYMENT OF THE ANNUAL ASSESSMENT.**

Notwithstanding Proximity's assertion the *Corrective Limited Warranty Deed* absolved Proximity of any obligation to pay the Annual Assessments (*Counterclaim*, paras. 4-6, *Proximity MSJ*, pp.1-2), Proximity was estopped to deny it was required to pay its share of the Annual Assessments.<sup>22</sup> Proximity voluntarily, knowingly, and willingly paid its share of the Annual Assessments from 2012 through 2021, even though its alleged "saving grace - the *Corrective Limited Warranty Deed* – had already been filed and Proximity had record notice of the document for some nine years.<sup>23</sup>

In *Seabrook Island Property Owners Association v. Pelzer*, this Court of Appeals addressed, *inter alia*, a property owner's claim the POA had improperly assessed fees for several years based on an incorrect formula.<sup>24</sup> While the Trial Court found for the POA

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<sup>22</sup> Grand Oaks asserted its equitable estoppel argument in its response to Proximity's Counterclaim. (*Reply*, para. 7). This was a proper assertion of the equitable estoppel doctrine. *See generally Companion Property and Casualty Insurance Company v. U.S. Bank National Association*, 2015 WL 7568613, at \*8 (D.S.C., 24 Nov. 2025) (*quoting Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992) ("[T]he doctrine of waiver or equitable estoppel may be invoked as affirmative defenses to counterclaims . . ."); *Nash v. Tara Plantation Homeowners Association, Inc.*, 2010 WL 10080093, at \*\*4-5 (S.C.App., 12 July 2010) (*per curiam*)). *See also Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 392, 680 S.E.2d 289, 291 (2009).

<sup>23</sup> *See S.C. Code Ann.* § 30-9-30(A) (Thomson Reuters West 2020). *See generally Bank of America, N.A. v. Vaughn*, 2017 WL 4791153, at \*2 (S.C.App., 5 July 2017) (*citing BB&T of S.C. v. Kidwell*, 350 S.C. 382, 389, 565 S.E.2d 316, 319 (Ct. App. 2002) (*quoting Nat'l Bank of Newberry v. Livingston*, 155 S.C. 264, 284, 152 S.E. 410, 417-18 (1930))).

<sup>24</sup> *Seabrook Island Property Owners Association v. Pelzer*, 292 S.C. 343, 346-348, 356 S.E.2d 411, 413-414 (Ct.App. 1987).

on all claims, this Court of Appeals reversed on the assessments<sup>25</sup> This Court of Appeals stated:

The annual charges for [1976-1983] were assessed in good faith. [The property owner] had constructive knowledge that the maintenance charges were not being assessed in accordance with the restrictive covenants and bylaws[, but] acquiesced in the method of assessment and paid the charges. The [POA] expended the moneys for purposes authorized by the bylaws [and the Property Owner] received the benefit of those expenditures.

. . . . If a party stands by and sees another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position, his silence is acquiescence and it estops him from later seeking relief.<sup>26</sup>

In Nash v. Tara Plantation Homeowners Association, Inc., this Court of Appeals addressed some property owners' claims the subdivision's covenants did not apply to their properties and they were, among other things, not obligated to pay the annual HOA dues assessment.<sup>27</sup> This Court of Appeals affirmed the Trial Court's decision for the HOA, noting:

[T]he [property owners] paid dues, voted on [HOA] issues, and participated in meetings for years before asserting their lots were not bound by the Covenants. The [property owner]s had access to the same facts that give rise to their current contention they are not bound by the Covenants. During this time, the [HOA] maintained the entranceway to the subdivision with landscaping, lighting, and placement of a sign. Until [the property owners] brought this action in . . . 2005, none of the [property owner]s took any action inconsistent with their lots being bound. The trial court [found] [t]he [HOA]

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<sup>25</sup> *Id.*, 292 S.C. 343, 347-348, 356 S.E.2d 411, 414.

<sup>26</sup> *Id.*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (*citing* McClintic v. Davis, 228 S.C. 378, 90 S.E.2d 364 (1955)). *See also generally* Knightsbridge Property Owners Association, 2018 WL 2129859, at \*1 (S.C.App., 9 May 2018) (*per curiam*); Nash, 2010 WL 10080093, at \*5; Queens Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 358,, 368 S.E.2d 902, 911 (Ct.App. 2006).

<sup>27</sup> Nash, 2010 WL 10080093, at \*\*1-2.

was ‘prejudiced by the [property owners’] delay by spending money and effort regarding the landscaping improvements, sign[,] and lights adjacent to the [property owners’] properties, all of which implicitly considered the disputed lots as part of the subdivision and was done without any reason to believe such a contention would be made.’ . . . [W]e [affirm] the trial court's ruling that the [property owners] are estopped from or have waived their contention the Covenants do not apply to their lots.<sup>28</sup>

In this case, Proximity (or Grand Bees) paid the Annual Assessment, initially to Bees Resources and then to Grand Oaks, from Grand Bees’ purchase and management of the real estate and the inception of the Proximity Neighborhoods Property<sup>29</sup>’s inception as a neighborhood, as well as certainly from July 2012 until 2022 when it unilaterally chose to stop.<sup>30</sup> From July 2021 until 2022, Proximity “had access to the same facts that give rise to [Proximity’s] current contention [it is] not bound by the [Grand Oak] Covenants[, but did not assert its non-obligation position until involved in this case].”<sup>31</sup>

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<sup>28</sup> *Id.*, 2010 WL 10080093, at \*6.

<sup>29</sup> As noted before, the Proximity Neighborhoods Property was managed/controlled by Grand Bees, as well as a number of subsequent assigns and successors before Proximity assumed control in 2023. (Proximity Memo. MSJ, p.4, Exh. G; 11/16/2004 Supplemental Declaration, p.3).

<sup>30</sup> Proximity asserts “[t]here [wa]s no evidence in the record demonstrating that Proximity, or any of its predecessors in interest, started paying the [A]nnual [A]ssessments pursuant to Paragraph 6 of the *Grand Oaks {Covenants}* in 2012 or that it regularly and consistently paid the annual assessment thereafter.” (Proximity’s Initial Brief, p.18). Proximity ignores the record. (*Order*, p.3; *Reply*, paras. 8-10). The Master-In-Equity specifically noted “[i]n or around 2020, [Proximity Neighborhoods] Property was managed by Lennar Carolinas, LLC as “Declarant” until the [Proximity Neighborhoods] Property became owner managed [by Proximity]. It was in or around that time [Proximity] questioned the assessments imposed upon it by [Grand Oaks] . . . .” (*Id.*). Proximity would have had no need to question the Annual Assessments unless either Proximity or its predecessors had been making the annual payments in the past by the then third-party property managers. Furthermore, Proximity has never asserted either Proximity or its predecessors previously refused to pay the Annual Assessments during the several years period from 2012 until 2021. In this situation, as virtually always, “proving a negative is a challenge in any context.” Vieth v. Jubelirer, 541 U.S. 267, 311 (2004) (Kennedy, J., *concurring in the judgment*).

<sup>31</sup> Nash, 2010 WL 10080093, at \*6.

Moreover, during the 2012 to 2021 or 2012 time frame, Grand Oaks “maintained the [Grand Oaks Boulevard] entranceway to the subdivision[, together with Ashley Gardens Boulevard, as well as the], landscaping, lighting, and [maintenance and] placement of [signage on both thoroughfares].”<sup>32</sup> “Until [Proximity] brought [its counterclaim in this case, Proximity had never taken] any action inconsistent with [Proximity or its predecessors] being bound [by the *Grand Oaks Covenants*].”<sup>33</sup> Consequently, Grand Oaks:

. . . was [necessarily] prejudiced by [Proximity’s] delay [in paying its share of the Annual Assessments] by spending money and effort regarding [maintenance of Grand Oaks Boulevard and Ashley Gardens Boulevard], landscaping improvements, sign[age,] and lights adjacent to [Proximity’s] properties, all of which implicitly considered [Proximity’s] disputed lots as part of the [overall Grand Oaks Plantation] subdivision and was [undertaken by Grand Oaks] without any reason [for Grand Oaks] to believe such a contention would be made [by Proximity].”<sup>34</sup>

Proximity’s “[e]stoppel by silence arises where [Proximity] ow[ed] [Grand Oaks] a duty to speak [about the *Corrective Limited Warranty Deed*] refrain[ed] from doing so and thereby le[d] [Grand Oaks] to believe in the existence of an erroneous state of facts[, namely, that Proximity would continue to pay the Annual Assessments].”<sup>35</sup> Consequently, Proximity’s “[s]ilence, whe[ther] it [wa]s intended, or when it [simply] ha[d] the effect of misleading [Grand Oaks,] may [legitimately] operate as [an] equitable

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Southern Development Land & Golf Co. v. South Carolina Public Service Commission, 311 S.C. 29, 33, 426 S.E.2d 748, 751 (1993) (*citing* Ridgill v. Clarendon County, 192 S.C. 321, 6 S.E.2d 766 (1939)).

estoppel.”<sup>36</sup> Furthermore, “[t]here is no requirement that [Proximity] have actual knowledge of the true facts if circumstances [we]re such that knowledge [wa]s necessarily imputed to [Proximity].”<sup>37</sup> This is the situation herein as Proximity, of course, would have had, at a minimum, constructive knowledge of the *Corrective Limited Warranty Deed* as it was in Proximity’s chain of title.<sup>38</sup> Moreover, Proximity and its predecessors, having record (if not actual) knowledge of the *Corrective Limited Warranty Deed* continued to pay the Annual Assessment to Grand Oaks from 16 July 2012 until 2022 without any reservations, restrictions, and/or objections. These actions now prevent Proximity from now refusing to do so. Grand Oaks has expended funds in, among other things, maintaining Grand Oaks Boulevard and Ashley Gardens Boulevard, in continuing and maintaining the landscaping, and signage upkeep. Grand Oaks’ expenditures have, both directly and indirectly, benefited Proximity. Grand Oaks had no way to assume Proximity would unilaterally cease its payments of the Annual Assessments in 2022 given Proximity’s prior payment actions. Proximity was and remains equitably estopped from shirking its contractual responsibility to pay the Annual Assessment.

Proximity argues that it cannot be equitably estopped from paying the Annual Assessments since both Grand Oaks and Proximity had the same level of knowledge vis-à-vis the *Corrective Limited Warranty Deed*.<sup>39</sup> Admittedly both Proximity and Grand Oaks

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<sup>36</sup> *Id.*, (citing Welch v. Edisto Realty Co., 170 S.C. 31, 169 S.E. 667 (1933)).

<sup>37</sup> *Id.*, (citing Accord Alwes v. Hartford Life & Accident Ins. Co., 372 N.W.2d 376 (Minn.App. 1985)).

<sup>38</sup> See Oak Forest Homeowners Association, Inc. v. Dennison, 2025 WL 3772138, at \* (S.C.App., 31 Dec. 2025) (*per curiam*).

<sup>39</sup> Proximity’s Initial Brief, pp.20-21 (citing Adams v. Adams, 220 S.C. 131, 139-141, 66 S.E.2d 809, 813 (1951); Helsel v. City of North Myrtle Beach, 307 S.C. 24, 28, 413 S.E.2d 821, 824 (1992)).

both had constructive record notice of the *Corrective Limited Warranty Deed* as it had been recorded in the Office of the Register of Deeds in 2012. Proximity ignores the obvious fact that from 2012 until 2021 or so Proximity and its predecessors apparently viewed the *Corrective Limited Warranty Deed* in the very same light as Grand Oaks, namely, that Proximity was both required to and did pay the Annual Assessments. In fact, Proximity operated on that proposition until the Proximity Neighborhoods Property became owner-managed in 2022 and allegedly looked at the situation afresh. Grand Oaks has never changed its position – always believing Proximity was required to pay the Annual Assessments. Proximity was the only party to have changed its perspective.

The Master-In-Equity incorrectly concluded equitable estoppel did not apply to compel Proximity to pay the Annual Assessment. His decision must be reversed in all respects and remanded with directions to enter judgment for Grand Oaks or, alternatively, remanded for a trial proceeding.

**E. THE GRAND OAK COVENANTS' USE OF 'AND' DID NOT REQUIRE THE PROXIMITY NEIGHBORHOODS PROPERTY TO ABUT BOTH GRAND OAKS BOULEVARD AND ASHLEY GARDENS BOULEVARD.**

Proximity makes much of the Grand Oaks Covenants' use of the word "and" in the sentence which states "[o]nly owners of tracts which border Grand Oaks Boulevard and Ashley Gardens Boulevard or use [Grand Oaks] Boulevard[ or Ashley Gardens Boulevard] for their principal access from Bees Ferry Road to their property shall have th[e] [Grand Oaks Covenants] impose upon their property."<sup>40</sup> (4/7/2000

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<sup>40</sup> See *Proximity's Initial Brief*, pp.24-25.

*Amended/Restated Declaration*, para. 6(a)).<sup>41</sup> Although an interesting argument, it is simply a “red herring”<sup>42</sup> to divert this Court of Appeals’ attention from the unenforceability of the *Corrective Limited Warranty Deed*.

This Court of Appeals previously noted that “[t]here is great difficulty in many cases in determining whether a disjunctive interpretation shall be imposed on the word *and*, or a conjunctive interpretation put on the word *or*;-or whether these words should be left to their natural meaning and effect.”<sup>43</sup> The word “ ‘and’ may be interpreted conjunctively or disjunctively.”<sup>44</sup> “[C]ourts interpret ‘and’ in the disjunctive sense to prevent an absurd or unreasonable result, or to give effect to the parties’ intent and reasonable expectations.”<sup>45</sup> In such “cases, courts discern the meaning of the word from the context of the provision and the contract as a whole. In short, although ‘and’ typically bears a conjunctive meaning, that presumption [may] be overcome by context.”<sup>46</sup> “It is an established principal that ‘[t]he word ‘or’ is frequently construed to mean ‘and,’ and *vice versa*, in order to carry out the evident intent of the parties.”<sup>47</sup>

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<sup>41</sup> This language was also in the original *Grand Oaks Covenants*, although absent the reference to Ashley Garden Boulevard. (*Grand Oaks Covenants*, para. 5(a)).

<sup>42</sup> See generally *Naumova v. Sharonview Federal Credit Union*, 2024 WL 4297645, at \*4 (D.S.C., 26 Sept. 2024); *Jaudon v. Executive Director*, 2007 WL 1239248, at \*6 (D.S.C., 27 Apr. 2007).

<sup>43</sup> *Shands v. Rogers*, 7 Rich.Eq. 422, 425, 28 S.C.Eq. 422, 425 (Ct.App. 1855) (1855 WL 3170, at \*2) (Emphasis in original).

<sup>44</sup> *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1045 (Del. 2023). See also 11 *Williston on Contracts, Fourth Edition*, § 30:12 (Thomson Reuters West May 2026 Update).

<sup>45</sup> *Id.* See also *In re Fairfield Sentry Ltd.*, 147 F.4<sup>th</sup> 136, 150 (2<sup>nd</sup> Cir. 2025) (*quoting Spanski Enters., Inc. v. Telewizja Polska S.A.*, 832 Fed. Appx. 723, 725 (2d Cir. 2020)) (“Courts applying New York law to contracts using the word ‘and’ look to the context in which the word is used to determine whether it should be read in the conjunctive or disjunctive sense.”).

<sup>46</sup> *Id.*

<sup>47</sup> *Noell v. American Design, Inc., Profit Sharing Plan*, 764 F.2d 827, 833 (11<sup>th</sup> Cir. 1985) (*quoting Dumont v. United States*, 98 U.S. 142, 143 (1878)). See also generally 4 Samuel Williston, Walter

In this case, the context is the key. Bees Resources intended for all property owners abutting Grand Oaks Boulevard and Ashley Gardens Boulevard to collectively contribute to the upkeep and maintenance of those two thoroughfares. (*Grand Oaks Covenants*, para. 5(a); *4/7/2000 Amended/Restated Declaration*, para. 6(a)). It would be an entirely unreasonable and incongruous interpretation of the *Grand Oaks Covenants* (as amended and restated) to presume Bees Resources, by using the phrase “Grand Oaks Boulevard **and** Ashley Garden Boulevard” (*4/7/2000 Amended/Restated Declaration*, para. 6(a)) (Emphasis added), specifically intended to exclude the largest residential area in Grand Oaks Plantation from any obligation to and/or responsibility whatsoever for the maintenance and upkeep of Grand Oaks Boulevard and Ashley Gardens Boulevard, especially when those two thoroughfares comprise a significant part of the overall roadway boundaries for the Proximity Neighborhoods Property. This Court of Appeals should give credence to Bees Resources’ intent on adopting the *Grand Oak Covenants* (as amended and restated) and read the word “and” either as “or” on, alternatively, in the disjunctive “in order to carry out the evident intent of the parties.”**48**

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H.E. Jaeger, *A Treatise on the Law of Contracts*, § 619 (West 1961); *State Mut. Life Assur. Co. of Worcester, Mass. v. Heine*, 49 F.Supp. 786, 788 (W.D.Ky. 1943), *affirmed*, 141 F.2d 741 (6th Cir. 1944) (“[C]ases show that the word ‘and’ or ‘or’ will not be given its literal meaning when such meaning would do violence to the evident intent and purpose of the contracting parties, and the other meaning would give effect of such intent.”) (Alteration in original); *Wilson Stream Dam Co. v. Boston Excelsior Co.*, 105 Me. 249, 252, 74 A. 115, 116 (1909) (the word “and” in a contract may be construed as “a convertible term used in the sense of ‘or’ ” to make sense of the contract); *Lamborn v. Nat’l Park Bank of N. Y.*, 212 A.D. 25, 208 N.Y.S. 428, 435 (1<sup>st</sup> Dept. 1925), *affirmed*, 240 N.Y. 520, 148 N.E. 664 (1925). *See generally* *Cipla Ltd. v. Amgen Inc.*, 778 Fed.Appx. 135, 140 (3<sup>rd</sup> Cir. 2019) (*quoting* *United States v. One 1973 Rolls Royce, V.I.N. SRH-16266*, 43 F.3d 794, 815 (3d Cir. 1994)). *See also* *Stockman v. Heartland Indus. Partners, L.P.*, 2009 WL 2096213, at \*14, fn.64 (Del. Ch., 14 July 2009).

**48** *Noell*, 764 F.2d 827, 833 (*quoting* *Dumont*, 98 U.S. 142, 143).

Additionally, “the word[s] ‘and’ or ‘or’ will not be given [their] literal meaning when such meaning would do violence to the evident intent and purpose of the contracting parties, and the other meaning would give effect of such intent.”<sup>49</sup>

Proximity further asserts that Proximity Drive is the Proximity Neighborhoods Property principal point of ingress and egress from Bees Ferry Road, but Proximity neglected to consider that proposition may not, in fact, be totally accurate. Proximity failed to present any evidence which conclusively showed Proximity Drive was the Proximity Neighborhood Property’s residents’ principal access to their respective homes and/or apartments.<sup>50</sup> Proximity’s submitted maps only showed the residents had ingress and egress from Bees Ferry Road, as well as from Grand Oaks Boulevard and Ashley Garden Boulevard. (*Memo. Supp. MSJ*, pp.3, 5). The Master-In-Equity stated the “development of the [Proximity Neighborhoods Property] included the development of Proximity Drive, allowing [Proximity’s] residents to gain direct access to their home from Bees Ferry Road, rather than having to take Grand Oaks Boulevard to Ashley Gardens Boulevard to Proximity Drive.” (*Order*, p.3). It is important to note the Master-In-Equity **did not find or conclude** Proximity Drive was the “**principal access** of the [Proximity Neighborhoods Property’s residents] from Bees Ferry Road to their property . . . .” (*4/7/2000 Amended/Restated Declaration*, para. 6(a)) (Emphasis added). The Master-In-Equity found Proximity Drive was an alternative means, not necessarily the principal means, to either enter or leave Bees Ferry Road.

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<sup>49</sup> *Heine*, 49 F.Supp. 786, 788.

<sup>50</sup> Proximity’s only affidavit addressed signage, meeting notices, and budgets. (*Duc Aff.*, pp.1-2).

To move from Bees Ferry Road into the Proximity Neighborhoods Property by way of Proximity Drive requires transversing through both the front four buildings of the congested 292-unit Bees Ferry Apartments, as well as the front five buildings of the congested 199-unit Proximity Residences. (*Memo. Supp. MSJ*, p.5). Residents of the Proximity Neighborhoods Property are likely to avoid, at least in part, using the Proximity Drive entrance way for safety reasons, as well as using Grand Oaks Boulevard alternatively to gain access to the commercial area at the intersection of Grand Oaks Boulevard and Bees Ferry Road (*i.e.*, Harris Teeter, Starbucks, Extra Space Storage, dental/medical offices, restaurants, gasoline station, *etc.*).

Proximity's own submitted maps show that the Proximity Neighborhoods Property **abuts Ashley Gardens Boulevard** across the undeveloped greenspace, water, and marsh at the western most of the subdivision past the homes located on Byrd Garden Road. (*Memo. Supp. MSJ*, pp.3, 5). Proximity also reluctantly admitted this in discovery. (*Responses to RFA No. 3*, p.3). Moreover, the same maps reasonably show the Proximity Neighborhoods Property **also abuts Grand Oaks Boulevard** across similar undeveloped greenspace, water, and marsh at a spot to the subdivision's north between the Extra Space Storage facility and several residences located on Carters Grove Road. (*Memo. Supp. MSJ*, pp.3, 5). Under the applicable standard the Proximity Neighborhoods Property is contiguous to both rationally and logically contiguous to Ashley Garden Boulevard and Grand Oaks Boulevard.

Our courts “broadly interpret the term contiguous.”<sup>51</sup> While the term “ ‘[a]but’ means to be contiguous, or border on; to bound upon; to end, end at, or terminate, to join at a border or boundary; to meet; to touch at the end or side[,] , ‘abut’ does not always mean there must be actual contact.”<sup>52</sup> “[P]roperty may still be deemed to abut a road when there is some intervening, natural barrier like a stream or river.”<sup>53</sup> Furthermore, it is well established that “an intervening boundary [which] is neither a barrier nor an obstruction does not operate to destroy contiguity[, therefore], an incidental separation between properties [does] not serve to negate otherwise contiguous property.”<sup>54</sup> This includes “marshes and creeks [which] do not destroy contiguity . . . .”<sup>55</sup> Additionally, the “word ‘abutting’ has traditionally connoted the concept of contiguity.”<sup>56</sup>

The Master-In-Equity incorrectly concluded Proximity did not have to pay the Annual Assessment. His decision must be reversed in all respects and remanded with directions to enter judgment for Grand Oaks or, alternatively, remanded for a trial proceeding.

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<sup>51</sup> Sonoco Products Co. v. South Carolina Dept. of Revenue, 378 S.C. 375, 393-394, 662 S.E.2d 599, 603-604. (2008) (*citing cases*).

<sup>52</sup> Mosteller v. County of Lexington, 336 S.C. 360, 365, 520 S.E.2d 620, 623 (1999) (*quoting* 1 C.J.S., *Abut*, at 397 (1985)). *See also* Carolina Chloride, Inc. v. South Carolina Department of Transportation, 2018 WL 776633, at \*1 (S.C.App., 7 Feb. 2018) (*per curiam*); Eldridge v. South Carolina Department of Transportation, 384 S.C. 548, 552, 683 S.E.2d 483, 485 (2009).

<sup>53</sup> *Id.*, (*citing* Anderson v. Town of Albemarle, 182 N.C. 434, 109 S.E. 262 (1921)).

<sup>54</sup> Sonoco Products, 378 S.C. 375, 394, 662 S.E.2d 599, 604.

<sup>55</sup> Kizer v. Clark, 360 S.C. 86, 91, 600 S.E.2d 529, 531-532 (2004) (*citing* Glaze v. Grooms, 324 S.C. 249, 253, 478 S.E.2d 841, 844 (1996)).

<sup>56</sup> Jakobson v. Chestnut Hill Properties, Inc., 106 Misc.2d 918, 932, 436 N.Y.S.2d 806, 811 (Sup.Ct. 1981) (*citing* Black's Law Dictionary, 5<sup>th</sup> Ed., p.11; Homac Corporation v. Sun Oil Co., 137 Misc. 551, 244 N.Y.S. 51 (1930)).

## II. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Appellant, Grand Oaks Boulevard Association, Inc., respectfully requests this Court of Appeals to reverse the Master-In-Equity in all respects and remand this matter back with directions to enter judgment for Grand Oaks or, in the alternative, remand for a trial proceeding.

Respectfully submitted:

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